APPENDIX

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APPENDIX A

[FILED: AUGUST 21, 2025]

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee/ Cross-Appellant, v. MATTHEW CLINE, Defendant-Appellant/ Cross-Appellee.	Nos. 24-1119 & 24-1137

Appeal from the United States District Court for the District of Colorado (D.C. No. 1:21-CR-00339-DDD-1)

Robert T. Fishman of Ridley, McGreevey & Winocur, PC, Denver, Colorado, for Defendant-Appellant/Cross-Appellee.

Rajiv Mohan, Assistant United States Attorney (Matthew T. Kirsch, Acting United States Attorney, and J. Bishop Grewal, Acting United States Attorney, with him on the briefs), Office of the United States Attorney, Denver, Colorado, for Plaintiff-Appellee/Cross-Appellant.

Before **HARTZ**, **KELLY**, and **CARSON**, Circuit Judges.

HARTZ, Circuit Judge.

Matthew Cline (Defendant) appeals his convictions for participating in a scheme to defraud the Western Area Power Administration (WAPA). He argues that the district court erred by (1) permitting the government to introduce evidence of a testifying coparticipant's guilty plea as substantive evidence of Defendant's guilt and (2) instructing the jury that it could find the requisite mental state for conviction if Defendant was deliberately ignorant of the fraud. For its part, the government cross appeals the district court's forfeiture order, contending that the court erred by limiting forfeiture to the six transfers of funds from WAPA to Defendant that were charged in the indictment. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm Defendant's convictions but vacate and remand the forfeiture order.

I. BACKGROUND

WAPA is a government agency within the United States Department of Energy that markets and supplies hydroelectric power generated from federal dams. The agency operated a warehouse in Montrose, Colorado, where it stored supplies used to maintain its electrical grid. Jared Newman was a contract clerk for WAPA who worked at the warehouse. One of his responsibilities was to arrange for purchasing supplies. From 2014 to 2017 he abused this position, defrauding the government of nearly $900,000 by manipulating the warehouse's procurement processes.

The scheme operated as follows: First, Newman would prepare purchase orders for supplies that WAPA ostensibly needed from local vendors associated with his friends and family. The vendors would generate invoices for the ordered supplies, which Newman would submit to

WAPA for approval and payment. WAPA managers would then approve and pay those invoices. But the vendors would not provide the purchased supplies to the warehouse. Instead, they would transfer to Newman most of the money they received from WAPA, while keeping a cut of each fraudulent payment as a "commission." R., Vol. III at 682. To avoid raising suspicion, Newman and another warehouse clerk named John Atwood—who was also involved in the scheme as a vendor-company owner—would log the supplies into the warehouse's inventory tracking system as if they had been received.

Defendant was a friend of Newman's and the owner of two of the vendors in the scheme. He received 59 payments from WAPA based on fraudulent invoices that he generated, totaling nearly $180,000. In October 2021 a grand jury indicted Defendant on six counts of wire fraud, *see* 18 U.S.C. § 1343, in the United States District Court for the District of Colorado. Each count corresponded to a single transfer of funds from WAPA to one of Defendant's companies. The indictment sought forfeiture of all proceeds Defendant obtained through the scheme.

Before trial the government indicated that it planned to call Newman, Atwood, and several other coparticipants in the procurement-fraud scheme as witnesses in its case-in-chief. The coparticipants had all pleaded guilty to charges arising from their involvement in the scheme. Defendant filed several motions in limine to preclude the government from introducing evidence of the coparticipants' guilty pleas during their testimony. But the district court denied Defendant's supplemental motion in limine and ruled that the evidence was admissible. The government referred to Atwood's guilty plea twice during his direct examination and twice during closing argument.

Defendant's primary defense was that although Newman defrauded the government, Defendant was not a knowing participant in the fraud. To prove Defendant's knowledge, the government presented evidence that (1) Defendant received $179,314.56 in payments from WAPA (including on invoices for goods that his companies apparently were not even in the business of selling); (2) Defendant wrote checks to Newman kicking back most of the proceeds while pocketing a few hundred dollars for himself on each transaction; and (3) Defendant never provided any of the ordered supplies to the warehouse. The government also presented evidence that Defendant took steps to conceal his involvement in the scheme. He wrote "rent" on the memo line on the kickback checks he wrote to Newman, and he did not use his usual name or phone number when acting on behalf of one of his vendor companies. At the conclusion of testimony the district court instructed the jury that "knowledge can be inferred if the defendant purposely contrived to avoid learning all the facts." R., Vol. I at 872.

Defendant was convicted on all counts. The government sought a preliminary order of forfeiture in the amount of $179,314.56, which was the total amount paid by WAPA to Defendant's companies on 59 fraudulent invoices. The district court sentenced Defendant to four years' probation. It ordered Defendant to pay only $20,268.35 in forfeiture—the sum of the six transfers charged in the indictment. And it ordered restitution in the amount of $179,314.56[1], for which Defendant and Newman would be jointly and severally liable.

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[1] "Criminal forfeiture and restitution are separate remedies with different purposes." *United States v. McGinty*, 610 F.3d 1242, 1247 (10th Cir. 2010). "Thus, ordering forfeiture in addition to restitution is not an unfair double recovery." *Id.* at 1248.

II. DISCUSSION

A. Evidence of Coparticipant's Guilty Plea

Defendant argues that the district court erred under *United States v. Peterman*, 841 F.2d 1474, 1479 (10th Cir. 1988), by permitting the government to introduce evidence of Atwood's guilty plea.[2] We disagree.

1. *Preservation*

At the outset, the government contends that Defendant waived this argument because he did not contemporaneously object when the evidence was introduced and failed to argue plain error on appeal.

But Defendant adequately raised the issue through his pretrial motions in limine. In those motions he sought to exclude "evidence about the guilty pleas of other individuals," including Atwood, contending that this evidence would be improperly used for the primary purpose of proving his guilt, in violation of *Peterman*. R., Vol. I at 792 (capitalization omitted). The district court ruled otherwise. It denied Defendant's supplemental motion in limine and concluded that the guilty-plea evidence was admissible, stating:

> I am not convinced that *Peterman* as filtered through subsequent cases bars the government's introductions of the guilty pleas of the co-participants. In light of the nuance and uncertainty over how *Peterman* ought to be applied, at this point I will allow the government to introduce the guilty pleas if it chooses to run the risk that a stronger version of *Peterman* could be applied on appeal.

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[2] Defendant does not challenge the government's introduction of evidence of Newman's guilty plea.

Id. at 806.

A pretrial motion in limine "may preserve an objection when the issue (1) is fairly presented to the district court, (2) is the type of issue that can be finally decided in a pretrial hearing, and (3) is ruled upon without equivocation by the trial judge." *United States v. Williams*, 934 F.3d 1122, 1132 (10th Cir. 2019) (internal quotation marks omitted). Here, each prong was satisfied.

First, as the government concedes, this issue was fairly presented to the district court in Defendant's pretrial motions and the government's response to Defendant's initial motion in limine.

Second, the issue could be finally decided in a pretrial hearing. Although it is not uncommon for a trial judge to wait to see the context develop at trial, the context may be sufficiently apparent to make a pretrial ruling.

Third, the issue was ruled upon without equivocation. Despite what the government argues, the district court's decision to "allow the government to introduce the guilty pleas" was not conditional on the admission or nature of any other evidence. R., Vol. I at 806. The only contingency was whether the coparticipants testified at trial. The government argues that the district court's ruling was equivocal because it qualified its decision by using the phrase *at this point*, "indicat[ing] that its ruling was open to reconsideration." Aplee. Br. at 27. What the district court appears to have been saying, however, is that the guilty-plea evidence was admissible barring an intervening change in the law. The court's acknowledgment that its decision was subject to reversal on appeal was merely the expression of a truism that would apply to even the most categorical rulings of the court. And, perhaps most telling, the district court certainly thought its ruling had been unconditional. When

Defendant raised a belated objection to the guilty-plea evidence at trial, the court declared that its pretrial ruling had been definitive, stating "I have already ruled on the admissibility of these [plea] agreements." R., Vol. III at 509.

Defendant's pretrial motions in limine sufficed to preserve his argument on appeal.

2. Merits

Because Defendant's argument was preserved, we review his challenge to the district court's evidentiary ruling for abuse of discretion. *See United States v. Bruce*, 127 F.4th 246, 252 (10th Cir. 2025). "Evidentiary rulings may constitute an abuse of discretion only if based on an erroneous conclusion of law, a clearly erroneous finding of fact or a manifest error in judgment." *United States v. Harper*, 118 F.4th 1288, 1296 (10th Cir. 2024) (internal quotation marks omitted).

It is long-settled that evidence of a codefendant's or coparticipant's guilty plea or conviction "may not be used as substantive evidence of a defendant's guilt." *United States v. Baez*, 703 F.2d 453, 455 (10th Cir. 1983); *see United States v. Whitney*, 229 F.3d 1296, 1304 (10th Cir. 2000) (recognizing that this rule "appl[ies] to guilty pleas of co-conspirators as well" as codefendants); *Substantive evidence*, *Black's Law Dictionary*, 701 (12th ed. 2024) (defining *substantive evidence* as "[e]vidence offered to help establish a fact in issue, as opposed to evidence directed to impeach or to support a witness's credibility"). The "rule is grounded in notions of fundamental fairness and due process and serves at least two important purposes." *United States v. Woods*, 764 F.3d 1242, 1246 (10th Cir. 2014) (citation omitted). "First, it curbs the jury's temptation to find guilt by association. Second, it helps to ensure the government must prove every element

of an offense against the defendant; the government may not borrow proof from another person's conviction." *Id.* (citations omitted).

When the coparticipant testifies, however, evidence of the guilty plea may be properly admitted to assist the jury in assessing credibility. *See id.* The obvious, and most common, use is to undermine the witness's credibility by showing that the witness is a criminal, from which one can infer a tendency to lie. But this evidence may also be introduced to "bolster the witness's credibility." *Id.* For example, the plea may be used to show that the witness is not just trying to deflect blame onto someone else but has acknowledged participating in the described misconduct and has taken responsibility for it. *See id.* Or it may be used to establish the witness's firsthand knowledge of that misconduct. *See id.* More subtly, the party offering the coparticipant's testimony may also introduce this evidence to blunt any attempt by the opposing party to impeach the witness's credibility by bringing out the negative evidence during direct examination. *See United States v. Davis*, 766 F.2d 1452, 1456 (10th Cir. 1985) (eliciting coconspirator's guilty plea "to blunt defense efforts at impeachment" is a "permissible purpose[]"); James W. McElhaney, *More on Direct Examination*, 8 Litig. 43, 44 (Fall 1981) ("The current bias is in favor of bringing out harmful information rather than leaving it to the other side. Surely that is better than trying to conceal it and having your case seriously harmed. When you bring it out yourself, you can deal with it in your own way, and remove as much of the sting as possible."). Used for these purposes, the evidence is admissible when, as here, the jury is properly instructed not to use the evidence as a

ground to infer the defendant's guilt.[3] *See Woods*, 764 F.3d at 1246.

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[3] The district court provided the following limiting instruction:

> **INSTRUCTION NO. 10**
>
> **Co-Participants – Plea Agreement**
>
> The Government called as witnesses an alleged co-participant in the charged scheme, who was identified in the Indictment. The Government has entered into a plea agreements [sic] with this co-participant, providing a recommendation of a lesser sentence than this participant would otherwise likely receive. Plea bargaining is lawful and proper, and the rules of this Court expressly provide for it.
>
> An alleged co-participant, including one who has entered into a plea agreement with the Government, is not prohibited from testifying. On the contrary, the testimony of an alleged co-participant may, by itself, support a guilty verdict. You should receive this type of testimony with caution and weigh it with great care. You should never convict a defendant upon the unsupported testimony of an alleged co-participant, unless you believe that testimony beyond a reasonable doubt. *The fact that a co-participant has entered a guilty plea to the offense charged is not evidence of the guilt of any other person. The witness's plea agreement may not be used to establish the guilt of this defendant. The fact that the co-participant pled guilty should only be used to assess the co-participant's credibility as a witness.*

R., Vol. I at 861 (emphasis added).

Defendant claims in his reply brief that the limiting instruction applied only to the testimony of Newman, not to that of Atwood. Some aspects of the instruction support that view. The beginning of the instruction refers to the guilty plea of "an alleged co-participant" (singular) "who was identified in the Indictment." *Id.* And the only coparticipant identified in the indictment was "Person-1," *id.* at 29 (internal quotation marks omitted), who was identified in the government's opening statement as Newman, *see id.*, Vol. III at 122.

Thus, the question is whether the guilty-plea evidence was introduced for the proper purpose of assessing Atwood's credibility. We think it was.

During his direct examination Atwood testified about his involvement in the procurement-fraud scheme, both in his role as a warehouse clerk who falsely logged supplies into the warehouse's inventory tracking system and in his role as the owner of a vendor used to defraud WAPA.

Other parts of the instruction, however, reference multiple coparticipants, which would include Atwood. For example, the title of the instruction contains the word "Co-Participants" (plural), the instruction opens with "The Government called as witnesses" (plural), and at one point the instruction seems to refer to multiple plea agreements ("The Government has entered into a plea agreements [sic] . . . ."). *Id.*, Vol. I at 861.

Moreover, the district court appeared to be under the impression that the instruction applied to Atwood. When the court presented counsel with its final jury instructions, the prosecutor (apparently forgetting that Newman was also a government witness) said, "one minor thing, Instruction Number 10 refers to co-participants *plural* Plea Agreement. The government only ended up calling John Atwood, and the instruction refers to co-participants as witnesses, plural." *Id.*, Vol. III at 904 (emphasis added). The court responded: "Okay. I will take a look at that. That may involve [Newman] too, I guess, but will see if that still makes sense." *Id.* at 904–05. Defense counsel remained silent during this exchange.

All in all, the language in the instruction was ambiguous, if not inconsistent, concerning what particular person or persons the instruction referred to. But the principle it stated—that a coparticipant's guilty plea could not be used to establish the guilt of Defendant but could be used only to assess the coparticipant's credibility—was crystal-clear.

In any event, any argument that the limiting instruction was inadequate or otherwise improper is waived because Defendant did not object to the instruction below and he failed to challenge the instruction in his opening brief on appeal. *See United States v. Bowling*, 619 F.3d 1175, 1181 n.1 (10th Cir. 2010).

The construction of the scheme was what is commonly referred to as a hub-and-spoke enterprise. Newman was the central figure (the hub), who had a limited number of helpers (such as Atwood, in his role as a clerk) for the central operation. The "businesses" he conspired with (the spokes, such as Defendant) were largely dealt with independently of one another.

Atwood admitted to engaging in conduct similar to that of which Defendant was accused; namely, he set up a bogus vendor company to generate false invoices and received over $50,000 from WAPA for supplies that were never provided to the warehouse. Atwood also testified that Newman instructed him, as the owner of a vendor, to take steps to conceal his involvement in the fraud. As it was about to conclude its direct examination of Atwood, the government asked whether he had "plead[ed] guilty to theft of government funds" as a result of his conduct.[4] R., Vol. III at 372.

On cross-examination, defense counsel attempted to downplay Atwood's role in the scheme. She suggested that Atwood was simply following Newman's lead and did

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[4] The specific testimony was as follows:

> Q. Okay. All right. Now, as a result of this conduct of setting up this business [the vendor company], *did you plead guilty?*
>
> A. I did.
>
> Q. *And did you plead guilty to the—to a felony?*
>
> A. I did.
>
> Q. *Did you plead guilty to theft of government funds?*
>
> A. I did.

R., Vol. III at 371–72 (emphasis added).

not fully understand that what he was doing was wrong.[5] She also suggested that the warehouse was disorganized

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[5] Defense counsel asked Atwood the following questions about the extent of his involvement in the scheme:

> Q. And [Newman] naturally kind of took the lead [in dividing up the warehouse tasks]? . . . He is a much more fast-talking guy than you? R., Vol. III at 375.
>
> Q. [Newman], pretty early on, kind of established himself in the warehouse as the guy calling the shots, so to speak? . . . [A]nd he kind of took over your job, as well, right? *Id.* at 380.
>
> Q. [Newman] also was the one who said, *Hey, you could make more money through J&S fabrication* [Atwood's vendor company]*, if you started providing stuff to WAPA,* and that's why you had the situation set up . . . right? *Id.* at 382.
>
> Q. [Newman] wanted you to sell stuff that WAPA needed to WAPA . . . and that's how you got yourself into a pickle? *Id.*
>
> Q. And you were not familiar with doing a distribution kind of business, so [Newman] basically said, *I will do it for you,* right? *Id.*
>
> Q. [Newman] ordered stuff and ran it under your business name? *Id.* at 383.
>
> Q. And you also said, *I didn't think it was wrong at the time*? . . . You wanted to make sure though, that the products were actually coming in, and you did? *Id.*

and that its ability to track inventory was unreliable at best.[6]

On redirect the government finished its examination of Atwood by asking whether he had "accept[ed] responsibility" for the misconduct. *Id.* at 389.[7]

> Q. You had no information about whether [Newman] was hiding or moving stuff around in—in the warehouse? *Id.* at 384.
>
> Q. You weren't trained on how to do inventory, right? *Id.* at 386.

[6] Atwood was cross-examined about disorganization at the warehouse as follows:

> Q. And you talked a little bit about what was going on in the warehouse, and you made it sound like maybe it was a little chaotic?
>
> A. At times, it was.
>
> Q. People would come in, grab what they needed and take off, basically?
>
> A. Correct.
>
> Q. They didn't necessarily follow the rules about dotting the Is or crossing the Ts, so that Maximo [the warehouse's inventory-tracking system] could verify that they had taken inventory?
>
> A. That's correct.
>
> Q. And what would happen if they had followed the rules is that you would be able to say in Maximo, *Okay, engineer A took part B for a specific job*, right?
>
> A. Technically, yes.
>
> Q. But that very rarely happened?
>
> A. Seldom. Very rarely is a good analogy.

R., Vol. III at 373–74.

[7] The redirect examination of Atwood concluded as follows:

In this context, the government's introduction of evidence of Atwood's guilty plea served two proper purposes in anticipating possible impeachment. First, it was reasonable to expect that Defendant might attempt to challenge Atwood's credibility by pointing out that he was a convicted felon. As previously noted, the government could try to tame that evidence by bringing it out itself. *See Whitney*, 229 F.3d at 1306 (government may "anticipate the need to bolster credibility by eliciting testimony regarding the guilty plea on direct examination"). Second, by eliciting that Atwood had pleaded guilty, the government established his "acknowledgement [of his] participation in the offense," helping to bolster his credibility. *Woods*, 764 F.3d at 1246 (internal quotation marks omitted). In particular, Atwood's plea shows that he was not just trying to deflect responsibility onto other people, and it helped rebut defense counsel's suggestion that Atwood was ignorant of the scheme, *see Davis*, 766 F.2d at 1455–56 (after coconspirator witness denied a portion of his involvement in the conspiracy, evidence of "the information to which [he] had pled" was properly introduced "to show acknowledgement by the witness of participation in the offense"); *United States v. Maroney*, No. 96-1314, 1997 WL 748661, at *1–2 (10th Cir. Dec. 3, 1997) (unpublished) (where defendant challenged coparticipant's "firsthand knowledge [of the mail-fraud scheme] by questioning the degree of [the coparticipant's] involvement and her

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> Q. At some point did you realize what you were doing was wrong?
>
> A. I—I did.
>
> Q. And did you accept responsibility for it?
>
> A. I did.

R., Vol. III at 389.

understanding of" the scheme, evidence of coparticipant's guilty plea was properly introduced to bolster the credibility of her testimony about the scheme).

The government also alluded to Atwood's guilty plea twice during closing argument. In the first instance the government said that Atwood had "admitted to his fraud, admitted his responsibility." R., Vol. III at 945.[8] Second, during its rebuttal closing argument, the government called Atwood a "convicted felon[]," "an admitted felon," and a "criminal[]." *Id.* at 962.[9] Defendant, however,

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[8] During its closing argument the government said:

> I would ask you to consider Mr. Atwood for a second. He came before you. He worked in the warehouse. He admitted to his fraud, admitted his responsibility, but what he did say is, in his particular case, when he started to do his portion of the scheme, he was told by Mr. Newman to go get a phone, at Walmart[], which he did, second phone, had his— instructed by Mr. Newman to have his wife answer it, and make sure your address is not on that invoice, so in no way are you connected to this business. That's important, ladies and gentlemen, because you can see what Mr. Newman did with Mr. Atwood in this case. That makes sense. *Yeah, keep this on the down low; don't let anybody know what's going on.* [Defendant's] version, *No, he never told me to not say anything about it*, does not make sense. Mr. Atwood tells you what was going on here.

R., Vol. III at 945–46 (underlining added).

[9] During rebuttal closing the government remarked:

> What did we also hear from defense counsel in this case? . . . [W]e agree with and concede, WAPA was not run to standards that the US taxpayers should expect and count on their government to have. . . . [E]ssentially, their argument is blame the government. Say it's the government's fault. You can't trust the government because the way they operated here. That—that warehouse was in disarray, but there's another factor you

waived any objection to these references because he did not object during trial or raise the issue in his opening appellate brief. *See Bowling*, 619 F.3d at 1181 n.1. In any event, the first comment served the above-mentioned purposes of showing that Atwood was not trying to deflect responsibility onto someone else and that Atwood in fact was knowledgeable of the scheme. And the second reference in the government's argument was proper rebuttal to the defense's closing argument. The defense had argued that the warehouse was disorganized—the implication being that the vendors provided the supplies, but the warehouse failed to take proper inventory. The gist of the government's response was that the absence of accurate recordkeeping is to be expected in a fraudulent scheme, where the culprits would not want to clearly document their misconduct. In context, we see little chance that the jury would view the government's argument as being that the convictions of the other two men implied Defendant's guilt.

Still, Defendant argues that the government's tactics were more subtle. He contends that even if the guilty-plea evidence was introduced for a proper purpose on its face,

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> have got to keep in mind, and don't reward him for this, part of the overall scheme, who were the two key warehousemen, *two convicted felons*. The foxes were guarding the chicken coop, Fox number one, John Atwood. His responsibility is to keep track of the inventory. *He is an admitted felon*. He was dishonest. Fox number two, Jared Newman. The fact that there's no clear ability to say exactly what was in there is due, in large part, because of their shifty paperwork and their behavior . . . . But the point is, is part of the inability to show exactly what was in or came out of that, was due to two *criminals* who were part of this scheme.

R., Vol. III at 961–62 (emphasis added).

it violated the rule set forth in *Peterman*, 841 F.2d at 1479. We cannot agree.

In *Peterman* the defendant was on trial for a second time after his previous wire-fraud conviction was reversed on appeal. *See id.* at 1476. The government called the defendant's codefendant in his first trial to testify about the wire-fraud scheme. *See id.* at 1479. When the former codefendant began to testify favorably to the defendant, the prosecutor impeached the witness with evidence of his prior conviction. *See id.* The defendant argued that the government called the former codefendant "for the sole purpose of impeaching him with evidence of his prior conviction." *Id.* at 1480. He suggested that the government knew all along that the former codefendant would maintain his innocence—just as he had in the previous trial. *See id.* But in a hearing on the defendant's motion for a mistrial after the evidence of the former codefendant's conviction was introduced, the prosecutor and a special agent said that they had "met with [the former codefendant] before trial and expected that [he] would modify his original testimony and admit that he had" participated in the scheme. *Id.* Although in that same hearing the former codefendant "insisted that he had informed the government that he would not change his story," the district court found the prosecutor and special agent credible and found the former codefendant not credible. *Id.* This court held that "[b]ased on the factual findings by the trial court regarding the relative credibility of the witnesses, we cannot say the court erred in determining that the prosecutor did not call [the former codefendant] with the primary purpose of introducing evidence of his prior conviction." *Id.*

Peterman adopted the following rule: "[T]he prosecution may not introduce evidence under the guise of impeachment for the *primary* purpose of placing

before the jury substantive evidence which is not otherwise admissible." *Id.* at 1479 (internal quotation marks omitted). In other words, the district court abuses its discretion when it allows the government to introduce evidence of a coparticipant's guilty plea "ostensibly" for a proper credibility purpose but really for the "primary purpose" of offering substantive evidence of the defendant's guilt. *Id.* (emphasis omitted). Thus, in that case the "decisive issue" was "what the government expected [the codefendant] to say." *Id.* at 1480. In particular, if the government knew the codefendant would testify favorably to the defendant, the only reason it could have had to call him as a witness was to elicit his conviction, which would have been improper.

To support his *Peterman* claim, Defendant points to statements that the government made before trial which, he says, show that it intended to introduce the guilty-plea evidence for the primary purpose of proving his guilt. In both its brief in response to Defendant's initial motion in limine and during a pretrial conference discussing Defendant's supplemental motion in limine, the government explained that it planned to call the coparticipants as witnesses because evidence of their involvement in Newman's scheme was "closely intertwined," R., Vol. I at 570,[10] "overlapping," and "part

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[10] The relevant portion of the government's brief in response to Defendant's initial motion in limine stated:

> Moreover, evidence in the case as to [Defendant] is *closely intertwined* with evidence about the other [coparticipants]—for example, the packets the credit cardholder verified each month included not just invoices from the defendant's companies, but invoices from the [coparticipants'] companies. The credit card statement near the front of each packet lists all of the charges for that

and parcel" with the evidence of Defendant's involvement in the scheme, *id.*, Vol. III at 71.[11] It stated that because

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> time period to the card. Most monthly statements during the charged timeframe included charges for many of the [coparticipants'] companies. By ordering from multiple local companies each month, Newman and Atwood furthered the fraud so that one local company alone (like [Defendant's]) would not stand out.
>
> Accordingly, it is necessary, at a minimum, to explain to the jury the roles and involvement of the [coparticipants]. Doing so without reference to the consequences of their behavior would be confusing and misleading to the jury. The jury would inevitably wonder why [Defendant] is on trial for similar conduct as six other people who are specifically listed in the indictment. Preventing the government from introducing the fact of each associate's plea "would allow the defense to create a false impression, or the jurors to think that the government was trying to keep something from them." *Anderson*, 532 F.2d at 1230.

R., Vol. I at 570–71 (emphasis added).

[11] The relevant exchange at the pretrial conference went as follows:

> [THE GOVERNMENT]: [T]he Government's intention is not . . . to use . . . the plea agreements of the cooperators for the very reason the Court says. If they backpedal or disavow a fact about their participation or knowledge that they were involved in this scheme, those plea agreements would be relevant to cross examine them about.
>
> THE COURT: Let me interrupt you. What did [Defendant] have to do with—other than Jared Newman, with any of these other associates? If they had all said no, but [Defendant] had done the exact same thing alleged, what difference would it make?
>
> . . .

the witnesses would be testifying to their involvement in the procurement-fraud scheme, it would be confusing to the jury if it seemed that the witnesses had avoided any punishment. Introducing evidence of their guilty pleas was therefore necessary to prevent the jurors from "think[ing] that the government was trying to keep something from them." *Id.*, Vol. I at 571 (internal quotation marks omitted).

We fail to see how these statements somehow exposed the government's true intent to use the guilty pleas as substantive evidence of Defendant's guilt. As we understand the government's explanation, it was saying that (1) each participants' testimony about the operation of Newman's scheme was relevant because evidence of their participation in the scheme was necessarily intertwined with evidence of Defendant's participation, and (2) once these participants testify to their own criminal misconduct, the jury would want to know if they had faced the same consequences that Defendant was facing for similar misconduct. In particular, they might speculate that the witnesses, whose involvement was greater than that of Defendant, were getting off scot-free.

> [THE GOVERNMENT]: Well, the evidence is *overlapping*, Your Honor. It's intertwined. You gotta understand, what the jury is going to be asked to do is there's two government workers who approved stacks of invoices every month regularly. And in that stack, all of the cooperators' invoices, very voluminous documents along with [Defendant's] document. So, it's interwoven in there, and they paid for each of these people's false invoices.
>
> So, for the jury to know what happened in this case, why these government workers approved this, part of the scheme evidence is going to directly show that this evidence from these other people were *part and parcel* of how Jared Newman was obviously to carry out this scheme.

R., Vol. III at 69–71 (emphasis added).

The government therefore needed to inform the jury of their convictions to avoid such confusion and speculation and maintain their credibility. That is a proper purpose for such evidence. *See Davis*, 766 F.2d at 1456 (recognizing that evidence of coparticipant's guilty plea may be used "to dispel the suggestion that the government or its witnesses had something to hide").

Further, the government asserted at trial that its rationale for introducing the evidence was assessing witness credibility. When Defendant raised his belated objection after Atwood's testimony, the government responded: "[T]he reason for introducing . . . the prior guilty plea was how it went to . . . the witness' credibility." R., Vol. III at 507.

We do not read *Peterman* as saying that the trial judge (or an appellate court) has free rein to speculate about what the prosecution's true motive was in eliciting a witness's guilty plea. On the contrary, "courts should find a party called a witness for an improper purpose only where the trial record established *clearly and unequivocally* the circumstances showing an improper purpose existed." *United States v. Carter*, 973 F.2d 1509, 1513 (10th Cir. 1992) (emphasis added); *see also United States v. Clifton*, 406 F.3d 1173, 1185 (10th Cir. 2005) (Hartz, J., concurring) (recognizing that "Federal evidence law does *not* ask the judge to crawl inside the prosecutor's head to divine his or her true motivation" (ellipsis and internal quotation marks omitted)). Perhaps because of the difficulty of this task, this court has never found error under *Peterman*.

On this record, it is not obvious that the government intended to introduce the evidence of Atwood's guilty plea, or comment on his plea, for the *primary* purpose of proving Defendant's guilt. There were several proper

purposes for that evidence. We therefore hold that the district court did not abuse its discretion in admitting the evidence.

B. Deliberate Ignorance

Next, Defendant claims that the district court erred by instructing the jury that his knowledge of the fraud "can be inferred if [he] purposely contrived to avoid learning all the facts" of Newman's scheme. R., Vol. I at 872.[12] He asserts that the instruction was improper because the government failed to present sufficient evidence to support a jury finding of his deliberate ignorance of the fraud.

But we need not decide whether there was sufficient evidence of deliberate ignorance. Defendant does not dispute that there was sufficient evidence to support a

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[12] The instruction stated in full:

> **INSTRUCTION NO. 19**
>
> **Knowingly – Defined**
>
> When the word "knowingly" or the phrase "with knowledge" is used in these instructions, it means that the act was done voluntarily and intentionally, and not because of mistake or accident. Although knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, *knowledge can be inferred if the defendant purposely contrived to avoid learning all the facts.* Knowledge can be inferred if the defendant was aware of a high probability of the existence of the fact in question, unless the defendant did not actually believe that fact.
>
> Acting in good faith is inconsistent with the intent to defraud. A person who acts on a belief or opinion honestly held is not guilty under the statute merely because that belief or opinion turns out to be inaccurate, incorrect, or wrong.

R., Vol. I at 872 (emphasis added and stray period omitted).

conviction "based on his *actual knowledge* of the scheme." *United States v. Hillman*, 642 F.3d 929, 939 (10th Cir. 2011). When a defendant "does not challenge the sufficiency of the evidence on a theory of actual knowledge, our case law precludes reversal of the conviction on the basis of insufficient evidence supporting an alternate theory of deliberate ignorance." *Id.* The general rule is that we will sustain a guilty verdict "when there is sufficient evidence to support a conviction on one theory of guilt on which the jury was properly instructed," even if "there was insufficient evidence to convict on an alternative ground on which the jury was instructed." *United States v. Ayon Corrales*, 608 F.3d 654, 657 (10th Cir. 2010).

The Supreme Court has explained why courts do not set aside verdicts when one of the alternative grounds for conviction is not supported by *sufficient evidence*, even though reversal is necessary when an alternative ground for conviction is *legally improper*:

> Jurors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law—whether, for example, the action in question is protected by the Constitution, is time barred, or fails to come within the statutory definition of the crime. When, therefore, jurors have been left the option of relying upon a legally inadequate theory, there is no reason to think that their own intelligence and expertise will save them from that error. Quite the opposite is true, however, when they have been left the option of relying upon a factually inadequate theory, since jurors are well equipped to analyze the evidence. . . . It is one thing to negate a verdict that, while supported by evidence, may have been based on an erroneous

> view of the law; it is another to do so merely on the chance—remote, it seems to us—that the jury convicted on a ground that was not supported by adequate evidence when there existed alternative grounds for which the evidence was sufficient.

Griffin v. United States, 502 U.S. 46, 59 (1991) (emphasis and internal quotation marks omitted).

We therefore reject Defendant's deliberate-ignorance argument.[13]

C. Forfeiture

There remains the government's cross-appeal of the district court's forfeiture order. "Criminal forfeiture is a punitive measure that forces offenders of certain crimes to disgorge any profits obtained from their criminal activity. Unlike restitution, which compensates victims for their losses, forfeiture compels the offender to surrender money or substitute assets to the government." *United States v. Arnold*, 878 F.3d 940, 942 (10th Cir. 2017) (citation omitted). "[W]e review the district court's forfeiture order as we would any other sentencing determination—that is, we review its legal conclusions de novo and its factual findings for clear error." *Id.* at 942 (internal quotation marks omitted).

Defendant was convicted on six counts of wire fraud. Each count corresponded to a single transfer of funds

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[13] Defendant argues in the alternative that this court should decline to follow *Hillman* because it was "wrongly decided." Aplt. Resp. & Reply Br. at 29. As he acknowledges, however, this panel "may not overrule the decision of a previous panel . . . absent en banc reconsideration or a superseding contrary decision by the Supreme Court." *United States v. Mitchell*, 518 F.3d 740, 752 n.14 (10th Cir. 2008) (internal quotation marks omitted).

from WAPA to Defendant listed in the indictment. After the jury rendered its verdict, the government sought $179,314.56 in forfeiture—the sum of all 59 payments from WAPA to Defendant under the scheme. The district court ordered forfeiture under 18 U.S.C. § 981(a)(1)(C), which provides for forfeiture of "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specified unlawful activity' [as defined in 18 U.S.C. § 1956(c)(7)]." *See United States v. Courtney*, 816 F.3d 681, 685 (10th Cir. 2016) (recognizing that the statutory definition of *specified unlawful activity* includes wire fraud). But the court limited the amount of forfeiture to the sum of the six transfers charged in the indictment ($20,268.35).

On cross-appeal the government contends that the district court erred in limiting the forfeiture amount because all the funds that Defendant obtained under the scheme were "derived from proceeds traceable to" his wire-fraud violations. 18 U.S.C. § 981(a)(1)(C). It says that the court should therefore have ordered forfeiture on all 59 payments from WAPA to Defendant—regardless of whether they were specifically charged as wire transfers in the indictment.

As we understand it, the district court's forfeiture decision relied on two different but related grounds. First, the court stated that ordering forfeiture on the uncharged amounts would be akin to "impos[ing] an additional sentence," which it said must be based on findings by a jury. R., Vol. IV at 70. Second, the court reasoned that the government could not meet its burden to show that the funds from the uncharged transactions were "derived from proceeds traceable to a violation," since those transactions were never found to be unlawful. *Id.* Defendant does not defend either ground on appeal. Neither do we.

To begin with, the Supreme Court has held that "the right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection," and thus the facts underlying a criminal forfeiture need not be found by a jury. *Libretti v. United States*, 516 U.S. 29, 49 (1995); *see United States v. Leahy*, 438 F.3d 328, 331 (3d Cir. 2006) (en banc) ("As to forfeiture, based upon the Supreme Court's decision in *Libretti* . . . , we conclude that the amount a defendant must forfeit also need not be admitted or proved to a jury beyond a reasonable doubt."). The forfeiture amount may be found by a judge and need only be "supported by a preponderance of the evidence." *United States v. Bader*, 678 F.3d 858, 893 (10th Cir. 2012).

To be sure, *Libretti* was not the Supreme Court's last word on the Sixth Amendment. In particular, in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), the Court held that the Sixth Amendment requires a jury to find beyond a reasonable doubt any fact (other than the fact of a prior conviction) "that increases the penalty for a crime beyond the prescribed statutory maximum." And in *Southern Union Co. v. United States*, 567 U.S. 343, 360 (2012), the Court extended "the rule of *Apprendi* . . . to the imposition of criminal fines." It reasoned that "requiring juries to find beyond a reasonable doubt facts that determine the fine's maximum is necessary to implement *Apprendi*'s animating principle: the preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense." *Id.* at 350 (internal quotation marks omitted). But *Southern Union* recognized that there could be no "*Apprendi* violation where no [statutory] maximum is prescribed." *Id.* at 353. And the forfeiture provision applied here, 18 U.S.C. § 981(a)(1)(C), does not impose any maximum limit on the amount of forfeiture. *See United States v. Phillips*, 704

F.3d 754, 769–70 (9th Cir. 2012) (concluding that *Apprendi* and its progeny do not limit forfeiture under § 981(a)(1)(C) because "there is no statutory (or guideline) maximum limit on forfeitures"); *United States v. Dermen*, 143 F.4th 1148, 1228 (10th Cir. 2025) ("*Apprendi* and *Southern Union* do not supplant *Libretti* . . . .").

As for the district court's second concern, the Ninth Circuit explained in *United States v. Lo*, 839 F.3d 777, 793 (2016), that forfeiture turns on the scope of the whole scheme, not just on the specific transfers identified in the indictment:

> Because the proceeds from a mail fraud or wire fraud offense include funds obtained "as the result of the commission of the offense," and the commission of such a mail fraud or wire fraud offense necessarily includes a fraudulent scheme as a whole, the proceeds of the crime of conviction [under § 981(a)(1)(C)] consist of the funds involved in that fraudulent scheme, *including additional executions of the scheme that were not specifically charged* or on which the defendant was acquitted.

Id. (emphasis added).

The other circuits to address the issue have likewise concluded that because each wire-fraud count required "a scheme to defraud" as an essential element,[14] the proceeds

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[14] To prove wire fraud in violation of 18 U.S.C. § 1343, the government had to establish the following four elements beyond a reasonable doubt, as stated in jury instruction 17:

> *First:* the *defendant devised or intended to devise a scheme to defraud*, as alleged in the Indictment;
>
> *Second:* the defendant acted with specific intent to defraud;

traceable to each wire-fraud violation necessarily included *all* the proceeds the defendant obtained through the alleged scheme. *See United States v. Cox*, 851 F.3d 113, 128 (1st Cir. 2017) (concluding that "a court may order forfeiture [under § 981(a)(1)(C)] of the proceeds from uncharged conduct that was part of the same fraudulent scheme alleged in the counts of conviction"); *United States v. Venturella*, 585 F.3d 1013, 1017 (7th Cir. 2009) (defendants were convicted on one count of mail fraud; court held that the amount of the charged mailing, "by itself, does not adequately account for the proceeds obtained from [the defendants'] crime of conviction" because "[t]he plain language of . . . [§] 981(a)(1)(C) along with the expansive definition of 'proceeds' indicates that the statute contemplates the forfeiture of property other than the amounts alleged in the count(s) of conviction"); *see also United States v. Capoccia*, 503 F.3d 103, 117–18 (2d Cir. 2007) (Sotomayor, J.) (indicating that proceeds of uncharged or acquitted conduct may be subject to forfeiture under § 981(a)(1)(C) "[w]here the conviction itself is for executing a scheme, engaging in a conspiracy, or conducting a racketeering enterprise").

Rather than relying on the grounds suggested by the district court, Defendant raises an alternative argument against increasing the forfeiture. He argues that under the Supreme Court's opinion in *Honeycutt v. United States*, 581 U.S. 443 (2017), we should affirm "the district

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> *Third:* the defendant used or caused another person to use interstate or foreign wire communications facilities for the purpose of carrying out the scheme; and
>
> *Fourth:* the scheme employed false or fraudulent pretenses, representations, or promises that were material.

R., Vol. I at 868 (emphasis added).

court's denial of the government's request" for $179,314.56 because forfeiture is limited to the funds that "rested with" Defendant. Aplt. Resp. & Reply Br. at 4 (capitalization and internal quotation marks omitted). In other words, Defendant says that ordering forfeiture on the sum of all 59 transfers would have been improper—regardless of whether the transfers had been found to be unlawful by a jury—because only the money that remained in his possession after he paid the kickbacks to Newman was subject to forfeiture.

As the government points out, there is a substantial question whether this issue is properly before us because Defendant did not appeal the forfeiture order. Under the cross-appeal rule an appellee, or in this case a cross-appeal appellee, "may not attack the decree [being appealed] with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary" without cross-appealing. *Jennings v. Stephens*, 574 U.S. 271, 276 (2015) (internal quotation marks omitted); *see Greenlaw v. United States*, 554 U.S. 237, 243–45 (2008) (recognizing that this rule applies in both civil and criminal appeals); 15A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3904, 284 (3d ed. 2022) (Wright, Miller & Cooper) (explaining that the cross-appeal rule probably has "some value in fostering repose, identifying the issues to be met, shaping the progress of the appeal, and regulating enforcement of the judgment"). Thus, a cross-appeal is required "to support modification" of a forfeiture judgment. 16AA Wright, Miller & Cooper § 3974.4, 341 (5th ed. 2020); *United States v. Bajakajian*, 84 F.3d 334, 338 (9th Cir. 1996), *aff'd*, 524 U.S. 321 (1998) (defendant-appellee's failure to file cross-appeal requesting modification of forfeiture order barred appellate court from vacating order); *cf. United States v. Craven*, 239

F.3d 91, 97 (1st Cir. 2001) ("[A] criminal defendant, *qua* appellee, may not seek a reduction in his sentence without having filed a cross-appeal.").

At the same time, however, an appellee who does not take a cross-appeal "may urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court." *Jennings*, 574 U.S. at 276 (internal quotation marks omitted). The appellee may even raise an argument that could justify a modification of the lower-court decree that would benefit the appellee, so long as the appellee does not seek that relief but raises the argument only to preclude modifications that the appellant seeks. Such arguments "should be entertained" to the extent that they "seek to support a . . . judgment on different grounds, even though cross-appeal rules may require rejection of the *additional relief that logically follows* from the new grounds." 15A Wright, Miller & Cooper § 3904, 285 (emphasis added); *see id.* at 284–85 (The cross-appeal rule requires "flexible administration" when, as here, the non-appealing party makes arguments "that can be limited to support of the judgment *but that logically would require modification*." (emphasis added)). The treatise provides a helpful illustration: A plaintiff-appellant seeks an increase in an attorney-fee award on appeal and the defendant-appellee, without cross-appealing, argues that no fee award should have been made in the first place. *See id.* Under these circumstances, the fee award "cannot be reversed without cross-appeal." *Id.* But the defendant-appellee's "argument that no award was proper . . . should be accepted *to the extent that it simply defeats an increase that otherwise might seem appropriate.*" *Id.* (emphasis added).

Defendant's contention in this case stays within proper bounds. Although his argument—that the

forfeiture should not include the kickback amounts—might justify or even logically compel a reduced forfeiture amount, he does not request a decrease in the judgment against him. Instead, he contends that the forfeiture order *cannot be increased*. Such an argument "seeks to preserve" the status quo. *Nw. Airlines, Inc. v. Cnty. of Kent, Mich.*, 510 U.S. 355, 364 (1994). Defendant is in a position similar to that of the defendant-appellee in the above illustration. And the Ninth Circuit has come to essentially the same conclusion. *See Bajakajian*, 84 F.3d at 330 (allowing defendant to argue against the government's obtaining a *larger* forfeiture amount, but prohibiting defendant from using the same argument to set aside the forfeiture order altogether because he did not cross-appeal). We therefore review the merits of Defendant's *Honeycutt* argument, although we determine that it fails.

In *Honeycutt* the Supreme Court considered whether under 21 U.S.C. § 853(a)(1) "a defendant may be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire." 581 U.S. at 445; *see* 21 U.S.C. § 853(a)(1) (providing for forfeiture of "any property constituting, or derived from, any proceeds the person *obtained*, directly or indirectly, as the result of" certain drug crimes (emphasis added)). The defendant in that case, Terry, worked at a store owned by his brother that unlawfully sold a product used to make methamphetamine. *See* 581 U.S. at 445. After both brothers were convicted of crimes relating to the sale of the product, the government sought from Terry forfeiture of the store's illicit profits from selling the product, even though he "was a salaried employee who had not personally received any profits from" the sales. *Id.* at 446. The Court applied the common dictionary definition of

obtain to mean "to come into possession of or to get or acquire." *Id.* at 449 (internal quotation marks omitted). Reading the statutory provision in this context, it concluded that Terry could not be held liable for the illegal profits because "[f]orfeiture pursuant to § 853(a)(1) is limited to property the defendant himself *actually acquired* as the result of the crime." *Id.* at 454 (emphasis added).

We recognize that "a circuit split has developed over whether *Honeycutt* applies to a forfeiture under 18 U.S.C. § 981(a)(1)(C)," which does not use any form of the word *obtain*. *United States v. Channon*, 973 F.3d 1105, 1115 (10th Cir. 2020). We need not choose a side, however, because even if *Honeycutt* applies to § 981(a)(1)(C), the government prevails.

We do not read *Honeycutt* to say that a defendant who actually possessed or acquired the full amount of proceeds under a criminal scheme cannot be held liable for funds later transferred. The other circuits to have considered the question largely agree. *See United States v. Tanner*, 942 F.3d 60, 67–68 (2d Cir. 2019) (holding that defendant who wired $9.7 million to codefendant who had assisted defendant in defrauding codefendant's employer could properly be ordered to forfeit the $9.7 million under 18 U.S.C. § 982(a)(1), explaining, "*Honeycutt's* bar against joint and several forfeiture for co-conspirators applies only to co-conspirators who never possessed the tainted proceeds of their crimes. But when each co-conspirator acquired the full proceeds as a result of the crime, each can still be held liable to forfeit the value of those tainted proceeds, *even if those proceeds are no longer in his possession because they have been dissipated or otherwise disposed of by any act or omission of the defendant*." (emphasis added; citations and internal quotation marks omitted)); *United States v. Young*, 108

F.4th 1307, 1325–28 (11th Cir. 2024) (holding that *Honeycutt* did not bar forfeiture under 18 U.S.C. § 982(a)(7) of full amount of proceeds received under scheme where defendant "temporarily controlled all the illicit funds and distributed a portion of them to one of her co-conspirators"); *United States v. Bradley*, 969 F.3d 585, 589 (6th Cir. 2020) (holding that *Honeycutt* did not preclude forfeiture under 21 U.S.C. § 853(a) of full amount of proceeds defendant "came in possession of or got or acquired," "no matter their eventual destination" (brackets and internal quotation marks omitted)); *Saccoccia v. United States*, 955 F.3d 171, 175–76 (1st Cir. 2020) (concluding that *Honeycutt* did not limit defendant who wire-transferred fraud proceeds from bank account he controlled from being liable in forfeiture under 18 U.S.C. § 1963(a)(3) for full amount passing through the account). *But see United States v. Thompson*, 990 F.3d 680, 691 (9th Cir. 2021) (holding that under *Honeycutt*, forfeiture under 18 U.S.C. § 981(a)(1)(C) may reach only proceeds that "came to rest" with the defendant regardless of whether he "at some point had physical control" of all the money).

It is undisputed that Defendant obtained the full amount of each payment from WAPA. Persuaded by the reasoning reflected in the great weight of authority, we reject Defendant's argument. We hold that even though Defendant transferred a large portion of his proceeds to Newman shortly after receiving them, he still is subject to forfeiture on the total amount of the received funds. *See Bradley*, 969 F.3d at 589 (recognizing that whether the defendant "chose to reinvest [the money] in the conspiracy's overhead costs, saved it for a rainy day, or spent it on wine, women, and song" does not limit forfeiture under *Honeycutt* (internal quotation marks omitted)).

III. CONCLUSION

We **AFFIRM** Defendant's convictions. We **VACATE** the district court's forfeiture order and **REMAND** for further proceedings consistent with this opinion.

APPENDIX B

[FILED: APRIL 8, 2024]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF COLORADO

Criminal Case No. 21-cr-339-DDD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW CLINE,

Defendant.

Reporter's Transcript

Sentence Hearing

Proceedings before the HONORABLE DANIEL D. DOMENICO, Judge, United States District Court for the District of Colorado, commencing at 9 a.m., on the 12th day of March, 2024, in Courtroom A1002, United States Courthouse, Denver, Colorado.

Appearances

Tim Neff, Rebecca Weber and Elizabeth Young, Assistant United States Attorneys, 1225 17th Street, Suite 700, Denver, Colorado, 80202, appearing for the Government.

Mary-Claire Mulligan, Mulligan & Mulligan, PLLC, 89 Gold Trail, Boulder, CO 80302 and Kristen M. Frost, Ridley McGreevy & Winocur PC, 303 16th Street, Suite 200, Denver, CO 80202, appearing for the Defendant.

[2] **Proceedings**

(In open court at 9:07 a.m.)

* * *

[43] (In open court at 10:50 a.m.)

THE COURT: All right. Please take your seats. Thank you for your patience. I appreciate everyone's input on this.

Again, as I said, these issues are, I think, not easy. The case law is somewhat thin and not directly on point, but ultimately my findings are that, as we discussed, I don't think Rule 32.2 requires that the jury find the amount of the money judgment for purposes of forfeiture. On the other hand, the -- both the statute, 18 U.S.C. Section 981(C), requires only -- or permits forfeiture only of property that is or is derived from proceeds traceable to a violation. Likewise, the forfeiture allegation in the Indictment here is limited to proceeds the defendant obtained directly and indirectly as a result of such offense, which relates facts to specifically to Counts 1 through 6.

So the question for me is what -- whether there's been a sufficient finding of a violation with regard to these other multiple transactions, and I just am not comfortable saying that I, as a judge, can find that these were violations of the law, in order to impose an additional sentence. If instead of forfeiture section, Subsection C of 981 said that someone would [44] be subject to a year of imprisonment, I would think it would be obvious that a jury would have to find that violation in order for the judge to impose that additional penalty. Here we're talking about money, but I think the principle is still the same.

So I am going to say that only the six charged indictments are subject -- or the six charged counts in the

Indictment, which the jury found were violations of the law, are subject to forfeiture. The total amount of those is $20,268.35.

I agree with the defendant that 981(a)(2)(B) applies, because this was not otherwise illegal activity, but I disagree -- I -- well, but I think he has the burden of showing that goods were provided, and so I don't think he has met his burden of establishing any offset for those six charges, because I don't think there's any evidence that he, even indirectly through Mr. Newman or otherwise, provided legitimate goods or services in exchange for those amounts.

So I'm going to grant the government's Motion For Preliminary Order Of Forfeiture in part, and order that $20,268.35 is subject to forfeiture as proceeds obtained by the defendant through commission of the offenses in Counts 1 through 6, of which he was found guilty. That shall be entered in accordance with 18 U.S.C. Sections 981(a)(1)(C), and 2461, under Rule 32.2(b)(4). This money judgment -- forfeiture money [45] judgment shall become final at the time of sentencing, which will be here in a moment, and shall be made part of the sentence and included in the judgment.

* * *

[75] THE COURT: All right. Thank you, Ms. Frost. All right. So having heard everyone's arguments, I understand the competing positions here and having reviewed, again, the record in this case, the sentencing factors outlined in 18 U.S.C. Section 3553(a), and it's my judgment that the defendant is placed on a term of probation for four years as to each count he was convicted of. All of them running concurrently.

Mr. Cline, while on probation you will be subject to all of the conditions discussed in the report, including the

mandatory standard conditions, as well as the special conditions. As I mentioned, one of those requires substance-abuse treatment and testing program as supervised and approved by your probation officer, and a number of them relate to financial requirements that will be in place, as long as the [76] financial obligations are outstanding, and then the last one, requires completion of 150 hours of community service, within two years, again, as approved and supervised by the probation officer.

Obviously, the financial conditions are important to ensure that have Mr. Cline meets his -- the penalties that are imposed. The substance abuse, I think will help treat -- treatment will help ensure that he stays on track, both with his employment and overcoming some of the issues that, as the defense themselves have discussed, may have allowed him to go down this track, and the community service, my hope will be that that will be both somewhat of a punishment but also somewhat of a reminder to Mr. Cline of the impacts that his actions have had.

The restitution, is -- I'm going to order that it be the $179,314.56, jointly and severally liable with Jared Newman, payable as described in the supervised violation report.

The special assessment is a hundred dollars for each count of conviction, which is due and payable immediately. Given those amounts, I find that the defendant doesn't have the ability to pay an additional fine, so I waive the fine, and I will order forfeiture as previously discussed.

* * *

APPENDIX C

[FILED: MARCH 12, 2024]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE DANIEL D. DOMENICO

Criminal Case No.: 1:21-cr-00339-DDD-01	Date: March 12, 2024
Courtroom Deputy: Robert R. Keech	Court Reporter: Tammy Hoffschildt
Probation Officer: Sara Johnson	Interpreter: N/A

Parties:	*Counsel:*
UNITED STATES OF AMERICA, Plaintiff, v. MATTHEW CLINE, Defendant.	Tim R. Neff Rebecca S. Weber Elizabeth J. Young Mary C. Mulligan Kristen L. Frost

COURTROOM MINUTES

FORFEITURE HEARING and SENTENCING HEARING

9:07 a.m. **Court in session**. Defendant present, on bond.

Defendant found guilty on July 28, 2023 (Day 5 of Jury Trial)
Defendant found guilty as to Counts 1 through 6 of the Indictment

Appearances of counsel.

[217] United States' Opposed Motion for Preliminary Order of Forfeiture for a Personal Money Judgment Against Defendant Matthew Cline is raised for argument

Argument by Ms. Young and Ms. Mulligan.

10:19 a.m. Court in recess.

10:50 a.m. Court in session.

Court makes findings.

ORDERED: [217] United States' Opposed Motion for Preliminary Order of Forfeiture for a Personal Money Judgment Against Defendant Matthew Cline is **GRANTED IN PART**. Forfeiture shall be in the total amount of $20,268.35.

10:54 a.m. Sentencing hearing commences.

Parties received and reviewed the presentence report and all addenda.

The parties **do** dispute the facts contained in the presentence report.

The parties **do** dispute the calculation of the sentence under the Federal Sentencing Guidelines as set forth in the original presentence report.

The parties **do** request departure.

The parties **do** contend that the sentence should be different from that calculated under the Sentencing Guidelines in light of the sentencing objectives set forth in 18 U.S.C. Section 3553(a).

Allocution. Statements made by Ms. Frost, Mr. Neff, and Defendant on his own behalf.

ORDERED: [227] Defendant's Motion to Restrict is **GRANTED.**

ORDERED: [225] Defendant's Motion is **GRANTED.**

ORDERED: Defendant is sentenced to probation for a term of **4 years, on each of counts 1-6, to run concurrently**, restitution in the total amount of $179,314.56, and $600.00 special assessment to be paid immediately.

Conditions and special conditions as set forth on the record.

Defendant advised of right to appeal.

ORDERED: Bond is **EXONERATED.**

11:52 a.m. **Court in recess. Hearing concluded. Total time: 2:14 (1:16 forfeiture hearing and :58 sentencing hearing)**

APPENDIX D

[FILED: MARCH 13, 2024]

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

UNITED STATES OF AMERICA	) **JUDGMENT IN**) **A CRIMINAL CASE**)
	) Case Number:
v.	) 1:21-cr-00339-DDD-1)
MATTHEW CLINE	) USM Number: 76617-509)
	) Kristen M. Frost and Mary) Claire Mulligan) Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)_ which was accepted by the court.

☒ was found guilty on count(s) 1, 2, 3, 4, 5, and 6 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	10/28/2016	1
18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	11/08/2016	2

18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	12/06/2016	3
18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	01/11/2017	4

CONTINUED ON NEXT PAGE

The defendant is sentenced as provided in pages 2 through _____7_____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 12, 2024
Date of Imposition of Judgment

/s/ Daniel D. Domenico
Signature of Judge

Daniel D. Domenico, U.S.D.J.
Name and Title of Judge

March 13, 2024
Date

ADDITIONAL OFFENSES

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	02/13/2017	5
18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	04/03/2017	6

PROBATION

You are hereby sentenced to probation for a term of: **four (4) years** on each count, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on supervision and a maximum of 20 tests per year of supervision thereafter.

   ☐ The above drug testing condition is suspended, based on the court's determination that

you pose a low risk of future substance abuse. *(check if applicable)*

4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*
7. ☒ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your probation, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you were sentenced, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due

to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or

dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, *see Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and/or treatment for substance abuse approved by the probation officer and follow the rules and regulations of such program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program as to modality, duration, and intensity. You must abstain from the use of alcohol or other intoxicants during the course of treatment. You must not attempt to obstruct, tamper with or circumvent the testing methods. You must pay for the cost of testing and/or treatment based on your ability to pay.
2. You must maintain separate personal and business finances and must not co-mingle personal and business funds or income in any financial accounts, including but not limited to bank accounts and lines of credit.
3. Any business you operate during the term of supervision must be approved by the probation officer. You must operate under a formal, registered entity, and you must provide the probation officer with the name of the business entity and its registered agents. You must maintain business records and provide all business documentation and records as requested by the probation officer.
4. You must provide the probation officer access to any requested financial information and authorize the release of any financial information until all financial obligations imposed by the court are paid in full.
5. You must apply any monies received from income tax refunds, lottery winnings,

inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation in this case.

6. If the judgment imposes a financial penalty/restitution, you must pay the financial penalty/restitution in accordance with the Schedule of Payments sheet of this judgment. You must also notify the court of any changes in economic circumstances that might affect your ability to pay the financial penalty/restitution.
7. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless you are in compliance with the periodic payment obligations imposed pursuant to the Court's judgment and sentence.
8. If you have an outstanding financial obligation, the probation office may share any financial or employment documentation relevant to you with the Asset Recovery Division of the United States Attorney's Office to assist in the collection of the obligation.
9. You must complete 150 hours of community service within 2 years. The probation officer will supervise your participation in the program by approving the program, and frequency of participation. You must provide written verification of completed hours to the probation officer

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the following page.

	Assessment	Restitution	Fine
Totals	$600.00	$179,314.56	$0.00

	AVAA Assessment*	JVTA Assessment**
Totals	$0.00	$0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (A0 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Publ. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
WAPA/U.S. Department of Energy PO Box 6200-15 Portland, OR 97228-6200	$179,314.56	$179,314.56	
TOTALS	**$179,314.56**	**$179,314.56**	

☐ Restitution amount ordered pursuant to plea agreement **$**_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the following page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest is waived for the ☐ fine

☒ restitution.

☐ the interest requirement for the ☐ fine

☐ restitution is modified as follows:

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $_____ due immediately, balance due

☐ not later than _____, or

☐ in accordance with ☐C, ☐D, ☐E, or ☐F below; or

B ☒ Payment to begin immediately (may be combined with ☐C, ☐D, or ☒F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The special assessment and restitution obligation are due immediately. The balance of the monetary obligations shall be paid in monthly installment payments calculated as at

least 10 percent of the defendant's gross monthly income.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount
Matthew Cline, 1:21-cr-00339-DDD-1	$179,314.56
Jared Newman, 1:21-cr-00300-RMR-1	$179,314.56

Joint and Several Amount	Corresponding Payee, if appropriate
$179,314.56	WAPA/U.S. Department of Energy
$179,314.56	

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: Money Judgment in the amount of $20,268.35

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine

interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX E

18 U.S.C. § 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense-

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030,

1032, or 1344 of this title or any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of--

(i) section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the the[1] Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of

[1] So in original.

such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of--

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(G) All assets, foreign or domestic--

(i) of any individual, entity, or organization engaged in planning or perpetrating any any[1] Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in section 2332b(g)(5)[2] against the United States, citizens

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[1] So in original.

[2] So in original. A closing parenthesis probably should appear.

or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property; or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government.[3] Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(I) Any property, real or personal, that is involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a prohibition imposed pursuant to section 104(a) of the North Korea Sanctions and Policy Enhancement Act of 2016.

(2) For purposes of paragraph (1), the term "proceeds" is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care

[3] So in original. Probably should not be capitalized.

fraud schemes, the term "proceeds" means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term "proceeds" means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if--

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and--

(i) the seizure is made pursuant to a lawful arrest or search; or

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause

shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may--

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures,

and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine--

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency--

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In[3] the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the

[3] So in original. Probably should not be capitalized.

use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that--

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms "related criminal case" and "related criminal investigation" mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is "related" to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may

adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer--

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country

concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section--

(1) the term "Attorney General" means the Attorney General or his delegate; and

(2) the term "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

(k) Interbank accounts.--

(1) In general.--

(A) In general.--For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant

in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

(B) Authority to suspend.--The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) No requirement for government to trace funds.--If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

(3) Claims brought by owner of the funds.--If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

(4) Definitions.--For purposes of this subsection, the following definitions shall apply:

(A) Interbank account.--The term "interbank account" has the same meaning as in section 984(c)(2)(B).

(B) Owner.--

(i) In general.--Except as provided in clause (ii), the term "owner"--

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) Exception.--The foreign financial institution (as defined in section 984(c)(2)(A) of this title) may be considered the "owner" of the funds (and no other person shall qualify as the owner of such funds) only if--

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or

(II) the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged all or part of its obligation to the prior owner of the funds, in

which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

APPENDIX F

[FILED: OCTOBER 7, 2021]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 21-cr-00339-DDD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. MATTHEW CLINE,

Defendant.

INDICTMENT

The Grand Jury charges:

COUNTS 1-6

(Wire Fraud and Aiding and Abetting)

Background

At all times relevant to this Indictment:

1. The Western Area Power Administration ("WAPA") was a government agency within the U.S. Department of Energy ("DOE"). Among other things, WAPA was responsible for supplying and marketing electricity generated from federal dams to public entities within the United States. As part of its services, WAPA was responsible for constructing, maintaining, and operating an electrical grid which was used in the course of WAPA's transmission of hydroelectric power to its various customers.

2. WAPA operated a sizeable warehouse located in Montrose, Colorado, which warehouse stored and distributed supplies, equipment and materials

(collectively referred to as "supplies" or "goods") used in the maintenance, repair, and building of WAPA's electrical grid.

3. Defendant MATTHEW CLINE ("CLINE") resided and worked in the Delta, Colorado area during the course of the scheme. The Defendant owned and operated a business called "Matt's Home Source, LLC" and "WeDo, LLC".

4. "Person-1" resided and worked in Montrose, Colorado. During the course of the scheme, Person-1 was employed as a contractor for WAPA, for whom he worked as a warehouse clerk. In his position with WAPA, Person-1's general responsibilities included ordering supplies, documenting the purchase of supplies, inventorying supplies, distributing supplies to employees, and entering items (received and issued) into WAPA's electronic inventory system known as "maximo".

The Scheme

5. On or about June 10, 2014, and continuing through and including on or about November 21, 2017, in the State and District of Colorado, the defendant MATTHEW CLINE, Person-1, and other persons known to the grand jury devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises from WAPA, and aided and abetted the same.

6. As part of the scheme, Person-1 enlisted the assistance of CLINE along with other friends and family members (collectively referred to as "associates") in a fraudulent billing scheme designed to steal money from WAPA. Person-1 and CLINE's fraud scheme involved generating bogus purchase orders on behalf of WAPA for nonexistent supplies.

7. As part of the scheme, Person-1 and CLINE worked in concert to submit fraudulent invoices to WAPA which ultimately resulted in WAPA making multiple payments to CLINE for supplies which WAPA never actually ordered nor received. As part of the scheme, Person-1 was working with other associates in a similar manner.

8. As part of the scheme, Person-1, CLINE, and other associates utilized the following companies in the fraudulent billing scheme:

Associate	Company Name
CLINE	Matt's Home Source, LLC and WeDo LLC
BB	Bieser Co
CB	Branson Distributing
MF	MDF Supply
AO	Pinnacle
JN	The Home Store & RDC
JA	J&S Fabrication

9. As part of the scheme, Person-1 provided CLINE and other associates with bogus purchase orders from WAPA. The purchase orders detailed a list of various goods which WAPA supposedly desired to purchase for the maintenance and operation of its electrical grid. The purchase orders provided by Person-1 to CLINE and other associates contained the specific name, model number, quantity, and price for a given product. In reality, WAPA did not need such goods and the purchase orders were fraudulent.

10. As part of the scheme, Person-1 worked with CLINE and other associates to bill WAPA for the supplies listed on the bogus purchase orders. On multiple occasions, CLINE and associates created fictitious "invoices" from their companies for supplies supposedly

provided and shipped to WAPA. In reality, CLINE and other associates and their respective companies provided no goods to WAPA.

11. As part of the scheme, Person-1, CLINE and the other associates caused WAPA managers to review and ultimately approve payment of the bogus invoices by the government. As a result, WAPA managers authorized hundreds of payments from "government purchase cards" to companies controlled by Person-1, CLINE and other associates.

12. As part of the scheme, Person-1 used his access to WAPA's inventory control system, "maximo", to create false entries which made it appear that WAPA had received the purchased supplies when in fact WAPA had received nothing.

13. As part of the scheme, Person-1 made an agreement with CLINE that in exchange for his participation in sham business transactions, CLINE would be allowed to keep a portion of the funds collected from WAPA. In exchange for being able to keep government funds for his own use and personal benefit, CLINE kicked-back a substantial portion of the funds he improperly received from WAPA to Person-1.

14. Over the course of the scheme, Person-1, CLINE and the associates caused WAPA to make multiple payments of funds through "government purchase cards" for fraudulent invoices resulting in losses to the government totaling $ 879,392.27 as further detailed below.

Associate	Company Name	No. of Transactions	Total Paid by Govt.
CLINE	Matt's Home Source & WeDo LLC	59	$179,314.56

BB	Bieser Co	26	$81,872.32
CB	Branson Distributing	54	$165,003.69
MF	MDF Supply	63	$194,210.05
AO	Pinnacle	30	$87,516.01
JN	The Home Store & RDC	39	$120,532.23
JA	J&S Fabrication	18	$50,943.41
		Total =	$879,392.27

The Wires

15. On or about the following dates, in the State and District of Colorado, the defendant MATTHEW CLINE and Person-1, aiding and abetting each other, and for the purpose of executing the scheme described herein, did cause, to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, to wit: electronic funds transfers via credit card payments as further described below:

Count	Date	Description of Wire Communication
1	10-28-16	Transfer of $3,388.00 from WAPA to Matt's Home Source, LLC
2	11-8-16	Transfer of $3,378.00 from WAPA to Matt's Home Source, LLC
3	12-6-16	Transfer of $3,365.90 from WAPA to Matt's Home Source, LLC
4	1-11-17	Transfer of $3,376.75 from WAPA to Matt's Home Source, LLC
5	2-13-17	Transfer of $3,360.00 from WAPA to WeDo, LLC

6	4-3-17	Transfer of $3,399.70 from WAPA to Matt's Home Source, LLC

All in violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE ALLEGATION

16. The allegations contained in Count One through Six of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

17. Upon conviction of the violations alleged in Counts One through Six of this Indictment involving the commission of violations of Title 18, United States Code, Sections 1343 and 2, Defendant MATTHEW CLINE shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c) any and all of the defendant's right, title and interest in all property constituting and derived from any proceeds the defendant obtained directly and indirectly as a result of such offense, including, but not limited to, a money judgment in the amount of proceeds obtained by the defendant.

18. If any of the property described above, as a result of any act or omission of the defendant:

a) cannot be located upon the exercise of due diligence;

b) has been transferred or sold to, or deposited with, a third party;

c) has been placed beyond the jurisdiction of the Court;

d) has been substantially diminished in value; or

e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

A TRUE BILL

Ink signature on file in Clerk's Office
FOREPERSON

MATTHEW T. KIRSCH
Acting United States Attorney

By: s/ Tim R. Neff

TIM R. NEFF
Assistant United States Attorney
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APPENDIX G

[FILED: APRIL 28, 2023]

EXHIBIT 2
Plea Agreement – Jared Newman
(21-cr-00300-RMR)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 21-cr-00300
UNITED STATES OF AMERICA,
Plaintiff,
v.
1. JARED NEWMAN,
Defendant.

PLEA AGREEMENT

The United States of America (the government), through Tim Neff, Assistant United States Attorney for the District of Colorado, and the defendant, Jared Newman, personally and by counsel, Gregory Daniels, hereby submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

Defendant's Obligations:

1. The Defendant agrees to waive Indictment and plead guilty to a one count Information charging Wire

Fraud and Aiding and Abetting in violation of 18 U.S.C. ' ' 1343 and 2.

2. The Defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

i. the sentence exceeds the maximum penalty provided in the statute of conviction, 18 U.S.C. §§ 1341 and 2;

ii. the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of 24 (as calculated by the Government); or

iii. the government appeals the sentence imposed.

If any of these three criteria apply, the Defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The Defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including the restitution order) in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255. This waiver provision does not prevent the Defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

i. the Defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;

ii. the Defendant was deprived of the effective assistance of counsel; or

iii. the Defendant was prejudiced by prosecutorial misconduct.

3. The Defendant agrees to make restitution to the U.S. Department of Energy. The Defendant agrees that any restitution would be jointly and severally owed with any other individual(s) found criminally liable for restitution related to the same criminal activity. The Defendant understands that the Government maintains that the total loss and restitution figure for the offense is $879,392.27 and the Defendant agrees that he is entitled to present an alternative figure at the time of sentencing should he so chose.

4. The Defendant agrees not to contest forfeiture as more fully described below.

Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A) and (B).

1. The Government agrees not to pursue any additional charges against the Defendant based on conduct known to the U.S. Attorney's Office for the District of Colorado.

2. The Government agrees to recommend a sentence to the bottom of the applicable, advisory guideline range as determined by the Court.

3. The Government agrees that the defendant should receive a two level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a). If the Defendant does not engage in prohibited conduct or otherwise implicate USSG § 3C1.1, the Government

agrees to file a motion requesting that the defendant receive a one level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b).

Forfeiture of Assets

The defendant admits the forfeiture allegations set forth in the Information. The defendant further agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant, the defendant's nominees, or elsewhere. The assets to be forfeited specifically include, but are not limited to: a money judgment in the amount of $652,292.77 as obtained by the defendant. The defendant further agrees to the forfeiture of any substitute assets up to the value of any property described above pursuant to 21 U.S.C. § 853(p) and Federal Rules of Criminal Procedure 32.2(e).

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

The United States Attorney's Office for the District of Colorado will recommend to the Attorney General that any net proceeds derived from the sale of the judicially forfeited assets be remitted or restored to eligible victims of the offense, for which the defendant has pleaded guilty, pursuant to 18 U.S.C. § 981(e), 28 C.F.R. pt. 9, and any other applicable laws, if the legal requirements for recommendation are met. The defendant understands that the United States Attorney's Office only has authority to recommend such relief and that the final decision of whether to grant relief rests solely with the Department of Justice, which will make its decision in accordance with applicable law.

II. ELEMENTS OF THE OFFENSE

The parties agree that the elements of the offense to which this plea is being tendered are as follows:

Count One (Wire Fraud) - 18 U.S.C. § 1343

First: the defendant devised or intended to devise a scheme to defraud, as alleged in the indictment;

Second: the defendant acted with specific intent to defraud;

Third: the defendant used interstate or foreign wire communications facilities or caused another person to use interstate or foreign wire communications facilities for the purpose of carrying out the scheme;

Fourth: the scheme employed false or fraudulent pretenses, representations, or promises that were material;

A "scheme to defraud" is conduct intended to or reasonably calculated to deceive persons of ordinary prudence or comprehension.

A "scheme to defraud" includes a scheme to deprive another of money or property.

An "intent to defraud" means an intent to deceive or cheat someone.

A representation is "false" if it is known to be untrue oris made with reckless indifference as to its truth or falsity.

A representation would also be "false" when it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with intent to defraud.

A false statement is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the person or entity to which it is addressed.

To "cause" interstate wire communications facilities to be used is to do an act with knowledge that the use of the wire facilities will follow in the ordinary course of business or where such use can reasonably be foreseen.

Tenth Circuit Pattern Jury Instructions, § 2.57 (2021)

Aiding and Abetting: 18 U.S.C. § 2

This law makes it a crime to intentionally help someone else commit a crime. To find the defendant guilty of this crime, the government is required to prove each of the following elements:

First: every element of the charged crime as outlined above was committed by someone other than the defendant, and

Second: the defendant intentionally associated himself in some way with the crime and intentionally participated in it as he would in something he wished to bring about.

This means that the government must prove that the defendant consciously shared the other person's knowledge of the underlying criminal act and intended to help him.

The defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its commission to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

Tenth Circuit Pattern Jury Instructions, § 2.06 (2021)

III. STATUTORY PENALTIES

The maximum statutory penalties for a violation of 18 U.S.C. §§ 1343 and 2 are not more than 20 years of imprisonment; not more than a $250,000 fine, or both; not more than 3 years of supervised release; a $100 special assessment fee, and restitution.

If a term of probation or supervised release is imposed, any violation of the terms and/or conditions of supervision may result in an additional term of imprisonment.

IV. COLLATERAL CONSEQUENCES

This felony conviction may cause the loss of civil rights including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury. The conviction may also carry with it significant immigration consequences, including removal and deportation depending on the Defendant's status within the United States.

V. STIPULATION OF FACTS

The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement: This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the

parties have stipulated and which are relevant to the Court's guideline computations, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties stipulate that the following facts are true and correct:

Background Information

The Western Area Power Administration ("WAPA") was a government agency within the U.S. Department of Energy ("DOE"). Among other things, WAPA was responsible for supplying and marketing electricity generated from federal dams to public entities within the United States. As part of its services, WAPA was responsible for constructing, maintaining, and operating an electrical grid which was used in the course of WAPA's transmission of hydroelectric power to its various customers.

WAPA operated a sizeable warehouse located in Montrose, Colorado, which warehouse stored and distributed supplies, equipment and materials (collectively referred to as "supplies" or "goods") used in the maintenance, repair, and building of WAPA's electrical grid.

The Defendant JARED NEWMAN ("NEWMAN") resided and worked in Montrose, Colorado, during June of 2014, through November of 2017. During this time period, the Defendant was employed by a contractor for WAPA, for whom he worked as a warehouse clerk. In his position with WAPA, the Defendant's general responsibilities included ordering supplies, documenting the purchase of supplies, inventorying supplies, distributing supplies to employees, and entering items (received and issued) into WAPA's electronic inventory system known as "maximo". The Defendant worked

closely within the warehouse with another government contractor "J.A." in the course of his duties.

The Scheme

From June 10, 2014, through November 21, 2017, the Defendant and other persons created and participated in a scheme to defraud WAPA of money by means of materially false and fraudulent pretenses, representations and promises.

Shortly after becoming employed at WAPA, NEWMAN began working with friends, family members and a co-worker, J.A., (collectively referred to as "associates") in a fraudulent billing scheme designed to steal money from WAPA. NEWMAN's fraud scheme involved generating bogus purchase orders on behalf of WAPA for nonexistent supplies. NEWMAN and his associates then worked in concert to submit fraudulent invoices to WAPA which ultimately resulted in WAPA making multiple payments to NEWMAN and his associates for supplies which it never actually ordered nor received. NEWMAN maintains that not all purchase orders were bogus but instead a number of the purchase orders were legitimate and made for substitute goods.

As part of the scheme, NEWMAN solicited and worked with associates to create and register shell companies with the Colorado Secretary of State for the purported purposes of supplying goods to WAPA. NEWMAN further worked with associates to open and maintain a corresponding bank account in the name of the shell companies. At times, NEWMAN worked with associates to use their current company and connected company bank accounts to conduct business with WAPA in connection with the scheme.

NEWMAN and the associates utilized the following companies in the fraudulent billing scheme:

Associate	Company Name
BB	Bieser Co
CB	Branson Distributing
MF	MDF Supply
A-1	Matt's Home Source and WeDo LLC
HO	Pinnacle
JN	The Home Store & RDC
JA	J&S Fabrication

NEWMAN made an agreement with his associates that in exchange for their participation in sham business transactions, NEWMAN would share a portion of all funds collected from WAPA.

In connection with the scheme, NEWMAN provided associates with bogus purchase orders from WAPA. The purchase orders detailed a list of various goods which WAPA supposedly desired to purchase for the maintenance and operation of its electrical grid. The purchase orders provided by NEWMAN to the associates contained the specific name, model number, quantity, and price for a given product. In reality, WAPA did not need such goods and the purchase orders were fraudulent. Newman maintains that a number of the purchase orders were not bogus but in fact were substitute products.

Newman also worked with his associates to bill WAPA for the supplies listed on the bogus purchase orders. On multiple occasions, the associates created fictitious "invoices" from their companies for supplies supposedly provided and shipped to WAPA. In reality, the

Government contends that the associates and their companies provided no goods to WAPA. The Defendant disputes the fact that no goods were ever provided to WAPA during the course of the scheme and he reserves the right to present evidence to the contrary at sentencing.

As a result of his conduct, NEWMAN and his associates caused WAPA managers to review and ultimately approve payment of the bogus invoices by the government. WAPA managers authorized hundreds of payments from "government purchase cards" to companies controlled by NEWMAN's associates. Such authorizations were based on false and deceptive information.

NEWMAN was able to cover up his fraudulent conduct by using his access to WAPA's inventory control system, "maximo". Specifically, NEWMAN used maximo to create false entries which made it appear that WAPA had received the purchased supplies. The Defendant disputes this fact. NEWMAN also abused his position within WAPA's warehouse to submit fraudulent documentation to WAPA managers in which he certified to such managers that WAPA had received ordered supplies, and that WAPA should pay the invoices submitted by the associates' companies for the supplies. The Defendant disputes this fact.

After WAPA made payment on various invoices, NEWMAN contacted his associates and arranged for a division of the stolen proceeds. Such payments from the associates to Newman – also referred to as "kickbacks" – occurred over the course of the scheme. NEWMAN received the majority of the kickbacks from the associates, frequently in the form of cash or sometimes check. To the extent the associates paid NEWMAN

kickbacks by check, the associates commonly entered a fictitious reason in the memo line of the checks in an effort to conceal the true nature of the payments.

Over the course of the scheme, NEWMAN and the associates caused WAPA to make multiple payments of funds through "government purchase cards" for fraudulent invoices resulting in losses to the government totaling $ 879,392.27, from which NEWMAN received kickbacks totaling $ 652,292.77 as further detailed below.

Associate	**Company Name**	**No. of Transactions**	**Total Paid by Govt.**	**Total Kickbacks to Newman**
BB	Bieser Co	26	$ 81,872.32	$ 60,224.59
CB	Branson Distributing	54	$ 165,003.69	$ 110,131.32
MF	MDF Supply	63	$ 194,210.05	$ 161,794.60
A-1	Matt's Home Source & WeDo LLC	59	$ 179,314.56	$ 152,356.36
HO	Pinnacle	30		
JN	The Home Store & RDC	39		
JA	J&S Fabrication	18		

	$ 87,516.01	$ 72,114.00
	$ 120,532.23	$ 95,671.90
	$ 50,943.41	$ 00.00
Total =	**$ 879,392.27**	**$ 652,292.77**

The Defendant reserves the right to present evidence in connection with the Sentencing Hearing to demonstrate that he did in fact provide some items of value and/or goods to WAPA during the course of the scheme. He further reserves the right to contest the total loss amount from the scheme and also the amount of kickbacks which he received.

The Wire

On November, 21, 2017, NEWMAN -- for the purpose of executing the scheme described above -- did cause a wire communication to be transmitted in interstate commerce, namely, a WAPA government purchase card transfer of $3,375 to MDF Supply's Alpine Bank Account (# 0610).

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

1. The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. ' 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

2. The Guideline calculation below is the good-faith estimate of the parties, but it is only an estimate. Although the Government is obligated to make the sentencing recommendation tied to a total offense level of 24, as set forth in the Agreement section above, the parties understand that the Government also has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the Government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process, affect the estimate below.

A. The base guideline is § 2B1.1(a)(1), with a base offense level of 7.

B. The parties agree that the following specific offense characteristics apply:

(1) There is a 14-level increase pursuant to § 2B1.1(b)(1)(H) because the loss was between $550,000 and $1,500,000 (Government), or a 12 level increase pursuant to § 2B1.1(b)(1)(G) because the loss was between $250,000 and $550,000 (Defendant).

(2) The Government submits that is a 2-level increase pursuant to § 2B1.1(b)(10)(C) because the offense involved sophisticated means (here, hiding assets or transactions through the use of corporate shells) and the defendant intentionally engaged in or caused the conduct constituting sophisticated means. The Defendant reserves the right to contest this increase and submits that it is inapplicable.

C. There are no victim-related, obstruction of justice, or grouping adjustments that apply. The Government submits that the Defendant should receive a 4-level increase pursuant to § 3B1.1.1(a) for his role in the offense as that of an organizer or leader

of criminal activity that involved five or more participants or was otherwise extensive. The Defendant reserves the right to contest this increase and submits that it is inapplicable.

D. The adjusted offense level is therefore 27 (Government), or 19 (Defendant).

E. Acceptance of Responsibility: The parties agree that the defendant should receive a 3-level adjustment for acceptance of responsibility. The resulting offense level therefore would be **24** (Government), **or 16** (Defendant).

F. Criminal History Category: The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be **I**.

G. Imprisonment: The advisory guideline range resulting from these calculations is **51-63** months (Government), or **21-27** (Defendant). However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level estimated above could conceivably result in a range from 19 months (bottom of Category I, offense level 19) to 125 months (top of Category VI, offense level 24). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

H. Fine: Pursuant to guideline § 5E1.2, the fine range for this offense would be $20,000 to $200,000 (Government), or $10,000 to $95,000 (Defendant), plus applicable interest and penalties.

I. Supervised Release: Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is not more than 3 years.

J. Restitution: The Defendant agrees to pay restitution as outlined above in Part 1 of the Plea Agreement.

The parties understand that although the Court will consider the parties estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.

No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. § 3553 factors.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT

This document states the parties entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 2/1/22 Jared Newman

Jared Newman
Defendant

Date: 3/8/2022 s/ Gregory Daniels

Gregory Daniels
Attorney for Defendant

Date: 3/8/2022 s/ Tim Neff

Tim Neff
Assistant U.S. Attorney