No. 26-_______

IN THE
SUPREME COURT OF THE UNITED STATES

HASSAN ABBAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Has the First Circuit impermissibly relied on a sentencing guideline application note's caption to override its own unqualified text?

Does "referenced to" a sentencing guideline under USSG § 2B1.1 sweep in offenses only indirectly connected to it, as the First Circuit held?

May a court treat "personally causing" a victim's financial hardship as satisfied by mere participation in the scheme that caused it?

Did the First Circuit misapply the wire-fraud statute by reaching a transaction whose fraud, victim, and perpetrators were all located abroad?

PARTIES TO THE PROCEEDING

Petitioner in this Court is defendant-appellant Hassan Abbas. Respondent in this Court is the United States of America.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Hassan Abbas respectfully petitions this Court for a writ of certiorari to review the decision of the United States Court of Appeals of the First Circuit.

OPINION BELOW

The decision of the First Circuit under review is reported in *United States v. Abbas*, 165 F.4th 659 (1st Cir. 2026) ("*Abbas II*"), and is included in the Appendix at 1a–36a. In its decision, the First Circuit upheld the sentence imposed by the District Court of Massachusetts following his conviction after a jury trial on Counts One and Two (wire fraud), and Six (conspiracy to commit money laundering) of the Second Superseding Indictment. The First Circuit had previously vacated Mr. Abbas's convictions on Counts Three (money laundering) and Four and Five (unlawful monetary transactions) on the ground of lack of venue. *See United States v. Hassan Abbas*, 100 F.4th 267, 274 (1st Cir. 2024) ("*Abbas I*.")

STATEMENT OF JURISDICTION

The First Circuit issued its opinion on January 29, 2026. It denied Mr. Abbas's Petition for First Circuit Rehearing or Rehearing En Banc on April 21, 2026. The time within which to petition for certiorari extends until July 20, 2026 (according to Rule 13 of the Rules of the Supreme Court of the United States). This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Section 1956(h) of Title 18 of the United States Code provides:

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

United States Sentencing Guidelines ("USSG") § 2B1.1 provides:

> (a) Base Offense Level:
>
> (1) **7**, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or
>
> (2) **6**, otherwise.

USSG § 2S1.1 provides:

> (a) Base Offense Level:
>
> (1) The offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under subsection (a)(1)(A) of §1B1.3 (Relevant Conduct)); and (B) the offense level for that offense can be determined;
>
> (b) Specific Offense Characteristics
>
> (2) (Apply the [greater]) If—
>
> (A) the defendant was convicted under 18 U.S.C. § 1957, increase by **1** level; or
>
> (B) the defendant was convicted under 18 U.S.C. § 1956, increase by **2** levels.
>
> (3) If (A) subsection (b)(2)(B) applies; and (B) the offense involved sophisticated laundering, increase by **2** levels.

USSG § 2S1.1, comment. (n.3(C)), captioned "Application of Subsection (a)(2),"

provides:

> Non-Applicability of Enhancement.—Subsection (b)(2)(B) shall not apply if the defendant was convicted of a conspiracy under 18 U.S.C. §

1956(h) and the sole object of that conspiracy was to commit an offense set forth in 18 U.S.C. § 1957.

USSG § 4C1.1 provides

> (a) Adjustment.—If the defendant meets all of the following criteria:
>
> (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
>
> (2) the defendant did not receive an adjustment under §3A1.4 (Terrorism);
>
> (3) the defendant did not use violence or credible threats of violence in connection with the offense;
>
> (4) the offense did not result in death or serious bodily injury;
>
> (5) the instant offense of conviction is not a sex offense;
>
> (6) the defendant did not personally cause substantial financial hardship;
>
> (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
>
> (8) the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
>
> (9) the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense);
>
> (10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role); and
>
> (11) the defendant was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848;
>
> decrease the offense level determined under Chapters Two and Three by **2** levels.

STATEMENT OF THE CASE

I. Factual Background

Across the country, unsuspecting people are falling prey to financial scams carried out using the internet. *Abbas I* at 273-74. There are two types of schemes at play in this case: romance scams and business email compromises. *Id.* In romance scams, scammers typically create fake online profiles and use them to inveigle victims into wiring funds under false pretenses. *Id.* Business email compromises, on the other hand, target businesses that use wire transfers as part of legitimate business transactions. *Id.* Email messages that appear to come from legitimate sources are sent when, in reality, the request is from a "spoofed" email address that sends fraudulent wiring instructions, allowing the scammer to swindle the funds from the victim. *Id.*

Hassan Abbas was not accused of sending any of these electronic messages, nor was it suggested he had any contact with any of the victims who testified at his trial. Rather, Mr. Abbas, who was licensed to practice law in Illinois, was accused of creating multiple legal entities from 2012 through 2017, entities that subsequently opened bank accounts in various parts of the country. *Id.* at 274-75. Funds from victims throughout the country, including three living in Massachusetts, were transferred into those bank accounts. *Id.* at 275. These funds were comingled with other funds in the accounts. *Id.* at 276-77. After receipt, portions of the funds were transferred out of these accounts via either purchases, direct cash withdrawals, or transfers to other accounts. Id.

II. Trial and the First Appeal

Mr. Abbas was indicted in the District of Massachusetts and ultimately went to trial on all six counts. By way of two separate motions to dismiss and a motion for judgment of acquittal, Mr. Abbas challenged whether the District Court in Massachusetts was the proper venue. *Id.* at 277-78. The motions were denied by the trial Court. *Id.* at 279.

After five days of trial, the jury returned a verdict convicting Mr. Abbas on all six counts, though it acquitted him on the alternative theory alleged in Count 6(A). Id. At sentencing held on November 1, 2022, the District Court sentenced Mr. Abbas to 108 months, three years of supervised release, and a restitution order of $2,001,853.68. Id.

On appeal to the First Circuit, Mr. Abbas raised numerous claims of error, most of which were rejected by the First Circuit. The First Circuit, however, agreed with Mr. Abbas's contention that there was a lack of venue as to Counts Three, Four, and Five. In so doing, the Court wrote "the victims' wire transfers from Massachusetts to Illinois or California could not be the predicate for establishing the venue for Abbas's money-laundering convictions because '[a] money launderer must obtain proceeds before laundering can take place.'" *Id.* at 285-86 (*quoting United States v. Castellini,* 392 F.3d 35, 47 (1st Cir. 2004)). There was no evidence showing "Abbas controlled the wired funds until after the victims transferred them out of Massachusetts and section 1956's use of 'proceeds' requires that there be evidence that the funds are in the defendant's possession or at his disposal." *Id.* at

286 (cleaned up). Therefore, the First Circuit set aside the convictions for these counts only and remanded the remaining counts to the District Court for resentencing.

This Court denied certiorari in his first appeal on October 7, 2024.

III. Resentencing and the Second Appeal

Mr. Abbas was resentenced on the remaining three counts on August 19, 2024. Conducting a *de novo* resentencing, the District Court, over Mr. Abbas's objection, recalculated the guideline range starting from a base-offense level of 7. A4. It added 16 points of enhancement for loss amount ($1.5–3M), two points for the substantial financial hardship of at least one victim, and two points for sophisticated means. A11-12, 17. The Court also adjusted the offense level by two points for a conviction under 18 U.S.C. § 1956 for money laundering, and by two points for a conviction involving sophisticated laundering (+2), for a total adjusted offense level of 31. A11-12. The court rejected Abbas's requests for the zero-point offender reduction and for acceptance-of-responsibility credit. A25-28. With Criminal History Category I, this produced a 108–135-month range, the same as the original sentencing. A2.

The Government sought the original 108-month sentence, arguing the vacated counts didn't change the underlying conduct and citing Abbas's legal training and privileged background. Abbas sought essentially time served (30 months), citing sentencing disparity with other first-time financial offenders and his role caring for his elderly parents. The District Court chose to vary downward and imposed a sentence of 87 months (concurrent on all counts), plus three years of supervised release, and later imposed restitution of $2,001,853.68. A2-3.

Upon appeal to the First Circuit, Mr. Abbas made numerous assignments of error on both procedural and substantive grounds. Specifically in the issues relevant to this Petition, Mr. Abbas first argued for base level 6, not 7, under USSG § 2B1.1(a), because his offense of record – money-laundering conspiracy under 18 U.S.C. § 1956(h) – is not "referenced to" § 2B1.1. A4–9. The First Circuit held that USSG § 2S1.1(a)(1) instead sets the base level from the underlying wire-fraud offense that produced the laundered funds, which is referenced to § 2B1.1 and carries a 30-year maximum, rejecting Mr. Abbas's reading of "an" offense in § 2B1.1(a)(1)(A) as pointing back to the conspiracy conviction itself. Id.

Next, Mr. Abbas argued the four-level enhancement under USSG § 2S1.1(b)(2)(B) and (b)(3) should not apply because Application Note 3(C) exempts a § 1956(h) conspiracy whose sole object was a § 1957 offense, as here. A11–17. The First Circuit held Note 3(C) applies only when the base level is set under § 2S1.1(a)(2), not (a)(1) as here, declining to follow the Seventh Circuit's contrary reading in *United States v. Tedder*, 403 F.3d 836 (7th Cir. 2005). Id.

Third, Mr. Abbas sought a two-level reduction as a "zero-point offender" under USSG § 4C1.1(a)(6), arguing that he did not "personally cause" victim Evelyn Fessenden's financial hardship because he never communicated with or directly deceived her. A25–28. The First Circuit held his role in creating the receiving accounts was an integral, necessary part of the scheme sufficient to satisfy "personally caused," and that a narrower, but-for reading of that phrase was waived. Id.

Finally, Mr. Abbas challenged the 16-level loss enhancement under USSG § 2B1.1(b)(1)(I) and the resulting $2,001,853.68 restitution order for including (1) losses tied to an acquitted conspiracy object and (2) a $973,276.01 loss to a Kenyan victim, arguing it was unreliable and an impermissible extraterritorial application of the wire-fraud statute. A17–25, 34–36. The First Circuit found the acquitted-conduct argument waived and held the foreign loss was properly counted because the wire-fraud statute's "focus" is the misuse of wires, satisfied domestically when the funds reached Mr. Abbas's Illinois account. Id.

REASONS FOR GRANTING THE WRIT

I. The First Circuit's interpretation of the money laundering enhancements of 18 U.S.C. § 1956(h) creates a circuit split with the Seventh Circuit's opinion in *United States v. Tedder.*

Mr. Abbas, as a defendant convicted of a money-laundering conspiracy under 18 U.S.C. § 1956(h) whose sole conspiratorial object was a violation of 18 U.S.C. § 1957, should have been subject to only the one-level enhancement under § 2S1.1(b)(2)(A). Instead, the Trial Court applied, and the First Circuit upheld, both two-level enhancements under USSG. § 2S1.1(b)(2)(B) and § 2S1.1(b)(3). Mr. Abbas submits that the First Circuit's decision is contrary to the statute, the Seventh Circuit's authoritative decision in *Tedder,* and the principles espoused in the Sentencing Guidelines themselves. This Court should take up this opportunity to resolve this issue.

A. Guideline headings are not rules of law.

The First Circuit's decision is at odds with the Seventh Circuit's decision in *United States v. Tedder*, 403 F.3d 836 (7th Cir. 2005). In *Tedder*, the Seventh Circuit held that Application Note 3(C) to USSG. § 2S1.1 bars the § 2S1.1(b)(2)(B) enhancement when the defendant is convicted of a § 1956(h) conspiracy whose sole object is a § 1957 offense, regardless of whether the base offense level was set under § 2S1.1(a)(1) or (a)(2). The First Circuit acknowledged *Tedder* but declined to follow it. A13–16.

The First Circuit offered two reasons for departing from *Tedder*, neither of which withstands scrutiny. The First Circuit's primary basis for limiting Application Note 3(C) was that it appears under the heading "Application of Subsection (a)(2)." A12–13. But this Court has held that "[t]he title of a statute and the heading of a section cannot limit the plain meaning of the text" and that headings are "not meant to take the place of the detailed provisions of the text." *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001) (quotation omitted). Courts must "interpret the relevant text according to its plain language and apply the enacted rules as written rather than improve upon them." *Tedder* at 844 (*citing St. Cyr* and *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998)).

The operative text of Note 3(C) states without qualification: "Subsection (b)(2)(B) shall not apply if the defendant was convicted of a conspiracy under 18 U.S.C. § 1956(h) and the sole object of that conspiracy was to commit an offense set forth in 18 U.S.C. § 1957." Unlike the other subparts of Application Notes 2 and 3, which explicitly reference § 2S1.1(a)(1) or (a)(2), note 3(C) contains no such limitation. As *Tedder* recognized, this textual difference matters. 403 F.3d at 843–44 ("The other five sub-parts of Application Notes 2 and 3 explicitly refer to subsection (a)(1) or (a)(2); Note 3(C) alone does not, and its text suggests a more general application.") The question is not whether a heading describes a note's typical application, because headings always do that, but whether the note's own text contains a limitation. Here it does not, and the five surrounding application notes confirm the Commission knew how to write one when it intended to: each of them expressly cross-references "subsection (a)(1)" or "subsection (a)(2)." Note 3(C) alone omits any such cross-reference. That textual contrast, and not the caption above it, is the interpretive signal that matters, and it points against, not toward, the limitation the First Circuit read into the note.

The First Circuit's elevation of the heading over the operative text fails to heed this Court's lessons in *St. Cyr* and *Yeskey*.

B. The First Circuit's reliance on the distinction between direct and third-party launderers clashes with the text of 18 U.S.C. § 1956(h).

The secondary rationale of the First Circuit is that their interpretation matches the Sentencing Commission's desire to make a distinction between direct and third-party launderers. It noted a 2001 amendment distinguishing "direct" launderers under § 2S1.1(a)(1) from "third-party" launderers under § 2S1.1(a)(2), which the First Circuit said meant the Commission intended to yield offense levels for direct launderers "one to four levels greater" than for third-party launderers, justified reading Note 3(C) to apply only to (a)(2) cases. A16 (*citing United States v. Menendez*, 600 F.3d 263, 268-69 (2d Cir. 2010.) But that amendment addressed how the base offense level is calculated under subsection (a); it said nothing about the separate question addressed by Note 3(C) of a further enhancement under subsection (b)(2)(B) applying on top of that base offense level. The differential the Commission built into subsection (a) survives fully intact whether Note 3(C) also applies to (a)(1) cases, because subsection (a)(1) will, in the ordinary case, already produce a higher base offense level than subsection (a)(2)'s flat "8 plus loss table" calculation. Nothing in the amendment's history suggests the Commission additionally intended direct launderers convicted of a § 1956(h) conspiracy to receive a further, stacked four-level penalty that a defendant convicted outright of the § 1957 object offense would never face.

Further, this departs from the direct language of 18 U.S.C. § 1956(h), which provides:

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

This language constitutes a congressional mandate directing courts to treat the conspiracy as carrying the penalties of the underlying offense. Here, the sole object of Count 6(B) was a violation of 18 U.S.C. § 1957—unlawful monetary transactions. Under USSG. § 2S1.1(b)(2)(A), a defendant convicted of § 1957 receives a one-level enhancement. Under § 2S1.1(b)(2)(B), a defendant convicted of § 1956(h) receives a two-level enhancement—and that enhancement triggers an additional two-level increase for sophisticated laundering under § 2S1.1(b)(3). The First Circuit acknowledged these provisions. A11–12.

Tedder interpreted Application Note 3(C) to reflect a deliberate policy choice by the Sentencing Commission "to impose the same punishment for these two offenses." 403 F.3d at 844. This interpretation aligns with the general principle that "[t]hroughout the Sentencing Guidelines inchoate offenses either are treated identically to the corresponding substantive crimes, or are treated as less serious." *Id.* (*citing* USSG. § 2X1.1).

The First Circuit's opinion does not address whether the mandate of § 1956(h) that a conspiracy defendant "shall be subject to the same penalties" as those for the object offense independently requires that Mr. Abbas be treated as if convicted of § 1957 for purposes of the § 2S1.1(b)(2) enhancement. If § 1956(h) means what it says, then Mr. Abbas's conspiracy conviction should carry the § 1957 penalty, not the higher penalty triggered by the conspiracy statute's own statutory citation.

Instead, the First Circuit's interpretation collapses this distinction. By applying both the § 2S1.1(b)(2)(B) enhancement and the § 2S1.1(b)(3) sophisticated-laundering enhancement to a defendant whose sole conspiratorial object was § 1957, the First Circuit effectively punishes a § 1956(h) conspiracy more severely than the underlying § 1957 substantive offense it sought to accomplish. This result contradicts both the statutory mandate of § 1956(h) and the Sentencing

Commission's apparent intent that conspiracy defendants not receive harsher treatment than substantive offenders.

The First Circuit observed that no other circuit has adopted *Tedder*'s reasoning in the twenty years since it was decided. A16. But neither has any circuit squarely rejected it on the merits. The cases the First Circuit cited, *United States v. Otunyo,* 63 F.4th 948, 956 (D.C. Cir. 2023), *United States v. Capps*, 977 F.3d 250, 255-56 (3d Cir. 2020), and *United States v. Nikolovski*, 565 F. App'x 397, 401-02 (6th Cir. 2014) (per curiam) (unpublished), addressed the base-offense-level question under § 2B1.1(a), not the applicability of Note 3(C) to the § 2S1.1(b)(2) enhancement. The absence of contrary authority is equally consistent with the rarity of the precise issue — a § 1956(h) conspiracy with a *sole* § 1957 object — and does not diminish *Tedder's* reasoning. The First Circuit's decision is thus the first to squarely reject *Tedder's* reasoning on the precise question *Tedder* decided, creating a direct circuit conflict that warrants this Court weighing in.

C. This case will squarely resolve the circuit split.

This case is not simply a dispute over a single money-laundering enhancement. The Sentencing Guidelines' commentary is organized throughout by captioned application notes keyed to particular subsections, yet many of those notes, like Note 3(C), contain operative text that does not itself repeat the caption's limitation. Federal sentencing courts confront that same interpretive question, whether a caption narrows unqualified operative text, in guideline after guideline, and the courts of appeals plainly disagree about the answer. Left unresolved, that disagreement will continue to produce disparate sentences for similarly situated federal defendants based solely on the circuit in which they are prosecuted, undermining the uniformity in federal sentencing that the Sentencing Reform Act was designed to secure. This Court's guidance on how to reconcile a guideline application note's caption with its operative text will resolve not only the four-level dispute at issue here but the recurring interpretive question underlying it.

II. The First Circuit's reading of the base offense level for USSG § 2B1.1(a) adds to the split between the way the circuits have interpreted the phrase "referenced to this guideline."

The First Circuit improperly defined the phrase "referenced to this guideline" in a way that will have a far-reaching effect. It is not limited to this single case. This Court should take up this opportunity to resolve this dispute between the circuits.

A. Application Note 2(A) requires a direct reference in Appendix A, not a reference through an underlying offense.

USSG § 2B1.1(a)(1) sets a base offense level of 7 only if the defendant "was convicted of an offense referenced to this guideline" and that offense carries a 20-year-or-greater statutory maximum; otherwise, the base offense level is 6. USSG § 2B1.1(a)(2). Application Note 2(A) defines when an offense is "referenced to this guideline": either (i) § 2B1.1 "is the applicable Chapter Two guideline specifically referenced in Appendix A (Statutory Index) for the offense of conviction," or (ii) the conviction is for "conspiracy, solicitation, or attempt" under USSG § 2X1.1, and § 2B1.1 is the guideline for the object offense. Mr. Abbas's offense of conviction for base-offense-level purposes was money-laundering conspiracy under 18 U.S.C. §

1956(h). Appendix A references that offense only to USSG § 2S1.1, not § 2B1.1, and § 1956(h) conspiracies are sentenced directly under § 2S1.1, not through the general conspiracy guideline, USSG § 2X1.1. Neither prong of Application Note 2(A) is satisfied, and the base offense level should have been 6.

B. The First Circuit's contrary reading renders Application Note 2(A)'s express reference requirement surplusage.

The First Circuit reasoned that because § 2S1.1(a)(1) directs a court to use "the offense level for the underlying offense from which the laundered funds were derived," and that underlying offense here was wire fraud under 18 U.S.C. § 1343 directly referenced to § 2B1.1 in Appendix A, then the base-offense-level inquiry should look through the conviction of record to the underlying conduct. A7-9. Other courts have rejected exactly that reasoning. As the Sixth Circuit explained in reversing an identical base-offense-level calculation, "[i]f indirectly referenced offenses of conviction were included in § 2B1.1(a)(1)(A), then subsection (A) would be surplusage, without independent meaning." *United States v. Abdelsalam*, 311 F. App'x 832, 845 (6th Cir. 2009) (unpublished). Application Note 2(A)(ii) already tells courts when to look past the offense of conviction to an underlying object offense: when the conviction is for attempt, solicitation, or a USSG § 2X1.1 conspiracy. Extending that same look-through approach to convictions like Mr. Abbas's, one's sentenced under their own dedicated guideline, § 2S1.1, rather than under § 2X1.1, erases the distinction Application Note 2(A) draws and leaves its Appendix A reference requirement with no independent work to do.

C. Courts and the Sentencing Commission's own guidance disagree about how to interpret this phrase.

The Seventh, Ninth, and Fourth Circuits have all reached base offense level 6 on the same reasoning Mr. Abbas advances. *See United States v. Hallahan*, 756 F.3d 962, 966 (7th Cir. 2014); *United States v. Klassy*, 409 F. App'x 169, 171 (9th Cir. 2011) (unpublished) ("he was only convicted of an offense cross-referenced, rather than referenced, to Section 2B1.1"); *United States v. Osuji*, 413 F. App'x 603, 613 (4th Cir. 2011) (unpublished). The First Circuit below, like the D.C. Circuit in *Otunyo*, 63 F.4th at 956, and the Third Circuit in *United States v. Capps*, 977 F.3d 250, 255–56 (2020), read the guideline the other way. The disagreement is not confined to the courts of appeals: the Sentencing Commission's own training materials, addressing this exact fact pattern – a wire-fraud scheme whose proceeds were laundered through a conspiracy conviction – instruct that the base offense level is 6, and sentencing judges within the same district have split on the question in ordinary practice.

D. This will be a recurring question.

This is precisely the kind of unsettled, recurring guidelines question that warrants this Court's review rather than continued piecemeal resolution. The phrase "referenced to this guideline" has become a cipher – its meaning depends on how you look at it. The circuit courts and probation have not reached an agreement. Given the prominence and importance of this phrase in applying the sentencing guidelines, this Court should help clarify its true meaning.

III. The Definition of "Personally Caused" Under USSG. § 4C1.1 is an Unsettled Question of Exceptional Importance.

Mr. Abbas challenged the finding that he had personally caused substantial financial hardship to the victims of this case. The facts supporting the District Court's conclusion that Abbas personally caused the financial hardship were not at issue; it was the court's legal conclusion of causation. The First Circuit found this argument "doubly waived," first for not being squarely raised below, then for not being meaningfully developed on appeal. A28. Mr. Abbas respectfully submits that this conclusion overlooks the record.

A. The causation challenge was preserved.

USSG. § 4C1.1 provides an offense-level reduction for zero-point offenders who, among other criteria, have not "personally cause[d] substantial financial hardship." § 4C1.1(a)(6). The issue of "personally caused" was raised in the sentencing memorandum, argued at the resentencing hearing, where defense counsel specifically argued to the Trial Court that Mr. Abbas had to "cause the harm himself." The legal conclusion that Mr. Abbas's actions "personally caused" the hardship was raised in both the opening brief, Blue Br. 27-30, and in the reply, Grey Br. 10-13 in the below appeal.

B. "Personally caused" is a narrower standard than "resulted in," and the courts below blurred that distinction.

The Chapter 2 "substantial financial hardship" enhancement applies if the offense "resulted in" substantial financial hardship to one or more victims. USSG § 2B1.1(b)(2)(A)(iii). By contrast, the Chapter 4 "substantial financial hardship" disqualifier only applies if the defendant did “personally cause” a substantial financial hardship. USSG § 4C1.1(a)(6). While these two expressions of causation – “resulted in” and “personally cause” – may seem similar, their ordinary meaning differs: “resulted in” only requires “but-for” causation, while “cause” encompasses *both* “but-for” and “proximate” causation.

The zero-point offender language of § 4C1.1(a)(6) requires personal causation, which is distinct from but-for causation. Whenever this Court has construed “resulting” language to require only but-for causation, the analysis was a departure from the general rule that “cause” means both but-for and proximate causation. *See United States v. Ramos-Delgado*, 763 F.3d 398, 401 (5th Cir. 2014) (*citing United States v. Cardena-Garcia*, 362 F.3d 663, 666 (10th Cir. 2004) (“resulting in death and causing death are not equivalents”); *see also United States v. Whiting*, 471 F.3d 792, 802 (7th Cir. 2006) (“Causation includes two distinct principles, cause in fact, commonly known as ‘but for’ causation, and legal causation.”).

The First Circuit’s reading of causation would blur the clear distinction between §4C1.1(a)(6) and §2B1.1(b)(2) that Application Note 1 explicitly mandates courts to uphold as separate. Mr. Abbas’s convictions for wire fraud and conspiracy to commit money laundering stem from his receipt and transfer of funds obtained through the fraudulent actions of unknown individuals. The fact that others caused these transfers does not mean Mr. Abbas “personally caused” them. By failing to make the connection, the First Circuit renders the language difference superfluous. If every participant in a fraud scheme that “resulted in” financial hardship under §

2B1.1(b)(2) is also deemed to have "personally caused" it under § 4C1.1(a)(6), the word "personally" does no work at all.

C. This question is important to resolve and will continue to occur.

The zero-point-offender reduction affects every first-time defendant with no criminal history. USSG § 4C1.1 applies to every zero-criminal-history defendant sentenced in federal court, and fraud schemes involving multiple participants—organizers, intermediaries, and those who merely receive or move funds—are common. Whether "personally caused" reaches participants who never dealt directly with a victim is a recurring question with substantial consequences for a defendant's guideline range, and it warrants this Court's resolution independent of the waiver ruling below.

IV. The First Circuit's handling of a domestic receipt of the funds of a foreign transaction misapplies this Court's extraterritoriality framework.

The First Circuit's ruling that a wholly foreign fraud becomes a domestic application of the wire-fraud statute the moment its proceeds are wired into a United States bank account warrants review in its own right, independent of the guideline-interpretation questions presented above. It also controlled the restitution order, so the same error affected two independent components of Mr. Abbas's sentence.

A. There was a transaction that was, on its face, a completely foreign fraud.

Every actor and event relevant to the foreign transaction, except the final destination of the money, occurred abroad. The victim, Pak Sum Low, was a resident of Kenya. The property taken was the proceeds of his Kenyan house. The deception was practiced on his Kenyan lawyers, who were misled, through impersonation, into believing they were acting on Mr. Low's own instructions. The wire transfer itself originated from the Kenyan law firm's account. The only domestic contact was the endpoint: an Illinois account Mr. Abbas controlled. On that basis alone, the district court and the First Circuit counted the entire $973,276.01 both toward Mr. Abbas's loss enhancement under USSG § 2B1.1(b)(1)(I) and toward his restitution obligation.

B. Domestic receipt of funds alone is insufficient to establish extraterritoriality.

This Court has instructed that a statute is applied extraterritorially whenever "the conduct relevant to the [statute's] focus occurred in a foreign country," regardless of "any other conduct that occurred in U.S. territory." *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 337 (2016). The First Circuit identified the wire-fraud statute's focus as the "misuse of wires," but then treated the passive act of a foreign wire landing in a domestic account as itself sufficient "conduct relevant to th[at] focus"—without addressing whether the conduct that actually constituted the misuse (the fraudulent instruction to Mr. Low's lawyers, and their decision, in Kenya, to wire the funds) occurred abroad. Under that reasoning, a wholly foreign fraud against a wholly foreign victim becomes a domestic application of federal criminal law the instant the criminal chooses an

American bank to receive the money. This is a result that does not depend on anything Congress or the wrongdoer did in the United States, only on where the defendant happened to bank. It is difficult to square with this Court's repeated instruction that the presumption against extraterritoriality exists precisely to prevent "unintended clashes between our laws and those of other nations" and that a statute's focus is "the object of its solicitude." *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 413-14 (2018). This includes both the conduct the statute "seeks to regulate" and the parties and interests it "seeks to protect" or vindicate. *Id.*

A wholly foreign victim defrauded of wholly foreign property is not the interest the wire-fraud statute's focus is meant to vindicate merely because the criminal later moved the money through a domestic bank. "The wire fraud statute punishes the scheme, not its success." *Pasquantino v. United States*, 544 U.S. 349, 371(*quoting United States v. Pierce*, 224 F.3d 158, 166 (2d Cir. 2000) (cleaned up)); *see also Durland v. United States*, 161 U.S. 306, 313 (1896) ("The significant fact is the intent and purpose.") *Pasquantino's* domestic-application holding rested on the defendants executing the scheme from within the United States, whereas here the deceptive conduct was carried out entirely by unknown actors in Kenya, with Abbas doing nothing until the money had already been fraudulently obtained.

C. The same flawed analysis extended to the restitution order.

Similarly, the Mandatory Victim Restitution Act directs restitution to any "victim of the offense," including, for scheme offenses, "any person directly harmed by the defendant's criminal conduct in the course of the scheme." 18 U.S.C. § 3663A(a)(2). The First Circuit treated Mr. Abbas's restitution challenge as controlled entirely by its loss-calculation ruling, reasoning that because the wire-fraud statute reached the Low transaction, restitution for that same loss necessarily followed. Because the restitution ruling rests entirely on the extraterritoriality analysis challenged above, correcting that analysis would necessarily require the restitution order to be reexamined as well.

D. The recurrence of this question in an era of transnational fraud prosecutions warrants this Court's guidance.

Romance scams and business-email compromises—the very schemes at issue in this prosecution—routinely involve victims, intermediaries, and co-schemers scattered across multiple countries, with a wire transfer's only domestic contact being the receiving bank account. If the mere receipt of funds in a United States account is enough to convert an otherwise foreign scheme into a domestic application of the wire-fraud statute, the presumption against extraterritoriality will do little work in precisely the class of cases—cross-border financial fraud—where that presumption's role in avoiding unintended international friction matters most. This Court's guidance is needed on how the focus test applies when the only domestic contact is the passive receipt of a wire whose sending, and whose underlying fraud, occurred entirely abroad.

CONCLUSION

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

Respectfully submitted,

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