

IN THE SUPREME COURT OF THE UNITED STATES

---

GAVIN MICHAEL HAROLD, 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

---

D. JOHN SAUER  
Solicitor General  
Counsel of Record

A. TYSEN DUVA  
Assistant Attorney General

W. CONNOR WINN  
Attorney

Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

---

---

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.

PARTIES TO THE PROCEEDING

Petitioner, Gavin Harold, was the only appellant in the court of appeals. Respondent, the United States of America, was the only appellee in the court of appeals.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Harold, 23-cr-54 (July 30, 2024)

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

United States v. Harold, 24-10825 (Sept. 17, 2025)

United States v. Harold, 24-12506 (Sept. 17, 2025)

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 25-6386

GAVIN MICHAEL HAROLD, 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

---

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A10) is available at 2025 WL 2659685.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 2025. The petition for a writ of certiorari was filed on December 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Middle District of Florida, petitioner was convicted on

one count of possessing child pornography, in violation of 18 U.S.C. 2252(a)(4)(B) and (b)(2). Am. Judgment 1. The district court sentenced petitioner to 78 months of imprisonment, to be followed by a life term of supervised release. Id. at 2-3. The court also ordered petitioner to pay restitution in the amount of \$37,000. Id. 6-7; see 18 U.S.C. 2259(b)(2)(B). The court of appeals affirmed. Pet. App. A1-A10.

1. In December 2022, an undercover task force officer with the Federal Bureau of Investigation (FBI) used a peer-to-peer file sharing program to locate IP addresses sharing child pornography over the Internet. Presentence Investigation Report (PSR) ¶ 7. After connecting to one such address, the officer received over 500 files containing child pornography. Ibid. The IP address was linked to petitioner's residence, and the FBI then executed a search warrant. PSR ¶¶ 8-9. Petitioner, home at the time of the search, admitted after receiving Miranda warnings that he had been downloading child pornography. PSR ¶ 9. The FBI later found such content on electronic devices that it seized from his home. PSR ¶ 10.

A grand jury in the Middle District of Florida returned an indictment charging petitioner with possessing child pornography, in violation of 18 U.S.C. 2252(a)(4)(B) and (b)(2), Indictment 1, and he pleaded guilty without a plea agreement, Judgment 1. The district court sentenced petitioner to 78 months of imprisonment

and a life term of supervised release, but deferred a decision on restitution pending a hearing. Judgment 2-3, 6.

Under 18 U.S.C. 2259(b)(2)(B), “[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).

Petitioner moved to empanel a jury to determine the amount of restitution, arguing that such a jury determination was constitutionally required. D. Ct. Doc. 99 (June 3, 2024). The court denied petitioner’s motion. 23-cr-54 Docket entry No. 101 (June 18, 2024). After the hearing, the court ordered restitution under Section 2259(b)(2)(B) to eight of petitioner’s victims, some of whom received \$3000 and some of whom received higher amounts based on uncontested accounts of their losses. Am. Judgment 6-7; id. at 1 n.1.

2. The court of appeals affirmed. Pet. App. A1-A10. Relying on its recent decision in United States v. Kluge, 147 F.4th 1291 (11th Cir. 2025), petition for cert. pending, No. 25-6010 (filed Oct. 29, 2025), the court rejected petitioner’s claim of an

entitlement to a jury determination of the restitution amount.  
Pet. App. A3.

#### ARGUMENT

Petitioner renews (Pet. 8, 21-28) his contention that the Fifth and Sixth Amendments guarantee a right to jury fact-finding on criminal restitution. For the reasons explained in the government's brief in opposition to the pending petition for a writ of certiorari in Kluge v. United States, No. 23-6010 (Mar. 19, 2026), a copy of which is being served on petitioner, the court of appeals correctly rejected that contention, and the question presented does not warrant further review. Br. in Opp. at 6-10, Kluge, supra (No. 25-6010).

This case would be a particularly unsuitable vehicle for further review because petitioner was not prejudiced by any error. Although petitioner suggests (Pet. 26) that a jury might have concluded that the individuals to whom restitution were awarded were not in fact his victims, he reserved the right to make such an argument but did not advance any form of that argument to the district court, D. Ct. Doc. 99 at 2 n.1 (June 3, 2024); D. Ct. Doc. 115, at 6, 8, 18. And the restitution amounts for each victim were either uncontested or (for one victim) resolved in his favor. Compare Am. Judgment 6-7, with D. Ct. Doc. 115, at 6, 8, 18 (Sept. 17, 2024), and D. Ct. Docs. 107-1 to 107-9 (July 19, 2024).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER  
Solicitor General

A. TYSEN DUVA  
Assistant Attorney General

W. CONNOR WINN  
Attorney

May 2026