No. 26-5159

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

PETITIONER'S REPLY TO THE UNITED STATES' BRIEF IN OPPOSITION

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INTRODUCTION

The Government does not dispute the fact that matters most. A defendant convicted of a money-laundering conspiracy under 18 U.S.C. § 1956(h), whose sole object was a § 1957 offense, receives a four-level enhancement under Sentencing Guidelines § 2S1.1(b)(2)(B) and (b)(3) in the First Circuit and does not receive it in the Seventh. See *United States v. Tedder*, 403 F.3d 836, 843-844 (7th Cir. 2005). The Government says the Seventh Circuit did not hear the same arguments the First Circuit considered below. *Brief for the United States in Opposition* ("Opp.") 11-12. But it does not contend that Petitioner's guideline range would have been the same had he been sentenced in Chicago. It would not: the enhancements moved Petitioner's offense level from 28 to 31, and his range from 78-97 months to 108-135 months.

That disparity is not hypothetical here. Petitioner lived and practiced law in Chicago, and the accounts at the center of this case were in Illinois. The First Circuit has already held that venue for the laundering counts did not lie in Massachusetts. *United States v. Abbas*, 100 F.4th 267, 282-288 (1st Cir. 2024). Had Petitioner been prosecuted where his conduct occurred, *Tedder* would have controlled his sentence. The length of a federal sentence should not turn on which side of a circuit line the Government chooses to indict.

The Government's responses to the second and third questions likewise do not diminish the need for review. On the second question, the Government distinguishes the decisions of other circuits by the statutory maximum of the

underlying offense. Opp. 13-14. The First Circuit noted this, but did not rest on that distinction; it rejected an earlier Sixth Circuit case holding that the laundering count must be the reference point. *Petitioner's Appendix* ("Pet. App.") 9-11. That threshold question will recur whenever a defendant is convicted of both fraud and laundering.

On the third question, the Government rests largely on the court of appeals' waiver ruling. Opp. 15-16. But Petitioner argued at resentencing and on appeal that § 4C1.1(a)(6) requires that the defendant "cause the harm himself," and that "personally cause" is narrower than "resulted in." Pet. C.A. Br. at 27-30.

Finally, on the fourth question, the Government's new threshold argument (that the presumption against extraterritoriality may not apply to relevant conduct under the Guidelines) has no bearing on the restitution order. Opp. 18. Restitution rests on the Mandatory Victims Restitution Act, not on the Guidelines or 18 U.S.C. § 3661.

ARGUMENT IN REPLY

I. The Circuits are divided over whether Note 3(C) applies to a defendant whose base offense level comes from § 2S1.1(a)(1).

A. The conflict is real and decided this case.

When holding that the heading of Note 3 does not limit the Note's text, the Seventh Circuit in *Tedder* said:

> The text of Application Note 3(C) is unambiguous and covers Tedder's situation; consideration of its heading not only would not help us to understand the language but also would defeat its evident purport. We read Application Note 3(C) to say that the Sentencing Commission has decided not to use whatever leeway it possesses to prescribe different penalties for money laundering and money-laundering conspiracies, but instead wants courts to impose the same punishment for these two offenses.

Tedder, 403 F.3d at 844. When addressing whether this note should depend on which subsection is applied, the *Tedder* court observed: "It is hard to imagine why application of the rule in Note 3(C) should turn on which subdivision of subsection (a) was used to derive the base offense level." *Id.* at 843-44. The Government says the Seventh Circuit was not presented with the same arguments presented here, Opp. 11-12, but *Tedder* addressed the very question decided below: whether Note 3(C) turns on the subsection that supplies the base offense level.

The First Circuit answered the question the other way: "because Note 3(C) comes under the caption 'Application of Subsection (a)(2),' it controls only when the base level comes from USSG § 2S1.1(a)(2)." Pet. App. 12. Petitioner's case, the court noted, comes from USSG § 2S1.1(a)(1). Id.

This circuit split produces substantially different sentences for similarly situated defendants, and Mr. Abbas is an example. Had Petitioner been sentenced in the Seventh Circuit, his offense level would have been 28 and his range 78-97 months. Instead, in the First Circuit, his range was 108-135 months. The District Court took the bottom of the erroneous range, 108 months, as its starting point and varied downward from there. "In most cases, a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome." *Molina-Martinez v. United States*, 578 U.S. 189, 200 (2016).

The issue rarely reaches the courts of appeals because most cases plead, but it determines the range whenever it arises.

B. The Sentencing Commission has not acted to correct this split.

This Court has declined to resolve disputes over the meaning of certain Guidelines because "the Commission has already undertaken a proceeding that will eliminate circuit conflict." *Braxton v. United States*, 500 U.S. 344, 348-49 (1991). Here, the Commission has been silent for over twenty years, leaving this Court as the only avenue for resolution. *See Guerrant v. United States,* 595 U.S. 1158 (2022) (Statement of Sotomayor, J. joined by Barrett, J. respecting the denial of certiorari) (raising concern about the Sentencing Commission's lack of a quorum leaving unresolved divisions among the Court of Appeals); *see also Early v. United States*, 502 U.S. 920 (1991) (White, J. dissenting from a denial of certiorari because the Sentencing Commission "has not addressed [a] recurring issue" splitting the Courts

of Appeals). Although the Sentencing Commission reestablished a quorum in 2022, it has taken no action on Note 3(C). The Government treats the Commission's twenty years of silence as a reason to deny review. Opp. 11-12. It is the reason to grant it.

C. The First Circuit's logic does not stand.

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). The Government argues that Note 3(A)'s "umbrella paragraph" limits the entire note to subsection (a)(2). Opp. 10 (*citing* Sentencing Guidelines § 2S1.1, comment (n.3(A)) and *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022)). The Government's own authority helps make Petitioner's point: "to discern that ordinary meaning, those words must be read and interpreted in their context, not in isolation." *Southwest Airlines*, 596 U.S. at 455.

If Note 3(A) is to be read as framing the note generally, as the Government suggests, then the Commission had no reason to repeat "(a)(2)" in 3(A) and 3(B). "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." *Tedder*, F.3d at 843-44. The repetition shows the Commission knows how to expressly limit subparts when it means to.

The Government also relies on the Commission's 2001 amendment, which "subject[ed] 'direct' money launderers like Petitioner, covered by Section 2S1.1(a)(1),

to greater offense levels than 'third-party' launderers covered by Section 2S1.1(a)(2)." Opp. 10 (citing U.S.S.G. App. C, amend. 634). But Note 3(C) was adopted in the same amendment. The Commission thus drew the direct/third-party distinction and wrote Note 3(C) at the same time, and keyed Note 3(C) to the conviction under § 1956(h), not to the subsection from which the base offense level is derived.

The Government's only response to the inchoate-offense point raised in the Petition is that § 1956(h) "simply means" conspirators face "the same statutory penalties" as substantive offenders and "does not mean that direct and third-party launderers must be treated identically" under the Guidelines. Opp. 11. That answers an argument Petitioner did not make. Petitioner's comparison is not between direct and third-party launderers. It is between two defendants whose base offense levels come from § 2S1.1(a)(1). A defendant whose base offense level comes from this subsection and who is convicted of a substantive § 1957 offense receives a one-level increase under § 2S1.1(b)(2)(A). Under the decision below, the same defendant convicted only of *conspiring* to commit that § 1957 offense receives two levels under § 2S1.1(b)(2)(B), plus two more under § 2S1.1(b)(3), which applies only when (b)(2)(B) does. The distinction the Commission drew in 2001 between direct and third-party launderers cannot explain why an agreement to commit a crime is punished three levels more severely than committing it.

The Government does not defend that result, and the Guidelines do not allow it. Even accepting the Government's reading of § 1956(h) as a statement about

statutory exposure, the Guidelines independently reflect the same principle: "[t]hroughout the Sentencing Guidelines inchoate offenses either are treated identically to the corresponding substantive crimes, or are treated as less serious." *Tedder*, 403 F.3d at 844 (citing USSG § 2X1.1). The Government's brief does not mention § 2X1.1 or this part of *Tedder*'s reasoning. Note 3(C) implements this principle for money-laundering conspiracies. The First Circuit read it out of every case in which the base offense level comes from subsection (a)(1). Nothing in the text of the Note supports that limitation, and the Government identifies no reason the Commission would have intended it.

II. The Government's fact-based objections do not resolve the question of what "the offense of conviction" means in a money laundering conviction sentenced under USSG § 2S1.1(a)(1).

The Government distinguishes *Osuji*, *Abdelsalam*, *Hallahan*, and *Klassy* on the ground that the underlying offenses in those cases carried statutory maximums below twenty years. Opp. 13-14. The court below did not rest on that distinction. It rejected *Abdelsalam's* premise that the laundering count is the reference point for § 2B1.1(a)(1). Instead, it adopted the D.C. Circuit's view that because the guideline refers to "an" offense of conviction, level 7 applies if any one of the defendant's convictions is referenced to § 2B1.1 and carries a twenty-year maximum. Pet. App. 9-10; *see United States v. Otunyo*, 63 F.4th 948, 956-957 (D.C. Cir. 2023). The disagreement is thus over a threshold legal question. When a laundering count is sentenced under § 2S1.1(a)(1), does § 2B1.1(a)(1) ask about that count, or about any count in the judgment?

The Government's answer rests on the word "an," Opp. 13, but the commentary that defines the phrase points to the count being sentenced. Under Application Note 2(A), an offense is "referenced to this guideline" if either (i) § 2B1.1 is "the applicable Chapter Two guideline specifically referenced in Appendix A (Statutory Index) for the offense of conviction, as determined under the provisions of §1B1.2 (Applicable Guidelines)," or (ii) the conviction is for a conspiracy, solicitation, or attempt under § 2X1.1 whose object offense is referenced to § 2B1.1. U.S.S.G. § 2B1.1, comment. (n.2(A)). Section 1B1.2, in turn, identifies the offense of conviction by "the offense conduct charged in the count of the indictment or information of which the defendant was convicted." U.S.S.G. § 1B1.2(a). The inquiry is thus count-specific by the commentary's own terms.

Petitioner's laundering conviction satisfies neither prong of Note 2(A). Appendix A references § 1956(h) only to § 2S1.1, and § 1956(h) conspiracies are sentenced under § 2S1.1, not § 2X1.1. Under the decision below, that count nonetheless receives level 7. It does so not because the laundering conviction satisfies Note 2(A), but because a different count, sentenced under a different guideline, does. *Abdelsalam* declined to read the guideline that way because, if offenses reached only indirectly qualified, then "subsection (A) would be surplusage, without independent meaning." *United States v. Abdelsalam*, 311 F. App'x 832, 845 (6th Cir. 2009). Note 2(A)(ii) specifies the one circumstance in which a conviction not itself referenced to § 2B1.1 may trigger level 7, and a § 1956(h) conviction is not within it.

Other courts have likewise applied level 6 when sentencing laundering counts. *United States v. Osuji*, 413 F. App'x 603, 613 (4th Cir. 2011); *United States v. Hallahan*, 756 F.3d 962, 976 (7th Cir. 2014); *United States v. Klassy*, 409 F. App'x 169, 171 (9th Cir. 2011). As the Government notes, they did so without extended analysis. Opp. 14. The question will nonetheless recur. Defendants are routinely convicted of both a fraud offense and of laundering its proceeds. In every such case, the decision below raises the base offense level for the laundering count based on a different count of conviction.

III. The Government's objections do not answer the legal question of what "personally cause" requires.

The Government relies principally on the court of appeals' waiver ruling in its objections to the third question raised in the Petition. Opp. 15. The record shows the issue was presented. At resentencing, Petitioner argued that § 4C1.1(a)(6) requires that the defendant "cause the harm himself," and his acts did not personally cause the harm. Court of Appeals App. 117-120. On appeal, he argued that "personally caused" is narrower than "resulted in," relying on Note 1's instruction that the two be determined independently. Pet. C.A. Br. at 27-30.

The Government contends that the facts of this case would satisfy a proximate-cause standard, citing the district court's description of Petitioner's role as "integral" and a "necessary part of the scheme," Opp. 16; Pet. App. 27. But a finding that conduct was necessary to a harm is a finding of but-for causation. Proximate cause asks a different question: whether the harm bears a sufficiently direct relationship to the defendant's own conduct. *See Paroline v. United States*,

572 U.S. 434, 444-445 (2014). The district court never asked that question. Petitioner therefore does not ask this Court "to review evidence and discuss specific facts." Opp. 16 (*quoting United States v. Johnston*, 268 U.S. 220, 227 (1925)). He asks which legal standard governs.

The Ninth Circuit has held that Guidelines causation "embraces two distinct concepts: but-for causation and proximate causation," and that the Commission did not "mean to dispense with [proximate cause] without saying so." *United States v. George*, 949 F.3d 1181, 1187 (9th Cir. 2020) (cleaned up) (finding causation when a defendant's direct interactions with victims were both a direct and a but-for cause of their financial hardship). District courts are now grappling with this. See *United States v. Daramola*, 2024 WL 4241840, at *6 (D.N.M. Sept. 19, 2024) ("To effectuate the Commission's intention, the Court must give real teeth to the phrase, 'personally cause,' so that the applicability of §4C1.1(a)(6) can be made independently of the application of §2B1.1(b)(2)."); *United States v. Morris*, 2025 WL 1473945, at *3 (D. Kan. May 22, 2025) ("[B]y excluding only those defendants who 'personally caused' the financial hardship, the Sentencing Commission ensures that defendants who acted as 'middlemen' or had minor links in the causation chain, are still eligible for the two-offense level reduction."); *United States v. Elendu*, 2024 WL 458643, at *3 (S.D.N.Y. Feb. 6, 2024) ("[I]t is assumed that his money laundering activity as a member of a conspiracy that defrauded individuals and businesses would not disqualify him since he did not 'personally cause' substantial financial hardship to the victims of the fraud in which he participated.")

Section 4C1.1 took effect in November 2023 and applies to every defendant with zero criminal-history points. Whether "personally" excludes harm attributable to a defendant only through the conduct of others remains unsettled.

IV. The First Circuit treats domestic receipt of a foreign fraud's proceeds as a domestic application of § 1343.

The Government suggests that Petitioner's claim might be recast as one about relevant conduct under the Guidelines, which would require resolving whether the presumption against extraterritoriality applies to relevant conduct at all. Opp. 18-19. Petitioner makes no such claim. The question presented is what conduct is "relevant to the statute's focus" under *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 337 (2016), when the statute is 18 U.S.C. § 1343.

The Mandatory Victims Restitution Act reaches the "victim of the offense," 18 U.S.C. § 3663A(a)(2), a category "narrower than relevant conduct under the Guidelines." *United States v. Orillo*, 733 F.3d 241, 244 (7th Cir. 2013). The Fourth Circuit has held that because the wire-fraud statute reaches only domestic conduct, a conspiracy whose object is foreign wire fraud "cannot justify imposing restitution." *United States v. Elbaz*, 52 F.4th 593, 602, 610-611 (4th Cir. 2022).

The court below treated the focus of § 1343 as the misuse of the wires, so that a wire "originating internationally but received domestically" suffices, without more. Pet. App. 23. Even the Second Circuit, which also treats the use of the wires as the statute's focus, requires that domestic wire use be "a core component of the scheme to defraud," not merely incidental. *See United States v. Bascuñán*, 927 F.3d 108, 122 (2d Cir. 2019). That reading accords with this Court's description of § 1343

as prohibiting "any scheme to defraud" — "fraud simpliciter," without any requirement that it be "in connection with" a particular transaction. *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 271-272 (2010).

The Government relies on *Pasquantino v. United States*, 544 U.S. 349 (2005), Opp. 17-18, but that decision does not provide the shelter the Government assumes. This Court explained that its "interpretation of the wire fraud statute does not give it 'extraterritorial effect,'" because the defendants "used U.S. interstate wires to execute a scheme to defraud a foreign sovereign," and their "offense was complete the moment they executed the scheme inside the United States." *Id.* at 371. Domestic application in *Pasquantino* thus rested on where the scheme was executed. Here, the scheme against Pak Sum Low was executed in Kenya. Actors in Kenya deceived his Kenyan lawyers, through spoofed instructions, into wiring the proceeds of his Kenyan home from the firm's account to an account the Petitioner controlled. Pet. App. 19-20. The Government's emphasis on the Petitioner's conduct in Illinois, Opp. 18, assumes the answer to the question presented: that conduct matters only if the statute's focus is the wire rather than the scheme.

The question will recur. Romance scams and business-email-compromise schemes routinely involve foreign victims and foreign actors, with a domestic receiving account as the only U.S. contact. Whether that account alone makes the prosecution of a foreign fraud a domestic application of § 1343 is a question this Court should resolve.

CONCLUSION

For the foregoing reasons and those stated in the Petition, this Court should grant the petition for a writ of certiorari.

Respectfully submitted, November 6, 2026.

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