

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-482

HOLSEY ELLINGBURG, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

MOTION OF THE RESPONDENT FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for divided argument in this case. The United States requests that petitioner and the United States each be allotted 15 minutes of argument time and that the appointed amicus curiae be allotted 30 minutes of argument time. Counsel for petitioner consents to this motion.

This case presents the question whether restitution under the Mandatory Victims Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227, is a criminal punishment for purposes of the Ex Post Facto Clause. The court of appeals

held that such restitution is a civil penalty and therefore not subject to the Ex Post Facto Clause. The United States agrees with petitioner that the Ex Post Facto Clause applies to restitution imposed under the MVRA. The United States has accordingly filed a brief as respondent supporting petitioner.

The United States has a substantial interest in the Court's resolution of the question presented. The United States is a necessary participant in proceedings to impose restitution under the MVRA and bears principal responsibility for collecting unpaid restitution. See 18 U.S.C. 3664(e); see also 18 U.S.C. 3612(c). The government is accordingly a party to this case, and every federal prosecution in which the question presented arises. The government also has a strong interest in the Ex Post Facto Clause's application to federal sentencing more generally. Division of argument will therefore materially assist the Court in its consideration of this case.

The government has participated in oral argument in prior federal criminal cases in which the Court appointed an amicus to defend the judgment below. See, e.g., Hewitt v. United States, 145 S. Ct. 2165 (2025); Erlinger v. United States, 602 U.S. 821 (2024); Jones v. Hendrix, 599 U.S. 465 (2023); Holguin-Hernandez v. United States, 589 U.S. 169 (2020); Beckles v. United States, 580 U.S. 256 (2017); Welch v. United States, 578 U.S. 120 (2016). The government respectfully submits that the same course is warranted here.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

AUGUST 2025