



**U.S. Department of Justice**  
**Office of the Solicitor General**

*The Solicitor General*

*Washington, D.C. 20530*

May 12, 2025

Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: Ellingburg v. United States, No. 24-482

Dear Mr. Harris:

The Court granted certiorari in this case on April 7, 2025. In opposing certiorari, the government did not express a position about the correctness of the rationale of the court of appeals' opinion. The government instead contended that the court of appeals' judgment should be affirmed because, even assuming that restitution ordered pursuant to the Mandatory Victims Restitution Act of 1996 (MVRA) is a criminal penalty, retroactively applying the statutory amendment that petitioner challenges did not result in an increase in punishment that would violate the Ex Post Facto Clause.

The purpose of this letter is to notify the Court that the Solicitor General has determined that government will not defend the rationale of the court of appeals' decision. The government will file a brief in support of petitioner on the question presented, which is limited to whether restitution under the MVRA is criminal punishment for purposes of the Ex Post Facto Clause. Although the government continues to believe that there is no Ex Post Facto Clause violation in this case and that the judgment of the court of appeals should ultimately be sustained, its reasons are beyond the scope of the question on which the Court has granted review.

The government intends to file its brief on the deadline for petitioner's brief on the merits, and it joins petitioner's request for an extension of that deadline to June 23, 2025.

Under the circumstances, the Court may wish to invite an amicus curiae to file a brief to defend the rationale of the court of appeals' decision.

Sincerely,

D. John Sauer  
Solicitor General

cc: See Attached Service List

24-0482  
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