No. 24-571

In the Supreme Court of the United States

ELIZABETH PETERS YOUNG, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court's forfeiture order conflicted with *Honeycutt* v. *United States*, 581 U.S. 443 (2017), by including the gross proceeds that petitioner obtained from her offenses, without deducting the amount that she paid to a lower-level co-conspirator.

2. Whether the district court erred by including in the forfeiture order proceeds that petitioner would not have received but for her offenses.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes, guidelines, and rules:

Miscellaneous:

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-55) is reported at 108 F.4th 1307.

JURISDICTION

The judgment of the court of appeals was entered on July 22, 2024. On September 30, 2024, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including November 19, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of conspiring to pay and receive healthcare kickbacks, in violation of 18 U.S.C. 371, and four counts of paying kickbacks in connection with

a federal healthcare program, in violation of 42 U.S.C. 1320a-7b(b)(2)(A). Pet. App. 56-57. The district court sentenced petitioner to 57 months of imprisonment, to be followed by three years of supervised release. *Id.* at 59-60. The court of appeals affirmed in part, vacated in part, and remanded. *Id.* at 1-55.

1. Petitioner made a living marketing medical products to doctors. Pet. App. 3. In 2015, she began marketing Terocin and LidoPro, expensive pain-relieving patches and creams. *Ibid.* Only a few healthcare programs, including the U.S. Department of Labor's Federal Employees' Compensation Act (FECA) program, would pay for them. *Ibid.* But the programs paid extremely high reimbursement rates—for instance, "$802 for Terocin, even though the product cost the [providing] pharmacy only $200, plus $16 in shipping." *Ibid.*

Petitioner leveraged those rates into a highly profitable kickback scheme. She recruited her friend Desiree de la Cruz, a medical assistant for a doctor named Plas James, to encourage Dr. James to prescribe Terocin and LidoPro to FECA-eligible patients. Pet. App. 4-6. De la Cruz would send the prescriptions to be filled at a pharmacy that petitioner had found called Drugs4Less, which would be reimbursed by FECA. *Id.* at 4, 6. "Drugs4Less in turn sent half its profits to" petitioner. *Id.* at 6. And petitioner "sent 20% of her revenue" to de la Cruz's partner (and later husband), Tim Mitchell, to pay for de la Cruz's services to the scheme. *Id.* at 4, 6. Petitioner had hired Mitchell as her "sales representative," but in reality "he did no work at all" and "merely waited for the checks to come in" for de la Cruz. *Id.* at 7.

"The scheme was a huge financial success." Pet. App. 6. From March 2015 to July 2016, Drugs4Less paid petitioner about $1.2 million "based on reimburse-

ments from workers' compensation programs, the vast majority of which came from the FECA program." *Id.* at 6-7. Petitioner sent Mitchell about $338,000 during the same period. *Id.* at 7.

In the summer of 2016, petitioner took steps to limit her legal exposure from the scheme. Pet. App. 7. She "had Mitchell sign a declaration stating that he didn't try to influence Dr. James"; "sent Mitchell emails purporting to seek assurances that de la Cruz was not in a position of authority" to refer business; "arranged a training opportunity for Mitchell so he would appear to be a bona fide sales representative"; and asked the owner of Drugs4Less to hire Mitchell and herself as employees. *Ibid.* The owner refused, so petitioner terminated her relationship with Drugs4Less. *Ibid.*

Petitioner switched to a different pharmacy in Alabama, but the arrangement otherwise carried on as before—except that the new pharmacy hired Mitchell as an employee and so "paid him directly." Pet. App. 8. From September 2016 to December 2018, the Alabama pharmacy paid petitioner about $299,000 and Mitchell about $210,000. *Ibid.* "All told," petitioner "received $1,527,160.75 in total between the two pharmacies, and she passed $338,255 of that to Mitchell." *Ibid.*

2. A grand jury in the Southern District of Florida returned an indictment charging petitioner with one count of conspiring to pay and receive healthcare kickbacks in connection with a federal health care program, in violation of 18 U.S.C. 371; six counts of receiving such kickbacks, in violation of 42 U.S.C. 1320a-7b(b)(1)(A) (2016); and four counts of paying such kickbacks, in violation of 42 U.S.C. 1320a-7b(b)(2)(A) (2016). Pet. App. 8. The district court dismissed three of the receipt counts on venue grounds. *Id.* at 9. After trial, a jury

found petitioner guilty on the conspiracy count and the four payment counts and not guilty on the remaining receipt counts. *Id.* at 13.

Before sentencing, the government moved for a preliminary order of forfeiture under 18 U.S.C. 982(a)(7). Pet. App. 13. That statute provides that "[t]he court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense." 18 U.S.C. 982(a)(7); see 18 U.S.C. 24(a)(1) (defining "Federal health care offense" to include a violation of 42 U.S.C. 1320a-7b). The government sought forfeiture in the amount of $1,527,160.75, representing the total amount petitioner received in kickbacks from the pharmacies. Pet. App. 13.

Petitioner opposed the motion on multiple grounds, including that "any money that she transferred to co-conspirators" and "any money derived from private insurers" (as opposed to FECA) "should be excluded" from the forfeiture order. Pet. App. 13-14. On the former point, petitioner invoked *Honeycutt* v. *United States*, 581 U.S. 443 (2017), in which this Court held that a different forfeiture statute did not authorize joint-and-several liability for co-conspirators, so a defendant cannot be liable for "property that his co-conspirator derived from the crime but that the defendant himself did not acquire." *Id.* at 445; see 21 U.S.C. 853(a)(1).

The district court rejected those contentions and granted the government's motion, entering a preliminary order of forfeiture for a money judgment of $1,527,160.75. Pet. App. 14. The government agreed not to pursue a final order of forfeiture pending petitioner's appeal. *Id.* at 89; see Fed. R. Crim. P. 32.2(d).

The district court conducted a separate restitution hearing and ordered restitution in the same amount as the forfeiture. Pet. App. 82. At sentencing, the court deemed petitioner a manager or supervisor of the kickback scheme. D. Ct. Doc. 218, at 36 (Aug. 23, 2020); see Sentencing Guidelines § 3B1.1(b) (2018). The court sentenced petitioner to 57 months of imprisonment, to be followed by three years of supervised release. Pet. App. 13.

3. The court of appeals affirmed in part, vacated in part, and remanded. Pet. App. 1-55.

a. The court of appeals rejected petitioner's challenges to the amount of the preliminary forfeiture order. Pet. App. 32-48. The court held that the order was consistent with *Honeycutt* because petitioner acquired the full $1.5 million from the pharmacies, even if she used some of the money to pay her co-conspirators. See *id.* at 32-42; cf. *Honeycutt*, 581 U.S. at 454. Highlighting the statutory directive to forfeit property constituting or derived from the "gross proceeds" traceable to the offense, 18 U.S.C. 982(a)(7), the court explained that it mattered only "whether the defendant obtained the money, not whether she chose to reinvest it in the conspiracy's overhead costs, saved it for a rainy day, or spent it." Pet. App. 41 (brackets and citation omitted). The court observed that a different rule would be inconsistent with "the penological goal of forfeiture," as it would punish "defendants who immediately use proceeds for their own enrichment" but not those who distribute proceeds in order "to further the conspiracy and create more proceeds." *Id.* at 41-42.

The court of appeals likewise upheld the inclusion of amounts attributable to payments from private insurers, even though petitioner was convicted for kickbacks

in connection with a federal healthcare program. Pet. App. 42-48; see 42 U.S.C. 1320a-7b. Under Eleventh Circuit precedent, a but-for standard governs whether proceeds are "traceable to the commission of the offense" and thus forfeitable. 18 U.S.C. 982(a)(7); see Pet. App. 43 (citing, *e.g.*, *United States* v. *Gladden*, 78 F.4th 1232, 1250 (2023)). The court rejected petitioner's effort to limit that standard to cases arising under a different statute prohibiting schemes to defraud "any health care benefit program." 18 U.S.C. 1347; see Pet. App. 45-47. And the court found the but-for standard satisfied here based on the district court's factual findings that "the government portion" was "the driving force" of petitioner's scheme. Pet. App. 47 (citation omitted). Petitioner did "not assert that the district court clearly erred in making these findings," nor did she "suggest[] any reason why she would have received the funds from private payors but for" the federal kickback offenses. *Ibid.*

In addition, the court of appeals rejected petitioner's challenge to the sufficiency of the evidence and affirmed her convictions. Pet. App. 16-22. It vacated the restitution order and remanded on the ground that the government did not establish that the amount of petitioner's receipts was also the amount of the actual loss that the government suffered. *Id.* at 22-32.

b. Judge Jordan concurred in part and dissented in part, agreeing with the majority on all but the private-insurers issue. Pet. App. 49-55. He would have held that proceeds from private-insurer payments are not forfeitable in this context. *Ibid.*

4. On remand, the government did not pursue restitution, and the district court therefore entered a new judgment omitting restitution. Pet. App. 56-69. The

government did continue pursuing forfeiture, but it was unable to locate any money to satisfy the forfeiture judgment. D. Ct. Doc. 275, at 3 (Sept. 5, 2024). So the government moved for forfeiture of two pieces of real property in Georgia, including petitioner's house, as substitute property. 21 U.S.C. 853(p); see 18 U.S.C. 982(b)(1); D. Ct. Doc. 275, at 3-4; Pet. 27. Petitioner's husband filed a third-party claim to the properties, and the government reached an agreement with him not to forfeit those properties in exchange for about $100,000, corresponding to petitioner's "share of the estimated current net equity" in the properties. D. Ct. Doc. 302, at 5 (Feb. 26, 2025); see *id.* at 5-6 (court approving the settlement and ordering forfeiture).

ARGUMENT

Petitioner renews her contentions (Pet. 20-26, 28-30) that the district court's preliminary forfeiture order was inconsistent with *Honeycutt* v. *United States*, 581 U.S. 443 (2017), and erroneously included proceeds derived from private health insurers. Those claims lack merit; petitioner does not show that either would succeed in any circuit; and this case would be a poor vehicle for considering them in any event. Further review is unwarranted.

1. a. The court of appeals correctly held that petitioner was required to forfeit the full amount she received from the pharmacies in exchange for referrals during the conspiracy, including the amount that she paid to her co-conspirator Mitchell. Pet. App. 32-48.

The forfeiture statute here provides that the court "shall order the [defendant] to forfeit property * * * that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense." 18 U.S.C. 982(a)(7). As the court of appeals

explained—and petitioner does not dispute—the reference to "gross" proceeds means the "entire" amount of proceeds, "undiminished by deduction." Pet. App. 33 (quoting *Black's Law Dictionary* 847 (11th ed. 2019)) (brackets omitted). In the context of a conspiracy, the gross proceeds thus include "money received by the defendant from the crime but paid to coconspirators." *United States* v. *Bradley*, 969 F.3d 585, 588 (6th Cir. 2020), cert. denied, 141 S. Ct. 2763 (2021). "[I]t is beside the point whether the money stayed in [the defendant's] pocket (e.g., kept as profits) or went toward the costs of running the conspiracy (e.g., used to pay coconspirators)." *Id.* at 589; see Pet. App. 33-34.

In addition to following from the statutory text, the court of appeals' holding furthers the purposes of forfeiture. Criminal forfeiture statutes "serve important governmental interests such as 'separating a criminal from his ill-gotten gains,' 'returning property, in full, to those wrongfully deprived or defrauded of it,' and 'lessening the economic power' of criminal enterprises." *Honeycutt*, 581 U.S. at 447 (brackets and citation omitted); see *Kaley* v. *United States*, 571 U.S. 320, 323 (2014). The engineer of a criminal enterprise who re-invests her proceeds in the conspiracy benefits as much as—or more than—a criminal who spends the proceeds on unrelated items or investments. Pet. App. 41-42. There is no sound reason to impose a lesser forfeiture on the former than the latter. *Ibid.*

Petitioner's contrary arguments (Pet. 20-26) lack merit. She mainly contends that the court of appeals' decision is inconsistent with *Honeycutt*. But *Honeycutt* held that a defendant may not "be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself *did not*

acquire." 581 U.S. at 445 (emphasis added). Honeycutt, who worked for his brother's hardware store, accordingly could not be ordered to forfeit the total proceeds of the store's sales of a product used to make methamphetamine: although he was part of the conspiracy, he "had no ownership interest in [the] store and did not personally benefit from the * * * sales," and thus "never obtained tainted property." *Id.* at 454.

Petitioner, by contrast with Honeycutt, "possessed" and "controlled" the proceeds before giving a portion to Mitchell, her subordinate in the scheme. Pet. App. 41. The courts below thus did not hold petitioner jointly and severally liable for proceeds she never "acquire[d]." *Honeycutt*, 581 U.S. at 445.

Petitioner contends (Pet. 21-22) that the court of appeals erred under *Honeycutt* by applying a forfeiture rule that she characterizes as "if you touch it, you own it." Petitioner notes (Pet. 22), for example, that Honeycutt would have "physically collected" some of the tainted money "while working the cash register" at his brother's store, yet this Court held that he did not obtain it for forfeiture purposes. As noted, however, petitioner did not merely touch the proceeds of her scheme (or carry them at the direction of another, see *Honeycutt*, 581 U.S. at 450); she instead "controlled" and distributed them in her capacity as a high-level member of the conspiracy. Pet. App. 41. *Honeycutt* did not address that situation.

Nor, contrary to petitioner's contention (Pet. 22-23), does the court of appeals' decision enable the government to forfeit petitioner's untainted property without having to satisfy the substitute-property provisions of 21 U.S.C. 853(p). See *Honeycutt*, 581 U.S. at 451-452. The purpose of the district court's preliminary order of

forfeiture and money judgment was to determine the amount of gross proceeds petitioner is responsible for under 18 U.S.C. 982(a)(7). See Pet. App. 89; Fed. R. Crim. P. 32.2(b). To satisfy that judgment with untainted substitute property, the government must follow Section 853(p). See Br. in Opp. at 21-22, *Bradley* v. *United States*, 141 S. Ct. 2763 (2021) (No. 20-7198). That is how the government proceeded on remand here. See pp. 6-7, *supra*.

The decision below also does not allow the government to obtain a double recovery of the $338,000 that petitioner paid Mitchell. Cf. Pet. 23. As the court of appeals explained, "the government may recover the $1.5 million total only once," "[s]o to the extent that Mitchell pays any of it, that amount must be deducted from the amount that [petitioner] owes." Pet. App. 42 n.8. The court of appeals correctly held petitioner responsible for the proceeds she paid to her confederates.

b. Petitioner further errs in contending (Pet. 13-19) that the court of appeals' decision implicates a circuit conflict. As she acknowledges, the decision below is consistent with decisions of the First, Second, and Sixth Circuits. Although petitioner again claims that those circuits applied an "if you touch it, you own it" rule (Pet. 17), that is incorrect. Those cases, like this one and by contrast with *Honeycutt*, did not involve low-level participants in criminal enterprises who may have merely "touched" tainted proceeds. See *Saccoccia* v. *United States*, 955 F.3d 171, 175 (1st Cir. 2020) (defendant "controlled the bank account from which the funds at issue flowed and * * * oversaw the distribution of those funds"), cert. denied, 141 S. Ct. 1127 (2021); *United States* v. *Tanner*, 942 F.3d 60, 68 (2d Cir. 2019) (defendant was not "a mere intermediary in the money launder-

ing scheme"); *Bradley*, 969 F.3d at 587-588 (6th Cir.) (defendant "ran a drug trafficking conspiracy" and used proceeds to pay co-conspirators).

The decision below does not, as petitioner contends (Pet. 15-16), conflict with decisions of the Fourth Circuit. The defendant in *United States* v. *Chittenden*, 896 F.3d 633 (4th Cir. 2018), never obtained—in any sense—most of the $1 million that she was ordered to forfeit, see *id.* at 635-636, 639, and thus is not comparable to petitioner. And in *United States* v. *Limbaugh*, No. 21-4449, 2023 WL 119577 (4th Cir. Jan. 6, 2023), the court of appeals did not address the issue here because the government conceded that the district court had erred under *Honeycutt* by imposing joint-and-several forfeiture liability. See *id.* at *4-5. And the defendant in that case acknowledged that forfeiture *would* be proper for proceeds that she was "responsible for obtaining and dissipating." Appellant's Br. at 33, *Limbaugh*, 2022 WL 210332 (Jan. 18, 2022) (No. 21-4449).

Nor is petitioner correct in asserting (Pet. 14-15) that there is a conflict with the Ninth Circuit. The decision below is in some tension with *United States* v. *Thompson*, 990 F.3d 680 (9th Cir.), cert. denied, 142 S. Ct. 616 (2021), insofar as that case focused on where the proceeds "came to rest." *Id.* at 690-692; see Pet. App. 40. But *Thompson* involved three conspirators who divided up the proceeds of their scheme, 990 F.3d at 690, not someone like petitioner, a manager or supervisor of criminal activity who used a portion of the proceeds to pay a subordinate for his role in the conspiracy and to keep the scheme running. See pp. 2-3, *supra*. *Thompson* also did not make clear whether each defendant ever even possessed all the money he was ordered to forfeit. See 990 F.3d at 685 (discussing the proceeds'

distribution to three attorneys' trust accounts). Nor did it involve a provision that requires forfeiture of the "*gross* proceeds" of the offense, 18 U.S.C. 982(a)(7) (emphasis added), which makes it especially clear that forfeiture should not be limited to the defendant's net profits or ultimate receipts. Cf. *Thompson*, 990 F.3d at 686; 18 U.S.C. 981(a)(1)(C).

Thompson thus does not squarely conflict with the decision below. Indeed, in a case decided after *Thompson* (and in which the parties addressed *Thompson*), the Ninth Circuit upheld an order requiring the defendant to forfeit the gross proceeds of his visa-fraud offenses, even though he paid a portion of the proceeds to the visa beneficiaries who also participated in the scheme. *United States* v. *Prasad*, 18 F.4th 313, 320-325 (2021); see 19-10545 C.A. Doc. 62 (Apr. 12, 2021); 19-10545 C.A. Doc. 63 (Apr. 16, 2021). That decision's reasoning mirrored the Eleventh Circuit's below and expressly agreed with the Sixth Circuit's decision in *Bradley*, *supra*. *Prasad*, 18 F.4th at 321. The Ninth Circuit also grounded its holding in circuit precedent predating *Thompson*. See *id.* at 322-324. To the extent there is any inconsistency within the Ninth Circuit's decisions, this Court has long recognized that "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties." *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). Petitioner's *Honeycutt* claim does not warrant further review.

c. Petitioner's *Honeycutt* claim also lacks prospective importance in this case. In contending otherwise, petitioner emphasizes (Pet. 27) the potential forfeiture of her home. Since the petition for a writ of certiorari was filed, however, the government has agreed not to forfeit that substitute property, in exchange for a pay-

ment of about $100,000 representing petitioner's share of the house. See pp. 6-7, *supra*. The government has not found any directly forfeitable property, see *ibid.*, and is not currently pursuing other forfeiture to satisfy the money judgment. Those developments further counsel against granting certiorari.

2. Petitioner additionally contends (Pet. 28-30) that the forfeiture order erroneously included proceeds derived from payments by private insurers, because the relevant statute prohibits kickbacks in connection with a "*Federal* health care program." 42 U.S.C. 1320a-7b(b)(1)(A) and (2)(A) (emphasis added); see Pet. App. 42-48. But that was not error, and petitioner does not assert any disagreement in the courts of appeals on the matter. This Court recently denied certiorari in a case presenting a related issue, and it should take the same course here. *Jacob* v. *United States*, 145 S. Ct. 518 (2025) (No. 24-5032); see Pet. 29 n.5 (noting the then-pending petition in *Jacob*).

a. As a threshold matter, Section 1320a-7b(b) prohibits kickbacks for referrals for services that "may" be paid for by federal programs, not—as petitioner assumes—services that are actually paid by federal programs. 42 U.S.C. 1320a-7b(b)(1)(A) and (2)(A); see *United States* v. *Shah*, 95 F.4th 328, 352 (5th Cir. 2024), cert. denied, 145 S. Ct. 518 (2025). In any event, moreover, the forfeiture statute here is not limited to proceeds directly generated by prohibited conduct: it requires forfeiture of "property * * * that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense." 18 U.S.C. 982(a)(7). The Eleventh Circuit and other circuits have interpreted the traceability requirement to mean that property is forfeitable if the defendant would not have

received it "but for" the criminal offense. Pet. App. 43; see, *e.g.*, *Gladden*, *supra*, 78 F.4th at 1232, 1250; *Shah*, 95 F.4th at 389; *United States* v. *Bikundi*, 926 F.3d 761, 792-793 (D.C. Cir. 2019) (per curiam), cert. denied, 141 S. Ct. 150, and 141 S. Ct. 457 (2020).

Petitioner does not meaningfully dispute that interpretation. Nor does she dispute the lower courts' determinations that all $1.5 million in proceeds were traceable to her offenses under the but-for standard because the "the government portion" (*i.e.*, FECA's reimbursements for Terocin and LidoPro prescriptions) was "the driving force" of petitioner's scheme. Pet. App. 47 (citation omitted).

Petitioner instead dwells (Pet. 29-30) on Section 1320a-7b's contrast with 18 U.S.C. 1347, which refers to "any health care benefit program," instead of "Federal health care program"—implying, in her view, that defendants convicted under Section 1320a-7b cannot be ordered to forfeit proceeds derived from nonfederal payments. As noted above, however, forfeiture is not limited to proceeds directly generated by prohibited conduct. So any difference in the scope of Section 1320a-7b's and Section 1347's respective prohibitions is not dispositive of the forfeiture question.

b. This case would also be a poor vehicle for considering the private-payments issue—both in light of the recent developments discussed above, pp. 6-7, 12-13, *supra*, and because it is not clear what proceeds would be excluded under petitioner's theory. In the district court, the government noted that petitioner had given "no indication as to which payments would even purportedly fall into this category" of private-payor proceeds. D. Ct. Doc. 216, at 1 (Aug. 19, 2020). Petitioner filed a surreply with several exhibits seeking to show the sources

of the funds that she received from the pharmacies. Gov't C.A. Br. 11. But at the forfeiture hearing, the district court expressed skepticism about the "numbers and extrapolations" in petitioner's submissions and declined to rely on them. D. Ct. Doc. 235, at 77 (Sept. 23, 2020); see *id.* at 67-68, 77-79. Even if petitioner's claim had legal merit, it would likely fail as an evidentiary matter.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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