

SUPREME COURT OF THE UNITED STATES

Term Commencing October 2017

ANTONIO FONTANA, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

File No. _____

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

Dated: December 22, 2017

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QUESTION PRESENTED

In a criminal case involving child pornography the district court must award restitution “in the amount of the victim’s losses.” 18 U.S.C. § 2259(b)(1). The statute directs the court to make the determination by a preponderance of the evidence. 18 U.S.C. 2259(b)(2) (referring to 18 U.S.C. 3664).

The question presented is:

Does a criminal defendant have the right under the Constitution to have the amount of restitution he owes determined by a jury beyond a reasonable doubt?

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PETITION FOR CERTIORARI

Petitioner, Antonio Fontana, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The order of the United States Court of Appeals for the Sixth Circuit was not published. It is found at *United States v. Fontana*, No. 17-1313, 2017 U.S. App. LEXIS 23102 (6th Cir., November 15, 2017) (Pet. App. 1a).

JURISDICTION

The Sixth Circuit's opinion was filed on November 15, 2017. There was no petition for re-hearing. This Court has jurisdiction of this petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment to the Constitution and the right to trial by jury found in the Sixth Amendment as they apply to 18 U.S.C. § 2259, the Mandatory Restitution for Sexual Exploitation of Children Act ("Act"), which grants district courts authority to award restitution to victims of offenses involving the sexual exploitation of children. See Pet. App. 5–6a.

The Act makes restitution mandatory and requires the defendant to pay the

victim “the full amount of the victim’s losses as determined by the court.” 18 U.S.C. § 2259(b).

Losses include “any costs incurred by the victim” including such things as psychiatric or psychological care, lost income, attorney fees, and “any other losses suffered by the victim as a proximate result of the offense.” 18 U.S.C. § 2259(b)(3)(A)–(F). The Act directs the district court to follow the procedures set out in the Mandatory Victims Restitution Act (“MVRA”), 18 U.S.C. §§ 3663(A) and 3664. 18 U.S.C. § 2259(b)(2).

The MVRA says that:

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.

18 U.S.C. § 3664(e).

STATEMENT OF THE CASE

In this case Fontana seeks review of a district court restitution award imposed following his guilty plea to various internet related criminal sexual activity charges.

Fontana used the internet to coerce teenage girls to engage in sexually explicit conduct that he filmed and transmitted to others. The government charged him with various crimes set out in a 12-count indictment (R.1, Indictment, Page ID

1–11). Fontana was arrested at his home in Ontario, Canada and extradited to the Eastern District of Michigan.

As part of a plea agreement he pled guilty to one count of coercion and enticement of a minor to engage in unlawful sexual activity, to one count of producing child pornography, and to two counts of using the internet to extort a thing of value from the girls by threatening to injure their reputations. (R. 37, Plea Agreement, Page ID # 86). In return for his guilty plea the government agreed to dismiss the remaining charges. *Id.*, Page ID # 96.

At the sentencing hearing the district court heard from one of the girls and her mother about the impact of the crimes on them. The district court sentenced Fontana to serve 360 months in prison and gave the government 30 days to file pleadings to support its request for restitution. (R. 54, Judgment, Page ID # 610–18), (R. 70, Sentencing Tr., Page ID # 807–812, 830).¹

The government filed an extensive pleading under seal in support of its

¹Fontana appealed from his sentence. The Sixth Circuit affirmed his sentence and this Court denied certiorari. *United States v. Fontana*, 869 F. 3d 464 (6th Cir. 2017) *cert. den.*, 2017 U.S. LEXIS 7029 (November 27, 2017). When the district court sentences a defendant and issues a judgment, and later orders restitution and amends the judgment, the defendant must take two appeals. A notice of appeal from the initial judgment does not spring forward to include an appeal from the restitution order. *Manrique v. United States*, 197 L. Ed. 2d 599 (2017).

request for restitution. The government asked the district court to order restitution of \$47,414.10 for claims related to one of the minor victims. These claims included a hospital bill for \$10,000 and costs for counseling after the minor attempted suicide. The government also sought restitution for future individual counseling; weekly for 52 weeks and then monthly for four years at \$160 per session. (R. ___, Sealed Pleading, pp. 5–6, Page ID # unavailable).

Fontana objected. He argued that a jury should determine restitution beyond a reasonable doubt because restitution is a criminal penalty and anything that increases a mandatory minimum penalty requires proof to a jury beyond a reasonable doubt. (R. 74, Def.’s Response to Request for Restitution, Page ID #864–865). He also objected to part of the claims because some of the bills were paid by the victim’s insurance provider and to the claim for future counseling because the need for the counseling was unsupported by the record. *Id.*, Page ID # 865–66.

The district court held a hearing. In addition to its sealed pleading the government relied on what happened at the sentencing hearing. (R. 89, Hearing Tr., Page ID #907).

At sentencing the minor victim and her mother said that Fontana had terrorized them. He had called the mother. He had yelled at the girl and threatened

to come see her. He sent pictures of her to everybody at her church. He called her school principal. She lost friends and had to change schools. She was afraid that people at her new school would find out what had happened. She attempted suicide in August 2015 and was seeing a therapist monthly. According to her mother, she suffered from post traumatic stress disorder. (R. 70, Sentencing Tr., Page ID # 807–812).

The district court granted the government's request for restitution. The court said:

The process does not call for a separate jury trial for restitution, not does the process require that the determination be made by a standard of beyond a reasonable doubt. In fact, the Court generally decides sentencing issues by a preponderance of evidence.

...

[T]he issues before the Court have to do with whether the victim suffered a loss, although I don't think that's contested, whether the amounts are appropriate, and whether there should be any offsets. And all those, the Court believes, under the procedures outlined in Section 3664, ought to be determined by a preponderance of evidence.

Id., Page ID # 918–19.

In response to the district court's question about the basis for the claim for four more years of counseling, the Assistant U.S. Attorney explained that he had estimated the amount:

I tried to take a minimal period where I thought therapy would continue. And my estimation was, given where she currently is in high school, which I believe is her senior year, I extended out four more years of therapy through her college years...

Id., Page ID # 921.

Based on its observation of the victim at sentencing and its awareness of other cases, the district court held that the request for individual counseling for four more years was reasonable and supported by the record. (R. 89, Restitution Hearing Tr., Page ID # 3).

Fontana appealed. The United States Court of Appeals for the Sixth Circuit rejected his constitutional argument, citing its previous repeated holdings that rejected similar arguments. *United States v. Fontana*, 2017 U.S. App. LEXIS 23102 at * 3.

The Court of Appeals agreed with Fontana that the claim for a \$10,000.00 bill from a hospital was incorrect because the hospital had reduced its bill by \$2,758.00 so that only \$7,240.00 was paid. *Id.* at * 4.

The Court of Appeals rejected his argument that the award for four years of future counseling was too speculative. *Id.*, at * 4–5.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition to clarify that restitution is a criminal punishment which gives the defendant the right under the Fifth and Sixth

Amendment to have a jury determine the facts that warrant an order of restitution beyond a reasonable doubt. The circuit courts currently disagree over the criminal or civil nature of restitution, and they do not require that a jury decide the amount of restitution.

It is important that the Court decide these questions because the lower courts frequently have to consider requests for restitution in criminal cases.

I. The Fifth and Sixth Amendment Require That Facts Which Increase the Penalty for a Crime Beyond the Statutory Maximum Must be Submitted to a Jury and Proved Beyond a Reasonable Doubt. The Court Should Grant the Petition to Make Clear That These Requirements Apply to Restitution.

In *Southern Union Co. v. United States*, 132 S.Ct. 2344 (2012), relying on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Court held that criminal fines are penalties, and that a jury must determine them beyond a reasonable doubt — not a judge by a preponderance of the evidence. The Court said that requiring juries to find the amount of a criminal fine beyond a reasonable doubt was necessary to preserve the jury’s role as a bulwark between the State and the accused on trial for an alleged offense. *Southern Union Co.*, 132 S. Ct. at 2350–51. The Court said, “In stating *Apprendi*’s rule, we have never distinguished one form of punishment from another. Instead, our decisions broadly prohibit judicial fact-finding that increases maximum criminal

‘[s]entences,’ ‘penalties,’ or ‘[p]unishments.’” *Id.* (citations omitted).

The court has repeatedly held a person accused of a crime has the right to a trial by jury under the Sixth Amendment to the Constitution and that this right combined with the Due Process Clause of the Fifth Amendment requires that each element of a crime be proved to the jury beyond a reasonable doubt. *Alleyne v. United States*, 33 S. Ct. 2151, 2156 (2013).

In *Apprendi*, relying on the same constitutional provisions, the Court said that any fact that increased the prescribed statutory maximum sentence is an element of the offense that must be found by the jury. *Apprendi v. New Jersey*, 530 U.S. at 476, 483, n. 10. In *Alleyne*, the Court held that not only did this right to jury trial apply where the statutory maximum would be increased, it also applied where the fact finding would result in a change in the statutory mandatory minimum sentence. *Alleyne v. United States*, 133 S. Ct. at 163–64. The Court has applied *Apprendi*’s rule to plea bargains, sentencing guidelines, criminal fines, mandatory minimum sentences, and capital punishment. *Hurst v. Florida*, 136 S. Ct. 616, 621 (2016).

There is no real way to distinguish between criminal fines and criminal restitution. In *Southern Union* the Court noted that many statutes historically combined criminal fines and criminal restitution. *Southern Union*, 132 S.Ct. at

2354.

The jury must make the restitution decision because the statute requires that restitution be for the full amount of the loss. It is mandatory. It contrasts with the federal sentencing guidelines, which do not violate the right to a jury trial because they are advisory. *United States v. Booker*, 543 U.S. 220 (2005).

Some lower courts have held that the right to a jury trial protected by *Apprendi* and *Southern Union* only applies to statutes that spell out a statutory maximum penalty. *United States v. Green*, 722 F.3d 1146 (9th Cir. 2013); *United States v. Sosebee*, 419 F.3d 451, 454 (6th Cir. 2005). But this Court held in *Alleyne* that facts that increase a mandatory floor invoke the *Apprendi* rule as much as those that increase a mandatory ceiling.

Also, the concept of statutory maximums as applied to the Act is not helpful because the Act provides that the maximum and minimum amounts of restitution are the same — namely, the amount of the victim’s loss. 18 U.S.C. § 2559(b)(4). But to award restitution, someone has to find facts. These facts necessarily increase the minimum award of zero and result in a mandatory award. If the facts are not pled in the indictment (as in this case) the law says that the judge must determine them. This conflicts with *Apprendi*’s constitutional requirement that the jury find facts to support the penalty. *Apprendi*’s rule should apply to the

determination of restitution. It denies reality to say that facts beyond those pled in the indictment that are required to impose restitution are not really additional facts. Judge William M. Acker, Jr., *The Mandatory Victims Restitution Act is Unconstitutional. Will the Courts Say So After Southern Union v. United States?*, 64 Ala. L. Rev. 803, 826–28 (2013). See James Barta, *Guarding the Rights of the Accused and Accuser: The Jury's Role in Awarding Criminal Restitution Under the Sixth Amendment*, Note, 51 Am. Crim. L. Rev. 463, 478–80 (2014) (detailing the historical practice that required juries to determine the loss amount).

Some circuit courts say mandatory restitution escapes *Apprendi*'s rule because the Act requires restitution in the amount of the victim's loss, so by definition the award can't exceed the amount authorized by law. This is circular reasoning and also denies what *Apprendi* held. Acker, Jr., *supra*, 64 Ala. L. Rev. at 824–27. After *Apprendi*, “the ‘statutory maximum’ for *Apprendi* purposes 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.*” *Blakely v. Washington*, 124 S. Ct. 2531, 2537 (2004)(emphasis in original), *United States v. Booker*, 543 U.S. at 224.

Alleyne's holding that facts needed to establish a mandatory minimum penalty must be found by a jury beyond a reasonable doubt applies just as well to fact-finding for restitution. “When a finding of fact alters the legally prescribed

punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.” *Alleyne*, 133 S. Ct. at 2162.

Here, once the district court found that there was a victim who suffered losses, then facts that increased the penalty, i.e., the amount of mandatory restitution, had to be found by the jury beyond a reasonable doubt and presented in the indictment for the jury to consider or admitted by the defendant. Presentment in the indictment “enables the defendant to predict the legally applicable penalty from the face of the indictment.” *Id.* at 2161.

Due process in a criminal case demands more than guesstimating by a district judge or an assistant prosecutor.

The following colloquy from oral argument in *Paroline v. United States*, highlights the due-process problem created by judicial fact-finding using the preponderance-of-the-evidence standard for restitution:

JUSTICE SCALIA: And that’s wonderful, and you know, I – I want to go along with you. This is a bad guy and – and he ought to be punished and he ought to give restitution, but there is such a thing as due process of law. And what you’re saying is – I have no idea how much he’s going to be required to turn over, whether it’s going to be – what was it in this case, \$3 million?

MR. DREEBEN: That’s the amount of money that Amy has asked for.

JUSTICE SCALIA: I have no idea what he’s going to be socked with, and that’s not what we usually do with criminal statutes.

MR. DREEBEN: Well, in criminal –

JUSTICE SCALIA: You just can't say leave it up to the district judge, you know, and they all come out different ways, but who cares, it's – you know, so long as it's within some –

MR. DREEBEN: Well, Justice Scalia –

JUSTICE SCALIA: – some reasonable amount.

MR. DREEBEN: Post Booker –

JUSTICE SCALIA: That's just not the way we do law.

MR. DREEBEN: – post Booker, that is what happens in criminal sentencing. District judges have an enormous amount of discretion about how much imprisonment time and fine time to use to apply to a defendant. And there is appellate review that helps establish some norms that can look to sentencing guidelines as starting points. But in criminal sentencing, imprecision and estimation is the order of the day. And when you're dealing with –

JUSTICE SCALIA: That's because the statute says so. It says you get from, you know, 10 to 20 years, okay? But the statute here doesn't say, you know, you'll – you'll get between this and this, whatever the district judge likes. It doesn't say that. It says you – you should compensate the victim for what – for what you've caused her.

MR. DREEBEN: But there are two background principles that I think reinforce that a reasonable estimation is better than all or none. The first background principle is that in criminal restitution, exactitude is not required. Reasonable estimates are the order of the day. Courts have recognized that. And it's reinforced here by the fact that this restitution provision is kind of a crime tort hybrid. It's criminal sentencing, but it's enacted against the background of

compensatory tort law. And in compensatory tort law, reasonable estimates have long been accepted.

In the Burlington Northern case that I referred to earlier, the district court made an effort to do some calculations and then at the end, he applied a 50 percent fudge factor for estimations that reflected possible calculation errors.

JUSTICE SCALIA: We have a fudge factor here? Can a – can a district judge use what he calls a fudge factor? This is a criminal statute. It's not a tort case.

MR. DREEBEN: It is a criminal provision.

JUSTICE SCALIA: We're going to be liable for a fudge factor.

Paroline v. United States, No. 12-8561, 134 S. Ct. 1710 (2014), Oral Argument Tr., pp. 29–31 (Jan. 22, 2014).

Here, the district court ordered Fontana to pay restitution based in part on an estimate about the need for and cost of future counseling. There was no testimony from a doctor, only an observation of the distress of the victim and her mother at the sentencing hearing. The decision was made by the judge, not by the jury.

A criminal case is not a civil case. The Court should grant certiorari to make clear that the government's idea that "reasonable estimates are the order of the day" has no place in criminal restitution.

II. Granting Certiorari Would Resolve the Disagreement Among the Circuit Courts About Whether Restitution is a Criminal Penalty.

After *Southern Union Co.*, the Seventh Circuit held that a restitution order is not a criminal penalty, and therefore the Sixth Amendment protections of *Apprendi* do not apply. *United States v. Wolfe*, 701 F.3d 1206, 1217 (7th Cir. 2012). But this is the minority view. *Id.*

Before *Southern Union*, most of the circuit courts held that restitution orders are criminal penalties because they are imposed in criminal proceedings, are not controlled by the victim, and follow a criminal conviction. *See United States v. Bearden*, 274 F.3d 1031 (6th Cir. 2001); Acker Jr., *supra*, at 823 n. 137.

This Court has suggested that the purpose of awarding restitution under the MVRA is “to mete out appropriate criminal punishment for that conduct.” *Pasquantino v. United States*, 544 U.S. 349, 365 (2005). *See Kelly v. Robinson*, 479 U.S. 36, 52–53 (1986) (concluding that restitution is a criminal penalty that cannot be discharged in bankruptcy). To resolve the split among the circuits, the Court should grant certiorari on this issue.

III. Supreme Court Review Would Provide Guidance to the Lower Courts.

The lower courts frequently must consider restitution in child pornography cases.

Because it is a recurring issue, the Court should grant certiorari to guide the lower courts.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Dated: December 22, 2017

Respectfully submitted,



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APPENDIX

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-1313

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 15, 2017
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
ANTONIO P. FONTANA,	)	THE EASTERN DISTRICT OF
	)	MICHIGAN
Defendant-Appellant.	)	

ORDER

Before: ROGERS, SUTTON, and BUSH, Circuit Judges.

Antonio P. Fontana, a federal prisoner represented by counsel, requests vacatur of a portion of his restitution order. The parties have waived oral argument, and upon examination, this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2016, Fontana pled guilty to coercing and enticing a minor to engage in illegal sexual activity, in violation of 18 U.S.C. § 2422(b) (Count 1); producing child pornography, in violation of 18 U.S.C. § 2251(a) (Count 3); and two counts of using the internet to extort a person, in violation of 18 U.S.C. § 875(d) (Counts 8 and 9). His convictions stemmed from sex crimes involving two female victims, both minors. The district court sentenced Fontana to a total term of thirty years in prison, to be followed by ten years of supervised release.

At sentencing, the district court stated that the government could file a motion for restitution within thirty days. The government moved for restitution as to one of the victims, seeking \$47,414.10. At issue here are two different amounts contributing to that total: (1) a

\$10,000 bill from Havenwyck Hospital for expenses incurred from the victim's suicide attempt following her sexual abuse; and (2) \$7,680 for projected individual counseling for four years with one session per month.

Fontana responded to the restitution motion, arguing that (1) he had a constitutional right to have his amount of restitution determined beyond a reasonable doubt; (2) he should not have to pay any amount that was already paid by the victim's insurance company; and (3) the government's projections of future medical expenses that the victim might incur were too speculative and attenuated to support an award of restitution. At the restitution hearing, Fontana reiterated these arguments, but the district court rejected them and ordered the full amount of restitution sought—\$47,414.10. Fontana now appeals, arguing that (1) under the Sixth Amendment, a jury was required to determine the amount of restitution he owed beyond a reasonable doubt, and (2) the court abused its discretion in awarding \$10,000 for the Havenwyck Hospital bill and \$7,680 for four years of future counseling.

The district court imposed restitution under the Mandatory Restitution for Sexual Exploitation of Children Act, 18 U.S.C. § 2259, which requires restitution for violations of 18 U.S.C. § 2251. *See* 18 U.S.C. § 2259(a), (b)(4)(A); *United States v. Evers*, 669 F.3d 645, 655 (6th Cir. 2012). The actual issuance of restitution in this case, however, is carried out under the terms of 18 U.S.C. § 3664, the Mandatory Victims Restitution Act. *See* 18 U.S.C. § 2259(b)(2).

Fontana's first issue, that a jury was required to determine his restitution amount beyond a reasonable doubt, raises a constitutional challenge that we review *de novo*. *United States v. Churn*, 800 F.3d 768, 781 (6th Cir. 2015). Fontana cites *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), *Alleyne v. United States*, 133 S. Ct. 2151, 2155 (2013), and *Southern Union Co. v. United States*, 567 U.S. 343, 346 (2012), in support of his position. However, as the government points out, and as Fontana himself appears to acknowledge, we have *repeatedly* rejected reliance on these cases in support of arguments like Fontana's. *See United States v. Sawyer*, 825 F.3d 287, 297 (6th Cir.), *cert. denied*, 137 S. Ct. 386 (2016) (rejecting defendant's argument that *Southern Union* mandates that restitution claims be sent to a jury); *Churn*, 800 F.3d at 782 (adhering to principle that *Apprendi* does not affect restitution orders and concluding that

Southern Union does change that principle); *United States v. Johnson*, 583 F. App'x 503, 510 (6th Cir. 2014) (noting that *Alleyne* does not apply to restitution cases). Accordingly, we reject Fontana's constitutional challenge to his restitution.

Fontana next argues that the district court erred in awarding a portion of his restitution. Specifically, he argues that (1) the \$10,000 bill from Havenwyck Hospital was actually reduced by \$2,758 so that only \$7,242 was paid, and (2) the \$7,680 awarded for future individual counseling was too speculative to award restitution. He did not raise his first issue below, but regardless because the government has not asked for plain error review, we will apply the typical standard of review. *See United States v. Williams*, 641 F.3d 758, 763 (6th Cir. 2011).

"With regard to the amount of loss for purposes of restitution, we review the district court's calculation for abuse of discretion only." *United States v. Sosebee*, 419 F.3d 451, 455 (6th Cir. 2005). Under 18 U.S.C. § 2259(b)(1), a defendant must "pay the victim . . . the full amount of the victim's losses."

Fontana first argues that the victim did not suffer \$10,000 in losses from her treatment at Havenwyck Hospital because the bill contained an adjustment of \$2,758. We agree that the district court abused its discretion by awarding the full \$10,000 instead of the \$7,242 actually paid. The court can only award restitution for "costs incurred." 18 U.S.C. § 2259(b)(1). Because the hospital bill was adjusted by \$2,758, neither the victim nor her insurance company paid the full \$10,000.

Fontana next argues that the restitution award for four years of future counseling—namely \$7,680—was too speculative. We disagree.

At sentencing, the district court relied on testimony from the victim and her mother to determine that "the request for individual counseling for four additional years is a reasonable request and adequately supported by the record in the case." The victim and her mother testified about the impact of the defendant's conduct on her. The district court observed the victim's own reaction and her "behavioral traits" and found it consistent with a need for additional counseling for four additional years. It then calculated restitution based on the price of current counseling sessions multiplied by the number of monthly sessions over a four-year period. District courts

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have considerable discretion in fashioning restitution orders. *Paroline v. United States*, 134 S. Ct. 1710, 1728 (2014). The district court did not abuse its discretion here.

Accordingly, we **VACATE** the restitution order and **REMAND** the case for further proceedings consistent with this order.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read 'Deborah S. Hunt', is written over a horizontal line.

Deborah S. Hunt, Clerk

“No person shall. . . be deprived of life, liberty, or property, without due process of law. . . .”

U.S. Const. amend. V.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .”

U.S. Const. amend. VI.

§ 2259. Mandatory restitution

(a) In General. –Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and Nature of Order. –

(1) Directions. –The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement. –An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition. –For purposes of this subsection, the term “full amount of the victim's losses” includes any costs incurred by the victim for–

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, as well as other costs incurred; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order Mandatory. –(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of –

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

18 U.S.C. § 2259