No. 26-

IN THE

Supreme Court of the United States

NIDAL AHMED WAKED HATUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case concerns a money laundering offense in which Petitioner returned all of the money involved, with interest, and no one suffered any harm—financial or otherwise. Petitioner kept nothing, made no proceeds, and was financially unable to pay a fine. After the district court declined to enter a forfeiture judgment, however, the Eleventh Circuit *required* the district court to authorize forfeiting the total amount of money involved in the transactions—ultimately resulting in a forfeiture money judgment of more than $10 million dollars in unspecified, untainted property. Breaking from its sister circuits and precedent, the Eleventh Circuit found no constitutional or statutory impediment to that result.

The questions presented are:

(1) Whether, in determining whether a fine contravenes the Excessive Fines Clause, courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing. This is the same question on which the Court granted certiorari in *Jouppi* v. *State of Alaska*, No. 25–246.

(2) Whether, in determining whether a fine contravenes the Excessive Fines Clause, courts may ignore the financial status of the defendant.

(3) Whether, under 18 U.S.C. § 982(a)(1), the government can obtain a forfeiture money judgment for untainted substitute property in the amount of the full value of funds that changed hands during an offense, even if none of the forfeited property was tainted, the defendant never personally received anything, and the full amount was returned to the rightful owner before indictment.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Nidal Ahmed Waked Hatum was the defendant in the District Court and the appellant in the Eleventh Circuit. He is an individual, so there are no disclosures to be made pursuant to Supreme Court Rule 29.6. The respondent is the United States.

RELATED PROCEEDINGS

This Court denied certiorari from a prior Eleventh Circuit opinion in this case in *Waked Hatum* v. *United States*, 142 S.Ct. 72 (Mem) (2021). The Eleventh Circuit decision on review there was *United States* v. *Waked Hatum*, 969 F.3d 1156 (11th Cir. 2020).

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INTRODUCTION

On issue after issue, the Eleventh Circuit has adopted the most expansive view of the government's criminal forfeiture authority—departing time and again from its sister circuits, from this Court's precedent, and from the constitutional and historical limitations on that authority. The court of appeals' decision to mandate and uphold a $10 million forfeiture money judgment from a defendant who gained $0—not a dime of tainted property—implicates several of those questions.

To start, there is recognized "disorder in the lower courts" over how to apply the Eighth Amendment's Excessive Fines Clause to criminal forfeiture judgments. Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 297 (2014). In two splits directly implicated here, lower courts disagree about (1) the level of abstraction at which they should assess the severity of the offense at issue—a question the Court will address in *Jouppi* v. *State of Alaska*, No. 25–246—and (2) whether a defendant's financial status is relevant to the excessiveness analysis.

The lower courts are also "divided over whether *Honeycutt* [v. *United States*, 581 U.S. 443 (2017)] applies outside the drug context." Evan T. Barr, *Circuits Split on Extending 'Honeycutt' To White-Collar Defendants*; Corporate Crime, N.Y. L. J. (2023). Relevant here, courts disagree on whether background principles of forfeiture highlighted in *Honeycutt* prevent seizure of untainted property as a substitute for tainted property when the defendant has returned all of the tainted property and has gained nothing.

For Petitioner Nidal Waked Hatum, the Eleventh Circuit's uniquely pro-forfeiture approach was outcome determinative on each of these issues.

First, had the Eleventh Circuit focused on Mr. Waked Hatum's specific offense, instead of the *category* of money laundering offenses, the $10 million dollar judgment would have been excessive. A first-time offender, Mr. Waked Hatum pled guilty to using false invoices to draw on a line of credit and then immediately returning the money. There "was no loss to the bank, whether intended or actual," Sent'g Hr'g Tr. 32:13–14, Dkt. 358, and no financial loss to anyone—"all the draws from the bank were re-paid on time with interest," Factual Proffer 3, Dkt. 343. The Eleventh Circuit nevertheless ordered the district court to "consider the adverse impact on society that money laundering generally has," Pet. App. 52a—no matter how little those abstract harms related to the facts of this case. Many courts would have come out differently.

Second, had the Eleventh Circuit taken into account Mr. Waked Hatum's financial status, the $10 million judgment would have been excessive. The government acknowledged that "there were no proceeds of [the] offense," Pet. App. 34a, and the district court found that "the defendant is not able to pay a fine," Sent'g Hr'g Tr. 31:12–13. But the Eleventh Circuit required the district court to impose a $10 million forfeiture money judgment anyway, because courts in that circuit may "not take into account the personal impact of a forfeiture on the specific defendant." *United States* v. *Dicter*, 198 F.3d 1284, 1292 n.11 (11th Cir. 1999). Many courts would have come out differently.

Third, had the Eleventh Circuit adhered to the governing forfeiture principles from *Honeycutt*, it would have concluded that the $10 million judgment was not authorized. In other circuits, a defendant must be "credited with returning" funds to the victim. *United States* v. *Hawkey*, 148 F.3d 920, 928 (8th Cir. 1998); see also *United States* v. *Thompson*, 990 F.3d 680, 691 (9th Cir. 2021) (holding that a defendant could not be forced to forfeit the total amount of money he at some point controlled when that amount "did not come to rest with" him, because that theory could not "withstand the holding in *Honeycutt*"). But the Eleventh Circuit provides no such credit—effectively *punishing* defendants for returning money by requiring them to pay the same amount through additional and untainted funds.

These questions warrant this Court's review. Each has significant impacts on criminal forfeiture proceedings and leads to unequal treatment of defendants across the country. The Court has already decided to address one of these issues in *Jouppi*, but this case presents a unique opportunity to consider and clarify related issues at the same time. The Court should therefore grant review of this case alongside *Jouppi*. At a minimum, however, the Court should hold this petition pending resolution of *Jouppi*.

OPINIONS BELOW

The opinions of the Eleventh Circuit are available at *Waked Hatum* v. *United States*, 2026 WL 100562 (11th Cir. 2026), reproduced in the appendix at Pet. App. 2a–29a, and reported at *United States* v. *Waked Hatum*, 969 F.3d 1156 (11th Cir. 2020), reproduced in the appendix to this petition at Pet. App. 30–60a. The Eleventh Circuit's order denying rehearing en banc is reproduced in the appendix at Pet. App. 1a.

The opinions of the United States District Court for the Southern District of Florida are reproduced in the appendix at Pet. App. 61a–63a (imposing forfeiture on remand), and Pet. App. 64a–71a (declining to impose forfeiture).

JURISDICTION

The Eleventh Circuit issued its decision on January 14, 2026, Pet. App. 2a, and denied petitioner's petition for rehearing en banc on April 9, 2026, Pet. App. 1a. Petitioner twice timely petitioned for an extension of time, and Justice Thomas extended the time to petition for certiorari to September 8, 2026. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment of the U.S. Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The statutory provisions involved are 18 U.S.C. § 982 and 21 U.S.C. § 853 and are set forth in the appendix to this petition at Pet. App. 72a–87a.

STATEMENT OF THE CASE

A. Legal Background

Criminal forfeiture was "rejected altogether in the laws of this country until very recently." *United States* v. *Bajakajian*, 524 U.S. 321, 332 (1998). The First Congress "explicitly rejected *in personam* forfeitures as punishments for federal crimes." *Id.* at 332 n.7. And "Congress reenacted this ban several times over the course of two centuries." *Id.* It was not until 1970 that "Congress resurrected the English common law of punitive forfeiture" by providing for forfeiture in a narrow set of offenses. *Id.*

There are at least two important checks on this relatively new entrant into the United States legal system: (1) the Eighth Amendment and (2) the statutes that authorize it.

1. The Excessive Fines Clause embodies the principle, well-established at the Founding, that "no man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear." 4 W. Blackstone, *Commentaries on the Laws of England* 372 (1769). The clause "traces its venerable lineage back to at least 1215" and Magna Carta. *Timbs* v. *Indiana*, 586 U.S. 146, 151 (2019).

These principles were historically person-specific and offense-specific. At an individual level, "Magna Carta required that economic sanctions …' not be so large as to deprive [an offender] of his livelihood.'" *Id.* The bar on excessive fines was incorporated into the English Bill of Rights of 1689—adopted to protect against "ruinous fines" imposed by the English crown that transformed criminal defendants into permanent debtors who "could not pay the huge monetary penalties that had been assessed." *United States* v. *Levesque*, 546 F.3d 78, 83–84 (1st Cir. 2008) (quoting *Browing-Ferris Indus.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 267 (1989)). After the Glorious Revolution, the English Bill of Rights "reaffirmed Magna Carta's guarantee by providing that 'excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted.'" *Timbs*, 586 U.S. at 152 (citation omitted). "Across the Atlantic, this familiar language was adopted almost verbatim, first in the Virginia Declaration of Rights, then in the Eighth Amendment." *Id.*; *Levesque*, 546 F.3d at 83–84.

For offenses, too, the "touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. That may mean, as it did in *Bajakajian*, that "full forfeiture" of the entire amount of currency involved in the crime "violate[s] the Excessive Fines Clause." *Id.* at 344. There, the gravity of the specific defendant's offense was minimal compared to that of other violators "for whom the statute was principally designed," and "the harm … caused was also minimal"—only the government was affected, "and in a relatively minor way." *Id.* at 338–39. "There was no fraud on the United States, and respondent caused no loss to the public fisc." *Id.* at 339

2. Criminal forfeiture is also "a creature of statute" and its application is "confined by [the] precise contours of statutory language." *SEC* v. *Contorinis*, 743 F.3d 296, 307 (2d Cir. 2014). Forfeiture statutes "give the government vast and important power," and therefore "must be exercised in the *precise* manner the statutes provide." *United States* v. *Giovanelli*, 998 F.2d 116, 119 (2d Cir. 1993) (emphasis added).[1]

Over the past 50 years, Congress has enacted various statutes authorizing criminal forfeiture. See, *e.g.*, Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1366, 100 Stat. 3207, 3235 (1986); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Title VI, § 6463(c),

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[1] The government now agrees that it has no extra-statutory authority to seize assets as a result of a criminal forfeiture judgment, "using mechanisms outside the applicable forfeiture statutes." Br. for the United States in Opp'n at 18, *Lo* v. *United States*, No. 16-8327 (U.S. Sep. 11, 2017); see also Order Den. Pet. for Cert. at 1, *United States* v. *Peithman*, No. 19-16 (U.S. Nov. 18, 2019); Tr. of Oral Argument at 46, *Honeycutt* v. *United States*, 581 U.S. 443 (2017) (No. 16-142) (Kagan, J.) ("And let's put aside the extra[-]statutory money judgments, since I don't understand really how that works …").

102 Stat. 4374, 4374 (1988) (codified at 18 U.S.C. § 982). Most federal criminal forfeiture judgments are governed by 18 U.S.C. § 982, which applies to money laundering, bank fraud, and similar offenses; 21 U.S.C. § 853, which applies to drug offenses; or 18 U.S.C. § 981, a civil statute applicable to certain criminal cases through 28 U.S.C. § 2461(c).

The provision at issue here is 18 U.S.C. § 982(a)(1). It provides that a court shall order forfeiture of "any property, real or personal, involved in such offense, or any property traceable to such property." Pub. L. No. 100-690, Title VI, § 6463(c), 102 Stat. 4374, 4374 (1988). Section 982 does not itself authorize recovery of untainted substitute property, but it authorizes recovery of substitute assets through 21 U.S.C. § 853(p). Section 853(p), in turn, allows the government to seek forfeiture of a defendant's untainted property only when the tainted property has been dispersed by the defendant, including because it has been "transferred or sold to, or deposited with, a third party." 21 U.S.C. § 853(p)(1)(B).

This Court has interpreted criminal forfeiture statutes narrowly, consistent with the doctrine's restrained historical roots. Civil forfeiture has a much longer tradition in the United States and has always been *in rem*—"an action against the tainted property itself." *Honeycutt*, 581 U.S. at 454. The criminal provision at issue, § 853(a), tracked that historical limitation and did not generally authorize seizing untainted assets from a defendant who did not have the tainted property. *Id.* After all, when property is untainted, "it belongs to the defendant, pure and simple." *Luis* v. *United States*, 578 U.S. 5, 12 (2016) (plurality opinion).

The Court has recognized that Congress allowed the government to seize untainted property through § 853(p) but has simultaneously made clear that the mechanism is limited. *Honeycutt*, 581 U.S. at 452. "By adopting an *in personam* aspect to criminal forfeiture, and providing for substitute-asset forfeiture" in the narrow circumstances outlined, the Court explained, "Congress made it easier for the Government to hold the defendant who acquired the tainted property responsible." *Id.* But Congress "did not … enact any 'significant expansion of the scope of property subject to forfeiture.'" *Id.*

B. Factual Background

Between 2000 and 2009, Mr. Waked Hatum was a part owner of Panamanian electronics wholesaler Vida Panama and also owned two Miami-based corporations. Vida Panama had a corporate line of credit at the International Commercial Bank of China ("the Bank"). Mr. Waked Hatum pled guilty to engaging in a series of "mirror-image" financial transactions that took place in a closed loop. In particular, false invoices made it appear as though Vida Panama was purchasing electronics from the Miami corporations. Those invoices permitted Vida Panama to draw on its line of credit at the Bank and transfer money to the Miami corporations. Those corporations then immediately transferred the funds back to Vida Panama by check, and Vida Panama repaid the Bank—with interest. Vida Panama drew on the same line of credit each time, and at no time withdrew more than $550,000. Pet. App. 31a–32a.

The nature of these transactions is undisputed. Their "mirror-image" nature, for example, meant that "the Bank incurred no financial loss … and all draws were repaid with interest." Pet. App. 32a. It is undisputed that "there was no loss to the bank, whether intended or actual." Sent'g Hr'g Tr. 32:13–14. Indeed, the parties stipulated that the "scheme resulted in the *same funds* being moved from Panama to Miami and almost simultaneously from Miami back to Panama." Factual Proffer 3, Dkt. 343 (emphasis added). It is also undisputed that Mr. Waked Hatum did not personally receive any of the funds involved. The government conceded that "there were no proceeds of the offense." Pet. App. 34a; Forfeiture Hr'g Tr. 19:6, Dkt. 378.

C. Procedural Background

In 2017, Mr. Waked Hatum "pled guilty to conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 1956(h) and 1957(a)." Pet. App. 4a. The total amount of all of the transactions that moved funds into the United States and their mirror-image transactions that moved the money back out of the United States was $20,852,000. *Id.* at 35a.

The district court found that Mr. Waked Hatum was "not able to pay a fine." Sent'g Hr'g Tr. 31:12–13. During the sentencing hearing, the court also noted that Mr. Waked Hatum "has no prior arrest or conviction records." *Id.* at 6:4–5. There were no findings that Mr. Waked Hatum's "specified unlawful activity" was connected to any other illegal activity. Presentence Investigation Rep. 6. The district court therefore imposed a below-guidelines sentence of 27 months imprisonment.

The district court also denied the government's motion for forfeiture. As the government conceded, Mr. Waked Hatum made no proceeds from the money laundering offense. Pet. App. 34a, 63a. The district court held that the purpose of the statute—to punish criminals and ensure they do not retain ill-gotten gains—would not be served by imposing forfeiture on Mr. Waked Hatum, who returned all the money with interest. *Id.* at 62a–63a. The district court also found that the government's requested $20,852,000 would be excessive under the Eighth Amendment. The court held instead that that $10,000 per transaction—for a total of $520,000—would be appropriate if it were required to impose forfeiture. *Id.* Even then, the district court had "a hard time getting [its] head wrapped around" the government's theory that there is any money to recover "if the money goes back to the original victim before there's any prosecution." *Id.* at 35a.

The Eleventh Circuit reversed, holding that the district court was required to impose a forfeiture money judgment under § 982(a)(1), allowing the government to seize a sum equal to the total value of the property "involved in" the scheme. Pet. App. 53a. In assessing whether the forfeiture was excessive under the Eighth Amendment, moreover, the district court had to "consider the adverse impact on society that money laundering generally has." *Id.* at 52a. And the Eleventh Circuit was unconcerned that all money involved had been returned to the victim and held that the government could recover untainted property totaling the full amount of money "involved in" the transactions through § 853(p)(1)(B).

Mr. Waked Hatum petitioned for certiorari. The government opposed, and its lead argument was a vehicle one—namely, that the amount of the forfeiture money judgment had not been finally determined and the appeal was interlocutory. The Court denied the petition.

On remand, the district court imposed a forfeiture money judgment of $10,426,000—the total amount of the transactions through which money moved into the United States. Mr. Waked Hatum appealed. He argued that the forfeiture money judgment was unlawful under the Eighth Amendment because the gravity of his specific offense did not support it. Appellant Br. at 42, *United States* v. *Waked Hatum*, No. 22-13312-A, 2026 WL 100562 (11th Cir. 2025), Dkt. 84. He also maintained that imposition of a large forfeiture money judgment on "a person who cannot pay a simple fine" was barred by the Eighth Amendment. Opp'n Appellee Br. at 48, *United States* v. *Waked Hatum*, 969 F.3d 1156, (11th Cir. 2018) (No. 18-11951-F), Dkt. 29. And he argued that *Honeycutt* barred the forfeiture money judgment as well. The Eleventh Circuit rejected or ignored all of these arguments and affirmed. Mr. Waked Hatum timely sought rehearing and en banc review, which was also denied.

REASONS FOR GRANTING THE PETITION

Despite the Court's guidance in *Bajakajian* and *Honeycutt*, federal and state appellate courts are deeply divided over the constitutional and statutory limits on criminal forfeiture. The Eleventh Circuit's decision in this case implicates three such issues, and the Eleventh Circuit got each of them wrong. Independently and together, these questions warrant this Court's review.

In *Jouppi* v. *Alaska*, No. 25–246, the Court has agreed to hear one of those questions. Considering this case alongside *Jouppi* would allow the Court to efficiently provide clarity on multiple aspects of criminal forfeiture. At an absolute minimum, however, this petition should be held for the decision in *Jouppi*.

I. THE ELEVENTH CIRCUIT IS ON THE WRONG SIDE OF THE SPLIT THAT THE COURT WILL ADDRESS IN *JOUPPI*.

The *Jouppi* petition explained that, "[a]ligning with the Eleventh Circuit, the Alaska Supreme Court examined the gravity of the defendant's offense at a stratospheric level of abstraction." Cert. Pet. i, *Jouppi* v. *Alaska*, No. 25–246 (Aug. 29, 2025) (question presented). This case is the Eleventh Circuit analogue to *Jouppi*: the Eleventh Circuit's approach to the excessive fines analysis breaks with a majority of courts, which center around the specific defendant's actions, and is incompatible with this Court's decision in *Bajakajian* and the history of the Excessive Fines Clause. The Court already considered these points when it granted the *Jouppi* petition, but briefly:

1. In assessing whether a fine contravenes the Excessive Fines Clause, at least eleven courts focus on the defendant's specific wrongdoing. See, *e.g.*, *State* v. *Timbs*, 169 N.E.3d 361 (Ind. 2021); *Commonwealth* v. *1997 Chevrolet & Contents Seized from Young*, 160 A.3d 153 (Pa. 2017); *One 1995 Toyota Pick-Up Truck* v. *District of Columbia*, 718 A.2d 558, 565 (D.C. 1998); *State* v. *Real Prop. at 633 East 640 North*, 994 P.2d 1254, 1259–60 (Utah 2000); *United States* v. *$100,348.00 in U.S. Currency*, 354 F.3d 1110, 1123 (9th Cir. 2004); *United States* v. *Facteau*, 89 F.4th 1, 45 (1st Cir. 2023); *Yskamp* v. *DEA*, 163 F.3d 767, 773 (3d Cir. 1998); *United States* v. *Carpenter*, 317 F.3d 618, 627 (6th Cir. 2003); *United States* v. *Abair*, 746 F.3d 260, 268 (7th Cir. 2014); *United States ex rel. Grant* v. *Zorn*, 107 F.4th 782, 800 (8th Cir. 2024); *United States* v. *Wallace*, 389 F.3d 483, 487 (5th Cir. 2004).

The Eleventh Circuit (here) and Alaska Supreme Court (in *Jouppi*), by contrast, focus on the offense's gravity in the abstract. The Eleventh Circuit maintains that "excessiveness is determined in relation to the characteristics of the offense, not in relation to the characteristics of the offender." *United States* v. *817 N.E. 29th Drive*, 175 F.3d 1304, 1311 (11th Cir. 1999). Consistent with that rule, the panel below gave no meaningful weight to the circumstances of this case. It deemed the $10,426,000 judgment "presumptively constitutional" because it fell "below the statutory maximum fine." Pet. App. 25a, 49a. And it applied that presumption based on "general principles" about "the purpose of the money laundering statute" and the resulting "harm to society" from the generic offense—*not* any specific harm that Mr. Waked Hatum caused or any other facts about him. Pet. App. 25a–26a. The court of appeals even criticized the district court for focusing on the "little harm" that Mr. Waked Hatum caused and instead ordered the court to consider "the adverse impact on society that money laundering generally has." Pet. App. 52a.

2. The Eleventh Circuit's approach also conflicts with this Court's precedent and with the Excessive Fines Clause's history.

Starting with precedent, *Bajakajian* assessed the gravity of the defendant's specific misconduct. It considered the defendant's culpability "relative to other potential violators of the" statute. 524 U.S. at 339 n.14. The Court also examined the specific "harm that [defendant] caused," which was "minimal": there was "no loss to the public fisc," and his offense "affected only one party, the Government, … in a relatively minor way." *Id.* Just as important, the Court did *not* consider the offense in the abstract and did *not* focus on the generalized harms of Bank Secrecy Act violations, as the dissent did. *Id.* at 351 (Kennedy, J., dissenting). Nor did it accept the government's invitation to make Congress's maximum authorized sentence dispositive. *Id.* at 339 & n.14. The "constitutional requirement of proportionality review" was paramount. *Id.*

The historical understanding of the Excessive Fines Clause also supports a case-specific approach. At ratification, an "excessive" fine would have been understood in relation to the circumstances of the particular case. Pecuniary fines could not "be ascertained by any invariable law," but instead "must frequently vary." 4 William Blackstone, *Commentaries* *371. Fines should therefore reflect "[t]he peculiar circumstances of each case" and not exceed "the real measure of [an offender's] own offence." William Rawle, *A View of the Constitution of the United States* 130 (Philip H. Nicklin, 2d ed. 1829); *Jones* v. *Commonwealth*, 5 Va. 555, 558 (1799) (opinion of Carrington, J.).

The decision below conflicts with these authorities. The panel deemed the $10,426,000 forfeiture money judgment "presumptively constitutional" simply because it fell "below the statutory maximum fine the district court could have imposed." Pet. App. 25a, 49a. It then reaffirmed that presumption through abstractions about money laundering generally—going so far as to *require* the district court to consider the offense in the abstract and reversing the district court's case-specific forfeiture judgment. *Id.* at 23a.

Under the right framework, a forfeiture money judgment of millions of dollars against a first-time offender whose offense harmed no one and led to no proceeds is constitutionally disproportionate. The Court should grant certiorari and reverse.

II. THE ELEVENTH CIRCUIT IS ON THE WRONG SIDE OF A SPLIT ABOUT A DEFENDANT'S ABILITY TO PAY.

The Court should also grant review because this case directly implicates another longstanding and deepening split in the lower courts about what courts must consider in assessing whether a forfeiture money judgment is excessive under the Eighth Amendment.

A. The decision below conflicts with other courts' excessive fines approaches.

There has "emerged a little-noticed but important circuit split" as to whether a "defendant's inability to pay a fine [i]s a relevant consideration in the context of the Eighth Amendment." Nicholas M. McLean, Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause, 40 Hastings Const. L.Q. 833, 834–35 (2013).

On one side, at least the First, Second, and Tenth Circuits recognize that the Excessive Fines Clause requires courts to consider whether a financial penalty will deprive a defendant of his or her livelihood. See *Levesque*, 546 F.3d at 83; *United States* v. *Viloski*, 814 F.3d 104, 111 (2d Cir. 2016); *United States* v. *Muzaffar*, 714 F. App'x 52, 58 (2d Cir. 2017) ("[C]ourts may consider whether forfeiture 'would deprive an offender of his livelihood'"); *Fabrizius* v. *Dep't of Agric.*, 129 F.4th 1226, 1249 (10th Cir. 2025) (finding relevant that a fine would force the defendant out of business); cf. *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1072 (9th Cir. 2024) (noting in *dicta* that "[t]he Excessive Fines Clause reflects the principle that a fine 'should not deprive a wrongdoer of his livelihood'" (quoting *Bajakajian*, 524 U.S. at 335)). State courts have also weighed in. See, *e.g.*, *City of Seattle* v. *Long*, 493 P.3d 94, 115–16 (Wash. 2021) (en banc) (holding that "an ability to pay inquiry is necessary").

On the opposite side, other courts reject such a defendant-specific approach. The Eleventh Circuit has taken the most extreme position, holding that courts may never "take into account the personal impact of a forfeiture on the specific defendant in determining whether the forfeiture violates the Eighth Amendment." *Dicter*, 198 F.3d at 1292 n.11. The Fifth Circuit has followed the Eleventh Circuit's lead, *e.g.*, *United States* v. *Suarez*, 966 F.3d 376, 388 (5th Cir. 2020) (rejecting argument that "ability to pay is relevant to the proportionality inquiry"), as has Ohio, *e.g.*, *State* v. *O'Malley*, 206 N.E.3d 662, 676 (Ohio 2022) (refusing to adopt a test that would require "consideration[] of the defendant's financial ability to pay and the extent to which the forfeiture would harm the defendant's livelihood").

Several other circuits have recognized the split without taking a side. See *Grashoff* v. *Adams*, 65 F.4th 910, 921 (7th Cir. 2023) ("The Supreme Court has declined to address whether the sanctioned person's financial condition is relevant to the excessiveness inquiry. So do we.") (citations omitted); *United States* v. *Bennett*, 986 F.3d 389, 400 (4th Cir. 2021) (finding a lower court did not plainly err in imposing forfeiture judgment because "we have never expressly considered a defendant's means in evaluating the proportionality of a forfeiture judgment"); *United States* v. *Bikundi*, 926 F.3d 761, 796 (D.C. Cir. 2019) (per curiam) (finding a district court did not clearly err because "[t]he Excessive Fines Clause does not make obvious whether a forfeiture is excessive because a defendant is unable to pay, and '[n]either the Supreme Court nor this court has spoken' on that issue" (citations omitted)).

The Eleventh Circuit is again the standard bearer for the most limited view of the Excessive Fines Clause. Decades ago, the First Circuit recognized that its approach was "at odds with the Eleventh Circuit." *Levesque*, 546 F.3d at 83 n.4. Further percolation has only deepened the split, not resolved it. As one court recently put it, "[t]he problem is that there does not appear to be any consensus." *O'Malley*, 206 N.E.3d 662 at 675. The Court should grant review and provide it.

B. The decision below is wrong.

The Court should also grant review because the Eleventh Circuit's view is incompatible with the historical context and this Court's precedent.

By adopting language from the English Bill of Rights, *supra* 5–6, the Founders incorporated the understanding that "a person's wealth and income (or lack thereof) bear on whether a fine is excessive." Brianne J. Gorod & Brian R. Frazelle, *Timbs v. Indiana: Mere Constitutional Housekeeping or the Timely Revival of a Critical Safeguard?*, 2019 CATO Sup. Ct. Rev. 215, 242–43 (2019); McLean, *supra* at 839–41. At the "time of the Founding the phrase 'excessive fines' was … understood to be linked in important ways to the meaning of analogous legal protections in English history." McLean, *supra* at 840. That history informs the proper understanding of the Excessive Fines Clause. See, *e.g.*, *Levesque*, 546 F.3d at 84.

The Eleventh Circuit's contrary view ignores this history and misreads precedent. Citing *Bajakajian*, the Eleventh Circuit holds that "excessiveness is determined in relation to the characteristics of the offense, not in relation to the characteristics of the offender." *817 N.E. 29th Drive*, 175 F.3d at 1311. In that circuit, therefore, courts "do not take into account the personal impact of a forfeiture on the specific defendant." *Dicter*, 198 F.3d at 1292 n.11. But that is not what *Bajakajian* held; it expressly reserved the question. *Timbs*, 586 U.S. at 152 (describing *Bajakajian* as "taking no position on the question whether a person's income and wealth are relevant considerations in judging the excessiveness of a fine"). There was no need for the Court to decide the issue in *Bajakajian*, because the forfeiture was unconstitutional for other reasons.

The Court should grant certiorari, correct the lower courts' misunderstanding of *Bajakajian*, and return the Excessive Fines Clause to its original meaning.

III. THE ELEVENTH CIRCUIT IS ON THE WRONG SIDE OF A SPLIT OVER *HONEYCUTT*'S APPLICATION TO FEDERAL FORFEITURE STATUES.

The final question concerns the ramifications of this Court's decision in *Honeycutt*.

Honeycutt held that 21 U.S.C. § 853 does not permit recovery of untainted property through joint-and-several liability. The Court explained that forfeiture has traditionally been *in rem*—against the tainted property itself—and therefore limited to tainted property. Section 853(a) likewise limits forfeiture to tainted property that the defendant "himself actually acquired as the result of the crime." 581 U.S. at 454. Congress carefully and precisely defined the *only* circumstances in which the government may reach a defendant's untainted property: five enumerated conditions in § 853(p), each of which the government must establish. 21 U.S.C. § 853(p). Otherwise, Congress "maintain[ed] traditional in rem forfeiture's focus on tainted property." *Id.* at 453.

There is also a "growing circuit split" on whether *Honeycutt* applies to forfeiture statutes besides 21 U.S.C. § 853. *United States* v. *Elias*, 154 F.4th 56, 59 (2d Cir. 2025). In the decision below, the Eleventh Circuit again adopted the most pro-forfeiture position, refusing to apply *Honeycutt* to the statute at issue. See Pet. App. 2a. This case thus presents an important opportunity for the Court to clarify the application of forfeiture principles recognized in *Honeycutt* to other criminal forfeiture statutes.

A. The decision below conflicts with other circuits' approaches.

The courts of appeals have repeatedly been asked whether *Honeycutt* governs forfeitures under §§ 981 and 982—provisions that incorporate the procedures of § 853 but do not use its "the person obtained" language—and they have given conflicting answers.

1. There is a well-established split regarding § 981. In *Thompson*, 990 F.3d 680, the Ninth Circuit recognized the conflict, noting that the Third Circuit, in *United States v. Gjeli*, 867 F.3d 418 (3d Cir. 2017), had held that *Honeycutt* "appl[ies] with equal force" to § 981. *Id*. at 428. The Ninth Circuit sided with the Third—reasoning that *Honeycutt* "treats forfeiture, in accord with its development at common law over many centuries, as applicable only to 'tainted' property," and that § 981's language must be read to "similarly limi[t] forfeiture to tainted property." *Thompson*, 990 F.3d at 689. Differences in statutory language—specifically, "the absence of the phrase[] 'the person obtained'" in § 981—were "immaterial in light of the reasoning in *Honeycutt* that 'the most important background principles underlying § 853' are 'those of forfeiture.'" *Id.* The "same principles animate Section 981," and "necessitate a connection to tainted property." *Id.*

On the other side, the Sixth Circuit has held the opposite in *United States* v. *Sexton*, 894 F.3d 787 (6th Cir. 2018), and the Eighth Circuit has joined the Sixth, *United States* v. *Peithman*, 917 F.3d 635, 652 (8th Cir. 2019).

2. There is a similar split regarding § 982. The Fourth and Fifth Circuits have applied *Honeycutt*'s reasoning. In *United States* v. *Chittenden*, 896 F.3d 633 (4th Cir. 2018), the defendant had personally received approximately $231,000, but the district court ordered her to forfeit more than $1 million in untainted assets to account for proceeds received and dissipated by her coconspirators. *Id*. at 635–36. The Fourth Circuit vacated, holding that § 982(a)(2), like § 853, limits forfeiture to property the defendant

obtained and does not permit the government to take untainted assets as a substitute for proceeds acquired by someone else. *Id*. at 637–38. Like the Ninth Circuit in *Thompson*, the court did not rest on textual similarity alone but reasoned that § 982's incorporation of § 853(p) "further support[ed]" the conclusion that forfeiture cannot reach property the defendant had not obtained. *Id*. at 638. The Fifth Circuit reached the same result as to § 982(a)(7) in *United States v. Sanjar*, 876 F.3d 725 (5th Cir. 2017).

The Eighth Circuit agrees. Under "the proper application of [18 U.S.C.] § 982(a)(1)," if a defendant returns stolen property to the victim before conviction, his sentence cannot include forfeiture for that property. *Hawkey*, 148 F.3d at 928. The court explained that there is "no support in the statute … for the proposition that a defendant should not be credited with returning misappropriated funds." *Id*. The court therefore held that the government could not recover the full amount of property otherwise "involved" in the offense, and must offset it by the amount returned to the victim. *Id*.

The Eleventh Circuit took the opposite approach in the decision below. Petitioner never acquired—much less retained—any of the corporate credit draws at issue. "[A]lmost simultaneously," those same "funds were returned to the Bank with interest." Pet. App. 44a, 66a. In the Eighth Circuit, the forfeiture judgment thus would have "credited" Mr. Waked Hatum "with returning misappropriated funds." *Hawkey*, 148 F.3d at 928. Or, in the Ninth Circuit, *Honeycutt*'s acquisition limitation would not have been satisfied when the tainted property "came to rest" with its rightful owner. *Thompson*, 993 F.3d at 691; see also *United States* v. *Villegas*, No. 22-10335, 2024 WL 510310, at *1 (9th Cir. Feb. 9, 2024) ("[A] defendant is only subject to forfeit the amount that 'came to rest with him as a result of his crimes.'").

The Eleventh Circuit read the statutory grant at issue here more broadly. Eschewing the background principles on which *Honeycutt* relied, the court of appeals held that a difference in statutory phrasing was all that mattered. Specifically, § 982(a)(1) requires a person convicted of money laundering to forfeit "any property, real or personal, involved in such offense, or any property traceable to such property." Pet. App. 72a. Because that provision contains neither the word "proceeds" nor the word "obtained," the Eleventh Circuit held that *Honeycutt*'s tainted-property limitation "does not apply." Pet. App. 44a. The "definition of property in 18 U.S.C. § 982(a)(1) is distinct from that in … 21 U.S.C. § 853(a)." Pet. App. 46a. As a result, the amount of the forfeiture money judgment grew exponentially merely because Mr. Waked Hatum happened to be prosecuted in the Eleventh Circuit.

B. The decision below is wrong.

The Eleventh Circuit failed to properly account for the principles that *Honeycutt* articulated and thus misinterpreted the scope of the government's criminal forfeiture authority. *Honeycutt* established that criminal forfeiture statutes must be read against the "the most important background principles" underlying such statutes—"those of forfeiture." 581 U.S. at 453. That includes the principle that forfeiture is generally limited to tainted property obtained by the defendant and not returned to the victim or owner.

By instead constraining *Honeycutt* to the specific context of § 853(a), the Eleventh Circuit failed to recognize the interrelated nature of the criminal forfeiture statutes. Congress enacted § 853 as part of the Comprehensive Forfeiture Act and has incorporated those procedures elsewhere, rather than rewrite them into each new forfeiture statute. In the Money Laundering Control Act of 1986 (Subtitle H of Title I of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207), Congress created the forfeiture provisions of Title 18—§ 981 and § 982—and provided that the forfeiture procedures under § 982 are governed by § 853. Fourteen years later, the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, 114 Stat. 202, did the same for § 981, adding the bridge statute directing that the relevant procedures of § 853 "apply to all stages of a criminal forfeiture proceeding." 28 U.S.C. § 2461(c).

Each of these forfeiture statutes was enacted against the background principles the Court articulated in *Honeycutt*, and those principles are a necessary part of understanding their scope. See *Chittenden*, 896 F.3d at 637–38. The Eleventh Circuit's contrary holding is incorrect for several reasons.

First, the text of § 982(a) does not support it. Congress did not abandon centuries of forfeiture doctrine by using the phrase "involved in" in § 982(a)(1) to describe the property nexus required for money laundering forfeitures. Congress's consistent practice has been to extend the drug forfeiture provisions of § 853 to non-drug offenses by reference to and incorporation of "§ 413 of the Controlled Substances Act." Section 982(b)(1)'s adoption of the same statutory structure for money laundering forfeitures demonstrates that Congress intended that "the rationale of *Honeycutt* applies equally" to that section. *Peithman*, 140 S. Ct. at 340 (Sotomayor, J., dissenting).

Second, the Eleventh Circuit's attempt to distinguish *Hawkey* is meritless and finds no support in the statutory text. Consistent with *Honeycutt*, *Hawkey* recognized that forfeiture principles do not permit recovery of property returned to the victim, and that nothing in the statutory text counsels otherwise. 148 F.3d at 928. The Eleventh Circuit declared *Hawkey* distinguishable because the defendant here allegedly did not return property "out of the goodness of his heart." Pet. App. 42a. Nothing in the text of any of these statutes, however, ties the scope of criminal forfeiture to the motive of a defendant in returning property. Nor does *Hawkey* suggest that the defendant there acted with a pure motive in returning property. The limiting principle is the background principle that forfeiture is generally limited to tainted property—not the subjective status of a defendant's "heart."

Third, the Eleventh Circuit's reading is inconsistent with the express purposes of the criminal forfeiture statutes. Section 853(o) provides that "[t]he provisions of this section shall be liberally construed to effectuate its remedial purposes." A core remedial purpose of § 853 is "returning property, in full, to those wrongfully deprived or defrauded of it." *Honeycutt*, 581 U.S. at 447 (quoting *Caplin & Drysdale, Chartered* v. *United States*, 491 U.S. 617, 629–30 (1989)). The decision below does the opposite: it incentivizes criminals *not* to return stolen property to victims because that is the only way to avoid paying out of pocket for a forfeiture money judgment.

Criminal forfeiture also "serve[s] important governmental interests such as 'separating a criminal from his ill-gotten gains,' … and 'lessen[ing] the economic power' of criminal enterprises." *Id.* None of these interests is served by the forfeiture money judgment here. The government suffered no loss; Mr. Waked Hatum had no gains; the property was returned, in full, to the victim; and the defendant is financially unable to pay a fine.

Finally, the substitute property provisions of § 853(p) do not authorize the government's attempt to recoup a criminal forfeiture judgment of entirely untainted property. As *Honeycutt* explains, Congress layered the subsections of § 853 to capture the historical limitation of forfeiture to property with a specific nexus to criminality—tainted property. Substitute property forfeiture under subsection (p) applies exclusively to tainted property, *i.e.*, "property described in subsection (a)." § 853(p)(1).

In other words, the only statutory provision that allows the government to recover substitute property is § 853(p). And section 853(p) only provides for limited recovery. It allows recovery "if any *property described in subsection (a)*" cannot be located or obtained "as a result of" the defendant's actions. At that point, the government can recover "other property of the defendant, up to the value of any property" *described in subsection (a)*. In *Honeycutt*, this Court explained that this statutory scheme "permits forfeiture of substitute property only when the requirements of §§ 853(p) *and (a)* are satisfied." 581 U.S. at 452 (emphasis added). Subsection (a) allows forfeiture only of "proceeds the person obtained" from the offense and property "used … to commit" the offense. Subsection 853(p) "begins from the premise that the defendant once possessed tainted property *as 'described in subsection (a),'* and provides a means for the Government to recoup the value of the property.'" *Honeycutt*, 581 U.S. at 452.

Even if "involved in" is read more broadly than "proceeds the person obtained" in 853(a), therefore, section 853(p) does not authorize recovery of substitute property for the total value of funds "involved in" a money laundering offenses under 18 U.S.C. § 982(a)(1). The Eleventh Circuit was wrong to hold otherwise.

IV. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT.

Although the Court has granted certiorari on one of the questions presented, this case presents an opportunity to address interrelated issues that are both badly in need of clarity and exceptionally important.

In the roughly 50 years since Congress introduced criminal forfeiture to the United States legal system, the federal, state, and local governments have increasingly leaned on it as a source of revenue. The federal government alone has seized *billions* of dollars through civil and criminal forfeitures. See U.S. Gov't Accountability Off., GAO-16-297, Financial Institutions: Fines, Penalties, and Forfeitures for Violations of Financial Crimes and Sanctions Requirements (2016) (reporting that the Bank Secrecy Act and United States sanctions-related criminal cases between 2009 and 2019 resulted in forfeiture of almost $9 billion); David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 Harv. L. & Pol'y Rev. 541, 549 (2017).

With these staggering figures comes a troubling corollary: forfeiture power is subject to abuse and overreach, because the government has "a direct pecuniary interest in the outcome of the proceeding." *United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993). As Justice Scalia observed, "[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence." *Harmelin*, 501 U.S. at 978 n.9 (opinion of Scalia, J.). While other forms of punishment like "[i]mprisonment, corporal punishment, and even capital punishment cost a State money[,] fines are a source of revenue." *Id.* The same principle applies to forfeiture:

"because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture." *Leonard* v. *Texas*, 580 U.S. 1178, 1179 (2017) (Thomas, J., statement respecting denial of certiorari).

Worse, the poor "are often the most burdened by forfeiture." *Id.* Imposition of "ruinous" forfeiture money judgments can leave criminal defendants who are unable to pay as perpetual debtors to the government, trapped in an endless cycle of poverty. Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* 2 (2016).

The punitive remedy of criminal forfeiture is potent, and the government does not need any shortcuts in doling it out. The Eleventh Circuit, however, has lost sight of critical limits on that power and provided end-runs around those limits. Similarly situated criminal defendants should be treated similarly when it comes to forfeiture money judgments, regardless of where they are tried. Cf. *United States* v. *Booker*, 543 U.S. 220, 255 (2005).

Last time this case was before the Court, the government urged the Court to deny certiorari because: "If petitioner ultimately is dissatisfied with the amount of the forfeiture money judgment imposed on remand and if that judgment is upheld in any subsequent appeal, petitioner will be able to raise his current claims, together with any other claims that may arise with respect to the forfeiture judgment, in a single petition for a writ of certiorari." Br. for the United States in Opp'n at 10, *Waked Hatum*, No. 20-1370 (U.S. July 2021). That time is now, and this case is a clean vehicle to provide much-needed guidance and uniformity on these important issues for defendants nationwide.

CONCLUSION

For the foregoing reasons, the Court should grant review or, at a minimum, hold the petition and then grant, vacate, and remand following a decision in *Jouppi*.

Respectfully submitted,

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