

APPENDIX

The following opinions and orders are reproduced in this Appendix in the order required by Supreme Court Rule 14.1(i):

App. 1. Order of the United States Court of Appeals for the Third Circuit summarily affirming the judgment of the district court, filed December 12, 2025 (United States v. Georgiou, No. 25-2199)

App. 2. Order of the United States Court of Appeals for the Third Circuit denying rehearing en banc, entered January 9, 2026 (United States v. Georgiou, No. 25-2199)

App. 3. Order of the United States District Court for the Eastern District of Pennsylvania denying motions for reconsideration, entered June 6, 2025 (Quiñones Alejandro, J.) (United States v. Georgiou, No. 2:09-cr-00088, ECF No. 694)

App. 4. Order of the United States District Court for the Eastern District of Pennsylvania denying petition for writ of *audita querela* and related motions, entered June 23, 2022 (Jones, J.) (United States v. Georgiou, No. 2:09-cr-00088, ECF No. 675)

SUPPLEMENTAL APPENDIX

The following record documents are reproduced in this Supplemental Appendix. Each document is cited in the body of the petition and is referenced as "Supp. App. SA-__":

- SA-1. Government's Motion for Forfeiture Money Judgment, *United States v. Georgiou*, No. 2:09-cr-00088 (E.D. Pa.), ECF No. 220, relevant portion (footnote 1). The motion states expressly that the \$26 million forfeiture figure represents the 'amount of loss' to victims — not proceeds obtained by Petitioner.
- SA-2. Excerpt from Petitioner's Opening Brief on Direct Appeal, *United States v. Georgiou*, No. 10-4774 (3d Cir.), filed November 5, 2013, at page 88. The excerpt sets forth Petitioner's direct appeal challenge to the forfeiture determination on the ground that criminal forfeiture focuses on a defendant's actual gain, not the victim's loss — the precise argument *Honeycutt* would later confirm.

SA-3. Government's Response to First *Audita Querela* Petition, *United States v. Georgiou*, No. 2:09-cr-00088 (E.D. Pa.), ECF No. 457, filed September 18, 2017, at pages 12–13 and 17–18. Pages 12–13 contain the government's concession that *Honeycutt v. United States* 'announced a substantive rule that has retroactive effect' on collateral review. Pages 17–18 contain the government's acknowledgment that Petitioner challenged the forfeiture on direct appeal — the same predicate the government subsequently represented was never raised.

APPENDIX 1

Order of the United States Court of Appeals

for the Third Circuit — Summary Affirmance

United States v. Georgiou, No. 25-2199 (3d Cir. Dec. 12, 2025)

CLD-045

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 25-2199

UNITED STATES OF AMERICA,

v.

GEORGE GEORGIU,
Appellant

(E.D. Pa. Crim. No. 2:09-cr-00088-001)

Present: BIBAS, PHIPPS, and NYGAARD, Circuit Judges

Submitted are

- (1) By the Clerk for possible summary action under 3d Cir. L.A.R. 27.4 and I.O.P. 10.6, and possible issuance of a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) Appellant's motion "to divide into three appeals" and "to afford briefing schedule for each";
- (3) Appellee's motion for summary affirmance;
- (4) Appellant's response and supplemental memorandum;
- (5) Appellee's reply;
- (6) Appellant's sur-reply; and
- (7) Appellant's motion for leave to file a sur-reply

in the above-captioned case.

Respectfully,

Clerk

ORDER

George Georgiou's motion to divide this case into three appeals is denied, and his motion for leave to file a sur-reply to the Government's motion for summary affirmance is granted. Georgiou appeals the District Court's orders entered June 23, 2022, and June 6, 2025, denying his petition for writ of audita querela and motions for bail, appointment of counsel, compassionate release, and reconsideration. We have appellate jurisdiction over the District Court's orders under 28 U.S.C. § 1291. We review de novo any legal issues arising from the denial of a petition for writ of audita querela. See United States v. Richter, 510 F.3d 103, 104 (2d Cir. 2007) (per curiam). We review for abuse of discretion the denial of a motion for appointment of counsel, compassionate release, and reconsideration. See Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997); United States v. Pawlowski, 967 F.3d 327, 330 (3d Cir. 2020); Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

We agree with the District Court's denial of Georgiou's second petition for writ of audita querela attacking the forfeiture orders because, as we have previously explained, audita querela is "not an available remedy to vacate" the forfeiture orders because they "could have been challenged on direct appeal," which Georgiou failed to do. United States v. Georgiou, 800 F. App'x 136, 138-39 (3d Cir. 2020). We further agree with the District Court's denial of Georgiou's motion for bail and appointment of counsel, as Georgiou failed to show that he had a high probability of success and extraordinary or exceptional circumstances requiring relief. See Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir. 1992); see also Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993). We discern no abuse of discretion in the District Court's denial of compassionate release, as Georgiou failed to demonstrate extraordinary and compelling circumstances warranting relief. See 18 U.S.C. § 3582(c)(1)(A)(i); U.S.S.G. § 1B1.13(b). Finally, we discern no abuse of discretion in the denial of Georgiou's motions for reconsideration, as Georgiou failed to show an intervening change in the controlling law, the availability of new evidence, or the need to correct a clear error of law or fact or prevent manifest injustice. Max's Seafood Cafe ex rel. Lou-Ann, Inc., 176 F.3d at 677.

Accordingly, no substantial question is presented here, the Government's motion for summary affirmance is granted, and we summarily affirm the District Court's June 23, 2022, and June 6, 2025 orders. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4(a) (2011); 3d Cir. I.O.P. 10.6. To the extent a certificate of appealability is required, it is denied.

By the Court,

s/Stephanos Bibas

Circuit Judge

Dated: December 12, 2025
PDB/cc: George Georgiou
All Counsel of Record

APPENDIX 2

Order of the United States Court of Appeals

for the Third Circuit — Denial of Rehearing En Banc

United States v. Georgiou, No. 25-2199 (3d Cir. Jan. 9, 2026)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2199

UNITED STATES OF AMERICA,

v.

GEORGE GEORGIU,
Appellant

(E.D. Pa. Crim. No. 2:09-cr-00088-001)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, and HARDIMAN, SHWARTZ,
RESTREPO, BIBAS, PORTER, MATEY,
PHIPPS, MONTGOMERY-REEVES,
CHUNG, BOVE, MASCOTT, and NYGAARD, * *Circuit Judges*

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is **DENIED**.

By the Court,

s/Stephanos Bibas
Circuit Judge

* Judge Nygaard's vote is limited to panel rehearing only.

Dated: January 9, 2026
PDB/cc: George Georgiou
All Counsel of Record

APPENDIX 3

Order of the United States District Court

for the Eastern District of Pennsylvania — Denial of Reconsideration

United States v. Georgiou, No. 2:09-cr-00088, ECF No. 694 (June 6, 2025)

(Quiñones Alejandro, J.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 09-0088
	:	
GEORGE GEORGIU	:	
Defendant, pro se	:	

ORDER

AND NOW, this 6th day of June 2025, upon consideration of *pro se* Defendant's motion for reconsideration from denial of compassionate release, (Doc. 678), motion for reconsideration from denial of a writ of audita querela, or alternative relief, to amend or alter judgment in the forfeiture proceedings, (Doc. 679), motion for reconsideration from denial of bail, and appointment of counsel for Rule 60(b) proceedings, (Doc. 680), the Government's omnibus response in opposition, (Doc. 683), and Defendant's reply, (Doc. 687), it is hereby **ORDERED** that the motions for reconsideration, (Docs. 678, 679, and 680), are **DENIED**.¹

¹ On February 12, 2010, a jury convicted Defendant George Georgiou ("Defendant") of one count of conspiracy, in violation of 18 U.S.C. § 371, four counts of securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. § 240.10b-5, four counts of wire fraud, in violation of 18 U.S.C. § 1343, and aiding and abetting, in violation of 18 U.S.C. § 2. The securities fraud and related charges resulted in over \$50 million in actual losses to thousands of victims and intended losses of at least \$100 million. His conviction was affirmed, as were his numerous challenges. Defendant was sentenced to a term of 300 months of imprisonment, a sentence within the guideline range, and ordered to pay restitution in the amount of \$26 million.

By way of the three underlying motions for reconsideration, Defendant seeks reconsideration of the June 23, 2022 Order issued by the Honorable C. Darnell Jones, II, to whom this matter was assigned due to the Honorable Robert F. Kelly's retirement, and who has also retired. Judge Jones' Order denied Defendant's petition for writ of audita querela, his motion requesting bail and appointment of counsel, and his second motion for compassionate release. (See Doc. 675). Specifically, in the motion to reconsider the denial of a writ of audita, Defendant argues, *inter alia*, that his reply highlighting prosecutorial conflict of interest was not considered, that counsel should have been appointed, and that a hearing should have been held prior to the court ruling on his motion. (Doc. 679). In his motion to reconsider the denial of bail and appointment of counsel for Rule 60(b) proceedings, (Doc. 680), Defendant essentially acknowledges that though both requests are discretionary, the court erred in its discretion and reiterated similar arguments as

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro

NITZA I. QUIÑONES ALEJANDRO

Judge, United States District Court

those in his previous motion to reconsider regarding the prosecution. The Government filed a response opposing Defendant's various motions for reconsideration.

The Federal Rules of Criminal Procedure do not explicitly provide for motions for reconsideration. However, the United States Court of Appeals for the Third Circuit (the "Third Circuit") has held that motions for reconsideration in criminal cases may be filed pursuant to Federal Rule of Civil Procedure ("Rule") 59(e). *See United States v. Fiorelli*, 337 F.3d 282, 286 (3d Cir. 2003). The scope of review for such motions is "extremely limited." *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011). Motions for reconsideration are not to be used as an opportunity to re-litigate decided issues; rather, they should only be granted where the movant shows: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion" at issue; "or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999); *see also Kerlinsky v. Main Line Hosps., Inc.*, 2012 WL 4050764, at *1 (E.D. Pa. Sept. 14, 2012) (citing *Howard Hess Dental Lab'ys, Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010)); *Pellicano v. Blue Cross Blue Shield Ass'n*, 540 F. App'x 95, 99 (3d Cir. 2013) ("[T]o the extent that [the movant] sought to simply reargue claims previously raised, the District Court properly denied the motions for reconsideration."). "Motions for reconsideration may not be used 'as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided.'" *Romero v. Allstate Ins. Co.*, 1 F. Supp. 3d 319, 420 (E.D. Pa. 2014) (quoting *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990)).

Here, Defendant's current motions for reconsideration are replete with the same arguments presented to and rejected on multiple occasions by Judges Kelly and Jones. Such rehash of previously-rejected arguments does not meet the "extremely limited" scope of cognizable grounds for reconsideration. Moreover, this Court has thoroughly reviewed Judge Jones' June 23, 2022 decision, as well as the multiple decisions of the Third Circuit in this matter, and finds no error or grounds for disagreement. Accordingly, Defendant's motions for reconsideration are denied.

APPENDIX 4

Order of the United States District Court

for the Eastern District of Pennsylvania — Denial of Audita Querela

United States v. Georgiou, No. 2:09-cr-00088, ECF No. 675 (June 23, 2022)

(Jones II., J.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

GEORGE GEORGIU,
Defendant.

CRIMINAL ACTION

NO.: 09-088

ORDER

AND NOW, this 23rd day of June 2022, it is hereby **ORDERED** as follows:

- (1) Upon consideration of Defendant's Petition for Writ of *Audita Querela* (ECF No. 642), the Government's Response in Opposition (ECF No. 643), Defendant's Reply (ECF No. 649), the Government's Sur-Reply (ECF No. 651), and Defendant's Sur-Sur-Reply (ECF No. 659), said Motion is **DENIED**.¹

¹ Because both the parties and the Court are familiar with the facts of the above-captioned case, this Court will proceed directly into an analysis of the presently pending motions. Before the Court today is Petitioner-Defendant's (hereinafter "Defendant") Petition for Writ of *Audita Querela* (ECF No. 642), Defendant's Motion Requesting Bail and Appointment of Counsel (ECF No. 657), and Defendant's Motion for Compassionate Release (ECF No. 671). The Court will address each in turn.

In his Petition for Writ of *Audita Querela*, Defendant raised nine (9) separate issues. *See* Pet. for Writ of *Audita Querela*, ECF No. 642, 1-2. Seven (7) of these arguments were previously raised by Defendant in other filings and include: (1) forfeiture based on loss; (2) the use of the writ of *audita querela* to fill "a gap" in statutory framework; (3) prosecutorial misconduct; (4) falsities presented to the court; (5) fraud; (6) unlawful forfeiture amounting to a jurisdictional error; and (7) reiterating arguments advanced in an amicus brief. *See* Pet. for Writ of *Audita Querela* at 1-2. Because these arguments have already been considered by the Court, they will not be analyzed again for the purposes of this Order. *See United States v. Georgiou*, 800 F. App'x 136, 138-139 (3d Cir. 2020) (concluding there was "ample evidence in the record that [Defendant] obtained millions in proceeds from the scheme" and that *audita querela* was not an available remedy because Defendant did not identify a "gap in the system of post-conviction relief"); Ct.'s Op. Denying 28 U.S.C. § 2255 Motion, ECF No. 570, 15, 42 (explaining previous occasions where Defendant raised issues of government misconduct and providing details as to previously rejected arguments of prosecutorial misconduct); *United States v. Georgiou*, 777 F.3d 125, 147 (3d Cir. 2015) (explaining that claims of forfeiture were waived and, regardless of the waiver, forfeiture was proper because the money was "derived from proceeds traceable to the offenses of which the defendant was convicted."); *Georgiou*, 800 F. App'x 136, *cert. denied*, 141 S. Ct. 560 (2020) (considering Defendant's amicus brief, filed on October 5, 2020, among the filings in the Supreme Court's denial of his petition for writ of certiorari on October 13, 2020).

In addition to these previously considered arguments, the Court will address two (2) of Defendant's claims in the first instance. First, Defendant claims that the District Court conducted a biased adjudication, specifically alleging the denial of an impartial judge. *See* Pet. for Writ of *Audita Querela* at 2. Though Defendant had raised this issue in a 2018 Motion for Recusal (ECF No. 620), the District Court lacked jurisdiction to consider the Motion because it was filed while an Appeal was pending with the Circuit Court. *See* Ct.'s Oct. 18, 2018 Ord., ECF No. 623. After this Court regained jurisdiction over the

- (2) Upon consideration of Defendant's Motion Requesting Bail and Appointment of Counsel (ECF No. 657), the Government's Response (ECF No. 661), and Defendant's Reply (ECF No. 664), said Motion Requesting Bail is **DENIED**² and said Motion Requesting Appointment of Counsel is **DENIED**;
- (3) Upon consideration of Defendant's Second Motion for Compassionate Release (ECF No. 670) and the Government's Response in Opposition thereto (ECF No. 671), said Motion is **DENIED**.³

case, however, Defendant failed to raise the issue again. Rather, he waited three (3) years since that time to mention any judicial bias, though he submitted multiple other filings in the interim. Considering this delay, the Court finds that Defendant failed to act with the requisite diligence in seeking recusal, and it will not be considered further for purposes of the present Petition. *See United States v. Enigwe*, 155 F. Supp. 2d 365, 370 (3d Cir. 2001) (holding the defendant failed to act with required diligence in seeking recusal when he waited eighteen (18) months to file a motion for recusal, though he filed numerous other motions in the interim).

As his second new claim, though the Court has previously addressed the retroactive application of *Honeycutt v. United States*, Defendant now argues that this application is substantive, rather than procedural, so his required forfeiture of monies was inappropriate. *See* Pet. for Writ of *Audita Querela* at 1. In *Honeycutt*, the Court determined that "[f]orfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime." *Honeycutt v. United States*, 137 S. Ct. 1626, 1635 (2017). Thus, the Court held that forfeiture was unnecessary in *Honeycutt* because the defendant "never obtained tainted property as a result of the crime." *Id.* As applicable to Defendant here, the Third Circuit has recognized that "*Honeycutt* did not announce a new substantive rule of criminal procedure." *See Georgiou*, 800 F. App'x at 138-39. Furthermore, the Third Circuit clarified that even if it did, "*Georgiou's* case is readily distinguishable from *Honeycutt*" because Defendant personally received "millions in proceeds from the scheme." *Id.* at 139. Thus, for the reasons stated herein, Defendant's Petition for Writ of *Audita Querela* must be denied.

² In the Motion Requesting Bail and Appointment of Counsel, Defendant raises eight (8) claims for relief: (1) prosecutorial conflicts of interest; (2) deprivation of counsel; (3) coordinated witness testimony; (4) intentional concealment of evidence; (5) false testimony and false evidence; (6) misapplied standards of review; (7) false *Brady* materiality arguments; and (8) the lack of an impartial adjudication. *See* Mot. Requesting Bail & Appointment of Couns., ECF No. 657, 2. Because all of the issues were either raised in the Petition for Writ of *Audita Querela* or previously considered by the Court through other filings, they will not be re-litigated for the purposes of this Order. *See* Ct.'s Op. Denying 28 U.S.C. § 2255 Motion at 15, 17-18, 42, 154-55, 159 (noting ample opportunities that Defendant had to obtain and maintain counsel, rejecting any misconduct regarding standards of review, and rejecting his *Brady* claims); *Enigwe*, 155 F. Supp. 2d at 370. Accordingly, Defendant's Motion Requesting Bail and Appointment of Counsel must be denied.

³ In Defendant's second Motion for Compassionate Release, he proposes that a combination of prosecutorial conflict of interest, lack of impartial adjudication, unapplied bail credit, First Step Act time credits, misapplied sentencing enhancements, time served, innocence, personal circumstances, and global events constitutes an extraordinary and compelling ground for relief. *See* Mot. for Compassionate Release, ECF No. 670, 2. Before a defendant can proceed to the merits of a motion for compassionate release, he must satisfy Section 3582(c)(1)(A)'s exhaustion requirement. *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). If a defendant has met the administrative exhaustion requirements of 18 U.S.C. § 3582(c)(1)(A), his "next hurdle is to establish that 'extraordinary and compelling reasons' warrant a

BY THE COURT:

/s/ C. Darnell Jones, II
C. Darnell Jones, II J.

reduction of his sentence.” *United States v. Cantatore*, No. 16-CR-0189, 2020 WL 2611536, at *3 (D.N.J. May 21, 2020). Section 3582(c)(1)(A) does not define what constitutes an extraordinary and compelling reason. Instead, Congress delegated authority to the Sentencing Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction.” *United States v. Hammond*, No. 18-CR-184, 2020 WL 2126783, at *3 (E.D. Pa. May 5, 2020) (citing 28 U.S.C. § 994(t)). The Commission provided its definition of the term “extraordinary and compelling reasons” in U.S.S.G. § 1B1.13, Application Note 1, which includes, the Medical Condition and Age of the Defendant, Family Circumstances, and Other Reasons.

To attempt to meet this extraordinary and compelling standard, Defendant reiterates concerns from his Petition for Writ of *Audita Querela* over prosecutorial conflict of interest and impartial adjudication. *See* Ct.’s Op. Denying 28 U.S.C. § 2255 Motion at 154; *Enigwe*, 155 F. Supp. 2d at 370. Additionally, Defendant’s claims of innocence, personal circumstances, global events, and an extraordinary sentencing enhancement were considered and rejected by this Court in his first Motion for Compassionate Release. *See* Ct.’s Op. Denying Compassionate Release, ECF No. 640, 2. As stated above, the Court will not reconsider issues that have already been addressed, so such arguments will not be analyzed further for purposes of his present Motion for Compassionate Release.

Although Defendant’s arguments regarding unapplied bail credits and time credits through the First Step Act were not previously addressed, they are inappropriately raised within a Motion for Compassionate Release. Defendant claims that he is owed unapplied bail credits that lessen “the time towards the Court’s consideration for compassionate release.” Mot. For Compassionate Release at 20. However, Defendant fails to present, and this Court’s independent research does not reveal, any precedent or explanation as to why bail credit would ever function as an extraordinary and compelling reason for release. Though Defendant also raises the possibility of time credits through the First Step Act, the Court agrees with the Government that any issues regarding time or bail credits should be raised to the Bureau of Prisons or through a habeas petition and thus cannot warrant an extraordinary or compelling reason for release.

Because no other viable arguments remain, the Court will address Defendant’s final issue of time served in the first instance. Although time served can be considered as an extraordinary and compelling reason in certain circumstances, time served on its own is insufficient to warrant compassionate release, especially in instances where significant time on the sentence remains. *See United States v. Pawloski*, 967 F.3d 237, 330-31 (3d Cir. 2020) (concluding that serving only two (2) years of a fifteen (15) year sentence weighs against granting compassionate release); *United States v. Bogdanoff*, 459 F.Supp.3d 653, 658-59 (E.D. Pa. 2020) (determining that a reduction in sentence “by almost two-thirds could also have an impact on the public’s respect for the law and deterrence” when the defendant had only served seven (7) out of eighteen (18) years of his sentence). In this case, although Defendant served eight (8) out of nine (9) counts of his sentence, he still has 135 months remaining on his 300-month sentence. *See* Judgment, ECF No. 231, 3. Releasing Defendant at such an early stage, without any other extraordinary or compelling reason, would diminish the justification and importance of his appropriate sentence. Thus, for the reasons stated, Defendant’s Motion for Compassionate Release must be denied.

SUPPLEMENTAL APPENDIX SA-1

Government's Motion for Forfeiture Money Judgment

ECF No. 220, Footnote 1 (Forfeiture Based on "Amount of Loss")

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa. 2010)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

GEORGE GEORGIOU

CRIMINAL NO. 09-88

**GOVERNMENT'S MOTION FOR
FORFEITURE MONEY JUDGMENT**

The United States of America, by and through its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Louis D. Lappen and Derek A. Cohen, Assistant United States Attorneys, respectfully requests entry of a forfeiture money judgment, and in support of this motion, the United States represents as follows:

1. On February 12, 2009, defendant was charged in an Indictment with conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. § 371 (Count One); securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5 (Counts Two through Five); and wire fraud, in violation of 18 U.S.C. § 1343 (Counts Six through Nine). The Notice of Forfeiture in the Indictment alleged that certain property was forfeitable as a result of said offenses.

2. On February 12, 2010, defendant was found guilty by a jury of Counts One through Nine.

3. As a result of his conviction, defendant is required, pursuant to 18 U.S.C. § 981(a)(1)(C)) and 28 U.S.C. § 2461(c), to criminally forfeit his interest in any property, real or personal, which constitutes, or is derived from proceeds traceable to any offenses constituting "specified unlawful activity," that is, securities fraud and wire fraud, or a conspiracy to commit such offenses.

4. Based on evidence presented at trial and summarized at sentencing, the government avers that the sum of \$26,000,000 is subject to forfeiture as a result of defendant's conviction of the illegal acts alleged in Counts One through Nine.¹ This sum is the amount of property which constitutes, or is derived from proceeds traceable to any offenses constituting "specified unlawful activity," that is, securities fraud and wire fraud, or a conspiracy to commit such offenses, and the government has established the requisite nexus between such sum and such offenses. See United States v. Vampire Nation, 451 F.3d 189, 201-202 (3d Cir. 2006) (an in personam forfeiture money judgment may be entered against the defendant for the full amount of the criminal proceeds); United States v. Voigt, 89 F.3d 1050, 1084, 1088 (3d Cir. 1996) (government entitled to personal money judgment against defendant equal to amount of funds forfeitable).

5. The government, therefore, requests that a forfeiture judgment in the amount of \$26,000,000 be entered against defendant.

6. Because the government seeks only a money judgment and does not seek forfeiture of any specific asset at this time, advertisement of the judgment and third-party proceedings are not required. Fed.R.Crim.P. 32.2(c)(1) (no ancillary proceedings to address third-party claims required where forfeiture consists of money judgment).

¹ This is the amount set forth in the Notice of Forfeiture as that was the amount of loss readily provable by the government at the time of the indictment. For this reason, the government will not seek the full amount of the loss caused by the defendant as he will be obligated to pay that sum through mandatory restitution.

For the reasons stated above, the government requests that this Court enter the attached
Forfeiture Money Judgment.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

/s/Louis D. Lappen
LOUIS D. LAPPEN
First Assistant United States Attorney

/s/Derek A. Cohen
DEREK A. COHEN
Assistant United States Attorney

SUPPLEMENTAL APPENDIX SA-2

Excerpt from Petitioner's Opening Brief on Direct Appeal

No. 10-4774 (3d Cir.), Filed November 5, 2013, at Page 88

Forfeiture Challenge Preserved on Direct Appeal

Case Nos. 10-4774 (L), 11-4587 (cons.) & 12-2077 (cons.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

GEORGE GEORGIU,

Defendant-Appellant.

*On Appeal From Judgment and Sentence of the United States
District Court for the Eastern District of Pennsylvania
Crim. No. 09-0088*

BRIEF OF DEFENDANT-APPELLANT GEORGE GEORGIU

BACHNER & ASSOCIATES, P.C.
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96; *see also* *Chau Fan Xu*, 706 F.3d at 992-94; *U.S. v. Azeem*, 946 F.2d 13, 17-18 (2d Cir.1991).

C. The District Court Erred When it Based Restitution on Its Guidelines “Loss” Calculation

The court’s restitution order also was clearly erroneous because it used the Guidelines loss calculation for purposes of establishing the restitution amount (27-JA 5521a). *See Vilar*, 729 F.3d at 96; *Chau Fan Xu*, 706 F.3d at 994 (“district court [improperly] referred to its Guidelines calculations in making factual findings regarding the amount of actual loss suffered by the Bank of China”).

D. The District Court Plainly Erred When it Imposed the Forfeiture Order

The district court’s failure to comply with Rule 32.2 and its improper methodology for calculating the forfeiture amount prejudiced Georgiou’s substantial rights. *See U.S. v. Marquez*, 685 F.3d 501, 509-10 (5th Cir.2012). In *Marquez*, the Fifth Circuit held that the court committed plain error when it “failed to comply with the procedural requirements set forth in [Rule] 32.2,” which require it to make a *presentencing* forfeiture determination and enter a preliminary order of forfeiture whenever the government seeks a personal money judgment, and noted that the procedures are “mandatory” “not empty formalities.” *Id.* at 509-10; *see also U.S. v. Schwartz*, 503 F.App’x 443, 449 (6th Cir.2012)(unpublished).

No preliminary order of forfeiture was ever entered in this case; rather, the government waited nine months to file a proposed forfeiture order, days before sentencing. The errors were more prejudicial than in *Marquez*, because here no basis for the forfeiture amount was even contained in the PSR.⁴⁴ *Cf. id.* at 505. Indeed, the government, tried to avoid any challenge, by mentioning the forfeiture as the court was leaving the bench to consider the sentencing arguments, calling it a “housekeeping matter” (27-JA 5515a). (Moreover, the court’s \$26,000,000 forfeiture determination was substantively erroneous (29-JA 5726a-5727a). (Criminal forfeiture focuses on disgorgement, and a defendant’s actual gain, not the victim’s loss. See *U.S. v. Contorinis*, 692 F.3d 136, 146-47 (2d Cir.2012). Here, the court failed to establish any basis for the forfeiture amount, and the government failed to demonstrate the amount of criminal proceeds. See *U.S. v. Leahy*, 438 F.3d 328, 331-33 (3d Cir.2006).

⁴⁴ The government made *no* objections to the PSR (27-JA 5308a).

SUPPLEMENTAL APPENDIX SA-3

Government's Response to First Audita Querela Petition

ECF No. 457, Pages 12–13 and 17–18 (Filed September 18, 2017)

Honeycutt Retroactivity Concession and Acknowledgment of Direct Appeal Challenge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

v. : **Criminal No. 09-88-01**

GEORGE GEORGIU :

**RESPONSE OF UNITED STATES OF AMERICA
IN OPPOSITION TO MOTION TO VACATE
FORFEITURE ORDER AND ORDERS FOR
SUBSTITUTE ASSETS UNDER 28 U.S.C. § 1651, THE
ALL WRITS ACT, OR FOR A WRIT OF AUDITA QUERELA**

The United States of America, by its attorneys, Louis D. Lappen, Acting United States Attorney for the Eastern District of Pennsylvania, and Joseph F. Minni, Assistant United States Attorney, responds to the defendant's pro se Motion to Vacate Forfeiture Order and Orders for Substitute Assets under 28 U.S.C. § 1651, The All Writs Act, or for a Writ of *Audita Querela* (ECF No. 384), in the above-captioned case as follows:

I. INTRODUCTION

As a result of his conviction in this case, this Court entered against the defendant, George Georgiou, and in favor of the United States, a forfeiture judgment in the amount of \$26 million ("forfeiture judgment"). This judgment, which represents the amount of property that "constitutes, or is derived from

C. Georgiou Otherwise is Barred from Seeking Relief from the Forfeiture Judgment.

Georgiou's motion also must fail as this Court lacks jurisdiction to alter a final forfeiture judgment.

(The government initially notes that, by construing 21 U.S.C. § 853(a) to limit criminal forfeiture to the tainted proceeds "obtained, directly or indirectly" by the individual defendant, the Supreme Court in *Honeycutt* announced a substantive rule that has retroactive effect) *See Welch v. United States*, 136 S. Ct. 1257, 1264 (2016) ("[n]ew substantive rules generally apply retroactively" on collateral review), quoting *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004); *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016) (Eighth Amendment decision barring mandatory life without parole for juvenile offenders is substantive and therefore retroactive on collateral review); *Bousley v. United States*, 523 U.S. 614, 620 (1998) (new decision construing substantive reach of criminal statute applies on collateral review). *See also In re Hoffner*, --- F.3d ---, 2017 WL 3908880, *2 (3d Cir. Sept. 7, 2017) (following *Welch*). The Court in *Honeycutt* clarified that Section 853(a) always restricted criminal forfeiture to the property obtained, directly or indirectly, by the individual defendant. *See Bousley*, 523 U.S. at 625 (decision "merely explained what [the statute] had meant ever since the statute was enacted.") (Stevens, J., concurring in part and dissenting in part).

However, whether a new rule has retroactive effect does not automatically confer a remedy. Although a defendant may raise *Honeycutt* on direct appeal, see *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987), or even on appeal from an order forfeiting substitute assets, a defendant may not challenge a criminal forfeiture order once the judgment becomes final. A district court lacks authority to alter the terms of a criminal forfeiture order after the direct appeal has become final. See *United States v. Pelullo*, 178 F.3d 196, 202 (3d Cir. 1999) (preliminary order is final as to the defendant and divests him of any interest he had in the property, including property forfeited as a substitute asset); *United States v. Lester*, 2008 WL 732897, *2 (D. Kan. 2008) (once order of forfeiture became final as to defendant at sentencing, his only remedy was direct appeal; he could no longer make objections to the forfeiture in the district court); *United States v. Hicks*, 2005 WL 2656594, *2 (W.D. Wash. 2005) (because forfeiture is part of sentencing, it may only be challenged on direct appeal; once the time for appeal has expired, the forfeiture is final and cannot be revised by the district court). Therefore, while the decision in *Honeycutt* may be applied retroactively, even on collateral review, there is no basis to vacate a forfeiture judgment once it becomes final.³

³ Generally, an order is deemed “final” when “a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” *Griffith v. Kentucky*, 479 U.S. at 321, n.6. See also *Clay v. United States*, 537 U.S. 522, 524-25 (2003)

“Satisfy everyone?” Georgiou never objected. This Court also stated that it would “sign the forfeiture order,” and it later noted that “the Court has signed the order of forfeiture as presented by the government.” In agreeing to the forfeiture order, *i.e.*, \$26 million forfeiture judgment, Georgiou waived any claim that it was improper.

On appeal, Georgiou also challenged the forfeiture judgment on the grounds that the forfeiture amount was based on the victims’ losses and this Court failed to enter the judgment in accordance with Rule 32.2. The Court of Appeals rejected these arguments. It held that Georgiou waived these claims because, even though he had several opportunities to do so, he did not object to the forfeiture judgment. *See United States v. Georgiou*, 777 F.3d at 147. The Court of Appeals’ decision became final when the Supreme Court denied Georgiou’s petition for writ of certiorari.

Georgiou’s challenge to this Court’s forfeiture judgment by way of the present motion which seeks to absolve him of responsibility for the judgment is untimely. Georgiou’s sentence, including the forfeiture order, became final in November 2015 when the Supreme Court denied his petition for writ of certiorari. Now, almost two years later, and almost seven years after this Court entered the forfeiture judgment, Georgiou seeks to vacate the judgment on the basis of a new rule announced by the Supreme Court in *Honeycutt*. Having failed to present this issue on direct appeal, Georgiou waived his challenge to the forfeiture judgment.

Georgiou now cannot raise this claim under The All Writs Act, a Writ of *Audita Querela*, or on any other basis. This Court, therefore, now lacks jurisdiction to alter its final forfeiture judgment.

D. This Court Properly Entered the Substitute Assets Order.

Georgiou also seeks to vacate the substitute asset order alleging that the government failed to comply with Federal Rule of Criminal Procedure 32.2 and 21 U.S.C. § 853(p) because it “never actually undertaken diligence to locate offense related proceeds.” Motion, ¶ 17. Georgiou contends that the government failed to produce any affidavit or other evidence of diligence to explain its efforts to locate directly forfeitable property. *Id.* We disagree.

This case presents a classic example of the government seeking to forfeit unrelated property which the government alleged belongs to Georgiou to collect on an outstanding forfeiture judgment. The government does not contend that the funds in the RBC Account are necessarily proceeds of the fraud offenses for which Georgiou was convicted. There is no evidence of record to suggest that the funds in this account were directly forfeitable assets. Rather, the government sought forfeiture of these funds as substitute property to satisfy, in part, the existing \$26 million forfeiture judgment imposed against Georgiou.

In its motion seeking the substitute asset order, the government specifically alleged that: