25-2577
In re: IIG Structured Trade Fin. Fund, Ltd.

United States Court of Appeals for the Second Circuit

August Term 2025
Submitted: August 11, 2026
Decided: September 21, 2026
No. 25-2577

IN RE: IIG STRUCTURED TRADE FINANCE FUND, LTD.

IIG STRUCTURED TRADE FINANCE FUND, LTD., IIG GLOBAL TRADE FINANCE FUND LTD., GIROBANK, N.V., GIROBANK INTERNATIONAL, N.V.,

Petitioners,

v.

MARTIN SILVER,

Respondent.

Petition directed to the United States District Court
for the Southern District of New York,
No. 20 Cr. 360, Alvin K. Hellerstein, *Judge*.

Before: BIANCO, MENASHI, and KAHN, *Circuit Judges*.

Petitioners are four entities that lost millions of dollars because of a fraudulent scheme perpetrated by Martin Silver and his co-conspirator. After the scheme unraveled, the two were prosecuted. At Silver's sentencing, the district court imposed 13 months' imprisonment and, *inter alia*, ordered him to pay over $300 million in restitution to his victims—including Petitioners. In imposing restitution, the district court ordered Silver, both orally and in the written judgment, to make a $40,000 lump-sum payment before he reported to prison, and then payments of 10% of his monthly income upon his release.

When Silver was released from prison, he had relatively little income and therefore his restitution payments were meager. However, despite his limited *income*, Silver had substantial *assets* in various retirement, life insurance, and other financial accounts. Those assets had appreciated from roughly $3.5 million at the time of sentencing to about $5.1 million about one year after he was released from prison. Thus, the government—joined by certain of Silver's victims (including Petitioners)—filed a motion in the district court which sought an order (1) compelling the holders of these assets to turn over their full value to the Clerk of Court for distribution as restitution, and (2) modifying Silver's payment schedule to make payment due immediately and increasing his monthly payment. The district court ordered Silver to liquidate the appreciated value of the assets and pay that amount as restitution, but otherwise denied the motion.

Exercising their statutory right to file a petition for a writ of mandamus under the Crime Victims' Rights Act to seek review of the district court's decision, Petitioners argue that the district court erred by refusing to order the holders of Silver's assets to turn over the full value of the assets for restitution. We disagree.

Based upon the plain text of the Mandatory Victims Restitution Act, because the judgment here did not make the full restitution amount due immediately and contained a payment schedule which established a fixed monthly payment, and because Silver remained in compliance with that payment schedule, the government was not entitled to a turnover order to collect the full value of the assets above and beyond the payment schedule. Therefore, the district court did not err in denying the motion for such an order. Accordingly, we **DENY** the petition for a writ of mandamus.

Stephen B. Selbst and Nicholas G.O. Veliky, Herrick, Feinstein LLP, New York, New York, *for* Petitioners IIG Structured Trade Finance Fund, Ltd. and IIG Global Trade Finance Fund Ltd.

Constance M. Boland, Thompson Hine LLP, New York, New York, *for* Petitioners Girobank, N.V. and Girobank International, N.V.

Paul A. Batista, Paul Batista, P.C., New York, New York, *for* Respondent Martin Silver.

JOSEPH F. BIANCO, *Circuit Judge*:

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BACKGROUND

Petitioners IIG Structured Trade Finance Fund, Ltd., IIG Global Trade Finance Fund Ltd., Girobank, N.V., and Girobank, International, N.V. are victims of a fraud perpetrated by Respondent Martin Silver and his co-conspirator, David Hu. The IIG entities are investment funds that themselves have investors across the globe, including asset management companies, private individuals, public and private pension funds, and government-related entities such as sovereign funds. Girobank (and associated entities) is a bank based in Curaçao, whose primary accountholders are pensioners or retirees and the pension fund for Curaçaoan civil servants.

From 2007 to 2019, Silver was the co-founder, managing partner, and chief operating officer of International Investment Group, LLC, a registered investment advisor. In those positions, Silver "conspired with others to defraud [International Investment Group]-managed funds by overvaluing loans, creating fake loans, transferring overvalued and fake loans between [International Investment Group] and advised funds, and using the proceeds from those fraudulent sales to generate what would be required to pay off earlier investors." Plea Tr. at 16, *United States v. Silver*, No. 1:20-cr-00360 (S.D.N.Y. May 15, 2021), Dkt. No. 46.

After this Ponzi-like scheme unraveled, investors and other victims—including Petitioners—lost millions of dollars. Silver was charged with, and pled guilty to, one count of conspiracy to commit wire fraud, securities fraud, and investment advisor fraud, and substantive counts of wire fraud and securities fraud.

Prior to sentencing, Petitioners submitted victim impact statements. In those statements, the Girobank entities asserted their right to $138,635,248 in restitution, and the IIG entities sought $171,934,741.

In connection with the United States Probation Office's preparation of a Presentence Investigation Report, Silver disclosed that he owned the following assets (the "Subject Assets"), among others: (1) a Vanguard IRA account worth approximately $3.1 million; (2) a life insurance policy from Brighthouse Universal worth approximately $257,000; (3) a life insurance policy from AON worth approximately $123,000; and (4) approximately $41,000 in stock held at Computershare. He also reported that he was the co-signer—but not title-holder—of a house in Long Branch, New Jersey and an apartment on the Upper West Side of Manhattan.

On February 8, 2023, Silver was sentenced to 13 months' imprisonment, to be followed by three years of supervised release. As relevant here, at sentencing, the district court entered an order of restitution ordering Silver to pay $364,402,116.08 (jointly and severally with his co-defendant, Hu) to the victims of his offenses. Also during the sentencing proceeding, the district court orally ordered Silver to make a $40,000 restitution payment by February 28, 2023, and to pay 10% of his income on the 30th day of each month, starting on the first day of supervised release. In the written judgment issued after sentencing, consistent with its oral pronouncement, the district court included the following language regarding restitution:

> The defendant shall pay restitution in the amount of $364,402,116.08. Restitution shall be joint and several with [co-defendant Hu]. Defendant shall pay $40,000 by 2/28/2023. The balance shall be paid at a rate of 10% of monthly net income payable on the 30th day of each month, to begin on the first day day [*sic*] of supervised release.

Petition at 82[1] (the amended judgment). No party or victim objected to the terms of Silver's restitution at the time of sentencing. Following sentencing, the government served restraining notices on the companies holding the Subject Assets, which required them to preserve those assets, and barred Silver from accessing or withdrawing them.

On September 24, 2024, the government alerted the district court that Silver had paid the $40,000 lump-sum payment it ordered, but he had made only nominal payments of $100 per month since starting his term of supervised release on November 9, 2023. Meanwhile, the Subject Assets had appreciated in value by more than $1.5 million in the approximately one-and-one-half years following Silver's sentencing. Thus, the government sought a turnover order *in rem* directing the holders of the Subject Assets "to submit the full liquidated value of Silver's accounts to the Clerk of Court" so that it could be distributed as restitution. *Id.* at 103. The government also requested "[a]s supplemental relief" that the district court modify Silver's restitution payment schedule "to make the restitution due immediately and to order Silver to pay restitution at the rate of at least 15% of his gross monthly income."[2] *Id.* at 120–21. Petitioners filed a memorandum of law stating that they "join[ed] in the motion of the

1 Citations to the Petition use the page numbers designated by this Court's ACMS system.

2 As the government clarified, in seeking to make restitution "due immediately," it did not seek "immediate payment in full[,] but rather payment to the extent that the defendant can make . . . in good faith, beginning immediately." *Id.* at 123 (internal quotation marks and citation omitted).

[g]overnment" and requested the same relief.[3] *Id.* at 187.

On December 18, 2024, the district court granted the government's motion in part and denied it in part. The district court denied the government's request for a turnover order of the full value of the Subject Assets, reasoning that "[a] restitution order is generally considered a final judgment and can be modified only in a few prescribed circumstances" not present here. *Id.* at 236. However, the district court concluded that the appreciation in value of the Subject Assets qualified as a "material change in the defendant's economic circumstances" under 18 U.S.C. § 3664(k), which allowed it to order Silver to liquidate the appreciation and make immediate payment of that amount to his victims in restitution. *Id.* at 237–39.

Petitioners filed the instant petition for a writ of mandamus in response to that order.[4] The government did not join this

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[3] TriLinc Global Impact Fund–Trade Finance, Ltd. also joined that motion, but it is not a party to this mandamus proceeding.

[4] Petitioners filed the petition on October 16, 2025, nearly ten months after the district court issued the challenged order. Silver has not argued that this delay renders the petition untimely. He has thus forfeited any argument that it is untimely. *See Fed. Ins. Co. v. United States*, 882 F.3d 348, 365–66 (2d Cir. 2018) (noting that this timeliness inquiry "does not affect our jurisdiction"); *see also U.S. ex rel. Arant v. Lane*, 249 U.S. 367, 371 (1919) (noting that a petition for a writ of mandamus "is generally regarded as not embraced within statutes of limitation applicable to ordinary actions, but as subject to the equitable doctrine of laches"); *Hollins v. Brierfield Coal & Iron Co.*, 150 U.S. 371, 380 (1893) ("Defenses existing in equity suits [like laches] may be waived, just as they may in law actions, and, when waived, the cases stand as though the objection never existed."); *In re U.S.*, 572 F.3d 301, 308 n.8 (7th Cir. 2009) ("Neither the All Writs Act, 28 U.S.C. § 1651(a), nor Federal Rule of Appellate Procedure 21, provides a specific time frame within which all petitions for [a] writ of mandamus must be filed.").

petition, nor did it file its own petition or otherwise appeal from the district court's order.

Meanwhile, other proceedings relating to restitution—that are not challenged by this petition—continued before the district court. More specifically, one day after the district court issued the decision that is the subject of this petition, the government moved for an order requiring Silver to forfeit the remainder of the Subject Assets not covered by the district court's order regarding the appreciated value. As the government explained, "[o]nce the [Subject Assets] have been forfeited, the [g]overnment intends to recommend to the Department of Justice's Money Laundering and Asset Recovery Section . . . that those funds be restored to restitution for the victims of the Defendant's crimes." Motion in Support of Proposed Preliminary Order of Forfeiture at 5, *United States v. Silver*, No. 1:20-cr-00360 (S.D.N.Y. Dec. 19, 2024), Dkt. No. 177. Months later, Silver and the government came to a settlement regarding the government's forfeiture motion, which required Silver to pay $600,000 over six years in forfeiture. The district court then endorsed the parties' stipulation over the Petitioners' objection.

In September 2025, the government reached a further settlement with Suzanne Silver, Martin Silver's ex-wife. As the government explained, while Silver's fraud was ongoing, he allegedly fraudulently transferred his interest in the couple's house in New Jersey and apartment in Manhattan to his wife. In her settlement with the government, Ms. Silver agreed to sell both properties and pay 40% of the net proceeds of each sale to the Clerk of Court as restitution. She also agreed to immediately pay $166,000 as restitution, which represented 40% of a settlement the couple received in connection with a lawsuit they had brought against the contractors that built their home in New Jersey. Mr. Silver and attorneys representing him in an ongoing divorce proceeding between him and Ms. Silver objected to the settlement, but the district court overruled those objections and ultimately, in March 2026, entered a final order of garnishment requiring Ms. Silver's attorneys to release the $166,000 to the Clerk of Court as restitution.

In May 2026, the government informed the district court that Mr. Silver was obstructing Ms. Silver's ability to sell the home in New Jersey and apartment in Manhattan, and in response, the district court ordered Mr. Silver to facilitate the sale of both properties. In the same order, the district court also modified Mr. Silver's restitution payment schedule from 10% of his monthly income, to a fixed payment of $600 per month.

DISCUSSION

As Petitioners describe, they "seek a writ of mandamus ordering the district court to issue a new order directing liquidation of Silver's available assets and turnover of the value of those assets to the [g]overnment, for Petitioners, to pay, in part, Silver's restitution obligation." Petition at 13. Because Petitioners do not contend that the district court erred when it modified Silver's payment schedule to require immediate payment of the portion of the Subject Assets that had appreciated, we construe the petition as challenging only the district court's refusal to issue a turnover order allowing the government to seize the full value of the Subject Assets and then distribute the proceeds to victims as restitution.

I. Standard of Review

This petition is brought pursuant to the Crime Victims' Rights Act ("CVRA"), 18 U.S.C. § 3771. Under the CVRA, "[i]f the district court denies the relief sought [by a crime victim], the movant may petition the court of appeals for a writ of mandamus. . . . In deciding such application, the court of appeals shall apply ordinary standards of appellate review." *Id.* § 3771(d)(3). Accordingly, the usual rigorous standards to obtain a writ of mandamus do not apply. *See In re W.R. Huff Asset Mgmt. Co.*, 409 F.3d 555, 562 (2d Cir. 2005) ("[A] petitioner seeking relief pursuant to the mandamus provision set forth in § 3771(d)(3) need not overcome the hurdles typically faced by a petitioner seeking review of a district court determination through a writ of mandamus."). Our ordinary standard for reviewing a restitution order is as follows: we review "issues solely of law *de novo*, findings of adjudicative fact for clear error, and the multi-factor balancing aspects of such an order for abuse of discretion." *United States v. Jaffe*, 417 F.3d 259, 263 (2d Cir. 2005).

II. The Applicable Law of Restitution

"Federal courts have no inherent power to order restitution, which is traditionally a civil remedy. A sentencing court's power to order restitution, therefore, depends upon, and is necessarily circumscribed by, statute." *United States v. Zangari*, 677 F.3d 86, 91 (2d Cir. 2012) (internal citation omitted). Three statutes are relevant here: The Victim and Witness Protection Act of 1982 (the "VWPA"), the Mandatory Victims Restitution Act of 1996 (the "MVRA"), and the CVRA, which was enacted in 2004. We briefly summarize each statute as it pertains to the issues arising in this petition.

A. The VWPA

The VWPA provides that a district court "may order . . . that the defendant make restitution to any victim of the offense." Pub. L. No. 97-291 § 5(a)(1), 96 Stat. 1248 (now codified at 18 U.S.C. § 3663(a)(1)(A)). The VWPA thus "gives district courts the discretion to order a defendant who is convicted of a criminal offense to pay restitution, in full or in part, to the victim of that offense." *United States v. Kovall*, 857 F.3d 1060, 1064 (9th Cir. 2017). In exercising this discretion, the district court must "consider the amount of the loss sustained by the victim as a result of the offense, the defendant's financial resources, the financial needs and earning ability of the defendant and the defendant's dependents, and other factors the court deems appropriate." *United States v. Battista*, 575 F.3d 226, 230 (2d Cir. 2009).

B. The MVRA

Congress enacted the MVRA in 1996, as part of the Antiterrorism and Effective Death Penalty Act of 1996. *See* Pub. L. No. 104-132, 110 Stat. 1214, 1227 (codified in most relevant part at 18 U.S.C. §§ 3663A and 3664). "[T]he MVRA was enacted as a supplement to, and amendment of, the VWPA." *United States v. Ekanem*, 383 F.3d 40, 43 (2d Cir. 2004). It thus built on the VWPA in many important respects.

First, as the MVRA's name suggests, it makes restitution mandatory for victims of certain crimes, including any offense committed by fraud. *See* 18 U.S.C. § 3663A(a)(1), (c)(1)(A)(ii). It also requires a district court to order restitution "in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant." *Id.* § 3664(f)(1)(A).

Although full payment is required, the MVRA also provides flexibility to the district court in fashioning the *manner* of a defendant's restitution payments, including "the schedule according to which[] the restitution is to be paid." *Id.* § 3664(f)(2). For example, the statute provides that "[a] restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments." *Id.* § 3664(f)(3)(A). However, in setting such a schedule, the timeline for such payments "shall be the shortest time in which full payment can reasonably be made." *Id.* § 3572(d)(2). In addition, if the court does not set a payment schedule, the defendant must "make such payment immediately." *Id.* § 3572(d)(1).

Moreover, in specifying the manner of restitution payments—including whether to order a payment schedule—the district court must consider the defendant's "financial resources and other assets," "projected earnings and other income," and "any financial obligations." *Id.* § 3664(f)(2)(A)–(C). Thus, "[a]lthough the MVRA requires the district court to determine the *amount* of restitution without regard to the economic circumstances of the defendant, in determining *the manner in which the restitution is to be paid*, the court must consider the financial resources and other assets of the defendant, projected earnings of the defendant and any financial obligations of the defendant." *United States v. Hosking*, 567 F.3d 329, 335 (7th Cir. 2009) (internal citation omitted), *abrogated on other grounds by Lagos v. United States*, 584 U.S. 577 (2018).

Next, although the MVRA provides that a sentence imposing restitution is a "final judgment," 18 U.S.C. § 3664(o), it also provides for mechanisms to modify an order of restitution once entered. For example, upon notification from the defendant, the government, or a victim of a "material change in the defendant's economic circumstances," the court "may . . . adjust the payment schedule, or require immediate payment in full, as the interests of justice require." *Id.* § 3664(k). The district court may also adjust the order of restitution pursuant to Sections 3572 or 3613A. *See id.* § 3664(o)(1)(D). Among other things, those sections provide that "[n]otwithstanding any installment schedule, when a . . . payment of restitution is in default, the entire amount of the

. . . restitution is due within 30 days after notification of the default." *Id.* § 3572(i). Moreover, upon default, a district court may modify or revoke the defendant's term of supervised release, "resentence a defendant pursuant to [S]ection 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of . . . restitution." *Id.* § 3613A(a)(1).

The MVRA also has mechanisms to enforce an award of restitution once it is issued by the district court. For example, it provides that "[a]n order of restitution may be enforced by the United States" in the same manner as a fine or "by all other available and reasonable means." *Id.* § 3664(m)(1)(A)(i)–(ii). As relevant here, a fine (and thus, an order of restitution) may be enforced by the government "in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law." *Id.* § 3613(a), (f). Moreover, a restitution order automatically becomes "a lien in favor of the United States on all property and rights to property" of the defendant upon entry of judgment. *Id.* § 3613(c). The filing of such a lien has the same effect as a lien for unpaid tax under the Internal Revenue Code. *Id.* § 3613(c)–(d).

However, the MVRA does not limit enforcement power solely to the government. Instead, it also provides that a victim may obtain an "abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order." *Id.* § 3664(m)(1)(B). If the victim properly records that abstract of judgment in the state court of the state where the relevant district court is located, "the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State." *Id.* Despite this limited role for victims to enforce an order of restitution that has already been issued, under the MVRA, "the government, as the prosecuting authority, was responsible for litigating any issues that might arise as to the existence and extent" of a defendant's restitution obligation because the statute "did not provide any means for victims themselves to assert their own rights to restitution in the criminal proceeding or to appeal unfavorable restitution decisions." *Fed. Ins. Co. v. United States*, 882 F.3d 348, 357 (2d Cir. 2018).

C. The CVRA

The final entry in this statutory trilogy is the CVRA. Its life began not as a bill sitting on Capitol Hill, but as a proposed constitutional amendment. As we have explained elsewhere, "[b]etween the 1980s and the early 2000s, a wave of pro-victim (and, in some corners, anti-defendant) sentiment motivated a bipartisan group of legislators to propose for ratification a constitutional amendment guaranteeing certain procedural rights to crime victims." *Id.* After that effort stalled, Congress quickly passed the CVRA as a statute with little change or discussion. *Id.* at 357–58. This development means that the statute has "relatively sparse technical detail" and is phrased in "general, rights-conferring language" that generally seeks to ensure that "victims have dignity and 'voice' in criminal proceedings" but does not provide "specific procedures for their implementation." *Id.* at 358.

As relevant here, the CVRA guarantees crime victims "[t]he right to full and timely restitution as provided in law." 18 U.S.C. § 3771(a)(6). As the phrase "as provided in law" indicates, however, the right to restitution conferred by the CVRA is "a purely procedural one" which "does not expand any substantive rights to restitution provided by the MVRA or other statutes." *Fed. Ins. Co.*, 882 F.3d at 358; *accord Kovall*, 857 F.3d at 1070 (same); *In re Wellcare Health Plans, Inc.*, 754 F.3d 1234, 1236 (11th Cir. 2014) (same).

The CVRA also provides (as discussed above) a new mechanism for a victim to obtain appellate review: if a district court denies relief to a victim asserting a right under the statute, "the movant may petition the court of appeals for a writ of mandamus." 18 U.S.C. § 3771(d)(3).[5]

III. Whether Petitioners are Entitled to a Writ of Mandamus

Petitioners contend that, under the MVRA, the district court should have granted the government's request for a turnover order against the full value of the Subject Assets notwithstanding the payment schedule that was already in place. We disagree. As set forth below, based on the plain language of the statutory text, we conclude that where, as here, (1) a judgment imposing restitution does not specify that payment is due immediately and contains a payment schedule with a fixed monthly amount, and (2) the defendant is in compliance with that payment schedule, the government is not entitled to a turnover order to effectively force restitution payments above and beyond the payment schedule.

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[5] The same subsection contains other procedural requirements, such as a requirement that "[t]he court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration." *Id.* As we have noted elsewhere, this 72-hour deadline is "an awkward fit" for a complicated issue like restitution "that may take weeks or months to litigate in the district court." *Fed. Ins. Co.*, 882 F.3d at 359. In any event, here, Petitioners expressly waived the deadline.

A. Statutory Analysis

"When interpreting a statute, we begin with the plain language of the statute, giving the statutory terms their ordinary or natural meaning." *Rivera-Perez v. Stover*, 171 F.4th 196, 201 (2d Cir. 2026) (internal quotation marks and citation omitted). "[T]o ascertain a text's plain meaning, we draw on the specific context in which that language is used, and the broader context of the statute as a whole." *In re Soussis*, 136 F.4th 415, 427 (2d Cir. 2025) (internal quotation marks and citation omitted).

Here, the MVRA creates a default presumption that "[a] person sentenced to pay . . . restitution . . . shall make such payment immediately." 18 U.S.C. § 3572(d)(1); *see also United States v. Nucci*, 364 F.3d 419, 421 (2d Cir. 2004) ("Where a judgment is silent as to the timing of restitution payment, the default rule is that full payment is to be immediate."). However, a defendant's obligation to make immediate payment is triggered "*unless*, in the interest of justice, the court provides for payment . . . in installments." 18 U.S.C. § 3572(d)(1) (emphasis added); *see also United States v. Coates*, 178 F.3d 681, 684 (3d Cir. 1999) (stating that Section 3572(d)(1) "in no way eliminates the district court's obligation . . . to consider the defendant's financial situation and schedule payments accordingly"); *Hosking*, 567 F.3d at 336 (same).

By specifying that payment shall be made immediately *unless* the district court orders a payment schedule, Section 3572(d)(1) makes clear that the default presumption of immediate payment in full is triggered *only if* the district court does not provide for installment payments. To illustrate, if an employer tells a job applicant, "I will not hire you *unless* you have experience," that means the applicant would get the job *only if* they had experience. In short, "unless" establishes a necessary condition to trigger the default presumption of immediate payment: the absence of a payment schedule. Therefore, where the district court imposes a payment schedule, the default presumption of immediate payment is dissipated.

Moreover, the text of the MVRA establishes a clear division of responsibility between the district court and the government. The district court—not the government—determines how a defendant is to pay restitution. The statute tells us that "the *court* shall . . . specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid." 18 U.S.C. § 3664(f)(2) (emphasis added); *see also id.* § 3664(f)(3)(A) ("A restitution order [issued by the district court] may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments."). If an installment or payment schedule is ordered, "the length of time over which scheduled payments will be made *shall be set by the court*." *Id.* § 3572(d)(2) (emphasis added). Thus, the district court has the duty to determine the manner and schedule according to which the defendant must pay restitution. *See United States v. Prouty*, 303 F.3d 1249, 1254–55 (11th Cir. 2002) (holding that "setting a schedule for a [defendant] to pay restitution . . . is a core judicial function under the MVRA").

Then, once ordered by the district court, the government "may *enforce* a judgment" imposing a restitution obligation. 18 U.S.C. § 3613(a) (emphasis added); *see also id.* § 3664(m)(1)(A)(i) ("[A]n order of restitution may be *enforced* by the United States . . . .") (emphasis added). To enforce a judgment means to "cause [it] to take effect" or to "compel obedience" to it. *Enforce*, BLACK'S LAW DICTIONARY (6th ed. 1990). That means "[t]he government has statutory authority to enforce only the terms of a restitution order, not to take an enforcement action that would exceed a restitution order's payment terms." *United States v. Martinez*, 812 F.3d 1200, 1207 (10th Cir. 2015). Therefore, where a judgment ordering the payment of restitution also contains a payment schedule (or incorporates by reference an order of restitution that does so), the scope of the government's enforcement power is cabined by the terms of the judgment, including the payment schedule.

To be sure, nothing in the statute prevents a district court from imposing restitution that is *both* due immediately in full *and* payable according to a payment schedule. Despite these seemingly contradictory commands, this arrangement is feasible because "[a]ll that a 'due immediately' statement in a judgment does is command the defendant to discharge his obligations as quickly as possible." *United States v. Sawyer*, 521 F.3d 792, 796 (7th Cir. 2008); *see also United States v. Miller*, 406 F.3d 323, 328 (5th Cir. 2005) (noting that in the restitution context "payable immediately" does not necessarily require a defendant "to make full restitution at once"). Thus, as the Tenth Circuit has explained, "[c]ourts have almost uniformly recognized a crucial distinction between cases . . . in which the court orders the defendant to pay only through a payment schedule with no requirement of immediate payment in full, and cases . . . in which the judgment specifies that the amount owed is due in full on the date of judgment, regardless of whether the judgment includes a back-up schedule of payments to cover any unpaid amounts." *United States v. Williams*, 898 F.3d 1052, 1055 (10th Cir. 2018) (internal quotation marks and citations omitted) (collecting cases); *but see United States v. Holden*, 908 F.3d 395, 403–05 (9th Cir. 2018) (vacating as "internally inconsistent" a restitution order requiring full restitution to be paid immediately in a "lump sum" and imposing a payment schedule).[6] In other words, courts have interpreted judgments that provide restitution is "due immediately," but also contain a payment schedule to mean that the schedule sets a floor, but not a ceiling, on the government's collection efforts. *See, e.g.*, *United States v. Shusterman*, 331 F. App'x 994, 996–97 & n.2 (3d Cir. 2009) (per curiam) (unpublished); *United States v. Schwartz*, 503 F. App'x 443, 445–46 (6th Cir. 2012) (unpublished); *United States v. Behrens*, 656 F. App'x 789, 790 (8th Cir. 2016) (per curiam) (unpublished); *United States v. Khan*, 550 F. App'x 2, 4–5 (D.C. Cir. 2013) (per curiam) (unpublished).[7]

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[6] Subsequent cases in the Ninth Circuit have distinguished *Holden* as resting on the "lump sum" language contained in the judgment in that case. *See, e.g.*, *United States v. Patrick*, 163 F.4th 578, 583–85 (9th Cir. 2025) (distinguishing *Holden* because of this "lump sum" language and otherwise recognizing in the fine context that "due immediately" and a payment schedule are not inconsistent).

[7] Numerous district courts in this Circuit have reached this same conclusion. *See, e.g.*, *United States v. Moryan*, 767 F. Supp. 3d 1, 4 (E.D.N.Y. 2025) ("A restitution order 'due immediately' makes the lien created by the restitution order enforceable in full at any time, notwithstanding compliance with the payment schedule.") (internal quotation marks and citation omitted); *United States v. Price*, No. 17-CR-301 (NGG), 2023 WL 4599841, at *4 (E.D.N.Y. July 18, 2023) ("Here, the Judgment specified that [the defendant's] restitution was 'due immediately' and payable at a rate of $25 while in custody and ten percent of gross monthly income while on supervision. The phrase 'due immediately' made the lien created by the restitution order enforceable in full at any time, notwithstanding compliance with the payment schedule.") (internal citation omitted); *United States v. Schwartz*, No. 20-Cr-6033 (FPG), 2022 WL 537621, at *2 n.2 (W.D.N.Y. Feb. 23, 2022) ("[T]he Court ordered payment on restitution 'to begin immediately' and stated that restitution 'is due immediately.' Nothing in the payment plan gives the impression that . . . the

However, unless there is language in the restitution order or judgment indicating that the funds are immediately due, the imposition of the payment schedule establishing a fixed payment precludes the government from seeking to collect the entire amount of the restitution immediately in the absence of a default on the payment schedule. Here, at sentencing, the district court entered an order of restitution in the amount of $364,402,116.08, and further ordered that Silver make a $40,000 restitution payment by a fixed date, and then 10% of his income on a monthly basis once he commenced his supervised release term. The district court, however, did not make the full restitution amount due immediately. Therefore, we hold that, because Silver made the $40,000 payment and is not in default on the payment schedule, the government is not entitled to a turnover order for the full value of the Subject Assets.[8]

Several of our sister circuits have reached the same conclusion. For example, in *Martinez*, the district court had ordered the defendant at sentencing to pay roughly $2.7 million in restitution, but did not make payment due immediately and included a condition that he was to pay this amount through fixed monthly installments based on a percentage of his disposable income. 812 F.3d at 1201. When the defendant was released from prison, he was unable to obtain steady employment, and because his restitution payment schedule was pegged to *income*, he paid very little in restitution but was still in compliance with the schedule. *Id.* The government nevertheless sought to garnish two of the

government would be barred from exercising its statutory authority to enforce the full restitution order.") (internal citation omitted).

[8] Of course, this holding does not prevent the government from otherwise seeking to modify the restitution order which, as discussed *infra*, is precisely what the government did. *See* 18 U.S.C. § 3664(k).

defendant's retirement accounts and obtain funds beyond what was required by the payment schedule, but the Tenth Circuit concluded that the government could not do so. *Id.* at 1202. The court reasoned that "[b]y statute, it is the district court—not the government—that determines how a defendant is to pay restitution. Thus, the government can enforce *only what the district court has ordered the defendant to pay*." *Id.* (emphasis added) (internal citations omitted). Moreover, the court concluded that, because the district court did not make restitution due immediately and ordered installment payments, the defendant "had no obligation to immediately pay the full amount" of restitution. *Id.* at 1203. The court also specifically rejected the government's argument that it possessed independent authority to collect the full amount of the restitution because such a purported power would "usurp the district court's role in evaluating the defendant's financial conditions and setting the payment schedule." *Id.* at 1206.

Similarly, in *United States v. Hughes*, the Fifth Circuit held that "[w]hen a restitution order specifies an installment plan, unless there is language directing that the funds are also immediately due, the government cannot attempt to enforce the judgment beyond its plain terms absent a modification of the restitution order or default on the payment plan." 914 F.3d 947, 949 (5th Cir. 2019).[9] Other circuits have come to the same conclusion. *See, e.g.*,

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[9] The Fifth Circuit also held in *United States v. Rand* that the government could obtain a turnover order requiring a prisoner to turn over $1,684.57 in his inmate trust account, notwithstanding the fact that the district court ordered at sentencing that restitution payments would not commence until 60 days after the defendant's release from prison and at the rate of $50 per month or 10% of his income, whichever was greater. 924 F.3d 140, 142 (5th Cir. 2019) (per curiam). Although there is certainly language in

United States v. Buzzard, No. 21-7487, 2023 WL 3378985, at *2 (4th Cir. May 11, 2023) (per curiam) (unpublished) (concluding that "there is no current obligation to satisfy the [full] restitution order" where the judgment did not provide that restitution is "due immediately" and provided that it is due "in installments of no more than $25 per quarter"); *United States v. Dahlman*, 61 F. App'x 253, 256–57 (7th Cir. 2003) (holding that where the judgment did not provide for immediate payment, set a fixed payment schedule, and the defendant was not in default of that schedule, the government was not entitled to immediate turnover of a defendant's 401(k) account); *United States v. Raifsnider*, 846 F. App'x 423, 424 (8th Cir. 2021) (mem.) (vacating turnover order and holding that the government "may have lacked authority under § 3613(a) to collect more than the installment payments" and remanding for clarification of order where it was not apparent that restitution was made due immediately).

B. Petitioners' Statutory and Policy Arguments

In reaching this holding, we have carefully considered Petitioners' other arguments for why the government's motion for a turnover order should have been granted, but we find them

Rand that is helpful to Petitioners' position here, *Rand* is ultimately distinguishable because the turnover order was issued pursuant to a different provision of the MVRA, 18 U.S.C. § 3664(n), which provides that when a defendant "receives substantial resources" during his or her incarceration, "such person shall be required to apply the value of such resources to any restitution . . . still owed." 18 U.S.C. § 3664(n); *see Rand*, 924 F.3d at 142–43. Moreover, in *Rand*, the district court did not "expressly state it was deferring payments 'in the interest of justice.'" *Id.* at 143; *see also id.* ("*So long as the judgment contains nothing to the contrary*, the government may pursue immediate payment or an adjustment to the payment schedule.") (emphasis added).

unpersuasive. For instance, Petitioners contend that 18 U.S.C. § 3613(a) allows the government to pursue the full amount of restitution *notwithstanding* the payment schedule. Section 3613(a) reads in full:

> **(a) Enforcement.**—The United States may enforce a judgment imposing a fine [or restitution] in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine [or restitution] may be enforced against all property or rights to property of the person fined [or subject to an order of restitution], except that—
>
> > **(1)** property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;
> >
> > **(2)** section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and
> >
> > **(3)** the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal or State law.

18 U.S.C. § 3613(a).[10] According to Petitioners, the provision enabling the government to enforce a judgment imposing restitution "[n]otwithstanding any other Federal law," "mandates the enforcement of the restitution amount in the

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[10] Although the text of Section 3613(a) only references fines, 18 U.S.C. § 3664(m)(1)(A)(i) enables the government to enforce an order of restitution "in the manner provided for in . . . subchapter B of chapter 229 of [Title 18]," which contains Section 3613(a).

[j]udgment 'notwithstanding' the [p]ayment [s]chedule." Petition at 32. We disagree for three reasons.

First, under the plain text of this provision, the thing the government can enforce notwithstanding other laws is "*a judgment* imposing [restitution]." 18 U.S.C. § 3613(a) (emphasis added). Moreover, as described above, the power to *enforce* is the power to give the judgment force and effect according to its terms. Thus, where a district court incorporates a payment schedule into the judgment without making the full restitution amount due immediately (as it did here), the government's enforcement powers are bound by the payment schedule. For Petitioners' argument to work, Section 3613(a) would need to enable the government to collect a full amount of restitution *notwithstanding a payment plan contained in the judgment*. But it does not provide that, and it is not our role to rewrite the statute.[11]

Second, when read in context, Section 3613(a) is best read as defining the *kinds* of property that are subject to the government's efforts to enforce a judgment imposing a fine or restitution, not as a grant of power to ignore provisions of the MVRA and judgments relating to payment schedules. Subsection (a) creates a default presumption that all property is subject to these enforcement efforts "notwithstanding" other federal laws (including one that exempts Social Security payments from

[11] Moreover, to accept Petitioners' argument would disrupt the balance between the powers of the district court and the government that Congress struck. Because the payment schedule is embodied in the judgment itself (or incorporated by reference), to grant the government the power Petitioners advance would effectively grant the government the power to ignore provisions of a judgment. It strains credulity to suggest that the source of this purported power to ignore comes from a provision granting the government only the power to enforce.

garnishment).[12] Thus, in *United States v. Shkreli*, we held that the defendant's retirement accounts were subject to garnishment under the MVRA even though they would normally be protected by ERISA's anti-alienation provision (29 U.S.C. § 1056(d)(1)), because Section 3613(a)'s "notwithstanding" provision meant that the MVRA trumped the ERISA anti-retaliation provision. 47 F.4th 65, 71–72 (2d Cir. 2022)[13]; *see also Hosking*, 567 F.3d at 334–35 (interpreting Section 3613(a) in the same manner and collecting three additional circuit cases doing the same). But here, the parties agree that the Subject Assets are a *kind* of property that is subject to the government's enforcement authority and is not otherwise protected by a statutory anti-alienation provision. Therefore, Section 3613(a)'s "notwithstanding" provision is largely irrelevant to this dispute and, when it is read in its proper context, does not confer the government the authority to ignore the payment schedule.

Third, to grant the government the power to ignore a portion of the judgment would render much of the MVRA's complex scheme governing restitution superfluous. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (discussing the canon against surplusage). As described above, the MVRA directs district courts to consider "the financial resources and other assets of the defendant," the "projected earnings and other income of the defendant" and "any financial obligations of the defendant; including obligations to dependents" when determining the manner in which restitution

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[12] Subsections (a)(1)–(3) then articulate three narrow exceptions to this general rule that are not relevant here.

[13] Importantly for present purposes, at sentencing in *Shkreli*, the district court ordered that restitution was "due and payable immediately from available assets . . . until paid in full." *Id.* at 69 (omission in original) (internal quotation marks and citation omitted).

is to be paid. 18 U.S.C. § 3664(f)(2)(A)–(C). We find it unlikely that Congress would have mandated the court to consider these factors if the government could simply ignore them and usurp the district court's role of balancing the interest of victims in restitution and the defendant's ability to pay by recovering the full restitution amount notwithstanding a payment schedule and the lack of any provision stating that payment is due immediately. *See United States v. Grant*, 715 F.3d 552, 558 (4th Cir. 2013) (stating that Section 3664 "carefully balance[s] the need for obtaining victim compensation with a requirement that restitution obligations be based on the defendant's ability to pay").

Similarly, the MVRA provides for various consequences—including acceleration of payment—if a defendant defaults on his or her restitution obligations. For example, "[n]otwithstanding any installment schedule, when a . . . payment of restitution is in default, the entire amount of the . . . restitution is due within 30 days." 18 U.S.C. § 3572(i); *see also id.* § 3612(e) (providing that when restitution is in default, the Attorney General must inform the defendant that "the entire unpaid balance" of restitution "is due within thirty days"). Again, it would make little sense for Congress to include these provisions that recognize the existence of payment schedules and provide for consequences upon a default on such schedules if the government retained the ability to ignore them on its own whim even where payment is not yet due.[14]

In sum, we are unpersuaded that the "notwithstanding"

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[14] Other examples abound that we need not belabor. *See, e.g.*, 18 U.S.C. § 3664(k) (providing that the district court "may" "adjust the payment schedule, or require immediate payment in full" where there has been a "material change in the defendant's economic circumstances").

provision in Section 3613(a) allows the government to compel the turnover of the full value of the Subject Assets under these circumstances.[15]

Next, Petitioners rely on our decision in *United States v. O'Brien*, 851 F. App'x 236, 240–41 (2d Cir. 2021) (summary order), in which we affirmed the district court's decision allowing the government to pursue collection of restitution beyond a payment schedule. However, that reliance is misplaced. Importantly, in *O'Brien*, the judgment imposing restitution stated that the defendant must pay "*at least*" $500 per month. *Id.* at 240. Moreover, we noted that the defendant's plea agreement with the government explicitly stated that "[t]he parties agree . . . that the existence of a payment plan set by the Court shall not bar the IRS and other governmental collection efforts against any of the defendant's available assets." *Id.* (alteration and omission in original). Here, unlike in *O'Brien*, the judgment imposing the payment plan does not contain similar "at least" language, and the parties have not drawn our attention to any relevant plea agreement containing a term similar to the one in *O'Brien*. Thus, although the judgment in *O'Brien* was a floor—but not a ceiling—on the defendant's restitution payments, where, as here, there is no such limiting language, the payment schedule is both a floor and a ceiling.

Petitioners also rely on policy arguments, generalized notions

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15 We are thus unmoved by Petitioners' reliance on various district court cases which in turn relied on an interpretation of this "notwithstanding" provision that is contrary to ours. *See* Petition at 38–41 (relying on, *inter alia*, *United States v. Lumiere*, No. 16-CR-483 (JSR), 2021 WL 4710778 (S.D.N.Y. Oct. 7, 2021); *United States v. Reichman*, No. 12 CR. 750-3 (NRB), 2024 WL 5167749 (S.D.N.Y. Dec. 19, 2024); *United States v. Spina Sec. Am.*, No. 18-CR-625 (KMK), 2025 WL 815393 (S.D.N.Y. Mar. 13, 2025)).

of legislative intent, and legislative history as sources of the government's purported power to obtain a turnover order like the one at issue here. *See, e.g.*, *United States v. Phillips*, 303 F.3d 548, 551 (5th Cir. 2002) (opining that "Congress directed the attorney general to aggressively enforce restitution orders"); *Dolan v. United States*, 560 U.S. 605, 613 (2010) (identifying the MVRA's purpose as "to ensure that victims of a crime receive full restitution"); 141 Cong. Rec. 19281 (Dec. 22, 1995) (statement of Sen. McCain) ("[T]he committee included language to require offenders to pay their criminal . . . restitution orders in full and immediately if they have the resources to do so."). However, these considerations are insufficient to overcome the clear statutory text. *See Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 192 (2016) ("[P]olicy arguments cannot supersede the clear statutory text."); *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 460 (2012) (recognizing that generalized purposive arguments "simply cannot overcome the force of the plain text" because "[n]o legislation pursues its purposes at all costs") (internal quotation marks and citation omitted); *United States ex rel. Weiner v. Siemens AG*, 87 F.4th 157, 162–63 (2d Cir. 2023) (per curiam) ("[A] statute's legislative history cannot overcome the plain meaning of the text.") (internal quotation marks and citation omitted).

As events in this case subsequent to the denial of the motion for a turnover order have demonstrated, the government and Petitioners have used other avenues to pursue restitution from Silver. For example, since this petition was filed, the district court adjusted Silver's restitution payment schedule to require a fixed payment of $600 per month, instead of 10% of his net monthly income. *See United States v. Burko*, No. 10-CR-291 (KMK), 2023 WL 3195943, at *4 (S.D.N.Y. May 2, 2023) (noting in similar circumstances that "the better course under the statute would be for the [g]overnment to move to modify the payment schedule . . .

rather than requesting to enforce its lien").[16] Next, the government sought to forfeit the Subject Assets as substitute property and then apply the proceeds to restitution. Silver and the government then came to a settlement which required Silver to forfeit $600,000 over six years from the Subject Assets. Moreover, Petitioners have pursued restitution by obtaining abstracts of judgment, but to our knowledge, they have not "register[ed], record[ed], docket[ed], or index[ed] such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located." 18 U.S.C. § 3664(m)(1)(B). Accordingly, our conclusion that the district court did not err in refusing to order the turnover of the full value of the Subject Assets has not deprived the government, Petitioners, and any other victims of various other avenues to pursue restitution from Silver.[17]

* * *

In sum, based on the plain text of the MVRA, we conclude that where, as here, the judgment imposing restitution does not specify that payment is due immediately, includes a payment schedule setting a fixed monthly amount, and the defendant

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[16] The district court also ordered Silver to cooperate in the sale of a home in New Jersey and an apartment in Manhattan that are in Silver's ex-wife's name. Forty percent of the proceeds of those sales will be available to the victims as restitution.

[17] Our recounting of these avenues pursued by the government and Petitioners should not be interpreted as constituting an exclusive or comprehensive list, or commenting on whether they were pursued lawfully. Those issues are not before us. Instead, we highlight them only to show how our disposition of this petition does not necessarily run contrary to Congress's purpose in enacting the MVRA, as set forth by Petitioners.

remains in compliance with that schedule, the government is not entitled to a turnover order to collect funds for restitution above and beyond the payment schedule. Therefore, the district court did not err in denying the motion for a turnover order as to the full value of the Subject Assets.

CONCLUSION

For the foregoing reasons, we **DENY** the petition for a writ of mandamus.