

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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AHMAD SALTI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Tenth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

When a criminal restitution order apportions liability among co-defendants relative to their culpability *and* makes that apportioned amount owed jointly and severally, is a defendant whose restitution obligation is apportioned entitled to joint and several credits for payments made by a co-defendant who owes restitution in full?

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Ahmad Salti, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on February 6, 2023.

### **OPINION BELOW**

The published decision of the United States Court of Appeals for the Tenth Circuit in *United States v. Salti*, F.4th 1050 (10th Cir. 2023), is found in the Appendix at A1. The underlying district court decision is *United States v. Salti*, 2021 WL 4243128 (D. Kan. Sept 17, 2021).

### **JURISDICTION**

The United States District Court for the District of Kansas had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and entered judgment on February 6, 2023. On April 21, 2023, this Court extended the time within which to file a petition for a writ of certiorari until June 6, 2023. (Appendix at 8.) This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **FEDERAL PROVISION INVOLVED**

18 U.S.C. § 3664(h), provides, in full, that:

If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

## STATEMENT OF THE CASE

In 2014, Petitioner Ahmad Salti worked as a clerk at his father's convenience store in Topeka, Kansas. Vol. I at 30.<sup>1</sup> At the time, the store contracted with a company named TZ JR Enterprises LLC ("TZ") to stock its ATM. *Id.* Mr. Salti told a friend, Patrick Towner, when TZ would be restocking the store's ATM machine. *Id.* Towner then robbed the TZ employee restocking the machine, fleeing with over \$70,000. *Id.*

The federal government charged Mr. Salti with various counts related to the robbery. *Id.* at 19-23. It charged Towner with similar crimes, but in a separate indictment. Vol. II at 5. Accordingly, the two cases proceeded before different district court judges.

Ultimately, Mr. Salti pleaded guilty to a single count of conspiracy to commit robbery, in violation of 18 U.S.C. § 371. The parties agreed to a sentence of 24 months' imprisonment, followed by three years' supervised release. Vol. I at 31. The plea agreement itself made no mention of restitution. *Id.* at 29-37.

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<sup>1</sup> Citations are to the record on appeal in the Tenth Circuit and the page number at the bottom, right-hand side of each page, and are provided in the event this Court deems it necessary to review the record to resolve this petition. See Sup. Ct. R. 12.7.

Confusion and concern about Mr. Salti's restitution obligations scuttled his original sentencing hearing. Mr. Salti indicated that he had pleaded guilty with the understanding that no restitution obligation would be imposed. Supp. Vol. I at 51, 65. Based on that representation, and concerns about the adequacy of the factual basis for the plea, the court continued the hearing. *Id.* at 65-70.

Shortly thereafter, the issues were resolved. Mr. Salti accepted guilt, and the parties agreed to the court imposing \$35,000 in restitution as part of his sentence. *Id.* at 42-45. The court observed that the plea agreement itself had not included a restitution obligation and inquired how the parties "propose[d] to . . . add that term to the existing written plea agreement." *Id.* at 43. The parties responded it was sufficient to put on the record that they agreed \$35,000 in restitution was an appropriate apportionment to reflect Mr. Salti's culpability relative to Towner. *Id.* at 44-45.

Accordingly, the court accepted the plea and imposed the agreed-upon sentence, including restitution of \$35,000 to TZ joint and several with Towner, along with the mandatory Special Assessment of \$100. *Id.* at 51-52, 54, 58. Ultimately then, the restitution portion of the judgment read, in pertinent part:

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount Joint and Several Amount and corresponding payee, if appropriate.

Case Number <u>Including Defendant Number</u>	<u>Defendant Name</u>	Joint and Several <u>Amount</u>
5:14CR40112-001	Patrick J. Towner	\$35,000.00

Vol. I at 43; Supp. Vol. II at 7.

At Towner's sentencing two months later, the different district court judge presiding over his case entered a judgment ordering him to pay the full amount of money stolen—\$72,000—and to do so joint and several with Mr. Salti. Vol. I at 42, 45; Supp. Vol. II at 13-14.

The Clerk of Court is charged with collecting, recording, and distributing criminal restitution payments. Vol. III at 11-12. Based on the judgments in Mr. Salti's and Towner's cases, the Clerk's Office in the District of Kansas established their routine accounting system to monitor each defendant's financial obligations. Vol. I at 50-51, 59-60. This system employs ledgers for each obligation a defendant owes, and how their payments are to be distributed between their respective debts. Vol. III at 40-42.

Here, one of the Clerk's ledgers reflected only Mr. Salti's special assessment because he did not share that obligation with Towner. Vol. I at 50-51. Another ledger, in contrast, reflected the \$35,000 in restitution that Mr. Salti *and* Towner

owed jointly and severally. *Id.* at 50-51; Vol. III at 40-42. The last ledger reflected Towner's Special Assessment *and* the additional \$37,000 of the \$72,000 total loss, for which he was solely responsible. Vol. I at 50-51; Vol. III at 40-42. Together, these ledgers represented each defendant's obligations and whether those obligations were shared jointly with his codefendant:

**Figure 1**

Clerk's Ledger Designations	Assessments Ordered	Restitution Ordered
<b>Ledger 1 (Def. Salti)</b>	\$100.00	
<b>Ledger 2 (Def. Towner)</b>	\$100.00	\$37,000.00
<b>Ledger 3 (Defs Salti &amp; Towner)</b>		\$35,000.00
<b>Total:</b>	<b>N/A</b>	<b>\$72,000.00</b>

Vol. I at 50.

The first \$100 each defendant paid went to their mandatory special assessments. Thereafter, all of Mr. Salti's payments went towards the \$35,000 he owed joint and several with Towner, recorded on Ledger 3 above. Vol. III at 25. Towner's payments were split proportionally between the amounts he owed joint and several with Mr. Salti, recorded on Ledger 3, and for which Towner alone was responsible, recorded on Ledger 2. Vol. III at 41-42. Such division followed the guidance provided by the Director of the Administrative Office of U.S. Courts

(“DAO”),<sup>2</sup> which instructs Clerks to apply a percentage of each payment received from a defendant towards each of his obligations that is equal to each obligation’s percentage of the defendant’s total liability. Vol. III at 29-30, 41-42. The Clerk therefore applied 48.6% of each of Towner’s payments towards the \$35,000 he owed joint and several with Mr. Salti because \$35,000 is 48.6% of the total Towner owed (\$72,000), and 51.4% towards the \$37,000 Towner alone was responsible for because \$37,000 is 51.4% of \$72,000. *Id.*

Beginning in 2016, Mr. Salti made consistent payments towards his restitution liability. Vol. I at 55. Two years later, Towner started making payments as well, although he made fewer and in smaller amounts. *Id.* at 56. By July of 2020, there was \$5,339.51 remaining on the joint obligation. *Id.* at 55. On August 28, 2020, Mr. Salti submitted a check for \$7,827.38. *Id.* at 55-56. But because of Towner’s payments towards their joint obligation, this represented an overpayment of \$2,487.87:

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<sup>2</sup> The DAO instructs Clerks on how to apply a defendant’s payments towards a judgement. 18 U.S.C. § 3611; 28 U.S.C. § 604(a)(18).

Figure 2

Clerk's Ledger Designations	Assessments Ordered	Restitution Ordered	Def Salti Payments	Def Towner Payments	Total Restitution Payments	Payments to the Victim	Current Balance Due Victim	Overpayment
<b>Ledger 1 (Def. Salti)</b>	\$100.00						\$0.00	
<b>Ledger 2 (Def. Towner)</b>	\$100.00	\$37,000.00		\$2,630.05	\$2,630.05	\$2,630.05	\$34,369.95	
<b>Ledger 3 (J &amp; S Defs Salti &amp; Towner)</b>		\$35,000.00	\$35,000.00	\$2,487.87	\$37,487.87	\$35,000.00	\$0.00	\$2,487.87
<b>Total:</b>	<b>Paid</b>	<b>\$72,000.00</b>	<b>\$35,000.00</b>	<b>\$5,117.92</b>	<b>\$40,090.92</b>	<b>\$37,630.05</b>	<b>\$34,360.95</b>	<b>\$2,487.87</b>

Vol. I at 51, 60.

The Clerk alerted the government to Mr. Salti's overpayment and its intent to refund Mr. Salti the \$2,487.87 he overpaid. Vol. I at 46. The government objected to any refund, and instead moved that Mr. Salti's overpayment be paid to TZ. *Id.* at 44. Relying principally on a Fifth Circuit case, *United States v. Sheets*, 814 F.3d 256 (5th Cir. 2016), the government argued that no overpayment could ever exist until a defendant either has fully paid *his* judgment *or* the victim has been fully compensated for the total amount of its loss. *Id.* at 46. That Mr. Salti's restitution was apportioned, and that this apportioned amount was ordered joint and several with Towner, was immaterial. Rather, Mr. Salti owed \$35,000 and was not entitled to credits from his codefendant on their shared obligation. *Id.* at 46-52.

Mr. Salti disagreed, arguing that the Clerk's accounting effectuated the joint and several liability the district court ordered. *Id.* at 57, 61. The existence of

Towner's *additional* obligation had no effect, he continued, on how the obligation they *shared* should be paid. *Id.* And *Sheets*, he argued, was wrong; joint and several liability still has effect when ordered alongside liability that is apportioned between codefendants. *Id.* at 61-63.

The district court held a hearing to address the dispute, at which the Clerk introduced evidence explaining the implementation of restitution orders in this case and others. Vol. III at 5, 7-8, 41-42. Specifically, the Clerk's Office followed the court's judgments and DAO guidance when implementing those judgments and recording codefendants' payments. *Id.* at 11-15, 41-42; *see also* 18 U.S.C. § 3611; 28 U.S.C. § 604(a)(18). The Clerk explained that when district courts impose different restitution liabilities jointly and severally between codefendants—and, as here, do not prioritize those liabilities as they have the option to do—the DAO instructs Clerks to apply the codefendants' payments proportional to their respective obligations. Vol. III at 17. As a result, Mr. Salti's payments all went to his \$35,000 liability, while Towner's payments were split proportionally between what he owed jointly and severally with Mr. Salti, and what he was solely responsible for. *Id.* at 29-31.

In a written order, the district court agreed with the government. Vol. I at 90, 92-94. Finding no on point authority from the Tenth Circuit, it looked to the Fifth Circuit's decision in *Sheets*. Reading Mr. Salti's and Towner's restitution orders

together, the district court held that each codefendant was liable for the entire amount he could possibly owe until the victim was paid in full. *Id.* at 90, 92-93. As a result, the district court ordered Mr. Salti's overpayment be directed to TZ, not refunded to him. *Id.* at 93-94.

Mr. Salti appealed, arguing that the district court improperly disregarded Mr. Towner's payments as made in part towards the two's shared obligation and, in so doing, impermissibly modified its restitution order by requiring that he pay the *entire* \$35,000 owed. This, he explained, was wrong because it had the effect of reading the "joint" out of the judgment's 'joint and several' provision.

The Tenth Circuit affirmed. The court agreed that the restitution order in his judgment required Mr. Salti to continue to make payments toward his \$35,000 obligation *unless*—because of payment made by Mr. Towner—the victim had already been *fully* compensated for its \$72,000 loss. (Appendix at A1, A4-A6.) In support of this reading, the court explained, in part, that this was "the most reasonable way to allocate restitution payments," as it served the goal of maximizing recovery by victims and was fair to defendants paying restitution. (*Id.*)

This petition follows.

## REASONS FOR GRANTING THE WRIT

Review is warranted because lower courts have divided on this important question of statutory interpretation, one that the Tenth Circuit answered incorrectly.

First, contrary to the Tenth Circuit's indication below (Appendix at A4), there is not unanimity among the lower courts on this question. Although the circuit courts that have addressed this question have reached similar holdings—i.e., that a restitution obligation is not satisfied until the defendant has paid the amount apportioned to him individually in full or the victim has been made whole for the entire harm—the same is not true among district courts. *Compare, e.g., Salti*, 59 F.4th at 1056; *United States v. Yalincak*, 30 F.4th 115 (2d Cir. 2022); *United States v. Sheets*, 814 F.3d 256 (5th Cir. 2016); *with, e.g., United States v. Bronke*, No. 01-CR-532, 2022 WL 4119784 (Sept. 8, 2022) (adopting same argument raised by Mr. Salti that failing to credit co-defendant's payments towards shared obligation effectuated an improper modification of the restitution order); *United States v. Murray*, N.D. Ill. Case no. 09-cr-144-9, Doc. Nos. 960, 963 (same); *cf. United States v. Gonzalez*, No. 12-CR-260-XR, 2019 WL 2524840, at \*2 (W.D. Tex. June 18, 2019) (finding the Clerk did what it was ordered to do when, as here, the codefendants were jointly and severally liable for portions of the victim's total losses and the Clerk applied their

restitution payments proportional to their liability). These divergent outcomes will continue without this Court answering the question, with a significant impact on how restitution orders are interpreted and restitution judgments collected from district to district.

Additionally, the Tenth Circuit's decision also warrants review because it is even broader than similar rulings by other courts. That is, the order here lacks a critical feature present in all the similar restitution cases on which the government relied on below—namely, in those cases the joint and several, and allocated, restitution obligations were imposed on the multiple defendants by the *same* judge.<sup>3</sup> But here, of course, Mr. Salti and Mr. Towner were sentenced two months apart, by two different judges, and at the time of Mr. Salti's judgment, the district court sentencing him did not know what Mr. Towner's obligation would be. The breadth of the Tenth Circuit's decision further favors review.

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<sup>3</sup> See, e.g., *United States v. Yalincak*, 30 F.4th 115, 118 (2d Cir. 2022) (Judge Janet B. Arterton); *United States v. Sheets*, 814 F.3d 256, 258, 260 (5th Cir. 2016) (Judge Sam R. Cummings); *United States v. Bogart*, 576 F.3d 565, 569 (6th Cir. 2009) (Judge Algenon L. Marbley); *United States v. Hunt*, 521 F.3d 636 (6th Cir. 2008) (Judge Aleta A. Trauger); *United States v. Nucci*, 364 F.3d 419, 420 (2d Cir. 2004) (Judge Carol B. Amon); *United States v. Scott*, 270 F.3d 30 (1st Cir. 2001) (Judge George A. O'Toole, Jr.); *United States v. Diaz*, 245 F.3d 294, 312 (3d Cir. 2001) (Judge Sylvia H. Rambo); *United States v. Trigg*, 119 F.3d 493 (7th Cir. 1997) (Judge Robert L. Miller, Jr.).

Additionally, the need for this Court’s intervention is even more pronounced here given that the circuits’ view also conflicts with that expressed in the guidance promulgated by the Director of the Administrative Office of U.S. Courts (“DAO”) instructing district court clerks how to implement restitution orders. Most significantly, as was noted below, that administrative guidance actually covers *both* of the possible interpretations of the order in Mr. Salti’s case that were presented below—that is, one in which Mr. Salti was required to pay up until he paid \$35,000 or, as the Clerk concluded here, one in which Mr. Salti and Towner were making payments to both their shared, and for Towner his additional individual, obligations simultaneously. (Vol. III at 11-15, 41-53.) That the DAO’s considered guidance contemplated *both* these outcomes, and yet instructed that the judgments below should be interpreted as Mr. Salti argued, represents another split of authority warranting the need for review.

Second, this is an important question of statutory interpretation covering some portion of the roughly \$1 billion that is collected annually as federal criminal restitution. *See* Congressional Research Service, *Restitution in Federal Criminal Cases: A Sketch*, (Oct. 15, 2019 update). Specifically, the Victim and Witness Protection Act of 1982 (“VWPA”) and the Mandatory Victims Restitution Act (“MVRA”) of 1996 authorize, and sometimes require, the imposition of restitution in criminal cases. 18

U.S.C. §§ 3663 & 3663A (the VWPA and the MVRA respectively).<sup>4</sup> Both sections reference 18 U.S.C. § 3664 for the procedures governing the issuance and implementation of a restitution order. 18 U.S.C. §§ 3663(d) & 3663A(d). And when, as here, a crime involves multiple defendants, section 3664(h) provides that the district court “may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim’s loss and economic circumstances of each defendant.”

If a district court orders more than one defendant to be liable for either all, or some portion of, a restitution award, that liability is said to be “joint and several.” As the Tenth Circuit itself previously has explained, “[j]oint and several liability means that one of the two [or more] defendants could be liable for the entire amount.”

*United States v. Spring*, 80 F.3d 1450, 1463 (10th Cir. 1996) (internal parenthetical in original omitted). It also means that a defendant will benefit from a codefendant’s contributions towards their shared liability. *Id.*

There is no dispute that a district court may combine the approaches section 3664(h) provides. That is, it may apportion some amount of restitution liability *and* make it joint and several between codefendants. The question here, rather, is

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<sup>4</sup> Both Acts are nearly identical but for a few exceptions that are not relevant here.

whether, when a district court apportions joint and several liability between codefendants, that decision impacts how joint application of the codefendants' contributions towards their shared liability. That is an important question of statutory interpretation, informed by the background principles of joint and several liability that influence the restitution statutes, and one that is appropriate for this Court's review.

Finally, the third reason warranting review is that the Tenth Circuit answered this question incorrectly. There is no doubt that a primary goal of the restitution statutes is to compensate victims for losses suffered. (Appendix at A4-A6.) But such purposivist reasoning must yield when the terms of the document under review are clear. And here, that document was the district court's original order, and it was clear. The district court apportioned Mr. Salti's restitution liability to \$35,000 and made that amount owed joint and several with Towner's liability. Vol. I at 42-43. There is nothing remarkable about this approach. It is an outcome contemplated by the statute (and was part of the parties' agreement leading to Mr. Salti's guilty plea). Indeed, it was a common enough approach that, as noted, the DAO provides specific guidance to Clerks of Court about how to implement such judgments (guidance that was followed here). Vol. III at 16-17.

What the district court did *not* do was order Mr. Salti exclusively liable for the *entire* \$35,000 restitution amount it imposed. *See* Vol. I at 43. Mr. Salti could therefore anticipate and benefit from a reduction in his restitution liability for any of Towner’s contributions towards that same liability. The district court’s later order (under appeal here)—issued five years after Mr. Salti’s judgment was entered—modified the court’s original order. And, of course, “[a] district court does not have inherent authority to modify a sentence.” *United States v. Dando*, 287 F.3d 1007, 1009-10 (10th Cir. 2002). Rather, it is “authorized to modify a defendant’s sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so.” *United States v. Blackwell*, 81 F.3d 945, 947-48 (10th Cir. 1996). No statutory grant permitted such modification here. For instance, section 3664 provides when a district court may modify a restitution order. 18 U.S.C. § 3664(o). No enumerated circumstance applies here. Nor do the sentence modification provisions of 18 U.S.C. § 3582(c) provide any basis for modification.

All told, the district court’s and court of appeal’s decisions below effectively read the “joint” out of an order of joint and several liability, without any basis. In so doing, they modify a restitution order, impermissibly changing the nature of Mr. Salti’s obligations. *Compare* Vol. I at 43, *with* Vol. I at 90, 92-94. This Court should grant review to address this important question before the split of authority deepens

further, and, thereafter, vacate the orders below and remand this case to the district court.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 6, 2023