Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HONEYCUTT *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16–142. Argued March 29, 2017—Decided June 5, 2017

Terry Honeycutt managed sales and inventory for a Tennessee hardware store owned by his brother, Tony Honeycutt. After they were indicted for federal drug crimes including conspiracy to distribute a product used in methamphetamine production, the Government sought judgments against each brother in the amount of $269,751.98 pursuant to the Comprehensive Forfeiture Act of 1984, which mandates forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of" certain drug crimes, 21 U. S. C. §853(a)(1). Tony pleaded guilty and agreed to forfeit $200,000. Terry went to trial and was convicted. Despite conceding that Terry had no controlling interest in the store and did not stand to benefit personally from the sales of the product, the Government asked the District Court to hold him jointly and severally liable for the profits from the illegal sales and sought a judgment of $69,751.98, the outstanding conspiracy profits. The District Court declined to enter a forfeiture judgment against Terry, reasoning that he was a salaried employee who had not received any profits from the sales. The Sixth Circuit reversed, holding that the brothers, as co-conspirators, were jointly and severally liable for any conspiracy proceeds.

Held: Because forfeiture pursuant to §853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime, that provision does not permit forfeiture with regard to Terry Honeycutt, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales. Pp. 3–11.

(a) Section 853(a) limits forfeiture to property flowing from, §853(a)(1), or used in, §853(a)(2), the crime itself—providing the first clue that the statute does not countenance joint and several liability,

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which would require forfeiture of untainted property. It also defines forfeitable property solely in terms of personal possession or use. Section 853(a)(1), the provision at issue, limits forfeiture to property the defendant "obtained, directly or indirectly, as the result of" the crime. Neither the dictionary definition nor the common usage of the word "obtain" supports the conclusion that an individual "obtains" property that was acquired by someone else. And the adverbs "directly" and "indirectly" refer to how a defendant obtains the property; they do not negate the requirement that he obtain it at all. Sections 853(a)(2) and 853(a)(3) are in accord with this reading. Pp. 3–7.

(b) Joint and several liability is also contrary to several other provisions of §853. Section 853(c), which applies to property "described in subsection (a)," applies to tainted property only. See *Luis* v. *United States*, 578 U. S. ___, ___. Section §853(e)(1) permits pretrial asset freezes to preserve the availability of property forfeitable under subsection (a), provided there is probable cause to think that a defendant has committed an offense triggering forfeiture and "the property at issue has the requisite connection to that crime." *Kaley* v. *United States*, 571 U. S. ___, ___. Section 853(d) establishes a "rebuttable presumption" that property is subject to forfeiture only if the Government proves that the defendant acquired the property "during the period of the violation" and "there was no likely source for" the property but the crime. These provisions reinforce the statute's application to tainted property acquired by the defendant and are thus incompatible with joint and several liability. Joint and several liability would also render futile §853(p)—the sole provision of §853 that permits the Government to confiscate property untainted by the crime. Pp. 7–9.

(c) The plain text and structure of §853 leave no doubt that Congress did not, as the Government claims, incorporate the principle that conspirators are legally responsible for each other's foreseeable actions in furtherance of their common plan. See *Pinkerton* v. *United States*, 328 U. S. 640. Congress provided just one way for the Government to recoup substitute property when the tainted property itself is unavailable—the procedures outlined in §853(p). And as is clear from its text and structure, §853 maintains traditional *in rem* forfeiture's focus on tainted property unless one of §853(p)'s preconditions exists. Pp. 9–10.

816 F. 3d 362, reversed.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 16–142

TERRY MICHAEL HONEYCUTT, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 5, 2017]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

A federal statute—21 U. S. C. §853—mandates forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of" certain drug crimes. This case concerns how §853 operates when two or more defendants act as part of a conspiracy. Specifically, the issue is whether, under §853, a defendant may be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire. The Court holds that such liability is inconsistent with the statute's text and structure.

I

Terry Michael Honeycutt managed sales and inventory for a Tennessee hardware store owned by his brother, Tony Honeycutt. After observing several "'edgy looking folks'" purchasing an iodine-based water-purification product known as Polar Pure, Terry Honeycutt contacted the Chattanooga Police Department to inquire whether the iodine crystals in the product could be used to manufacture methamphetamine. App. to Pet. for Cert. 2a. An

officer confirmed that individuals were using Polar Pure for this purpose and advised Honeycutt to cease selling it if the sales made Honeycutt "'uncomfortable.'" *Ibid.* Notwithstanding the officer's advice, the store continued to sell large quantities of Polar Pure. Although each bottle of Polar Pure contained enough iodine to purify 500 gallons of water, and despite the fact that most people have no legitimate use for the product in large quantities, the brothers sold as many as 12 bottles in a single transaction to a single customer. Over a 3-year period, the store grossed roughly $400,000 from the sale of more than 20,000 bottles of Polar Pure.

Unsurprisingly, these sales prompted an investigation by the federal Drug Enforcement Administration along with state and local law enforcement. Authorities executed a search warrant at the store in November 2010 and seized its entire inventory of Polar Pure—more than 300 bottles. A federal grand jury indicted the Honeycutt brothers for various federal crimes relating to their sale of iodine while knowing or having reason to believe it would be used to manufacture methamphetamine. Pursuant to the Comprehensive Forfeiture Act of 1984, §303, 98 Stat. 2045, 21 U. S. C. §853(a)(1), which mandates forfeiture of "any proceeds the person obtained, directly or indirectly, as the result of" drug distribution, the Government sought forfeiture money judgments against each brother in the amount of $269,751.98, which represented the hardware store's profits from the sale of Polar Pure. Tony Honeycutt pleaded guilty and agreed to forfeit $200,000. Terry went to trial. A jury acquitted Terry Honeycutt of 3 charges but found him guilty of the remaining 11, including conspiring to and knowingly distributing iodine in violation of §§841(c)(2), 843(a)(6), and 846.

The District Court sentenced Terry Honeycutt to 60 months in prison. Despite conceding that Terry had no "controlling interest in the store" and "did not stand to

benefit personally," the Government insisted that the District Court "hold [him] jointly liable for the profit from the illegal sales." App. to Pet. for Cert. 60a–61a. The Government thus sought a money judgment of $69,751.98, the amount of the conspiracy profits outstanding after Tony Honeycutt's forfeiture payment. The District Court declined to enter a forfeiture judgment, reasoning that Honeycutt was a salaried employee who had not personally received any profits from the iodine sales.

The Court of Appeals for the Sixth Circuit reversed. As co-conspirators, the court held, the brothers are "'jointly and severally liable for any proceeds of the conspiracy.'" 816 F. 3d 362, 380 (2016). The court therefore concluded that each brother bore full responsibility for the entire forfeiture judgment. *Ibid*.

The Court granted certiorari to resolve disagreement among the Courts of Appeals regarding whether joint and several liability applies under §853.[1] 580 U. S. ___ (2016).

II

Criminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity. Such statutes serve important governmental interests such as "separating a criminal from his ill-gotten gains," "returning property, in full, to those wrongfully deprived or defrauded of it," and "lessen[ing] the economic power" of criminal enterprises. *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 629–630 (1989). The statute at issue here—§853—mandates

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[1] Compare *United States* v. *Van Nguyen*, 602 F. 3d 886, 904 (CA8 2010) (applying joint and several liability to forfeiture under §853); *United States* v. *Pitt*, 193 F. 3d 751, 765 (CA3 1999) (same); *United States* v. *McHan*, 101 F. 3d 1027 (CA4 1996) (same); and *United States* v. *Benevento*, 836 F. 2d 129, 130 (CA2 1988) (*per curiam*) (same), with *United States* v. *Cano-Flores*, 796 F. 3d 83, 91 (CADC 2015) (declining to apply joint and several liability under §853).

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