

No. 26-____

IN THE
Supreme Court of the United States

SAMUEL BANKMAN-FRIED,

Petitioner,

v.

UNITED STATES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a prosecution under the “fraudulent inducement” theory of fraud—under which it is irrelevant whether victims suffered any financial losses—when, if ever, may the trial court admit evidence indicating whether victims suffered such losses?

2. Does the Eighth Amendment permit a forfeiture or other criminal fine that destroys any future prospect of earning a livelihood?

PARTIES TO THE PROCEEDING

The United States was the plaintiff below and is respondent here.

Samuel Bankman-Fried was a defendant below and is petitioner here.

Zixiao Gary Wang, Caroline Ellison, Nishad Singh, and Ryan Salame were defendants below.

FTX Trading Ltd., West Realm Shires Inc., Alameda Research LLC, and Alameda Research Ltd. were intervenors below.

RELATED PROCEEDINGS

United States v. Bankman-Fried, No. 22-cr-673
(S.D.N.Y. March 29, 2024)

United States v. Bankman-Fried, No. 24-961-cr
(2d Cir. June 12, 2026)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Samuel Bankman-Fried respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Pet. App. 1a-32a) is reported at 179 F.4th 104. The district court's orders regarding the evidentiary question presented are unpublished. The district court's preliminary order of forfeiture is unpublished but available at 2024 WL 1506561; its other orders related to forfeiture are unpublished.

JURISDICTION

The court of appeals issued its decision on June 12, 2026. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The federal wire fraud statute, 18 U.S.C. § 1343, prohibits "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises."

Federal Rule of Evidence 401 provides: "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the

evidence; and (b) the fact is of consequence in determining the action.”

Federal Rule of Evidence 403 provides: “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

INTRODUCTION

This case raises two related questions arising from perhaps the most prominent fraudulent-inducement prosecution since the federal government began propounding the theory. Over the course of a few years, petitioner Samuel Bankman-Fried transferred several billion dollars in funds from his cryptocurrency exchange called FTX to investment accounts held by a separate company called Alameda. No customer lost money as a result of these actions. But because petitioner allegedly misrepresented how FTX would keep customers’ deposits (and allegedly made comparable misrepresentations to FTX’s investors and Alameda’s lenders), the government prosecuted him for wire fraud and related offenses. And not content with a 25-year prison sentence for such financial mismanagement and petitioner’s own voluntary relinquishment of all his assets to repay his customers, the district court imposed a punitive forfeiture order in the amount of \$11 billion.

This Court’s review is urgently necessary. To begin, the Second Circuit recognized that, under the government’s theory at trial, it was “immaterial” whether petitioner intended to cause or, in fact, caused any customer to lose money. Pet. App. 12a-13a. The

fraud was complete, it maintained, “the minute the misappropriation happen[ed].” *Id.* 14a. Yet the Second Circuit approved the admission of evidence suggesting that, after petitioner transferred funds from FTX to Alameda, customers lost large sums of money. *Id.* 13a-14a. And the Second Circuit did so while preventing petitioner from rebutting that suggestion—that is, showing that there were always more than enough assets available to repay customers (as they now have been repaid, with substantial interest).

These holdings regarding the evidence respecting financial loss that is admissible in fraudulent-inducement prosecutions are as important as they are problematic. As the Court recognized in *Kousisis v. United States*, 605 U.S. 114 (2025), when it approved of the fraudulent-inducement theory, the theory is quite expansive. *Id.* at 135. It allows prosecutors to seek decades-long prison sentences anytime people are induced by misrepresentations to part with their money—even if they suffer no pecuniary harm. *Id.* Establishing clear and equitable rules regarding how such cases may be presented to juries is essential, lest defendants like petitioner be unable to obtain fair trials (or even feel at liberty to demand trials in the first place). *See id.* at 149-50 (Gorsuch, J., concurring in part and concurring in the judgment); *id.* at 159 (Sotomayor, J., concurring in the judgment).

The Second Circuit’s approval of the crushing fine here also warrants this Court’s consideration. The Eighth Amendment’s Excessive Fines Clause enshrines the historical protection—dating back to Magna Carta—that fines “should not deprive a wrongdoer of his livelihood.” *United States v. Bajakajian*, 524 U.S. 321, 335 (1998). Recognizing this

history, some federal courts of appeals and state high courts prohibit fines that have this effect. The Solicitor General has also appeared in past filings to accept that limitation. *See infra* at 32. Expressly departing from the views of other courts, however, the Second Circuit holds otherwise, permitting fines that leave defendants forever indebted to the government. Other courts allow such fines as well. It is time for this Court to resolve this conflict involving a core protection in the Bill of Rights. And this case is the ideal opportunity to do that.

STATEMENT OF THE CASE

1. In the late 2010s, petitioner Samuel Bankman-Fried founded and began serving as CEO of FTX.com and Alameda Research. FTX was a cryptocurrency futures exchange designed to combine the best elements of traditional financial products with the most innovative elements of the “crypto ecosystem.” “[C]ustomers could buy and sell cryptocurrencies such as Bitcoin, Ethereum, and Ripple. FTX customers could also trade cryptocurrency derivatives, borrow funds and trade on margin.” Pet. App. 3a. Alameda was a cryptocurrency hedge fund and trading firm that was “FTX’s largest customer and primary market maker,” often providing liquidity for the exchange. *Id.* In return, Alameda had borrowing privileges from FTX. Both companies grew very quickly and, “by 2022, FTX’s customers traded around \$10-\$15 billion daily.” *Id.*

According to the government, petitioner “secured investments in FTX by promising customers that their funds would be secure on the platform and used only for cryptocurrency transactions on FTX.” Pet. App. 5a. But, the government says, petitioner sometimes

“transferred investor funds from FTX customer accounts to Alameda and elsewhere where he used those funds for purposes investors had not authorized”—mostly investing in early-stage technology companies. *Id.*; A-582.¹ To the extent this activity occurred, however, petitioner continually sought to honor his financial commitments to FTX customers. Pet. App. 6a, 17a-18a.

In late summer and early fall of 2022, “the Federal Reserve rapidly raised interest rates, draining liquidity from financial markets and causing cryptocurrency markets to crash.” Pet. App. 4a. As a result, Alameda’s net asset value “fell substantially,” and customers began making withdrawals from FTX. *Id.* “Within days, those customer withdrawals skyrocketed,” forcing petitioner to begin liquidating Alameda. *Id.*

Petitioner believed he could cover the FTX customers’ withdrawals. Pet. App. 10a-11a; A-679-84. Both FTX and Alameda had billions of dollars in assets. But many of those assets were not liquid. To cite just one example, Alameda held a \$500 million early-stage investment in a then-little-known company called Anthropic (an investment that would be worth about \$80 billion today). A-804. Petitioner also had six- to nine-figure investments in SpaceX, Robinhood, and Cursor, an AI coding startup. A-840-41; SPA-90; Nina Bambyшева, *Sam Bankman-Fried’s Venture Bets Would Have Made Him \$100 Billion Richer Had He Stayed Out of Prison*, *Forbes* (May 5,

¹ Citations to “A-” refer to the appendix in the Second Circuit. “SPA-” refers to the special appendix in that court. Citations to “Dkt.” refer to filings in the district court.

2026). All of those investments had greatly appreciated by the time of FTX’s liquidity crunch. But they could not be transformed into cash or cryptocurrency immediately. They needed to be appraised and sold as necessary in major transactions.

That process, however, did not play out. Instead, under pressure from lawyers who represented FTX and wanted to steer the liquidity crisis into bankruptcy court, petitioner agreed to step down from his CEO positions. The new CEO immediately filed to put FTX and its affiliates into bankruptcy proceedings. Pet. App. 4a. Refunding FTX’s customers’ money thus became a matter for those administering the bankruptcy process.

2. a. Within a month of these events, the government indicted petitioner—the “prosecutorial equivalent” in a complicated white-collar case “of breaking the sound barrier.”² In the operative indictment, the government charged petitioner with two counts of wire fraud, in violation of 18 U.S.C. § 1343; two counts of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; and one count each of conspiracy to commit securities fraud, commodities fraud, and laundering the proceeds of the alleged frauds.

The case proceeded to trial within a year. In light of petitioner’s consistent intent to make FTX customers whole and the ongoing bankruptcy proceedings—which indicated that customers would, in fact, be fully repaid with interest—the government

² Ankush Khardori, *The Indictment of SBF is a Bombshell: Federal Prosecutors Broke New Ground With This Shockingly Fast Arrest*, N.Y. Mag. (Dec. 13, 2022).

proceeded under the fraudulent-inducement theory. Under the government's theory, "FTX customers were defrauded as soon as Bankman-Fried transferred their money to Alameda regardless of how strongly he believed he might later return the money." Pet. App. 13a. It was "immaterial as a matter of law" whether the customers suffered pecuniary harm. *Id.* 12a.

Petitioner maintained that he never misappropriated any customer funds. The portion of FTX's terms of service governing margin trading disclosed that FTX was permitted to lend funds to others through a margin lending and collateral program. Those terms also disclosed the risk of clawbacks. A-1010-11, A-1246-47 §§ 16.2-16.4. And margin customers constituted the vast bulk of FTX's business, such that FTX never lacked sufficient assets to repay its non-margin customers' funds on a moment's notice. A-881, A-1298-99.

Tracking that argument, however, required the laypersons on the jury to understand industry practices and to comprehend the intricacies of the financial dealings and instruments involved. Concerned that if the jury believed FTX's customers suffered financial losses, it might rely on that belief to convict instead of parsing the complicated transactions at issue, petitioner moved to prevent the government from introducing evidence implying FTX or Alameda became insolvent or otherwise suggesting FTX's customers suffered pecuniary losses. Dkt. 207 at 8-14. Invoking Federal Rules of Evidence 401 and 403, petitioner maintained such evidence was legally irrelevant, or at least highly prejudicial, under the government's limited misappropriation theory. Dkt. 207 at 8-11. In the alternative, he sought to rebut any

implication that his customers lost money with evidence that “FTX and Alameda, while temporarily illiquid, held sufficient assets to ultimately make investors and customers whole.” Pet. App. 6a.

The district court denied both requests. It reasoned that “the bankruptcies were ‘intertwined inextricably’” with the charged offenses. Pet. App. 14a. It likewise permitted the government to elicit testimony from customers that they had not been able to recoup their funds from FTX. For instance, the government accordingly asked one testifying customer: “[A]s we sit here today, have you ever been able to withdraw your FTX customer deposits that we see?” The customer answered: “Never.” A-686; *see also* A823-25 (equivalent Q and A); A-800, A-816, A-830-31 (other similar evidence).

At the same time, the district court refused to allow petitioner to counter that his companies had enough money to repay all of FTX’s customers’ deposits (and then some). Pet. App. 14a. In an about-face from the latitude it gave the government, the district court insisted that “anything that occurred after ‘the minute the misappropriation happen[ed]’”—that is, the minute petitioner transferred funds from FTX to Alameda—“was irrelevant” to the charges petitioner faced. *Id.* It was “immaterial,” the district court asserted, “whether customers could be made whole.” Dkt. 204 at 51.

The government exploited this evidentiary asymmetry at closing. It argued that, after transferring funds from FTX to Alameda, petitioner “gambl[ed] with” those funds. Dkt. 382 at 2963. And even though ongoing bankruptcy proceedings indicated that FTX customers had never been (and

still were not) at risk of losing their deposits, the government told the jury that even if FTX and Alameda sold all their assets, they still “couldn’t” repay their debts because they were “deeply in the red,” “totally under water,” and financially “in the hole.” A-1087-88, A-1091. The government added that customers would never be repaid—that billions of dollars were “gone” for good, A-1078-79, and that “[t]housands of people lost billions of dollars,” A-1105. And it claimed it was “very clear” to petitioner that his companies “did not have the assets to cover this giant debt to FTX customers.” A-1091, A-1110.

The jury convicted on all counts.

b. The district court sentenced petitioner to 25 years’ imprisonment, to be followed by three years of supervised release. The district court also imposed a preliminary order of forfeiture of \$11.02 billion—the amount of money the district court believed petitioner transferred from FTX to Alameda and that was otherwise involved in the offenses here. Pet. App. 5a. Because petitioner had promptly delivered all of FTX’s and Alameda’s assets to the bankruptcy estate and had no remaining funds of his own, the forfeiture order operated as an “*in personam* money judgment” requiring him to pay any money (up to that amount) he ever obtains over the rest of his life. Pet. App. 28a.

Petitioner objected to this financial penalty. As relevant here, he argued it violated the Eighth Amendment’s prohibition against “excessive fines” because it would deprive him of any future ability to earn a livelihood. The district court brushed this objection aside and finalized its judgment. SPA-102.

3. The Second Circuit affirmed. It began by emphasizing that the government prosecuted this case

under the “fraudulent-inducement theory.” Pet. App. 6a (quoting *Kousisis*, 605 U.S. at 118). Under that theory, petitioner “completed the fraud when he secretly moved funds from FTX to Alameda, regardless whether Alameda was solvent, insolvent, or merely illiquid.” Gov’t CA2 Br. 30-31. It was “irrelevant” whether FTX’s customers suffered any “economic loss.” Pet. App. 14a, 16a.

But when the Second Circuit turned to the government’s evidence suggesting (incorrectly) that FTX’s customers incurred huge economic losses as a result of petitioner’s actions, the Second Circuit found no fault with the district court’s admission of that evidence. The court of appeals reasoned that FTX’s bankruptcy and its fallout for customers were “intertwined inextricably” with its theory of guilt. Pet. App. 14a. What’s more, the court of appeals held that petitioner had no right to introduce responsive evidence clarifying that the customers did not, in fact, incur losses. *Id.* 14a-15a. Finally, while the Second Circuit assumed that the district court erred “by permitting the government to argue at [closing] that victims *permanently* lost their funds,” the court of appeals did not believe—in light of the evidence admitted at trial—that these statements “tainted the jury’s verdict.” *Id.* 15a (emphasis added).

Addressing the forfeiture order, the Second Circuit “recognize[d] that \$11 billion is a very large amount, especially in the context of an illegal scheme in which many victims may be made whole.” Pet. App. 30a. The court of appeals also accepted that the monetary penalty will “destroy [petitioner’s] ability to make a livelihood (after 25 years of incarceration).” *Id.* 32a. But the court of appeals concluded that the fine is

not unconstitutionally excessive. It reasoned that destroying a defendant’s livelihood does not “alone” delegitimize a fine that is not “grossly disproportional to the gravity of the defendant’s offense.” *Id.* 31a-32a (quoting *Bajakajian*, 524 U.S. at 337).

4. The bankruptcy process that began in November of 2022—and that was playing out during this fast-moving prosecution—has now nearly run its course. Even though many of FTX’s and Alameda’s assets were sold at steep discounts, all FTX customers have been repaid the value of their deposits as of the commencement of the bankruptcy proceedings. Estimates also project that when payouts are complete, they will receive substantial interest on top of their claim values. Dkt. 19143 at 2, *In re FTX Trading Ltd.*, No. 22-bk-11068 (Bankr. D. Del. May 7, 2024); Press Release, *FTX Announces Fifth Distribution of Approximately \$900 Million to Creditors on July 31, 2026* (July 17, 2026).³

As it turns out, FTX was never insolvent. In the words of one author who had a front-row seat as the events here unfolded and then investigated to ask “Where did all the money go? The answer was: nowhere. It was still there.” Michael Lewis, *Going*

³ Some customers have objected that they are receiving cash instead of cryptocurrency and that markets have appreciated more than might be reflected in their interest payments. But it was bankruptcy administrators, not petitioner, who decided to base recoveries on the cash value of cryptocurrency at the time of FTX’s collapse. And had they not sold investments such as petitioner’s stake in Anthropic for pennies on the dollar, customers could have received much larger payments. Petitioner’s former lawyers and other counsel have also billed about \$1.5 billion in fees to the bankruptcy estate, further reducing the payouts customers are receiving.

Infinite: The Rise and Fall of a New Tycoon 248 (2023). The Independent Examiner appointed by the bankruptcy court made findings in accord, as have others. *See* Decl. of Daniel Chapsky, Dkt. 583-1 ¶¶ 9, 12-14; Ian Ayres & John Donohue, *FTX Was Never Really Bankrupt*, Project Syndicate, Jan. 26, 2024.

REASONS FOR GRANTING THE WRIT

Review is warranted to resolve two important issues—one statutory, the other constitutional—that have enormous repercussions in criminal fraud prosecutions. This case showcases those issues and calls out for this Court to ensure that the Second Circuit—the epicenter of prosecutions for financial crimes—sufficiently protects the rights of the accused.

I. The Court should decide whether or when evidence indicating victims lost money may be introduced in fraudulent-inducement prosecutions.

A. Lower courts need guidance regarding this important issue.

1. The federal wire fraud statute prohibits “any scheme or artifice to defraud.” 18 U.S.C. § 1343. Expansive as this language is, the statute does not cover all acts of “deception, corruption, [or] abuse of power.” *Kelly v. United States*, 590 U.S. 391, 393 (2020). Instead, the term “defrauding,” per its “usual and primary” meaning, has always denoted that a victim suffered some sort of harm. *United States v. Cohn*, 270 U.S. 339, 346-47 (1926). The classic way the government meets this requirement is showing that a victim suffered “pecuniary,” *id.*, or “economic” loss—in other words, that the defendant took money or

property from the victim, to the victim’s financial detriment. *Kelly*, 590 U.S. at 401-02.

In *Kousisis v. United States*, 605 U.S. 114 (2025), the Court endorsed a new method of criminal fraud called “fraudulent inducement.” The theory—which the government had hatched some years before—“supports liability for federal fraud anytime a defendant uses falsehoods to induce a victim to enter into a transaction.” *Id.* at 122 (cleaned up). “In these situations, the defendant need not—and given the reciprocal nature of most transactions, often will not—aim to inflict economic loss.” *Id.* Instead, the defendant satisfies the statute’s harm requirement simply by obtaining money from someone who, but for a misrepresentation, “would not otherwise have parted with” it. *Id.* at 127 n.5 (citation omitted).

By the Court’s admission, this is an “undeniably ‘broad’” conception of fraud. *Id.* at 135 (citation omitted). “[I]t does not matter” under the fraudulent-inducement theory “if the putative victim receives all he was promised,” *id.* at 147 (Gorsuch, J., concurring in part and concurring in the judgment), or is economically harmed in any way, *id.* at 124 (majority opinion). “So long as he parts with any money or property because of the defendant’s misrepresentation,” that is “enough to sustain a federal wire-fraud conviction.” *Id.* at 147 (Gorsuch, J., concurring in part and concurring in the judgment).⁴

⁴ *Kousisis* involved the wire fraud statute, but these same principles govern the securities fraud statutes that the government also invoked here because “proof of harm is not necessary” under those statutes either. *United States v. Litvak*, 889 F.3d 56, 65 (2d Cir. 2018).

As Justices Gorsuch and Sotomayor have observed, “[a] wide array of everyday transactional conduct” can fall within that test. *Koussisis*, 605 U.S. at 159 (Sotomayor, J., concurring in the judgment); *see also id.* at 146-47, 149-50 (Gorsuch, J., concurring in part and concurring in the judgment). “Consider, for instance, . . . a used car salesman who closes a deal by falsely claiming another buyer is coming to look at the car later that day, while truthfully disclosing all the pertinent details about the car; or a prospective housing developer who beats out competing bidders by lying about wanting to raise a family in the home, but pays the full amount of his bid.” *Id.* at 159 (Sotomayor, J., concurring in the judgment). Or imagine the owner of a start-up sells securities based in part on representations about how the business works that are untrue, but the purchaser makes all of the money she expected from her investments. Under the fraudulent-inducement theory, “each of those cases may well give rise to federal fraud liability, punishable by up to 20 years in prison.” *Id.*

2. In light of the potential for the fraudulent-inducement theory to “turn[] prosecutors and courts into morality police with a commission to prosecute and punish harmless lies,” *id.* at 151 (Gorsuch, J., concurring in part and concurring in the judgment), a critical question arises: When, if ever, may the trial court in a fraudulent-inducement prosecution admit evidence suggesting whether the victims actually lost money?

The reason this question is vitally important is simple: When the government brings fraudulent-inducement charges, juries must do two things. First, they must carefully parse evidence regarding whether

an actual misrepresentation took place. Second, they must bring “the commonsense judgment of the community” to bear on the prosecution’s theory of illegality. *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975). Even if the defendant technically misled people in some respect, juries might reasonably ask “what business is it of the government’s to punish victimless lies with prison time anyway?” *Koussisis*, 605 U.S. at 151 (Gorsuch, J., concurring in part and concurring in the judgment). But if juries are led to believe in fraudulent-inducement prosecutions that victims actually suffered losses, they have little incentive to perform either of these checking functions. The trial then appears to the jury to be nothing more than a classic fraud where victims were cheated out of their money and left empty-handed.

Take, for example, the pre-*Koussisis* fraudulent-inducement prosecution in *United States v. Carpenter*, 494 F.3d 13, 16 (1st Cir. 2007). The defendant operated investment exchanges. He promised his customers (called “exchangors”) “that their funds would be invested in ‘safe,’ interest-bearing ‘escrow’ accounts guaranteeing [certain rates of] return.” *United States v. Carpenter*, 736 F.3d 619, 623 (1st Cir. 2013). Carpenter then “used the exchangors’ funds to trade in risky assets, including stock options.” *Id.*

“[I]t was not disputed that the defendant wanted the scheme to succeed.” *United States v. Carpenter*, 808 F. Supp. 2d 366, 378 (D. Mass. 2011). And for some time, Carpenter was able to pay clients “the amounts promised to them” while keeping additional investment gains for himself. *Carpenter*, 736 F.3d at 624; *see also Carpenter*, 494 F.3d at 16.

Faced with the defendant's intent to prevent his customers from losing money, the prosecution's theory was "that Carpenter had fraudulently induced the exchangors to use his company to perform their exchanges in part through false promises that their money would be kept in safe, interest-bearing accounts." *Carpenter*, 736 F.3d at 624. Under this theory, "the government did not have to prove that the defendant intended to harm the exchangors by losing their money." *Carpenter*, 808 F. Supp. 2d at 378. "The scheme's object was achieved when the money was obtained, before it was invested." *United States v. Carpenter*, 405 F. Supp. 2d 85, 93 (D. Mass. 2005).

At Carpenter's trial, the government nonetheless introduced evidence of "trading losses" that the defendant incurred at the tail end of his scheme. *Carpenter*, 405 F. Supp. 2d at 102. The government also urged the jury at closing to convict in part because the defendant had improperly "gambled" with the customers' money. *Id.* at 102-03 & n.14.

After the jury convicted, the district court granted Carpenter a new trial, and the First Circuit affirmed. The government's evidence and argumentation, the district court reasoned, may have "induced a verdict based on the jury's disapproval of the 'gambling,' rather than because the jury was satisfied beyond a reasonable doubt that the elements of the offenses charged had been proven." *Id.* at 102. The First Circuit agreed that "the evidence of trading strategy and financial losses," combined with the prosecutor's gambling arguments, was unduly prejudicial because it "distract[ed] the jury from its focus on Carpenter's state of mind when he obtained his clients' funds." 494 F.3d at 22-23.

3. The Second Circuit’s decision here stands in stark contrast. As in *Carpenter*, petitioner told customers that their funds would be kept safe. As in *Carpenter*, petitioner transferred their funds into investment accounts that the government argues improperly put the funds at risk. And as in *Carpenter*, petitioner intended all along to ensure his customers suffered no financial losses.

Consequently, the government prosecuted petitioner not for financially harming customers but instead under the fraudulent-inducement theory. Under that theory, “the fraud” in this case “was the misappropriation of funds that Bankman-Fried had falsely told his customers would be kept safe.” Gov’t CA2 Br. 29-30. And as in *Carpenter*, “the government did not need to prove intent to cause economic loss,” much less that any actual loss occurred. Pet. App. 12a-13a (citing *Kousisis*). “FTX customers were defrauded as soon as Bankman-Fried transferred their money to Alameda.” *Id.* 13a.

Nevertheless, the district court permitted the government to introduce evidence that FTX and Alameda subsequently declared bankruptcy. When a company has declared bankruptcy, a jury’s natural assumption is that debtors cannot recover all—or perhaps any—of their investments. The district court likewise allowed customers to testify that they had not gotten any of their money back. Then, at closing, the prosecution argued that “[t]he defendant was gambling with customer money.” Dkt. 382 at 2963. And it asserted repeatedly that petitioner had caused his customers to sustain billions of dollars in losses. *See supra* at 8-9.

If anything, that evidence and argumentation was more problematic than in *Carpenter*, for FTX customers—unlike the customers there—did not, in fact, lose their deposits. *See supra* at 11-12. Yet the Second Circuit held that no reversible error occurred here. While acknowledging that the fraudulent-inducement theory renders it “immaterial” whether the victims incurred any financial losses, the Second Circuit condoned the admission in such a prosecution of evidence indicating that victims suffered economic losses. Pet. App. 12a-14a. The Second Circuit even deemed such evidence admissible while also forbidding the defense from showing that the victims were actually repaid. *Id.* 14a-15a.

B. The Second Circuit’s holding is wrong.

The Second Circuit’s approach to the admissibility of evidence of financial loss in fraudulent-inducement cases is incompatible with *Kousisis* or the Rules of Evidence.

1. a. Evidence is relevant only if it is offered to prove something “of consequence in determining the action.” Fed. R. Evid. 401. And even when evidence is technically relevant, Rule 403 bars its admission “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury.” Fed. R. Evid. 403. Evidence meets that test if it has “an undue tendency to suggest decision on an improper basis,” Fed. R. Evid. 403 advisory committee’s note, or if “the jury is likely to assign much more weight to [it] than is warranted,” *United States v. Hale*, 422 U.S. 171, 180 (1975).

It follows directly from these tenets that evidence in a fraudulent inducement prosecution indicating

that victims lost money should be inadmissible. In such a prosecution, the fraud “is complete when the defendant has induced the deprivation of money or property under materially false pretenses.” *Kousisis*, 605 U.S. at 127 n.5. In the words of the courts below, therefore, “anything” in such a prosecution “that occurred after ‘the minute the misappropriation happen[ed]’ [i]s *irrelevant*.” Pet. App. 14a (emphasis added) (quoting district court’s explanation). That includes any “pecuniary loss” the victims may have incurred. *Kousisis*, 605 U.S. at 127 n.5.

Inexplicably, however, the Second Circuit allowed the government here to introduce evidence indicating that the customers whose funds petitioner allegedly misappropriated incurred economic losses. If, as the government argued, petitioner “completed the fraud when he secretly moved funds from FTX to Alameda,” Gov’t CA2 Br. 29-30, then what happened after that had no probative value under Rule 401. In the district court’s own words, it was “immaterial as a matter of law” whether customers lost money. Pet. App. 12a.

Even if evidence suggesting victims in fraudulent-inducement prosecution lost money were somehow relevant, it has an “intolerably prejudicial impact,” *Hale*, 422 U.S. at 180. Just as jurors in a prosecution for reckless driving might react quite differently if they believe the driver hit and injured victims, jurors confronted with criminal fraud charges are likely to react much differently if they believe victims suffered financial losses. Worse yet, evidence indicating significant pecuniary harm might well cause jurors who are unsure in the context of complicated financial dealings whether the defendant misappropriated funds in the first place to resolve their doubts against

the defendant. Indeed, it would be natural for a jury to think the existence of actual losses signals that funds were stolen. Such an improper basis for a verdict in a fraudulent-inducement case is a quintessential Rule 403 problem.

b. The Second Circuit brushed aside this reality, asserting that the evidence indicating FTX customers lost money was relevant to the government's fraudulent-inducement theory because "[t]he government had to prove that the money customers placed with FTX was not accessible." Pet. App. 14a. It is true, of course, that the government can introduce evidence necessary to prove its case, even if it is prejudicial to the defendant. *See Old Chief v. United States*, 519 U.S. 172, 186-89 (1997). But no facts relating to FTX's bankruptcy or customers' subsequent inability to recover their investments immediately were pertinent to the government's theory that petitioner "completed the fraud when he secretly moved funds from FTX to Alameda." Gov't CA2 Br. 29-30. All the government had to show under that theory was that petitioner in fact moved those funds and that the manner in which Alameda held them violated the terms on which petitioner had promised they would be kept.

Even if somehow marginally relevant, any evidence suggesting the customers were subsequently unable to get their money back risked "lur[ing] the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief*, 519 U.S. at 180. The fact that the suggestion of pecuniary loss was false in this case only deepened the unfair prejudice. As Justice Cardozo long ago explained for the Court, "When the risk of confusion is

so great as to upset the balance of advantage, the evidence goes out.” *Shepard v. United States*, 290 U.S. 96, 104 (1933).

2. If nothing else, the trial court in a fraudulent inducement prosecution cannot allow the prosecution to introduce evidence indicating the victims lost money while *also* excluding defense evidence showing they did not. “Evidence relevant to undercut a charge is no less relevant to bolster it; the standard under Rule 401 is symmetric.” *United States v. Rhodes*, 229 F.3d 659, 661 (7th Cir. 2000). Thus, when one party introduces evidence to prove a point, “[c]ounterproof is admissible if it contradicts” that point. 3 Mueller & Kirkpatrick, *Federal Evidence* § 6:89 (4th ed. & 2023 update). All the more so where, as here, the totality of the record so clearly shows that the victims did *not* actually lose their deposits.

The Second Circuit shrugged off the asymmetry here, stating that the customers’ ability to recover their funds after they were transferred to Alameda was “irrelevant as to whether [petitioner] committed fraud.” Pet. App. 15a. That reasoning not only contradicts the purported justification for allowing the government to introduce evidence suggesting FTX’s customers lost money; it also fails to address the symmetry principle just recited. Either evidence regarding financial loss is relevant or it is not; the prosecution cannot have it both ways.

The Second Circuit’s decision also overlooked the unfair prejudice involved here. Jurors tasked with sitting in judgment of a fellow citizen have a natural interest in—often a “moral” concern for—learning the full story of what happened. *See Old Chief*, 519 U.S. at 188-89. The jury here, as in any other fraud

prosecution, thus no doubt wondered whether the victims suffered financial harm as a result of petitioner's alleged scheme. Allowing the jury to have such a profound misconception about such a powerful issue surely transgressed Rule 403.⁵

C. The Court should use this case to resolve this issue.

The government no doubt will argue that the Second Circuit's "evidence of loss" analysis does not create a square circuit split because no other court of appeals since *Kousisis* has directly addressed the admissibility of pecuniary-loss evidence in fraudulent-inducement cases. But that should not stop this Court from granting certiorari.

1. Only a few jurisdictions before *Kousisis* had endorsed the fraudulent-inducement theory. *See Kousisis*, 605 U.S. at 120-21. Now that this Court has green-lit and explained its conception of the theory, the question of what evidence is admissible in such prosecutions is sure to arise far more frequently.

At the same time, defendants will be unlikely in such new cases to push the issue at trial and thereby generate appeals. Over 95% of federal criminal convictions are the result of plea bargains. *See Missouri v. Frye*, 566 U.S. 134, 143 (2012). In the wake

⁵ Holding that the district court erred either by admitting evidence of customer losses or by precluding petitioner from introducing responsive evidence would also call into question the Second Circuit's holding that the government's statements at closing argument "that victims permanently lost their funds" were not prejudicial. *See* Pet. App. 15a. Especially when evidence is inadmissible because it is unfairly prejudicial, governmental arguments based on that evidence are prejudicial too.

of the Second Circuit’s decision here, defendants in fraudulent-inducement prosecutions involving large sums of money will face even *more* pressure to accept plea offers. *Cf. Hunter v. United States*, 146 S. Ct. 1702, 1718 (2026) (Gorsuch, J., concurring) (explaining how prosecutors take “full advantage” of “judicial latitude” to “cajole defendants into pleading guilty”). Every count in a fraud prosecution is punishable by 20 years in prison, plus large monetary penalties. 18 U.S.C. § 1343. If the government in fraudulent-inducement cases can make jurors think victims suffered big financial losses, the chances they will convict even innocent defendants will escalate considerably—thus exposing them to years of imprisonment if they refuse to plead guilty.

This case illustrates that risk. There is reason to believe FTX’s margin lending and collateral model allowed petitioner to handle customers’ funds as he did. *See supra* at 7. And all of the customers who invested in FTX have gotten their money back with interest. Indeed, it has now become pellucidly clear that Alameda had sufficient assets all along to cover customers’ deposits. *See supra* at 11-12. What’s more, much of FTX’s liquidity shortfall in November 2022 arose not from the transfers on which the government focused at trial, but from a separate payment processing arrangement. Yet the jury not only convicted petitioner of fraud but the district court sentenced him to 25 years in prison—more than the base sentence the Federal Sentencing Guidelines recommend for kidnapping, armed robbery, or sexual exploitation of a minor. *See* U.S. Sent’g Guidelines Manual §§ 2A4.1(a), 2B3.1(b)(2), 2G2.1(a) (2025). On top of that, the district court imposed a monetary fine of \$11 billion dollars. If the Second Circuit’s decision

stands, what defendant in a future case would risk going to trial and suffering such ruinous punishment?

This Court should grant review before the government is able to threaten or carry out any other fraudulent-inducement theory prosecutions under the evidentiary system approved of here.

2. This case is also an excellent vehicle for considering this question presented. Not only did the government introduce evidence here suggesting victims lost money, but that impression was decidedly incorrect. This case thus presents not only a pure question of relevance under the wire fraud statute but also serious problems regarding unfair prejudice in particularly dramatic form.

Furthermore, the dramatic nature of the record here is representative of other fraudulent-inducement cases likely to raise the question presented. Whenever the government elects to proceed under the fraudulent-inducement theory instead of a conventional theory of fraud, that choice suggests the prosecution does not think it can prove victims suffered financial losses—or indeed knows that they did not. And when the prosecution in such a case nonetheless seeks to introduce evidence suggesting victims *did* suffer losses, one might infer that the government lacks confidence that its misappropriation theory alone will persuade the jury to convict. This Court should make clear what the evidentiary ground rules are in this sort of case—where the need for ensuring the jury’s proper focus is at its zenith.

II. The Court should decide whether the Eighth Amendment prohibits a fine that destroys the defendant's livelihood.

The Second Circuit's approval of the district court's massive forfeiture order also warrants this Court's intervention.

A. Courts are openly divided over the issue.

This Court has held that a fine that is “grossly disproportional to the gravity of the defendant's offense” violates the Excessive Fines Clause. *United States v. Bajakajian*, 524 U.S. 321, 337 (1998). But it has never squarely addressed whether a fine that “deprive[s] the defendant] of his livelihood” also violates the Clause. *Id.* at 340 n.15. Meanwhile, federal and state courts have divided into three camps over the issue.

1. Drawing on the historical principle—dating all the way back to Magna Carta—that fines should not “deprive [a wrongdoer] of his livelihood,” *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 271 (1989), the First Circuit holds that the Eighth Amendment prohibits a forfeiture that is “so great as to deprive a wrongdoer of his or her livelihood.” *United States v. Levesque*, 546 F.3d 78, 83-84 (1st Cir. 2008). This prohibition is “separate” from the “gross disproportionality” principle and can be met “regardless of the relationship between the [forfeiture] and the gravity of the offense.” *Id.* at 84-85; *see also United States v. Aguasvivas-Castillo*, 668 F.3d 7, 16 (1st Cir. 2012) (reiterating this test).

Other federal courts are in accord. The Ninth Circuit has stressed that “[t]he Excessive Fines Clause reflects the principle that a fine ‘should not deprive a

wrongdoer of his livelihood.” *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1073 (9th Cir. 2024) (quoting *Bajakajian*, 524 U.S. at 335); *see also United States v. Hantzis*, 403 F. App’x 170, 172 (9th Cir. 2010) (assessing, separately from its gross-disproportionality inquiry, whether a criminal fine “deprive[d the defendant] of his livelihood” (citation omitted)). A district court in another circuit has adopted this approach as well, reasoning that “treatment of the livelihood criterion as a free-standing reference point is more consonant with the holding, reasoning, and historical antecedents articulated by the Court in *Bajakajian*.” *United States v. King*, 231 F. Supp. 3d 872, 903 (W.D. Okla. 2017).

Expressly following the First Circuit’s approach, the Maine Supreme Judicial Court has agreed that—in addition to satisfying the gross proportionality test—a criminal forfeiture “should *also* not deprive the defendant of his livelihood.” *State v. Martin*, 354 A.3d 1075, 1089 (Me. 2026) (emphasis added); *see also Jouppe v. State*, 566 P.3d 943, 958 (Alaska 2025) (“assum[ing], without deciding, that a forfeiture cannot constitutionally deprive [the defendant] of his livelihood”), *cert. granted* (July 20, 2026) (No. 25-246).⁶

2. The Second Circuit has expressly “part[ed] ways with the First Circuit.” *United States v. Viloski*, 814 F.3d 104, 112 n.12 (2d Cir. 2016); *see also id.* at 111 n.10 (acknowledging that its approach “differs” from the First Circuit’s). In *Viloski*, the Second Circuit accepted that courts “may consider . . . whether the

⁶ *Jouppe* involves whether a fine may be deemed sufficiently proportional based on the gravity of the underlying offense in the abstract, as opposed to the specific defendant’s wrongdoing.

forfeiture would deprive the defendant of his livelihood.” *Id.* at 111. But in direct contrast to the First Circuit, the Second Circuit held that “[w]hether a forfeiture would destroy a defendant’s livelihood is a component of the proportionality analysis, *not* a separate inquiry.” *Id.* at 111-12 (emphasis added); *see also United States v. Hwa*, 161 F.4th 127, 147 (2d Cir. 2025) (not a “discrete factor” or “separate inquiry”). Under that approach, “a forfeiture that deprives a defendant of his livelihood” can be permissible, “depending on his culpability or other circumstances.” *Viloski*, 814 F.3d at 112.

Picking up in this case where it left off in *Viloski*, the Second Circuit reaffirmed that destroying the defendant’s livelihood “does *not* render a forfeiture that satisfies the *Bajakajian* factors” unconstitutional. Pet. App. 32a (emphasis added). Consequently, the Second Circuit held that the livelihood-destroying nature of the district court’s \$11 billion forfeiture here could not “alone” render the fine invalid. *Id.*

The Pennsylvania Supreme Court has adopted the same basic approach. It considers “whether the forfeiture would deprive the property owner of his or her livelihood.” *Commonwealth v. 1997 Chevrolet & Contents Seized from Young*, 160 A.3d 153, 189 (Pa. 2017). But it simply balances that “factor[]” against others to determine whether the fine is grossly disproportional to the offense. *Id.* at 189, 192.

3. On the other side of the spectrum from the First Circuit, the Eleventh Circuit “do[es] not take into account the personal impact of a forfeiture on the specific defendant in determining whether the forfeiture violates the Eighth Amendment.” *United States v. Dicter*, 198 F.3d 1284, 1292 n.11 (11th Cir.

1999). Accordingly, courts in that jurisdiction must “blind[them]selves to the effect of a fine on a defendant’s livelihood.” *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1321 (11th Cir. 2021) (Newsom, J., concurring). Eleventh Circuit judges have noted that “other circuits ha[ve] disagreed” with this position and that it “may well contravene the original meaning of the Eighth Amendment’s Excessive Fines Clause.” *Id.* But the position continues to be the law of the circuit. *See, e.g., United States v. Crooks*, No. 22-13060, 2023 WL 3944547, at *1 (11th Cir. June 12, 2023); *United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009).

B. The Second Circuit’s holding is incorrect.

The Second Circuit’s position is at odds with the original understanding of the Excessive Fines Clause as well as this Court’s precedent interpreting it.

1. The Excessive Fines Clause traces its venerable lineage “back to at least . . . Magna Carta.” *Timbs v. Indiana*, 586 U.S. 146, 151 (2019). The Amercements Clause of that Great Charter provided that “[a] Freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement; (2) and a Merchant likewise, saving to him his merchandise; (3) and any other’s villain than ours shall be likewise amerced, saving his wainage.” *Bajakajian*, 524 U.S. at 335-36 (quoting Magna Charta, 9 Hen. III, ch. 14 (1225), 1 Stat. at Large 6-7 (1762 ed.)). As Judge Newsom recently explained, “[t]o save a free man’s ‘position,’ a merchant’s ‘trade,’ and a villein’s ‘tillage’ . . . all reflect the principle that no offender be ‘pushed absolutely to the wall: his means of livelihood must be saved to him.” *Yates*, 21 F.4th at

1322 (concurring opinion) (quoting William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 287 (2d ed. 1914)). Put even more succinctly, a fine should not “be so large as to deprive a wrongdoer of his livelihood.” *Browning-Ferris*, 492 U.S. at 271.

That protection became a “flashpoint” in England “in the period leading up to the Glorious Revolution of 1688-1689.” *Timbs*, 586 U.S. at 161 (Thomas, J., concurring in the judgment) (citation omitted). “The Court of Star Chamber, for instance, ‘imposed heavy fines on the king’s enemies,’ in disregard ‘of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means.’” *Id.* at 162 (citations omitted). Citizens also complained in 1680 that Chief Justice William Scroggs unlawfully imposed fines “without any Regard to the Nature of the Offenses, *or the Ability of the Persons.*” *Id.* (citation omitted and emphasis added).

The English Bill of Rights of 1689 ended these controversial practices, using the identical “excessive fines” language later enshrined in the Eighth Amendment. *See id.* at 160, 163. And just before our Founding, Blackstone and other commentators described this guarantee as ensuring that no one “shall have a larger amercement imposed . . . than his circumstances or personal estate will bear, . . . without touching the implements of his livelihood.” 4 William Blackstone, *Commentaries on the Laws of England* *372-373 (1769); *see also* Timothy Cunningham, *A New and Complete Law-Dictionary* (unpaginated) (2d ed. 1771) (explaining, under definition of “fines for offences,” that “amercements . . . were always held too

grievous and excessive, if they deprived the offender of the means of his livelihood”).

All told, there can be no doubt that the Eighth Amendment’s Excessive Fines Clause implements the ancient English protection against livelihood-destroying fines. And this is “an additional limiting principle,” separate from the prohibition against grossly disproportional levies. Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 42 Hastings Const. L.Q. 833, 835 (2013).

2. The Second Circuit has acknowledged that “hostility to livelihood-destroying fines is deeply rooted in our constitutional tradition.” *Viloski*, 814 F.3d at 112. It has nevertheless refused to hold that a fine can violate the Eighth Amendment for that reason alone. Neither of the justifications it has advanced for that position withstands scrutiny.

First, the Second Circuit has interpreted this Court’s precedent to “instruct[] that ‘the test for the excessiveness of a punitive forfeiture involves *solely* a proportionality determination.’” *Id.* at 111 (emphasis in original) (quoting *Bajakajian*, 524 U.S. at 333-34). Read in isolation, that passage from *Bajakajian* might be thought to support the Second Circuit’s rule. But considered in its totality, this Court’s precedent cuts the other way. Elsewhere in *Bajakajian* itself, this Court explained that Magna Carta provided that fines “should be proportioned to the offense *and* that they should not deprive a wrongdoer of his livelihood.” 524 U.S. at 335 (emphasis added). In *Timbs*, the Court reiterated that “Magna Carta required that economic sanctions ‘be proportioned to the wrong’ *and* ‘not be so large as to deprive [an offender] of his livelihood.’” 586

U.S. at 151 (emphasis added) (quoting *Browning-Ferris*, 492 U.S. at 271). The Court added that Blackstone’s *Commentaries* were to the same effect. *Id.* None of these explanations would make any sense if the Excessive Fines Clause permitted fines that destroy defendants’ livelihoods so long as they are not disproportionate to the gravity of the offense.

Lest there be any doubt, the Court emphasized in *Bajakajian* that the defendant “d[id] not argue” that the forfeiture “would deprive him of his livelihood.” 524 U.S. at 340 n.15. And in *Timbs*, the Court stated that *Bajakajian* “t[ook] no position on the question whether a person’s income and wealth are relevant considerations in judging the excessiveness of a fine.” 586 U.S. at 152 (citation omitted). The Second Circuit is thus mistaken that precedent forecloses petitioner’s position here.

Second, the Second Circuit has quipped that “[i]f the Eighth Amendment permits the Government to end some offenders’ lives, it surely permits the Government to destroy other offenders’ livelihoods.” *Viloski*, 814 F.3d at 112 n.13 (citation omitted). The Cruel and Unusual Punishment Clause, however, is cut from different cloth than the Excessive Fines Clause and operates differently in practice. For good reason, too: “Imprisonment, corporal punishment, and even capital punishment cost a State money; fines are a source of revenue. As [the Court has] recognized in the context of other constitutional provisions, it makes sense to scrutinize governmental action more closely when the State stands to benefit.” *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (plurality opinion of Scalia, J.); *see also Timbs*, 586 U.S. at 154 (adopting this reasoning).

Furthermore, the protection against livelihood-destroying fines serves distinct objectives. Especially after punishing crime with prison sentences, it is critical that individuals have a path to earn a living and contribute to society. If they face nothing but “persistent impoverishment” because every dollar they might ever make must be turned over to the government, there is little incentive to become productive members of their communities. Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Calif. L. Rev. 277, 335 (2014). The resulting damage is not just to an individual’s wellbeing but also to their families and society as a whole.

3. The Office of the Solicitor General appears to recognize that the Eighth Amendment prohibits fines that destroy defendants’ livelihoods. In two filings in this Court—one in 2017 and the other in 2021—the government has recited this Court’s explanation that fines cannot “be so large as to deprive [a person] of his livelihood.” Br. in Opp. at 30, *Viloski v. United States* (No. 16-508) (quoting *Browning-Ferris*, 492 U.S. at 271); *see also* Br. in Opp. at 10, *Rosales-Gonzalez v. United States* (No. 21-5305). And it has assumed, based on the history recounted above, that a fine that is “not just . . . difficult or impossible to pay but would . . . deprive an individual of his livelihood” would violate the Excessive Fines Clause. *Rosales-Gonzalez* Br. in Opp. at 11; *see also Viloski* Br. in Opp. at 30.

For all the reasons set forth above, the Office of the Solicitor General’s recognition of an independent livelihood-destruction protection is correct. The Court should settle the issue here, lest U.S. Attorneys across the country feel entitled, as in this case, to continue to take a contrary position.

C. This important issue should be resolved here and now.

1. Proper enforcement of the Excessive Fines Clause is “fundamental to our scheme of ordered liberty.” *Timbs*, 586 U.S. at 154 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010)). At its core, the Clause protects against debilitating financial punishment. Without proper enforcement of the Clause, the government’s “exercise or abuse” of its power could be “dangerous to the people.” *Id.* at 167 (Thomas, J., concurring in the judgment) (quoting 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1858, at 718-19 (1833)).

“Exorbitant tolls undermine other constitutional liberties” as well. *Timbs*, 586 U.S. at 153. “Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies.” *Id.* They can also impede societal efforts to rehabilitate offenders and to reintegrate them into communities upon release from prison.

2. Forfeiture orders in criminal prosecutions also present special risks in modern times that they did not pose until relatively recently. For most of our Nation’s history, “[c]riminal forfeiture was not part of the federal criminal justice system in the United States at all.” *United States v. Young*, 330 F. Supp. 3d 424, 431 (D.D.C. 2018) (Jackson, J.). But starting in the 1970s, Congress allowed federal prosecutors to seek forfeiture in criminal cases as a means of punishing defendants.

Frequently invoked statutes enable courts to order forfeiture of any property “involved in [the] offense,” 18 U.S.C. § 982, or “which the [defendant] obtained” or “derived from” the offense, *id.* § 1963. Moreover, when defendants no longer have money

“involved” in their offenses, *id.* § 982—when, for example, it just passed through their control during the events at issue—prosecutors can seek forfeiture of “substitute assets.” Pet. App. 28a; *see also* Heather J. Garretson, *Federal Criminal Forfeiture: A Royal Pain in the Assets*, 18 Rev. L. & Social Justice 45, 52-54 (2008) (spelling out various statutory provisions allowing this). It does not matter whether those substitute assets have any connection to the offense, or whether the defendant even possesses sufficient assets at the time of the conviction. Nor does it matter whether the defendant has also paid restitution to victims. *See, e.g., United States v. Bodouva*, 853 F.3d 76, 79 (2d Cir. 2017). A modern forfeiture order can operate simply as a freestanding “money judgment[],” creating a debt to the federal government that exists until paid off or the defendant dies. Pet. App. 28a.

The upshot is that courts now have the statutory power in cases involving misappropriated investments, improper business dealings, and other financial crimes to impose jaw-dropping forfeiture orders. Especially in the Southern District of New York—where this case was tried and where our country’s financial system is largely based—money judgments equivalent to “all of the money received” from customers, investors and lenders, Pet. App. 29a, can regularly reach well into tens or hundreds of millions of dollars. *See, e.g., United States v. Patterson*, No. 21-1678, 2022 WL 17825627, at *6 (2d Cir. 2022) (collecting examples); *United States v. Guo*, No. 23-cr-118-1, 2026 WL 1862602, at *8 (S.D.N.Y. June 29, 2026) (\$889 million). Very few individuals can ever hope to pay such fines after spending years in prison and procuring whatever employment they can upon release.

3. This case is also the perfect vehicle for addressing the permissibility of livelihood-destroying fines. The purpose of some forfeitures is disgorgement. But the forfeiture order here is “punitive, not remedial.” Pet. App. 31a. Before this prosecution commenced, petitioner handed over all of his assets for the benefit of his customers. There is no question, therefore, that the order constitutes a “fine” within the meaning of the Eighth Amendment. It is a money judgment “for which [petitioner] is personally liable.” *Id.*

In addition, the government has taken for granted that the \$11 billion fine “will destroy [petitioner’s] ‘future livelihood.’” Gov’t CA2 Br. 77 (quoting Pet’r CA2 Br. 82). The Second Circuit likewise accepted that the fine will “destroy [petitioner’s] ability to make a livelihood” because he “will never be able to come close to satisfying the \$11 billion judgment.” Pet. App. 32a (cleaned up). The legitimacy of such a fine is thus squarely presented here.⁷

This case also highlights the stakes involved in whether the Eighth Amendment permits livelihood-destroying fines. Wholly apart from the devastating forfeiture order imposed here, the district court sentenced petitioner to serve 25 years in a federal penitentiary. Accordingly, petitioner is already being severely punished for actions that caused no customer to lose money. It is, at the very least, open to serious question whether it is also constitutionally

⁷ As indicated *supra* at 32, past petitions for certiorari have argued that forfeiture orders were unconstitutional because the defendants lacked the ability to pay them. But no petition to petitioner’s knowledge has squarely pressed the livelihood-destruction argument petitioner raises here.

permissible under these circumstances to require petitioner—after he completes his lengthy sentence—to turn over every dime he might ever earn in the future to the government.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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