

SOTOMAYOR, J., dissenting

**SUPREME COURT OF THE UNITED STATES**ALLEN E. PEITHMAN, JR., ET AL. *v.* UNITED STATESON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 19–16. Decided November 18, 2019

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from denial of certiorari.

In *Honeycutt v. United States*, 581 U. S. \_\_\_\_ (2017), this Court held that joint-and-several liability is not permitted under 98 Stat. 2045, 21 U. S. C. §853(a)(1), which mandates forfeiture of “property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of” certain drug crimes. 581 U. S., at \_\_\_\_ (slip op., at 1). The Court of Appeals for the Third Circuit has since held that the reasoning of *Honeycutt* “appl[ies] with equal force” to 18 U. S. C. §981(a)(1)(C), which is worded almost identically to 21 U. S. C. §853(a)(1). *United States v. Gjeli*, 867 F. 3d 418, 428 (2017).

In this case, the Court of Appeals for the Eighth Circuit reached a contrary conclusion. 917 F. 3d 635, 652–653 (2019). It upheld a joint-and-several forfeiture order against petitioners under §981(a)(1)(C), reasoning that *Honeycutt* does not apply to that provision. See 917 F. 3d, at 652–653. The Government now concedes error. According to the Government, there is no “distinguishing 18 U. S. C. 981 from 21 U. S. C. 853 for purposes of joint and several liability.” Brief in Opposition 6; see also *id.*, at 10 (“[T]he government has agreed that *Honeycutt*’s reasoning applies to Section 981(a)(1)(C)”). Nevertheless, the Government maintains that there is an independent ground for the imposition of joint-and-several liability under §981(a)(1)(C). See *id.*, at 6–9. The Eighth Circuit, however, never addressed that proffered alternative ground for affirmance.

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Because the Government now concedes that the rationale of *Honeycutt* applies equally to §981(a)(1)(C) as it does to §853(a)(1), I would grant the petition for certiorari, vacate the judgment below, and remand the case to allow the Eighth Circuit to reconsider its decision in light of the Government's concession.