No.

In the Supreme Court of the United States

CALEB ROBERT WIEN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 2259(b)(2) of Title 18 requires a district court to order a defendant to pay at least $3,000 in restitution to certain victims of child pornography offenses once it finds specific facts about a victim's losses and a defendant's causal role in them. This Court has held that a possession or distribution defendant may be ordered to pay restitution only for the losses his own offense proximately caused.

The questions presented are:

1. Whether the Sixth Amendment requires a jury, rather than a judge, to find beyond a reasonable doubt the facts that trigger § 2259(b)(2)'s mandatory minimum restitution award.
2. Whether § 2259 requires a sentencing court to first disaggregate the losses caused by a victim's initial abuse from losses caused by the later possession or distribution of the victim's images before determining the portion of the latter losses proximately caused by the defendant.

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition follows:

- United States of America
- Caleb Robert Wien

RELATED PROCEEDINGS

United States District Court (M.D. Fla.)
United States v. *Wien*, No. 2:23-cr-00109
(Feb. 27, 2025)

United States Court of Appeals (11th Cir.)
United States v. Wien, No. 25-10685
(May 11, 2026)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Caleb Robert Wien respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The opinion of the court of appeals (App., *infra*, 1a–4a) is not reported, but is available at 2026 WL 1286442 and is reproduced at Appendix A.

JURISDICTION

The United States District Court for the Middle District of Florida had jurisdiction over this criminal case under 18 U.S.C. § 3231. Under 28 U.S.C. § 1291, the United States Court of Appeals for the Eleventh Circuit had jurisdiction to review the final decision of the district court.

The Eleventh Circuit issued its decision on May 11, 2026. On August 5, 2026, Justice Thomas extended the time within which to file a petition for a writ of certiorari to September 8, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VI

18 U.S.C. § 2259

These provisions are reproduced at Appendix B.

INTRODUCTION

This case presents two related but distinct questions about how district courts calculate criminal restitution under 18 U.S.C. § 2259—one constitutional, one statutory—each of which has splintered the lower courts for over a decade without any consistent rationale emerging.

First, the Sixth Amendment guarantees that a jury, not a judge, must find any fact that increases a mandatory minimum sentence. Section 2259(b)(2) requires a $3,000 mandatory minimum restitution order once a court finds specific facts about a victim's losses and the defendant's causal role in them. The Eleventh Circuit held below that a judge—not a jury—may find those facts, and need only do so by a preponderance of the evidence. That holding rests on the conclusion that restitution falls outside the Sixth Amendment altogether, a conclusion the courts of appeals have reached through at least four mutually incompatible rationales, and that several jurists on this Court, on the courts of appeals, and on state appellate courts have identified as irreconcilable with this Court's precedents. This Court has never held that restitution escapes the Sixth Amendment.

Second, this Court has held that a possession or distribution defendant may be ordered to pay restitution only for the portion of a victim's losses that his own offense proximately caused—not for losses caused by the original abuser or by other, unrelated offenders. That rule necessarily requires a sentencing court to disaggregate the losses attributable to the initial abuse from the losses attributable to later possession and distribution, before apportioning the latter among possessors. The Eleventh Circuit and several others have instead collapsed that first step into a single discretionary factor relevant only to the second—whether the defendant had any hand in producing the images—eliminating disaggregation as an independent requirement in every ordinary possession case. Two other circuits, by contrast, enforce disaggregation as a distinct, mandatory step.

Both questions were squarely raised below, fully preserved, and decided against Mr. Wien on facts that present no vehicle problems. Both have divided the federal courts of appeals and state appellate courts for years, producing a host of shifting and incompatible rationales that even courts adopting them have acknowledged can't be squared with this Court's precedents. And both involve a compulsory financial penalty imposed on an indigent defendant without regard to his ability to pay, enforceable through continued supervision and reincarceration. This case is an ideal vehicle to resolve both questions cleanly and definitively. The petition for a writ of certiorari should be granted.

STATEMENT OF THE CASE

I. District court proceedings

Mr. Wien was indicted on, and pleaded guilty to, one count of possession of prepubescent child pornography, in violation of 18 U.S.C. §§ 2252(a)(4)(B) and (b)(2).[1] Docs. 20, 43, 44, 46. The district court imposed a 72-month term of imprisonment, followed by 20 years of supervised release. Doc. 63 at 2–3. The district court deferred with respect to restitution and

[1] Docket entries in the district court are cited as "Doc. ___." Docket entries in the circuit court are cited as "Cir. Doc. ___."

scheduled a hearing for a later date. *Id.* at 6.

Before the restitution hearing, Mr. Wien moved the district court to "either empanel a jury to determine the amount of restitution or limit the restitution to the amount authorized by the facts admitted by Mr. Wien at his guilty plea—here, zero." Doc. 78 at 1. He explained that *Apprendi*[2] and *Alleyne*[3] required a jury to determine each restitution-related fact beyond a reasonable doubt, noting that the restitution statute, 18 U.S.C. § 2259(b)(2), established a mandatory minimum of $3,000 per victim. *Id.* at 2–12.

Mr. Wien also preserved the argument that the factfinder must disaggregate a victim's losses from the initial abuse. *Id.* at 12–14.

The government opposed Mr. Wien's motion and stated its intention to seek $25,000 in restitution, representing $10,000 each for two victims and $5,000 for a third victim. Doc. 87 at 2–3.

At the restitution hearing, the district court rejected both of Mr. Wien's arguments—that a jury should be empaneled to determine restitution and that the victim's losses must be disaggregated from the initial abuse. Doc. 99 at 4:2–20, 13:11–14:15. The district court then ordered restitution in the amounts requested. *Id.* at 14:20–15:9. An amended judgment followed. Doc. 93.

II. Appellate proceedings

On appeal, Mr. Wien renewed his challenge to the restitution order, arguing that it violated his

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[2] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

[3] *Alleyne v. United States*, 570 U.S. 99 (2013).

constitutional rights under *Apprendi* and *Alleyne*, and that the district court failed to disaggregate the losses caused by the victims' initial abusers. *See* Cir. Doc. 17 at 7–15. The Eleventh Circuit rejected Mr. Wien's arguments.

As to his jury argument, the Eleventh Circuit explained that in a recent case, it had "rejected the appellant's argument that a restitution award under § 2259 required a jury, rather than a judge, to make the essential findings required to trigger the mandatory minimum of $3,000." App. 3a (citing *United States v. Kluge*, 147 F.4th 1291, 1301–02 (11th Cir. 2025), *cert. denied*, ___ S. Ct. ___, 2026 WL 1640876 (2026)).

Then, as to the disaggregation argument, the Eleventh Circuit explained its precedent holding "that a district court is not required to 'determine, calculate, or disaggregate' the victim's losses caused by the original creator or other distributors before determining the losses caused by the defendant." App. 4a (quoting *United States v. Rothenberg*, 923 F.3d 1309, 1333 (11th Cir. 2019)).

Based on these cases, the Eleventh Circuit affirmed the district court's restitution order. *Id.*

REASONS FOR GRANTING THE PETITION

I. The decision below contravenes this Court's Sixth Amendment precedent.

A. Under the Sixth Amendment, facts triggering a mandatory minimum restitution order must be proved to a jury beyond a reasonable doubt.

In *Apprendi v. New Jersey*, this Court held that, except for the fact of a prior conviction, the Sixth Amendment requires that any fact that would increase the punishment for a crime beyond the prescribed statutory maximum must be presented to the factfinder and proven beyond a reasonable doubt. 530 U.S. 466, 490 (2000). "[T]he '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*, 542 U.S. 296, 303 (2004).

The Court later extended *Apprendi*'s rule to mandatory minimums. *Alleyne v. United States*, 570 U.S. 99, 103, 116 (2013). The Court clarified that although *Apprendi* had been limited to facts increasing the statutory maximum, *Apprendi*'s underlying principle carries the same weight when it comes to facts that elevate the mandatory minimum. *See id.* at 111–12. *Alleyne*'s reasoning was based on the recognition that a fact triggering a mandatory minimum alters the prescribed sentencing range for a criminal defendant. *Id.* at 112. Because the legally prescribed range represents the penalty associated with the offense, it follows that a fact affecting either end of the range results in a new penalty and constitutes an essential element of the offense. *See id.*

In the years since, this Court "has not hesitated to strike down" sentencing procedures "that fail to respect the jury's supervisory function." *United States v. Haymond*, 588 U.S. 634, 644 (2019) (plurality opinion). Just two years ago, for example, the Court held that to impose an enhanced statutory range under the Armed Career Criminal Act, 18 U.S.C. § 924(e), the statute's "different occasions" requirement must be proved to a unanimous jury beyond a reasonable doubt. *Erlinger v. United States*, 602 U.S. 821, 835

(2024).

The Court has also explained that this bedrock constitutional rule is not limited to facts that increase terms of imprisonment. Rather, it applies "broadly" to "prohibit judicial factfinding that increases maximum criminal sentences, penalties, or punishments." *S. Union Co. v. United States*, 567 U.S. 343, 350 (2012) (cleaned up). Indeed, this Court "ha[s] never distinguished one form of punishment from another" for purposes of *Apprendi*. *Id.* Thus, in *Southern Union*, the Court held that a jury must find the facts necessary to impose criminal fines. *Id.*

Like fines, restitution ordered in criminal cases is a monetary criminal penalty whose "purpose" is "to mete out appropriate criminal punishment." *Pasquantino v. United States*, 544 U.S. 349, 365 (2005); *see also Ellingburg v. United States*, 607 U.S. 163, 167 (2026) ("[R]estitution is criminal punishment."). And like the fine in *Southern Union*, § 2259 restitution orders require additional factfinding. *See* 18 U.S.C. § 2259(b)(2) (requiring the factfinder to determine "the full amount of the victim's losses," a restitution amount "that reflects the defendant's relative role in the causal process that underlies the victim's losses," and "the amount of restitution the victim has been paid in other cases for the same losses"). Because those facts increase the statutory minimum (and maximum) penalty a defendant faces, the Sixth Amendment demands that the government prove them to a jury.

That result is not only compelled by the Court's precedent, it's also consistent with the "historical role of the jury at common law." *S. Union*, 567 U.S. at 353 (quoting *Oregon v. Ice*, 555 U.S. 160, 170 (2009)). A review of the historical record supports that facts affecting the statutory maximum or minimum amount of restitution must be admitted by the defendant or submitted to a jury and proven beyond a reasonable doubt. *See generally* James Barta, *Guarding the Rights of the Accused and Accuser: The Jury's Role in Awarding Criminal Restitution Under the Sixth Amendment*, 51 Am. Crim. L. Rev. 463, 471–76 (2014) (discussing how restitution was awarded at common law).

Indeed, "as 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." *Hester v. United States*, 586 U.S. 1104, 1107 (2019) (Gorsuch, J., dissenting from denial of certiorari); *see also S. Union*, 567 U.S. at 354 (discussing authority suggesting English juries had to find value of property taken to authorize pecuniary punishment). "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 (Gorsuch, J., dissenting from denial of certiorari). As two Justices of this Court explained, "it's hard to see why the right to a jury trial should mean less to the people today than it did to those at the time of the Sixth . . . Amendment's adoption." *Id.*

In short, a historical understanding of the Sixth Amendment confirms what this Court's precedent compels: a jury must find the facts necessary to order restitution. This result is especially clear as applied to an order under § 2259(b)(2), where the factfinding triggers a $3,000 mandatory minimum restitution order.

B. The Eleventh Circuit's decision that a jury need not find the facts necessary to trigger § 2259(b)(2)'s mandatory minimum is wrong.

In holding that *Apprendi* and *Alleyne* don't apply to mandatory minimum restitution orders under § 2259(b)(2), the Eleventh Circuit relies on the faulty premise that restitution is not a criminal penalty and therefore does not implicate the right to a jury trial. *See Kluge*, 147 F.4th at 1302.

That is wrong. The jury trial right applies "[i]n all criminal prosecutions." U.S. Const., amend. VI. And restitution is "imposed by the Government 'at the culmination of a criminal proceeding and requires conviction of an underlying' crime." *Paroline v. United States*, 572 U.S. 434, 456 (2014) (quoting *United States v. Bajakajian*, 524 U.S. 321, 328 (1998)); *see Manrique v. United States*, 581 U.S. 116, 118 (2017) ("Sentencing courts are required to impose restitution as part of the sentence for specified crimes.").

This Court has repeatedly recognized that restitution is a criminal penalty with "punitive purposes." *Paroline*, 572 U.S. at 456; *see also Ellingburg*, 607 U.S. at 167 ("[T]he MVRA makes abundantly clear that restitution is criminal punishment."); *Pasquantino*, 544 U.S. at 365 ("The purpose of awarding restitution" is "to mete out appropriate criminal punishment for that conduct."). As this Court observed, restitution is an "effective rehabilitative penalty" that has "a more precise deterrent effect than a traditional fine." *Kelly v. Robinson*, 479 U.S. 36, 49 n.10 (1986).

The statutory scheme confirms that the restitution ordered in Mr. Wien's case is a criminal penalty. Section 2259 classifies restitution as a "penalty" for the "offense" that is triggered when a defendant is "convicted" of certain crimes. 18 U.S.C. §§ 2259(a), (b)(2); *see Hester*, 586 U.S. at 1107 (Gorsuch, J., dissenting from denial of certiorari) ("Federal statues, too, describe restitution as a penalty' imposed on the defendant as part of his criminal sentence . . . ."). That § 2259(b)(2) imposes a $3,000 minimum—regardless of the victim's actual losses or the defendant's causal contribution to them—reflects the statute's penal goals. And because paying restitution is both a mandatory condition of supervised release, 18 U.S.C. § 3583(d), and enforceable like a fine, 18 U.S.C. § 3664(m)(1)(A)(i), restitution can be enforced through reimprisonment. Thus, the statutory scheme lays bare that restitution is part of the criminal penalty.

C. The question presented is important and won't resolve itself without this Court's intervention.

1. Restitution is an important part of criminal cases.

"Restitution plays an increasing role in federal criminal sentencing today." *Hester*, 586 U.S. at 1105 (Gorsuch, J., dissenting from denial of certiorari). Before enactment of the MVRA in 1996, "restitution orders were comparatively rare." *Id.* But "between 1996 and 2016, the amount of unpaid federal criminal restitution rose from less than $6 billion to more than $110 billion." *Id.* And "from 2014 to 2016 alone, federal courts sentenced 33,158 defendants to pay $33.9 billion in restitution." *Id.*

Criminal restitution continues to shape our justice system. In 2025, federal courts ordered almost 8,000 defendants to pay $25.5 billion in restitution, with a mean award of $3.2 million. U.S. Sentencing Comm'n, 2025 Sourcebook of Federal Sentencing Statistics tbl. 17.

And when defendants don't comply with their restitution orders—a common occurrence, *see* Wayne LaFave, *Criminal Procedure* § 26.6(c) (2024)—they face severe consequences. "Failure or inability to pay restitution can result in suspension of the right to vote, continued court supervision, or even reincarceration." *Hester*, 586 U.S. at 1106 (Gorsuch, J., dissenting from denial of certiorari); *see* 18 U.S.C. § 3664(m)(1)(A)(i) (providing that restitution may be enforced in the same manner as fines). The consequences are particularly troubling for indigent defendants, as restitution is imposed without regard for the individual's ability to pay. *See, e.g.*, 18 U.S.C. § 2259(b)(4)(B)(i).

These penalties are not just onerous; under the Sixth Amendment, they are unconstitutional. As this Court recently explained, it's not "too much to ask the government to prove its case . . . with reliable evidence" before exposing criminal defendants to enhanced punishments, especially considering the "practical reality" that defendants face as a result. *Erlinger*, 602 U.S. at 835 n.1 (cleaned up).

2. Federal and state courts are making a mess of this issue.

a. Federal circuit courts haven't applied the jury right to restitution for at least four incompatible reasons.

Rarely does a single, recurring question of federal constitutional law produce as much open disagreement among the lower courts as this one.

Five circuits hold that *Apprendi* does not apply to restitution solely because restitution statutes impose no fixed statutory maximum, reasoning that a fact cannot "increase" a penalty beyond a ceiling that does not exist. *See United States v. Vega-Martinez*, 949 F.3d 43, 55 (1st Cir. 2020); *United States v. Bengis*, 783 F.3d 407, 413 (2d Cir. 2015); *United States v. Day*, 700 F.3d 713, 732 (4th Cir. 2012); *United States v. Rosbottom*, 763 F.3d 408, 420 (5th Cir. 2014); *United States v. Sawyer*, 825 F.3d 287, 297 (6th Cir. 2016).

Two other circuits reject application of *Apprendi* on the entirely different ground that restitution is not "punishment" at all, but a civil-style compensatory remedy lying outside the Sixth Amendment's reach. *See United States v. Wolfe*, 701 F.3d 1206, 1217 (7th Cir. 2012); *United States v. Thunderhawk*, 799 F.3d 1203, 1209 (8th Cir. 2015); *but cf. United States v. Ross*, 279 F.3d 600, 609 (8th Cir. 2002) (same circuit previously holding restitution is punishment, but that no statutory maximum exists to trigger *Apprendi*).

Three more circuits combine both rationales, holding that restitution is not punishment and, independently, that no statutory maximum exists even if it were. *See United States v. Green*, 722 F.3d 1146, 1149–50 (9th Cir. 2013);[4] *United States v. Burns*, 800 F.3d 1258, 1261–62 (10th Cir. 2015); *Kluge*, 147 F.4th at 1302–03 (11th Cir.).

And the en banc Third Circuit, over a five-judge dissent, staked out a fourth position entirely:

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[4] The Ninth Circuit recognized that its restitution precedent is not "well-harmonized" with *Southern Union*, and that the panel might have decided the question differently had *Southern Union* preceded it. *Green*, 722 F.3d at 1151.

restitution is punishment, and there is no statutory maximum, but *Apprendi* still does not apply because a restitution order is not a severe enough increase in punishment to warrant a jury. *See United States v. Leahy*, 438 F.3d 328, 335–38 (3d Cir. 2006) (en banc).

Four incompatible rationales—(1) no statutory maximum; (2) not punishment; (3) both; and (4) not enough punishment—cannot all be correct, and most of them cannot survive *Southern Union* at all. This isn't a case where the circuits have reached the same result on the same reasoning and merely phrased it differently. It's a case where the circuits agree on almost nothing except the bottom line, each charting its own path through, and in several cases around, this Court's precedent.

b. State courts are also flailing about.

State courts of last resort confronting the same question have proffered still more rationales, several of which track none of the four federal approaches. The Washington Supreme Court held *Apprendi* inapplicable purely for want of a statutory maximum. *State v. Kinneman*, 119 P.3d 350, 355 (Wash. 2005). The Indiana Supreme Court held that restitution orders aren't within "the scope of the Framers' conception of the Sixth Amendment" because "'historically judges have imposed restitution.'" *Prickett v. State*, 856 N.E.2d 1203, 1210 (Ind. 2006) (quoting *United States v. Visinaiz*, 344 F. Supp. 2d 1310, 1323 (D. Utah 2004)) (cleaned up). The Montana Supreme Court held that restitution is categorically not punishment. *State v. Field*, 116 P.3d 813, 817 (Mont. 2005) (quoting *United States v. George*, 403 F.3d 470, 473 (7th Cir. 2005)). New York's highest court combined the no-maximum rationale with a further holding that restitution is not analogous to an *Apprendi*-style sentencing enhancement at all. *People v. Horne*, 767 N.E.2d 132, 139 (N.Y. 2002). Nebraska's Supreme Court accepted that restitution is punishment yet still found no *Apprendi* violation for lack of a statutory ceiling. *State v. Clapper*, 732 N.W.2d 657, 662–63 (Neb. 2007). Massachusetts's high court held restitution is neither punishment nor capped by a statutory maximum. *Commonwealth v. Denehy*, 2 N.E.3d 161, 174–75 (Mass. 2014). The Minnesota Supreme Court held that it need not consider Sixth Amendment arguments "[g]iven the modest amount of mandatory restitution imposed by the Legislature for each victim" and restitution's compensatory nature. *State v. Rey*, 905 N.W.2d 490, 496–97 (Minn. 2018). And the California Supreme Court has staked out a narrower position of its own, suggesting *Apprendi* may apply, but only to the discrete factual finding of whether "compelling and extraordinary reasons" justify withholding restitution altogether. *People v. Wall*, 404 P.3d 1209, 1228 (Cal. 2017). Finally, satisfied to drop any pretense of analysis, the Kansas Supreme Court didn't bother to take a specific position and instead just took a head count. *See State v. Arnett*, 496 P.3d 928, 933 (Kan. 2021).

Intermediate state appellate courts have adopted various of these arguments. *See Groom v. State*, 551 P.3d 567, 574 (Alaska Ct. App. 2024) (recognizing restitution as criminal punishment, but adopting the no-statutory-maximum argument); *State v. Leon*, 381 P.3d 286, 289–90 (Ariz. Ct. App. 2016) (restitution isn't punishment, and even if it were, there's no statutory maximum); *People v. Smith*, 181 P.3d 324, 327 (Colo. App. 2007) (no statutory maximum); State v. Foumai, No. CAAP-17-0000093, 2018 WL 495679, at

*4 (Haw. Ct. App. 2018) (unpublished) (no statutory maximum); *People v. Foster*, 901 N.W.2d 127, 141 (Mich. Ct. App. 2017) (restitution isn't punishment); *State v. Martinez*, 920 A.2d 715, 722 (N.J. Super. Ct. App. Div. 2007) (*Apprendi* doesn't apply because restitution is capped at the victim's total loss); *State v. Deslaurier*, 371 P.3d 505, 509 (Or. Ct. App. 2016) (*Apprendi* and *Southern Union* don't apply because restitution is capped at the victim's total loss); *Commonwealth v. Getz*, No. 2153 EDA 2011, 2013 WL 11254781, at *8 (Pa. Super. Ct. 2013) (unpublished) (no statutory maximum); *State v. White*, No. W2003-00751-CCA-R3-CD, 2004 WL 2326708, at *24 (Tenn. Crim. App. 2004) (unpublished) (no statutory maximum).

Notably, however, at least one state supreme court has broken from the majority position and held that a state restitution scheme *does* violate the jury-trial right. *See State v. Davison*, 973 N.W.2d 276, 279 (Iowa 2022). That case involved an Iowa statute requiring a restitution award of at least $150,000 if the offender was "convicted of a felony in which the act or acts committed by the offender caused the death of another person." *Id.* at 278 (quoting Iowa Code § 910.3B(1)). The Iowa Supreme Court "conclude[d] that the punitive and determinate characteristics of the $150,000 restitution bring it within the rule of *Apprendi* and its offspring." *Id.* at 286. Because the statute didn't require a jury to find that the defendant caused another's death, the court held that it violated the Sixth Amendment. *See id.* at 278.

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After years of percolation, the federal circuit courts and most state appellate courts have held tight to their precedent, despite various Justices of this Court, federal circuit judges, and state appellate jurists highlighting inconsistencies between circuit precedent and this Court's Sixth Amendment jurisprudence. *See, e.g.*, *Rimlawi v. United States*, 145 S. Ct. 518, 518–19 (2025) (Gorsuch, J., dissenting from denial of certiorari); *Hester*, 586 U.S. at 1105–07 (Gorsuch, J., joined by Sotomayor, J., dissenting from denial of certiorari); *Leahy*, 438 F.3d at 348 (McKee, J., dissenting) ("A finding of loss necessarily is a condition precedent to an order of restitution, and . . . it is the judge who makes the finding. As I have explained, the imposition of this additional criminal penalty based on a fact not found by a jury violates the Sixth Amendment."); *United States v. Carruth*, 418 F.3d 900, 906 (8th Cir. 2005) (Bye, J., dissenting) ("Once we recognize restitution as being a 'criminal penalty' the proverbial *Apprendi* dominoes begin to fall."); *Groom*, 551 P.3d at 579–80 (Wollenberg, J., dissenting) ("I fail to see how the Court's ruling today that restitution can be found by a judge, instead of a jury, can be logically reconciled with *Apprendi* and its progeny."); *Arnett*, 496 P.3d at 943 (Standridge, J., dissenting) ("When viewed collectively, these cases may appear to provide overwhelming support for finding that *Apprendi* does not apply to restitution orders. However, when read individually, these cases fail to provide a consistent or clear rationale for why *Apprendi* should not apply to restitution.").

In short, the courts are stuck. As the Ninth Circuit explained: "Our precedents are clear that *Apprendi* doesn't apply to restitution, but that doesn't mean our caselaw's well-harmonized with *Southern Union*. Had *Southern Union* come down before our cases, those cases might have come out differently. Nonetheless, our panel can't base its decision on what the law might have been." *Green*, 722 F.3d at 1146. This dynamic—lower courts reaching a common result through a proliferation of incompatible or outdated rationales, each borrowing legitimacy from the others' head count rather than from independent reasoning—is precisely the kind of pattern this Court's review exists to correct. This important constitutional question deserves more than silence from this Court.

II. The court below failed to disaggregate the losses as this Court's precedents require.

A. *Paroline* means what it says: disaggregate first, apportion second.

Section 2259 instructs a sentencing court to order restitution for "the full amount of the victim's losses." 18 U.S.C. § 2259(b)(1). Read in isolation, that language might suggest every possessor of a victim's images owes her everything she has ever lost. But *Paroline* said no. Restitution under § 2259 is available "only to the extent the defendant's offense proximately caused a victim's losses"—not the losses caused by whoever molested them, whoever filmed it, or the thousands of other people who later traded the images online. *Paroline*, 572 U.S. at 448.

That holding isn't a suggestion. It's a limit, and limits require a method for enforcing them. *Paroline* supplied one: first isolate the losses caused by the original abuser, and only then determine what portion of what remains—the losses attributable to distribution and possession—this defendant proximately caused. *See id.* at 449 (acknowledging that "[c]omplications may arise in disaggregating losses sustained as a result of the initial physical abuse," without suggesting the task can be skipped). The Ninth and Tenth Circuits take this instruction seriously. *See United States v. Galan*, 804 F.3d 1287, 1291 (9th Cir. 2015) (vacating award where the district court didn't separate losses caused by the original abuse from losses caused by the later distribution and possession); *United States v. Dunn*, 777 F.3d 1171, 1181–82 (10th Cir. 2015) (same). The court below doesn't.

B. The Eleventh Circuit substitutes a factor for a requirement.

In 2019, the Eleventh Circuit announced that disaggregation had already been accomplished—not through any actual accounting of the victim's losses, but, rather, through one of the discretionary factors *Paroline* listed for apportioning a defendant's share of the losses already attributed to possession offenses: whether the defendant had a hand in producing the images in the first place. *United States v. Rothenberg*, 923 F.3d 1309, 1333–34 (11th Cir. 2019); *see Paroline*, 572 U.S. at 460. In the decision below, the Eleventh Circuit dutifully followed its *Rothenberg* precedent and declined to require disaggregation. App. 4a.

That won't do. Whether a defendant helped produce the images may matter when a court later divides trafficking losses among the many people who possessed them. It says nothing about how much of the victim's harm came from the original abuse rather than from later trafficking. Those are different questions, answered by different evidence, at different stages of the analysis. Collapsing them into one inquiry doesn't streamline *Paroline*—it erases half of it.

And the stakes of that shortcut are not academic. In *Paroline* itself, the victim had already completed therapy and was (in her therapist's words) "back to normal" before she learned her images were circulating online. 572 U.S. at 440. That timeline made disaggregation more straightforward. Nothing in this record affords the same comfort. Where a victim's losses from distribution and possession are bound up with losses from the initial abuse, disaggregation isn't a technicality to be waved away. It's the only thing standing between a possession defendant and a restitution order that punishes him for someone else's crime.

C. The Circuits are divided on the disaggregation question.

There isn't a dispute over how generously to weigh one factor among several. Instead, there is a circuit split over whether *Paroline*'s first step exists at all. The Ninth and Tenth Circuits say it does, and they enforce it. *Galan*, 804 F.3d at 1291; *Dunn*, 777 F.3d at 1181–82. The Third, Eighth, Eleventh, and D.C. Circuits say that the disaggregation step can be dispensed with entirely based on consideration of the factor of whether the defendant had any connection to the initial production of the images. *See United States v. Sanders*, 834 F. App'x 742, 744–45 (3d Cir. 2020); *United States v. Bordman*, 895 F.3d 1048, 1059 (8th Cir. 2018); *Rothenberg*, 923 F.3d at 1333 (11th Cir.); *United States v. Monzel*, 930 F.3d 470, 483 (D.C. Cir. 2019). In every ordinary possession case, that factor changes nothing, decides nothing, and disaggregates nothing.

Twelve years of percolation is long enough. This Court granted certiorari in *Paroline* to resolve exactly this kind of confusion over how restitution should be calculated in these cases, but the confusion has returned. Only this Court can resolve it. It should do so now.

III. This case is an excellent vehicle.

This case is an ideal vehicle to correct course and uphold both the right to a jury trial and *Paroline*'s disaggregation requirement. These issues are well preserved and have a material impact for Mr. Wien, an indigent defendant now facing a significant criminal penalty based solely on judicial factfinding without disaggregating harms from the victims' initial abuse.

Mr. Wien raised both arguments in a written motion to the district court. The district court rejected his requests and based the $25,000 restitution order on its own factfinding without disaggregating. He renewed both issues before the Eleventh Circuit, where the panel rejected them. There are no preservation issues.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

CHARLES L. PRITCHARD JR.
Federal Public Defender
MATTHEW D. CAVENDER
Research and Writing Attorney

September 3, 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-12004

UNITED STATES OF AMERICA

v.

CALEB ROBERT WIEN

Filed: May 11, 2026

On Appeal from the United States District Court
for the Middle District of Florida
(D.C. No. 2:23-cr-00109)
District Judge: Honorable Sheri Polster Chappell

OPINION OF THE COURT

Before: NEWSOM, BRANCH, AND WILSON, *Circuit Judges*.

PER CURIAM.

Defendant-Appellant Caleb Wien appeals the district court's order of a total of $25,000 in restitution to three victims of child pornography, imposed as part of his sentence for possessing and accessing with intent to view prepubescent child pornography. He first argues that he had a constitutional right under the Fifth and Sixth Amendments to have a jury make fact findings regarding the amount of restitution he owed. Second, he argues that the district court was required to disaggregate victims' total losses from the losses caused by their initial abusers when calculating restitution. After careful review, we affirm.

I.

We review "the legality of a restitution order" de novo. *United States v. Kluge*, 147 F.4th 1291, 1296 (11th Cir. 2025).

Defendants convicted of sexual exploitation of children offenses are required to pay restitution. 18 U.S.C. § 2259(a), (b)(4)(A). For convictions of trafficking in child pornography, "[t]he court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim," and then "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." *Id.* § 2259(b)(2)(A)–(B). "A victim's total aggregate recovery . . . shall not exceed the full amount of the victim's demonstrated losses." *Id.* § 2259(b)(2)(C).

A proper restitution amount "comports with the defendant's relative role in the causal process that underlies the victim's general losses." *Paroline v. United States*, 572 U.S. 434, 458 (2014). The government must prove the amount by a preponderance of the evidence, but a district court can accept a "reasonable estimate of the loss." *United States v. Rothenberg*, 923 F.3d 1309, 1337 (11th Cir. 2019) (quotation marks omitted)).

In *Apprendi v. New Jersey*, the Supreme Court held that, other 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. 530 U.S. 466, 490 (2000). In *Alleyne v. United States*, the Supreme Court extended the rule in *Apprendi* by requiring that all facts that increase mandatory minimum sentences must be submitted to the jury as well. 570 U.S. 99, 117 (2013).

In *Dohrmann v. United States*, we held that *Apprendi* does not apply to restitution orders because the restitution statute does not have a prescribed statutory maximum. 442 F.3d 1279, 1281 (11th Cir. 2006). Then, in *Southern Union Co. v. United States*, the Supreme Court held that *Apprendi* applies to criminal fines. 567 U.S. 343, 353, 360 (2012). But in *Gatlin v. United States*, considering a challenge to a restitution order under § 3663A, we rejected an argument that *Southern Union* abrogated *Dohrmann* because we had not determined that restitution, like a criminal fine, is a criminal penalty and *Southern Union* did not discuss restitution, let alone hold that *Apprendi* should apply to restitution orders. 90 F.4th 1050, 1074 (11th Cir. 2024).

More recently, in *Kluge*, we rejected the appellant's argument that a restitution award under 18 U.S.C. § 2259 required a jury, rather than a judge, to make the essential findings required to trigger the mandatory minimum of \$3,000. 147 F.4th at 1301–02. We reiterated that our precedent, *Dohrmann* and *Gatlin*, foreclosed the arguments that *Apprendi* and *Alleyne* apply to restitution orders under § 2259. *Id.*

Here, as Wien concedes, our binding precedent forecloses his argument that the district court violated his Fifth and Sixth Amendment rights by ordering him to pay a total of $25,000 in restitution to three identified victims without requiring findings by a jury, or a finding that Wien otherwise admitted to the facts supporting the restitution award when pleading guilty.[1] Accordingly, we affirm as to this issue.

II.

In *Rothenberg*, after careful review of *Paroline*, we determined that a district court is not required to "determine, calculate, or disaggregate" the victim's losses caused by the original creator or other distributors before determining the losses caused by the defendant. 923 F.3d at 1333. It is sufficient for the district court to say that it has considered that a defendant is only a possessor and that the restitution award is based solely on that conduct. *Id.* at 1334.

Here, as Wien concedes, our binding precedent forecloses his argument that the district court needed to disaggregate the victims' losses caused by the initial abuse from the losses he caused before awarding restitution. Because *Rothenberg* has not been overruled or abrogated, we are bound to apply it. Accordingly, we affirm as to this issue.

AFFIRMED.

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[1] Under the prior panel precedent rule, our prior decisions are binding until they are overruled by this court sitting en banc, by the Supreme Court, or if the Supreme Court has "undermined [the decision] to the point of abrogation." *United States v. Sneed*, 600 F.3d 1326, 1332 (11th Cir. 2010).

APPENDIX B

1. U.S. Const. amend. VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

2. 26 U.S.C. § 2259 provides, in relevant part:

(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.—

. . .

(2) Restitution for trafficking in child pornography.—If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) Determining the full amount of a victim's losses.—The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) Determining a restitution amount.—After completing the determination required under subparagraph (A), 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.

(C) Termination of payment.—A victim's total aggregate recovery pursuant to this section shall not exceed the full amount of the victim's demonstrated losses. After the victim has received restitution in the full amount of the victim's losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(3) 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.

(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.

(c) Definitions.—

. . .

(2) Full amount of the victim's losses.—For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—

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

(F) any other relevant losses incurred by the victim.

. . .

(4) Victim.—For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter. In

the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.