

22-7386 McINTOSH V. UNITED STATES

DECISION BELOW: 58 F.4th 606

LOWER COURT CASE NUMBER: 14-1908

QUESTION PRESENTED:

1. Whether a district court may enter a criminal forfeiture order outside the time limitations set forth in Rule 32.2, Fed.R.Crim.P.?

The appellate courts are divided on this issue. The Court of Appeals below rejected petitioner's argument that the district court's forfeiture order was invalid where the government failed to submit a preliminary order of forfeiture until more than two- and-half years after sentencing, and the government also failed to comply with the district court's direction that it provide a formal order of forfeiture within one week of sentencing, Compare *United States v. Maddux*, 37 F.4th 1170 (6th Cir. 2022) (rejecting the decision below and concluding that Rule 32.2 was a mandatory claim processing rule preventing forfeiture in that case); and *United States v. Shakur*, 691 F.3d 979 (8th Cir. 2011)(Rule 32.2's mandates are jurisdictional, and a court lacks the "power to enter" forfeiture once Rule 32.2's deadlines have passed); and *United States v. Martin*, 662 F.3d 301 (4th Cir. 2011) (concluding that Rule 32.2's deadlines are simply "time-related directive[s]").

2. Is the theft of cash from an individual sufficient to satisfy the "interstate commerce" element of 18 U.S.C. §1951 a necessary predicate for federal jurisdiction of what is otherwise local criminal conduct that should be prosecuted by the individual states?

The Solicitor General candidly admitted in a prior case before this Court that: when there's a robbery of an individual, the links [to Commerce] are much more attenuated and there's a longer chain of causation to get to commerce. And so in those contexts, even within the depletion of assets theory that my brother espouses before the Court, the courts have said, as a normal matter, robberies of individuals just don't fall within the Commerce Clause. *Taylor v. United States*, 14-6166 (Transcript of Oral Argument, Feb, 23, 2016) at 23-24. Despite this concession, the Second Circuit upheld petitioner's conviction under the depletion of assets theory, a theory that when applied to an individual effectively eviscerates the "interstate commerce" element and raises serious Federalism concerns.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 9/29/2023