No. 25-6010

IN THE SUPREME COURT OF THE UNITED STATES

KARL PATRICK KLUGE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Amendment requires that the amount of restitution ordered under 18 U.S.C. 2259 be charged in the indictment, submitted to the jury, and proved beyond a reasonable doubt.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (M.D. Fla.):

United States v. Kluge, No. 22-cr-23 (May 12, 2023) (denying petitioner's motion to empanel jury to determine amount of restitution)

United States v. Kluge, No. 22-cr-23 (May 24, 2023) (amended criminal judgment)

United States Court of Appeals (11th Cir.):

United States v. Kluge, No. 23-10697 (July 31, 2025)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 147 F.4th 1291. The opinion and order of the district court (Pet. App. 23a-29a) is available at 2023 WL 3434035.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 2025. The petition for a writ of certiorari was filed on October 29, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Middle District of Florida, petitioner was convicted on one count of possessing and accessing with intent to view child pornography involving depiction of a prepubescent minor, in violation of 18 U.S.C. 2252(a)(4)(B) and (b)(2) (2018). Pet. App. 2a-3a, 30a. The district court sentenced petitioner to 97 months of imprisonment, to be followed by 15 years of supervised release. Id. at 31a-32a. The court also ordered petitioner to pay restitution in the amount of $39,000. Id. at 35a. The court of appeals affirmed. Id. at 1a-22a.

1. In May 2021, the Federal Bureau of Investigation (FBI) determined that a computer belonging to petitioner was sharing child pornography via a peer-to-peer network. Pet. App. 2a. Pursuant to a search warrant, FBI agents seized a thumb drive, a laptop computer, and three cell phones from petitioner's residence. Ibid. The same day that agents executed the search warrant, petitioner voluntarily gave a statement to the agents in which he admitted both viewing and sharing child pornography. Presentence Investigation Report (PSR) ¶ 10.

A subsequent forensic examination of the seized devices revealed that petitioner had used file-sharing software to download and share over 300 images and 150 videos depicting minors engaged in sexually explicit conduct. Pet. App. 2a. Some of the

material depicted bondage and the sexual abuse of toddlers and very young children. PSR ¶¶ 7, 11, 23, 25.

2. A grand jury in the Middle District of Florida returned an indictment charging petitioner with possessing and accessing with intent to view child pornography involving a prepubescent minor, in violation of 18 U.S.C. 2252(a)(4)(B) and (b)(2) (2018). Indictment 1-2. Petitioner waived his right to a jury trial and proceeded to a bench trial with stipulated facts. Pet. App. 2a-3a. The district court found him guilty. Id. at 3a. At sentencing, the court sentenced petitioner to 97 months of imprisonment, to be followed by 15 years of supervised release, but deferred its ruling on restitution. Sent. Tr. 22-27; see Pet. App. 31a-32a.

Petitioner moved to empanel a jury to determine the amount of restitution, arguing that such a jury determination was constitutionally required. D. Ct. Doc. 84, at 2-11 (May 8, 2023). In the alternative, petitioner sought an order limiting restitution to the amount authorized by the facts found by the district court at the bench trial, which petitioner contended was $0. Id. at 11. The court denied petitioner's requests. Pet. App. 23a-29a.

At the restitution hearing, the government sought $3000 in restitution for each of 13 of petitioner's victims who had requested restitution. D. Ct. Doc. 86, at 3-4 (May 11, 2023); 5/15/23 Hr'g Tr. 4-7. Under 18 U.S.C. 2259(b)(2)(B) (2018), "[i]f

the defendant was convicted of trafficking in child pornography, the court shall order restitution * * * in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than $3,000." The provision further specifies, however, that "[a] victim's total aggregate recovery pursuant to this section shall not exceed the full amount of the victim's demonstrated losses"; once "the victim has received restitution" of that amount, the restitution obligation will be "terminated." 18 U.S.C. 2259(b)(2)(C) (2018).

Here, the government provided psychological reports, victim impact statements, and cost estimates detailing information such as the cost of the victims' psychological counseling, lost income, and expenses attributable to their victimization. See D. Ct. Doc. 86, at 3; 5/15/23 Hr'g Tr. 4-7. Petitioner did not contest any of that evidence. See 5/15/23 Hr'g Tr. 4-7. The district court ordered petitioner to pay $3000 in restitution to each of the 13 victims, for a total of $39000. Id. at 8; Pet. App. 35a-37a.

3. The court of appeals affirmed. Pet. App. 1a-22a. The court found, inter alia, that the Fifth and Sixth Amendments had not required convening a jury for petitioner's restitution hearing. Id. at 16a-19a. The court recognized that in Apprendi v. New Jersey, 530 U.S. 466 (2000), this Court held 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."

Pet. App. 16a (quoting 530 U.S. at 490). The court also recognized that Alleyne v. United States, 570 U.S. 99 (2013), "extended that rule" by requiring that all facts that increase a mandatory minimum sentence be submitted to the jury as well. Pet. App. 16a. But the court noted that under circuit precedent, "Apprendi and its progeny" do not apply to restitution orders. Id. at 16a-17a (citing Dohrmann v. United States, 442 F.3d 1279, 1281 (11th Cir. 2006), and United States v. Gatlin, 90 F.4th 1050, 1074 (11th Cir. 2024)).

ARGUMENT

Petitioner renews (Pet. 11-26) his contention that the Sixth Amendment guarantees a right to jury fact-finding on criminal restitution. For the reasons explained in the government's brief in opposition to the petition for a writ of certiorari in Stroud v. United States, cert. denied, No. 24-7486 (Jan. 12, 2026), that contention lacks merit and does not warrant this Court's review. See Br. in Opp. at 5-13, Stroud, supra (No. 24-7486).[1] This Court has repeatedly denied petitions for writs of certiorari presenting similar questions[2] -- including, earlier this Term, a petition

[1] A copy of the government's brief in opposition in that case is being served on petitioner.

[2] See, e.g., Stroud v. United States, No. 24-7486, 2026 WL 79762 (2026); Rimlawi v. United States, 145 S. Ct. 518 (2025) (Nos. 24-23, 24-25, 24-5032); Gendreau v. United States, 144 S. Ct. 2693 (2024) (No. 23-6966); Finnell v. United States, 144 S. Ct. 2529 (2024) (No. 23-5835); Arnett v. Kansas, 142 S. Ct. 2868 (2022) (No. 21-1126); Flynn v. United States, 141 S. Ct. 2853 (2021) (No. 20-1129); Gilbertson v. United States, 141 S. Ct. 2793 (2021) (No. 20-860); George v. United States, 141 S. Ct. 605 (2020) (No. 20-

presenting a nearly identical claim, see Thomas v. United States, 145 S. Ct. 1066 (2025) (No. 24-5366) -- and it should follow the same course here.

Similar to the Mandatory Victims Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227, the statutory framework that governed the restitution award in Stroud, supra, the restitution provision at issue in this case requires the court to determine "the full amount of the victim's losses," 18 U.S.C. 2259(b)(2)(A) (2018) (capitalization omitted), and "order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than $3,000," 18 U.S.C. 2259(b)(2)(B) (2018), but ultimately ensures that the defendant pays restitution to a victim only until the victim has recovered the "full amount of the victim's demonstrated losses," 18 U.S.C. 2259(b)(2)(C) (2018). Like the MVRA, Section 2259 establishes an indeterminate

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5669); Budagova v. United States, 589 U.S. 931 (2019) (No. 18-8938); Ovsepian v. United States, 589 U.S. 929 (2019) (No. 18-7262); Hester v. United States, 586 U.S. 1104 (2019) (No. 17-9082); Petras v. United States, 586 U.S. 944 (2018) (No. 17-8462); Fontana v. United States, 583 U.S. 1134 (2018) (No. 17-7300); Alvarez v. United States, 580 U.S. 1223 (2017) (No. 16-8060); Patel v. United States, 580 U.S. 883 (2016) (No. 16-5129); Santos v. United States, 578 U.S. 935 (2016) (No. 15-8471); Roemmele v. United States, 577 U.S. 904 (2015) (No. 15-5507); Gomes v. United States, 577 U.S. 852 (2015) (No. 14-10204); Printz v. United States, 577 U.S. 845 (2015) (No. 14-10068); Johnson v. United States, 576 U.S. 1035 (2015) (No. 14-1006); Basile v. United States, 575 U.S. 904 (2015) (No. 14-6980).

framework, with no fixed maximum. See 18 U.S.C. 2259(b)(2)(B) (2018).

As the court of appeals recognized (Pet. App. 16a), this Court held in Apprendi v. New Jersey, 530 U.S. 466 (2000), 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." Pet. App. 16a (quoting 530 U.S. at 490). But a "judge cannot exceed his constitutional authority by imposing a punishment beyond the statutory maximum if there is no statutory maximum." United States v. Fruchter, 411 F.3d 377, 383 (2d. Cir.) (addressing forfeiture), cert. denied, 546 U.S. 1076 (2005). Instead, when a sentencing court determines the amount of the victim's losses under an indeterminate framework, it "is merely giving definite shape to the restitution penalty [that is] born out of the conviction," not "imposing a punishment beyond that authorized by jury-found or admitted facts." United States v. Leahy, 438 F.3d 328, 337 (3d Cir.) (en banc), cert. denied, 549 U.S. 1071 (2006).

Contrary to petitioner's assertions (Pet. 12-14), nothing in this Court's decision in Southern Union Co. v. United States, 567 U.S. 343, 353 (2012), or in the history of the Sixth Amendment, undermines the uniform line of precedent holding that restitution is not subject to Apprendi. Br. in Opp. At 10-13, Stroud, supra (No. 24-7486). Indeed, petitioner himself acknowledges (Pet. 18) that "the appellate courts that have considered whether the Sixth

Amendment's jury trial right applies to restitution have answered 'no.'" See Br. in Opp. at 8-9, Stroud, supra (No. 24-7486) (citing decisions from eleven circuits).

Petitioner also invokes (Pet. 21-23) this Court's decision in Alleyne v. United States, 570 U.S. 99 (2013), which concluded that Apprendi applies to facts that increase a statutory minimum sentence, because such facts "alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment," id. at 108 (plurality opinion). But Alleyne, unlike this case, involved a fixed statutory minimum. Id. at 103-104.

The $3000 minimum restitution amount in Section 2259(b)(2)(B) does not establish a true statutory minimum. Instead, the very next subparagraph specifies that a victim's recovery is in fact tied to the "amount of the victim's losses," with any restitution obligation ending once she has received that amount from one or more defendants. 18 U.S.C. 2259(b)(2)(C) (2018). As every court of appeals to have considered the question has recognized (in unpublished decisions), Alleyne does not undermine the uniform line of precedent holding that criminal restitution is not subject to Apprendi.[3]

[3] See, e.g., United States v. Tartaglione, 815 Fed. Appx. 648, 652-653 (3d Cir. 2020); United States v. Basile, 570 Fed. Appx. 252, 258 (3d Cir. 2014), cert. denied, 575 U.S. 904 (2015); United States v. Odak, 802 Fed. Appx. 153, 154 (5th Cir. 2020) (per curiam); United States v. Agbebiyi, 575 Fed. Appx. 624, 632-633 (6th Cir. 2014); United States v. Holmich, 563 Fed. Appx. 483, 484-485 (7th Cir. 2014), cert. denied, 574 U.S. 1121 (2015); United

Contrary to petitioner's suggestion (Pet. 22), the decision below is not in meaningful tension with the Fifth Circuit's decision in United States v. Caudillo, 110 F.4th 808 (2024). In Caudillo, the court simply left for "another day" whether Alleyne applies to a $3000 restitution award under Section 2259(b)(2)(B), because the defendant there had "explicitly waived any Sixth Amendment challenge to the district court's restitution award." Id. at 812. And the Fifth Circuit's brief discussion of the issue did not account for the full Section 2259(b)(2) scheme, under which restitution amounts may be lower than $3000.

Petitioner's suggestion (Pet. 27-28) that the resolution of this case could be affected by Ellingburg v. United States, 146 S. Ct. 564 (2026) (No. 24-482), is likewise misplaced. In that case, the Court held that restitution under the MVRA is criminal punishment for purposes of the Ex Post Facto Clause. But the court below had already reached that same conclusion, and did not find that it affected its analysis of the Apprendi/Alleyne claim here. See Pet. App. 19a & n.3 (citing United States v. Siegel, 153 F.3d 1256, 1260 (11th Cir. 1998)). Nor should it affect the resolution of that claim. See U.S. Br. at 26 n.3, Ellingburg, supra (No. 24-482).

States v. Ovsepian, 674 Fed. Appx. 712, 714 (9th Cir. 2017); United States v. Kieffer, 596 Fed. Appx. 653, 664 (10th Cir. 2014), cert. denied, 576 U.S. 1012 (2015); United States v. Finnell, No. 22-13892, 2023 WL 6577444, at *4 (11th Cir. Oct. 10, 2023) (per curiam), cert. denied, 144 S. Ct. 2529 (2023).

At all events, this case would be a poor vehicle in which to address the question presented because petitioner "waived his right to a jury trial." Pet. App. 2a; see D. Ct. Doc. 57 (Nov. 1, 2022). Although petitioner later sought to empanel a jury for the restitution hearing, see D. Ct. Doc. 84, he identifies no authority that would allow him to selectively waive his Sixth Amendment right so that a judge determines some factual issues and a jury determines others. And in any event, the government presented evidence to the district court -- which was uncontested by petitioner -- that each victim had suffered harm in an amount of at least $3000, rendering any error harmless. D. Ct. Doc. 86, at 3-4; 5/15/23 Hr'g Tr. 4-7.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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