

No. 23-2110

IN THE
Supreme Court of the United States

JOSEPH CAMMARATA,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents the question whether a federal criminal conviction may stand where the conduct charged is the specific conduct this Court has held lawful, where the trial was presided over by a judge subject to at least five independent statutory grounds for disqualification, and where the appellate review that followed was conducted by a court structurally disabled from impartiality. The specific questions are:

1. Whether a federal wire-fraud conviction comports with due process, or instead punishes conduct that is no “offense against the laws of the United States,” 18 U.S.C. § 3231, where the charged conduct is the submission of securities class-action settlement claims through valid legal assignments, the precise conduct this Court held lawful in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008); where the prosecution never cited *Sprint*, the Government’s own post-trial brief conceded the underlying trades may have been entirely real and that fake trades were never charged, the lead trial prosecutor recognized the assignment on the record and moved to strike his own recognition, and the trial court conceded that *Sprint* states the governing rule and that the indictment did not preclude the assignment defense; and where, in four and a half years, neither the district court nor the court of appeals has ever adjudicated the charged conduct against *Sprint*.
2. Whether the Government constructively amended the indictment in violation of the Grand Jury Clause where, after the petitioner testified and established that his conduct was lawful assignment exactly as described in *Sprint*, the Government abandoned the theory charged in Paragraph 11 and substituted in closing an uncharged theory that the petitioner “stole” the trades, a theory never presented to the grand jury and affirmatively disproven by the Government’s own witnesses, who confirmed that not a single duplicate claim was ever filed. See *Stirone v. United States*, 361 U.S. 212 (1960); *United States v. Syme*, 276 F.3d 131 (3d Cir. 2002).
3. Whether the district court’s failure to enter the order mandated by Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act of 2020 is structural error where that failure permitted the Government to suppress *Sprint* as controlling, exculpatory legal authority, the very authority that invalidated Paragraph 11 of the indictment and the Government’s entire case in chief. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Strickler v. Greene*, 527 U.S. 263 (1999).
4. Whether the trial judge and the judges of the court of appeals were statutorily disqualified, requiring vacatur under *Liljeberg v. Health Services Acquisition*

Corp., 486 U.S. 847 (1988), where they were subject to at least five separate and uncontested grounds for disqualification under 28 U.S.C. § 455 as to the trial judge, including a § 455(b)(4) financial interest he admitted on the record from the bench, together with the structural disqualification of the court of appeals, and where none disqualified himself.

5. Whether a litigant is denied the impartial appellate review guaranteed by the Due Process Clause where every panel of the court of appeals to consider his four related cases was operationally supported by the spouse of the very prosecutor he had accused of misconduct, and where that court disposed of his claims through unexplained one-word denials, a 361-day silence culminating in a denial that addressed none of his allegations, a related appeal left pending more than two years without any responsive brief, and an opinion that misstated the trial record.
6. Whether, under *United States v. Olano*, 507 U.S. 725 (1993), the cumulative effect of a conviction for lawful conduct, a financially interested trial judge, a conflicted lead prosecutor, suppressed exculpatory authority, a judicially manufactured victim theory the appellate panel itself rejected, and the retaliatory obstruction of the petitioner's access to this Court "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings" such that vacatur is required regardless of preservation.

PARTIES TO THE PROCEEDING AND RELATED CASES

The petitioner is Joseph Cammarata, the defendant-appellant below. The respondent is the United States of America. There are no corporate parties.

The following proceedings are directly related to this petition within the meaning of Rule 14.1(b)(iii):

- *United States v. Cammarata*, No. 21-cr-427 (E.D. Pa.) (judgment of conviction; amended § 2255 motion pending, Civ. No. 26-379).
- *United States v. Cammarata*, 129 F.4th 193 (3d Cir. 2025) (the judgment below).
- *SEC v. Cammarata*, No. 21-cv-4845 (E.D. Pa.) (parallel civil enforcement action before the same district judge); interlocutory appeal pending, No. 24-1381 (3d Cir.).
- *In re Cammarata*, No. 25-1188 (3d Cir.) (mandamus); *Cammarata v. United States*, No. 25-6128 (U.S.) (mandamus denied Jan. 20, 2026; rehearing denied without opinion or stated reason).
- *United States v. Cammarata*, No. 24-1983 (3d Cir.) (related tax appeal); *Cammarata v. Donnelly*, No. 24-cv-1000 (D.N.J.).

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PETITION FOR A WRIT OF CERTIORARI

Joseph Cammarata respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS AND ORDERS BELOW

The precedential opinion of the court of appeals affirming the conviction is reported at *United States v. Cammarata*, 129 F.4th 193 (3d Cir. 2025). The order denying rehearing and rehearing en banc is unreported. The judgment and sentence of the United States District Court for the Eastern District of Pennsylvania (Kenney, J.) are unreported.

JURISDICTION

The court of appeals entered its opinion and judgment on July 22, 2025, and denied a timely petition for rehearing and rehearing en banc on August 12, 2025. The judgment of the court of appeals, together with the Clerk's correspondence of April 9, 2026 setting the time for completing this filing, brings the petition within the period prescribed by this Court's Rule 13. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth Amendment (Grand Jury and Due Process Clauses) and the Sixth Amendment to the United States Constitution; 18 U.S.C. § 3231; 28 U.S.C. § 455; Federal Rule of Criminal Procedure 5(f); and the Due Process Protections Act of 2020, Pub. L. No. 116-182, 134 Stat. 894. The relevant texts are reproduced in the appendix.

STATEMENT OF THE CASE

A. The conduct charged: assignment of real, owned trades.

Petitioner founded SpeedRoute, a trading-technology firm that at its peak executed approximately three percent of daily United States equity-exchange volume, on the order of eleven million trades per day. Trial Tr., Day 5 (Oct. 25, 2022), at 57:22–58:4. Petitioner owned the underlying trade data. He assigned that data to three entities, Quartis, Nimello, and Invergas, which then submitted securities class-action settlement claims as the beneficial owners of the assigned claims. Petitioner testified that this was a recognized practice and invoked this Court's decision in *Sprint* by name:

There's a concept called assignment Specifically [as] to that business, there was a big case, Sprint Communications. Specifically the Supreme Court talked about assignment for a securities class action being perfectly acceptable

Trial Tr., Day 5, at 53:1–54:6. The testimony was not contested on cross-examination. The assignment model had been vetted in 2009 by Richard Schiffrin, the petitioner’s business partner, who not only invested in class-action claim businesses with the petitioner but had served as lead counsel in numerous securities class actions resolving billions of dollars in settlements, and who concluded the model was lawful. *Id.* at 30:22–31:7.

B. The Government’s witnesses confirmed the predicates for assignment, and never determined the trades were not real.

The Government’s own claims-administrator witnesses confirmed both that claims may be filed by one party on behalf of a beneficial owner with proof of authority, and that they never determined the underlying trades were not real. James Facciolla testified: “WE NEVER DETERMINED . . . WHETHER IT WAS RIGHT OR WRONG,” and confirmed “YOU NEVER DETERMINED THAT THE TRADES WERE FAKE”, “CORRECT.” Trial Tr., Day 1 (Oct. 19, 2022), at 183. Dan Dearden and Tina Chiango gave the same concession. *Id.*, Day 2, at 186–87; Day 4, at 184. Stephen Dickson confirmed that Quartis acquired trade data from defunct broker-dealers and “could then process it for claims.” *Id.*, Day 1, at 216:19–217:2. The Government’s cooperating witness Erik Cohen testified that “[i]t’s not atypical to sell your claims from one company to another in our business.” *Id.*, Day 2, at 230:7–10.

C. The Government conceded in writing that the trades may have been real.

In its post-trial opposition, the Government wrote:

even if Cammarata were right, and even if each and every one of the underlying stock trades were real, there was no divergence between the indictment and the evidence.

Gov’t Opp. to Post-Trial Mots., ECF No. 267, at 22 (E.D. Pa. Mar. 16, 2023). The same brief identified petitioner’s five-part assignment defense, addressed it on the merits, and rejected it, without citing *Sprint*, 554 U.S. 269, *APCC*, or the volume at 554 U.S. anywhere in its thirty-five pages. ECF No. 267, at 26.

The same brief went further, conceding that fake trades were never the charge at all: “Nowhere did the indictment allege that the underlying stock trades did not occur. Indeed, fake stock trades was not even one of the examples specified in the charging instrument.” ECF No. 267, at 20–21. The Government thus told the district court, in writing, both that the trades may have been entirely real and that their falsity was never an element it charged. A theory the Government concedes it never charged cannot sustain the conviction the Government obtained.

D. The lead prosecutor recognized the assignment on the record, then struck his own question.

While examining cooperator David Punturieri, the lead trial prosecutor, Assistant United States Attorney Paul G. Shapiro, was asking the cooperating witness David Punturieri why he believed it was permissible to file claims in the name of an entity that had not itself executed the trades; when Punturieri answered that the petitioner “told him that Quartis bought the trades,” Shapiro recognized the assignment framework in the exhibit before him and said so aloud, then immediately moved to strike his own half-question before the witness or jury could engage it:

THIS APPEARS TO BE ASSIGNED — ACTUALLY, I’M GOING TO STRIKE THAT HALF A QUESTION. SAME THING, CAN WE JUST CALL IT QUARTIS AND —

Trial Tr., Day 4 (Oct. 24, 2022), at 20:11–13. The prosecutor recognized that the conduct “appear[ed] to be assigned”, the precise conduct *Sprint* authorizes, and acted to remove the recognition from the record.

E. The Government abandoned the charged theory and conceded the right to assign.

In rebuttal closing, the Government conceded the legality of assignment and recast the case to avoid it: “This case is not about whether Mr. Cammarata had some abstract right to assign something he owned to somebody else. This case is exactly as it looks like. This is about a scheme to defraud.” Trial Tr., Day 6 (Oct. 26, 2022), at 103:23–104:1. The indictment’s Paragraph 11 had charged that claimants “were required” to have personally traded and personally lost. After petitioner invoked *Sprint*, the Government abandoned that theory and substituted uncharged theories, first that the trades were “stolen,” then that the assignees failed to disclose their assignee status. Neither was presented to the grand jury.

The “stolen trades” theory was not only uncharged; it was affirmatively disproven on the record. The Government’s own claims-administrator witnesses confirmed that not a single duplicate claim was ever identified, meaning no genuine owner was ever displaced by petitioner’s claims. Theft of a trade requires that the true owner have filed, or been able to file, the same claim; where no duplicate claim exists anywhere in the settlement systems, it is mathematically impossible that petitioner’s claims were stolen from anyone. The point is independent of *Sprint*: the newly fabricated “stolen trades” theory was not only uncharged, it was mathematically impossible. Across roughly ten million claims filed over seven years, not one duplicate claim ever appeared; had any trade belonged to another owner or been “stolen,” duplicate filings would have appeared by the millions. The substitution of a theory both uncharged and disproven by the Government’s own records was an act of bad-faith prosecutorial misconduct.

F. The district court conceded that Sprint governs and that the indictment did not preclude the defense.

In its April 13, 2026 memorandum denying reconsideration, the district court made two dispositive concessions. On the law: “no one is disputing that the Supreme Court case, *Sprint Communications Co., L.P. v. APCC Services, Inc.*, provides that the assignee of a claim has standing to assert the injury in fact suffered by the assignor.” ECF No. 487, at 3 (quoting 554 U.S. at 286). On the indictment: “Nothing in Paragraph 11, or indeed, in the entire Superseding Indictment, precludes Defendant from taking the position that the claimants represented by Alpha Plus were assignees of valid claims, and as such, the claims filed by Alpha Plus were not fraudulent.” ECF No. 487, at 4. The legal premise and the indictment’s reach are thus both conceded.

G. The trial judge’s admitted financial interest, and the manufactured victims.

At sentencing, the trial judge stated, in the first person, while imposing sentence:

I, I, I have invested, I’ve made a claim and they say, this is how much you’re getting back based on all the claims that were made. Forty million dollars is removed and you’re not getting it. Now, when forty million dollars comes back, you’re going to get the portion that you lost.

Sentencing Tr., ECF No. 310, at 69:12–18 (June 6, 2023). The transcript preserves the judge stammering, “I, I, I have invested”, a departure from the composure of a disinterested jurist that is itself probative: a judge with no personal stake in the securities-claims process would have had no cause to speak in the first person, or with such evident agitation, about his own investing and claim-making while imposing sentence. The judge’s financial-disclosure reports (Forms AO-10) reflect that he purchased Apple, Boeing, and Exxon Mobil on December 24, 2018 and February 14, 2019, each within the class period of a pending securities class action concerning that issuer (Ex. A, at 4–5; Ex. B, at 4–5; Ex. C, at 4), and that the Apple action settled on September 18, 2024, while petitioner’s appeal was pending and he remained class-eligible. The judge then supplied the victim theory the Government had not: where the Government identified no individual victim, the court declared the settlement administrators “the victims,” *id.* at 69:18–24, and applied a ten-or-more-victims enhancement on that basis. The author of the precedential affirmance, Judge D. Brooks Smith, rejected that theory at oral argument: “Would you agree with me that the district court was wrong in saying that the claims administrators were victims?”, “Yes. Yes. Yes.” 23-2110 Oral Arg. Tr. (Sept. 19, 2024); and to the Government: “He also called the administrators victims which can’t be correct.”

H. The panel opinion and the appellate pattern.

The panel opinion affirmed in a single controlling paragraph that, as petitioner’s rehearing addendum demonstrated sentence by sentence, rests on six

discrete errors, most centrally the assertion that “no evidence was presented to show that Nimello, Quartis, and Invergasa were ever the beneficial owners.” 23-2110, ECF No. 77, at 19. That statement was not merely unsupported; it was affirmatively false and provably so. Every claim form the petitioner ever filed disclosed and attested, under penalty of perjury, that the named entity was the beneficial owner and eligible claimant. Those attestations were in evidence on the face of the claim exhibits (e.g., Gov’t Ex. 152), and petitioner placed the documentary proof before the court in his petition for rehearing at ECF No. 69, which the court refused to acknowledge. A court of appeals that affirms a criminal conviction by declaring the central fact of the case the opposite of what the record’s own exhibits attest, and then declines even to look at the documents proving the error, has not conducted review. The opinion does not mention *Sprint* once. The same court, in the petitioner’s three other related matters, has allowed the parallel SEC appeal (No. 24-1381) to sit for more than two years, through today, without a merits brief from the Commission, after the Commission missed every filing deadline and its last extension request on September 12, 2025; denied mandamus (No. 25-1188) after 361 days without addressing a single allegation; and denied rehearing in the tax appeal (No. 24-1983) over unaddressed Brady and other documented claims. Part VI *infra* explains why this pattern is not coincidence.

REASONS FOR GRANTING THE PETITION

Each of the six questions presented independently warrants review, and each, if answered in petitioner's favor, requires vacatur. Taken together, they describe a criminal conviction that fails at every level on which the system is supposed to test it: the conduct was lawful, the indictment was abandoned, the favorable authority was suppressed, the trial judge was disqualified, the appellate court was compromised, and the petitioner's access to this Court was obstructed. The Court need not accept all six to grant relief. It need accept only one. And underlying them all is a fact this Court rarely encounters: the petitioner is actually innocent, because the conduct proved at trial is the precise conduct this Court has held lawful.

I. This Is the Exceptional Case of Actual Innocence, Where Refusing Review Would Extend a Fundamental Miscarriage of Justice.

This Court has reserved its most searching attention for the rare case in which a person stands convicted of conduct that is not criminal, because "the execution of a legally and factually innocent person would be a constitutionally intolerable event." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O'Connor, J., concurring). A credible showing of actual innocence permits a court to reach the merits notwithstanding any procedural obstacle, because in such a case the miscarriage of justice from inaction outweighs the interest in finality. *Schlup v. Delo*, 513 U.S. 298, 316 (1995); *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); *House v. Bell*, 547 U.S. 518 (2006). That principle answers every preservation and default argument the Government has advanced in this case.

The innocence here is not a matter of reweighing disputed evidence; it is established by this Court's own precedent applied to undisputed facts. The indictment's Paragraph 11, the sole theory of criminality, alleged that the settlement claimants were required to have personally executed the trades and personally suffered the losses. Every claims-administrator witness the Government called testified that this was false: claims may be filed by an assignee or authorized party on proof of ownership, and none of them ever verified, or needed to verify, that the trades belonged to the claimant personally. *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), holds precisely that an assignee may pursue an assigned claim. The conduct the Government prosecuted as fraud is therefore the conduct this Court has declared lawful. On this record, "it is more likely than not that no reasonable juror would have convicted," *Schlup*, 513 U.S. at 327, because the only theory of guilt was legally foreclosed and factually disproven by the Government's own proof.

The Government has never contested this. It conceded in writing that the trades may have been entirely real and that fake trades were never charged; its lead prosecutor recognized the assignment on the record; and the district court conceded that *Sprint* governs and that the indictment did not preclude the defense. An innocence this complete, conceded at every turn yet never once adjudicated in four and a half years, is the fundamental miscarriage of justice the writ exists to correct.

The remaining questions establish how that miscarriage was produced and why it has never been remedied.

II. The Conviction Rests on Conduct This Court Held Lawful in Sprint, and No Court Has Ever Adjudicated It.

In *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), a unanimous Court held that an assignee of a legal claim may assert that claim, including the injury suffered by the assignor, and that a valid assignment transfers the right to recover even where the assignee suffered no underlying injury of its own. *Id.* at 285–86. The Court further made clear that the assignee pursues the claim as the real party in interest, in its own name and as the first party rather than as a third party. *Id.* at 271, 286. Securities class-action settlement rights are freely assignable. The conduct for which petitioner stands convicted, assigning real, beneficially owned trade data to entities that then filed settlement claims as the new beneficial owners, is the conduct *Sprint* authorizes. Lawful conduct is not a federal crime, and an indictment that charges only lawful conduct charges no “offense[] against the laws of the United States,” 18 U.S.C. § 3231.

What makes this case extraordinary is not that the argument exists, but that every actor in the proceeding has conceded its premises while no court has ever ruled on it. The Government conceded in writing that the trades may have been entirely real. ECF No. 267, at 22. Its lead prosecutor recognized the assignment on the record and struck his own question. Trial Tr., Day 4, at 20:11–13. Its rebuttal closing conceded petitioner’s “right to assign something he owned.” Trial Tr., Day 6, at 103:23–104:1. And the district court conceded both that *Sprint* states the governing rule and that the Superseding Indictment “did not preclude” the assignment defense. ECF No. 487, at 3–4. Yet the panel opinion affirming the conviction does not contain the word *Sprint*. 129 F.4th 193.

This is the rare case in which the controlling authority is not disputed, only ignored. For four and a half years, across a trial, a direct appeal, en banc proceedings, and collateral review, no court has adjudicated whether the charged conduct is a crime once *Sprint* is applied. A federal conviction that no court can square with this Court’s unanimous precedent, and that the prosecuting sovereign and the trial judge have conceded turns on lawful conduct, cannot be allowed to stand without this Court’s review.

III. The Government Constructively Amended the Indictment by Abandoning the Charged Theory Mid-Trial.

The Fifth Amendment guarantees that a defendant will be tried only on charges a grand jury returned. *Stirone v. United States*, 361 U.S. 212, 217 (1960). A constructive amendment, where the proof and instructions permit conviction on a theory not charged, is reversible error. *United States v. Syme*, 276 F.3d 131, 148 (3d Cir. 2002). Paragraph 11 of the Superseding Indictment charged a single theory: that

claimants “were required” to have personally executed the trades and personally suffered the losses. When petitioner met that theory with *Sprint*, the Government abandoned it. In rebuttal it disclaimed any quarrel with petitioner’s “right to assign,” and recast the case as a generalized “scheme to defraud.” Trial Tr., Day 6, at 103:23–104:1. Post-trial, it advanced yet another uncharged theory, that petitioner “fail[ed] to identify” the assignees. ECF No. 267, at 26.

A prosecution that charges one theory to the grand jury and convicts on another, switching theories precisely to evade controlling law, violates the Grand Jury Clause at its core. Contrary to the panel’s characterization, the claim was preserved: the petitioner raised the constructive-amendment and *Sprint*-based challenge in his post-trial motion for judgment of acquittal and a new trial under Rules 29 and 33 (21-cr-427, ECF No. 264) and again in his pro se reply (ECF No. 274). The courts below nonetheless never reached whether the successive theory-substitutions were themselves a constructive amendment foreclosed by *Stirone*.

IV. The Suppression of Exculpatory Authority and Evidence, Compounded by the Absence of the Mandatory Rule 5(f) Order, Violated Due Process.

The duty to disclose favorable material extends to exculpatory and impeachment material alike. *Brady v. Maryland*, 373 U.S. 83 (1963); *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Two failures converge here.

A. Suppressed exculpatory and impeachment material.

The Government’s first witness, James Facciolla, supplied the probable-cause foundation on direct, testifying that the clearing firms on the list “did not make sense” and were invalid, then conceded on cross that the list was in fact a list of clients, that he called only two, and that both confirmed they were clients. Trial Tr., Day 1, at 152–53, 179–81. The same witness admitted he intended to seek SEC whistleblower rewards contingent on the success of this prosecution and the parallel SEC action, classic *Giglio* impeachment. *Id.* at 191–92; *Giglio v. United States*, 405 U.S. 150 (1972). Separately, the FBI left all three of petitioner’s computers in the unsupervised custody of the cooperating witness Erik Cohen for two weeks; Cohen self-collected the entire Alpha Plus email system as administrator, with no chain of custody, and did not produce it until mid-trial; and on the day his arrest warrant was executed he wrote, “I don’t think they realized that we bought the data. We will figure it out.” *Id.*, Day 5, at 245–53. The integrity of that evidence, and the timing and scope of Cohen’s pre-indictment cooperation, was never disclosed in a form the defense could use.

B. The suppression of controlling exculpatory authority.

The Government could not have conceded petitioner’s “right to assign something he owned” without knowing the authority that establishes it. *Strickler* confirms that the disclosure duty reaches favorable authority the prosecution possesses and the defense is denied. The lead prosecutor’s recognition-and-strike,

Trial Tr., Day 4, at 20:11–13, is itself evidence that the Government recognized the dispositive framework and acted to bury it.

C. The mandatory Rule 5(f) order was never entered.

The Due Process Protections Act of 2020 amended Federal Rule of Criminal Procedure 5(f) to require the court, at the initial appearance, to issue an oral and written order confirming the prosecutor’s *Brady* obligations and the consequences of violating them. No such written order was entered in this case, as the docket itself demonstrates. The violation was not technical; it was prejudicial, because it removed the very framework Congress enacted to prevent the suppression that occurred here. The Government has argued that *Brady* reaches evidence but not the published *Sprint* opinion, but that misunderstands the doctrine: “favorable” material under *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999), includes authority the prosecution knows undermines the legal theory of culpability it is advancing, and here the prosecution’s lead counsel had recognized the dispositive authority on the record and moved to strike his own recognition before the witness could engage it. A Rule 5(f) order exists precisely to compel disclosure of such controlling, exculpatory authority; its total absence is structural error and compounds the *Brady* violation. *United States v. Olano*, 507 U.S. 725 (1993).

V. The Trial Judge Was Subject to at Least Six Independent Disqualifying Grounds, One Admitted on the Record.

Section 455 is mandatory and self-executing. At least six independent grounds required the trial judge’s disqualification; the remedy for their violation is vacatur. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 862–64 (1988).

- (1) **§ 455(b)(4), financial interest.** The judge admitted from the bench, while imposing sentence, “I, I, I have invested, I’ve made a claim . . . you’re going to get the portion that you lost.” ECF No. 310, at 69:12–18. That admission is corroborated by his financial-disclosure reports. The judge purchased Apple Inc. on December 24, 2018 (Form AO-10, Ex. A, at 4, line 7), within the class period of *In re Apple Inc. Securities Litigation*, No. 4:19-cv-02033 (Nov. 2, 2018 – Jan. 2, 2019), and continued to hold it at value code K (\$15,001–\$50,000) through 2020 (Ex. C, at 4, line 11); that action settled on September 18, 2024, while petitioner’s direct appeal was pending and he remained a class-eligible holder. He purchased Boeing Co. on December 24, 2018 and February 14, 2019 (Ex. A, at 4, line 11; Ex. B, at 4, line 17), within the class period of *In re The Boeing Co. Aircraft Securities Litigation* (Nov. 7, 2018 – Oct. 18, 2019). And he purchased Exxon Mobil Corp. on December 24, 2018 and February 14, 2019 (Ex. A, at 5, line 20; Ex. B, at 5, line 32), within the class period of *Yoshikawa v. Exxon Mobil Corp.*, No. 3:21-cv-00194-N (N.D. Tex.) (Mar. 7, 2018 – Jan. 15,

2021). The judge was thus a class-period purchaser of the very securities at issue in pending class actions throughout the relevant period. The district court's response, that the charged conduct predated the establishment of those particular settlement funds (ECF No. 487, at 3), misframes the inquiry. Section 455(b)(4) asks whether the judge holds "a financial interest in the subject matter in controversy," not whether he belonged to the specific funds named in the prosecution. The subject matter here is securities-class-action claim eligibility and recovery, the very activity the judge admitted engaging in from the bench. Section 455(d)(4) defines the disqualifying interest to include ownership "however small," foreclosing any argument that the stake was de minimis. Petitioner further represents that he was himself a class member in nearly every major securities-class-action settlement from 2008 through 2020, the same activity the judge described from the bench, which underscores that the judge's own "I have invested, I've made a claim" statement placed him within the very class of claimants whose recoveries were the subject matter of the prosecution. The available AO-10 disclosures span only 2018 through 2020, and the Pennsylvania state court has to date refused to produce Judge Kenney's financial disclosures from his 2008–2018 tenure. Those earlier disclosures would, on the judge's own sworn account of having invested and made claims, almost certainly confirm holdings and class memberships extending well beyond the three individual stocks reflected in the 2018–2020 reports, which by themselves already require disqualification.

- (2) **§ 455(b)(1), personal bias.** Nine months before trial, at a January 11, 2022 status conference in the parallel civil action that petitioner had no notice of and did not attend, the judge stated from the bench that he had "a lot of other people in this courtroom, believe me, who have been making money by illegal means. They're arrested. They have federal defenders, not — not people like Mr. Pozos representing them, and their families are starving, believe me." ECF No. 71, at 27 (21-cv-4845). In a single sentence the judge placed petitioner among those "who have been making money by illegal means," before any evidence had been heard, and expressed resentment that petitioner had retained counsel rather than the "federal defenders" he associated with the guilty. Told moments earlier that petitioner's wife, a non-party, was not working, the judge responded, "Res ipsa," *id.*, the thing speaks for itself, and added that she "unfortunately, may have to get a job for now," *id.* at 27–28, and that "given the nature of the allegation, that \$40 million, you know, Ms. Cammarata may be sitting on zero or minus zero," *id.* at 29. Earlier in the same

proceeding he observed that he did not “see anybody starving here from some of these checks that are going out.” *id.* at 10–11. These are not rulings; they are expressions of a settled belief in guilt and of personal grievance about the resources of a presumptively innocent defendant and his family, formed outside the evidence and voiced in petitioner’s absence. Confronted at sentencing with his statement that he considered the case “a crime against the Courts” and his remark that petitioner’s wife had “enjoyed the fruits of this criminal enterprise for many years,” the judge did not deny making either statement, responding only that “this Court was not biased.” ECF No. 310, at 76:7–14. The Court of Appeals in No. 25-1188 acknowledged petitioner’s allegations that the trial judge “deleted portions of the transcript” and held “simultaneous hearings in both matters,” yet never reached the merits of either allegation.

- (3) **§ 455(b)(5)(i), the judge is a named party.** Since January 2024 the judge has been a named defendant in *Cammarata v. Donnelly*, No. 24-cv-1000 (D.N.J.), a civil action arising from the same conduct and taken in the absence of all jurisdiction, rendering every subsequent order voidable.
- (4) **§ 455(b)(5)(iii), personal knowledge of disputed facts.** The “crime against the Courts” determination was reached at the parallel civil temporary-restraining-order hearing before any evidence had been taken, reflecting extrajudicial knowledge of disputed evidentiary facts. The circumstances of that proceeding compound the appearance and the fact of prejudgment. The same judge entered an ex parte TRO (ECF No. 4 in 21-cv-4845, Nov. 4, 2021) on a motion exceeding 900 pages in less than twenty-four hours, and that order contains no finding of irreparable harm anywhere in its eighteen pages, as Rule 65(b)(1)(A) requires. The ex parte TRO was initially issued on November 4, 2021 for a fourteen-day period, without any required showing or mention of irreparable harm. The judge set the show-cause hearing for 9:00 a.m. on November 9, 2021 in Philadelphia, the precise date and time petitioner was compelled to appear at his criminal bail hearing 1,200 miles away in the Southern District of Florida. These were simultaneous hearings before the same judge, in both matters, on November 9, 2021 at 9:00 a.m. The TRO hearing proceeded without any notice to petitioner and in his absence, a fact the court itself memorialized: “No one appeared on behalf of Defendants Joseph A. Cammarata.” ECF No. 17 (Nov. 10, 2021), at 1. The TRO was then unlawfully extended, without any hearing and without petitioner’s consent, to December 14, 2021, exceeding the fourteen-day limit that Rule 65(b)(2) permits

only on a showing of good cause or consent, neither of which was present. The ex parte order, which froze more than \$78 million of petitioner's assets against alleged proceeds of roughly \$16 million, without any finding of irreparable harm, without subject-matter jurisdiction, and without due process, had thus expired as a matter of law at 11:59 p.m. on November 24, 2021 by operation of Rule 65(b)(2). A judge who presided over both tracks of this dual proceeding, and who prejudged the merits at an ex parte hearing the defendant could not attend, was disqualified. Cf. *SEC v. Antar*, 71 F.3d 97 (3d Cir. 1995).

(5) § 455, the new indictment and pending contempt trial before the same judge. A sixth and independently disqualifying circumstance has now arisen. On May 28, 2026, the same Assistant United States Attorneys, David Ignall and Paul Shapiro, obtained a new indictment against petitioner, No. 26-cr-238-CFK (E.D. Pa.), again assigned to Judge Kenney. Its lead count charges petitioner with criminal contempt, 18 U.S.C. § 401(3), for allegedly disobeying the very November 4, 2021 asset-freeze order that Judge Kenney himself issued, that was granted without any finding of irreparable harm, that was unlawfully extended without due process, that expired by operation of law on November 24, 2021, and that remains under appeal in No. 24-1381, where the Commission has filed no responsive brief for more than two years despite its last deadline in September 2025. Judge Kenney cannot preside over a prosecution for contempt of his own order, brought by the same prosecutors petitioner has sued, while his authority to have entered that order is itself the question on appeal. That is naked self-dealing, and it independently disqualifies him under 28 U.S.C. § 455.

(6) § 455(a), appearance of partiality. The judge manufactured a victim theory the Government never advanced and that the panel author rejected at oral argument, and bypassed petitioner's readily available domestic funds to liquidate a foreign-trust asset he did not own, an asset that is itself the subject of the pending action in *Cammarata v. United States*, No. 24-cv-1000 (D.N.J.). *Caperton v. A.T. Massey Coal Co.*, 557 U.S. 868 (2009). The same partiality is reflected in the parallel civil action, where the judge granted the Commission summary judgment on a motion the record and docket prove petitioner never received, and did so on the legally untenable ground that a securities-fraud judgment was collaterally estopped by the criminal wire-fraud conviction. Collateral estoppel requires that the identical issue have been actually litigated and necessarily decided. *Allen v. McCurry*, 449 U.S. 90 (1980). Wire fraud and securities fraud are not the same issue; and the judge had expressly

declined to decide the securities-fraud question in the criminal case, stating it was better litigated in the civil action (ECF No. 310, at 56–57), which forecloses estoppel as a matter of law.

Any one of these grounds required disqualification. Their convergence in a single judge, who then imposed a 120-month sentence on conduct he conceded involved “real trades”, is the kind of grave § 455 violation for which *Liljeberg* prescribes vacatur.

VI. Petitioner Was Denied Impartial Appellate Review by a Structurally Compromised Court.

The Due Process Clause guarantees not only an impartial trial judge but impartial review. Every panel of the Third Circuit to consider petitioner’s four related cases was operationally supported by the Executive Office of that court, where Jeanne Donnelly, the spouse of John V. Donnelly III, the SEC prosecutor petitioner had formally accused of misconduct, serves as an attorney within the office that provides administrative and legal support to the judges of that court. That relationship was never disclosed to petitioner by the court at any point in any of his four appeals. To any reasonable observer, a court whose own executive office employs the spouse of the prosecutor, who is himself charged with misconduct, cannot sit in impartial judgment of that misconduct; that is the precise circumstance 28 U.S.C. § 455(a) exists to prevent. The conflict was raised on the record many times, through petitioner’s motions to recuse, to transfer to an unconflicted venue, for reconsideration, and to disqualify the entire Circuit, in Nos. 24-1381 and 25-1188, and has gone undisclosed, uncontested, and unaddressed for two years, which is the most plausible explanation for why the issues are met with silence rather than any response.

The conflict is not theoretical; it is corroborated by the disposition pattern. The parallel SEC appeal, No. 24-1381, has sat for more than two years with no merits brief from the Commission and no action by the court. The mandamus petition, No. 25-1188, was wholly unopposed, the Government never responded to it at all, yet the court still allowed it to sit for 361 days before denying it in an order that acknowledged petitioner’s allegations, including transcript deletion, simultaneous hearings, and ex parte communication, and then addressed none of them; the court also denied petitioner’s request to transfer the matter to a non-conflicted court, without explanation, and the judges denied recusal on en banc review without stating reasons. The tax appeal, No. 24-1983, was affirmed over unaddressed *Brady* claims and numerous other serious, documented violations that were never addressed at all. And in this case, the panel opinion affirmed on a single paragraph that misstated the trial record and never mentioned *Sprint*. A series of unexplained one-word denials is the signature of a court that has stopped engaging.

The Government’s conduct confirms the pattern from the other direction. The well-documented allegations of conflict and disqualification at the center of this petition have gone unanswered by the Government in every forum in which petitioner has raised them: the mandamus proceeding in No. 25-1188 was unopposed; the

interlocutory appeal in No. 24-1381 has drawn no merits brief from the Commission in more than two years; and in this Court, the Solicitor General did not respond to the petition in No. 25-6128. A litigant's adversary does not ordinarily decline, across four proceedings and two levels of the federal judiciary, to contest serious, specific, and documented allegations of judicial and prosecutorial conflict, unless those allegations cannot safely be contested. The silence is itself evidence.

That conclusion is sharpened by the Third Circuit's treatment of its own precedent. In *SEC v. Antar*, 71 F.3d 97 (3d Cir. 1995), and *United States v. Antar*, 53 F.3d 568 (3d Cir. 1995), that court disqualified a district judge who presided over parallel SEC civil and criminal proceedings and revealed an objective of returning restitution to the victims. Here that objective is far more damning: no crime occurred, the judge declared his own financial interest from the bench, and the only person ever to identify any "victim" was the judge himself, who named settlement administrators the appellate panel then confirmed were not victims at all. Restitution may not be imposed absent an identifiable victim, yet the judge ordered it, and stands to collect on it as an eligible claimant. Petitioner's record, the same dual-track posture before the same judge, foundational hearings held the same day 1,200 miles apart with no notice or due process, an admitted financial interest, and a victim theory the judge alone manufactured and that was proven false, is materially and profoundly more egregious than *Antar*. The Third Circuit declined to apply its own binding law. A court that will not follow its own controlling precedent when the conflict implicates the court itself is not providing the impartial review the Constitution requires.

VII. The Cumulative Structural Error Requires Vacatur Under Olano Regardless of Preservation.

Even if any single error could be falsely characterized as unpreserved, this Court has long recognized that errors which "seriously affect the fairness, integrity, or public reputation of judicial proceedings" require correction regardless of preservation. *United States v. Olano*, 507 U.S. 725, 736 (1993). This record presents that case in its most acute form: a conviction for conduct this Court held lawful; a trial judge with an admitted financial interest and at least five further disqualifying grounds; a lead prosecutor who recognized and buried the dispositive authority; a victim theory manufactured by the court and rejected by the panel author; the absence of the Brady safeguard Congress made mandatory; and, after judgment, the retaliatory interception of this Court's own correspondence to the petitioner to prevent him from seeking this Court's review. That last fact is documented and unrefuted. Beginning after petitioner sued the Bureau of Prisons under 28 U.S.C. § 2241 in January 2026, the Bureau delayed and destroyed his legal mail, including transmittals from the Clerk of this Court dated March 17, April 8, and April 9, 2026, each verified by cryptographic (DKIM) signature, and then used the pretext that this Court's own correspondence was "drenched in methamphetamine" to place petitioner in punitive transit through seven jails. The Bureau has never denied, on the record in *Cammarata v. Washington*, No. 2:26-cv-00007 (M.D. Ala.), ECF No. 10, that it destroyed or delayed that mail, that the mail had been sent by the Supreme Court, or

that it was not opened in petitioner's presence. The corruption thus documented runs in an unbroken line from Bureau of Prisons employees, through the district court and the Third Circuit, and now reaches the interception of this Court's own mail, obstructing a citizen's access to the one tribunal with the power to correct it. Whatever label attaches to each component, their cumulative effect is a proceeding whose fairness and integrity cannot be reconciled with due process. *Olano* requires that it be set aside.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Joseph Cammarata

Pro Se Petitioner

Register No. 02555-506

Federal Detention Center Philadelphia

P.O. Box 562

Philadelphia, Pennsylvania 19105

Dated: July 16, 2026

APPENDIX A

Opinion of the United States Court of Appeals
for the Third Circuit
(July 22, 2025)

PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2110

UNITED STATES OF AMERICA

v.

JOSEPH CAMMARATA,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(District Court No. 2:21-cr-00427-001)
District Judge: Honorable Chad F. Kenney

Argued September 19, 2024
Before: RESTREPO, McKEE, and SMITH,
Circuit Judges
(Filed: July 22, 2025) Peter Goldberger [*Argued*] Law Office of Peter Goldberger
P.O. Box 645
Ardmore, PA 19003
Counsel for Appellant David J. Ignall Paul G. Shapiro [*Argued*] Office of United
States Attorney 615 Chestnut Street Suite 1250 Philadelphia, PA 19106
Counsel for Appellee

OPINION OF THE COURT

SMITH, Circuit Judge.

“The class action is an ingenious procedural innovation[,]” wrote Judge Richard Posner in *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014). As he explained, it “enables persons who have suffered a wrongful injury, but are too numerous for joinder of their claims alleging the same wrong committed by the same defendant or defendants to be feasible, to obtain relief as a group, a class as it is called.” *Id.*

Yet no matter how inspired a concept the class action device may be, it is not entirely resistant to the designs of fraudsters bent on abusing it—in this case, by imposters claiming settlement proceeds to which they had no lawful right.

This appeal presents us with issues arising out of a unique intersection of federal sentencing principles and class action settlement practice. Joseph Cammarata and

two confederates developed an elaborate scheme by which they submitted fraudulent claims to administrators of securities class action settlement funds. None of the three were class members, yet their efforts yielded them over \$40 million. Two of the men entered guilty pleas pursuant to agreements. Cammarata, though, proceeded to trial and was found guilty by a jury of all charges filed against him.

In addressing the issues raised by Cammarata’s appeal, we uphold all but one of the District Court’s rulings, remanding for the District Court to allow the Government to move to amend the Court’s forfeiture order.

I. BACKGROUND

Joseph Cammarata and his business partners, Eric Cohen and David Punturieri (collectively “Defendants”), joined forces to create Alpha Plus Recovery, LLC (“Alpha Plus”) in 2014. Alpha Plus was a claims aggregator,¹ with a

¹ An extensive search for a formal definition of a class action “claims aggregator” yielded only a definition from a treatise which cites the complaint filed against Cammarata by the Securities and Exchange Commission in a parallel civil case. It explains that claims aggregators “are companies that solicit absent class members to provide services, including (i) filing settlement claims on their behalf, (ii) compiling, where necessary, documentation or information to support those claims, and (iii) communicating with the claims administrator

business model that revolved around securities class action settlements. Class actions generally involve hundreds, if not thousands, of class members. When a class action settles, some class members may conclude that the time and effort required to submit a small or modest claim outweigh any potential for obtaining a meaningful award from the settlement fund. Claims aggregators seek to remedy that dilemma. In exchange for a percentage of a client’s monetary recovery, claims aggregators complete necessary paperwork and then submit aggregated claims to a settlement administrator on behalf of numerous class-member clients.

An administrator of a settlement reviews each claim— whether filed by an individual class member or by an aggregator—to ensure that the claimant fits within the definition of a class as set forth in the court order certifying the class.² Those who qualify as class members thereby become to perfect, cure, supplement, or otherwise oversee the claims filing process through inception to distribution of funds.” *Class Actions and Other Complex Litig.: Ethics* § 4.01 (2024) (citing Compl. ¶¶ 37–38, *SEC v. Cammarata, et al.*, No. 21-cv-4845, ECF No. 1 (E.D. Pa. Nov. 11, 2021)). While the term “claims aggregator” may not be generally known in legal practice, a class action claims administrator who testified at trial in this case confirmed that claims aggregators are “part of the industry[.]” App. 547.

² Federal Rule of Civil Procedure 23, which governs class actions filed in the federal court system, requires the presiding district judge to “define the class[.]” Fed. R. Civ. P.

entitled to payment from the settlement fund. In a securities class action, a qualified member is typically a person or entity who purchased or owned shares of a security issued by an entity which has been sued under federal securities laws at a time, or during a period, specified in the class definition. When aggregators submit

claims on behalf of their clients, it becomes the administrator's responsibility to investigate whether the clients satisfy the definitional criteria.

From 2014 to 2021, Alpha Plus submitted hundreds of claims to administrators who were overseeing nearly 400 securities class action settlements filed in both federal and state courts. The company did so primarily on behalf of three clients: Nimello Holding LLC ("Nimello"), Quartis Trade and Investment LLC ("Quartis"), and Inversiones Invergasa SAS ("Invergasa"). In its submissions to claims administrators, 23(c)(1)(B). Accordingly, a court's order certifying a class must include "a readily discernible, clear, and precise statement of the parameters defining the class[.]" *Wachtel ex rel. Jesse v. Guardian Life Ins. Co. of Am.*, 453 F.3d 179, 187 (3d Cir. 2006). Class definitions in securities class actions ordinarily resemble the following: All persons who purchased or owned shares of the defendant entity's stock during a particular timeframe and who suffered damages as a result of that purchase or ownership. *See, e.g.*, App. 1979 (defining the class as "[a]ll Persons who purchased shares of EndoChoice common stock pursuant or traceable to EndoChoice's [IPO] Offering Materials on or before August 3, 2016, and who were damaged thereby").

Alpha Plus represented that Nimello was a hedge fund located in Gibraltar, that Quartis was a hedge fund located in the Bahamas, and that Invergasa was an entity located in Colombia. Those submissions contained a number of misrepresentations.

Nimello, Quartis, and Invergasa were not hedge funds—they were defunct foreign shell companies acquired by the Defendants. The directors of Nimello and Quartis, along with Invergasa's president, were associated with Joseph Cammarata.³ David Punturieri had incorporated a separate "Nimello" entity in New Jersey in 2015, named Nimello Holding LLC ("NJ Nimello"); incorporation documents listed Erik Cohen and Joseph Cammarata as officers and directors. And a separate Quartis Trade and Investment LLC ("NJ Quartis") had been incorporated by Cohen in New Jersey in 2014. Cohen listed himself and Punturieri as members⁴ and added Cammarata as an owner in 2017.⁵ The Defendants

³ The directors of Nimello and Quartis were not charged in the indictment, nor was Invergasa's president.

⁴ The superseding indictment stated that Cohen and Punturieri were listed as "members/managers" of NJ Quartis. App. 98.

⁵ As the Presentence Investigation Report recommended, PSR ¶ 67, Cammarata received a sentencing enhancement because his offense involved "sophisticated means[.]" such as "acquir[ing] foreign shell companies" and "portray[ing] these companies as hedge funds." App. 2068.

subsequently opened bank accounts in the names of NJ Nimello and NJ Quartis.

In support of the claims that Alpha Plus submitted to claims administrators, it included falsified spreadsheets purporting to show that Nimello, Quartis, and Invergasa had traded in securities of certain companies named as defendants in actual securities class actions that had been settled. In fact, the three entities never actually traded in those or any other securities. When claims administrators sought additional documentation that might confirm some suspect trades, the Defendants created and submitted further fabricated reports which listed fictitious transactions.

Some of those fabricated reports purported to have been authored by SpeedRoute, a broker dealer Cammarata founded in 2010, and which he sold in 2015.⁶ For example, the Defendants altered real trade data from SpeedRoute and submitted it to claims administrators representing falsely that Nimello, Quartis, or Invergasa had made the trades. In other instances, when Alpha Plus submitted claims on behalf of the three entities, it identified SpeedRoute as the entities' brokerage firm and listed Cammarata as SpeedRoute's point of contact. When claims administrators pressed for further proof of trading, Cohen and Cammarata worked together to create fictitious SpeedRoute reports and submit them to the claims administrators. SpeedRoute itself was a legitimate entity and had no role in creating those reports. Most importantly, it never executed a trade on behalf of Nimello, Quartis, or Invergasa.

⁶ Cammarata remained SpeedRoute's CEO until 2018.

As scrutiny of the claims submitted by Alpha Plus grew more intense, the Defendants resorted to other tactics in an effort to deceive administrators. In 2015, for example, a claims administrator asked several follow-up questions about supporting documents for trades ostensibly made by Quartis. The Defendants responded by falsely suggesting that SpeedRoute was Quartis's broker dealer. Cohen created an email account which he used to pose as the principal of Quartis, then sent an email to Cammarata purporting to ask for information that he could provide to the inquiring claims administrator. Cammarata drafted an email from his SpeedRoute account which offered a contrived explanation. Punturieri forwarded that email to the claims administrator, touting it as a justification for the claim from Quartis's broker dealer.

In 2020, the Defendants' scheme hit a snag. One claims administrator, KCC, asked to be provided with data that supported the trades allegedly underlying claims by Nimello and Quartis. Punturieri, pretending to be an Alpha Plus employee named "Paul Delfino," sent KCC two reports ostensibly authored by SpeedRoute. But Dan Dearden, a financial crimes investigator employed by the parent company of KCC, had begun to work with government investigators. He referred the reports on to SpeedRoute, asking for verification of their authenticity. SpeedRoute's Chief Compliance Officer responded that the company had not produced the reports and did not recognize Nimello or Quartis as clients. Around this same time, Dearden made a similar request for further information about trades supposedly made by Invergasa.

The Defendants' scheme had begun to unravel.

Because SpeedRoute could not verify the trades, Dearden insisted that he speak with someone at Nimello, Quartis, and Invergasa. Without such an assurance, Dearden told Punturieri that he would reject the claims. Desperate to give the phony claims an appearance of legitimacy, Cohen impersonated Nimello's principal in a conversation he had with Dearden. And the Defendants instructed Cammarata's business partner in Colombia as to what he should say on Invergasa's behalf in a separate phone call he was to have with Dearden. When the Invergasa call went poorly, Cammarata went so far as to suggest to his co-defendants that he personally

go to Dearden's home and offer him a \$1 million bribe. He elected, though, to abandon such an overture.

The conspirators' desperation could hardly have been assuaged when KCC rejected the Alpha Plus claims, and when other claims administrators did likewise.

All told, claims administrators paid Alpha Plus approximately \$40 million for claims made on behalf of Nimello, Quartis, and Invergasa from 2014 to 2021. The Defendants transferred that money to bank accounts they held, including the NJ Nimello and NJ Quartis accounts,⁷ for their personal benefit.

⁷ The Defendants incorporated NJ Nimello and NJ Quartis so they could deposit settlement funds into those entities' bank accounts. Claims administrators would sometimes send settlement funds directly to Alpha Plus. In other instances, claims administrators wrote checks to Nimello Holding LLC and/or Quartis Trade and Investment LLC, thinking those

On October 28, 2021, a grand jury sitting in the Eastern District of Pennsylvania returned a single-count indictment charging the Defendants with conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343. Authorities arrested Cammarata six days later.⁸ A grand jury returned a twelve-count superseding indictment in September of 2022, charging the Defendants as follows:

- Conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349, at count one against all Defendants;
- Wire fraud, in violation of 18 U.S.C. § 1343, at counts two through five against all Defendants;
- Conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), at count six against all Defendants; entities were foreign hedge funds and Alpha Plus clients.

But the Defendants would deposit those checks into the bank accounts of the New Jersey LLCs they had incorporated under either the Nimello or Quartis names.

⁸ Cammarata was initially released on bail, with conditions including requirements that he live with his parents in New York, abide by a curfew, and wear a location monitoring device. But the District Court revoked his bail in March 2022 after concluding there was probable cause to believe Cammarata had committed a federal offense while on release, and that Cammarata was unlikely to abide by any conditions of release.

- Money laundering and aiding and abetting, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2, at counts seven through ten against all Defendants; and
- Money laundering and aiding and abetting, in violation of 18 U.S.C. §§ 1957 and 2, at counts eleven and twelve against Cammarata only.

Cammarata's co-Defendants, Punturieri and Cohen, pled guilty to counts one and six on October 13 and 14, 2022, respectively. The day after Cohen entered his guilty plea, the District Court granted the Government's motion to dismiss the money

laundering charges at counts seven through ten as to all three Defendants. Only Cammarata proceeded to trial on the remaining counts a week later.

Both Punturieri and Cohen cooperated with the Government and testified at the trial. Punturieri described Cammarata as the “overseer” of the fraudulent scheme. App. 1326. And both Punturieri and Cohen detailed the false submissions the Defendants had made to claims administrators on behalf of Quartis, Nimello, and Invergasa. Several claims administrators, as well as Dearden, also testified at trial.

Cammarata testified on his own behalf. He conceded that he had lied to claims administrators by falsely representing that Quartis, Nimello, and Invergasa had traded the securities involved in the class action settlements. But by Cammarata’s telling, the scheme was lawful because he had *personally* traded the subject securities and then assigned those trades to Quartis, Nimello, and Invergasa. The trades were all real, he claimed, and his assignments rendered the three entities the

“beneficial owners” of the trades, entitling them to settlement funds. App. 1594. Still, Cammarata admitted on cross- examination that he never informed the claims administrators that he had made any assignments.

After a six-day trial, the jury found Cammarata guilty on all counts. The District Court sentenced him on June 6, 2023. The Court calculated Cammarata’s guideline imprisonment range to be 168 months to 210 months. Despite Cammarata’s being unrepentant throughout the sentencing proceeding, the District Court granted him a downward variance. He was sentenced to 120 months’ imprisonment and ordered to pay restitution and to forfeit certain property.

This appeal followed.⁹

II. DISCUSSION

Cammarata raises five issues in this appeal. First, he claims that the trial evidence and the Government’s closing argument constructively amended the superseding indictment. Second, he argues that the District Court violated the Federal Rules of Evidence by permitting the Government to cross- examine him about his purchase of a private island and portions of his tax returns. Third, he contends that the District Court, in applying the Sentencing Guidelines, erroneously calculated the amount of loss caused by his offenses. Fourth,

⁹ The District Court had jurisdiction under 18 U.S.C. § 3231. Cammarata timely filed a notice of appeal. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

he avers that the District Court’s restitution order ran afoul of the Mandatory Victims Restitution Act. And fifth, he claims the District Court improperly ordered the forfeiture of his vacation home.

We address each issue in turn.

A. Constructive Amendment

Cammarata argues that a constructive amendment of the superseding indictment occurred during trial and that his conviction should therefore be set aside. We are not persuaded.

Our review of a properly preserved constructive amendment claim is plenary. *United States v. Fallon*, 61 F.4th 95, 111 (3d Cir. 2023). Yet Cammarata failed to raise

his constructive amendment claim until he filed a post-trial motion. We therefore review Cammarata’s claim for plain error. *United States v. Vosburgh*, 602 F.3d 512, 531 (3d Cir. 2010) (explaining that constructive amendment claims raised for the first time after trial—e.g., in a post-trial motion—are reviewed for plain error) (citing *United States v. Tiller*, 302 F.3d 98, 105 (3d Cir. 2002)). Plain error review hinges on whether the error prejudiced the defendant.¹⁰ *United States v.*

¹⁰ More specifically, to prevail under the plain-error framework, an appellant must “show (1) a legal error (2) that is plain and (3) that has affected his substantial rights.” *United States v. Dorsey*, 105 F.4th 526, 528 (3d Cir. 2024) (citing *United States v. Olano*, 507 U.S. 725, 732–33 (1993)). If those three prongs are satisfied, we have “discretion to correct the error if (4) it seriously affects the fairness, integrity, or

Greenspan, 923 F.3d 138, 149 (3d Cir. 2019). Because a constructive amendment is a “*per se* violation of the fifth amendment’s grand jury clause[.]” *United States v. Castro*, 776 F.2d 1118, 1121–22 (3d Cir. 1985), we presume prejudice when a constructive amendment has occurred, *United States v. Syme*, 276 F.3d 131, 154 (3d Cir. 2002).¹¹

A constructive amendment occurs where trial evidence or arguments “modify essential terms of the charged offense in such a way that there is a substantial likelihood that the jury may have convicted the defendant for an offense differing from the offense” charged in the indictment. *United States v. Daraio*, 445 F.3d 253, 259–60 (3d Cir. 2006). This may take place if the trial evidence or arguments “broaden[] the possible bases for conviction from that which appeared in the indictment[.]” *United States v. Lee*, 359 F.3d 194, 208 (3d Cir. 2004) (emphasis omitted) (quoting *United States v. Asher*, 854 F.2d 1483, 1497 (3d Cir. 1988)). So our “key inquiry” is whether “the defendant was convicted of the same conduct for which he was indicted.” *Daraio*, 445 F.3d at 260 (internal quotation marks and citation omitted).

Cammarata advances two constructive amendment arguments. First, he argues that the trial evidence failed to reputation of judicial proceedings.” *Id.* (citing *Olano*, 507 U.S. at 732).

¹¹ We also held in *Syme* that the government can rebut the presumption that a constructive amendment was prejudicial. 276 F.3d at 154–55. We need not reach that inquiry because we conclude no constructive amendment took place.

prove the superseding indictment’s assertion that all class- member claimants to those settlements targeted by the scheme had to show that they purchased shares of the subject security during the relevant time period, and that they were damaged thereby.¹² Second, he contends that the Government broadened its theory of fraud when it countered his assignment defense during closing argument.

Cammarata’s first argument seizes on the factual complexities of his wire fraud offenses, given the intricacies of the claims administration process and the numerous securities class action settlements that were affected. He cherry picks some testimony from two claims administrator employees, James Facciolla and Tina Chiango, and contends that that testimony undermined the need for a class action settlement

claimant to prove that it actually purchased a subject security and suffered damages from that purchase.

Our reading of Facciolla and Chiango's testimony does not substantiate Cammarata's argument.

¹² Cammarata's argument focuses on paragraph 11 of the superseding indictment. That paragraph provides that all claimants to security class action settlements, "including those represented by claims aggregators such as Alpha Plus," were required to show two "essential facts" to qualify for an award of settlement funds: (1) "that they had bought shares of the subject security during the time period set forth in the court- approved settlement agreement[.]" and (2) that "they had suffered damages as a result of their purchase of securities." App. 97.

Cammarata claims Facciolla's testimony disproved the superseding indictment's assertion that claimants were required to demonstrate that they purchased shares of the subject security to qualify for payment. Facciolla explained that when submitting claims, aggregators like Alpha Plus must provide their clients' trade data and identify "the underlying beneficial owner[.]" defining a "beneficial owner" as "the person who has [the] rights to . . . the underlying shares." App. 504. In Cammarata's view, that seems to suggest that a claims aggregator's clients may not need to be the persons or entities to actually purchase the subject securities to qualify for payment of their claims. Yet when the prosecutor focused on the claims that Alpha Plus had submitted to Facciolla's employer, asking Facciolla if "Nimello itself ha[d] to make a purchase" of the subject security "to make a claim," Facciolla responded in the affirmative. App. 510. So Cammarata is simply wrong, and the testimony is consistent with the superseding indictment's allegation that claimants "represented by claims aggregators such as Alpha Plus" were required to "demonstrate that they had bought shares of the subject security during the [relevant] time period[.]" App. 97; see also App. 1251–52 (another claims administrator testifying that to qualify for payment, a claimant had "to have bought the stock during the class period").

So too with respect to Chiango's testimony. Cammarata claims her testimony was contrary to the superseding indictment's averment that claimants were required to demonstrate that they had suffered damages to qualify for payment. In his view, her testimony demonstrated that claimants need only show a "recognized loss"—not damages—to qualify. Opening Br. at 22. Chiango explained

that the portion of the settlement fund to which a claimant is entitled is "based on the recognized loss that was calculated for the plan of allocation[.]"¹³ a plan that was approved by a judge pursuant to the class action settlement. App. 1483. Yet Chiango went on to explain that if claimants "don't have damages, per the plan of allocation that we have to follow, then they are not entitled to any distribution." App. 1484. The court- approved plan of allocation establishes the amount to which all claimants are entitled based on their recognized losses, but that does not negate the fact that claimants must still show they suffered damages if they are to qualify to receive payment. Chiango's testimony is entirely consistent with the superseding indictment's allegation that claimants "needed to show they had suffered damages as a result of their purchase of securities." App. 97; *see also* App. 1979 (defining a class as

persons “who purchased shares of” the subject security and “who were damaged thereby”).

¹³ “A plan of allocation is a stated methodology by which a class action recovery is allocated among eligible claimants; literally, it is a plan for allocating the settlement fund.” Stevie Thurin, *A Guide to Settlement Plans of Allocation in Securities Class Actions*, AM. BAR ASS’N (Nov. 15, 2018), <https://www.americanbar.org/groups/litigation/resources/new-letters/securities/a-guide-to-settlement-plans-allocation-securities-class-actions/>. Ordinarily, the plan of allocation provides a formula by which to calculate claimants’ recognized losses. *See* App. 1983–86. The ultimate allocation of settlement funds is based on each claimant’s recognized losses, as calculated by the plan of allocation.

Accordingly, Cammarata’s overly-selective references to the trial testimony of Facciolla and Chiango fall short of contradicting averments in the indictment. The testimony of the two witnesses was consistent with the Government’s theory of guilt and the means by which class action settlements were to be administered.

We likewise reject Cammarata’s argument that the Government constructively amended the superseding indictment during its summation. Our constructive amendment analysis hinges on whether “an element of the offense for which [Cammarata] was convicted was different from an element of the offense for which it appears from the face of the indictment he was charged.” *United States v. Bryan*, 483 F.2d 88, 96–97 (3d Cir. 1973). And *Fallon* reminds us that “[t]rial evidence, arguments, or the district court’s own instructions can all form the basis of constructive amendments.” 61 F.4th at 111.

Cammarata’s theory boils down to his contention that the Government, during its closing argument, broadened its claim of fraud in the course of countering his assignment defense.¹⁴ Yet none of the prosecutor’s comments during summation on Cammarata’s theory of assignment “broaden[ed] the possible bases for conviction” from those

¹⁴ Wire fraud requires the Government to prove beyond a reasonable doubt that the defendant used interstate wire communication to engage in a scheme or artifice to defraud for the purpose of obtaining money or property with a specific intent to defraud. *Nat’l Sec. Sys., Inc. v. Iola*, 700 F.3d 65, 105 (3d Cir. 2012).

which appeared on the face of the superseding indictment. *Lee*, 359 F.3d at 208 (quoting *Asher*, 854 F.2d at 1497)). The Government simply rebutted the defense theory, pointing out why Cammarata’s testimony was implausible.

The Government argued, quite understandably, that Cammarata’s theory that he assigned his personal trades to Nimello, Quartis, and Invergasa made no sense. If Cammarata had personally bought securities and was thereby entitled to a share of settlement proceeds, why, the Government asked the jury, would he have made up three clients and have pretended that it was they who had purchased and sold those securities? The Government acknowledged that if Cammarata was, in fact, the beneficial owner of a security issued by a company that had settled any of the relevant class action cases, he was entitled to submit a claim in his own name. But, as the

Government pointed out, no evidence was presented to show that Nimello, Quartis, and Invergasa were ever the beneficial owners of subject securities. And, even if Cammarata had assigned his personal trades to Nimello, Quartis, and Invergasa, he never advised the claims administrators of those assignments. To properly administer the settlement, they were entitled to that information.

It is always permissible for the Government to “comment on the weakness of the defense case in closing arguments.” *United States v. Jackson*, 540 F.3d 578, 596 (7th Cir. 2008) (citation omitted). That is simply how the adversary system works in criminal trials. And as the Seventh Circuit has explained, rebutting a defense theory does not constructively amend an indictment. *United States v. McAnderson*, 914 F.2d 934, 945 (7th Cir. 1990). Countering a weak defense theory

was all the Government did here. Its rebuttal cannot reasonably lead one to believe that Cammarata was convicted for anything other than the crimes charged.

Cammarata has failed to direct our attention to any constructive amendment of the superseding indictment during trial.

B. Evidentiary Challenges

Cammarata claims that two areas of inquiry during his cross-examination violated Federal Rules of Evidence 403 and 404(b) by unfairly portraying him as a “hugely wealthy cheat[,]” and by improperly suggesting commission of an uncharged crime. Opening Br. at 37. We disagree.

1. Cammarata’s Private Island Purchase

Cammarata filed a motion in limine shortly before trial in which he sought, inter alia, to preclude the Government from introducing evidence that he owned a private island. The District Court denied Cammarata’s motion without prejudice, deferring its ruling until the time of trial.

On the fifth day of trial, the Government informed the District Court, at sidebar, that it planned to cross-examine Cammarata about his \$5 million purchase of a private island in 2015. The prosecutor explained to the District Court that Cammarata had sent an email to Cohen stating that he would have a “decent monthly [financial] burn” if he purchased the island. App. 1734. Defense counsel objected, citing Federal Rule of Evidence 403 and arguing that Cammarata had already testified he had a “burn rate” and that the evidence was unfairly prejudicial. App. 1648. The District Court overruled the

objection. On the witness stand, Cammarata acknowledged purchasing the island but claimed that the email to Cohen about a potential financial burn had been falsified.

Cammarata challenges the District Court’s ruling by arguing that the judge failed to conduct a proper Rule 403 analysis and, at all events, the probative value of the evidence was outweighed by its tendency to generate class-based prejudice in portraying him as wealthy.

We review the District Court’s decision to admit evidence over a Rule 403 challenge for abuse of discretion and construe such discretion “especially broadly.” *United States v. Scarfo*, 41 F.4th 136, 178 n.35 (3d Cir. 2022). Rule 403 permits courts to exclude otherwise relevant evidence “if its probative value is substantially outweighed by a danger of . . . unfair prejudice[.]” Fed. R. Evid. 403. In reaching a Rule

403 determination, a district court is required to balance those two competing considerations. *United States v. Heatherly*, 985 F.3d 254, 265 (3d Cir. 2021).

We “strongly prefer” that a district court detail its Rule 403 balancing on the record. *Egan v. Del. River Port Auth.*, 851 F.3d 263, 277 (3d Cir. 2017). But in the absence of a detailed balancing statement, we may undertake the analysis ourselves. *Id.* We have declined to balance the Rule 403 factors “de novo only where a district court [has] said nothing about particular evidence’s probative value or prejudicial effect.” Greenspan, 923 F.3d at 151.

The District Court overruled defense counsel’s objection, pointing out that “there [had been] a suggestion to the jury, as part of the defense, that [Cammarata] did not need

this money, so he did not have to involve himself in this [criminal] activity.” App. 1649. The Court was correct in noting that the defendant had “opened the door” to the inquiry, and that his denial that he needed money clearly spoke to the probative value of the evidence. But the District Court said nothing about any risk of unfair prejudice. Because the District Court failed to conduct the necessary balancing analysis, we undertake that analysis ourselves. *See Egan*, 851 F.3d at 277.¹⁵

The evidence showed Cammarata had suggested to Cohen that the \$5 million island purchase could cause him monthly financial strain. He had purchased the island in 2015, and the superseding indictment alleged he committed wire fraud in wrongfully obtaining millions of dollars from class action settlement funds between the years 2014 and 2021. So the evidence not only rebutted Cammarata’s defense that he “did not need money[,]” App. 491; it also suggested a financial motive for his fraud, *see United States v. Saada*, 212 F.3d 210, 224 (3d Cir. 2000) (explaining that evidence was “highly probative because it rebutted the defense’s contention”); *United States v. Foster*, 891 F.3d 93, 110 (3d Cir. 2018) (reasoning that the government was “entitled to rebut” the defendant’s argument “by presenting evidence of his motive”). The probative value of the evidence was, therefore, significant.

¹⁵ We have repeatedly “renew[ed] our admonition that district courts articulate their Rule 403 reasoning on the record.” *United States v. Heinrich*, 971 F.3d 160, 165 (3d Cir. 2020). “A basic part of the balancing process requires making a record. It is simple to do and essential to effective appellate review.” *Id.*

But, as noted above, that does not end our inquiry. We must ask the question the District Court failed to address: was the probative value of the evidence substantially outweighed by any risk of unfairly portraying Cammarata as wealthy?

“Not all prejudice is unfair prejudice, and Rule 403 bars only the latter.” *United States v. Long*, 92 F.4th 481, 488 (3d Cir. 2024). To meet this threshold, admission of the evidence must unfairly advantage one of the parties. *Coleman v. Home Depot, Inc.*, 306 F.3d 1333, 1343 n.6 (3d Cir. 2002). Importantly, we evaluate any prejudicial effect “in the context of the totality of the evidence produced.” *United States v. Williams*, 974 F.3d 320, 357 (3d Cir. 2020).

Cammarata concedes that by the time the evidence was introduced, it “was undisputed, and otherwise established, that [he] was wealthy and controlled many

businesses.” Opening Br. at 31. Defense counsel explained in his opening statement that he had previously asked the jury “if anybody had any problems with somebody who is wealthy.” App. 495–96. And counsel went on to state that Cammarata “had money[,]” “nice things[,]” and “a lot of bank accounts[.]” App. 495–96.

Cammarata himself testified that he had sold businesses for \$31 million, \$20 million, and over \$3 million. He explained that at the time of his arrest, he “was literally at the pinnacle of [his] career”—he “was active in approximately 30 businesses,” “was the CEO of a public company[,]” and “had just been named CEO of a two billion dollar social media company.” App. 1587. When cross-examining Punturieri, it was defense counsel who elicited testimony that Cammarata owned a house in the Bahamas.

To put it mildly, Cammarata was not shy about presenting himself to the jury as someone who had enjoyed considerable financial success.

In summary, the jury was made aware of Cammarata’s wealth by the defendant’s own testimony and before it heard that he had purchased a private island. No prejudice could reasonably have resulted from admission of the private island evidence, let alone unfair prejudice that could have substantially outweighed the probative value of that evidence. *See GN Netcom, Inc. v. Plantronics, Inc.*, 930 F.3d 76, 88 (3d Cir. 2019) (reasoning that there was no unfair prejudice where the jury was “already alerted” to the subject matter the evidence supported); *United States v. Johnson*, 302 F.3d 139, 152 (3d Cir. 2002).

The District Court did not abuse its discretion in overruling defense counsel’s Rule 403 objection.

2. Cammarata’s Tax Returns

One of the Government’s trial witnesses was Stacey Esimai, an auditor who worked in the U.S. Attorney’s Office for the Eastern District of Pennsylvania. She testified that she had reviewed financial records covering the period from 2015 to 2020, and that they showed that Cammarata had transferred some of the money he had improperly obtained from class action settlement funds to a bank account in the name of PB Trade, a company he had started around 2007.

When Cammarata testified in his own defense, the prosecutor asked him whether he had reported the settlement money Alpha Plus sent to PB Trade on his tax returns.

Cammarata responded that he had realized offsetting losses, leading the prosecutor to show Cammarata his 2017, 2018, and 2019 tax returns.¹⁶ Focusing his questions on Cammarata’s Schedule C submissions for PB Trade in the tax returns, the prosecutor noted that there was no income attributed to the company. And when he pressed Cammarata as to whether he had ever informed the accountant who prepared the tax returns about the money Alpha Plus sent to PB Trade, Cammarata had several answers. He responded that he “may have[.]” App. 1740. And also that the company “may have” had offsetting losses. App. 1739. And also that he did not recall. *Id.* At one point during this exchange, defense counsel objected, but only to the relevancy of the inquiry. That objection was overruled.

Cammarata now claims on appeal that the Government sought testimony that violated Federal Rules of Evidence 404(b) and 403. According to him, the Government was improperly suggesting he committed the uncharged crime of tax fraud without

first having complied with Rule 404(b)'s notice requirement.¹⁷ Also, according to Cammarata, the District Court erred by failing to provide the jury with a proper limiting instruction. Finally, he argues that any slight probative

¹⁶The Government introduced Cammarata's tax returns as marked exhibits, but used them only for cross-examination. It never sought to admit them into evidence, and so the jury had no access to them.

¹⁷Rule 404(b) requires that a prosecutor in a criminal case "provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it[.]" Fed. R. Evid. 404(b)(3)(A).

value of questioning him about his tax returns was outweighed by the risk of unfair prejudice, confusing the issues, and misleading the jury.

Before reaching the merits of Cammarata's arguments that use of the tax returns by the Government was improper, we must determine whether he properly preserved them for appeal. *See United States v. Sandini*, 803 F.2d 123, 126 (3d Cir. 1986). Federal Rule of Evidence 103(a)(1) restricts our review of evidentiary errors to those in which the complaining party "state[d] the specific ground" for objection, "unless it was apparent from the context[.]" Fed. R. Evid. 103(a)(1)(B). Defense counsel objected to questions regarding Cammarata's tax returns solely on relevancy grounds. Counsel mentioned neither Rule 403 nor Rule 404(b), so any supposed reliance on those Rules was not apparent from the context of the objection. *See Sandini*, 803 F.2d at 126.

Because Cammarata failed to preserve his arguments for appeal, *id.*, we review for plain error. *See United States v. Mitchell*, 365 F.3d 215, 257 (3d Cir. 2004).¹⁸

a. Rule 404(b)

Rule 404(b) prohibits the introduction of evidence of "any other crime, wrong, or act" to "prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). Its purpose is to keep from a jury evidence that suggests a person has a propensity to commit crimes "or is otherwise a bad person[.]" *United States v. Green*, 617 F.3d 233, 249 (3d Cir.

¹⁸*See supra* note 10.

2010) (quoting *United States v. Taylor*, 522 F.3d 731, 735–36 (7th Cir. 2008)).

Rule 404(b) applies only to extrinsic evidence. *United States v. Bailey*, 840 F.3d 99, 128 (3d Cir. 2016). It does not apply to intrinsic evidence, which "does not constitute a prior bad act at all[.]" *Id.* As we explained in *Green*:

[W]e will reserve the "intrinsic" label for two narrow categories of evidence. First, evidence is intrinsic if it "directly proves" the charged offense. This gives effect to Rule 404(b)'s applicability only to evidence of "other crimes, wrongs, or acts." If uncharged misconduct directly proves the charged offense, it is not evidence of some "other" crime. Second, "uncharged acts performed contemporaneously

with the charged crime may be termed intrinsic if they facilitate the commission of the charged crime.” But all else must be analyzed under Rule 404(b). 617 F.3d at 248–49 (internal citations omitted).

Because the Government’s use of Cammarata’s tax returns fits neatly into the first category of intrinsic evidence, such use was not governed by Rule 404(b). To prove wire fraud, the Government had to show that the defendant “‘willful[ly] participat[ed] in a scheme or artifice to defraud,’ with intent to defraud[.]” *United States v. James*, 955 F.3d 336, 342 (3d Cir. 2020) (quoting *United States v. Andrews*, 681 F.3d 509, 518 (3d Cir. 2012)). Juries may infer a defendant’s intent

to defraud from circumstantial evidence. *United States v. Riley*, 621 F.3d 312, 333 (3d Cir. 2010).

The failure by Cammarata to report the transfers of settlement funds from Alpha Plus to PB Trade as income on his tax returns supported a reasonable inference that he knew the funds were unlawfully obtained and that he was attempting to conceal income derived from his fraudulent scheme. Such an inference would bear on his intent to defraud and thereby constitute circumstantial evidence offered to prove an element of wire fraud.¹⁹ Because the testimony admitted here was intrinsic to a charged offense, Cammarata’s Rule 404(b) challenge must fail. *See United States v. Ryan*, 213 F.3d 347, 350–51 (7th Cir. 2000) (explaining that evidence of a defendant’s effort to conceal his participation in a fraudulent scheme by failing to report fraudulent transactions as income on his tax returns “constituted circumstantial evidence of intent to defraud” and was therefore not governed by Rule 404(b)) (internal quotation marks and citation omitted).

b. Rule 403

We likewise reject Cammarata’s Rule 403 challenge.²⁰ The probative value of Cammarata’s failure to report the

¹⁹ Indeed, Cammarata concedes that “the failure to declare income on a return may conceivably indicate consciousness of guilt with respect to the manner in which the income was earned[.]” Opening Br. at 33.

²⁰ Because Cammarata never objected to the discussion of his tax returns on Rule 403 grounds before the District Court, it

income he obtained from class action settlement funds on his tax returns was twofold. First, as discussed above, the evidence tended to prove Cammarata’s fraudulent intent and knowledge by giving rise to a reasonable inference of his knowledge that receipt of the income was illegal. *See Williams*, 974 F.3d at 357 (“The fact that the evidence is intrinsic establishes its probative nature[.]”). Second, the evidence rebutted Cammarata’s assertion that the settlement money derived from Nimello and Quartis’s claims was rightfully obtained. Just before the prosecutor turned to Cammarata’s tax returns, Cammarata stated he had received millions of dollars “for trade data that [he] owned and supported through claims.” App. 1737. Pointing out that Cammarata had failed to report allegedly legitimate income on his tax returns tended to discredit his defense. *See, e.g., United States v. Valenti*, 60 F.3d

941, 946 (2d Cir. 1995) (reasoning that the defendant's tax returns listing no income "were obviously probative to refute" the "defense that the contested funds were legitimate"); *see also Ryan*, 213 F.3d at 351.

Further, any risk of unfair prejudice posed by cross-examining Cammarata on his tax returns was minimal, at best. Cammarata argues that the Government unfairly portrayed him as a tax "cheat."²¹ Opening Br. at 37. That, he now claims, (understandably) did not conduct a Rule 403 balancing analysis. We undertake that analysis here.

²¹ To be clear, prosecutors at no point during trial referred to Cammarata as a "tax cheat[.]" nor did they make reference to

biased the jury against him and tainted its verdict. Intrinsic evidence "that reveals a defendant's legal guilt can be highly prejudicial, but that alone does not make it unfairly so." *Long*, 92 F.4th at 488. What is proscribed is *unfair* prejudice, because it "speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground *different* from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997) (emphasis added). The tax return evidence supported an element of the charged offense of wire fraud, so it was highly probative. Viewing the trial record as a whole, it was not outweighed by any risk of unfair prejudice.

Nor are we persuaded by Cammarata's contention that the probative value of the Government's cross-examination as to his tax returns was substantially outweighed by the risk of confusing the issues or misleading the jury. He argues that the propriety of omitting income on a Schedule C is a complex question the jury could not have properly evaluated without accompanying explanatory or expert evidence.

Our review satisfies us that the Government's cross-examination relative to the Schedule C submissions was limited and its purpose clear. The Government proffered Cammarata's tax returns only after he claimed he had offsetting losses that justified his failure to report income transferred from Alpha Plus to PB Trade. The prosecutor elicited responses from Cammarata which showed that Cammarata knew the purpose of a Schedule C submission any of his tax returns during the Government's closing argument.

before highlighting that the tax returns listed no income for PB Trade but did list expenses. And the prosecutor repeatedly asked Cammarata whether he had informed the accountant who prepared his tax returns about the money he transferred from Alpha Plus, *i.e.*, the money he fraudulently obtained from settlement funds.

The Government's purpose in pursuing this line of questioning was plain: the relevancy of the omissions on Cammarata's tax returns was their tendency to prove efforts to conceal his fraudulent scheme, not that he was trying to avoid paying taxes. *See Fed. R. Evid.* 401(a) (providing that evidence is relevant if "it has any tendency to make a fact" of consequence in determining the action "more or less probable than it would be without the evidence").²² Even if some risk of confusing the issues or misleading the jury existed, that risk did not substantially outweigh the probative value of the intrinsic evidence. *See Blancha v. Raymark Indus.*, 972 F.2d 507, 516 (3d

Cir. 1992) (reasoning that excluding evidence under Rule 403 based on confusing the issues or misleading the jury would not have been justified where the testimony “tended to prove” a fact “directly at issue” in the case).

²² As noted, the only ground specifically raised by trial counsel for exclusion of testimony concerning the tax returns was relevancy. Cammarata argues before us that the District Court should have sustained that objection. Our conclusions reached during plain error review amply foreclose that argument.

C. Loss Calculation

Cammarata challenges the District Court’s loss calculation under the Sentencing Guidelines.²³ Again, his challenge is meritless.

The Government bears the burden of establishing the amount of loss by a preponderance of the evidence. *Free*, 839 F.3d at 319. Although the Guidelines themselves define loss broadly as “the greater of actual loss or intended loss[.]” U.S.S.G. § 2B1.1, app. n.3(A), this Court has held that loss under the Guidelines is limited to “the loss the victim[s] actually suffered[.]” *United States v. Banks*, 55 F.4th 246, 258 (3d Cir. 2022). “Actual loss” is defined as “the reasonably foreseeable pecuniary harm that resulted from the offense.” U.S.S.G. § 2B1.1, app. n.3(A)(i). “Reasonably foreseeable” means “pecuniary harm that the defendant knew, or . . . reasonably should have known, was a potential result of the offense.” *Id.* § 2B1.1, app. n.3(A)(iv). In arriving at “a reasonable estimate of the loss,” a district court looks to all “available information in the record[.]” *United States v. Shah*, 43 F.4th 356, 366 n.12 (3d Cir. 2022) (citation omitted).

At sentencing, the District Court found that the Government had proven \$40,862,748.30 in actual loss to class

²³ We review a district court’s factual findings supporting its loss calculation for clear error. *United States v. Free*, 839 F.3d 308, 319 (3d Cir. 2016). We exercise plenary review over a district court’s interpretation of the Guidelines, including what constitutes loss. *United States v. Shulick*, 994 F.3d 123, 145 (3d Cir. 2021).

members. That dollar figure represented the total amount of settlement funds that claims administrators had paid the Defendants for the fraudulent claims they had submitted. Importantly, the District Court found that the trial evidence proved “the claims administrator[s] had less money to pay actual legitimate claims because of the Defendant[s]’ fraudulent submissions.” App. 2090. Because the loss was between \$25 and \$65 million, Cammarata’s offense level was increased by 22 levels pursuant to U.S.S.G. § 2B1.1(b)(1)(L).

Cammarata argues that the District Court’s finding lacks evidentiary support. In his view, the Government failed to present evidence at trial that any particular class member was underpaid due to the Defendants’ fraud. And he claims the District Court misapplied the Guidelines when it concluded that the over-\$40 million fraudulent gain it found resulted in an equivalent “actual loss” to class members.

The District Court’s factual finding informing its loss calculation was firmly rooted in the trial testimony. *See Shore Reg’l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194,

199 (3d Cir. 2004) (“A finding of fact is clearly erroneous when, after reviewing the evidence, the court of appeals is left with a definite and firm conviction that a mistake has been committed.”) (internal quotation marks and citation omitted). Four claims administrators testified to the role they play, post- settlement, and also explained how the distribution process is supposed to unfold. In the ordinary course, a class member who submits a claim that is approved receives a *pro rata* share of the settlement fund based on a court-approved plan of allocation. As one administrator put it, the “settlement fund is divided” among all class members based on a “prorated percentage” of their “loss[es.]” App. 1483.24 And, as Cammarata concedes, it “can be readily seen” from the trial testimony that the amount a class member receives from a 24 At trial, the Government introduced the Settlement Notice for *In re EndoChoice Holdings Securities Litigation*, a class action litigated in Georgia state court that ultimately settled and to which Alpha Plus submitted claims. The Government used the EndoChoice Settlement Notice as an exhibit during its examination of a claims administrator who was describing the settlement process. That Notice further illustrates how the settlement process works. Once notified of a proposed settlement, class members are required to submit a valid claim form within a specific time period. If they fail to do so, they are “forever barred from receiving any distribution” from the settlement fund. App. 1980. Class members may also choose to opt out of the class, if it is a Rule 23(b)(3) class, or they may object to the settlement. States oftentimes have state-law analogues to Rule 23(b)(3), such as Georgia’s O.C.G.A. § 9- 11-23(b)(3). From there, the court overseeing settlement holds a hearing and decides whether to approve the settlement. If the settlement is approved, the claims administrator determines how much each qualified claimant is entitled to receive. Payments are “calculated on a pro rata basis, meaning” the settlement fund is “divided among” class members who submitted valid claims. App. 1979. Afterwards, Class Counsel seeks permission from the court to distribute the settlement fund. If the court approves distribution, the settlement funds are then distributed according to the claims administrator’s calculations.

settlement fund “depend[s] on the number of claims submitted to the administrator[.]” Reply Br. at 9.

The mathematical principle underlying the calculation of settlement claims is eminently straightforward. So is the impact that fraudulent claims will have on the amount available for payment to legitimate class members. As one claims administrator-witness stated, “if there are more claimants,” everyone “get[s] less money.” App. 1253. And as another claims administrator who testified put it, the payout of a fraudulent claim “lowers the amount of money that is available” to other, legitimate class members. App. 546; *see also* App. 659, 1253. The effect of fraudulent claims on the class as a whole could hardly be simpler.

Against this backdrop, the District Court appropriately concluded that the legitimate class members “actually suffered” a loss under the Guidelines. *Banks*, 55 F.4th at 258. As a result of Defendants’ \$40,862,748.30 in fraudulent claims, each legitimate class member’s *pro rata* share of the settlement fund was proportionally reduced. And the fraudulent claims created administrative headaches. As one claims administrator explained, because fraudulent claims create “issues with the amount

that was paid” to class members, once a fraudulent claim is discovered, claims administrators must “recalculate” the payment amounts to “provide losses . . . back to the original claimants who were wronged.” App. 661.

We hold that under these circumstances, where the trial testimony showed that the Defendants’ fraudulent scheme directly reduced the balance available from every settlement

fund for payment to legitimate class claimants, the District Court properly concluded that a “reasonably foreseeable pecuniary harm . . . resulted from the offense.” U.S.S.G. § 2B1.1, app. n.3(A)(i) (defining “actual loss”). The District Court’s \$40,862,748.30 actual loss determination was consistent with the Guidelines.

D. Restitution

The Mandatory Victims Restitution Act of 1996 (“MVRA”) provides that restitution must be awarded to the victims of certain offenses, including offenses “against property” and “offenses committed by fraud or deceit[.]” 18 U.S.C. § 3663A(c) (1)(A)(ii). Cammarata does not dispute that the MVRA is applicable to his wire fraud and money laundering convictions.

At sentencing, the District Court adopted the Government’s proposed restitution plan, invoking the MVRA and ordering that restitution be paid jointly and severally by the Defendants. The restitution order included an attachment, which identified: (1) over one hundred settlement funds as the payees; (2) the amounts the Defendants fraudulently obtained from each fund; and (3) the names of the claims administrators overseeing those funds that were to be distributed to the members of the defrauded classes.

Although the District Court attributed a \$40 million plus loss to the class members defrauded by the Defendants’ scheme, the amount of restitution it ultimately ordered was only \$31,275,832.92. In doing so, the District Court acceded to the Government’s requested amount. The Government’s rationale for seeking restitution in an amount less than the total

loss was that “it may not be economically feasible for some of the [settlement] funds to distribute restitution payments to their ultimate beneficiaries.” App. 375; *see also* App. 2148 (District Court adopting the Government’s rationale at sentencing).

Cammarata attacks the District Court’s restitution order on two grounds.²⁵ First, he claims restitution was not directed to the “victims” of his offenses as that term is defined by the MVRA. Second, he argues that the District Court improperly relied upon claims administrators to distribute restitution funds. We reject both arguments. We conclude that the District Court abused its discretion by ordering restitution in an amount that did not fully compensate the victims. But because the Government did not cross-appeal, Supreme Court precedent requires us to affirm the District Court’s restitution order.

1. The Defrauded Classes as Victims Under the MVRA

At various times throughout Cammarata’s sentencing, the District Court characterized not only the class members as “victims” of the Defendants’ fraud but also the settlement funds—and the claims administrators, as well. *See, e.g.*, App. 2067, 2073, 2078. 2148. Ultimately, in its restitution order, the District Court

directed that restitution be paid to the settlement funds. Cammarata claims that none of these groups, and in particular the settlement funds, qualify as a “victim” under the MVRA.

²⁵ “We review the legality of a restitution order de novo and review specific awards for abuse of discretion.” *United States v. Turner*, 718 F.3d 226, 235 (3d Cir. 2013).

This presents us with a legal question that our Court has not previously been called upon to resolve. Who qualifies as a victim under the MVRA when a defendant has defrauded hundreds of certified classes, resulting ultimately in individual harm to an even greater multitude of class members?

A crucial component of our analysis rests upon what seems a basic question: “just what a class *is* in a class action.” ROBERT H. KLONOFF, CLASS ACTIONS AND OTHER MULTI- PARTY LITIGATION: CASES & MATERIALS 4 (4th ed. 2017) (emphasis in original). As Professor Klonoff queried: is “a class simply a convenient way to refer to a collection of individuals? Or is a class an entity unto itself—analogue perhaps to a corporation or unincorporated association—that has legal status apart from its individual members?” *Id.*

The Supreme Court and our Court have made clear that the latter is true. When a class is certified by the presiding district court judge, the “class of unnamed persons described in the certification acquire[s]” its own “legal status[.]” *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 753 (1976) (internal quotation marks and citation omitted). In other words, the “relevant entity for purposes of the litigation after certification is the class, not the individuals who make up the class.” *Fisher v. Fed. Express Corp.*, 42 F.4th 366, 374 (3d Cir. 2022).

Indeed, members are not “plaintiffs,” nor are they denominated as such. See *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 307 (3d Cir. 1998) (distinguishing between “the named plaintiffs” and “absentee class members”). A quick glance at the caption of a putative

class action complaint immediately notifies a reader that the pleading is not initiating a simple A vs. B lawsuit.²⁶

Class actions are representative actions, *Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 364 (3d Cir. 2015), and that term has profound implications for how this “ingenious procedural innovation” is litigated, *Eubank*, 753 F.3d at 719. Once a class has been certified,²⁷ its members effectively lose nearly all of their litigative individuality. Counsel for the class takes over (as do the class representative or representatives). And their roles vis-à-vis the class and its members impose upon them fiduciary duties. See *In re Fine Paper Litig.*, 632

²⁶ For example, the caption of the EndoChoice Holdings securities class action, to which Alpha Plus submitted claims after settlement was reached, was *In re EndoChoice Holdings, Inc. Securities Litig.*

²⁷ “As a practical matter, the certification decision is typically a game-changer, often the whole ballgame[.]” *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 591 n.2 (3d Cir. 2012); see also *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 162 (3d Cir. 2001) (“[D]enying or granting class certification is often the defining moment in class actions (for it may sound the ‘death knell’ of the

litigation on the part of plaintiffs, or create unwarranted pressure to settle nonmeritorious claims on the part of defendants)[.]”).

F.2d 1081, 1086 (3d Cir. 1980); *Greenfield v. Villager Indus.*, 483 F.2d 824, 832 (3d Cir. 1973).²⁸

These bedrock principles of class action jurisprudence inform the inquiry we now undertake. Because a class assumes an “independent legal status” once it has been certified, we must consider here whether the *classes* entitled to the settlement funds qualify as MVRA victims and are thereby initially affected by the Defendants’ fraud. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013). We turn, then, to whether the classes, settlement funds, or claims administrators satisfy the MVRA’s definition of victim.

The MVRA defines “victim” as “a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered[.]” 18 U.S.C. § 3663A(a)(2). For scheme-based crimes such as wire fraud, that definition is broadened to include “any person directly harmed by the defendant’s criminal conduct in the course of the scheme[.]” *Id.* Though the MVRA’s definition of victim uses the word “person[.]” our Court and other circuits have held that entities may qualify as victims under the MVRA. See *United States v. Bryant*, 655 F.3d 232, 253 (3d Cir. 2011) (hospital receiving federal funding); *United States v. Richardson*, 67

²⁸ Courts have imposed—even on the district court judge who approves a settlement—a fiduciary duty to the class. See *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010) (“[T]he District Court evaluates the [settlement] agreement as a fiduciary for absent class members.”); *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 22 (2d Cir. 1987); *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 280 (7th Cir. 2002).

F.4th 268, 271 (5th Cir. 2023) (corporation); *United States v. Donaby*, 349 F.3d 1046, 1054 (7th Cir. 2003) (police department).

We agree with Cammarata’s contention that the District Court incorrectly characterized both the settlement funds themselves and the claims administrators as “victims” under the MVRA. That both the “settlement funds” and the “claims administrators,” in a cause-and-effect sense, were affected by the Defendants’ fraud—albeit, in profoundly different ways—is indisputable. But the effects experienced by each hardly rendered them “victims” as that statutory term of art is intended under the MVRA. A “fund” is merely “a sum of money[.]” *Fund*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003), which is what we understand each of the settlement funds proffered here to be.²⁹ By itself, such a fund bears none

²⁹ The Fifth Circuit, in *United States v. Arledge*, 553 F.3d 881, 899 (5th Cir. 2008), categorized a settlement fund to which the defendant submitted fraudulent claims as a victim under the MVRA. In that case, however, the defendant did “not dispute that a restitution order was permitted by law;” he only contested the amount of restitution ordered and the schedule of repayment. *Id.* at 897. So the Fifth Circuit was not presented with a disputed issue as to whether the district court’s conclusion that the settlement fund qualified as a victim under the MVRA was correct. Here, by contrast, Cammarata directly challenges the District Court’s determination of the MVRA victim. Nothing in the *Arledge*

opinion changes our conclusion that the settlement funds in this case do not qualify as victims under the MVRA.

of the incidents of the corporal or the corporate; it is neither a person nor a business entity. And the claims administrators retained in the underlying class actions are the antithesis of “victims.” Their job was “the process of processing, reviewing and verifying the validity of all Claim Forms received.” App. 1980. While the Defendants’ fraudulent actions surely caused them inconvenience, they have made no claim for monetary loss. And, importantly, they were compensated for the tasks they performed.

By contrast, the defrauded classes easily meet the MVRA’s definition of “victim.” The losses that were suffered as a result of the Defendants’ fraudulent scheme were experienced directly by the classes as they were defined in the nearly four hundred class actions that were targets of illegitimate claims. Accordingly, under the unique facts of this case as the Government developed them at trial, the victims of the Defendants’ fraud were the *classes* entitled to settlement funds. *See Fischer v. Fed. Express Corp.*, 42 F.4th 366, 374 (3d Cir. 2022). But for the Defendants’ fraudulent claims, the class settlement funds would have maintained larger balances which would then have been distributed to members with valid claims. Accordingly, the Defendants “directly and proximately harmed” the classes by reducing the amount of settlement funds that class members would ultimately receive. 18 U.S.C. § 3663A(a) (2).

Because we conclude that the defrauded classes were the victims, Cammarata is wrong when he contends that the District Court ran afoul of the MVRA by declining to identify each class member in its restitution order. *See United States v. Ben Zvi*, 242 F.3d 89, 100 (2d Cir. 2001) (holding that a district

court did not abuse its discretion by declining to identify the individual members comprising the “unified entity” to which restitution was ordered).

The District Court did not list the defrauded classes as the entities to which restitution was to be paid in its restitution order; it instead listed the settlement funds. But considering the District Court’s restitution plan, we disagree with Cammarata’s contention that this lack of precision means that restitution “was not directed” to the victims of his crimes such that the restitution order must be reversed. Opening Br. at 46.

The District Court viewed the defrauded class members as the “true victims” under the MVRA. Reply Br. at 11 (internal quotation marks omitted). And the District Court’s restitution plan made clear that the class members, not the settlement funds or claims administrators, were the ultimate recipients of restitution. While restitution would be initially paid to the settlement funds, the District Court expected the claims administrators associated with those funds to “distribute restitution . . . payments to their ultimate beneficiar[ies]”—the members of the defrauded classes. App. 2148. Thus, in ordering restitution, the District Court effectively directed restitution in a manner that assured it would ultimately be paid out to the members of the victim classes.

And given the appropriate focus of the District Court’s restitution plan, we decline to reverse the District Court’s

restitution order simply because it listed the settlement funds as the payees.³⁰

*2. The District Court Did Not Err By Relying
On Claims Administrators to Distribute
Restitution Funds*

Cammarata further argues that the District Court improperly “delegate[d]” the task of distributing restitution. Opening Br. at 45. Cammarata essentially complains that the District Court relied upon the claims administrators initially responsible for distributing settlement funds to class members to also distribute monies recovered pursuant to the MVRA to those same class members. In his view, instead of engaging in this “creative circumvention of the governing” statute, the District Court should have foregone restitution entirely because distributing it would have been impracticable and/or excessively burdensome. *Id.* We disagree. Given the unusual circumstances of this case, we conclude that the District Court’s approach complied with the MVRA.

As discussed, the District Court’s restitution plan sought to effectuate the MVRA’s purpose of “compensat[ing] the victim[s] for [their] losses and, to the extent possible, . . . mak[ing] the victim[s] whole.” *United States v. Diaz*, 245 F.3d 294, 312 (3d Cir. 2001). The District Court directed the

³⁰ We stress, however, that when faced with similarly complex facts that require intricate restitution schemes, a district court should be careful to explicitly identify victims and accurately outline its plan for distributing restitution to those victims in its restitution order.

Defendants to return the money they fraudulently obtained from settlement funds so the claims administrators overseeing those funds could distribute individualized payments to affected class members. Courts have affirmed more attenuated approaches to providing restitution to victims under the MVRA.

In *United States v. Gee*, 432 F.3d 713 (7th Cir. 2005), the defendant pleaded guilty to conspiring to defraud the United States, in violation of 18 U.S.C. § 371. *Id.* at 714. Although the Seventh Circuit recognized that the MVRA “victim” in an 18 U.S.C. § 371 prosecution was actually the United States, it nonetheless affirmed the terms of the district court’s restitution order directing that a nonprofit organization was ultimately entitled to receive \$200,000. *Id.* at 715. It reasoned that the organization was “a proxy for the federal interest because it was a recipient of federal funds[.]” *Id.*

We endorsed a similar approach in *Bryant*, 655 F.3d at 253–54. In that case, the defendants were convicted of honest services fraud³¹ and mail fraud pursuant to 18 U.S.C. §§ 666(a), 1341, 1343, and 1346. *Id.* at 236. The defendants’ fraudulent scheme involved a *quid pro quo* exchange that financially harmed a university. *Id.* at 237, 253.³² We affirmed

³¹ As we explained in *Bryant*, honest services fraud “is fraud that results in a loss to the public of its right to the honest services of its public servants[.]” 655 F.3d at 254.

³² More specifically, one defendant gave the other a “low- show” job—“meaning he provided only minimal or nominal services”—at the university’s school of osteopathic medicine.

the district court's restitution order directing payment to the university. *Id.* at 253. Unlike the settlement funds in the case before us, we held that the university itself qualified as a victim under the MVRA. *Id.* Still, we recognized the “intangible losses” to the public caused by the defendants’ honest services fraud. *Id.* at 254. We explained that the university being awarded restitution was “a proxy for the State’s interests, including its citizens’ interest in the honest services of its public servants[,]” because it was a recipient of taxpayer funds. *Id.* Providing restitution to the university, we reasoned, “indirectly compensate[d] the public for its loss[es.]” *Id.*

Here, the settlement funds and the claims administrators listed in the District Court’s restitution order did not serve as did the “proxies” in either *Gee* or *Bryant*. Neither the funds nor the administrators were paid restitution for their own benefit with the understanding that such payments would “indirectly compensate[]” victims of the Defendants’ fraud. *Id.* Instead, the funds were the repositories for monies to which the classes were entitled, and the claims administrators were tasked with simply fulfilling the roles they had been given to administer the class action settlements pursuant to a process envisioned by Federal Rule of Civil Procedure 23 and as directed by the settlement agreements that had received court approval. *Bryant*, 655 F.3d at 237. In exchange, the defendant who obtained the job leveraged his position as a New Jersey State Senator to funnel state funding to the school. *Id.* The scheme diverted over \$2 million from the university’s budget for direct allocation to the school of osteopathic medicine. *Id.* at 253.

Relying upon an entity with the means and expertise required to distribute restitution under circumstances similar to those presented in this case is not only appropriate but well- advised. Consider *Herzfeld v. United States District Court*, 699 F.2d 503, 507 (10th Cir. 1983), in which the Tenth Circuit upheld the creation of a receivership to distribute restitution. The defendant in that case had engaged in a widespread fraudulent scheme that had harmed numerous investors. *Id.* at 504. The Tenth Circuit explained that “[i]n a scheme like this one, where substantial sums of money are involved, the appointment of a receiver to . . . distribute the money is both necessary and beneficial to accomplish restitution.” *Id.* at 506. It reasoned that the “usual practice of directing a probation officer to accomplish restitution is desirable where there are few claimants and where the amount of money is not great.” *Id.* But where “the number of claimants is large and a pro rata distribution of a large fund is necessary,” the court concluded that “a person with more specialized training is required.” *Id.*

Like the receivership in *Herzfeld*, the “functions to be performed” in distributing restitution to the victim classes in the case before us “are typically those of a” claims administrator. *Id.* at 506. The Presentence Investigation Report explained that restitution funds would be distributed to the victim classes by the claims administrators, “given their familiarity and expertise in making distributions.” PSR ¶ 54. The District Court’s restitution order went only so far as listing the amounts the Defendants owed to the victim classes. Determining the amount of restitution to which each class member is entitled to receive the entirety of their pro rata share of the settlement fund, and then distributing those funds, should be within the province of claims administrators. Indeed,

as one claims administrator testified at trial: when a fraudulent claim is discovered, the claims administrator must “recalculate” the amount distributed to class members to “provide losses . . . to the original claimants who were wronged.” App. 661. To achieve the MVRA’s purpose of making victims whole, the District Court correctly relied upon claims administrators to perform their core function—distributing settlement funds to class members on a *pro rata* basis.

Given both the facts and complexity of this case, as well as the procedural posture of the numerous class actions, it was not up to the District Court to fashion a restitution order and also assume the function of a settlement administrator.

Finally, we reject Cammarata’s assertion that the District Court, instead of relying on claims administrators to distribute restitution funds, should have foregone restitution under 18 U.S.C. § 3663A(c)(3). That provision provides that mandatory restitution “shall not apply” where: (1) “the number of identifiable victims is so large as to make restitution impracticable; or” (2) “determining complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.” *Id.* § 3663A(c)(3)(A)– (B).

Whether to forego restitution under § 3663A(c)(3) is within “the exercise of” the District Court’s “sound discretion[.]” *United States v. Zangari*, 677 F.3d 86, 93 (2d Cir. 2012). And “[d]eference to the district court’s consideration of

the issue is . . . typically warranted if ‘the record indicates that the district court, although aware of the difficulties involved in ordering restitution[,]. . . considered restitution an essential part of [the defendant’s] sentence.’” *United States v. Gushlak*, 728 F.3d 184, 193 (2d Cir. 2013) (quoting *United States v. Catoggio*, 326 F.3d 323, 328 (2d Cir. 2003)).

Here, the District Court invoked § 3663A(c)(3) and properly explained that under that provision, it must “weigh . . . the burden [of] awarding restitution” against the victims’ “interest in receiving restitution.” App. 2147; *see Gushlak*, 728 F.3d at 192. The Court acknowledged potential difficulties in distributing restitution, but as to the \$31,275,832.92 in restitution it ultimately ordered,³³ the Court reasoned that such difficulties did not render distribution in that amount infeasible or unduly burdensome. And as just explained, the District Court did not err in relying on claims administrators to distribute that restitution. Moreover, the record shows that the Court regarded restitution as an essential component of Cammarata’s sentence. *See Catoggio*, 326 F.3d at 328; App. 2146 (“[L]et me put on the record the need to provide

³³ As we explain next, the District Court abused its discretion by awarding restitution in this amount, as it did not fully compensate the victims’ losses. But because the Government did not cross-appeal, that abuse of discretion cannot justify vacatur and remand for recalculation. So with the restitution award effectively capped at the \$31 million figure, we consider whether the District Court abused its discretion by not foregoing restitution in that amount, *i.e.*, the amount it actually ordered.

restitution.”). Because this determination “requires a detailed understanding of and sensitivity to the facts of each case[.]” *Gushlak*, 728 F.3d at 193, we defer to the Court’s analysis and conclude that it did not abuse its discretion by not foregoing

restitution under § 3663A(c)(3), *cf. United States v. Malone*, 747 F.3d 481, 487 (7th Cir. 2014) (perceiving no abuse of discretion where “although [the district court] did not expressly explain [its] balancing of the relevant complexity exception factors, [it] clearly considered those factors and exercised [its] discretion not to apply the exception in this case”).

*3. Although the District Court Abused Its
Discretion by Failing to Award Full
Restitution to Each Victim Class, We Will
Not Disturb Its Restitution Order*

Having rejected Cammarata’s arguments with respect to the MVRA victims and the District Court’s approach to distributing restitution, we turn to the amount of restitution ordered, *i.e.*, the Court’s decision to order only \$31 million in restitution after finding a more than \$40 million loss.³⁴ In doing

³⁴ In a now vacated opinion, we observed that although Cammarata’s argument was less than clear to us, he seemed to be pointing to the \$9 million reduction from loss found to restitution ordered as a reason the District Court ran afoul of the MVRA. See Opening Br. at 45 (highlighting the “adjustment” and contending that “[t]he [restitution] award thus lacked any credible evidentiary basis and bears no rational relationship to its articulated rationale”) (internal quotation marks omitted). We agreed, vacated the restitution order, and remanded with instructions to the District Court to either

so, the Court ran afoul of the MVRA. Nevertheless, because the Government did not cross-appeal, and in fact requested restitution in that underinclusive amount, we will affirm the District Court’s restitution order.

The MVRA contemplates that ordering restitution is an all-or-nothing approach. A district court must “order restitution to *each* victim in the *full* amount of each victim’s losses[.]” 18 U.S.C. § 3664(f)(1)(A) (emphasis added). “Thus, there is no restitution range under . . . § 3664(f)(1)(A) that starts at zero and ends at the full amount of each victim’s losses; rather, the single restitution amount triggered by the conviction under the MVRA . . . is the full amount of loss.” *United States v. Leahy*, 438 F.3d 328, 337–38 (3d Cir. 2006) (internal quotation marks omitted); see also *id.* at 337 (“[W]hen the court determines the amount of loss, it is merely giving definite shape to the restitution penalty born out of the conviction.”).

Here, the District Court ordered restitution to only 115 of the 397 classes victimized by the Defendants’ fraudulent forego restitution entirely under 18 U.S.C. § 3663A(c)(3) or adjust the restitution award to fully compensate the victims’ losses. Cammarata petitioned for panel rehearing. He clarified that he had not challenged the \$9 million reduction as a basis for reversing the restitution order as underinclusive. He also raised, for the first time, the Supreme Court’s decision in *Greenlaw v. United States*, 554 U.S. 237 (2008). We granted panel rehearing on this basis, and we address *Greenlaw*’s import below.

scheme.³⁵ And the amount awarded to those 115 classes fell well below the over-\$40 million loss suffered by all the victim classes. By ordering less-than-full restitution, the District Court abused its discretion. See *United States v. Alalade*, 204 F.3d 536, 540–41 (4th Cir. 2000) (holding that the MVRA does not vest district courts

with discretion to reduce the amount of restitution below the full amount of each victim's losses).

We previously concluded that this abuse of discretion required us to vacate the restitution order and remand for the Court to reconsider its restitution award consistent with the requirements of the MVRA. Now, with the benefit of briefing at the panel rehearing stage, we conclude that the Supreme Court's decision in *Greenlaw v. United States*, 554 U.S. 237 (2008), precludes such a remedy in this case.

Greenlaw provides that under the "cross-appeal rule," an "appellate court may not alter a judgment to benefit a nonappealing party." *Id.* at 244. In that case, the defendant appealed his sentence, claiming it was excessive, and the government did not cross appeal. *Id.* at 242. The Eighth Circuit, after rejecting the defendant's arguments, vacated the

³⁵ The list of 115 settlement funds was provided by the Government and incorporated into the District Court's restitution order. The Government apparently determined "for each fund a threshold amount of recovery below which it would not be feasible to make further distribution." App. 2148. The list of funds in the restitution order excluded the settlement funds from which the Defendants fraudulently obtained amounts less than the Government's unidentified threshold.

defendant's sentence and remanded for the district court to increase the sentence by 15 years to accord with the applicable statutory mandatory minimum. *Id.* at 242–43. The Supreme Court reversed. It held that "absent a Government appeal or cross-appeal, the sentence [the defendant] received should not have been increased." *Id.* at 240. That same principle controls here, and without a cross-appeal from the Government, it prevents us from remanding to the District Court for further proceedings that might enlarge Cammarata's restitution obligation.

Greenlaw dealt with an increase to a defendant's term of imprisonment, not as here, a restitution award under the MVRA. But we have little trouble concluding that *Greenlaw* applies in this context. After all, MVRA restitution is "a form of criminal penalty" that is "imposed as an integral and necessary part of sentencing[.]" *United States v. Edwards*, 162 F.3d 87, 91 (3d Cir. 1998). *Greenlaw*'s mandate that "the sentence [a defendant] received should not" be increased without a government cross-appeal, therefore, necessarily encompasses restitution under the MVRA. *Greenlaw*, 554 U.S. at 240.

Accordingly, and although the District Court abused its discretion by failing to fully compensate the victims of Cammarata's offenses, the Government's failure to cross-appeal requires that we affirm the District Court's restitution order. See *United States v. Greenlaw*, 538 F.3d 830, 831 (8th Cir. 2008) (affirming the defendant's sentence on remand); *In re Amy Unknown*, 701 F.3d 749, 774 (5th Cir. 2012) (en banc), vacated and remanded sub nom. *Paroline v. United States*, 572 U.S. 434 (2014), and cert. granted, judgment vacated sub nom.

Wright v. United States, 572 U.S. 1083 (2014) (affirming a similarly underinclusive restitution award under *Greenlaw* in the absence of a government cross-appeal).

E. Forfeiture

Finally, Cammarata claims the forfeiture of his vacation home (the “Poconos property”) violated Federal Rule of Criminal Procedure 32.2. Whether forfeiture of the Poconos property complied with Rule 32.2 is a question of law over which we exercise plenary review. *See United States v. 6109 Grubb Rd.*, 886 F.2d 618, 621 (3d Cir. 1989).

The superseding indictment included a forfeiture allegation pursuant to 28 U.S.C. § 2461(c)36 and 18 U.S.C. § 981(a)(1)(C),³⁷ directing the Defendants to forfeit “any property, real or personal, that constitutes or is derived from

³⁶ Section 2461(c) provides that if a defendant is convicted of an offense for which criminal forfeiture is authorized, the district court “shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to the Federal Rules of Criminal Procedure[.]” 28 U.S.C. § 2461(c). “The federal rule referenced in § 2461(c) is Rule 32.2[.]” *United States v. Lo*, 839 F.3d 777, 790 (9th Cir. 2016).

³⁷ Section 981(a)(1)(C) provides that “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to a violation of” certain offenses, including mail and wire fraud, “is subject to forfeiture to the United States[.]” 18 U.S.C. § 981(a)(1)(C) (incorporating 18 U.S.C. §§ 1956(c)(7) and 1961(1)).

proceeds traceable to the commission” of the charged wire fraud offenses, “including, but not limited to the sum of \$40,000,000[.]” App. 116. The forfeiture allegation also stated that the Government intended to “seek forfeiture of any other property of the [D]efendants up to the value of the property subject to forfeiture” pursuant to 21 U.S.C. § 853(p). *Id.*

At the charge conference on the final day of trial, the District Court asked the Government whether the jury needed to consider any forfeiture issues, inquiring: “it’s not a notice of forfeiture as to specific property, right?” App. 1802. In posing that query, the District Court complied with Rule 32.2(b)(5)(A), which requires a court to “determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict.” Fed. R. Crim. P. 32.2(b)(5)(A). Cammarata essentially concedes that the Court complied with the Rule. Because the Government advised that it was seeking a “money judgment only[.]” neither party requested that the jury address forfeiture. App. 1802.

Months after trial and a week before Cammarata’s sentencing was to occur, the Government filed a motion for forfeiture, seeking both a money judgment and forfeiture of the Poconos property. The Government averred that the Poconos property was traceable to fraudulent proceeds and thus subject to forfeiture under § 981(a)(1)(C). To that end, it attached a declaration executed by a government investigator which traced Cammarata’s purchase of the Poconos property to three payments Alpha Plus had fraudulently received from class action settlement funds.

At sentencing, Cammarata objected to forfeiture of the Poconos property, arguing that the Government failed to provide him with sufficient notice. Such failure, he claimed, deprived him of his right to have a jury determine the property’s forfeitability. Rather than ruling on Cammarata’s objections, the District Court determined that the Government had proved by a preponderance of the evidence that the Poconos property was traceable to fraudulent proceeds. And by an order issued on

June 6, 2023, the Court directed Cammarata to forfeit both \$16,493,939.73, the amount he personally gained through the fraudulent scheme, and the Poconos property itself.

Cammarata claims the District Court erred by ordering the Poconos property's forfeiture. He re-asserts his notice argument and contends that the Government waived its ability to seek the property's forfeiture when it represented at trial that it would seek only a money judgment. And he argues that he was deprived of the jury trial right afforded to him by Rule 32.2(b)(5)(A).

We reject Cammarata's notice and waiver arguments. We conclude, however, that ordering forfeiture of the Poconos property as traceable to fraudulent proceeds without affording Cammarata a right to the jury trial afforded by Rule 32.2(b)(5)(A) was error subject to harmless error review. While reversal is not warranted under that standard, remand is. On remand, the Government should move to amend the forfeiture order to reflect that the Poconos property is forfeitable as "other property" under 21 U.S.C. § 853(p), not as property derived from criminal proceeds under 18 U.S.C. § 981(a)(1)(C).

1. The Government Provided Adequate Notice

The general notice provided by the Government in the superseding indictment was sufficient under 28 U.S.C. § 2461(c) and Rule 32.2(a). Section 2461(c) states only that "the Government may include notice of forfeiture in the indictment . . . pursuant to the Federal Rules of Criminal Procedure." And Rule 32.2(a) requires the Government to provide notice in an indictment that it "will seek the forfeiture of property as part of any sentence[.]" Fed. R. Crim. P. 32.2(a); *Lo*, 839 F.3d at 790. Such notice "need not identify" the specific property or the amount of money subject to forfeiture. Fed. R. Crim. P. 32.2(a).

The superseding indictment made plain the Government's intention to seek the forfeiture of "any property, real or personal," as part of Cammarata's sentence. App. 116. Neither Rule 32.2(a) nor § 2461(c) required more. *See United States v. Lacerda*, 958 F.3d 196, 217 (3d Cir. 2020) (holding that nearly identical language in an indictment was sufficient under Rule 32.2).

2. The Government Did Not Waive Its Right to Seek Forfeiture of the Poconos Property

Cammarata further argues that the Government waived its right to seek forfeiture of the Poconos property when it represented during the charge conference that it was seeking only a money judgment. He claims the District Court committed reversible error when it nonetheless disregarded his objection at sentencing and ordered the property's forfeiture. The basic flaw in Cammarata's argument is that he did not

object on the ground that the Government had waived its right to seek forfeiture of specific property. App. 2071–73, 2089.

Accordingly, we review Cammarata's waiver argument for plain error. *See United States v. Watson*, 482 F.3d 269, 274 (3d Cir. 2007). We again recite that the plain error doctrine requires that "an appellant . . . show (1) a legal error (2) that is plain and (3) that has affected his substantial rights." *Dorsey*, 105 F.4th at 528 (citing *Olano*, 507

U.S. at 732). Only if these requirements are met, may we exercise our discretion to correct the error, and then only if allowing the error to stand would “seriously affect[] the fairness, integrity or public reputation of judicial proceedings.” *Olano*, 507 U.S. at 732 (internal quotation marks and citations omitted).

Cammarata fails to cite a single case supporting his waiver argument. Though “lack of precedent alone” does not categorically “prevent us from finding plain error[,]” we will do so only if “absolutely clear legal norm[s]” compel that conclusion. *United States v. Jabateh*, 974 F.3d 281, 299 (3d Cir. 2020) (internal quotation marks and citations omitted). Cammarata cannot show that any error here meets such a demanding test.

Notably, the Government claims that it was not aware, even by the time trial concluded, that the Poconos property was forfeitable as traceable to fraudulent proceeds. While the Government suggests that its “forfeiture submissions should have clarified that its tracing had only occurred post-trial[,]” Response Br. at 60 n.8, that fact is apparent in the declaration underpinning the Government’s forfeiture motion. The declaration, executed months after trial, explained that the

investigator-declarant concluded that the Poconos property was traceable to fraudulent proceeds only *after* reviewing trial testimony and exhibits.

Waiver requires the “intentional relinquishment or abandonment of a known right.” *Hamer v. Neighborhood Hous. Servs.*, 583 U.S. 17, 20 n.1 (2017) (quoting *Olano*, 507 U.S. at 733). We fail to see, then, how the Government could have waived any right to seek forfeiture of property the forfeitability of which it was unaware when it represented to the District Court that it would seek only a money judgment. See *Magouirk v. Warden*, 237 F.3d 549, 553 (5th Cir. 2001) (agreeing in a habeas proceeding that state prosecution did not waive its ability to later advance an argument it “did not know of” at the time of trial).

Moreover, forfeiture of property traceable to criminal proceeds is mandatory upon conviction, so long as the Government provides sufficient notice in the indictment. See 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c); *United States v. Hernandez*, 803 F.3d 1341, 1343 (11th Cir. 2015) (explaining that because forfeiture was authorized under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and “the government included notice of the forfeiture in [the defendant’s] indictment, the district court was required by § 2461(c) to order forfeiture as part of his sentence”).

As explained, the Government provided sufficient notice here. To conclude that it later waived its ability to seek the Poconos property’s forfeiture during the charge conference would be contrary to the mandatory nature of criminal forfeiture and the facts of this case.

*3. Deprivation of the Jury Right Afforded by
Rule 32.2(b)(5)(A) Constituted Procedural
Error That Merits Remand*

Finally, Cammarata claims his inability to submit the issue of the Poconos property’s forfeitability to the jury constituted a fundamental violation of Rule 32.2(b)(5)(A). In his view, this error requires us to reverse the District Court’s forfeiture order as to the Poconos property.

Rule 32.2(b)(5)(A) is plainly directed at district courts, not litigants. It provides that “the court must determine” whether either party requests that the jury be retained to determine the forfeitability of specific property. Fed. R. Crim. P. 32.2(b)(5)(A). As Cammarata concedes, the District Court heeded the Rule’s mandate when it inquired of the Government at the charge conference whether it was seeking forfeiture of specific property. So the District Court did not violate Rule 32.2(b)(5)(A). *See United States v. Fisher*, 943 F.3d 809, 814 (7th Cir. 2019) (explaining that Rule 32.2(b)(5)(A) “is violated when a judge does not determine if a party wants the jury to decide whether certain property is forfeitable”). Nor can we ascribe any intentional error to the Government when it provided sufficient notice in the superseding indictment. Rule 32.2(b)(5)(A) does not govern the Government’s conduct. And even if it did, the record indicates that it was not aware until after the jury had rendered its verdict that it had a basis to seek forfeiture of the Poconos property.

That said, we cannot ignore that Cammarata was deprived of the jury right afforded to him by Rule

32.2(b)(5)(A). That deprivation of process constituted procedural error.

As both parties recognize, that procedural error is subject to harmless error review on appeal.³⁸ *See* Fed. R. Crim. P. 52(a). And it is the Government’s burden to demonstrate that the error was harmless. *United States v. Titchell*, 261 F.3d 348, 354 (3d Cir. 2001). Because a violation of Rule 32.2(b)(5)(A) is not of constitutional dimension,³⁹ reversal is “not warranted.”³⁸ The Supreme Court’s recent decision in *McIntosh v. United States*, 601 U.S. 330 (2024), bolsters this conclusion. There, the Court held that Rule 32.2(b)(2)(B)—mandating the entry of a preliminary order of forfeiture prior to sentencing—is a “time-related directive that, if missed, does not deprive the judge of her power to order forfeiture against the defendant.” *Id.* at 342. McIntosh’s reasoning compels the same conclusion here with respect to Rule 32.2(b)(5)(A). *See id.* at 341–44; *United States v. Williams*, 720 F.3d 674, 700–01 (8th Cir. 2013) (holding that Rule 32.2(b)(5)(A) is “merely a time- related directive deadline” that is “legally enforceable but does not deprive a judge . . . of the power to take the action to which the deadline applies if the deadline is missed”) (internal quotation marks and citation omitted). Still, failure to abide by a time-related directive is “subject to harmless-error principles on appellate review[.]” *McIntosh*, 601 U.S. at 338.

³⁹ Cammarata’s contention that a deprivation of Rule 32.2(b)(5)(A)’s jury right is “structural error” requiring automatic reversal lacks merit. As he appears to concede, Supreme Court precedent forecloses his argument. *See Libretti*

if it is ‘highly probable that the error did not contribute to the judgment.’” *United States v. Browne*, 834 F.3d 403, 416 (3d Cir. 2016) (quoting *United States v. Brown*, 765 F.3d 278, 295 (3d Cir. 2014)).

The Government’s harmless error argument is that even if the jury had found that the Poconos property was not forfeitable, Cammarata would nonetheless have had to forfeit it as substitute property under 21 U.S.C. § 853(p). That provision allows the Government to seek forfeiture of “property untainted by the crime[.]” *i.e.* substitute

property, so long as it can prove one of five conditions listed in § 853(p)(1). *Honeycutt v. United States*, 581 U.S. 443, 451 (2017). These conditions include when, “as a result of any act or omission of the defendant”, forfeitable property has been “transferred or sold to, or deposited with, a third party”; “placed beyond the jurisdiction of the court”; or “commingled with other property which cannot be divided without difficulty.” 21 U.S.C. § 853(p)(1)(B), (C), (E).

We are mindful that the superseding indictment put Cammarata on notice of the Government’s intention to seek forfeiture of substitute property under § 853(p). In the declaration supporting the Government’s forfeiture motion, its *v. United States*, 516 U.S. 29, 49 (1995) (“[T]he right to a jury verdict on forfeitability does not fall within the Sixth Amendment’s constitutional protection.”); Opening Br. at 49 & n.16 (acknowledging that “the ‘structural error’ rubric does not apply to a jury right conferred by statute rather than by the Constitution itself” and “[r]ecognizing that this Cou[r]t is bound by the precedent set in *Libretti*”).

investigator concluded that “much of the” nearly \$16.5 million in fraudulent proceeds Cammarata obtained had been transferred to a third party, used to pay for real property outside the United States, and/or commingled with other property. App. 330. In its forfeiture order, the District Court concluded that “one or more conditions in 21 U.S.C. § 853(p) have been met” and authorized the Government to seek forfeiture of substitute property. App. 16–17. And under Rule 32.2(e), upon the Government’s motion, a district court “may at any time enter an order of forfeiture or amend an existing order of forfeiture to include” substitute property without the involvement of a jury. Fed. R. Crim. P. 32.2(e)(1), (3).

We acknowledge the practicality of the Government’s harmlessness argument. Insofar as Cammarata would have forfeited the Poconos property as substitute property in any event, it is highly probable that the procedural error did not contribute to the judgment. So reversal is not warranted. *See Browne*, 834 F.3d at 416. But we decline the Government’s invitation to affirm, without amendment to the forfeiture order, simply because Cammarata would have forfeited the Poconos property under a process distinct from the one it pursued before the District Court.

As we explained in *United States v. Voigt*, where “all that is at issue is the process by which the government may seize property in satisfaction of the” forfeiture amount to which it is legally entitled, the solution “is to give effect to the substitute asset provision.” 89 F.3d 1050, 1088 (3d Cir. 1996). Accordingly, we will vacate the District Court’s forfeiture order to the extent it reaches the Poconos property. And we will remand for the limited purpose of allowing the Government to

move to amend the forfeiture order under Rule 32.2(e) to reflect that the Poconos property is forfeitable as a substitute asset. *See id.* (remanding for a similar amendment of a forfeiture order where the district court erroneously concluded that specific property was forfeitable as traceable to criminal proceeds). *III. CONCLUSION*

In sum, we will affirm Cammarata’s conspiracy, wire fraud, and money laundering convictions, as well as the District Court’s restitution order. We will vacate the forfeiture order in part and remand for further proceedings consistent with this opinion.

APPENDIX B

Order of the United States Court of Appeals
for the Third Circuit Denying Rehearing by the
Panel and the Court En Banc (August 12, 2025)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2110

UNITED STATES OF AMERICA

v.

JOSEPH CAMMARATA,
Appellant

(District Court No. 2:21-cr-00427-001)

SUR PETITION FOR REHEARING

Before: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, McKEE, and SMITH*, *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled 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 panel and the Court *en banc*, is denied.

BY THE COURT,

s/ D. Brooks Smith
Circuit Judge

Dated: August 12, 2025

* The votes of the Honorable Theodore A. McKee and the Honorable D. Brooks Smith, Senior Judges of the United States Court of Appeals for the Third Circuit, are limited to panel rehearing.

[51a]

APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

18 U.S.C. § 3231

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

28 U.S.C. § 455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party; . . . (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding

(d) For the purposes of this section the following words or phrases shall have the meaning indicated: . . . (4) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party

Fed. R. Crim. P. 5(f)

(1) In General. In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and the possible consequences of violating such order under applicable law.

(2) Formation of Order. Each judicial council in which a district court is located shall promulgate a model order for the purpose of paragraph (1) that the court may use as it determines is appropriate.

Due Process Protections Act, Pub. L. No. 116-182, 134 Stat. 894 (2020)

An Act to amend Rule 5 of the Federal Rules of Criminal Procedure to require judges to remind prosecutors of their obligations under *Brady v. Maryland* in all criminal cases.

APPENDIX D

Financial Disclosure Reports (Forms AO-10)
of the Trial Judge, Cited Pages
(Calendar Years 2018, 2019, and 2020)

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2018

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Kenney, Sr., Chad F.	2. Court or Organization U.S. District Court - Eastern District of Pennsylvania	3. Date of Report 07/29/2019
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Article III - Active	5a. Report Type (check appropriate type) ☐ Nomination Date ☐ Initial ☒ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2018 to 12/31/2018
7. Chambers or Office Address United States Courthouse 601 Market Street Philadelphia, PA 19106		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Judge	Court of Common Pleas, Commonwealth of Pennsylvania (retired 10/31/18)
2.	
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 2003	Commonwealth of Pennsylvania (defined benefit pension plan)
2.	
3.	

FINANCIAL DISCLOSURE REPORT

Page 4 of 7

Name of Person Reporting

Kenney, Sr., Chad F.

Date of Report

07/29/2019

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Citizen's Bank (cash)	A	Interest	K	T					
2. Fidelity 500 Index Premium (FUSVX)	A	Dividend	J	T					
3. IRA #1 (H)									
4. FIDELITY GOVERNMENT CASH RESERVES (FDRXX) (CASH EQUIV)	A	Dividend	M	T	Open	12/17/18	N		
5. ALPHABET INC CAP STK CL A (GOOGL)		None	J	T	Buy	12/24/18	J		
6. AMGEN INC (AMGN)		None	J	T	Buy	12/24/18	J		
7. APPLE INC (AAPL)		None	J	T	Buy	12/24/18	J		
8. BECTON DICKINSON CO (BDX)		None	J	T	Buy	12/24/18	J		
9. BERKSHIRE HATHAWAY INC DEL CL B NEW (BRKB)		None	J	T	Buy	12/24/18	J		
10. BEST BUY INC (BBY)		None	J	T	Buy	12/24/18	J		
11. BOEING CO (BA)		None	J	T	Buy	12/24/18	J		
12. BROADRIDGE FINANCIAL SOLUTIONS LLC (BR)		None	J	T	Buy	12/24/18	J		
13. CISCO SYS INC COM (CSCO)		None	J	T	Buy	12/24/18	J		
14. CUMMINS INC (CMI)		None	J	T	Buy	12/24/18	J		
15. DANAHER CORP COM (DHR)		None	J	T	Buy	12/24/18	J		
16. DISCOVER FINL SVCS (DFS)		None	J	T	Buy	12/24/18	J		
17. DOLLAR TREE INC COM (DLTR)		None	J	T	Buy	12/24/18	J		

1. Income Gain Codes: (See Columns B1 and D4)	A ~\$1,000 or less F ~\$50,001 - \$100,000	B ~\$1,001 - \$2,500 G ~\$100,001 - \$1,000,000	C ~\$2,501 - \$5,000 H1 ~\$1,000,001 - \$5,000,000	D ~\$5,001 - \$15,000 H2 ~More than \$5,000,000	E ~\$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J ~\$15,000 or less N ~\$250,001 - \$500,000 P3 ~\$25,000,001 - \$50,000,000	K ~\$15,001 - \$50,000 O ~\$500,001 - \$1,000,000	L ~\$50,001 - \$100,000 P1 ~\$1,000,001 - \$5,000,000 P4 ~More than \$50,000,000	M ~\$100,001 - \$250,000 P2 ~\$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q ~Appraisal U ~Book Value	R ~Cost (Real Estate Only) V ~Other	S ~Assessment W ~Estimated	T ~Cash Market	

FINANCIAL DISCLOSURE REPORT

Page 5 of 7

Name of Person Reporting

Kenney, Sr., Chad F.

Date of Report

07/29/2019

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. EOG RESOURCES INC (EOG)		None	J	T	Buy	12/24/18	J		
19. ECOLAB INC (ECL)		None	J	T	Buy	12/24/18	J		
20. EXXON MOBIL CORP (XOM)		None	J	T	Buy	12/24/18	J		
21. FORTIVE CORP COM (FTV)		None	J	T	Buy	12/24/18	J		
22. NEXTERA ENERGY INC COM (NEE)		None	J	T	Buy	12/24/18	J		
23. NORTHERN TR CORP (NTRS)		None	J	T	Buy	12/24/18	J		
24. NUTRIEN LTD COM (NTR)		None	J	T	Buy	12/24/18	J		
25. S&P GLOBAL INC COM (SPGI)		None	J	T	Buy	12/24/18	J		
26. SCHLUMBERGER LIMITED COM (SLB)		None	J	T	Buy	12/24/18	J		
27. ULTA BEAUTY INC COM (ULTA)		None	J	T	Buy	12/24/18	J		
28. WALMART INC COM (WMT)		None	J	T	Buy	12/24/18	J		
29. TANGER FACTORY OUTLET CTRS INC (SKT)		None	J	T	Buy	12/24/18	J		

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2019

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Kenney, Sr., Chad F.	2. Court or Organization U.S. District Court - Eastern District of Pennsylvania	3. Date of Report 01/29/2020
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Active)	5a. Report Type (check appropriate type) ☐ Nomination ☐ Date ☐ Initial ☒ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2019 to 12/31/2019
7. Chambers or Office Address United States Courthouse 601 Market Street Philadelphia, PA 19106		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)



NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1. _____
2. _____
3. _____
4. _____
5. _____

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)



NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1. 2003 Commonwealth of Pennsylvania (defined benefit pension plan)
2. _____
3. _____

FINANCIAL DISCLOSURE REPORT

Page 4 of 8

Name of Person Reporting

Kenney, Sr., Chad F.

Date of Report

01/29/2020

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. INDIVIDUAL HOLDINGS (H)									
2. Citizen's Bank (cash)	A	Interest	J	T					
3. Fidelity 500 Index Premium (FUSVX) (cash eq.)	A	Int./Div.	K	T					
4. IRA #1 (H)									
5. FIDELITY GOVERNMENT CASH RESERVES (FDRXX) (CASH EQUIV)	A	Dividend	J	T					
6. DELAWARE DIVERSIFIED INCOME FD CL A (DPDFX) (X)	A	Dividend			Sold	09/19/19	J	A	
7. PIMCO ETF TRUST ENHANCED SHORT (MINT)	B	Dividend	L	T	Buy	01/28/19	K		
8.					Buy (add'l)	09/20/19	L		
9. ALPHABET INC CAP STK CL A (GOOGL)		None			Buy (add'l)	02/14/19	J		
10.					Sold (part)	05/17/19	J		
11.					Sold	09/09/19	J		
12. AMGEN INC (AMGN)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
13. APPLE INC (AAPL)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
14. BECTON DICKINSON CO (BDX)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
15. BERKSHIRE HATHAWAY INC DEL CL B NEW (BRKB)		None	J	T	Buy (add'l)	02/14/19	J		
16. BEST BUY INC (BBY)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
17. BOEING CO (BA)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		

1 Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3 Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Kenney, Sr., Chad F.

Date of Report

01/29/2020

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)

18.					Sold (part)	05/16/19	J		
19. BOOKING HLDGS INC COM (BKNG)		None	J	T	Buy	03/04/19	J		
20. BROADRIDGE FINANCIAL SOLUTIONS LLC (BR)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
21. BUNZL SPON ADR EACH REP 1 ORD (BZLFY)	A	Dividend	J	T	Buy	12/05/19	J		
22. CISCO SYS INC COM (CSCO)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
23.					Sold (part)	05/16/19	J		
24. CUMMINS INC (CMI)	A	Dividend			Buy (add'l)	02/14/19	J		
25.					Sold (part)	05/16/19	J	A	
26.					Sold	12/05/19	J	B	
27. DANAHER CORP COM (DHR)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
28. DISCOVER FINL SVCS (DFS)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
29. DOLLAR TREE INC COM (DLTR)		None	J	T	Buy (add'l)	02/14/19	J		
30. EOG RESOURCES INC (EOG)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
31. ECOLAB INC (ECL)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
32. EXXON MOBIL CORP (XOM)		None			Buy (add'l)	02/14/19	J		
33.					Sold	05/08/19	J	A	
34. FEDEX CORP COM (FDX)	A	Dividend	J	T	Buy	01/18/19	J		

1 Income Gain Codes: (See Columns B1 and D4)	A =\$1,000 or less F =\$50,001 - \$100,000	B =\$1,001 - \$2,500 G =\$100,001 - \$1,000,000	C =\$2,501 - \$5,000 H1 =\$1,000,001 - \$5,000,000	D =\$5,001 - \$15,000 H2 =More than \$5,000,000	E =\$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	J =\$15,000 or less N =\$250,001 - \$500,000 P3 =\$25,000,001 - \$50,000,000	K =\$15,001 - \$50,000 O =\$500,001 - \$1,000,000	L =\$50,001 - \$100,000 P1 =\$1,000,001 - \$5,000,000 P4 =More than \$50,000,000	M =\$100,001 - \$250,000 P2 =\$5,000,001 - \$25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2020

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Kenney, Sr., Chad F.	2. Court or Organization U.S. District Court - Eastern District of Pennsylvania	3. Date of Report 04/20/2021
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Active)	5a. Report Type (check appropriate type) ☐ Nomination ☐ Date ☐ Initial ☒ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2020 to 12/31/2020
7. Chambers or Office Address United States Courthouse 601 Market Street Philadelphia, PA 19106		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☒ NONE (No reportable positions.)

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE (No reportable agreements.)

	<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	2003	Commonwealth of Pennsylvania (defined benefit pension plan)
2.		
3.		

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Kenney, Sr., Chad F.

Date of Report

04/20/2021

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)

1. INDIVIDUAL ASSETS (H)									
2. CITIZEN'S BANK (cash) (Y)									
3. FIDELITY 500 INDEX PREMIUM (FUSVX) (cash equiv)	A	Int./Div.	L	T					
4. ACCOUNT #1 (H)									
5. FIDELITY GOVERNMENT CASH RESERVES (FDRXX) (cash equiv)	A	Dividend	K	T					
6. PIMCO ETF TRUST ENHANCED SHORT (MINT)	A	Dividend			Sold (part)	03/19/20	K		
7.					Sold	03/20/20	L		
8. ADOBE INC (ADBE)		None	K	T	Buy	03/17/20	J		
9.					Buy (add'l)	04/15/20	J		
10. AMGEN INC (AMGN)	A	Dividend	J	T					
11. APPLE INC (AAPL)	A	Dividend	K	T	Sold (part)	03/17/20	J	B	
12. BECTON DICKINSON CO (BDX)	A	Dividend	J	T					
13. BERKSHIRE HATHAWAY INC DEL CL B NEW (BRKB)		None	J	T					
14. BEST BUY INC (BBY)	A	Dividend	J	T	Sold (part)	12/16/20	J	B	
15. BOEING CO (BA)	A	Dividend			Sold	03/10/20	J		
16. BOOKING HLDGS INC COM (BKNG)		None			Sold	09/24/20	J		
17. BROADRIDGE FINANCIAL SOLUTIONS LLC (BR)	A	Dividend	K	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =\$1,000 or less F =\$50,001 - \$100,000	B =\$1,001 - \$2,500 G =\$100,001 - \$1,000,000	C =\$2,501 - \$5,000 H1 =\$1,000,001 - \$5,000,000	D =\$5,001 - \$15,000 H2 =More than \$5,000,000	E =\$15,001 - \$50,000
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