United States Court of Appeals
For the First Circuit

Nos. 20-1368
     20-1412

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant,

v.

RICHARD M. SIMON,

Defendant, Appellant/Cross-Appellee.

Nos. 20-1369
     20-1411

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant,

v.

SUNRISE LEE,

Defendant, Appellant/Cross-Appellee.

Nos. 20-1370
     20-1413

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant,

v.

JOSEPH A. ROWAN,

Defendant, Appellant/Cross-Appellee.

Nos. 20-1382
     20-1409

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant,

v.

JOHN KAPOOR,

Defendant, Appellant/Cross-Appellee.

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Nos. 20-1410
     20-1457

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant,

v.

MICHAEL J. GURRY,

Defendant, Appellant/Cross-Appellee.

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APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Allison D. Burroughs, U.S. District Judge]

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Before

Howard, Chief Judge,
Selya, Circuit Judge,
and Gelpí,* District Judge.

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William W. Fick, with whom Daniel N. Marx and Fick & Marx LLP
were on brief, for defendant Simon.
Peter Charles Horstmann for defendant Lee.

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* Of the District of Puerto Rico, sitting by designation.

Michael Kendall, with whom Karen Eisenstadt, Alexandra I. Gliga, and White & Case LLP were on brief, for defendant Rowan.

Martin G. Weinberg and Kosta S. Stojilkovic, with whom Martin G. Weinberg Law, P.C., Beth A. Wilkinson, Chanakya A. Sethi, and Wilkinson Walsh LLP were on brief, for defendant Kapoor.

Megan A. Siddall, with whom Tracy A. Miner and Miner Orkand Siddall LLP were on brief, for defendant Gurry.

David M. Lieberman, Attorney, Appellate Section, United States Department of Justice, with whom Nicholas L. McQuaid, Acting Assistant Attorneys General, Criminal Division, Robert A. Zink, Acting Deputy Assistant Attorney General, Nathaniel R. Mendell, Acting United States Attorney, Donald C. Lockhart, Appellate Chief, and Mark T. Quinlivan, Fred Wyshak, K. Nathaniel Yeager, and David G. Lazarus, Assistant United States Attorneys, were on brief, for the United States.

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August 25, 2021

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SELYA, **Circuit Judge**. A noted British ethologist once observed that "[t]he total amount of suffering per year in the natural world is beyond all decent contemplation." Richard Dawkins, River Out of Eden 131-32 (Basic Books 1995). Some of this suffering is unavoidable, but some is caused by those who callously place profits over principle. The facts of this mammoth case, as supportably found by the jury, tell a chilling tale of suffering that did not need to happen. It involves a group of pharmaceutical executives who chose to shunt medical necessity to one side and shamelessly proceeded to exploit the sickest and most vulnerable among us — all in an effort to fatten the bottom line and pad their own pockets.

The tale told by this case chronicles the pernicious practices employed by a publicly held pharmaceutical firm, Insys Therapeutics, Inc. (Insys), with respect to the marketing and sale of Subsys, a fentanyl-laced medication approved by the United States Food and Drug Administration (FDA) for use in the treatment of breakthrough cancer pain. When the government got wind of these practices, it launched an investigation. That investigation produced evidence that led a federal grand jury to indict seven of the company's top executives on charges brought under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C § 1962(d). Two of the executives eventually entered into plea agreements, but the rest stood their ground. Following a fifty-

one-day trial, the jury convicted the five remaining defendants as charged (with an exception described below), and the district court (again with an exception described below) declined to set aside the jury verdicts. The court then sentenced the defendants to prison terms of varying lengths, ordered defendant-specific restitution, and directed the forfeiture of certain assets.

On appeal, the defendants — ably represented — raise a gallimaufry of claims. The government cross-appeals, assigning error to the district court's refusal to embrace the whole of the jury verdicts and to its computation of the forfeiture amounts. After careful consideration of an amplitudinous record, we uphold the jury verdicts in full, affirm the defendants' sentences (which are unchallenged), vacate the restitution and forfeiture orders, and remand for further proceedings consistent with this opinion.

I

We begin with a snapshot of the relevant facts drawn from the evidence adduced at trial. We then briefly rehearse the travel of the case.

A

Insys is a pharmaceutical firm founded by one of the defendants, Dr. John Kapoor. Under the Insys umbrella, Kapoor sought to develop sublingual spray drug-delivery formulations. The firm explored various options, but soon concentrated on

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