No.

# In the Supreme Court of the United States

RONALD BRUCE MYERS, PETITIONER,

*v.*

UNITED STATES.

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

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTION PRESENTED

This case presents a square and acknowledged conflict over an important question of federal criminal law. Section 3664(n) requires an incarcerated defendant who "receives substantial resources from any source" to apply "the value of such resources" to restitution. 18 U.S.C. § 3664(n). The First, Fifth, Sixth, and Eighth Circuits have held that § 3664(n) does not reach modest funds merely because they accumulate over time. A divided Ninth Circuit held the opposite, allowing the government to aggregate years of modest deposits from family and friends and seize them once the inmate's account balance becomes substantial.

Four judges dissented from the denial of rehearing en banc. They explained that the case "involves questions of exceptional national importance for prison management, inmates, and the courts," and that the panel's decision "creates a circuit split in an area of law which is best applied uniformly nationwide." Three more judges wrote separately to express that "[a] principled reading of the statute does not support [the panel's] result." The panel's rule follows inmates sentenced in the Ninth Circuit wherever the Bureau of Prisons houses them, subjecting inmates in the same federal prisons to different restitution regimes based solely on where they were sentenced.

The question presented is:

Whether 18 U.S.C. § 3664(n), which requires an incarcerated defendant who "receives substantial resources" to apply them to restitution, applies only when the defendant receives resources that are substantial at the time of receipt, or also permits the government to aggregate modest, periodic deposits over time and seize them once the inmate's trust-account balance becomes substantial.

## PARTIES TO THE PROCEEDING

Petitioner Ronald Bruce Myers was the defendant-appellant below.

Respondent the United States of America was the plaintiff-appellee below.

## RELATED PROCEEDINGS

United States District Court for the Eastern District of Washington:

*United States v. Myers*, No. 2:04-cr-00173-MKD (turnover order entered May 10, 2023)

United States Court of Appeals for the Ninth Circuit:

*United States v. Myers*, No. 23-1034 (opinion filed May 6, 2025; amended, and rehearing en banc denied, Mar. 27, 2026)

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### OPINIONS BELOW

The amended opinion of the court of appeals (App. 1a-27a) is reported at 170 F.4th 1180, and amends and supersedes the panel's original opinion, reported at 136 F.4th 917. The order of the court of appeals denying rehearing en banc, together with the concurring and dissenting opinions respecting that denial (App. 36a-63a), is reported at 170 F.4th 1180. The order of the district court granting turnover (App. 28a-35a) is reported at 2023 WL 7017707.

### JURISDICTION

The court of appeals entered judgment on May 6, 2025, and denied a timely petition for rehearing en banc on March 27, 2026. On June 17, 2026, Justice Kagan extended the time to file this petition to and including August 24, 2026. *See* No. 25A1407. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### STATUTORY PROVISIONS INVOLVED

The relevant provisions of 18 U.S.C. § 3664 are reproduced at App. 64a-71a. Section 3664(n) provides:

> If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

Section 3664(k) provides:

> A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution.... Upon receipt of the

notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

## INTRODUCTION

When a federal inmate comes into real money "from any source" during his imprisonment—an inheritance, a settlement, a legal judgment—the Mandatory Victims Restitution Act requires him to apply those "substantial resources" to any restitution he still owes. It does so automatically and in full. 18 U.S.C. § 3664(n). For every other change in an inmate's finances, Congress provided a different tool: a court may adjust the inmate's payment schedule as the interests of justice require. *Id.* § 3664(k). The First, Fifth, Sixth, and Eighth Circuits have recognized that distinction: all have held that § 3664(n) does not reach funds that were modest when received merely because they accumulate over time. App. 53a-57a. In the decision below, the Ninth Circuit charted a different path. It held that § 3664(n) authorizes the government to aggregate years of modest deposits from family and friends into "substantial resources from any source" subject to mandatory turnover, even though no individual deposit was substantial when received. The panel thus transformed a provision directed at inmates who "receive[] substantial resources from any source" into one authorizing automatic seizure whenever an inmate's accumulated trust-account balance eventually becomes substantial. Federal inmates keep their money in Bureau of Prisons trust accounts, which hold family deposits, prison wages, and release savings alike.

The decision creates an administrative nightmare for the Bureau of Prisons. The Ninth Circuit's rule does not stop at the Ninth Circuit's borders: it governs every inmate sentenced there, and the Bureau houses those inmates in federal institutions across the country. Officials must therefore sort prisoners in the same institution—inmate by inmate, account by account—into different restitution regimes based solely on the happenstance of where each was sentenced. For the families who scrimp to send an inmate money for food, hygiene, and phone calls, the rule is arbitrary in the cruelest way: identical gifts to two inmates in the same institution are safe for one and subject to seizure for the other. Petitioner Ronald Bruce Myers illustrates the point: sentenced in Washington, he was confined at the United States Penitentiary in Leavenworth, Kansas, when the district court ordered his account turned over. App. 35a. Uniform federal prison administration should not depend on that happenstance. Every day the decision remains in effect, Bureau of Prisons staff must administer a fractured restitution regime that Congress never contemplated.

Myers is a federal inmate who still owes restitution imposed in 2005. In late 2022, his inmate trust account held $1,622.53—most of it set aside in a pre-release account reserved for his eventual reentry. App. 29a. The government froze the account and asked the district court to order the money turned over as restitution under § 3664(n). App. 29a-30a. Myers had been in federal custody for nearly a decade by then, and the small sums his family and friends deposited over those years added up. But no individual deposit was substantial when received, and Myers spent nearly all of them as they arrived—on commissary necessities, subscriptions, donations to charity, and support for others. App. 3a, 31a. The government's theory below, and the Ninth Circuit's logic, is that the small deposits that accumulated in Myers's account are together "substantial resources" subject to mandatory seizure. The district court ordered $1,233.73 turned over. App. 33a, 35a.

A divided panel of the Ninth Circuit affirmed, holding that § 3664(n) reaches "substantial aggregated sums from multiple sources—like family and friends—that gradually accrue in an inmate's trust account." App. 5a. The court of appeals denied rehearing en banc over the dissent of four judges. App. 41a. Three more judges wrote separately that "[a] principled reading of the statute does not support" the panel's result. App. 63a.

The panel also compounded the problem it created. Having made turnover depend on an account's accumulated balance, it "le[ft] for another day" whether prison wages count toward that balance. Prison wages are the principal means by which many inmates accumulate savings, and every court of appeals to decide the question has placed those funds beyond § 3664(n)'s reach. App. 13a n.3. Because trust accounts commingle wages with outside deposits, the aggregation rule immediately unsettles the administration of accounts funded by family deposits, prison earnings, and release savings alike.

This case is a good vehicle for resolving the question presented. The government expressly disclaimed any effort to reach Myers's prison wages, the district court ordered turnover solely because modest outside-source deposits had accumulated over time, and the court of appeals squarely held that § 3664(n) permits such aggregation. The question is purely one of statutory interpretation, was fully litigated below, and cleanly presents an issue of recurring national importance affecting the administration of restitution throughout the federal prison system.

## STATEMENT OF THE CASE

### A. Statutory background

Congress enacted the Mandatory Victims Restitution Act (MVRA) in 1996 to "help victims of crime secure prompt restitution." *Dolan v. United States*, 560 U.S. 605, 613 (2010); 18 U.S.C. §§ 3663A-3664. A sentencing court must order restitution "in the full amount of each victim's losses," § 3664(f)(1)(A), but Congress recognized that defendants often cannot pay all at once. The court therefore sets a payment schedule "in consideration of" the defendant's "financial resources," "projected earnings," and "financial obligations." § 3664(f)(2).

Because a defendant's ability to pay can change, the MVRA provides mechanisms to revisit the schedule. Section 3664(k) directs that a restitution order "shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances." It further provides that, "[u]pon receipt of the notification, the court may... adjust the payment schedule, or require immediate payment in full, as the interests of justice require." 18 U.S.C. § 3664(k). Section 3664(k) thus supplies a discretionary, court-supervised tool that operates whenever a defendant's economic circumstances change over time.

Section 3664(n) is different. It provides that an inmate who "receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration,... shall be required to apply the value of such resources to any restitution or fine still owed." 18 U.S.C. § 3664(n). Unlike § 3664(k), § 3664(n) is automatic: it requires no judicial finding of changed circumstances, no "interests of justice" balancing, and no notice—the inmate simply "shall be required" to turn the resources over. It is, as the Ninth Circuit has recognized, the "harsher" mechanism, requiring "immediate" disgorgement "of the full value of newly-received substantial resources." *United States v. Lillard*, 935 F.3d 827, 834-35 (9th Cir. 2019).

These provisions operate against the backdrop of the Bureau of Prisons' Inmate Financial Responsibility Program (IFRP), 28 C.F.R. pt. 545, under which BOP staff help each inmate develop a financial plan to meet obligations (including restitution) while saving for necessities and reentry. Inmate funds—prison wages and deposits from family and friends alike—are held in a BOP-maintained "inmate trust account." 28 C.F.R. §§ 506.1, 545.10-.11. Inmates draw on those accounts to buy commissary necessities, pay medical co-pays and postage, maintain telephone contact with family and counsel, and save for release. The BOP separately earmarks a portion of those funds in a pre-release subaccount intended to help inmates pay the costs of reentry upon release, underscoring that inmate trust accounts are intended not merely to collect money, but to facilitate successful reintegration into society. *See* C.A. 2-SER 71, 76 (Myers's "pre-release encumbrance" subaccount); App. 33a, 43a; Reservation of Funds for Reentry Under the First Step Act, 88 Fed. Reg. 77,064, 77,065 (proposed Nov. 8, 2023) (funds reserved so that they are available "on the inmate's first day of reentry"); *United States v. Kidd*, 23 F.4th 781, 783 n.1 (8th Cir. 2022) (describing the BOP trust-fund structure).

**B. Facts and proceedings**

In 2005, petitioner Ronald Bruce Myers pleaded guilty to possessing an implement for counterfeiting state securities and to transporting a stolen motor vehicle across state lines. *See* 18 U.S.C. §§ 513(b), 2312. The district court sentenced him to 60 months' imprisonment and three years' supervised release, and ordered him to pay $40,406 in restitution, with payments to "begin immediately" and to be "not less than 25% of [his] monthly gross earnings" while incarcerated. App. 2a, 16a.

Myers completed that sentence in 2010, but he was reincarcerated on unrelated charges in 2013 and has remained in federal custody since. Because he still owed restitution, the 2005 order's conditions remained in effect. Myers had a BOP trust account—the standard account through which federal inmates receive prison wages and outside deposits. As of late 2022, his account held $1,622.53, most of it ($1,224) in a "pre-release encumbrance" subaccount Myers had reserved to assist his eventual reentry (C.A. 2-SER 71, 76)—and he still owed $35,011.09 in restitution. App. 29a. Myers had been in federal custody for many years, and his family and friends sent him a steady stream of small deposits, supplemented by modest prison wages. App. 3a, 31a. But he spent nearly all of that money as it arrived. He donated $1,580 to charity, sent $1,334 to support other individuals, spent about $128 on subscriptions, and used much of the remainder on commissary necessities—leaving only the modest balance the government sought to seize. App. 3a.

In November 2022, the government froze Myers's account and, after he moved for a hearing, asked the district court to order the BOP to turn the funds over as restitution under § 3664(n). App. 29a-30a. The government disclaimed any effort to reach Myers's prison wages. App. 3a. Because the account was commingled and Myers's spending each year exceeded his wages, no dollar-by-dollar tracing was attempted. Instead, the government proposed using only the 2022 transactions—in which Myers received modest deposits from family and friends and $388.80 in prison wages—and, in Myers's favor, assuming that all of the 2022 wages remained unspent. Subtracting that $388.80 from the $1,622.53 balance, the district court ordered turnover of $1,233.73. App. 33a, 35a. The court held that "substantial aggregated sums," including deposits from family and friends, "satisfy the requirement of 'substantial resources'" under § 3664(n), even though the "gradual accumulation of prison wages does not." App. 31a-32a. No individual deposit was found to be substantial when received. The court denied Myers's request for an evidentiary hearing on the account's composition. App. 34a-35a.

**C. The decision below**

A divided panel of the Ninth Circuit affirmed. App. 1a-27a. Judge Nelson, joined by Judge Boggs (sitting by designation), wrote for the majority. The panel held that § 3664(n) "applies not just to one-time financial windfalls, but also to substantial aggregated sums from multiple sources—like family and friends—that gradually accrue in an inmate's trust account." App. 5a. The majority reasoned that, under the Dictionary Act, the singular "source" "include[s] the plural," 1 U.S.C. § 1, so "any source" reaches deposits from multiple people. The majority also relied on the Dictionary Act's tense rule: "words used in the present tense include the future as well as the present." *Id.* From that premise, resources that no one would call substantial when received may "become" substantial under § 3664(n) by sitting in an inmate's account long enough. App. 6a-8a. The panel "le[ft] for another day" whether § 3664(n) also reaches prison wages, App. 13a n.3. Prison wages are the principal means by which many inmates accumulate modest savings for commissary needs and eventual reentry. Allowing the question to go unresolved leaves the Bureau of Prisons to administer inmate trust accounts under an uncertain legal standard.

On rehearing, the panel amended its opinion to add that "[n]othing in this opinion should be construed as preventing a future panel from agreeing with these other circuits on the issue of exempting prison wages." App. 13a n.3.

Judge McKeown dissented. In her view, "§ 3664(n) applies only to resources that are substantial at the time of receipt." App. 20a (McKeown, J., dissenting). She explained that Congress's use of the present-tense "receives" "requires contemporaneity: the resources must be substantial at the time of receipt." App. 22a. She also explained that the statute's illustrations—"inheritance, settlement, or other judgment"—are each "a single event" in which substantial resources are received in "a discrete instance." App. 23a. Accumulation of modest sums over time, she explained, is instead the province of § 3664(k). That provision addresses a "material change in the defendant's economic circumstances" and permits a court to "adjust the payment schedule, or require immediate payment in full, as the interests of justice require." 18 U.S.C. § 3664(k); *see* App. 24a.

The court of appeals denied rehearing en banc. Judge Wardlaw, joined by Judges Gould, Koh, and Mendoza, dissented from that denial. She explained that the panel had "muddled" §§ 3664(k) and (n). In doing so, the panel swept "small sums deposited over time by family and friends... that have become 'substantial' into the MVRA's automatic turnover provision," App. 41a. But Congress "made clear that material changes in a defendant's financial circumstances are governed by a different provision: 18 U.S.C. § 3664(k)." App. 41a. The panel's decision, she wrote, "is incorrect, creates a circuit split," and "interfer[es] with the BOP's carefully constructed" IFRP. App. 41a. And because § 3664(n) turnover proceedings take place in the sentencing court, the chaos is system-wide. The rule governs every inmate sentenced in the Ninth Circuit wherever the BOP houses him. Inmates sentenced elsewhere—including those housed in Ninth Circuit facilities—remain subject to other circuits' rules, leaving the BOP to administer different restitution regimes for inmates in the same federal institution based solely on the circuit of sentencing. She concluded that the case "involves questions of exceptional national importance for prison management, inmates, and the courts." App. 59a. Judge McKeown, joined by Judges W. Fletcher and Paez, separately wrote to agree that "[a] principled reading of the statute does not support" the panel's result. App. 63a.

Judge Nelson concurred in the denial of rehearing en banc. App. 36a-40a.

## REASONS FOR GRANTING THE PETITION

The decision below authorizes the government to aggregate an inmate's modest, periodic deposits over time and seize the resulting balance once it becomes "substantial." That rule now governs every inmate sentenced in the Ninth Circuit, wherever the Bureau of Prisons houses him, and it forces prison officials to administer different restitution regimes inside the same federal institutions. It also exposes family-and-friend deposits set aside for hygiene, phone calls, commissary needs, and release savings to automatic turnover without the interests-of-justice review Congress supplied in § 3664(k). The other circuits have taken a different approach. Four judges explained the point in dissenting from the denial of rehearing en banc: "[u]ntil the panel majority opinion" here, "each circuit to publish an opinion addressing whether § 3664(n) applies to gradually accumulated funds in an inmate trust account had held that it does not." App. 53a.

The question is important and recurring. Section 3664(n) reaches the trust accounts of federal inmates with outstanding restitution or fine obligations throughout the federal prison system. Yet the decision below now subjects those sentenced in the Ninth Circuit alone to automatic turnover of the modest savings they and their families accumulate for necessities and reentry. And the decision is wrong. It reads the present-tense "receives" to reach resources received in the past. It reads the singular "any source" to mean multiple sources. It also pulls gradual accumulation into a turnover provision that operates automatically once its predicate is found—bypassing § 3664(k), the changed-circumstances provision Congress wrote with an interests-of-justice safeguard, for the very cases that provision fits best. This clean, purely legal question is a good vehicle in which to resolve the conflict and restore uniform administration of restitution across the federal prison system.

## I. THE DECISION BELOW CONFLICTS WITH THE OTHER COURTS OF APPEALS.

The Ninth Circuit is the first court of appeals to hold that § 3664(n) reaches "substantial aggregated sums from multiple sources—like family and friends—that gradually accrue in an inmate's trust account." Under that rule, deposits "not... substantial at the time of receipt... can reach that threshold if they accumulate over time." 170 F.4th at 1185-86. The First, Fifth, Sixth, and Eighth Circuits have taken a different approach—measuring substantiality at the point of receipt and treating gradual accumulation as a matter for § 3664(k). The practical consequences are immediate. Because the rule turns on the circuit of sentencing rather than the place of incarceration, the Bureau of Prisons must administer different restitution rules to inmates housed in the same federal institution based solely on where they were sentenced. Families who make identical modest deposits for inmates serving identical sentences face dramatically different treatment depending only on the sentencing circuit. This Court's review is warranted now. The fractured regime and its resulting chaos and unfairness are now the daily operating reality of the federal prison system.

### A. The Eighth Circuit treats gradual accumulation as a § 3664(k) question.

The Eighth Circuit has twice indicated that the gradual accumulation of modest deposits is governed by § 3664(k), not § 3664(n). In *United States v. Kidd*, the court drew the § 3664(n) versus § 3664(k) line by the character of the receipt. Section 3664(n) reaches the "receipt of 'substantial resources' from outside sources." By contrast, "an accumulation of small amounts received from various sources" that together amount to a "'material change' in [the inmate's] economic circumstances" is a matter for the district court's discretion under § 3664(k). The court may "'adjust the payment schedule'... 'as the interests of justice require.'" 23 F.4th 781, 787-88 (8th Cir. 2022). Confronting an undifferentiated $5,500 balance, the Eighth Circuit did not order turnover; it remanded, explaining that the funds "could include" a § 3664(n) receipt from outside sources or, "perhaps more likely," a § 3664(k) accumulation of small amounts. *Id.* at 787-88. The court reaffirmed the point months later in *United States v. Evans*, explaining that a "gradual accumulation of 'small amounts received from various sources'... would constitute a 'material change in the defendant's economic circumstances' under § 3664(k)." 48 F.4th 888, 891 (8th Cir. 2022).

Those holdings cannot be reconciled with the decision below. The Ninth Circuit held that "substantial aggregated sums from multiple sources... that gradually accrue" *are* subject to § 3664(n)'s automatic turnover, 170 F.4th at 1185. That's the very accumulation the Eighth Circuit treats as a § 3664(k) question committed to the district court's interests-of-justice discretion. The sum seized from Myers was the accreted remainder of modest deposits, not one of which the district court found substantial when received. Under the Eighth Circuit's approach, such an accumulation would not be swept up by

§ 3664(n)'s automatic turnover; it would instead require the government to proceed under § 3664(k). Under the Ninth Circuit's rule, it was turned over automatically.

**B. The First, Fifth, and Sixth Circuits apply the receipt-time rule.**

The First, Fifth, and Sixth Circuits apply the receipt-time rule. As the en banc dissent explained, each asks whether the resources were substantial when received and requires a source-specific inquiry, rather than aggregating an accumulated balance. App. 53a-58a.

The Fifth Circuit was the first court of appeals to address the question. It held that the provision "refers to windfalls or sudden financial injections," not the "gradual accumulation" of funds, reasoning that the statute's examples ("inheritance, settlement, or other judgment") share the quality of discrete, substantial receipts. *United States v. Hughes*, 914 F.3d 947, 951 (5th Cir. 2019). A "sudden financial injection" is, by definition, substantial when it arrives—the opposite of a balance built up from modest deposits over years.

The Sixth Circuit required a district court to "first determine the source of the funds" and to ask whether "a resource"—a given deposit—is "substantial." It explained that "a cash deposit of $2,663.05 from outside sources would be 'substantial'" to a prisoner earning no more than about $100 per month in wages. *United States v. Carson*, 55 F.4th 1053, 1057-58 (6th Cir. 2022). *Carson* vacated the turnover order and remanded for those findings. Its analysis treated a single outside-source deposit—not an accumulated balance—as the unit of substantiality, in a case involving family deposits and possible stimulus payments, not merely prison wages. *Id.* at 1055-58.

The First Circuit likewise held that a district court "must examine the source or sources of an inmate's account before it may order the turnover of funds." It also held that if the account "consist[s] only of gradually accumulated... funds that do not qualify as 'substantial resources,' section 3664(n) is not implicated." *United States v. Saemisch*, 70 F.4th 1, 9-11 (1st Cir. 2023). Like the Sixth Circuit, the First Circuit directed courts to assess substantiality when the funds were received.

Those cases arose in varied postures—some principally involving prison wages—but the analytical premise each applied is the same: substantiality is assessed when resources are received, from an identified source. None of these courts has adopted the balance-aggregation rule of the decision below.

### C. The conflict is acknowledged, and the concurrence's contrary view confirms it.

The judges of the court below recognized the split. Judge Wardlaw, joined by Judges Gould, Koh, and Mendoza, wrote that the decision "creates a circuit split." App. 41a. Judge McKeown's panel dissent concluded that "§ 3664(n) applies only to resources that are substantial at the time of receipt." App. 20a. At the en banc phase, Judge McKeown, joined by Judges W. Fletcher and Paez, wrote separately that "[a] principled reading of the statute does not support" the result. App. 63a. Four judges thus expressly identified the split, and seven judges in total rejected the majority's statutory analysis.

Judge Nelson's concurrence in the denial of rehearing en banc contended that the panel "created no new circuit split" because the other circuits "only held that accumulated prison wages were not substantial." App. 36a-37a. But *Kidd* did not turn on prison wages. The Eighth Circuit distinguished the "receipt of 'substantial resources' from outside sources" from the "accumulation of small amounts received from various sources" that belongs under § 3664(k). 23 F.4th at 787-88; *accord Evans*, 48 F.4th at 891. *Carson* addressed cash deposits from the inmate's family and possible stimulus payments—outside sources—and asked whether such a deposit was "substantial" at receipt. 55 F.4th at 1057-58. The premise of the decision below—that modest outside deposits may be summed until a balance is substantial—is one the Eighth Circuit's cases expressly reject and the First and Sixth Circuits' reasoning cannot accommodate.

At bottom, the disagreement here is over the governing rule. And this Court grants review to resolve conflicts over governing rules without waiting for mirror-image outcomes on identical facts.[1] The receipt-time approach the other circuits apply and the balance-aggregation rule applied below cannot both be right, and only this Court can resolve which governs. This Court's review is needed to restore uniformity to a statute that Congress designed to apply identically throughout the federal prison system.

## II. THE QUESTION IS IMPORTANT AND RECURRING.

### A. Section 3664(n) operates against the nationwide federal trust-account system.

The MVRA applies nationwide, and § 3664(n) operates against the uniform, BOP-administered inmate trust-account system that every federal prisoner uses. The legal question therefore has wide reach: the Bureau of Prisons houses more than 153,000 federal inmates,[2] and

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[1] *See Salve Regina College v. Russell*, 499 U.S. 225, 231, 237 (1991) (granting review to resolve conflict over legal test); *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (same); *Miller v. Fenton*, 474 U.S. 104, 109 (1985) (similar); *Thompson v. Clark*, 596 U.S. 36, 41 (2022) (similar); *Ivan Allen Co. v. United States*, 422 U.S. 617, 623 (1975) (similar); *United States v. Bruno*, 329 U.S. 207, 208 (1946) (similar).

[2] *See* Fed. Bureau of Prisons, *Population Statistics*, https://www.bop.gov/about/statistics/population_statistics.jsp (last visited Aug. 21, 2026).

in fiscal year 2025 alone the federal courts ordered restitution in 8,866 cases, in amounts exceeding $25 billion.[3] The question whether the government may aggregate modest deposits and turn over an inmate's balance recurs throughout that system, and reported decisions repeatedly involve comparably modest trust-account balances. *See, e.g., Kidd*, 23 F.4th 781 ($5,500); *Carson*, 55 F.4th 1053 ($4,037.89).

The question is also recurring. District courts continue to confront whether § 3664(n) reaches the gradual accumulation of modest outside-source deposits. *See, e.g., United States v. Price*, No. 17-CR-301 (NGG), 2023 WL 4599841, at *2-4 (E.D.N.Y. July 18, 2023); *United States v. Othman*, 683 F. Supp. 3d 207, 209-11 (E.D.N.Y. 2023); *see also Kidd*, 23 F.4th at 787-88; *United States v. Sweatt*, 85 F.4th 1240, 1241-42 (7th Cir. 2023). The frequency with which the courts confront the question underscores the need for this Court to resolve the governing rule.

And without a receipt-time anchor, courts have no principled way to say how much is "substantial." One court has taken everything over $500; another, everything over $151.59. One found $768.40 substantial; another held that $1,032.53 was not. A third simply took three-quarters of the inmate's balance in its "discretion." Another left an inmate exactly $75, because "[t]he Government suggests the Defendant be allowed to retain $75." And another held that the $3,714.61 initially sought "likely constituted a substantial resource" while "the remaining amount ($235.59), does not." *See United States v. Hester*, 2016 WL 1007335, at *3 (S.D. Cal. Mar. 14, 2016); *United States v. Lazala*, 2024 U.S. Dist. LEXIS 35855, at *5–6 (S.D.N.Y.

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[3] *See* U.S. Sent'g Comm'n, *2025 Sourcebook of Federal Sentencing Statistics* tbls. 16-17 (2026), https://www.ussc.gov/research/sourcebook-2025.

Mar. 1, 2024); *United States v. Kimoto*, 2016 U.S. Dist. LEXIS 69819, at *4 (S.D. Ill. May 27, 2016); *United States v. Ware*, 2022 WL 18024207, at *2 (D.N.J. Dec. 30, 2022); *United States v. Craddock*, 2021 WL 3144818, at *3 (D. Kan. July 26, 2021); *United States v. Myers*, 2021 U.S. Dist. LEXIS 148382, at *2 (D.N.D. Aug. 9, 2021); *United States v. Cantatore*, 2021 U.S. Dist. LEXIS 74932, at *2 (D.N.J. Apr. 19, 2021); *see also United States v. Anwar*, 662 F. Supp. 3d 1169, 1179 (E.D. Wash. 2022) ("[T]here is no authority setting forth how much money is required to be considered 'substantial' under § 3664(n).").

### B. The decision creates a geographically arbitrary regime that disrupts uniform prison administration.

Federal inmates are often housed outside the circuit in which they were sentenced. The decision below therefore means that "different inmates in the same federal prisons will be subject to different rules based on the happenstance of whether they were sentenced in the Ninth Circuit." App. 59a (quoting Pet. for Reh'g En Banc 2). That disuniformity is not merely untidy; it "interfer[es] with the BOP's carefully constructed Inmate Financial Responsibility Program." *Kidd*, 23 F.4th at 787. The IFRP depends on inmates and BOP staff working together to set voluntary, flexible financial plans that balance restitution against savings for necessities and reentry. *See United States v. Lemoine*, 546 F.3d 1042, 1050 (9th Cir. 2008); 28 C.F.R. § 545.11; App. 43a, 60a. A rule that lets the government take accumulated savings automatically whenever a balance crosses a "substantial" line—without interests-of-justice review—cuts against that program for defendants sentenced in the Ninth Circuit while leaving it intact for everyone else.

Such a rule threatens administrative and disciplinary havoc in the federal prison system. Instead of applying one uniform set of criteria to all inmates, BOP counselors must develop different IFRP plans for inmates sentenced in the Ninth Circuit and inmates sentenced elsewhere. This disuniformity plays out within individual federal prisons—inmate by inmate and account by account: different inmates in the same prison facility face different automatic turnover regimes. That disparate treatment—especially of emotionally freighted resources such as friends-and-family deposits—risks creating morale and disciplinary problems within the federal prison system, and interfering with the BOP's Inmate Financial Responsibility Program. *See Kidd*, 23 F.4th at 787.

### C. The stakes for federal prisoners are high.

As the en banc dissent explained, the decision reaches "questions of exceptional national importance." App. 59a. Inmate trust accounts hold the funds prisoners need for hygiene, medical co-pays, postage and telephone contact with family and counsel, and reentry—needs that families fill at an average of roughly $2,500 per inmate per year. App. 60a. *See* Anna VanCleave, *Prison Banking*, 112 Cal. L. Rev. 1699, 1702-03 (2024) (inmate trust accounts are compulsory, low-transparency accounts on which prisoners depend for necessities); *see also* Sean Kolkey, *People over Profit: The Case for Abolishing the Prison Financial System*, 110 Cal. L. Rev. 257, 267-70 (2022) (families and friends pay over $3 billion to stay in contact with and provide necessities for incarcerated people); *Inmate Financial Responsibility Program: Procedures*, 88 Fed. Reg. 1331, 1331-32 (proposed Jan. 10, 2023) (BOP recognizing "the importance of planning for re-entry, including the availability of financial resources").

Congress itself has recognized the importance of release savings, reserving 15% of certain prison wages "to assist the inmate with costs associated with release." 18 U.S.C. § 4126(c)(4). The decision below permits the automatic turnover of an inmate's modest accumulated deposits without any consideration of the inmate's individual circumstances or the interests of justice. The concurrence treated the small sum as a reason to deny review, noting the government secured "just $1,200"—"about four percent" of the funds Myers had received over the prior decade of incarceration. App. 37a. That gets it backwards: the modesty of the sums is precisely why the aggregation rule is so consequential. Section 3664(k) exists to let courts weigh exactly these equities. That discretion is especially important where, as here, the funds at issue are modest savings accumulated for release, because financial stability during reentry is widely recognized as a critical factor in successful reintegration and reduced recidivism.[4] The decision below removes that safeguard for the class of cases—small, gradually accumulated savings—where it matters most.

## III. THE DECISION BELOW IS WRONG.

### A. The text forecloses aggregation over time.

Section 3664(n) applies to an inmate who "receives substantial resources." The present-tense "receives" fixes the moment of analysis at receipt. "Congress' use of a verb tense is significant," *United States v. Wilson*, 503 U.S.

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[4] *See* Reservation of Funds for Reentry Under the First Step Act, 88 Fed. Reg. 77,064, 77,065–66 (proposed Nov. 8, 2023) (reserved funds must be available "on the inmate's first day of reentry" so that "inmates will be more financially prepared for reentry"); Inmate Financial Responsibility Program: Procedures, 88 Fed. Reg. 1331, 1331-34 (proposed Jan. 10, 2023); 28 C.F.R. § 571.20 ("It is the policy of the Bureau of Prisons that an inmate being released to the community will have suitable clothing, transportation to the inmate's release destination, and some funds to use until he or she begins to receive income."); Megan Schwartz, MDRC, *Support for the Journey Home: An Impact Study of the Returning Citizens Stimulus Program* 6 (2025) (cash assistance at release nearly halved parole violations in the first six months).

329, 333 (1992). Although "words used in the present tense include the future as well as the present," 1 U.S.C. § 1, "the present tense generally does not include the past," *Carr v. United States*, 560 U.S. 438, 448 (2010). Nor does the simple present reach wholly past conduct. *See Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 59 (1987) (a statute's use of the simple present—there, "to be in violation"—does not reach wholly past conduct). A statute keyed to one who "receives" substantial resources does not reach one who "has received" modest deposits and accumulated them into a substantial balance.

This Court has recently underscored that Congress's choice among tenses is deliberate and consequential—particularly where neighboring provisions use a different tense. *See Hewitt v. United States*, 606 U.S. 419, 427-30 (2025) (present-perfect "has not been imposed" connects past and present, and "adjacent provisions'" differing tenses are meaningful). Section 3664 proves the point: where Congress meant to reach past events, it used the present perfect. *See* 18 U.S.C. § 3664(j)(1) ("has received"); § 3664(f)(1)(B) ("has received"). Its choice of the simple present "receives" in § 3664(n) fixes the inquiry at the moment of receipt.

The majority's move—reading "receives... now or in the future" to license summing deposits until a balance becomes substantial, 170 F.4th at 1185-86—does not follow from the Dictionary Act. That the present tense "include[s] the future" means the statute reaches resources that will be received; it says nothing about combining separate, non-substantial past receipts into a later "substantial" whole.

Nor does the plural "resources" supply the missing step. It confirms only that a single receipt may comprise multiple resources—for example, a settlement paid by several defendants at once—that together are substantial when received; it does not detach the substantiality inquiry from the moment of receipt. The statutory modifier "substantial" attaches to what the inmate "receives," and "receives" is present tense. As the en banc dissent put it, at the time of turnover Myers's funds "were not funds he would receive in the future but had not yet received." "[H]e was already in possession of the funds," which "were the aggregate of resources [he] had acquired in the past." App. 48a. Nothing in § 3664(n) directs a court to measure substantiality against an accumulated balance rather than the resources received.

### B. The Dictionary Act's singular-plural rule does not license aggregation.

Congress's use of the singular "source" instead of the plural "sources" is further evidence of its narrow intent. To avoid that commonsense reading the majority leaned on the Dictionary Act to hold that the singular "source" "include[s] the plural." 170 F.4th at 1185. But "[t]he Dictionary Act does not transform every use of the singular... into the plural"; "[i]nstead, it tells us only that a statute using the singular... can apply to multiple persons, parties, or things." *Niz-Chavez v. Garland*, 593 U.S. 155, 164 (2021). The statute is not naturally read to treat funds received from a "source" as funds received from multiple "sources." And where the Dictionary Act would require a court to depart from the ordinary and natural meaning of a statutory phrase, the statute's text controls. *See* 1 U.S.C. § 1; *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 199-200 (1993).

### C. Section 3664(k) is the better fit for gradual accumulation.

Context confirms that § 3664(n) reaches isolated windfalls, not gradual accumulation. Congress supplied a separate tool for the situation the decision below addressed: gradual accumulation of funds into significant resources. Under § 3664(k), when an inmate's savings grow over time, that is a "material change in the defendant's economic circumstances." Section 3664(k) empowers the court to "adjust the payment schedule, or require immediate payment in full, as the interests of justice require." 18 U.S.C. § 3664(k); *see Kidd*, 23 F.4th at 787-88; *Evans*, 48 F.4th at 891.

That division tracks the statute's history: the Senate Report Congress designated as the MVRA's legislative history treats § 3664(k)'s "material change" mechanism and the incarcerated-defendant provision as distinct, the latter addressed to "substantial resources acquired" during incarceration. *See* S. Rep. No. 104-179, at 14-15, 21 (1995); H.R. Rep. No. 104-518, at 111-12 (1996) (Conf. Rep.) (designating S. Rep. No. 104-179 as the subtitle's legislative history). Where the only basis for turnover is that non-substantial receipts have accumulated into a substantial balance, § 3664(k)—not § 3664(n)—is the provision that fits: it addresses changed circumstances and supplies a judicial check.

The floor history is more pointed still. What became § 3664(n) "drew on provisions in S. 1404," a bill addressed to prisoners who "file a prisoner lawsuit and receive a windfall," so that the "windfall will go to the victims and not to the prisoner." 142 Cong. Rec. S3379 (daily ed. Apr. 16, 1996) (statement of Sen. Grassley). As its sponsor explained, the enacted provision reaches "windfalls received by prisoners from all sources, including lawsuits." *Id.* "Any source" describes where a windfall may come from. It is not a license to aggregate everyday deposits until they resemble one.

The decision below dismissed overlap between § 3664(n) and § 3664(k) as harmless. 170 F.4th at 1190. But by treating gradually accumulated modest savings as "substantial resources" under § 3664(n), the Ninth Circuit removes from § 3664(k), and its interests-of-justice safeguard, the very cases for which Congress created the provision. The result also renders § 3664(k) largely superfluous: whenever an inmate's accumulated deposits amount to a "material change" in economic circumstances, the same funds are automatically subject to § 3664(n)'s mandatory turnover. Courts avoid superfluity when possible. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *Corley v. United States*, 556 U.S. 303, 314 (2009).

### D. The concurrence's contrary policy concern is misplaced—and answered by § 3664(k).

The concurrence warned that excluding aggregation would let an inmate "carve up a $100,000 windfall... into daily payments" to evade turnover. App. 40a. Not so. A genuine windfall is substantial when the recipient becomes entitled to it, however the obligor schedules payment. That is how the law ordinarily treats such rights: an heir acquires inherited property at the decedent's death even if distribution comes later and income is received when its recipient "first became entitled" to it.[5] The substantial-at-receipt reading turns

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[5] *See Brewster v. Gage*, 280 U.S. 327, 334 (1930); *Drye v. United States*, 528 U.S. 49, 60-61 (1999) (heir held "a valuable, transferable, legally protected right" to the estate "at his mother's death," making the inheritance "property" subject to federal collection); *North American Oil Consolidated v. Burnet*, 286 U.S. 417, 424 (1932); *see also Segal v. Rochelle*, 382 U.S. 375, 379 (1966) (a property interest "is not outside" the law's "reach because it is novel or contingent or because enjoyment must be postponed"); *cf. Comm'r v. Pan-American Life Ins. Co.*, 111 F.2d 366, 369 (5th Cir. 1940) (obligation payable in installments "matured" in full at death); *In re Lonstein*, 950 F.2d 77, 79-80 (1st Cir. 1991) (undistributed bequest that vested at the testator's death was property of the debtor's bankruptcy estate even though distribution came later); *In*

on the character of the resource received, not on the mechanics by which a single award is disbursed. In any event, any true accumulation of savings is a "material change" in economic circumstances reachable under § 3664(k), which lets the court order immediate payment in full "as the interests of justice require." 18 U.S.C. § 3664(k). The government thus loses nothing it is entitled to. It must proceed under the provision Congress wrote for accumulation, with the judicial check Congress attached. The en banc dissent made the same points. App. 52a-53a.

**IV. THIS IS A CLEAN VEHICLE.**

This case is a good vehicle. The question is a pure question of statutory interpretation, decided below on *de novo* review. From the outset, Myers contended that § 3664(n) does not reach the gradual accumulation of modest deposits in an inmate trust account; his opening brief framed that contention in windfall and single-source terms, and Judge McKeown's dissent articulated its receipt-time form. The panel majority squarely considered and rejected the "substantial at the time of receipt" reading, 170 F.4th at 1185-86, and Myers pressed it in seeking rehearing en banc, so the question was pressed and passed upon below.

The conflict is fully ventilated in published opinions—a four-judge en banc dissent, a separate statement by three more judges, and a panel dissent—and the

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*re Ryerson*, 739 F.2d 1423, 1425 (9th Cir. 1984) (interest contingent at filing and not payable until a future event was estate property); *In re Neuton*, 922 F.2d 1379, 1382-83 (9th Cir. 1990) (same for a contingent trust interest); *Matter of Brown*, 86 B.R. 944, 947-48 (N.D. Ind. 1988) (right to $1.5 million in lottery winnings payable $1,000 per week was property of the estate at filing); *cf. Helvering v. Horst*, 311 U.S. 112, 118 (1940) ("The power to dispose of income is the equivalent of ownership of it.").

government defends the outlier rule. And this question calls for this Court's urgent resolution. Every day the decision stands, the Bureau of Prisons must administer a fractured restitution regime, and the families of inmates sentenced in the Ninth Circuit—and only those inmates—lose the modest sums they set aside for commissary needs and release.

Nor does the modest amount at stake counsel against review. Instead, the small sum is the point. Section 3664(n)'s automatic-turnover rule bites hardest on exactly the modest, gradually accumulated balances the decision below sweeps in. Those are the only kinds of balances that the poorest inmates—the inmates most in need of some financial lifeline while in prison and upon release—will ever amass. And that so small an amount was turned over without interests-of-justice review illustrates both the legal error and its system-wide stakes.

The question will also recur: Myers remains incarcerated and continues to receive modest deposits from family and friends, as do countless federal inmates with outstanding restitution obligations. As the dissent from denial of rehearing en banc explained below, this case "involves questions of exceptional national importance for prison management, inmates, and the courts." App. 59a. It warrants this Court's review.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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