No. _____

IN THE

Supreme Court of the United States

ROMAN ISRAILOV

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Should the Court should grant the petition in order to resolve a conflict among the Courts of Appeals and among the panels of the Second Circuit as to whether under the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A *et seq*., a district court is authorized to include in a restitution award the value of services received by the victims, for which the victims would have been required to pay had there been no fraud?

List of Parties

Petitioner Roman Israilov was the defendant in the district court and the appellant in the Second Circuit. His co-defendants in the district court were Robert Wisnicki, Anthony Dipietro, Rolando Chumaceiro, Marcelo Quiroga, Albert Aronov, Peter Khaimov, Alexander Gulkarov,

The Respondent is the United States.

Related Proceedings

The appeal of co-defendant Khaimov is 2d Cir. docket no. 24-1730. The appeal of co-defendant Gulkarov is 2d Cir. docket no. 24-2356.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Roman Israilov respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit dated April 20, 2026.

Opinions Below

The decision of the Court of Appeals is an unpublished summary affirmance and is set forth at App. 020.[1] The Second Circuit's denial of the petition for rehearing/rehearing en banc is unpublished and is set forth at App. 026. The district court's decision, *United States v. Israilov*, 22 Cr. 20 (PGG) (S.D. N.Y. Aug 20, 2024), is unpublished and is set forth at App. 001.

Jurisdiction

The Court of Appeals opinion in this case was filed on April 20, 2026. A timely petition for rehearing/ rehearing en banc was filed on April 25, 2026. The Court of Appeals denied the petition on May 13, 2026. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

The basis for subject matter jurisdiction in district court was 18 U.S.C. §3231 (jurisdiction over offenses against the United States). The basis for the jurisdiction of the court of appeals was 28 U.S.C. §1291 (appeals from final judgments of district courts), Rule 4(b), Fed. R. App. Proc. (appeals from criminal convictions), 18 U.S.C. §3557 and 18 U.S.C. §3742 (appeals from sentences) and Rule 35 (en banc determinations).

Statutory Provision Involved

18 U.S.C. §3663A. Mandatory restitution to victims of certain crimes

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[1]In this petition, "App." refers to the Appendix to this Petition for Certiorari, which accompanies the petition. "A" refers to the appendix filed by the petitioner in the Court of Appeals.

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

* * * *

(b) The order of restitution shall require that such defendant-

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense-

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to-

(I) the greater of-

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

* * * *

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense-

(A) that is-

* * * *

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

* * * *

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss

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* * * *

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) or (iii) if the court finds, from facts on the record, that-

> (A) the number of identifiable victims is so large as to make restitution impracticable; or
>
> (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

Statement of the Case

District Court proceedings: Roman Israilov pleaded guilty in the Southern District of New York (SDNY docket no. 1:22-cr-20-PGG-2) (Paul G. Gardephe, U.S.D.J.).

He was charged in the indictment with seven others. He waived indictment and pleaded guilty to a two-count superceding information charging conspiracy to commit healthcare fraud, in violation of 18 U.S.C. §371, and aggravated identity theft, in violation of 18 U.S.C.§ 1028A. A-082. The fraud alleged in the information involved multiple facets not relevant to this petition. The aspect of the fraud that is germane to this petition is that insurance reimbursements that by law could be made only to clinics owned and operated by medical professionals were made to medical clinics that were secretly owned and controlled by Roman Israilov and his co-conspirators.

The district court sentenced Israilov to seven years' imprisonment, to be followed by a three-year term of supervised release.

Th e district court also entered an order of restitution under the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A *et seq*., holding Israilov and two codefendants jointly and severally liable for forty-six million dollars that insurance companies had paid to the clinics.

At Roman Israilov's sentencing, the government (as well as the victim insurance companies) contended that the amount of restitution properly ordered by the court would be the total amount of moneys that the insurance companies had paid to the conspirators' clinics.

Roman Israilov, on the other hand, contended that from the total insurance-company payments should be subtracted amounts paid to reimburse the clinics for the medically necessary treatment that they had concededly provided, amounts which the insurance companies would have been required to reimburse, had the clinics been owned and operated by medical professionals or had the injured received treatment elsewhere.

The issue was thoroughly briefed and argued. The district court concurred with the government, setting as a restitutionary amount the total payments made by insurance companies to the conspirator-controlled facilities. App. 014.

Roman Israilov appealed to the Court of Appeals for the Second Circuit from the order of restitution. Among other arguments, he continued to assert that the district court had erred by declining to reduce the amount of restitution owed to insurance companies by the value of the medically necessary treatments that had been provided to the patients.

The Court of Appeals agreed with the district court:

> [T]he district court did not err by declining to reduce the restitution amount to account for medically necessary treatments. Israilov argues that the insurers' losses must be reduced by the value of any services his clinics rendered that were "medically necessary." But that is the wrong test. The MVRA compensates victims for their actual losses—that is, amounts the victims would not have paid but for the fraud. United States v. Razzouk, 984 F.3d 181, 188 (2d Cir. 2020) ("[T]he [MVRA] is designed to make victims of crime whole, to fully compensate these victims for their losses and to restore these victims to their original state of well-being." (cleaned up)). The question, then, is not whether any particular treatment happened to be medically necessary. It is whether, absent the fraud, the insurers would have paid these clinics anything at all; and the answer on this record is no. Under

> New York law, fraudulently incorporated medical corporations are not entitled to reimbursement under the no-fault regime, even for claims reflecting appropriate care from a qualified professional. *State Farm Mut. Auto. Ins. Co. v. Mallela*, 4 N.Y.3d 313, 320 (2005). Because Israilov's clinics were not lawfully entitled to any reimbursement, the insurers would have paid nothing had the fraud been known. The full amount paid is therefore the full amount lost.

App. 022-023.

The Court of Appeals denied Roman Israilov's petition for rehearing / rehearing en banc, App. 026, and this timely petition followed.

Argument

New York Law requires that every vehicle registered in New York State be protected by no-fault car insurance, which enables vehicle occupants to promptly obtain up to $50,000 per person for injuries sustained in a car accident, regardless of fault and without the need to file a personal injury lawsuit. Under this no-fault law, an insured could assign his or her rights to no-fault benefits to a medical provider, which could then receive payment directly from the insurance company. *See* New York Insurance Law §§5101 *et seq*.

To be eligible for reimbursement under the no-fault statute, medical clinics that submitted claims had to be owned, operated, and controlled by licensed medical practitioners. Insurance companies would routinely deny all claims under the No-Fault Law for medical treatments performed by medical clinics that were not in fact owned, operated, and controlled by licensed medical practitioners, even if the treatments were medically necessary procedures for which reimbursement would have been required, had the clinic been owned by a doctor.

In *State Farm Ins. v. Mallela*, 4 N.Y.3d 313, 827 N.E.2d 758, 794 N.Y.S.2d 700 (N.Y. 2005), the New York Court of Appeals accepted from the Court of Appeals for the Second Circuit the following certified question:

whether a medical corporation that was fraudulently incorporated under

> N.Y. Business Corporation Law §§ 1507, 1508 and N.Y. Education Law § 6507(4)(c) is entitled to be reimbursed by insurers, under New York Insurance Law §§ 5101 et seq. and its implementing regulations, for medical services rendered by licensed medical practitioners.[2]

The New York Court of Appeals held that such corporations are not entitled to reimbursement. The Court based its ruling on the New York Superintendent of Insurance's revised regulation, 11 N.Y.C.R.R. §65-3.16(a)(12), which allows carriers to withhold reimbursement from fraudulently licensed medical corporations. The New York Court of Appeals found the revised regulation valid and held that "on the strength of this regulation, carriers may look beyond the face of licensing documents to identify willful and material failure to abide by state and local law." *Id.*, 4 N.Y.3d at 321.

In its decision the New York Court of Appeals observed that "[n]otably, State Farm never alleged that the actual care received by patients was unnecessary or improper. The patients insured by State Farm presumably received appropriate care from a health professional qualified to give that care. State Farm's complaint centers on fraud in the corporate form rather than on the quality of care provided." *Id.*, 4 N.Y.3d at 320.

As noted, the Court of Appeals for the Second Circuit based its decision in Roman Israilov's case on this holding.

The panel's summary order, however, is in conflict with other decisions of the Second Circuit and other circuits, holding that under the MVRA, victims are not entitled to a windfall.

In *United States v. James*,151 F.4th 28 (2025), the defendant, like Roman Israilov, had been convicted for conspiring to commit healthcare fraud, among other charges. *Id.* at 34-35. James operated a billing service that defrauded insurance companies by upcoding (*i.e.*,billing for medical procedures costlier than those

[2] State Farm Mut. Auto. Ins. Co. v. Mallela, 372 F.3d 500, 509 (2d Cir. 2004),

performed) and unbundling (*i.e.,*billing for multiple services that were actually part of a single procedure, using a coding modifier called "Modifier 59"). *Id.* at 36. When ignorance company agents sought to question patients concerning the treatment they had received, James's staff would impersonate the patients. *Id.*[3]

The government contended that the amount of restitution should include the total amount of insurance claims paid out in cases involving upcoding, unbundling, and impersonation. James claimed that the upcoded bills, the unbundled bills, and the bills for patients who had been impersonated did include amounts for legitimate care. Those amounts, he argued, should be subtracted from the total. *Id.* at 38.

The district court concurred with the government and issued a restitution order that included the total amount of the bills that involved uploading, unbundling, and impersonation. It ordered restitution in the amount of $336,996,416.85. *Id.* at 39.

On appeal, the Court of Appeals for the Second Circuit held that the district court had employed a flawed methodology to calculate restitution, vacated the restitution order, and remanded for recalculation. The Court held:

> Under the MVRA, "restitution may be awarded only in the amount of losses directly and proximately caused by the defendant's conduct." *United States v. Gushlak*, 728 F.3d 184, 194-95 (2d Cir. 2013) (citing 18 U.S.C. § 3663A(a)(2)). While a restitution amount need not be "mathematically precise" and "a reasonable approximation will suffice, especially in cases in which an exact dollar amount is inherently incalculable," id. at 195-96 (quotation marks omitted), the approximation must be "supported by a sound methodology," *id.* at 196. A "failure at least to approximate the amount of the loss caused by the fraud without even considering other [legitimate] factors" that may be relevant to calculating restitution "requires a remand to redetermine the amount of the loss." *United States v. Rutkoske*, 506 F.3d 170, 180 (2d Cir. 2007).

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[3] Submitting bills on behalf of clinics not owned and operated by medical professionals does not appear to have been a component of his fraud.

* * * *

> The District Court's restitution order does not reflect a "reasonable approximation of losses" directly and proximately caused by James's fraud. *Gushlak*, 728 F.3d at 196. The District Court's methodology for calculating restitution failed to separate legitimate from fraudulent revenue. It instead included all payments associated with all impersonated patients, regardless of when the impersonation occurred. It likewise assumed that all payments associated with Modifier 59 were directly or proximately caused by fraud, even though some legitimate claims also used Modifier 59, including claims as to which Modifier 59 did not materially affect the insurance company's payment decision.

Id. at 49-50.

James's patients had received medically necessary treatment, although the value of that treatment had been fraudulently inflated by unloading, unbundling and impersonation. The Court held that the amount of James's restitution order should include amounts fraudulently inflated but should not include the amounts for medical services legitimately provided – which was Roman Israilov's contention as well. The Israilov panel's summary affirmance thus conflicts with the decision of a different Second Circuit panel.

The panel's decision also conflicts with decisions in other circuits that are similar to the decision in *James*.

In *United States v. Sharma*, 703 F.3d 318 (5th Cir. 2012), the court held that with respect to restitution, "[a]ctual loss also must not include compensation for that which would have occurred in the absence of the crime." *Id*. at 324-25. Thus, "in health care-fraud cases, an insurer's actual loss for restitution purposes must not include any amount that the insurer would have paid had the defendant not committed the fraud." Id. at 324. Because an insurance company receives "value when its beneficiaries receive legitimate health care services for which [it is] obligated to pay but for a fraud, " restitution cannot include amounts paid by insurance companies for medically necessary services. *Accord*, *United States v.*

Mahmood, 820 F.3d 177, 195 (5th Cir. 2016) (government's own valuation of the services rendered to patients at his hospitals indicated that Medicare would have reimbursed the hospitals all but $143,608; failure to consider this amount as the victims' actual loss was an abuse of discretion.); *United States v. Klein*, 543 F.3d 206, 213–15 (5th Cir. 2008) (reducing the loss to insurers by the value of the drugs dispensed here the patients needed those drugs and that the insurers would have had to pay for the drugs, absent the fraud); *United States v. Moss*, 34 F.4th 1176 (11th Cir. 2022) (affirming district court's reduction of restitution based on judicial estimate that ten percent of the services defendant provided and billed to Medicare and Medicaid had been legitimate). *See United States v. Umana*, Crim. No. 1:14-CR-00151 (M.D. Pa. Dec 13, 2016), at 6 (recognizing that in healthcare fraud cases, the "actual loss for restitution purposes must not include any amount that the insurer would have paid had the defendant not committed the fraud" but finding that defendant's proof concerning legitimate services was totally unreliable). *Contra*, *United States v. Triana*, 468 F.3d 308, 320–23 (6th Cir. 2006) (where defendant was barred by prior conviction from participating in Medicare program, full amount paid by Medicare to his firms was properly treated as loss, even if billings were for legitimate services provided to Medicare-eligible patients by licensed professionals)

In a variety of cases in a variety of contexts (none on all fours with Roman Israilov's), the Court of Appeals for the Second Circuit has held, like many other courts, that under the MVRA, a sentencing court cannot award the victim a windfall, *i.e.*, more in restitution than the victim actually lost. *See, e.g.*, *United States v. Fishman*, 157 F.4th 143, 166 (2d Cir. 2025); *United States v. Yalincak*, 30 F.4th 115, 122 (2d Cir. 2022); *United States v. Thompson*, 792 F.3d 273, 277 (2d Cir. 2015); *United States v. Maynard*, 743 F.3d 374, 379-80 (2d Cir. 2014); *United States*

v. Boccagna, 450 F.3d 107, 117 (2d Cir. 2006); *United States v. Nucci*, 364 F.3d 419 44 (2d Cir. 2004); *United States v. Coriaty*, 300 F.3d 244, 252 (2d Cir. 2002). While the facts underlying these cases are different from Roman Israilov's (and from each other), the principal universally expressed – that under the MVRA victims are not entitled to a windfall – was violated by the panel's decision.

Conclusion

Because the decision of the panel of the Court of Appeals conflicts with a decision of another panel of the Court of Appeals, and because it conflicts with decisions of other courts of appeal, the Court should grant Roman Israilov's petition in order to resolve the conflict.

Respectfully submitted,

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