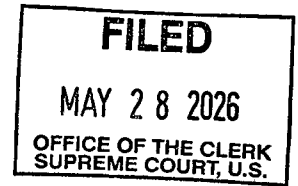


ORIGINAL

No. _____

26-5915



IN THE SUPREME COURT OF THE UNITED STATES

GEORGE GEORGIOU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the

United States Court of Appeals

for the Third Circuit

(No. 25-2199)

PETITION FOR A WRIT OF CERTIORARI

GEORGE GEORGIOU

Pro Se Petitioner

#61499-066

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June 2026

QUESTIONS PRESENTED

1. Whether the Constitution permits continued enforcement of a criminal forfeiture rendered substantively unlawful by *Honeycutt v. United States* — which the government concedes applies retroactively on collateral review — where no statutory post-conviction vehicle exists to effectuate that retroactivity because the forfeiture is non-custodial and 28 U.S.C. § 2255 does not reach it, leaving the defendant subject to punishment the law no longer authorizes and without any procedural mechanism to obtain relief.
2. Whether a court of appeals may deny *audita querela* relief from a forfeiture rendered substantively unlawful by *Honeycutt v. United States* based on the factual predicate that forfeiture was never challenged on direct appeal — a predicate the record shows is false — without first adjudicating the petitioner's un rebutted allegation of fraud on the court directed at that predicate. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).
3. Whether summary affirmance is permissible where the prosecutor was formally disqualified and compelled to testify as a necessary fact witness regarding his own conflict of interest, yet continued to control the post-conviction proceedings — including the forfeiture briefing — that the Constitution requires be conducted by a disinterested prosecutor. See *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987).

4. Whether a court of appeals may summarily affirm a judgment where preserved claims of structural error — specifically, judicial bias — remain entirely undefended by the government on the merits and have never been adjudicated on the merits by any court. See *In re Murchison*, 349 U.S. 133 (1955).

PARTIES TO THE PROCEEDING

Petitioner George Georgiou was the defendant-appellant below. He is currently confined at FCI Otisville, Otisville, New York, and proceeds pro se.

Respondent is the United States of America, represented below by the United States Attorney for the Eastern District of Pennsylvania.

There are no corporate parties. No corporate disclosure statement is required.

RELATED PROCEEDINGS

A related motion is pending in the district court: *United States v. Georgiou*, No. 2:09-cr-00088 (E.D. Pa.), in which Petitioner filed a Motion for Relief from Judgment under Rules 60(b) and 60(d)(3) on May 18, 2026 (ECF No. 710), challenging structural defects in the integrity of the § 2255 habeas proceedings. The questions presented in that motion substantially overlap with Questions Three and Four presented here. No decision has issued.

On May 14, 2026, the Third Circuit affirmed a civil disgorgement judgment of approximately \$21 million against Petitioner in *SEC v. Georgiou*, No. 23-1751, applying the criminal conviction as preclusive under collateral estoppel without addressing the structural defects at issue in this petition.

On May 26, 2026, Petitioner filed a petition for rehearing *en banc* in the Third Circuit in No. 23-1751, challenging the civil disgorgement judgment on collateral estoppel grounds that include the structural errors presented here.

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Opinions Below

The opinion of the United States Court of Appeals for the Third Circuit summarily affirming the orders of the district court (App., *infra*, 1) is unpublished and non-precedential. It was filed December 12, 2025, in No. 25-2199. The order of the Third Circuit denying rehearing *en banc* (App., *infra*, 2) was entered January 9, 2026, by the full court. Neither opinion has been reported in the Federal Appendix.

The district court order denying Petitioner's motions for reconsideration of the denial of *audita querela* relief, appointment of counsel, and compassionate release (App., *infra*, 3) was entered June 6, 2025, by the United States District Court for the Eastern District of Pennsylvania (Quiñones Alejandro, J.), in No. 2:09-cr-00088. It is unreported. The district court order denying the second petition for a writ of *audita querela* and related motions (App., *infra*, 4) was entered June 23, 2022, by the United States District Court for the Eastern District of Pennsylvania (Jones, J.). It is unreported.

For context, the Third Circuit's earlier non-precedential opinion affirming the denial of Petitioner's first *audita querela* petition is reported at *United States v. Georgiou*, 800 F. App'x 136 (3d Cir. 2020), certiorari denied, No. 20-280 (Oct. 13, 2020). The Third Circuit's opinion affirming Petitioner's conviction and sentence on direct appeal is reported at *United States v. Georgiou*, 777 F.3d 125 (3d Cir. 2015), certiorari denied, 577 U.S. —, 136 S. Ct. 401 (Nov. 2, 2015) (No. 14-1535). Neither

of those prior denials of certiorari addressed the questions presented here. *See Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912, 919 (1950) (Frankfurter, J.) (denial of certiorari imports no expression of opinion upon the merits).

Jurisdiction

The United States Court of Appeals for the Third Circuit entered its order summarily affirming the judgment of the district court on **December 12, 2025** (App., *infra*, 1). The court of appeals denied rehearing *en banc* — without a single judge requesting rehearing — on **January 9, 2026** (App., *infra*, 2). The timely filing of a petition for rehearing *en banc* tolled the time for seeking certiorari. *See* Sup. Ct. R. 13.3.

The original ninety-day period for filing a petition for a writ of certiorari expired on **April 9, 2026**. On March 21, 2026, Petitioner applied to Justice Alito, as Circuit Justice for the Third Circuit, for an extension of time. On **March 30, 2026**, Justice Alito granted the application (No. 25A1069), extending the time to file to and including **June 8, 2026**. This petition is timely filed.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

The United States District Court for the Eastern District of Pennsylvania had subject matter jurisdiction under 18 U.S.C. § 3231. The court of appeals had appellate jurisdiction under 28 U.S.C. § 1291. Petitioner invokes the district court's jurisdiction to grant relief in the nature of *audita querela* under the All Writs Act,

28 U.S.C. § 1651, a source of equitable authority this Court has recognized as available in criminal cases to fill gaps in the post-conviction remedial system. See *United States v. Morgan*, 346 U.S. 502, 506 (1954); *United States v. Denedo*, 556 U.S. 904, 910–11 (2009); *United States v. Massey*, 581 F.3d 172, 174 (3d Cir. 2009).

A note on the prior denial of certiorari in No. 20-280. This Court denied certiorari on October 13, 2020, in Petitioner's first application for review of the Third Circuit's denial of his initial *audita querela* petition. That petition presented a single question: whether the All Writs Act affords a remedy to correct a criminal financial penalty rendered illegal by a retroactive statutory-construction decision of this Court. The petition did not — and could not — present the questions raised here: whether the Third Circuit's denial rested on a fraudulently obtained factual predicate that the court refused to adjudicate before reaffirming; whether preserved claims of structural constitutional error may be summarily affirmed without merits adjudication; or whether summary affirmance is permissible where the prosecutor was formally disqualified yet continued to control the proceedings he was disqualified from. Those claims were not yet ripe in 2020. They are fully presented and exhausted here.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are directly implicated by the Questions Presented. Pertinent text is reproduced verbatim below. *See Sup. Ct. R. 14.1(f).*

United States Constitution, Amendment V (Due Process Clause):

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Relevance: Questions Three and Four invoke the Fifth Amendment's guarantee of prosecution by a disinterested sovereign, and adjudication by a neutral tribunal. *See Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807–09 (1987); *In re Murchison*, 349 U.S. 133, 136 (1955). Question Two invokes the guarantee against enforcement of a financial penalty that no law authorizes.

United States Constitution, Amendment VIII (Excessive Fines Clause):

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Relevance: A criminal forfeiture that bears no rational relationship to the proceeds a defendant actually obtained — and that is imposed on a defendant who received a small fraction of the sum forfeited — implicates the Excessive Fines Clause. *See Austin v. United States*, 509 U.S. 602, 622 (1993); *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). The absence of any post-conviction vehicle to challenge such a forfeiture compounds the constitutional injury Questions One and Two address.

28 U.S.C. § 1651 — The All Writs Act:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Relevance: Section 1651 is the sole post-conviction vehicle available to Petitioner.

Questions One and Two turn on whether *audita querela* under this provision may fill the remedial gap created by the absence of any statutory mechanism to challenge a final forfeiture rendered unlawful by retroactive Supreme Court precedent.

28 U.S.C. § 2255(a) — Federal Prisoners; Motion to Vacate Sentence:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Relevance: Section 2255 is unavailable to Petitioner for his forfeiture challenge because it is confined to persons claiming the right to be released from custody. A criminal forfeiture does not place a defendant in custody and is accordingly not cognizable under § 2255. *See Kaminski v. United States*, 339 F.3d 84, 87 (2d Cir. 2003). This custodial limitation, combined with the repeal in 1987 of former Fed. R. Crim. P. 35(a) — which had permitted correction of an illegal sentence "at any time" — creates the remedial gap that Questions One and Two present.

**18 U.S.C. § 981(a)(1)(C) — Civil Forfeiture (made criminally enforceable by
28 U.S.C. § 2461(c)):**

(a)(1) The following property is subject to forfeiture to the United States:

....
(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

Relevance: This is the forfeiture statute under which the \$26 million money judgment was entered against Petitioner. The Third Circuit has held that *Honeycutt's* limitation of forfeiture to proceeds a defendant actually obtained — construing parallel language in 21 U.S.C. § 853(a) — applies with equal force to § 981(a)(1)(C). *United States v. Gjeli*, 867 F.3d 418, 426–28 (3d Cir. 2017). The government conceded *Honeycutt's* retroactivity before the district court below.

**21 U.S.C. § 853(a) — Criminal Forfeiture (the statute construed in
Honeycutt):**

Any person convicted of a violation of this subchapter . . . shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation[.]

Relevance: In *Honeycutt v. United States*, 137 S. Ct. 1626 (2017), this Court construed § 853(a)(1) to bar joint and several forfeiture liability, holding that forfeiture reaches only property the individual defendant personally obtained. That holding — substantive and retroactive, the government conceded — rendered Petitioner's \$26 million forfeiture unlawful. The absence of any statutory

mechanism to enforce that right on collateral review is the constitutional anomaly at the center of this petition.

Former Fed. R. Crim. P. 35(a) (in force March 21, 1946 – October 31, 1987):

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

Relevance: For over forty years, Rule 35(a) provided a simple, unrestricted mechanism to correct an illegal sentence at any time. Congress repealed it in the Sentencing Reform Act of 1984, Pub. L. 98-473, § 215(b), 98 Stat. 2015 (eff. Nov. 1, 1987), to conform the rule to the new appellate review provisions of 18 U.S.C. § 3742. Nothing in the legislative history suggests any intent to abolish the historic judicial power to correct an illegal sentence whenever the illegality is discovered. See S. Rep. 98-225, 98th Cong., 1st Sess. 158 (1983). The repeal created the remedial gap that *audita querela* under § 1651 now exists to fill.

Introduction

This Court held unanimously in 2017 that a defendant may not forfeit what he never obtained — a substantive rule the government concedes applies retroactively. Yet there is no statutory vehicle through which a defendant may enforce that right against a final forfeiture order. The vehicle Congress provided for forty years was repealed in 1987 and never replaced. A right without a remedy is not a right.

The forfeiture at issue was \$26 million, calculated not on what Petitioner obtained but on what victims lost — the government's own forfeiture motion said so expressly. ECF 220, n.1 (Supp. App., *infra*, SA-1). Petitioner's account-by-account analysis, uncontested by the government before the district court, showed \$599,000 in gross proceeds. The government's own lead prosecutor told the jury that the person who profited most was a co-conspirator. Sixteen years later, a \$26 million forfeiture measured by a standard this Court unanimously rejected stands fully enforced, with no court ever having examined whether *Honeycutt* requires its reduction.

The proceedings that should have provided the remedy were themselves structurally compromised. The district court formally disqualified the prosecutor and ordered him to testify as a fact witness about his own conflict. He did not recuse. Thereafter he controlled every aspect of the post-conviction proceedings: scripting the proposed findings of fact, preparing the witnesses, authoring every

government brief in the criminal proceedings at every level, and defending the forfeiture he obtained through each appeal up to and including the proceeding now before this Court. The judge who presided over those proceedings had declared the defendant guilty of the charged fraud before the jury deliberated — making himself, in this Court's words, “part of the accusatory process” — and had issued the forfeiture order itself. These structural errors have never been adjudicated on the merits.

Petitioner has served nearly seventeen years of a twenty-five year sentence. The \$26 million forfeiture has generated a further \$21 million civil disgorgement judgment in parallel SEC proceedings, using the criminal conviction as preclusive. This petition presents four grounds for this Court's review. Each is independently sufficient. None has been answered by any court. Only this Court can answer them.

STATEMENT OF THE CASE

I. The Conviction and Sentence.

Following a jury trial in the Eastern District of Pennsylvania, Petitioner George Georgiou was convicted on nine counts of securities fraud, wire fraud, and conspiracy. On November 19, 2010, the district court (Kelly, J.) sentenced him to 300 months' imprisonment and issued a \$26 million criminal forfeiture money judgment pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) — a judgment calculated on the basis of victim "loss," not proceeds obtained. ECF 220 n.1 (Supp. App., *infra*, SA-1). The conviction and sentence were affirmed on direct appeal. *United States v. Georgiou*, 777 F.3d 125 (3d Cir. 2015), *cert. denied*, 136 S. Ct. 401 (Nov. 2, 2015). Petitioner's conviction became final on November 2, 2015.

II. *Honeycutt v. United States* and the Remedial Landscape.

On June 5, 2017, this Court decided *Honeycutt v. United States*, 137 S. Ct. 1626 (2017). The Third Circuit recognized that *Honeycutt's* construction of the criminal forfeiture statutes applies with equal force to § 981(a)(1)(C). *United States v. Gjeli*, 867 F.3d 418, 426–28 (3d Cir. 2017).

No statutory vehicle exists to challenge a final criminal forfeiture on the basis of a post-conviction decision of this Court. Section 2255 provides relief only to prisoners claiming "the right to be released upon the ground that the sentence was imposed in violation of" law — a custody-based remedy that does not reach criminal financial penalties. 28 U.S.C. § 2255(a). The former Fed. R. Crim. P. 35(a), which

permitted correction of an illegal sentence "at any time," was repealed effective November 1, 1987. No cognate provision was enacted. This Court has not addressed whether a writ of *audita querela* under 28 U.S.C. § 1651 fills that gap.

In July 2017, Petitioner filed a pro se motion in the district court for a writ of *audita querela* under 28 U.S.C. § 1651. ECF 384. The government's response, filed September 18, 2017, stated that *Honeycutt* "announced a substantive rule that has retroactive effect" on collateral review. ECF 457 at 12–13 (Supp. App., *infra*, SA-3). The government did not dispute Petitioner's factual averments. The district court denied the writ. The Third Circuit affirmed in a non-precedential opinion, holding that *audita querela* is categorically unavailable because the forfeiture orders "could have been challenged on direct appeal." *Georgiou*, 800 F. App'x 136, 139 (3d Cir. 2020). This Court denied certiorari in No. 20-280, October 13, 2020.

III. The Second *Audita Querela* Petition and the Fraud Allegation.

In August 2021, following the discovery of additional grounds, Petitioner filed a second petition for *audita querela*. ECF 642. Among other claims, the petition alleged that the government had procured the Third Circuit's 2020 denial through a misrepresentation: that Petitioner had never challenged the forfeiture on direct appeal. The petition identified the precise language in Petitioner's direct appeal brief, filed November 5, 2013, that contradicted that premise:

Moreover, the court's \$26,000,000 forfeiture determination was substantively erroneous. . . . Criminal forfeiture focuses on disgorgement, and a defendant's actual gain, not the victim's loss. . . . Here, the court failed to establish any

basis for the forfeiture amount, and the government failed to demonstrate the amount of criminal proceeds.

Brief for Appellant, No. 10-4774 (3d Cir., filed Nov. 5, 2013), at 88 (Supp. App., *infra*, SA-2).

The 2015 direct appeal opinion denied forfeiture relief without reaching the merits. 777 F.3d at 147. Five rounds of briefing followed in the district court. The government offered no factual response to the fraud allegation. In no filing did the government contest the existence or content of the cited passage.

No court has adjudicated whether the factual predicate on which the 2020 denial rested — that Petitioner never challenged forfeiture on direct appeal — was procured by misrepresentation. The district court denied the second petition without reaching that question. The Third Circuit summarily affirmed on December 12, 2025, relying on the same predicate (App., *infra*, 1 and 2). Whether a court of appeals may do so without first adjudicating an un rebutted fraud allegation directed at that predicate is a question this Court has not addressed.

IV. The Undefended Structural Claims.

The second petition raised two structural constitutional claims that no court has adjudicated on the merits at any level.

Disqualified prosecutor. On August 10, 2017, the district court formally disqualified Acting United States Attorney, Louis Lappen. Mr Lappen was ordered to testify as a necessary fact witness regarding his conflict of interest, namely, his

undisclosed personal involvement in the undercover operation. ECF 413. That prosecutor, however, did not recuse. Instead, he controlled every aspect of the post-conviction proceedings examining his conflict. He prepared the witnesses, objected to production and examination of evidence directly related to the conflict, coordinated his own testimony with his co-accused without sequestration, argued at every appearance, objected to Petitioner having appointment of counsel, sat at counsel table directing objections, personally litigated over thirty pre hearing motions, and authored the findings of fact and conclusions of law for those § 2255 proceedings, ECF 557, which the criminal court adopted verbatim. Thereafter, he authored every government brief in every subsequent proceeding in this case, including the forfeiture briefs filed in the Third Circuit appeal that produced the summary affirmance now before this Court. The government has not defended the merits of the disqualification claim in any filing at any level. No court has addressed it. Whether *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987), bars such control by a disqualified prosecutor, and whether summary affirmance is available where that structural question remains open and undefended, are questions this Court has not resolved.

Judicial bias. The judge who adopted the disqualified prosecutor's § 2255 findings of fact verbatim, — Kelly, J. — had openly stated at trial before the jury prior to verdict: "So what does that have to do with [Georgiou] committing this massive fraud?" Trial Tr. Feb. 1, 2010, at 216–17. Judge Kelly also issued the \$26 million forfeiture order. ECF 228. On October 12, 2018, after the § 2255

proceedings amplified Judge Kelly's partiality, Petitioner filed a comprehensive recusal motion, documenting the bench statement and numerous additional instances of bias and deep-seated favoritism toward the prosecution across the trial and post-conviction proceedings. ECF 620. The government did not contest the motion on its factual or legal merits in any filing at any level. The disqualified prosecutor then asked the district court to dismiss the motion for bias for lack of jurisdiction —as a Notice of Appeal had been filed. The district court did so without prejudice. ECF 623. Judge Kelly did not find the motion for bias and recusal to be untimely, procedurally deficient, or meritless.

V. The Proceedings Below.

The district court who inherited the case after Judge Kelly's retirement, Jones, J., denied the second *audita querela* petition on June 23, 2022. ECF 675 (App., *infra*, 4). Therein, Judge Jones dismissed the judicial bias claim *sua sponte* as untimely — a ground the government had not raised because the case was awaiting *certiorari* in this Court, unable to return to district court jurisdiction until the *certiorari* proceedings were complete. Judge Jones also addressed *Honeycutt* by attributing to the Third Circuit a holding — that *Honeycutt* "did not announce a new substantive rule" — that the Third Circuit had expressly declined to make. Compare ECF 675 at 2 with 800 F. App'x at 136 n.2 ("[b]ecause we conclude *audita querela* is not an available remedy, we need not reach the alternative ruling"). The fraud allegation, the prosecutorial disqualification claim, and Petitioner's factual averments on proceeds were not addressed.

Motions for reconsideration were filed. The case was reassigned to a different district judge. On June 6, 2025 — thirty-four months after the last brief was filed — the new court denied reconsideration. ECF 694 (App., *infra*, 3). The order was two pages. Its substantive analysis consisted of a single sentence stating the motions were "replete with the same arguments presented to and rejected on multiple occasions." None of the structural errors — the fraud allegation, the disqualified prosecutor's control, the judicial bias merits — were identified or addressed.

The Third Circuit summarily affirmed on December 12, 2025 (App., *infra*, 1). Its analytical content was one sentence, reaffirming that *audita querela* was unavailable because Petitioner had "failed" to challenge forfeiture on direct appeal.

Petitioner's undefended claims of fraud upon the court, and structural errors of a disqualified prosecutor controlling the proceedings and judicial bias, were not addressed. Petitioner's citation to Third Circuit binding precedent, *United States v. Rhines*, 640 F.3d 69, 71 (3d Cir. 2011), holding that denial of *audita querela* must be reviewed de novo, was neither adhered to or even mentioned. Rehearing *en banc* was denied January 9, 2026. All thirteen active judges of the Third Circuit were presented with the petition. Not one requested rehearing (App., *infra*, 2).

This petition follows.

Summary of Argument

First. This Court's unanimous holding in *Honeycutt v. United States* is a substantive rule that applies retroactively on collateral review — the government concedes it. Yet no statutory vehicle exists to enforce it against a final forfeiture order. The vehicle Congress provided for forty years was repealed in 1987 and never replaced. The All Writs Act fills that gap: *audita querela* is the historic remedy for a judgment valid when entered that supervening law has since rendered unlawful. The Third Circuit's categorical bar — that the writ is unavailable whenever the issue could have been raised on direct appeal — is irreconcilable with the constitutional mandate of retroactivity as applied to defendants who could not have raised *Honeycutt* before it was decided. Petitioner preserved the equivalent challenge on direct appeal in any event; the bar cannot apply to him on its own terms. This Court has not resolved whether the All Writs Act provides the remedy *Montgomery* and *Honeycutt* together require. It should.

Second. The Third Circuit's categorical bar rested on a false factual predicate — that Petitioner never challenged forfeiture on direct appeal — established through misrepresentations made by a formally disqualified prosecutor in proceedings from which he had been excluded. Courts of equity have never permitted the fruit of a fraud to serve as the instrument of its own perpetuation. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). A court may not invoke a prior denial as preclusive without first adjudicating an un rebutted fraud allegation directed at its factual foundation. No circuit has applied that principle in

the post-conviction context. Every court that dismisses a successive petition as previously litigated will eventually face it. This Court has not answered it.

Third. This Court held in *Young v. United States ex rel. Vuitton et Fils S.A.* that prosecution by an interested attorney is structural error requiring no showing of prejudice. That holding arose in a contempt proceeding. It has never been applied in the post-conviction context — where its guarantee is most needed. Here, the district court formally disqualified the prosecutor and ordered him to testify as a fact witness about his own conflict. He did not recuse. He thereafter controlled every stage of the post-conviction proceedings, authored the findings the district court adopted verbatim, and signed every government brief through the summary affirmance now before this Court — defending at each stage the forfeiture his disqualification had placed in question. Whether *Young* bars that participation, and what remedy it requires, are questions this Court has not resolved.

Fourth. The judge who issued the \$26 million forfeiture order declared the defendant guilty of the charged fraud before the jury deliberated — making himself, in this Court's words, "part of the accusatory process." He then presided over the § 2255 proceedings examining his own partiality and issued a 181-page denial adopting the disqualified prosecutor's proposed findings verbatim. The government has never contested the merits of the judicial bias claim at any level. No court has adjudicated it. Summary affirmance of a structural constitutional claim the government has declined to defend on the merits presents an important and unresolved question about the outer limits of that procedure.

Fifth. The Third Circuit's own IOP 10.6 authorizes summary affirmance only where the appeal presents no substantial question. Structural constitutional errors are presumptively prejudicial regardless of outcome — they are, by definition, substantial claims. The government's silence on the merits does not resolve a structural claim; it leaves it open. A court that affirms structural claims by treating "previously litigated" — applied to prior proceedings that themselves never reached the merits — as a finding of no substantial question has not applied the IOP's threshold. It has abandoned it. This Court has not defined the outer limits of summary affirmance in the face of preserved, undefended structural error. This case requires it to do so.

Reasons for Granting the Writ

This Court unanimously held in *Honeycutt v. United States*, 137 S. Ct. 1626 (2017), that criminal forfeiture is limited to proceeds a defendant actually obtained. That holding is a substantive rule. Substantive rules apply retroactively on collateral review as a matter of constitutional command. *Montgomery v. Louisiana*, 577 U.S. 190 (2016). The government concedes all three propositions. Yet there is no statutory vehicle through which a defendant whose final forfeiture order predates *Honeycutt* may enforce the right it confers. A right without a remedy is not a right — it is a statement. This Court created the right. Congress inadvertently eliminated the remedy. Only this Court can restore it. Four structural constitutional claims compound the anomaly: the forfeiture proceedings were controlled by a prosecutor the district court had disqualified; the judge who issued the forfeiture order declared guilt from the bench in the jury's presence before verdict; the denial of collateral relief rested on a false factual premise that same disqualified prosecutor created and no court has examined; and the court of appeals affirmed all of it summarily, without the government defending any of it on the merits.

I. This Court's Substantive, Retroactive Holding in *Honeycutt* Is Rendered Unenforceable Against Final Forfeiture Orders Predating 2017 — a Statutory Anomaly Congress Did Not Intend — with the All Writs Act the Only Remedy to Fill That Gap.

A. Mandatory retroactivity is constitutionally incompatible with the absence of any enforcement vehicle.

The retroactivity of substantive rules is not a matter of judicial discretion. It is a constitutional command. *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016) (substantive rules "apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act the law does not make criminal or faces a punishment that the law cannot impose upon him"). *Welch v. United States*, 578 U.S. 120, 130 (2016) (courts are "prohibited from imposing criminal punishment beyond what Congress in fact has enacted"). A judgment that imposes a punishment Congress has not authorized is not merely wrong — it is unlawful and constitutionally void. It must yield on collateral review as a matter of constitutional necessity, not grace.

The syllogism is inescapable. *Honeycutt* is a substantive rule — the government expressly conceded this before the district court, ECF 457 at 12–13 (Supp. App., *infra*, SA-3), and in multiple subsequent proceedings without ever withdrawing that concession.¹ A substantive rule applies retroactively as a constitutional necessity. *Montgomery*, 577 U.S. at 212. A forfeiture imposed in

¹ The government's concession that *Honeycutt* announced a substantive rule with retroactive effect on collateral review is not unique to this case. In *United States v. Daugerdas*, No. 09-cr-581 (S.D.N.Y.), the government made the identical concession explicitly. The NACDL and other amici have consistently argued that *Honeycutt* pronounced a new substantive rule applying retroactively under *Schiro v. Summerlin*, 542 U.S. 348 (2004). In *United States v. Bane*, 948 F.3d 1290, 1301–08 (11th Cir. 2020), Judge Martin dissented and collected cases demonstrating the strength of the argument for availability of extraordinary writs to fill the remedial gap *Honeycutt* created. The First Circuit in *Saccoccia v. United States*, 955 F.3d 171, 175 (1st Cir. 2020), and courts in *United States v. Bangiyev*, No. 1:16-cr-229 (E.D. Va.), have proceeded on the assumption that *Honeycutt* applies retroactively. No circuit has squarely held in a binding published opinion that *Honeycutt* is non-retroactive.

violation of *Honeycutt* is therefore a punishment Congress has not authorized. A punishment Congress has not authorized cannot constitutionally stand. The defendant from whom it is collected has a constitutional right to challenge it on collateral review. *Welch*, 578 U.S. at 130.

That right is presently unenforceable for an entire class of defendants — those whose unlawful forfeiture became final before *Honeycutt* was decided. Section 2255 is confined by its text to prisoners claiming "the right to be released" from custody. 28 U.S.C. § 2255(a). A criminal forfeiture does not place a defendant in custody. No court has held § 2255 available to challenge a forfeiture on the basis of intervening Supreme Court precedent; the weight of authority holds it unavailable. See *Kaminski v. United States*, 339 F.3d 84, 87 (2d Cir. 2003). No other statutory vehicle exists. The constitutional right announced in *Honeycutt* — amplified by *Montgomery* and *Welch* — is therefore a right without a remedy. That is the anomaly. It is not sustainable.

B. The gap is a legislative accident created by the 1987 repeal of former Rule 35(a) — not a deliberate policy choice.

The remedial void is of recent and accidental origin. For forty-one years — from the adoption of the Federal Rules of Criminal Procedure in 1946 to their amendment effective November 1, 1987 — former Fed. R. Crim. P. 35(a) provided a straightforward remedy: "The court may correct an illegal sentence at any time." No limitations period. No showing of prior challenge. No distinction between custodial and financial components. A defendant who discovered that subsequent Supreme

Court precedent had rendered his sentence illegal could seek correction as a matter of course. *United States v. Morgan*, 346 U.S. 502, 506 (1954).

Congress repealed Rule 35(a) in the Sentencing Reform Act of 1984, effective November 1, 1987, to align the correction mechanism with the new appellate review provisions of 18 U.S.C. § 3742. Pub. L. 98-473, § 215(b), 98 Stat. 2015. The Senate Report confirms the purpose was procedural modernization, not substantive elimination: the Committee intended to bring correction motions within the new appellate structure — not to extinguish the underlying judicial power to correct illegal sentences. S. Rep. 98-225, 98th Cong., 1st Sess. 158 (1983). Congress enacted no substitute for the forfeiture context. It could not have anticipated that this Court would later announce a substantive change in forfeiture law applicable retroactively to sentences already final — leaving defendants with a constitutional right and no procedural home in which to vindicate it.

C. The All Writs Act restores what the repeal inadvertently removed — and this case presents the question in its most unambiguous form.

The historic office of *audita querela* was precisely to address a judgment deemed valid when entered that has since been rendered unenforceable by supervening law. The All Writs Act, 28 U.S.C. § 1651, preserves that equitable power. This Court has recognized that the Act retains vitality in the post-conviction context to fill remedial gaps the statute leaves open. *United States v. Morgan*, 346 U.S. at 510–11; *United States v. Denedo*, 556 U.S. 904, 910–11 (2009). The Third Circuit itself has held that *audita querela* lies where there is "a legal, as opposed to

equitable, objection to a judgment which has arisen subsequent to that judgment." *United States v. Massey*, 581 F.3d 172, 174 (3d Cir. 2009). A Honeycutt challenge to a pre-Honeycutt forfeiture is precisely that — a legal objection arising subsequent to the judgment, for which no other remedy exists. Analogous circuits have confirmed the gap-filling function of § 1651 for illegal financial penalties where § 2255 does not reach. *United States v. Miller*, 599 F.3d 484, 488–89 (5th Cir. 2010); *United States v. Wilkozek*, 822 F.3d 364, 368–69 (7th Cir. 2016).

This Court's recent consideration of Honeycutt confirms that the enforcement question presented here is both ripe and distinct. In *Young v. United States*, 145 S. Ct. 1959 (2025), and again in *Cline v. United States*, No. 25-747 (cert. denied Feb. 23, 2026), the Court declined to address the scope of Honeycutt on direct review — specifically, whether a pass-through defendant who briefly controlled proceeds before transferring them to a co-conspirator "actually obtained" those proceeds. This petition presents the question those cases left untouched: how a defendant enforces what Honeycutt already means, retroactively, against a final order, when Congress has provided no statutory vehicle. The two denials clear the field. The enforcement question stands alone, unanswered, in a gap only this Court can fill.

This case presents that question in its most unambiguous form. The government's own forfeiture motion stated expressly that the \$26 million was based on the "amount of loss" to victims. ECF 220 n.1 (Supp. App., *infra*, SA-1). Petitioner's account-by-account analysis — uncontested by the government before the district court — demonstrated \$599,000 in gross proceeds. This is not a case

where a defendant argues he should have retained more of his criminal gains. It is a case where the forfeiture was calculated on a measure Honeycutt unanimously forecloses, by a government that has since conceded the rule is retroactive, with no vehicle to enforce the right. The legal question is clean. The record is complete. The government's concession is unreserved.

Petitioner preserved precisely this challenge on direct appeal — before Honeycutt was decided. His opening brief, filed November 5, 2013, argued explicitly: "[T]he court's \$26,000,000 forfeiture determination was substantively erroneous. . . . Criminal forfeiture focuses on disgorgement, and a defendant's actual gain, not the victim's loss." Brief for Appellant, No. 10-4774 (3d Cir.), at 88 (Supp. App., *infra*, SA-2). The 2015 panel acknowledged the forfeiture challenge but disposed of it on waiver grounds — not on the merits of whether the forfeiture was calculated on loss rather than proceeds. Georgiou, 777 F.3d at 147. Petitioner thus preserved the equivalent of Honeycutt before Honeycutt was announced. The Third Circuit's stated ground for denial — that Petitioner "never challenged" forfeiture on direct appeal — is contradicted by the face of the record. The categorical bar cannot apply to him on its own terms. Whether it can properly rest on that false premise at all is the subject of Argument II. The constitutional commands of *Montgomery* and *Welch* are not satisfied by a right without a remedy. This Court should hold that the All Writs Act provides the vehicle they require.

**II. The Third Circuit Applied a Categorical Bar to Final Forfeiture
Without Adjudicating an Unrebutted Allegation That the Bar's Factual
Predicate Was Procured Through Fraud — a Threshold Question
Hazel-Atlas Demands Be Answered First.**

This Court's unanimous holding in *Honeycutt* rendered Petitioner's \$26 million forfeiture substantively unlawful. The only available remedy is *audita querela* under the All Writs Act. Yet the court of appeals denied that relief on the factual predicate that "forfeiture was never challenged on direct appeal" — a predicate the record itself shows is false. Petitioner presented an unrebutted allegation that this false predicate was procured through prosecutorial misrepresentation amounting to fraud on the court. The panel refused to adjudicate that threshold *Hazel-Atlas* claim before summarily affirming.

Courts of equity have never permitted the fruit of a fraud to serve as the instrument of its own perpetuation. That principle predates this Court's modern jurisprudence. See *Throckmorton v. United States*, 98 U.S. 61, 65 (1878) ("[c]ourts of justice are never made the instruments of wrong"). This Court reaffirmed it in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944): fraud on the court strikes at "the very foundation" of the judicial process and is subject to no limitations period, no rule of repose, and no bar of finality, because a judgment procured through fraud is not the product of adjudication. And this Court confirmed in *United States v. Beggerly*, 524 U.S. 38, 46 (1998), that the equitable power to

address fraud on the court cannot be contracted by procedural rules — it inheres in the court's inherent authority over its own process.

The corollary is not an inference from these cases. It is these cases. A court may not invoke a prior ruling as a procedural bar without first determining whether that ruling was itself procured by fraud. To do otherwise is to use the court's own process to insulate the fraud from the examination equity requires. The court that applies the bar becomes, in *Throckmorton's* formulation, an instrument of the wrong. No circuit has applied this principle to the specific context presented here: a court of appeals invoking a prior collateral denial as establishing a procedural bar, without adjudicating an unrebutted allegation that the prior denial's factual predicate was procured by misrepresentation.

That principle governs this case with unusual force. The Third Circuit's categorical bar rested on a single factual premise: that Petitioner "never challenged" forfeiture on direct appeal. That premise was false — as the face of the direct appeal brief demonstrates — and was established through representations made by Mr. Lappen, the same disqualified attorney whose post-disqualification control of these proceedings is the subject of Argument III, in proceedings from which he had been formally excluded and in which his own conflict of interest was under examination. Petitioner documented this in five rounds of district court briefing. The government never contested the substance of the allegation. The Third Circuit summarily affirmed on the same unexamined predicate without addressing it. Whether a court of appeals may treat a denial as preclusive without first adjudicating an unrebutted

fraud allegation directed at its factual foundation is a question this Court has not answered and no circuit has resolved.

The question's systemic importance extends far beyond forfeiture. Courts across the country dismiss successive collateral petitions by invoking prior denials as establishing that claims are "previously litigated." See 28 U.S.C. § 2255(h); *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005). Where the prior denial rests on a misrepresentation that has never been examined — and was produced by a disqualified prosecutor whose conflict of interest infected the proceedings in which it operated — that mechanism operates as a shield for misconduct rather than a safeguard of finality. Every court that faces a fraud allegation directed at a prior collateral denial will need this Court's answer. It has not provided one.

**III. An interested, disqualified prosecutor controlled the proceedings.
Young v. Vuitton Has Never Been Applied in the Post-Conviction Context —
 Where Its Structural Guarantee Does Its Most Indispensable Work — and
 This Record Presents the Question in Its Starkest Form.**

In *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987), this Court held that the constitutional guarantee of prosecution by a disinterested sovereign is structural — it "pervade[s] the entire proceeding" without regard to whether the defendant can identify a specific item of prejudice. *Id.* at 809–10. The rule is "categorical" — it "requires no subtle calculations of judgment." *Id.* at 814. The right is the right to a process conducted by a sovereign whose obligation to

"govern impartially is as compelling as its obligation to govern at all." Id. at 803.

Congress codified the same requirement: a Department of Justice officer "shall disqualify himself" where his participation "may result in a personal, financial, or political conflict of interest, or the appearance thereof." 28 U.S.C. § 528.

Young arose in the context of a criminal contempt proceeding. This Court has never addressed its application in post-conviction proceedings — and specifically whether a formally disqualified prosecutor may continue to control the collateral proceedings examining his own conflict, while controlling the forfeiture proceedings his disqualification placed in question. That question is presented here with a completeness of record unlikely to be replicated.

On August 10, 2017, the district court formally disqualified Louis D. Lappen — Acting United States Attorney at the time — and ordered him to testify as a necessary fact witness regarding his own conflict and communications. ECF 413. Mr. Lappen did not, however, recuse. As Acting United States Attorney — the most powerful federal prosecutor in the Eastern District, with no superior within the office to check his participation — he assumed total control of the very proceedings convened to examine him.

What followed is a matter of undisputed record. Mr. Lappen authored every government filing in the § 2255 proceedings. He sat at counsel table under Rule 615 "agent" status. He prepared all of the witnesses including the government's star witness, Kevin Waltzer, through "a dozen or more" phone calls and multiple

"two-hour" sessions. Hr. Tr. 09/25/17 at 47. He prepared FBI Agent Joanson for "five hours." Hr. Tr. 11/15/17 at 156. He objected throughout to examination on evidence that would have exposed his own conflict. He arranged Waltzer's early release from federal prison — nearly five years early — weeks before the hearings began.

Waltzer's contemporaneous email recorded the transaction: "I can't thank you enough for my freedom . . . As promised I will do anything and everything possible to assist you in any way with the GG matter." ECF 657 at 25.

Mr. Lappen then authored the government's 181-page proposed findings of fact and conclusions of law — ECF 557 — which the district court adopted in substantially verbatim form. ECF 570. He thereafter signed and controlled every government brief at every subsequent level, including — critically — the forfeiture briefing itself: the opposition to the *audita querela* petitions in the district court, which directly addressed the legality of the forfeiture he had obtained; the motion for summary affirmance in the Third Circuit; the reply brief in the Third Circuit; and the brief that produced the summary affirmance now before this Court. The forfeiture he obtained, by methods his disqualification placed in question, was defended at every stage by the disqualified attorney whose conflict of interest in the forfeiture he had obtained was simultaneously under examination. The government has never denied any of this.

The post-conviction stage is where the *Young* guarantee does its most indispensable work. It is precisely here that prosecutorial conflict is most likely to be examined, and where the tension between a prosecutor's personal interest in

sustaining a conviction he obtained — and defending actions that could expose him to liability — is most acute. Whether *Young's* categorical rule extends to that context is a question of first importance that this Court has not answered and every circuit needs answered. This record provides the vehicle.

IV. *In re Murchison* Bars a Judge Who Becomes “Part of the Accusatory Process”

— Here, the Same Judge Declared Guilt Before Verdict, Issued the Forfeiture Order, and Denied Habeas Relief in the Disqualified Prosecutor’s Verbatim Findings — and No Court Has Ever Examined That Claim on the Merits.

During jury trial, with the jury present and before verdict, the presiding judge stated from the bench: “So what does that have to do with [Georgiou] committing this massive fraud?” Trial Tr. Feb. 1, 2010, at 216–17. That statement — a pre-verdict judicial declaration of guilt made to the jurors charged with deciding the question — has never been examined by any court as a constitutional matter. The government has never defended it on the merits. The same judge who made it then issued the \$26 million forfeiture order. ECF 228. He then presided over the § 2255 proceedings — the proceedings in which his own partiality was at issue — and issued a 181-page denial adopting the disqualified prosecutor’s proposed findings in substantially verbatim form. *See* ECF 557; ECF 570.

This Court held in *In re Murchison*, 349 U.S. 133, 136 (1955), that due process requires “a fair trial in a fair tribunal” and that a judge who has become “part of the accusatory process” cannot constitutionally preside. The violation is

structural — no showing of prejudice is required. See *Williams v. Pennsylvania*, 579 U.S. 1, 14 (2016) ("[w]here a judge has had a direct, personal, substantial interest in a proceeding, this Court has not required a litigant to demonstrate actual bias"). A pre-verdict judicial declaration of guilt, made in the hearing of the jurors charged with deciding the question, is the paradigm case *Murchison* identifies as constitutionally intolerable.

The bench statement was not the only ground for recusal. The comprehensive motion filed October 12, 2018, ECF 620, documented numerous additional instances of bias and deep-seated favoritism toward the prosecution — across the trial and post-conviction proceedings — each independently supporting the claim of a disqualifying personal interest. The government contested none of them on the merits in any filing at any level. The district court dismissed the motion without prejudice for lack of jurisdiction only — the pending notice of appeal had divested the court of authority to act. ECF 623. Judge Kelly did not find the motion for bias and recusal to be untimely, procedurally deficient, or meritless. The bias claim entered subsequent proceedings with its entire substance unexamined.

When Petitioner raised the judicial bias claim in the proceedings below, Judge Jones dismissed it sua sponte on a timeliness ground the government had never raised — and therefore forfeited, see *Eberhart v. United States*, 546 U.S. 12 (2005) — citing as Third Circuit authority an unreported district court opinion. ECF 675 at 2 (App., *infra*, 4). The Third Circuit summarily affirmed without addressing the substance. At every level, a structural constitutional claim has been

procedurally disposed of — by courts invoking prior rulings that themselves never reached the merits. No court has engaged the substance. That is not adjudication. It is perpetual deferral.

The combination of a disqualified prosecutor controlling the § 2255 proceedings and a partial judge presiding over them produced what Petitioner's pending Rule 60(b) motion, ECF 710, terms "process capture" — the structural elimination of adversarial adjudication itself. A disqualified prosecutor scripted the findings; a partial judge who had issued the underlying forfeiture order adopted them verbatim. Each enabled and insulated the other. The resulting denial has been invoked as preclusive at every subsequent level without any court examining whether the proceeding that produced it was constitutionally valid.

V. The Summary Affirmance Procedure Was Inverted in This Case — Used to Extinguish Structural Constitutional Claims the Government Declined to Defend on the Merits.

Summary affirmance exists to protect judicial resources by disposing of cases presenting no serious legal question. 3d Cir. I.O.P. 10.6 authorizes the procedure only where the appeal "presents no substantial question." Its use in this case produced the opposite result: it disposed of cases presenting nothing but substantial questions — preserved, undefended structural constitutional claims — without the court making the threshold determination the IOP requires.

The "no substantial question" finding cannot be made without examining whether a substantial question exists. Structural errors — those that "defy analysis by 'harmless error' standards" because they affect "the entire conduct of the trial from beginning to end," *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991) — are by this Court's own definition presumptively prejudicial regardless of outcome. A preserved structural claim is therefore, as a matter of law, a substantial claim. The IOP's threshold requires an independent judicial determination — not deference to the government's silence, and not invocation of prior proceedings that themselves never reached the merits. The government's obligation is to the court, not to the petitioner. Its failure to engage does not resolve the legal question; it leaves the question entirely open.

In this case, the government responded to four preserved structural claims — a disqualified prosecutor, a biased judge, a fraud-procured denial, and the Honeycutt enforcement gap — with a single response in every filing: "previously litigated." That representation was itself false: none of those claims had been adjudicated on the merits. A court that uses the summary affirmance procedure to affirm structural claims on the basis of a "previously litigated" representation that is factually incorrect has not found that no substantial question is presented. It has declined to determine whether one exists. That is the inversion the procedure was not designed to sanction, and this Court should say so.

VI. The Interests of Justice Independently Warrant Review.

This Court was asked to resolve the *Honeycutt* enforcement question in 2020. It declined. The question returns now — joined by three additional grounds that were not then ripe, fully exhausted, and none previously presented to this Court. The National Association of Criminal Defense Lawyers, represented by Sidley Austin LLP, appeared as amicus curiae in the 2020 proceeding — institutional recognition that the question was already important enough to warrant this Court's attention before the structural claims now presented had developed. It is more important now.

What unites all four grounds is a single institutional concern. The doctrinal machinery that exists to test the legality of a criminal judgment — adversarial collateral review before a neutral tribunal, conducted by a disinterested sovereign — was not available in these proceedings. The collateral proceedings were controlled at every stage by a prosecutor the court had disqualified, whose personal conflict of interest in the outcome was direct and documented. The tribunal whose neutrality Petitioner challenged was the same judge who declared guilt from the bench in the jury's presence before verdict, issued the forfeiture order, and then denied habeas relief in findings authored by the disqualified prosecutor and adopted verbatim. The appellate court confirmed prior denials without examining whether those denials rested on a fraudulent predicate. And the substantive right *Honeycutt* announces unanimously — that a defendant may not be punished for proceeds he never received — has no mechanism of enforcement against a final order.

A right without a remedy is not a right. Four grounds, each independently sufficient, each unanswered, converge in this record to present a single question: whether the Constitution tolerates a proceeding in which the machinery of adversarial justice was displaced at every stage and its displacement has been insulated from review. Only this Court can answer that question. The petition should be granted.

CONCLUSION

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

Respectfully submitted,

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June 2026

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the type-volume limitations of Supreme Court Rule 33.2. The petition contains 8,186 words, excluding the questions presented, the list of parties and related proceedings, the table of contents, the table of cited authorities, the listing of counsel, and the appendices, as permitted by Rule 33.1(d). The petition is presented in Century Schoolbook typeface, 12-point, double-spaced, on 8½ × 11-inch paper, pursuant to Rule 33.2.

GEORGE GEORGIU

Pro Se Petitioner

June 2026

CERTIFICATE OF SERVICE

I certify that on or before May 27, 2026, I served a copy of this petition for a writ of certiorari on counsel for Respondent by sending it via overnight courier and electronic mail to:

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