No._____

IN THE SUPREME COURT OF THE UNITED STATES

BRUCE STROUD, PETITIONER

v.

UNITED STATES OF AMERICA

_____

**PETITION FOR WRIT OF CERTIORARI**
**TO THE**
**UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

_____

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## QUESTION PRESENTED FOR REVIEW

Whether a restitution order imposed as part of a federal criminal sentence and based on fact-findings made by the district court, rather than the jury, violates the fifth amendment indictment and notice guarantees and the sixth amendment jury trial guarantee.

## PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the court below were Bruce Stroud, Bobbie Stroud, and the United States of America.

## RELATED PROCEEDINGS

*United States v. Bobbi Stroud, Bruce Stroud, and Kenric Griffin,* U.S. District Court for the Northern District of Texas, Number 3: 19 CR 439, Judgment entered December 8, 2022.

*United States v. Bruce Stroud and Bobbi Stroud,* U.S. Court of Appeals for the Fifth Circuit, Number 22-11208, Judgment entered April 15, 2025.

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## PETITION FOR WRIT OF CERTIORARI

Bruce Stroud asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit.

## OPINION BELOW

The unpublished opinion of the court of appeals may be found at 2025 WL 1113223 (5th Cir. Apr. 15, 2025). The opinion is attached to this petition as Appendix A.

## JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the court of appeals were entered on April 15, 2025. This petition is filed within 90 days after entry of judgment. *See* Supreme Court Rule 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

The fifth amendment to the U.S. Constitution provides in pertinent part that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury[.]"

The sixth amendment to the U.S. Constitution provides in pertinent part that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]"

## STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. § 3663(a)(1) provides in pertinent part that a district court, "when sentencing a defendant convicted of an offense under this title . . . 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[.]"

Title 18 U.S.C. § 3663A(a)(1) provides in pertinent part that a district court, "when sentencing a defendant convicted of an offense under this title . . . 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[.]"

## STATEMENT

Bruce Stroud operated three durable medical equipment (DME) companies. He owned New Horizons Durable Medical Equipment and Striffin Medical Supply with Kenric Griffin. He owned 4B Ortho with his wife, Bobbie Stroud. The DMEs provided medical and orthotic devices to fulfill prescriptions written by doctors, physician's assistants, or nurse practitioners.

The government indicted Griffin and the Strouds on one count of conspiring to commit health care fraud, in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1320-7b(b)(1) and (2), and seven counts of paying illegal kickbacks to induce a referral, in violation of 42 U.S.C. §1320-7b(b)(2)(A) and 18 U.S.C. § 2.[1] The indictment alleged that the defendants' DME companies had purchased prescriptions written to Medicare

[1] The district court exercised jurisdiction under 18 U.S.C. § 3231.

beneficiaries from two companies, True Alliance Health Group and U.S. Care Associates, and filled those prescriptions for the patients without ever calling or meeting the patients. The DMEs then billed Medicare for the medical and orthotic devices provided. The government asserted that the purchasing of prescriptions was veiled by contracts indicating the DMEs had made the payments to True Alliance and U.S. Care Associates, not for prescriptions but for marketing and back-office services.

Griffin and the Strouds pleaded not guilty and went to trial. At trial, the primary government witnesses against the defendants were Willliam Novack of True Alliance, and Emmanuel Silva, a co-owner of U.S. Care Associates and of Dial4MD, the telehealth company through which U.S. Care Associates conducted medical calls with patients, and Seth Aaronson, a manager at U.S. Care Associates. Novack, Aaronson, and Silva had all pleaded guilty to health-care fraud charges and all testified against the Strouds and Griffin in the hope of obtaining a reduction in sentence.

Silva and Aaronson both testified about the U.S. Care Associates business model and their dealings with Bruce Stroud and his DMEs. U.S. Care Associates would contract with telemarketers, usually ones based overseas, and those telemarketers would cold call Medicare beneficiaries, ask them about their health, and offer them a telehealth consultation. The calls were made to Medicare beneficiaries because Medicare offered reimbursement more quickly and at higher rates than private insurance companies did.

When a person contacted by the telemarketers indicated interest in a telehealth consultation, that person's name was furnished to U.S. Care Associates, which would verify the person's Medicare eligibility and identification number. U.S. Care Associates would then determine if the person had recently received an orthotic device like those U.S. Care Associates was involved with. If the person was found ineligible for an orthotic at the time, nothing further was done, and the person's name was discarded.

If the person was eligible, U.S. Care Associates would arrange for the person to have a telemed consultation with a doctor working for Dial4MD. Those doctors were paid a set amount for each consultation they did; both Aaronson and Silva testified that a doctor who did not write many prescriptions from the telehealth consultations was eventually dropped, a practice that resulted in prescriptions being written for 90 to 95 percent of the patients consulted. After a prescription was written, U.S. Care Associates would do another same-or-similar check, then contact the patient to verify the prescription before assigning it to a DME company.

Silva explained that the patient was not offered a choice of provider. Instead, his company simply assigned prescriptions by dollar value to DMEs. A U.S. Care Associates employee would place the prescription in the portal of a DME. The information visible to the DME company included the patient's insurance information and prescription. If an order provided to a DME by U.S. Cares Associates was not filled, then a credit would be requested by and granted to the DME. Aaronson testified that he had discussed this process with Stroud. The government introduced email

between the Stroud/Griffin DMEs and U.S. Care Associates discussing requests for credits and showing credits given. Through Silva, the government also introduced emails discussing, in relation to an audit issue, the format and adaptability of prescriptions that had been provided to the DMEs. Silva testified that, if a prescription that the DMEs filled did not pass an audit, he was required to credit the DME for the amount.

William Novack, who owned True Alliance, testified that his company also worked with call centers to find people for whom prescriptions for durable medical equipment could be written. The call centers would identify eligible persons and then Novack's company would arrange for telehealth consultations. True Alliance paid the doctor for each time a prescription was written and Novack testified that the consultations almost always resulted in a prescription being written. True Alliance assigned prescriptions to one of its DME customers based on the size of the customer's order and its payment for the week. The assignment was made through a dropbox, and the beneficiaries were not offered a choice of which DME dropbox they ended up in.

The jury found all three accused guilty. The district court sentenced Stroud to 78-month imprisonment terms on counts 6 through 8, and 60-month imprisonment terms on counts 1 through 5.[2] Stroud appealed. He argued that the evidence was insufficient to prove the charged offenses and that the $6.6 million restitution ordered

[2] Following a guideline amendment that was made retroactive, the district court reduced those sentences to 63 months of imprisonment.

by the district court was invalid because no jury findings were made on the amount of restitution. Appendix A, 2025 WL at *6.

## REASONS FOR GRANTING THE WRIT

### THE COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER FEDERAL RESTITUTION IMPOSED UNDER 18 U.S.C. § 3663 AND 18 U.S.C. § 3663A CONSTITUTES A CRIMINAL PENALTY THAT CAN BE INCREASED ONLY UPON NOTICE IN THE INDICTMENT AND PROOF TO THE JURY.

The sixth amendment requires that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). The fifth amendment requires that "a fact that describe[s] punishment must be charged in the indictment" because doing so allows a defendant to "predict with certainty the judgment from the face of the felony indictment[.]" *Alleyne v. United States*, 570 U.S. 99, 109-10 (2013) (quoting *Apprendi*, 530 U.S. at 478).

Since *Apprendi*, the Court has explained the application of these constitutional requirements in a number of contexts. It has taught the proper way to determine the relevant maximum punishment. *Blakely v. Washington,* 542 U.S. 296 (2004). It has explained how these rules apply to enhanced statutory sentences, *Alleyne,* 570 U.S. at 107-16, to state and federal guideline-sentencing schemes that permit judges a fact-finding role, *Blakely,* 542 U.S. at 303-05, *United States v. Booker,* 543 U.S. 220,

233-44 (2005), *California v. Cunningham,* 549 U.S. 270, 288-94, and to criminal fines, *Southern Union Co. v. United States*, 567 U.S. 343, 360 (2012).

The Court has not yet considered whether and how the notice and jury-findings requirements of the fifth and sixth amendments apply to restitution imposed as part of a federal criminal sentence. *See Hester v. United States,* 586 U.S. 1104, 1105 (2019) (Gorsuch, J. and Sotomayor, J., dissenting from denial of certiorari). On the plain language of the relevant statutes, restitution appears to be a federal criminal penalty. *See* 18 U.S.C. § 3663(a)(1); 18 U.S.C. § 3663A(a)(1). The courts of appeals, however, have divided over the nature of a federal criminal restitution order, with some holding that restitution is akin to civil remedial action and others holding that it is a criminal penalty. *Compare United States v. Ziskind,* 471 F.3d 266, 270 (1st Cir. 2006), *United States v. Edwards,* 162 F.3d 87, 91 (3d Cir. 1998) and *United States v. Adams,* 363 F.3d 363, 365 (5th Cir. 2004) *with United States v. Thunderhawk*, 799 F.3d 1203, 1209 (8th Cir. 2015) and *United States v. Serawop,* 505 F.3d 1112, 1123 (10th Cir. 2007). Not surprisingly, those circuits that hold restitution is civil in nature have decided that the fifth and sixth amendments and the *Apprendi* rule do not apply to the restitution portion of a criminal sentence. *See, e.g., Thunderhawk,* 799 F.3d at 1209. Surprisingly, that same result has been reached by the circuits that do recognize restitution as a criminal penalty. These circuits believe either that *Apprendi* does not apply because the federal statutes do not set a maximum restitution amount, *see, e.g., United States v. Rosbottom,* 763 F.3d 408, 420 (5th Cir.

2014), or that they must wait for the Court to decide whether *Apprendi* extends to restitution, *see, e.g., United States v. Green*, 722 F.3d 1146, 1151 (9th Cir. 2013).

The Court should now decide whether federal criminal restitution orders are criminal penalties and should clarify what the constitution requires of the prosecutors that seek restitution orders and the sentencing courts that impose them. Resolving the nature of restitution orders and bringing constitutional clarity to restitution proceedings would have significant practical effects. The federal district courts impose restitution in thousands of federal criminal cases each year. S*ee* https://www.ussc.gov/about/annual-report-2024 (last visited May 30, 2025). The total amount defendants are ordered to pay each year runs to billions of dollars; in 2025, it topped 13 billion dollars, the "highest amount in more than two decades." *Id.* These restitution orders hamstring lives, create the risk of impoverishment or even imprisonment, and affect other constitutional rights, such as the right to counsel of choice, of those who are subject to them. *See, e.g., United States v. Scully,* 882 F.3d 549 (5th Cir. 2018). Review is therefore merited.

### A. Though the circuits are divided, the better view is that federal restitution is a criminal penalty.

Restitution is a sanction for a federal criminal offense created by statute. Title 18 U.S.C. § 3556 provides that a district 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." Both § 3663 and § 3663A state that restitution is imposed "in addition" to "any other penalty authorized by law[.]" 18 U.S.C. § 3663(a)(1); 18 U.S.C. § 3663(a)(1).

Statutory language must be given its plain, ordinary meaning if that meaning makes sense within the statutory context and structure. *See, e.g., Niz-Chavez v. Garland,* 593 U.S. 155, 160 (2021) ; *United States v. Gonzales,* 520 U.S. 1, 4-5 (1997). Here, the ordinary meanings of the terms in the restitution statutes indicate restitution is a criminal penalty. The statute directs that restitution be imposed "in addition to" any "other penalty" tells us that restitution is a criminal penalty, just as other sanctions, such as imprisonment or fines, are penalties. If restitution were not a criminal penalty, the phrases "in addition to" and "any other penalty" would have no meaning in the statute. Congress would have needed only to state that restitution should or could be imposed by a district court if there were any persons who were victims of an offense. *Cf. Corley v. United States,* 556 U.S. 303, 314-15 (2009) (language of statute as written must be given effect). The plain language of the statutes strongly suggests that restitution is a punishment.

This reading of the plain language of the statutes comports with what the Court has identified as the purposes of criminal prosecution and of sentencing restitution orders. The Court has stated that a purpose of restitution in a criminal case is "to mete out appropriate criminal punishment for [the defendant's criminal] conduct." *Pasquantino v. United States*, 544 U.S. 349, 365 (2005). Restitution, while it does also serve remedial and compensatory goals, arises from the "'prosecutorial powers of government'" and "serves punitive purposes[.]" *United States v. Paroline*,

572 U.S. 434, 456 (2014) (quoting *Browning-Ferris Industries of Vt., Inc v. Kelco Disposal, Inc,* 492 U.S. 257, 275 (1989)). Restitution, when imposed as part of a criminal sentence, furthers the "rehabilitative and deterrent goals" sentencing. *Kelly v. Robinson*, 479 U.S. 36, 52 & n.10 (1986). These teaching reinforce the bedrock point that criminal prosecutions are brought to hold persons to account and to impose criminal punishment, not to ensure monetary compensation for individuals. *Id.* at 52-53; *cf. United States v. Leahy*, 438 F.3d 328, 341-42 (3d Cir. 2006) (en banc) (goal of deterrence and punishment of criminal conduct means restitution is a criminal penalty) (McKee, J., concurring in part and dissenting in part).

The history of restitution also suggests that restitution is a criminal penalty that must be alleged in the indictment and proved to the jury. The *Apprendi* "rule is rooted in longstanding common-law practice," *Cunningham,* 549 U.S. at 281, and thus the Court has looked to historical practice to determine what facts are necessary to punishments. *Southern Union,* for example, looked to the historical practices around criminal fines. 567 U.S. at 354-56. Its examination revealed that, historically, facts concerning a possible fine were alleged in the charging instrument and submitted to juries. *Id.* Because the common-law rule was that facts "essential to the punishment" were the facts submitted to the jury, the Court concluded fines were a penalty and subject to the *Apprendi* rule. 567 U.S. at 356.

As Justices Gorsuch and Sotomayor recounted in their *Hester* dissent, restitution at common law had to be alleged and submitted to the jury. *Hester,* 586 U.S. at 1107. "[A]s long ago as the time of Henry VIII, an English statute entitling

victims to the restitution of stolen goods allowed courts to order the return only of those goods mentioned in the indictment and found stolen by a jury. 1 J. Chitty, Criminal Law 817–820 (2d ed. 1816); 1 M. Hale, Pleas of the Crown 545 (1736). In America, too, courts held that in prosecutions for larceny, the jury usually had to find the value of the stolen property before restitution to the victim could be ordered." *Hester,* 586 U.S. at 1107 (citing, *inter alia, Schoonover v. State*, 17 Ohio St. 294 (1867) and *Commonwealth v. Smith,* 1 Mass. 245 (1804)). That restitution was available only when the indictment listed it and the jury considered the justifications for it is strong evidence that restitution is punishment. If restitution were not "essential to punishment" there would have been no reason to submit restitution facts to the jury. *Cf. Southern Union,* 567 U.S. at 356; *Blakely,* 542 U.S. at 301-02.

The federal restitution statutes at § 3663 and § 3663A deviate substantially from historical practice. When imposing either discretionary restitution under § 3663 or mandatory restitution under § 3663A, the sentencing judge determines who has been injured and how much the defendant must pay the injured party. *See* 18 U.S.C. § 3663(a)(1)(B)(i)(I); (a)(2); 18 U.S.C. § § 3663A(a)(2), (b)(1). The district court makes these determinations after having the probation officer collect and obtain information and after hearing from the government and the defendant. 18 U.S.C. § 3664(a), (f).

If restitution is a criminal penalty these deviations raise significant constitutional questions. Clarifying the nature of restitution would aid the circuit courts and would have significant practical impact, both for the law and for individuals. *Cf. United States v. Carruth,* 418 F.3d 900, 905 (8th Cir. 2005) (observing

that some circuits have held that restitution is a punishment for purposes of the ex post facto clause, but not for the fifth and sixth amendments and this distinction has "no principled basis".)

### B. If Restitution Is Punishment, It Must be Alleged and Submitted to the Jury.

The *Apprendi* rule "reflects not just respect for longstanding precedent, but the need to give intelligible content to the right of a jury trial." *Blakely,* 542 U.S. at 305. "*Apprendi* carries out this design by ensuring that the judge's authority to sentence derives *wholly* from the jury's verdict." *Id.* (emphasis added). That means, *Blakely* explained, that for, for sixth amendment purposes, the statutory maximum is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Id.* at 303. The practical effects of this rule are significant: in many cases the maximum sentence is not the highest penalty set forth by statute, but rather "the maximum [the judge] may impose *without* any additional findings" by the jury. *Id.* at 303-04; *see also Booker,* 543 U.S. at 232 (same).

Greater punishment than that implicates the core concern of the sixth amendment by "remov[ing] from the [province of the] jury" the determination of facts that warrant punishment for a specific statutory offense. *Oregon v. Ice*, 555 U.S. 160, 170 (2009) (quoting *Apprendi,* 530 U.S. at 490) (internal quotation marks omitted). In finding that the facts supporting a criminal fine had to be found by the jury, the Court reemphasized that, "while judges may exercise discretion in sentencing, they

may not "inflic[t] punishment that the jury's verdict alone does not allow." *Southern Union Co,* 567 U.S. at 348 (quoting *Blakely,* 542 U.S. at 304).

A number of the courts of appeal appear to have disregarded this core precedent when they reasoned that restitution does not implicate the fifth and sixth amendments because neither § 3663 nor § 3663A set a maximum amount of restitution that a defendant can be ordered to pay. These rulings began after *Apprendi* and have continued after *Southern Union.* The Eight Circuit long ago declined to apply the *Apprendi* rules because "there isn't really a 'prescribed' maximum" for restitution. *United States v. Ross,* 279 F.3d 600, 609 (8th Cir. 2002). *Blakely* and *Southern Union* would seem to have called such reasoning into doubt, but several circuits after *Southern Union* have held that, because no statutory maximum is set in the restitution statutes, a sentencing court's imposition of restitution cannot exceed the statutory maximum. *See United States v. Bengis*, 783 F.3d 407, 412-13 (2d Cir. 2015) ("there is no range prescribed by statute and thus there can be no *Apprendi* violation."); *United States v. Day*, 700 F.3d 713, 731 (4th Cir. 2012) ("Critically, however, there is no prescribed statutory maximum in the restitution context; the amount of restitution that a court may order is instead indeterminate and varies based on the amount of damage and injury caused by the offense"); *United States v. Rosbottom*, 763 F.3d 408, 420 (5th Cir. 2014) (rejecting challenge to restitution based on *Southern Union*, "because no statutory maximum applies to restitution"); *United States v. Churn*, 800 F.3d 768, 782-83 (6th Cir. 2015) (rejecting argument). The First Circuit put it bluntly, stating that because there is no

maximum set out in the restitution statute, "a judge cannot find facts that would cause the amount to exceed a prescribed statutory maximum." *United States v. Vega-Martinez,* 949 F.3d 43 (1st Cir. 2020) (quoting *Bengis,* 783 F.3d at 412).

But as Justices Sotomayor and Gorsuch stated. in the ordinary case "the statutory maximum for restitution is usually *zero,* because a court can't award *any* restitution without finding additional facts about the victim's loss. And just as a jury must find any facts necessary to authorize a steeper prison sentence or fine, it would seem to follow that a jury must find any facts necessary to support a (nonzero) restitution order." *Hester,* 586 U.S. at 1107 (Gorsuch, J. and Sotomayor, J., dissenting from denial of certiorari) (emphases in original). This is because, under *Apprendi* and *Blakely,* the maximum restitution authorized by the jury verdict is nothing. No accusation of loss was considered by the jury and thus the jury made no findings regarding whether a loss occurred or who suffered that loss.

*Southern Union* helps make this clear. In that case, the Court cited *Commonwealth v. Smith*, 1 Mass. 245, 247 (1804), a larceny case in which the trial court was authorized to order a fine of three times the amount of money stolen. The court refused to allow a fine for stolen property that was not listed or valued in the indictment. *Southern Union* explained that "'an accusation which lacks any particular fact which the law makes essential to the punishment is . . . no accusation within the requirements of the common law, and it is no accusation in reason.'" 567 U.S. at 356 (citing *Blakely,* 542 U.S. at 301-02). It would seem that restitution, if it is a criminal penalty, must work the same way. If there is no allegation of loss made or

no victim named in the indictment, no restitution is authorized. The Court should grant certiorari to resolve this issue.

### C. This Case Provides a Good Vehicle for Resolving These Issues, Which Affect Thousands of Defendants Each Year and Can Also Affect the Right to Counsel.

The nature of federal criminal restitution orders and the constitutional strictures that may apply to them are questions that affect thousands of cases each year. If restitution facts need to be pleaded and proved by the government (or admitted by the defendant), then many judgments are ordered and many lives impacted each year in violation of the fifth and sixth amendments. In 2024 alone, federal courts imposed restitution penalties in 15 percent of all cases sentenced, for a total of more than $13 billion in restitution. S*ee* https://www.ussc.gov/about/annual-report-2024 (last visited May 30, 2025).

Restitution judgments have major effects on defendants. An order to pay hundreds, thousands, or, as in Stroud's case, millions of dollars creates a long-term obligation that may destroy a credit history, drive a family into poverty, or return a defendant to prison if restitution has been made a condition of his supervised release. All these punitive consequences arise without notice of them to the defendant in the indictment and without a jury finding that the defendant caused any particular loss.

The deprivation of these notice and jury rights matters. Given notice of damages he is claimed to have caused, a defendant can contest claims of purported victims and supposed losses, can confront witnesses, and can hold the government to

our system's most demanding standard of proof. Restitution determined by a judge at sentencing removes those protections, greatly increasing the chance that a defendant will be financially punished for a crime. This is because, compared to notice and trial, the procedures in the restitution statute and at sentencing offer reduced opportunities to challenge assertions effectively.

The restitution statutes contemplate that a probation officer will collect information about restitution amounts and victims to put in a presentence report, or in a separate restitution report. 18 U.S.C. § 3664(a). In a reality in which courts have been known to refer to "my probation officer," the loss of the protections of an independent jury are highlighted. A probation officer seen, correctly, as working for the court cannot be challenged in the same ways that an opposing advocate or witness may. Additionally, when the probation officer puts information in a presentence report, that information acquires in the Fifth Circuit a presumption of reliability, *see, e.g, United States v. Caldwell,* 448 F.3d 287, 291 (5th Cir. 2006) and, in essence, the defendant is required to prove that the victims or amounts named in the presentence report are not true.

Restitution can also affect other rights of a defendant. The sixth amendment permits a defendant "a fair opportunity to secure counsel of his own choice." *Powell v. Alabama,* 287 U.S. 45, 53 (1932); *see also Luis v. United States,* 578 U.S. 5, 11 (2016); *United States v. Gonzalez-Lopez,* 548 U.S. 140, 148 (2006). The right to counsel of choice is fundamental because of "the necessarily close working relationship between lawyer and client, the need for confidence, and the critical

importance of trust" in the attorney-client relationship. *Luis,* 578 U.S. at 11. Though a fundamental right, counsel of choice is not an unlimited right. A defendant may not use tainted funds to hire counsel of choice. *Cf. Caplin & Drysdale, Chartered v. United States,* 491 U.S. 617, 631 (1989).

The mere finding of guilt of a charged offense does not, however, make any specific property of the defendant, let alone all the property of the defendant, tainted. But the effect of a restitution finding by the district court creates such a taint and thus can destroy the right to counsel of choice. *See, e.g., United States v. Scully,* 882 F.3d 549, 551-52 (5th Cir. 2018) (statutory lien against *all* of defendant's property kept defendant from hiring his counsel of choice on appeal). Thus, restitution orders made without jury findings can thwart additional constitutional rights and affect the presentation of cases on appeal, issues that deserve the Court's attention.

These practical and legal effects on individuals, like the division in the circuits as to whether the *Apprendi* rule applies, merit review by this Court. Stroud's case presents the issue clearly and cleanly. The jury made no findings on the amount of restitution that might have been justified or loss that might have occurred. The issues raised are purely legal ones; that the issues were not raised in the district court does not affect their presentation here. Fifth Circuit precedent would have required the district court to summarily deny a request that the restitution be submitted to the jury, in the same way that precedent required the Fifth Circuit to summarily wave aside Stroud's challenge on appeal. *See* 2025 WL 1113223 at *6. The fifth and sixth amendment principles are set, only their application to the imposition of restitution

in criminal cases remains to be answered. The Court should grant certiorari in this case and provide that answer.

## Conclusion

FOR THESE REASONS, Petitioner asks that the Court grant a writ of certiorari and review the judgment of the court of appeals.

/s/ PHILIP J. LYNCH
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DATED: June 18, 2025.