No. 24-482

In the Supreme Court of the United States

HOLSEY ELLINGBURG, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES
SUPPORTING VACATUR

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QUESTION PRESENTED

Whether restitution under the Mandatory Victims Restitution Act of 1996, Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227, is a criminal punishment for purposes of the Ex Post Facto Clause.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-9a) is reported at 113 F.4th 839. The order of the district court (Pet. App. 12a-16a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 10a-11a) was entered on August 23, 2024. A petition for rehearing en banc was denied on September 30, 2024 (Pet. App. 1a). The petition for a writ of certiorari was filed on October 25, 2024, and granted on April 7, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Ex Post Facto Clause of the U.S. Constitution provides in pertinent part: "No . . . ex post facto Law shall be passed." U.S. Const. Art. I, § 9, Cl. 3.

Section 3663(a)(1)(A) of Title 18 of the United States Code provides:

> The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) * * * , or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

18 U.S.C. 3663(a)(1)(A).

Section 3663A(a) provides in part:

> (1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.
>
> * * * * *
>
> (3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

18 U.S.C. 3663A(a)(1) and (3).

Section 3664 provides in part:

> (a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. * * *
>
> (b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.
>
> (c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.
>
> * * * * *
>
> (e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. * * *
>
> * * * * *
>
> (m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or
>
> (ii) by all other available and reasonable means.

18 U.S.C. 3664(a), (b), (c), (e), and (m)(1)(A).

The full text of those provisions, along with other pertinent statutory provisions, is reproduced in an appendix to this brief. App., *infra*, 1a-32a.

INTRODUCTION

The Ex Post Facto Clause prohibits the enactment of a law that retroactively "increase[s] the punishment for criminal acts." *California Dep't of Corr.* v. *Morales*, 514 U.S. 499, 504 (1995) (citation omitted). The Clause therefore limits only laws that actually "punish[] * * * criminal acts," *ibid.* (emphasis omitted), a classification that is principally "a question of statutory construction," *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997). To determine whether a particular law is subject to the Ex Post Facto Clause, a court must initially "ascertain whether the legislature meant the statute to establish 'civil' proceedings" or criminal proceedings. *Ibid.* Here, where the Mandatory Victims Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227, implements restitution in a manner that "mete[s] out appropriate criminal punishment," *Pasquantino* v. *United States*, 544 U.S. 349, 365 (2005), restitution is penal for ex post facto purposes.

Under the MVRA, restitution is integrated into a defendant's sentence—and, accordingly, his punishment—for a criminal offense. See 18 U.S.C. 3663A(a)(1); see also 18 U.S.C. 3663(a)(1)(A). Congress codified restitution as part of the criminal code and grouped a district court's authority to impose restitution under the same chapter as other provisions authorizing criminal punishment. See 18 U.S.C. 3556. Restitution is a condition of probation and supervised release, such that the defendant can be incarcerated if he fails to adhere to a restitution order. See 18 U.S.C. 3563(a)(6)(A), 3583(d); see also

Pet. App. 21a. And while a victim of an offense can be a beneficiary of the restitution order, the principal mechanisms for enforcing a restitution order belong to the government alone. See 18 U.S.C. 3664(a)-(e) and (m)(1)(A).

The court of appeals reached a contrary result by focusing on restitution's general compensatory goals, to the exclusion of the specific manner in which the MVRA implements restitution, which gives restitution a principally penal character. An examination of the "statute's text and its structure," *Smith* v. *Doe*, 538 U.S. 84, 92 (2003), shows that restitution is integrated into the defendant's criminal sentence, and thus serves as part of his criminal punishment rather than a civil remedy. Where "the intention of the legislature was to impose punishment, that ends the inquiry" into the law's classification for ex post facto purposes. *Id.* at 92.

It does not, however, end the inquiry into whether a particular application of the law would *violate* the Ex Post Facto Clause, by "increas[ing]" a defendant's punishment. *Morales*, 514 U.S. at 504. And many courts of appeals have rejected claims like petitioner's on the ground that altering the amount of time for paying off a restitution obligation is not such an increase. Thus, while the court of appeals' erroneous classification of MVRA restitution as civil should be vacated, the case should be remanded so that the court of appeals can address alternative bases for reaching the same judgment.

STATEMENT

In 1996, following a jury trial in the United States District Court for the Southern District of Georgia, petitioner was convicted of bank robbery in violation of 18 U.S.C. 2113(a) and (d) (1994), and using a firearm during a crime of violence in violation of 18 U.S.C. 924(c) (1994).

Pet. App. 17a. He was sentenced to 322 months of imprisonment, to be followed by five years of supervised release, and ordered to pay $7567.25 in restitution. *Id.* at 19a-20a, 24a-25a.

On July 27, 2022, petitioner's supervised release was transferred to the United States District Court for the Western District of Missouri. Pet. App. 12a. Petitioner subsequently filed a pro se motion challenging the continued enforcement of his court-ordered restitution obligation. *Ibid.* The district court denied the motion. *Id.* at 12a-16a. The court of appeals affirmed. *Id.* at 2a-9a.

A. Statutory Background

Congress enacted the Victim and Witness Protection Act of 1982 (VWPA), Pub. L. No. 97-291, 96 Stat. 1248, "to enhance and protect the necessary role of crime victims * * * in the criminal justice process" and "to ensure that the Federal Government does all that is possible within limits of available resources to assist victims * * * without infringing on the constitutional rights of the defendant," § 2(b)(1) and (2), 96 Stat. 1249. Among other things, the VWPA provided that, when sentencing a defendant convicted of a Title 18 offense, the district court "may order, in addition to * * * any other penalty authorized by law, that the defendant make restitution to any victim of such offense." 18 U.S.C. 3663(a)(1) (1994). The VWPA also authorized the United States to enforce a restitution order through the imposition of a lien for a period of 20 years from the entry of the judgment in the criminal case. 18 U.S.C. 3663(h)(1), 3664 (1994); see 18 U.S.C. 3613(b)(1) (1994).

Fourteen years later, Congress enacted the MVRA, which superseded the VWPA in part. Among other things, the MVRA made the imposition of restitution mandatory, rather than discretionary, for certain crimes.

See *Dolan* v. *United States*, 560 U.S. 605, 612 (2010). In particular, the MVRA added 18 U.S.C. 3663A, which specifies that "when sentencing a defendant convicted of an [enumerated] offense * * * , the court shall order, in addition to * * * any other penalty authorized by law, that the defendant make restitution to the victim of the offense." 18 U.S.C. 3663A(a)(1). The enumerated offenses include, *inter alia*, crimes of violence, offenses against property, and offenses under 18 U.S.C. 1365 (relating to tampering with consumer products), "in which an identifiable victim or victims has suffered a physical injury or pecuniary loss." 18 U.S.C. 3663A(c)(1)(B).

The MVRA also strengthened the enforcement mechanisms for restitution. Before the MVRA, the government and an individual victim could each enforce an order of restitution "in the same manner as a judgment in a civil action," 18 U.S.C. 3663(h) (1994), which often left enforcement of restitution orders subject to a "patchwork of state-law procedures for executing judgments," *United States* v. *Witham*, 648 F.3d 40, 45 (1st Cir. 2011). In the MVRA, however, Congress made the Attorney General "responsible for collection of an unpaid * * * restitution" obligation, 18 U.S.C. 3612(c), by allowing the United States (but not victims) to enforce restitution in the same manner as it could collect a criminal fine. See 18 U.S.C. 3664(m)(1)(A)(i) (authorizing enforcement consistent with 18 U.S.C. 3611-3615); see also 18 U.S.C. 3613(f) (making all provisions governing enforcement of fines applicable to "the enforcement of an order of restitution"). The MVRA also made payment of restitution a mandatory condition of probation,

18 U.S.C. 3563(a)(6), and allowed courts to enforce restitution orders through revocation of probation and supervised release, 18 U.S.C. 3613A(a)(1).[1]

In addition, the MVRA provided a longer period of time than the VWPA for the payment of restitution. While the VWPA had set the period at 20 years from entry of judgment, see p. 6, *supra*, the MVRA specified that the obligation to pay would remain in place until "the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the [defendant]." 18 U.S.C. 3613(b) (Supp. II 1996); see 18 U.S.C. 3663A(d), 3664(m)(1)(A)(i). And Congress specified that the MVRA would be effective as to all sentencing proceedings in "cases in which the defendant [wa]s convicted" on or after the statute's April 24, 1996, enactment date, "to the extent constitutionally permissible." § 211, 110 Stat. 1241 (18 U.S.C. 2248 note).

B. Factual And Procedural Background

1. On December 4, 1995, petitioner and an accomplice robbed a bank in Savannah, Georgia, of $15,134.50. Pet. App. 13a; Gov't C.A. Br. 2. Petitioner brandished a sawed-off double-barrel shotgun as his codefendant approached the teller area. Presentence Investigation Report ¶ 3. Then, as the codefendant gathered money, petitioner walked around the bank pointing his weapon at several people. *Ibid.*

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[1] In 2016, Congress provided that "mak[ing] restitution" should be a mandatory condition of supervised release. Justice For All Reauthorization Act of 2016, Pub. L. No. 114-324, § 2(a), 130 Stat. 19148 (18 U.S.C. 3583(d)). Previously, district courts had discretion in that matter, 18 U.S.C. 3583(d) (1996); 18 U.S.C. 3583(b)(2) (1996), and in this case, the court required timely payment of restitution as a condition of petitioner's supervised release, see Pet. App. 21a.

On August 29, 1996, a jury found petitioner guilty of bank robbery in violation of 18 U.S.C. 2113(a) and (d) (1994), and use of a firearm during a crime of violence in violation of 18 U.S.C. 924(c) (1994). See Pet. App. 13a, 17a (judgment). On November 19, 1996, the district court sentenced petitioner to 322 months of imprisonment, to be followed by five years of supervised release, and ordered that he pay $7567.25 in restitution—half the amount that he and his accomplice stole. See *id.* at 13a, 17a-28a. While petitioner's offense conduct predated the MVRA, both petitioner's conviction and his sentence postdated the MVRA's enactment.

On June 2, 2022, petitioner was released from federal custody. Pet. App. 3a; Gov't C.A. Br. 2. At that time, he had paid $2154.04 in restitution (with all but $350 of that payment coming before the end of 2004). See Gov't C.A. Addendum A4-A6. On July 27, 2022, petitioner's supervised release was transferred to the Western District of Missouri, where petitioner relocated after leaving prison. Pet. App. 3a; Gov't C.A. Br. 3.

2. In March 2023, petitioner filed a pro se motion in the district court challenging the continued enforcement of his court-ordered restitution obligation, which included continuing interest. See Pet. App. 3a; see also Gov't C.A. Br. 3; Gov't C.A. Addendum A8 (reflecting $13,915.84 balance as of February 1, 2024); 18 U.S.C. 3612(f)(1) and (3) (requiring payment of interest for restitution absent waiver or other court order). Petitioner maintained that the statutory period for paying restitution under the VWPA had expired in 2016, 20 years from the entry of the judgment in his case, and that a continuing obligation under the MVRA would violate the constitutional prohibition on Congress's "pass[ing]" any "ex post facto Law." Art. I, § 9, Cl. 3; see Pet. App. 13a.

The district court denied petitioner's motion. Pet. App. 12a-16a. The court reasoned that the application of a criminal law postdating the offense conduct does not result in an "ex post facto violation * * * if the change effected is merely procedural, and does not increase the punishment nor change the ingredients of the offense or the ultimate facts necessary to establish guilt." *Id.* at 15a (quoting *Weaver* v. *Graham*, 450 U.S. 24, 29 n.12 (1981)). And the court agreed with "the great majority of the federal circuit courts that have confronted this question * * * that application of [the MVRA]'s expanded liability period for an order of restitution does not violate the Ex Post Facto Clause." *Ibid.* (collecting cases).

3. Petitioner appealed, and the court of appeals affirmed in a per curiam opinion. Pet. App. 2a-9a.

a. Noting that the Ex Post Facto Clause "applies only to criminal penalties," the court of appeals (unlike the district court) considered the threshold question "whether MVRA restitution is a criminal or civil penalty." Pet. App. 4a. The court stated that its prior decision in *United States* v. *Carruth*, 418 F.3d 900, 904 (8th Cir. 2005), had "held that, because restitution under the MVRA 'is designed to make victims whole, not to punish perpetrators, . . . it is essentially a civil remedy created by Congress and incorporated into criminal proceedings for reasons of economy and practicality.'" Pet. App. 5a (quoting *Carruth*, 418 F.3d at 904).

The court of appeals acknowledged that two subsequent decisions of this Court—*Pasquantino* v. *United States*, 544 U.S. 349 (2005), and *Paroline* v. *United States*, 572 U.S. 434 (2014)—had "called [that] holding into question." Pet. App. 5a. And it also recognized that "the majority of circuits" classify restitution under the

MVRA as "a criminal penalty." *Id.* at 6a. But it observed that it had reaffirmed that *Carruth*'s contrary holding "remain[s] binding precedent" after *Paroline*, and thus it deemed itself obligated to treat restitution as a civil remedy. *Ibid.* (citing *United States* v. *Thunderhawk*, 799 F.3d 1203, 1209 (8th Cir. 2015)).

Taking that view, the court of appeals reasoned that "retroactive application of the MVRA to [petitioner's] restitution order does not violate the Ex Post Facto Clause." Pet. App. 7a. The court did not address whether it would reach the same result on the alternative ground, embraced by the district court, that even if MVRA restitution is a criminal penalty, application of the MVRA's liability period would not "disadvantage" petitioner because it would not "alter[] the definition of criminal conduct or increas[e] the punishment for a crime." *Id.* at 4a (citation and internal quotation marks omitted).

In a concurring opinion, Judge Melloy, joined by Judge Kelly, stated that, but for the Eighth Circuit's post-*Paroline* decision reaffirming *Carruth*, he "would conclude *Paroline* overruled *Carruth*." Pet. App. 7a. Citing *Paroline*'s observations that restitution "is imposed by the Government at the culmination of a criminal proceeding," "requires conviction of an underlying crime," and "implicates the prosecutorial powers of government," Judge Melloy would have treated it as a criminal penalty. *Id.* at 7a-8a (quoting *Paroline*, 572 U.S. at 457) (internal quotation marks omitted). In a separate opinion concurring in the judgment, Judge Gruender agreed that circuit precedent "control[led] the outcome of th[e] case," but found "nothing in *Pasquantino* or *Paroline*" that called those precedents "into question." *Id.* at 8a.

SUMMARY OF ARGUMENT

The Constitution's Ex Post Facto Clause, which provides that "[n]o * * * ex post facto Law shall be passed," Art. I, § 9, Cl. 3, applies only to laws that are "criminal" in nature, *California Dep't of Corr.* v. *Morales*, 514 U.S. 499, 504 (1995) (citation omitted). The question whether a penalty is criminal or civil is, in the first instance, "a question of statutory construction." *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997) (citation omitted). Here, the provisions of the MVRA make clear that restitution is integrated into a defendant's sentence—and, accordingly, his punishment—for a criminal offense. MVRA restitution is therefore a criminal penalty for ex post facto purposes.

A. Under the MVRA, restitution is a "penalty" that courts impose during "sentencing": It may only be required of a criminal "defendant," and may only be ordered following that defendant's conviction of a qualifying crime. 18 U.S.C. 3663A(a)(1); 18 U.S.C. 3663(a)(1)(A). Congress codified restitution within the criminal code and made the district court's authority to impose restitution part of the same chapter as the other provisions authorizing criminal punishment such as imprisonment, fines, and probation. 18 U.S.C. 3551, 3556. Payment of restitution under Sections 3663 and 3663A is also an "explicit condition" of a sentence of probation, 18 U.S.C. 3563(a)(6), as well as a common (and, today, mandatory) condition of supervised release, see Pet. App. 21a; 18 U.S.C. 3583(d), such that the obligation is a part of those criminal penalties.

The "procedural mechanisms to implement" the penalty, *Smith* v. *Doe*, 538 U.S. 84, 95 (2003), underscore that MVRA restitution is a form of criminal punish-

ment. The district court imposes restitution at sentencing, 18 U.S.C. 3663(a)(1)(A), 3663A(a)(1), under procedures similar to the procedures for imposing other criminal penalties and consistent with the Federal Rules of Criminal Procedure. See 18 U.S.C. 3664(c). And it is the government—not the victim—that stands as the adversarial party in a proceeding to impose such restitution, 18 U.S.C. 3664(e), and that bears principal responsibility for collecting unpaid restitution, 18 U.S.C. 3612(c).

B. Precedent supports the classification of restitution under the MVRA as a criminal penalty under the Ex Post Facto Clause. When Congress enacted the MVRA, it did so against a backdrop of decisions by the courts of appeals that uniformly treated restitution under a predecessor statute as "a criminal, rather than civil, penalty" for purposes of the Seventh Amendment. *United States* v. *Palma*, 760 F.2d 475, 479-480 (3d Cir. 1985). Likewise, this Court during that same period recognized restitution imposed as part of a state sentence as a "criminal sanction," which "necessarily considers the penal and rehabilitative interests of the State." *Kelly* v. *Robinson*, 479 U.S. 36, 52-53 (1986) (citation omitted). The MVRA, which replicated the relevant language of its federal predecessor and implements restitution as a criminal penalty, carries forward the preexisting judicial consensus.

Indeed, since the MVRA's enactment, this Court has twice treated restitution that is integrated into a criminal sentence as a form of criminal punishment. In *Pasquantino* v. *United States*, 544 U.S. 349 (2005), this Court described the "purpose" of restitution as "to mete out appropriate criminal punishment for [the defendants'] conduct." *Id.* at 365. The Court made a similar

observation when considering a federal restitution statute similar to the MVRA in *Paroline* v. *United States*, 572 U.S. 434 (2014), explaining that "while restitution under [the statute] is paid to a victim, it is imposed by the Government 'at the culmination of a criminal proceeding and requires conviction of an underlying' crime." *Id.* at 456 (citation omitted). Consistent with that case law, the majority of the courts of appeals to address the issue have recognized that the Ex Post Facto Clause applies to restitution imposed under the MVRA.

C. The court of appeals reached a contrary conclusion primarily because it failed to consider the statute's text or structure. The court focused on the purpose and effects of restitution generally, reasoning that restitution is "designed to make victims whole, not to punish perpetrators." Pet. App. 5a (citation omitted). But the question whether a penalty is criminal is, in the first instance, "a question of statutory construction." *Hendricks*, 521 U.S. at 361 (citation omitted). Here, the provisions of the MVRA make clear that Congress's intention "was to impose punishment." *Smith*, 538 U.S. at 92. That should have "end[ed] the inquiry" into whether MVRA restitution is penal for ex post facto purposes. *Ibid.*

D. The court of appeals' bottom-line judgment was ultimately correct, however, because application of the MVRA's period for paying restitution did not increase petitioner's punishment and thus did not violate the Ex Post Facto Clause. Nonetheless, the court upheld petitioner's restitution obligation based solely on its conclusion that restitution under the MVRA is a civil penalty that would not implicate the Clause in the first place.

See Pet. App. 5a-7a. Consistent with its ordinary practice, this Court should vacate the decision below and remand the case so that the court of appeals may consider other grounds for affirmance.

ARGUMENT

RESTITUTION UNDER THE MVRA IS CRIMINAL PUNISHMENT FOR PURPOSES OF APPLYING THE EX POST FACTO CLAUSE

The Constitution's Ex Post Facto Clause, which provides that "[n]o * * * ex post facto Law shall be passed," Art. I, § 9, Cl. 3, "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts,'" *California Dep't of Corr.* v. *Morales*, 514 U.S. 499, 504 (1995) (quoting *Collins* v. *Youngblood*, 497 U.S. 37, 43 (1990)). As such, it applies only to a "criminal" law, a classification that is principally "a question of statutory construction," *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997) (citation omitted). Here, the text and structure of the MVRA integrate restitution into the defendant's criminal sentence. The manner in which the MVRA does so indicates that restitution under that statutory scheme should be considered part of the punishment for a criminal conviction. The court of appeals erred in holding otherwise. This Court should vacate the decision below and remand so that the court of appeals can consider alternative grounds for rejecting petitioner's ex post facto claim.

A. MVRA Restitution Implicates The Ex Post Facto Clause Because the Statute Implements It As Criminal Punishment

To determine whether a particular law is subject to the Ex Post Facto Clause, a court must "ascertain whether the legislature meant the statute to establish

'civil' proceedings" or criminal proceedings. *Hendricks*, 521 U.S. at 361. If "the intention of the legislature was to impose punishment, that ends the inquiry" and the Clause applies. *Smith* v. *Doe*, 538 U.S. 84, 92 (2003). If, however, the legislature's intent "was to enact a regulatory scheme that is civil and nonpunitive," *ibid.*, the Clause applies only if the "party challenging the statute provides 'the clearest proof' that 'the statutory scheme [is] so punitive either in purpose or effect as to negate [the legislature's] intention' to deem it 'civil.'" *Hendricks*, 521 U.S. at 361 (quoting *United States* v. *Ward*, 448 U.S. 242, 248-249 (1980)) (first set of brackets in original).

A court therefore accords "considerable deference * * * to the intent as the legislature has stated it." *Smith*, 538 U.S. at 93. The focus on legislative intent is particularly appropriate for a penalty like restitution, which, as this Court has recognized, can serve multiple goals. "The primary goal of restitution," which attempts to make whole the victims of a criminal offense, is generally "remedial or compensatory." *Paroline* v. *United States*, 572 U.S. 434, 456 (2014). But "it also serves punitive purposes," *ibid.*, and can be implemented in a manner that constitutes criminal punishment. To determine the "legislative objective," the starting point, as always, is the "statute's text and its structure." *Smith*, 538 U.S. at 92. Here, the provisions of the MVRA make clear that Congress intended to integrate restitution into a defendant's sentence—and, thus, his punishment—for a criminal offense.

1. Under the MVRA, "when sentencing a defendant convicted of" certain criminal offenses, "the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by

law, that the defendant make restitution to the victim" or the victim's estate. 18 U.S.C. 3663A(a)(1); see also 18 U.S.C. 3663(a)(1)(A) (similarly providing that "when sentencing a defendant convicted of" a wider range of offenses, a court "may order" restitution as a discretionary matter). The statutory scheme therefore makes restitution a "penalty" that courts impose during "sentencing." 18 U.S.C. 3663A(a)(1) (making the penalty mandatory for certain crimes); see also 18 U.S.C. 3663(a)(1)(A) (authorizing the penalty for additional crimes). In fact, for a misdemeanor, restitution may be the only "penalty," "in lieu of" any other. 18 U.S.C. 3663A(a)(1).

The MVRA makes "a criminal conviction a prerequisite" to imposition of restitution. *Hendricks*, 521 U.S. at 362. Restitution under the MVRA may only be required of a criminal "defendant," and may only be ordered following that defendant's conviction of a qualifying crime. 18 U.S.C. 3663A(a)(1); 18 U.S.C. 3663(a)(1)(A); see also *Department of Revenue* v. *Kurth Ranch*, 511 U.S. 767, 781 (1994) (noting that conditioning a penalty on a criminal offense can be "significant of penal and prohibitory intent" for purposes of constitutional double-jeopardy analysis).

The placement of restitution provisions within the criminal code reinforces Congress's intent to implement it as a criminal penalty. While not "dispositive," *Smith*, 538 U.S. at 94, "the manner of [a penalty's] codification * * * [is] probative of the legislature's intent," *Hendricks*, 521 U.S. at 361 (citation omitted). Here, Congress included the provisions on restitution within Title 18—"Crimes and Criminal Procedure"—and specifically within the provisions of Title 18 that "involve crim-

inal punishment," *Smith*, 538 U.S. at 95. The mandatory-restitution provision, 18 U.S.C. 3663A, along with the discretionary-restitution provision, 18 U.S.C. 3663, is codified in Chapter 232, titled "Miscellaneous Sentencing Provisions." 18 U.S.C. 3663A. And 18 U.S.C. 3556, which requires courts to "order restitution in accordance with section 3663A" and authorizes courts to "order restitution in accordance with section 3663" is included within Chapter 227, titled "Sentences." *Ibid.* Congress thus grouped the district court's authority to order restitution in the same chapter as the other provisions authorizing criminal punishment.

Other statutory provisions under Title 18 confirm that MVRA restitution is integrated into a defendant's criminal sentence, akin to other criminal penalties imposed for a criminal violation. Section 3551 identifies "[a]uthorized sentences" for "a defendant who has been found guilty of an offense described in any Federal statute," and specifies that a district court may impose a "sanction" authorized under Section 3556, 18 U.S.C. 3551(b) and (c)—which requires "restitution in accordance with" Sections 3663 and 3663A, 18 U.S.C. 3556. Similarly, Section 3611 specifies that "[a] person who is sentenced to pay a fine, assessment, or restitution, shall pay the fine, assessment, or restitution." 18 U.S.C. 3611; see also 18 U.S.C. 3572(d) (similar); *Rutledge* v. *United States*, 517 U.S. 292, 301 (1996) (describing special assessment as "punishment"). Finally, restitution imposed under Section 3663 or 3663A is a mandatory condition "of a sentence of probation," 18 U.S.C. 3563(a), as well as a common (and, today, mandatory) condition of supervised release. See Pet. App. 21a; see also 18 U.S.C. 3583(d); note 1, *supra*.

2. The specific "procedural mechanisms to implement" restitution under the MVRA, *Smith*, 538 U.S. at 95, further evidence Congress's intent to implement restitution as criminal punishment. See, *e.g.*, *United States* v. *One Assortment of 89 Firearms*, 465 U.S. 354, 363 (1984) (treating Congress's intent to establish a criminal or civil penalty as "most clearly demonstrated by the procedural mechanisms it established for enforcing" the penalty).

As discussed above, the district court imposes restitution "when sentencing a defendant." 18 U.S.C. 3663(a)(1)(A), 3663A(a)(1). The district court accordingly does so pursuant to procedures similar to those for other penalties imposed during sentencing. Chapter 227 of Title 18, which sets forth procedures for "Sentencing," and Federal Rule of Criminal Procedure 32(c), which sets forth procedures for presentence investigations by the Probation Office, are both applicable. 18 U.S.C. 3664(c). The statutory scheme instructs that a "probation officer" must provide "information sufficient for the court to exercise its discretion in fashioning a restitution order." 18 U.S.C. 3664(a). It further specifies that the court must "disclose to both the defendant and the attorney for the Government all portions of the presentence or other [relevant] report." 18 U.S.C. 3664(b). And although a restitution order need not be contemporaneous with other penalties, a "sentence that imposes a restitution order is a final judgment" subject to appeal under 18 U.S.C. 3742, which governs review of a criminal sentence. 18 U.S.C. 3664(*o*)(1); see *Manrique* v. *United States*, 581 U.S. 116, 122-123 (2017).

The MVRA's mechanisms for enforcing a restitution order likewise indicate that restitution functions as a criminal, rather than civil, penalty. The Attorney General—not the victim—bears principal responsibility for the "collection of * * * unpaid * * * restitution," under the same statutory provisions applicable to an "unpaid fine." 18 U.S.C. 3612(c); see 18 U.S.C. 3612(d) and (e); *United States* v. *Witham*, 648 F.3d 40, 45 (1st Cir. 2011). And while the government has some "[c]ivil remedies" that it can enforce for unpaid fines and restitution, 18 U.S.C. 3613(f), if a defendant defaults on a payment of restitution, the court may "take any action necessary to obtain compliance with the order," up to and including "revok[ing] probation or a term of supervised release" and imprisoning the defendant. 18 U.S.C. 3613A(a)(1). In addition, if a "defendant knowingly fails to pay a delinquent fine or restitution[,] the court may resentence the defendant to any sentence which might originally have been imposed," subject to certain conditions. 18 U.S.C. 3614(a); see 18 U.S.C. 3614(b).

Criminal restitution thus stands in contrast to forfeiture under 18 U.S.C. 924(d) of a firearm involved in an illegal activity, which this Court has classified as a "remedial civil sanction" for purposes of double-jeopardy analysis. *89 Firearms*, 465 U.S. at 363. In making that classification, the Court noted, among other things, that forfeiture under Section 924(d) is available only through the in rem proceedings applicable to tax liability, which are distinct from "the *in personam* nature of criminal actions." *Ibid.*; see also *United States* v. *Ursery*, 518 U.S. 267, 288-290 (1996). Restitution, by contrast, is imposed at sentencing, and thus more akin to "*in personam*, criminal forfeitures," which "have historically been

treated as punitive, being part of the punishment imposed for felonies and treason." *United States* v. *Bajakajian*, 524 U.S. 321, 332 (1998).

3. Finally, to the extent that this Court may consider legislative history "instructive" as to whether Congress intended a particular remedy to serve as "punishment," *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 177 (1963), the legislative history of the MVRA, like the statutory scheme itself, "evinces a Congressional intent" that MVRA restitution "be a form of criminal punishment," *United States* v. *Edwards*, 162 F.3d 87, 91 (3d Cir. 1998).

The Senate Report accompanying the MVRA stated that "[t]he committee believes that restitution must be considered a part of the criminal sentence, and that justice cannot be considered served until full restitution is made." S. Rep. No. 179, 104th Cong., 1st Sess. 20 (1995). The report recognized that restitution serves compensatory purposes—it would "ensure that the loss to crime victims is recognized, and that they receive the restitution they are due." *Id.* at 12. But by integrating restitution into the criminal sentence, the report stated that Congress would "ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society." *Ibid.* In doing so, the Senate report emphasized the "pen[o]logical benefits" of "requiring the offender to be accountable for the harm caused to the victim." *Id.* at 18; see also 141 Cong. Rec. S19,280 (daily ed. Dec. 22, 1995) (statement of Sen. Hatch) (bill co-sponsor noting restitution served an "important penological function" by "forc[ing] the criminal to contemplate his criminal act and truly pay for his crime").

B. Precedent Supports Treating MVRA Restitution As A Criminal Penalty

This Court's precedent, as well as case law in the courts of appeals, supports interpreting restitution under the MVRA as a criminal penalty.

1. Congress did not write on a blank slate when it enacted the MVRA. The MVRA scheme amended the VWPA, which likewise authorized district courts to impose restitution as a "penalty" during criminal sentencing. 18 U.S.C. 3663(a)(1) (1994); see p. 6, *supra*. In the years following the VWPA's enactment, courts of appeals were "forced to evaluate the treatment of restitution orders by determining whether they are 'compensatory' or 'penal,'" *Kelly* v. *Robinson*, 479 U.S. 36, 53 n.14 (1986), and uniformly viewed them as the latter.

In particular, defendants challenged the constitutionality of the VWPA, arguing that the Seventh Amendment entitled them to a jury trial as to the amount of restitution. *Kelly*, 479 U.S. at 53 n.14. In response to such challenges, the courts of appeals "uniformly held that an order of restitution imposed under the VWPA is a criminal, rather than civil, penalty." *United States* v. *Palma*, 760 F.2d 475, 479-480 (3d Cir. 1985); see, *e.g.*, *United States* v. *Keith*, 754 F.2d 1388, 1391-1392 (9th Cir. 1984), cert. denied, 474 U.S. 829 (1985); *United States* v. *Watchman*, 749 F.2d 616, 617 (10th Cir. 1984); *United States* v. *Brown*, 744 F.2d 905, 908 (2d Cir. 1984), cert. denied, 469 U.S. 1089 (1984); *United States* v. *Satterfield*, 743 F.2d 827, 836-839 (11th Cir. 1984), cert. denied 471 U.S. 1117 (1985), superseded by statute on other grounds as stated in *United States* v. *Edwards*, 728 F.3d

1286, 1292 & n.2 (11th Cir. 2013); *United States* v. *Florence*, 741 F.2d 1066, 1067-1068 (8th Cir. 1984).[2]

Citing that consensus, this Court during that same period likewise treated restitution imposed as part of a sentence as a "criminal sanction." *Kelly*, 479 U.S. at 52 & 53 n.14 (citation omitted). In *Kelly*, the Court considered whether a restitution debt imposed as a component of a state criminal sentence was dischargeable through bankruptcy, an inquiry that turned on whether restitution was "for the benefit of a government" or instead "compensation for actual pecuniary loss." *Id.* at 51. In answering that question, the Court acknowledged that restitution "resemble[s] a judgment 'for the benefit' of the victim" but found that "the context in which [restitution] is imposed"—namely, during criminal sentencing—"undermine[d] that conclusion." *Id.* at 52. "Because criminal proceedings focus on the State's interests in rehabilitation and punishment," "[t]he sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State." *Id.* at 53. Thus, the Court understood restitution imposed during sentencing both to have a "deterrent effect" and to be "an effective rehabilitation penalty" that would "forc[e] the defendant to confront, in concrete terms, the harm his actions have caused." *Id.* at 49 n.10 (citing Notes, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 Harv. L. Rev. 931, 937-941 (1984)).

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[2] The United States likewise took the position that the Seventh Amendment did not apply to restitution orders under the VWPA because "the character of restitution as a criminal rather than civil sanction is evident from the language, structure, and legislative history of the VWPA." See U.S. Br. at 42, *Hughey* v. *United States*, 495 U.S. 411 (1990) (No. 89-5691).

The MVRA did not displace the preexisting understanding that restitution imposed during sentencing is a criminal penalty. On the contrary, Congress not only left in place authorization for a discretionary restitution order "in addition to * * * any other penalty authorized by law" "when sentencing a defendant," 18 U.S.C. 3663(a)(1)(A), but also adopted the same language in the newly enacted Section 3663A. See 18 U.S.C. 3663A(a)(1). Congress thus provided no indication that it "changed the meaning" of that language. *TC Heartland LLC* v. *Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 268 (2017). And it "br[ought] the old soil" with the "transplant[ed]" language, *Taggart* v. *Lorenzen*, 587 U.S. 554, 560 (2019) (citation omitted), when it incorporated the same words into Section 3663A.

2. Since the MVRA's enactment, this Court has twice treated restitution integrated into a criminal sentence as a form of criminal punishment. The first was in *Pasquantino* v. *United States*, 544 U.S. 349 (2005), where the Court refused to apply the common-law revenue rule, which generally prohibited courts from enforcing the tax laws of foreign sovereigns, "to except frauds directed at evading foreign taxes" from the federal wire-fraud statute. *Id.* at 359. The defendants in *Pasquantino* argued, among other things, that because the MVRA mandated "restitution of the lost tax revenue" that they had fraudulently kept for themselves "to Canada," the true "object" of the prosecution was "the recovery of taxes" for a foreign government. *Id.* at 365. The Court rejected that argument, explaining that "[t]he purpose of awarding restitution in this action is not to collect a foreign tax, but to mete out appropriate criminal punishment for [the defendants'] conduct." *Ibid.*

Subsequently, in *Paroline* v. *United States*, 572 U.S. 434 (2014), this Court considered a statute mandating restitution for certain child-exploitation offenses, 18 U.S.C. 2259, and expressed reluctance to import "alternative and less demanding causal standards" from "tort law" in determining how that statute should be applied. *Paroline*, 572 U.S. at 452. The Court explained that "restitution serves purposes that differ from (though they overlap with) the purposes of tort law," such as providing "'an effective rehabilitative penalty.'" *Id.* at 453 (quoting *Kelly*, 489 U.S. at 49 n.10). The Court accordingly recognized that although the "primary goal of restitution is remedial or compensatory," "it also serves punitive purposes," such as to "'mete out appropriate criminal punishment.'" *Id.* at 456 (quoting *Pasquantino*, 544 U.S. at 359). And the Court emphasized that "while restitution under [Section] 2259 is paid to a victim, it is imposed by the Government at the culmination of a criminal proceeding and requires conviction of an underlying crime." *Ibid.* (citation and internal quotation marks omitted).

3. Consistent with the understanding reflected in those decisions, the majority of the courts of appeals to address the issue have held that the Ex Post Facto Clause applies to restitution imposed under the MVRA. *United States* v. *Edwards*, 162 F.3d 87, 89-92 (3d Cir. 1998); *United States* v. *Richards*, 204 F.3d 177, 213 (5th Cir.), cert. denied, 531 U.S. 826 (2000), overruled on other grounds by *United States* v. *Cotton*, 535 U.S. 625 (2002); *United States* v. *Schulte,* 264 F.3d 656, 662 (6th Cir. 2001)*; United States* v. *Bagett*, 125 F.3d 1319, 13122 (9th Cir. 1997); *United States* v. *Siegel*, 153 F.3d 1256, 1259 (11th Cir. 1998). Two additional courts of appeals

have suggested that they would agree with that majority view. See *United States* v. *Bapack*, 129 F.3d 1320, 1327 n.13 (D.C. Cir. 1997) (observing that "retroactive application of mandatory restitution provisions raises *ex post facto* concerns"); see also *United States* v. *Anthony*, 25 F.4th 792, 798 n.6 (10th Cir. 2022) (noting that *Paroline* had "call[ed] into question" circuit precedent holding that "the MVRA lacks a penal element") (citation omitted).

C. The Court Of Appeals' Contrary Reasoning Is Flawed

The court of appeals' contrary conclusion rested principally on a misapplication of the proper inquiry under the Ex Post Facto Clause for determining whether the legislature intended to create a criminal or civil penalty. The court viewed restitution imposed pursuant to the MVRA as a civil penalty on the theory that restitution is "designed to make victims whole, not to punish perpetrators." Pet. App. 5a (quoting *United States* v. *Carruth*, 418 F.3d 900, 904 (8th Cir. 2005)). But to the extent that the former purpose might in some circumstances weigh more heavily the latter, the court failed to consider the MVRA's specific "text and * * * structure to determine" its particular "legislative objective," *Smith*, 538 U.S. at 92, in how it chose to implement restitution under the MVRA.[3]

[3] The precedent on which the Eighth Circuit relied addressed whether the Sixth Amendment entitles a defendant to a jury trial as to the amount of restitution pursuant to this Court's decision in *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000). The Eighth Circuit, like every other court of appeals to address the issue, has held that restitution under the MVRA does not implicate *Apprendi*, primarily because, under that statute, "there is no specific or set upper limit for the amount of restitution," and therefore findings underlying a

If a legislature "intended to punish," that is the end of the matter—the law implicates the Ex Post Facto Clause "without further inquiry into its effects." *Smith*, 538 U.S. at 93. And for all of the reasons discussed in the previous sections, the statutory analysis indicates a primarily punitive purpose. See pp. 26-27, *supra*. The MVRA integrates restitution into a defendant's criminal sentence, thereby implementing it as a part of the criminal punishment, rather than as a civil remedy. As this Court has recognized, "[t]he sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State." *Kelly*, 479 U.S. at 53. And because "the intention of the legislature was to impose punishment, that ends the inquiry," regardless of whether the effects of a penalty are primarily compensatory or punitive. *Smith*, 538 U.S. at 92; see pp. 15-16, *supra*.

Moreover, many restitution provisions protect the "interests of the State," rather than those of the victim alone. *Kelly*, 479 U.S. at 53. In some instances, the government may obtain restitution in amounts greater than necessary to compensate identifiable victims of the crime. A court may, for instance, order "restitution in any criminal case to the extent agreed to by the parties in a plea agreement," even if greater than the loss to a particular victim. 18 U.S.C. 3663(a)(3). For mandatory restitution, a court must order restitution "to persons

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restitution order cannot increase a defendant's maximum punishment. *Carruth*, 418 F.3d at 904. In an additional paragraph, the Eighth Circuit also observed that restitution was "essentially a civil remedy," not a criminal punishment. *Ibid.* In past filings, the government has also advanced that reason as an additional rationale for why restitution does not implicate the requirements set forth in *Apprendi*. See, *e.g.*, Br. in Opp. at 13, *Rimlawi* v. *United States*, No. 24-23 (Nov. 20, 2025). That question is not at issue here.

other than the victim of the offense" "if agreed to by the parties in a plea agreement." 18 U.S.C. 3663A(a)(3). And a court may impose restitution for certain drug offenses even when there "is no identifiable victim" at all. 18 U.S.C. 3663(c)(1).

In addition, the victim cannot directly control "the amount of restitution awarded" or "the decision to award restitution." *Kelly*, 479 U.S. at 52. It is the government—not the victim—that stands as the adversarial party when the court imposes restitution, 18 U.S.C. 3664(e), and that bears responsibility for enforcing restitution, 18 U.S.C. 3612. And while the government may pursue compliance through the same means that it uses to enforce criminal fines, see p. 20, *supra*, victims have only limited avenues through which they can enforce restitution orders, see 18 U.S.C. 3664(m)(1)(B) (authorizing victims to obtain a lien in state court on the property of the defendant).

Finally, just as sentencing generally involves a balancing of individual and societal interests, see 18 U.S.C. 3553(a), a defendant's restitution payments account for his individual financial "situation," *Kelly*, 479 U.S. at 53, not just the harm caused to the victim. In this respect, too, it differs from ordinary civil penalties. See *ibid.* Section 3663 authorizes district courts to consider "the financial resources of the defendant," along with the financial needs of his dependents, when imposing restitution. 18 U.S.C. 3663(a)(1)(B). While restitution is mandatory under Section 3663A, the court may set a payment schedule that requires only "nominal" payments if the defendant's "economic circumstances" will not permit full payment, 18 U.S.C. 3664(f)(3)(B), and both the court and government may waive interest payments if the defendant lacks the ability to pay, 18 U.S.C.

3612(f)(3)(A) and (h). Moreover, Section 3663A does not apply to certain offenses if the court finds that imposing restitution would "complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process." 18 U.S.C. 3663A(c)(3)(B). Particularly when viewed in combination, those aspects of restitution make clear that Congress treated it as part of the "sentencing process," *ibid.*, rather than as a mechanism principally directed at making victims whole.

D. This Court Should Vacate The Judgment Below And Remand The Case To The Court of Appeals

As the government explained in its brief in opposition to certiorari (at 8-11), the court of appeals' judgment was ultimately correct because applying the statutory amendment that petitioner challenges did not result in an increase in punishment that would violate the Ex Post Facto Clause. That Clause only precludes the retroactive application of laws that "make innocent acts criminal, alter the nature of the offense, or * * * increase the punishment." *Collins*, 497 U.S. at 46. That last "category" includes laws "'that change[] the punishment, and inflict[] a greater punishment, than the law annexed to the crime, when committed.'" *Peugh* v. *United States*, 569 U.S. 530, 532-533 (2013) (quoting *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386, 390 (1798)) (emphasis omitted). "The touchstone of this Court's inquiry is whether a given change in law presents a sufficient risk of increasing the measure of punishment attached to the covered crimes." *Id.* at 539 (citation and internal quotation marks omitted).

Application of the MVRA's longer period for paying restitution did not increase petitioner's punishment.

The relevant punishment that was annexed to petitioner's "underlying crime [wa]s the obligation to compensate [his] victims in the amount determined by the district court at sentencing." *United States* v. *Weinlein*, 109 F.4th 91, 101 (2d Cir. 2024), cert. denied, 145 S. Ct. 1425 (2025). Petitioner's "punishment," in other words, was the $7567.25 in restitution that the district court ordered him to pay his victim. Pet. App. 25a. That amount did not change when the MVRA amended 18 U.S.C. 3613(b), because the amendment "merely increased the time period over which the government could collect" the outstanding restitution amount. *United States* v. *Blackwell*, 852 F.3d 1164, 1166 (9th Cir. 2017) (per curiam). "[T]he time horizon in which a defendant may meet that obligation is not a separate punishment." *Weinlein*, 109 F.4th at 103.

The MVRA's effect was instead analogous to the extension of a nonexpired limitations period for charging a criminal offense. The federal courts of appeals have long held that the Ex Post Facto Clause does not bar a legislature from extending an unexpired limitations period. See *Stogner* v. *California*, 539 U.S. 607, 618 (2003) (acknowledging that case law and distinguishing between an expired and an unexpired limitations period for ex post facto purposes); *id.* at 650 (Kennedy, J., dissenting) ("[T]he Court is careful to leave in place the uniform decisions by state and federal courts to uphold retroactive extension of unexpired statutes of limitations against an *ex post facto* challenge."). By the same token, the prescription of a time period for repaying restitution, enacted before petitioner was ordered to pay restitution, would likewise not violate the Ex Post Facto Clause.

The majority of the courts of appeals to have considered the question have thus correctly recognized—as the district court did below (Pet. App. 15a-16a)—that, regardless of whether restitution under the MVRA is penal and subject to the Ex Post Facto Clause, applying the MVRA's period for paying an outstanding restitution amount does not "disadvantage" a defendant because it does not increase the defendant's punishment. See *Weinlein*, 109 F.4th at 101 (2d Cir.); *Blackwell*, 852 F.3d at 1166 (9th Cir.); *United States* v. *McGuire*, 636 Fed. Appx. 445, 446-447 (10th Cir. 2016); *United States* v. *Rosello*, 737 Fed. Appx. 907, 908-909 (11th Cir. 2018) (per curiam); but see *United States* v. *Norwood*, 49 F.4th 189, 218 (3d Cir. 2022) (reaching a contrary conclusion).

Nonetheless, the court of appeals upheld petitioner's restitution obligation based solely on its conclusion that restitution under the MVRA is a civil penalty and therefore not subject to the Ex Post Facto Clause. Pet. App. 5a-7a. The question presented expressly concerns only that erroneous conclusion, and the court of appeals did not consider alternative grounds for affirmance. Accordingly, it would be appropriate for this Court to follow its usual practice by remanding to allow the court of appeals to apply the correct legal standard in the first instance. See, *e.g.*, *Holguin-Hernandez* v. *United States*, 589 U.S. 169, 175 (2020).

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. U.S. Const. art. I, § 9, cl. 3 provides:

No Bill of Attainer or ex post facto law shall be passed.

2. 18 U.S.C. 3551 provides:

Authorized sentences

(a) IN GENERAL.—Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, including sections 13 and 1153 of this title, other than an Act of Congress applicable exclusively in the District of Columbia or the Uniform Code of Military Justice, shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case.

(b) INDIVIDUALS.—An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

(1) a term of probation as authorized by subchapter B;

(2) a fine as authorized by subchapter C; or

(3) a term of imprisonment as authorized by subchapter D.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(c) ORGANIZATIONS.—An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

(1) a term of probation as authorized by subchapter B; or

(2) a fine as authorized by subchapter C.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

3. 18 U.S.C. 3556 provides:

Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense shall order restitution in accordance with section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.

4. 18 U.S.C. 3563(a) provides:

Conditions of probation

(a) MANDATORY CONDITIONS.—The court shall provide, as an explicit condition of a sentence of probation—

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation;

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2) or

(b)(12), unless the court has imposed a fine under this chapter, or unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b);

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance;

(4) for a domestic violence crime as defined in section 3561(b) by a defendant convicted of such an offense for the first time that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant;

(5) for a felony, a misdemeanor, or an infraction, that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant;

(6) that the defendant—

(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

(B) pay the assessment imposed in accordance with section 3013;

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments;

(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act; and

(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

5. 18 U.S.C. 3583(d) provides:

Inclusion of a term of supervised release after imprisonment

(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that

the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4).[1] The results of a drug test administered in accordance with the preceding subsection shall be sub-

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[1] See References in Text note below.

ject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be im-

posed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

6. 18 U.S.C. 3612 provides:

Collection of unpaid fine or restitution

(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—The clerk or the person designated under section 604(a)(18) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the clerk, or the person designated under section 604(a)(18) of title 28, shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.

(b) INFORMATION TO BE INCLUDED IN JUDGMENT; JUDGMENT TO BE TRANSMITTED TO ATTORNEY GENERAL.—(1) A judgment or order imposing, modifying, or remitting a fine or restitution order of more than $100 shall include—

(A) the name, social security account number, mailing address, and residence address of the defendant;

(B) the docket number of the case;

(C) the original amount of the fine or restitution order and the amount that is due and unpaid;

(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

(E) a description of any modification or remission;

(F) if other than immediate payment is permitted, a requirement that, until the fine or restitution

order is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs; and

(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained.

(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.

(c) RESPONSIBILITY FOR COLLECTION.—The Attorney General shall be responsible for collection of an unpaid fine or restitution concerning which a certification has been issued as provided in subsection (b). An order of restitution, pursuant to section 3556, does not create any right of action against the United States by the person to whom restitution is ordered to be paid. Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

(1) A penalty assessment under section 3013 of title 18, United States Code.

(2) Restitution of all victims.

(3) All other fines, penalties, costs, and other payments required under the sentence.

(d) NOTIFICATION OF DELINQUENCY.—Within ten working days after a fine or restitution is determined to be delinquent as provided in section 3572(h), the Attorney General shall notify the person whose fine or restitution is delinquent, to inform the person of the delinquency.

(e) NOTIFICATION OF DEFAULT.—Within ten working days after a fine or restitution is determined to be in default as provided in section 3572(i), the Attorney General shall notify the person defaulting to inform the person that the fine or restitution is in default and the entire unpaid balance, including interest and penalties, is due within thirty days.

(f) INTEREST ON FINES AND RESTITUTION.—

(1) IN GENERAL.—The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

(2) COMPUTATION.—Interest on a fine shall be computed—

(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

(B) at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding

the first day on which the defendant is liable for interest under paragraph (1).

(3) MODIFICATION OF INTEREST BY COURT.—If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

(A) waive the requirement for interest;

(B) limit the total of interest payable to a specific dollar amount; or

(C) limit the length of the period during which interest accrues.

(g) PENALTY FOR DELINQUENT FINE.—If a fine or restitution becomes delinquent, the defendant shall pay, as a penalty, an amount equal to 10 percent of the principal amount that is delinquent. If a fine or restitution becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

(h) WAIVER OF INTEREST OR PENALTY BY ATTORNEY GENERAL.—The Attorney General may waive all or part of any interest or penalty under this section or any interest or penalty relating to a fine imposed under any prior law if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

(i) APPLICATION OF PAYMENTS.—Payments relating to fines and restitution shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.

(j) EVALUATION OF OFFICES OF THE UNITED STATES ATTORNEY AND DEPARTMENT COMPONENTS.—

(1) IN GENERAL.—The Attorney General shall, as part of the regular evaluation process, evaluate each office of the United States attorney and each component of the Department of Justice on the performance of the office or the component, as the case may be, in seeking and recovering restitution for victims under each provision of this title and the Controlled Substances Act (21 U.S.C. 801 et seq.) that authorizes restitution.

(2) REQUIREMENT.—Following an evaluation under paragraph (1), each office of the United States attorney and each component of the Department of Justice shall work to improve the practices of the office or component, as the case may be, with respect to seeking and recovering restitution for victims under each provision of this title and the Controlled Substances Act (21 U.S.C. 801 et seq.) that authorizes restitution.

(k) GAO REPORTS.—

(1) REPORT.—Not later than 1 year after the date of enactment of this subsection, the Comptroller General of the United States shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on restitution sought by the Attorney General under each provision of this title and the Controlled Substances Act (21 U.S.C. 801 et seq.) that authorizes restitution during the 3-year period preceding the report.

(2) CONTENTS.—The report required under paragraph (1) shall include statistically valid estimates of—

(A) the number of cases in which a defendant was convicted and the Attorney General could seek restitution under this title or the Controlled Substances Act (21 U.S.C. 801 et seq.);

(B) the number of cases in which the Attorney General sought restitution;

(C) of the cases in which the Attorney General sought restitution, the number of times restitution was ordered by the district courts of the United States;

(D) the amount of restitution ordered by the district courts of the United States;

(E) the amount of restitution collected pursuant to the restitution orders described in subparagraph (D);

(F) the percentage of restitution orders for which the full amount of restitution has not been collected; and

(G) any other measurement the Comptroller General determines would assist in evaluating how to improve the restitution process in Federal criminal cases.

(3) RECOMMENDATIONS.—The report required under paragraph (1) shall include recommendations on the best practices for—

(A) requesting restitution in cases in which restitution may be sought under each provision of

this title and the Controlled Substances Act (21 U.S.C. 801 et seq.) that authorizes restitution;

(B) obtaining restitution orders from the district courts of the United States; and

(C) collecting restitution ordered by the district courts of the United States.

(4) REPORT.—Not later than 3 years after the date on which the report required under paragraph (1) is submitted, the Comptroller General of the United States shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the implementation by the Attorney General of the best practices recommended under paragraph (3).

7. 18 U.S.C. 3613 provides:

Civil remedies for satisfaction of an unpaid fine

(a) ENFORCEMENT.—The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—

(1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

(2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and

(3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

(b) TERMINATION OF LIABILITY.—The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined. The liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution. In the event of the death of the person ordered to pay restitution, the individual's estate will be held responsible for any unpaid balance of the restitution amount, and the lien provided in subsection (c) of this section shall continue until the estate receives a written release of that liability.

(c) LIEN.—A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, an assessment imposed pursuant to section 2259A of this title, or an order of restitution made pursuant to sections[1] 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20

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[1] So in original. Probably should be "section".

years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b).

(d) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

(e) DISCHARGE OF DEBT INAPPLICABLE.—No discharge of debts in a proceeding pursuant to any chapter of title 11, United States Code, shall discharge liability to pay a fine pursuant to this section, and a lien filed as prescribed by this section shall not be voided in a bankruptcy proceeding.

(f) APPLICABILITY TO ORDER OF RESTITUTION.—In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.

8. 18 U.S.C. 3613A provides:

Effect of default

(a)(1) Upon a finding that the defendant is in default on a payment of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the fine or restitution order, and any other circumstances that may have a bearing on the defendant's ability or failure to comply with the order of a fine or restitution.

(b)(1) Any hearing held pursuant to this section may be conducted by a magistrate judge, subject to de novo review by the court.

(2) To the extent practicable, in a hearing held pursuant to this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

9. 18 U.S.C. 3614 provides:

Resentencing upon failure to pay a fine or restitution

(a) RESENTENCING.—Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine or restitution the court may resentence the defendant to any sentence which might originally have been imposed.

(b) IMPRISONMENT.—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.

10. 18 U.S.C. 3663 provides:

Order of restitution

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense un-

der this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)(i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapaci-

tated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) THE ORDER MAY REQUIRE THAT SUCH DEFENDANT—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110—

(A) pay an amount equal to the cost of necessary medical and related professional services and

devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate; and

(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title, pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B)(i)(II)

and (ii),[1] when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

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[1] So in original. Probably should be "(ii)),".

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

11. 18 U.S.C. 3663A provides:

Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed

as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(4) CLARIFICATION.—In ordering restitution under this section, a court shall order the defendant to make restitution to a person who has assumed the victim's rights under paragraph (2) to reimburse that person's necessary and reasonable—

(A) lost income, child care, transportation, and other expenses incurred during and directly related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(B) lost income, transportation, and other expenses incurred that are directly related to transporting the victim for necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance

with a method of healing recognized by the law of the place of treatment; and

(C) lost income, transportation, and other expenses incurred that are directly related to transporting the victim to receive necessary physical and occupational therapy and rehabilitation.

(b) THE ORDER OF RESTITUTION SHALL REQUIRE THAT SUCH DEFENDANT—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psy-

chological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) an offense described in section 3 of the Rodchenkov Anti-Doping Act of 2019;

(iv) an offense described in section 1365 (relating to tampering with consumer products); or

(v) an offense under section 670 (relating to theft of medical products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) or (iii) if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

12. 18 U.S.C. 3664 provides:

Procedure for issuance and enforcement of order of restitution

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

(d)(1) Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable—

(A) provide notice to all identified victims of

(i) the offense or offenses of which the defendant was convicted;

(ii) the amounts subject to restitution submitted to the probation officer;

(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

(iv) the scheduled date, time, and place of the sentencing hearing;

(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

(5) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's dependents, shall be on the defendant. The burden of demonstrating such other matters as the

court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of—

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of

the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(4) An in-kind payment described in paragraph (3) may be in the form of—

(A) return of property;

(B) replacement of property; or

(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

(g)(1) No victim shall be required to participate in any phase of a restitution order.

(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

(h) 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.

(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all other

victims receive full restitution before the United States receives any restitution.

(j)(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(*l*) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

(ii) by all other available and reasonable means.

(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

(n) If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

(*o*) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that—

(1) such a sentence can subsequently be—

(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

(B) appealed and modified under section 3742;

(C) amended under subsection (d)(5); or

(D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

(p) Nothing in this section or sections 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.