

No. 26-_____

In the
Supreme Court of the United States

Jeffrey Alvarez,
Petitioner,

v.

State of Arizona,
Respondent.

On Petition for a Writ of Certiorari
To the Arizona Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Since this Court decided *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the criminal justice system has struggled with whether a jury must decide the facts needed to order restitution.

In *Apprendi*, this Court ruled that a jury must decide any fact, other than a prior conviction, necessary to expose a defendant to a punishment beyond that authorized by the guilty verdict alone. This rule applies to financial penalties.

Restitution fits the bill. In *Ellingburg v. U.S.*, 607 U.S. 163 (2026), this Court held that restitution under the Mandatory Victims Restitution Act was a criminal punishment for purposes of the Ex Post Facto Clause. Arizona's mandatory restitution scheme carries the same hallmarks as the MVRA.

Yet courts have steadfastly refused to empanel juries for restitution based on two core theories. Under the no-punishment theory, restitution is not punishment. Under the no-maximum theory, restitution has no statutory maximum that judicial factfinding can increase. Arizona adopted both.

Neither theory can be squared with this Court's Sixth Amendment decisions or the history of the Sixth Amendment and restitution.

This petition squarely asks: Does a defendant have a Sixth Amendment right to a jury for restitution decisions?

PARTIES TO THE PROCEEDING

Jeffrey Alvarez is the petitioner. He was the defendant below.

The respondent is the State of Arizona. It was the plaintiff below.

RELATED PROCEEDINGS

Supreme Court of the United States

- *Alvarez v. Arizona*, No. 26A253 (Aug. 26, 2026) (granting application to extend time to file a petition for a writ of certiorari).

Arizona Supreme Court

- *State v. Alvarez*, CR-25-0199-PR (Ariz. June 2, 2026) (denying petition for review).

Arizona Court of Appeals

- *State v. Alvarez*, 1 CA-CR 24-0426, 2025 WL 1561684 (Ariz. App. June 3, 2025, unpub.) (affirming restitution order).
- *State v. Alvarez*, 1 CA-CR 22-0273, 2023 WL 4531825 (Ariz. App. July 13, 2023, unpub.) (affirming conviction and initial sentences).

Maricopa County Superior Court

- *State v. Alvarez*, CR 2019-003621-001 (restitution order entered July 19, 2024).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jeffrey Alvarez petitions this Court for a writ of certiorari to review the judgment of the Arizona Court of Appeals.

INTRODUCTION

For decades, courts have consistently but wrongly ruled that defendants are not entitled to a jury for restitution for one of two reasons. First, courts adopting the no-punishment theory have ruled that restitution is not a punishment. Second, courts adopting the no-maximum theory have concluded that restitution involves no statutory maximum that judicial factfinding can increase. And some courts—including Arizona—have adopted both.

Those decisions conflict with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and this Court’s restitution jurisprudence. Under *Apprendi*, a jury must decide any fact necessary to authorize a punishment beyond that authorized by the verdict alone. Restitution is a punishment, as this Court recently reiterated in *Ellingburg v. U.S.*, 607 U.S. 163 (2026). And restitution cannot be ordered based on verdict alone—a factfinder must first decide 1) whether the victim suffered a financial loss, 2) whether the defendant’s criminal conduct caused that loss, and 3) the amount of the loss.

Applying *Apprendi* and its progeny, a jury must decide the facts necessary to order restitution.

OPINIONS BELOW

The decision of the Arizona Court of Appeals was not reported, but is available at *State v. Alvarez*, 1 CA-CR 24-0426, 2025 WL 1561684 (Ariz. App. 2025, unpub.) (Appendix A). Although the decision is not reported, Arizona allows parties to cite unreported decisions in several circumstances. Ariz. Supreme Ct. R. 111(c)(1)(C).

JURISDICTION

This petition is timely, and this Court has jurisdiction under 28 U.S.C. § 1257(a). The Arizona Court of Appeals issued its unpublished decision on June 3, 2025. Appendix A. Mr. Alvarez petitioned for review in the Arizona Supreme Court. The court denied review on June 2, 2026. Appendix B. Mr. Alvarez then timely asked this Court to extend the deadline for filing this petition. This Court granted that request on August 26, 2026, and extended the deadline to October 2, 2026. *See Alvarez v. Arizona*, No. 26A253.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment 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” U.S. Const. Amend. 6.

The Fourteenth Amendment provides, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. 14 § 1.

STATEMENT

Mr. Alvarez asked for a jury for his restitution hearing. The trial court denied his request and ordered restitution. And the Arizona Court of Appeals affirmed that decision.

Mr. Alvarez went to trial on murder and related charges. *State v. Alvarez*, 1 CA-CR 24-0426, 2025 WL 1561684, ¶ 2 (Ariz. App. 2025, unpub.) (Appendix A). A jury convicted him and he was sentenced to life. *Id.*; see also *State v. Alvarez*, 1 CA-CR 22-0273, 2023 WL 4531825, ¶ 8 (Ariz. App. 2023, unpub.).

The victim, the decedent's mother, later asked for \$3,897.71 in restitution. *Alvarez*, 2025 WL 1561684, ¶ 3. The costs were for expenses related to holding a funeral and attending court. *Id.*

Mr. Alvarez asked that a jury be empaneled to decide the restitution amount. *Id.* Citing the Sixth Amendment, Mr. Alvarez argued that a jury had to determine restitution. *See id.*

The trial court disagreed and ordered the entire requested amount. *Id.* at ¶ 4.

Mr. Alvarez raised the issue on appeal. *Id.* at ¶ 6.

The Arizona Court of Appeals rejected Mr. Alvarez's claim and affirmed the restitution order. *Id.* at ¶¶ 5-15. The court relied on prior Arizona cases holding that the primary purpose of restitution is to make the victim whole and rehabilitate the offender. *Id.* at ¶¶ 7-8. From this, the court opined that restitution is not punishment. *Id.* The court also ruled that, even if restitution is punishment,

Apprendi still would not apply because restitution has no statutory maximum. *Id.* at ¶ 7.

Mr. Alvarez petitioned the Arizona Supreme Court to review the ruling, which the court denied. *See* Appendix B.

This petition follows.

REASONS THIS PETITION SHOULD BE GRANTED

The constitutional problem is simple: restitution is a punishment, and the verdict alone does not authorize any positive amount of restitution. But lower courts have steadfastly refused to empanel juries to make the findings needed to order restitution. That refusal conflicts with this Court's jurisprudence and the weight of history.

The question is also worthy of this Court's review. Restitution has expanded in both scale and scope. In terms of scale, restitution orders have reached all-time highs. And as to scope, restitution is now often authorized in circumstances that were previously reserved for civil cases—where a jury would have made the decision. As a result, lawyers, legal scholars, and jurists—including two Justices on this Court—have long called on this Court to decide whether *Apprendi* applies to restitution.

Finally, this case provides an excellent vehicle for deciding the issue. The Arizona Court of Appeals adopted both theories—no-punishment and no-maximum. And this case presents the issue in a posture that permits a clear constitutional ruling without factual or procedural distractions.

- 1. Under *Apprendi* and its progeny, a jury must determine restitution. But courts across the country have carved out an exception this Court never authorized.**

The *Apprendi* line of cases is clear that any fact (other than a prior conviction) that increases the maximum or minimum punishment authorized by the verdict alone must be found by a jury. Restitution is a punishment. And it is a

punishment that requires the finding of facts beyond the conviction—that the victim suffered a financial loss, that the defendant’s criminal conduct caused that loss, and the amount.

Yet courts have refused to apply *Apprendi* to restitution for two main reasons. First, courts have repeatedly held that restitution is not a punishment—a theory that can no longer stand in light of this Court’s recent decision in *Ellingburg v. U.S.*, 607 U.S. 163 (2026). Second, courts have repeatedly ruled that restitution does not fall under *Apprendi* because there is no statutory maximum (or minimum). But this ignores the plain holding of *Apprendi* itself.

a. Other than a prior conviction, a jury must decide any fact that increases the punishment authorized by the verdict alone.

Under *Apprendi v. New Jersey*, any fact that will increase a person’s maximum penalty (other than a prior conviction) must be submitted to and found by a jury. This Court held: “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.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Four years later, in *Blakely v. Washington*, this Court clarified that the “statutory maximum ... 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) (emphasis in original). If a sentence is

authorized by the verdict alone, the judge may impose it; if a sentence requires additional factual findings, a jury must make them.

This is not limited to incarceration penalties. In *Southern Union v. U.S.*, this Court held that a jury must find any facts needed to increase the maximum financial penalties that a court can impose. *Southern Union v. U.S.*, 567 U.S. 343, 350 (2012). “In stating *Apprendi*’s rule,” this Court noted, “we have never distinguished one form of punishment from another. Instead, our decisions broadly prohibit judicial factfinding that increases maximum criminal ‘sentences,’ ‘penalties,’ or ‘punishments’—terms that each undeniably embrace fines.” *Id.* (quotation modified).

And *Apprendi* applies to minimums. In *Alleyne v. U.S.*, this Court ruled that any fact that increases the mandatory minimum punishment must also be submitted to and found by a jury. *Alleyne v. U.S.*, 570 U.S. 99, 111-16 (2013).

This Court has yet to determine whether *Apprendi* applies to restitution.

But the analysis is straightforward.

b. Restitution is a punishment that requires factual findings beyond the verdict.

The case for applying *Apprendi* to restitution is simple. Restitution is a punishment. That punishment cannot be ordered based on the verdict alone; it requires a factfinder to determine 1) that the victim suffered a financial loss, 2) the defendant’s criminal conduct caused that loss, and 3) the amount of the loss. Under *Apprendi*, a jury must make those findings.

First, restitution is a punishment. While this Court has repeatedly emphasized this point, it crystallized the conclusion last Term in *Ellingburg v. U.S.*, 607 U.S. 163 (2026). This Court considered whether restitution under the Mandatory Victims Restitution Act was a punishment under the Ex Post Facto Clause. *Id.* at 165. This Court unanimously concluded that restitution is a punishment. *Id.* at 166. Although *Ellingburg* arose under the Ex Post Facto Clause, its reasoning applies with equal force here. Restitution is a punishment.

Second, the verdict alone does not authorize any positive amount of restitution. Additional facts must be found. At its most basic level, a factfinder must determine: 1) the victim suffered a financial loss, 2) the defendant's criminal conduct caused that loss (or at least that the defendant's conduct warrants joint and several liability), and 3) the amount of the loss. *See, e.g., State v. Wilkinson*, 39 P.3d 1131, ¶ 7 (Ariz. 2002) ("First, the loss must be economic. Second, the loss must be one that the victim would not have incurred but for the defendant's criminal offense.... [Third,] the criminal conduct must directly cause the economic loss."); *Socorro v. State*, 901 So. 2d 940, 941 (Fla. App. 2005) ("Prior to ordering restitution, a trial court must determine that: (1) the damage or loss for which restitution is ordered was caused directly or indirectly by defendant's offense; and (2) there is a significant relationship between the damage to the victim and the crime proved."); *State v. Forant*, 719 A.2d 399, 403 (Vt. 1998); *Holderfield v. State*, 255 So. 3d 746, 752 (Ala. App. 2017).

Indeed, this Court recognized the same principle for financial punishments in *Southern Union v. U.S.*, 567 U.S. 343, 349-50 (2012). This Court observed that financial penalties may be tied to something like “the defendant’s gain or the victim’s loss, or some other factor.” *Id.* at 349-50. In those instances, “requiring juries to find beyond a reasonable doubt facts that determine the fine’s maximum amount is necessary to implement *Apprendi*’s ‘animating principle’: the ‘preservation of the jury’s historic role as a bulwark between the State and the accused at the trial for an alleged offense.’” *Id.* at 350.

Under *Apprendi*, a jury must find any fact necessary to impose any punishment beyond that authorized by the verdict alone. Restitution is a punishment. But the verdict alone does not authorize any positive amount of restitution. Further facts must be found, including that the victim suffered a financial loss, the defendant’s criminal conduct caused the loss, and the amount of the loss. Under *Apprendi*, a jury must find those facts.

Yet courts have almost uniformly refused to apply *Apprendi* to restitution.

c. Courts have nevertheless carved out a restitution exception based on two theories: no-punishment and no-maximum.

Almost immediately after this Court’s decision in *Apprendi*, courts had to address whether *Apprendi* applied to restitution.

The Seventh Circuit led the way in *U.S. v. Behrman*, holding that *Apprendi* did not apply to restitution. *U.S. v. Behrman*, 235 F.3d 1049, 1053-54 (7th Cir. 2000).

The court offered two bases for this decision: 1) Restitution is not a penalty or punishment; 2) There is no statutory maximum to increase. *Id.* As to the first, the court reasoned, “Thus the first question is whether restitution is a ‘penalty for a crime,’ a question that has already been answered ‘no’ in this circuit because restitution for harm done is a classic civil remedy.” *Id.* at 1054. As to the second, the court opined that the relevant restitution statute did “not include a ‘statutory maximum’ that could be ‘increased’ by a given finding.” *Id.* Rather, the court believed restitution was “like a statute that permits the judge to impose any term of years up to life in prison.” *Id.* Under that sort of scheme, “the judge may make any appropriate findings by a preponderance of the evidence.” *Id.*

From there, courts adopted one or both of the Seventh Circuit’s justifications, or some hybrid thereof. *See, e.g., U.S. v. Bearden*, 274 F.3d 1031, 1042 (6th Cir. 2001) (adopting the no-maximum theory); *U.S. v. Wooten*, 377 F.3d 1134, 1144-45 (10th Cir. 2004) (concluding the no-maximum theory controlled even if restitution was a criminal penalty); *U.S. v. Reichow*, 416 F.3d 802, 807-08 (8th Cir. 2005) (finding precedent that previously held restitution was a penalty was not controlling for the *Apprendi* question and adopting the no-maximum theory); *U.S. v. Leahy*, 438 F.3d 328, 337-38 (3d Cir. 2006) (adopting the no-maximum theory, and justifying it on the basis that restitution is a punishment that nonetheless retains restorative and compensatory traits); *Dohrmann v. U.S.*, 442 F.3d 1279, 1281 (11th Cir. 2006) (adopting both theories).

As this Court continued to consider *Apprendi*, however, these justifications began to erode. In *Southern Union v. U.S.*, for example, this Court held that *Apprendi* applies to fines. *Southern Union v. U.S.*, 567 U.S. 343, 349-50 (2012). And in *Alleyne v. U.S.*, this Court ruled that it was not just the statutory maximum that was protected, but also any mandatory minimum. *Alleyne v. U.S.*, 570 U.S. 99, 111-16 (2013).

But lower courts didn't budge; they clung to their prior rulings that *Apprendi* didn't apply to restitution.

The Ninth Circuit's decision in *U.S. v. Green* is illustrative. *U.S. v. Green*, 722 F.3d 1146 (9th Cir. 2013). The circuit acknowledged that it had been inconsistent with how it characterized restitution. *Id.* at 1150. In some contexts, restitution was a punishment; in others, it was not; and sometimes, the court saw restitution as a hybrid. *Id.* But because "restitution's not 'clearly' punishment," the court reasoned, "we can't rely on *Southern Union* to overrule our restitution precedents." *Id.* The court approached the no-maximum theory the same way. *Id.* at 1150-51. The Ninth Circuit noted that several decisions had ruled that restitution had no statutory maximum. *Id.* From that, the court concluded that *Southern Union* was not "clearly irreconcilable' with our restitution caselaw." *Id.* at 1151. The Ninth Circuit affirmed these decisions despite recognizing the problem. "Our precedents are clear that *Apprendi* doesn't apply to restitution," the court said in its conclusion, "but that doesn't mean our caselaw's well-harmonized with *Southern Union*." *Id.* In fact, the

court conceded, “Had *Southern Union* come down before our cases, those cases might have come out differently.” *Id.* But the Ninth Circuit saw itself as stuck. *Id.*

The Eleventh Circuit’s unpublished decision in *U.S. v. Roemmelle* is another example. *U.S. v. Roemmelle*, 589 F. App’x 470 (11th Cir. 2014, unpub.). After *Apprendi*, the Eleventh Circuit had ruled that *Apprendi* did not apply to restitution because restitution had no statutory maximum. *Id.* at 471 (citing *Dohrmann v. U.S.*, 442 F.3d 1279, 1281 (11th Cir. 2006)). Then this Court issued *Alleyne*, explaining that a jury must also find any facts that increase the mandatory minimum. *See id.* at 470 (citing *Alleyne*, 570 U.S. at 116). But the Eleventh Circuit stuck with its earlier decision. *Id.* at 471. “*Alleyne*,” the court reasoned, “was an extension of *Apprendi*.” *Id.* So the conclusion thus extended: “It follows from *Dohrmann*’s logic that the Supreme Court’s decision in *Alleyne* does not apply to restitution orders because the restitution statute does not have a prescribed statutory minimum either.” *Id.* The Eleventh Circuit didn’t analyze the question anew in light of *Alleyne*. Like the Ninth Circuit in *Green*, the Eleventh Circuit simply held on to precedent.

The pattern is clear. As this Court clarified the scope of *Apprendi* in cases like *Southern Union* and *Alleyne*, lower courts didn’t reconsider *Apprendi*’s application to restitution from first principles. They clung to decisions they’d already issued.

But neither theory holds up against this Court’s precedent or the history of restitution.

d. This Court’s precedent forecloses both the no-punishment theory and the no-maximum theory, and history confirms the jury’s role in finding the facts needed to order restitution.

This Court’s jurisprudence dispenses with both of the theories courts have given for refusing to apply *Apprendi* to restitution. The no-punishment theory is undone by this Court’s recent decision in *Ellingburg v. U.S.*, 607 U.S. 163 (2026). The no-maximum theory ignores the realities of restitution schemes and the core holding of *Apprendi*. And history confirms these cases; at common law, juries decided the facts needed to order restitution.

**i. *Ellingburg* forecloses the no-punishment theory—
restitution is punishment.**

First, the no-punishment theory cannot survive *Ellingburg v. U.S.*, 607 U.S. 163 (2026).

The theory was questionable at its origin. Even before *Apprendi*, this Court recognized the punitive character of restitution. In *Kelly v. Robinson*, for example, this Court understood that restitution serves the State’s interests in rehabilitation and punishment. *Kelly v. Robinson*, 479 U.S. 36, 52-53 (1986). “Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused.” *Id.* at 49 n.10.

This Court’s later jurisprudence reinforced the conclusion that restitution serves punitive purposes. In *Pasquantino v. U.S.*, this Court ruled that the purpose of awarding restitution in that case was “to mete out appropriate criminal punishment for that conduct.” *Pasquantino v. U.S.*, 544 U.S. 349, 365 (2005). And in

Paroline v. U.S., this Court observed that the “primary goal of restitution is remedial or compensatory, but it also serves punitive purposes.” *Paroline v. U.S.*, 572 U.S. 434, 456 (2014) (quotation modified).

Arizona didn’t buy in.

In *State v. Leon*, the Arizona Court of Appeals ruled that restitution is not a punishment, reasoning that Arizona’s “courts have uniformly concluded that restitution’s primary purpose is not penal in nature.” *State v. Leon*, 381 P.3d 286, ¶ 10 (Ariz. App. 2016).

But Arizona’s cases are not so uniform.

In *State v. Wilkinson*—which *Leon* cited—the Arizona Supreme Court recognized restitution’s penal character. *State v. Wilkinson*, 39 P.3d 1131, ¶ 13 (Ariz. 2002). The court was considering whether criminal restitution violated a person’s right to a civil jury under the Arizona Constitution. *Id.* at ¶ 5. The court concluded there was no violation because restitution serves penal interests. *Id.* at ¶ 13. Restitution, the court noted, has a “close relationship to the retributive and deterrent purposes of criminal punishment.” *Id.* at ¶ 9 (quoting *U.S. v. Fountain*, 768 F.2d 790, 800 (7th Cir. 1985)). And restitution helps rehabilitate offenders and deters them from committing the same crimes again. *Id.* at ¶ 13. “The penalty,” the court explained, “thus fits squarely within the goals of criminal punishment and does not deprive him of a civil trial to which he might otherwise be entitled.” *Id.*

The court reiterated this conclusion in *State v. Regenold*, 249 P.3d 337, ¶ 8 (Ariz. 2011). “At that time, the defendant learns his punishment, which may include

a combination of prison or jail time and restitution, along with any probationary period and terms.” *Id.*

Other Arizona cases have gone the other direction. See *E.H. v. Slayton*, 568 P.3d 377, ¶ 10 (Ariz. 2025) (“Because restitution is not a penalty, it must be limited to the victim’s actual loss.”); *Town of Gilbert v. Downie*, 189 P.3d 393, ¶ 13 (Ariz. 2008) (“Restitution is not meant to penalize the defendant; that function is served by incarceration, fines, or probation.”).

This Court’s recent decision in *Ellingburg v. U.S.* resolves the inconsistency—even for Arizona’s restitution scheme.

In *Ellingburg*, this Court looked to common principles of construction to determine whether restitution under the Mandatory Victim Restitution Act was punishment. *Ellingburg v. U.S.*, 607 U.S. 163, 166 (2026). Analyzing the statutes’ text and structure, this Court concluded restitution was punishment. *Id.* Arizona’s restitution scheme bears the same features.

Start with the statutory text. The Mandatory Victim Restitution Act “labels restitution as a ‘penalty’ for a criminal ‘offense.’” *Ellingburg*, 607 U.S. at 166. Arizona goes further. Section 13-603(C) of the Arizona Revised Statutes provides that restitution “is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.” Ariz. Rev. Stat. § 13-603(C). And Arizona characterizes restitution as a “penalty, fine or sanction” for the purposes of ordering a time-payment fee. Ariz. Rev. Stat. § 12-116(A).

The structure points the same way. The Mandatory Victim Restitution Act is codified in Title 18, “Crimes and Criminal Procedure.” *Ellingburg*, 607 U.S. at 166. And the main statutory provisions are in a chapter that deals with sentencing. *Id.* Restitution was thus imposed during sentencing. *Id.* Arizona is the same. The statutes governing restitution are codified in Arizona’s Title 13, the “Criminal Code.” The relevant statutes are further located in the chapters that deal with the sentencing process—chapters 6 through 9. *See* Ariz. Rev. Stat. § 13-603(A). The primary statute is in Chapter 6, which governs “Classifications of Offenses and Authorized Dispositions of Offenders.” *See* Ariz. Rev. Stat. § 13-603(C). The secondary statute is in Chapter 8, which addresses “Restitution and Fines.” *See* Ariz. Rev. Stat. § 13-804(A).

Moreover, under the Mandatory Victim Restitution Act, a court could “order restitution only with respect to a criminal ‘defendant’ and only after that defendant’s conviction of a qualifying crime.” *Ellingburg*, 607 U.S. at 166. Arizona is the same. Under the relevant statute, a court can only order restitution “If a person is convicted of an offense” Ariz. Rev. Stat. § 13-603(C); *see also* Ariz. Rev. Stat. § 13-804(A) (“On a defendant’s conviction for an offense”).

The State also remains involved in the process. In *Ellingburg*, this Court noted that “the Government, not the victim, is the party adverse to the defendant.” *Ellingburg*, 607 U.S. at 166. Arizona is similar. Arizona guarantees victims the right to be heard, including through counsel, and the right to receive prompt restitution. Ariz. Const. Art. 2, § 2.1(A)(4), (8); Ariz. Rev. Stat. § 13-4437(A), (E).

That happened here. But the State remains a party to the criminal proceedings. Indeed, as the Arizona Court of Appeals recognized, the “purpose of restitution proceedings would be subverted if the victim’s counsel were allowed to take the prosecutor’s place” *Lindsay R. v. Cohen*, 343 P.3d 435, ¶ 10 (Ariz. App. 2015). And the State of Arizona remains the opposing party during the appellate process that follows.

And a person who does not pay restitution faces criminal consequences. Under the Mandatory Victim Restitution Act, “when a defendant does not make the required restitution payments, the court may modify the terms of his supervised release or probation and impose imprisonment” *Ellingburg*, 607 U.S. at 166. Arizona likewise permits courts, under appropriate circumstances, to hold a person in contempt for nonpayment, order the person to perform community restitution, jail the person until restitution is paid, and even revoke probation. Ariz. Rev. Stat. § 13-810(B), (E).

Ellingburg also addresses the compensatory nature of restitution. This Court noted that the Mandatory Victim Restitution Act had dual purposes: “to both punish and compensate.” *Ellingburg*, 607 U.S. at 168. That didn’t change this Court’s conclusion; “so long as the text and structure of the Act demonstrate that Congress intended at least ‘to impose punishment,’ that ‘ends the inquiry.’” *Id.* Arizona is the same. The text and structure of Arizona’s restitution scheme demonstrate that it imposes punishment. As noted above, the statute expressly characterizes restitution as a “criminal penalty.” Ariz. Rev. Stat. § 13-603(C); *see*

also Ariz. Rev. Stat. § 12-116(A) (characterizing restitution as a “penalty, fine or sanction”). And even the standard characterization of restitution’s purposes includes the penological goals of rehabilitation and deterrence. *See Wilkinson*, 39 P.3d 1131, ¶¶ 9, 13.

So while restitution in Arizona compensates victims, it also punishes defendants. After *Ellingburg*, the no-punishment theory cannot stand. Neither can the no-maximum theory.

ii. *Blakely and Southern Union foreclose the no-maximum theory—factual findings are necessary to order any restitution over \$0.*

Second, the no-maximum theory also fails—principally because it turns on a restrictive reading of *Apprendi* that this Court has since disavowed.

In *Apprendi v. New Jersey*, this Court analyzed a hate-crime provision that extended the term of imprisonment that would have otherwise been authorized by the conviction. *Apprendi v. New Jersey*, 530 U.S. 466, 468-69 (2000). Based on the conviction alone, the defendant faced “between five and 10 years” in prison. *Id.* at 468. Under the hate-crime provision, the sentence was “between 10 and 20 years” imprisonment. *Id.* at 469. The scheme at issue thus increased the statutory maximum. *Id.*

This Court thus expressed its holding in the context of the case: “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.” *Id.* at 490.

But this Court’s holding was not so narrow as to be confined only to a “statutory maximum.” Rather, this Court was concerned with the maximum penalty a defendant “would receive if punished according to the facts reflected in the jury verdict alone.” *Id.* at 483. That just happened to be an increasing statutory maximum in *Apprendi*.

That nuance was lost, however, when lower courts started addressing restitution.

In *U.S. v. Behrman*, the Seventh Circuit ruled that *Apprendi* did not apply to restitution because there was no statutory maximum. *U.S. v. Behrman*, 235 F.3d 1049, 1054 (7th Cir. 2000). The court built this theory on an analogy to “a statute that permits the judge to impose any term of years up to life in prison.” *Id.* Under such a system, the Seventh Circuit concluded, a judge may make any necessary findings. *Id.* “Put otherwise, *Apprendi* does not affect the operation of the Sentencing Guidelines; it is limited to situations in which findings affect *statutory* maximum punishment.” *Id.* (emphasis in original).

The analysis doesn’t check out. *Behrman*’s focus on a “*statutory* maximum punishment” missed this Court’s broader point in *Apprendi*: the focus is on the punishment a judge can impose based on the verdict alone.

Indeed, four years after *Behrman*, this Court clarified *Apprendi*’s broader application in *Blakely v. Washington*, 542 U.S. 296, 303 (2004). As this Court held, “the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” *Id.* (emphasis omitted). “In other

words, the relevant ‘statutory maximum’ is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings.” *Id.* at 303-04 (emphasis in original).

And in *Southern Union v. U.S.*, this Court recognized that a jury would need to be involved when punishments are linked to something like the victim’s loss. *Southern Union v. U.S.*, 567 U.S. 343, 349-50 (2012). For example, this Court noted that some statutes link fines to “the amount of the defendant’s gain or the victim’s loss, or some other factor.” *Id.* That requires a jury determination: “In all such cases, requiring juries to find beyond a reasonable doubt facts that determine the fine’s maximum amount is necessary to implement *Apprendi*’s animating principle: the preservation of the jury’s historic role as a bulwark between the State and the accused at the trial for an alleged offense.” *Id.* at 350 (internal quotation marks omitted).

The no-maximum theory was built on an inaccurate reading of *Apprendi*. *Apprendi* is not so limited as to apply only when there is a “statutory” maximum.

The difference is between facts that inform a judge’s exercise of sentencing authority and facts that create that authority.

When a punishment is already within the bounds of a trial judge’s discretion, the judge may consider additional facts in deciding whether to impose it. Those facts may influence the judge’s exercise of authority; they do not create that authority.

But when specific facts (other than a prior conviction) must exist before the judge can impose the punishment, *Apprendi* requires a jury to find those facts.

That's how mandatory restitution works. Based on the conviction alone, the judge has no authority to order any positive amount of restitution. The judge cannot impose a \$10,000 penalty or a \$10 penalty. What authorizes the judge to impose a positive amount of restitution is three factual findings: the victim suffered a loss, the defendant was responsible for the loss, and the amount of the loss. If the factfinder determines the loss was \$1,000, the judge has no discretion to order more or less. They cannot order restitution in the amount of \$10,000 or \$10. And they cannot refuse to order restitution. They must order \$1,000. The judge does not have discretion; the factual findings bind the judge.

“Full economic loss” is therefore not an already-authorized sentencing range; it is a fact-dependent formula. And *Southern Union* specifically recognized that *Apprendi* applies when facts like “the defendant’s gain or the victim’s loss” determine the amount of a financial punishment. *Southern Union*, 567 U.S. at 349-50.

Even if the no-maximum theory’s premise were true, the Sixth Amendment problem remains. Suppose conviction authorizes a restitution range from \$0 to the full amount of economic loss, whatever the amount turns out to be. The minimum authorized by the verdict alone remains \$0. Additional findings of loss, causation, and amount increase that minimum. Once those facts are found, Arizona law requires the court to order restitution “in the full amount of the economic loss.”

Ariz. Rev. Stat. § 13-603(C). Under *Alleyne*, a jury must find any fact that increases a mandatory minimum. *Alleyne v. U.S.*, 570 U.S. 99, 111-16 (2013). So even if the no-maximum theory were correct about the top of the range, it would not answer the problem at the bottom.

Whether viewed from the maximum under *Blakely* and *Southern Union* or the minimum under *Alleyne*, the verdict alone authorizes \$0 in restitution. A jury must find the facts needed to increase restitution above that amount.

iii. *History confirms the jury’s role in restitution.*

History is the starting point for this Court’s Sixth Amendment analyses. *Oregon v. Ice*, 555 U.S. 160, 170 (2009).

In the English system, restitution arose from the appeal of felony. 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, 472 (2014). This prosecution was “initiated and maintained by an individual,” but still “had a punitive orientation.” *Id.* With an appeal of felony, a narrow class of victims could receive restitution—particularly victims of larceny. *Id.*

To receive restitution under an appeal of felony, the victim had to identify the stolen goods in the appeal and a jury had to determine ownership. *Id.*

The indictment of felony was a second form of prosecution that existed at the same time. *Id.* at 472-73. “Among the differences between an appeal and indictment were that a local government official would prosecute the indictment after the

victim had initiated the action and that the victim initially had no prospect of obtaining restitution.” *Id.*

In 1529, however, “King Henry VIII and Parliament authorized a writ of restitution in successful larceny indictments.” *Id.* at 473. The procedures under the statute “closely resembled those used to obtain restitution through the appeal.” *Id.* The victim could only receive “goods listed in the indictment and found in the felon’s possession.” *Id.*

Early American jurisprudence followed the same principles: the indictment had to identify the stolen items—which meant the jury verdict encompassed the stolen items. *Id.* at 473-74; *see also* Thomas Starkie, *A Treatise on Criminal Pleading, with Precedents of Indictments, Special Pleas, etc., Adapted to Practice* 439 n.(b) (1824). If a stolen item was omitted from the indictment, a victim could not recover the item “unless the jury returned a special verdict.” Barta, *Guarding the Rights of the Accused and Accuser*, 51 Am. Crim. L. Rev. at 477. In this way, restitution followed the “predominant practice” used for fact-dependent fines. *See Southern Union v. U.S.*, 567 U.S. 343, 354 (2012). When fines were linked to a specific fact, it was often “the value of damaged or stolen property.” *Id.* And the “predominant practice was for such facts to be alleged in the indictment and proved to the jury.” *Id.*

Whether through a jury verdict on an indictment that alleged the stolen property or through a special verdict, the procedures used in “eighteenth- and nineteenth-century courts required juries to find the facts underlying awards of

restitution” Barta, *Guarding the Rights of the Accused and Accuser*, 51 Am. Crim. L. Rev. at 477.

“And,” as Justice Gorsuch observed in *Hester v. U.S.*, “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 and Seventh Amendments’ adoption.” *Hester v. U.S.*, 586 U.S. 1104, 1107 (2019) (Gorsuch, J., dissenting from denial of certiorari).

2. Attorneys, scholars, and judges—including two Justices—have long called for this Court to decide whether *Apprendi* applies to restitution. Lower courts are now waiting for this Court to act.

Restitution matters. Restitution orders are reaching all-time highs. And restitution is being ordered in increasingly complex situations—often standing in the stead of the traditional civil jury.

“Criminal restitution has exploded over the past forty years, both in application and enforcement.” Lula A. Hagos, *Debunking Criminal Restitution*, 123 Mich. L. Rev. 469, 483 (2024).

In terms of scope and application, “legislatures and courts have begun to define ‘loss’ more broadly.” Cortney E. Lollar, *What Is Criminal Restitution?*, 100 Iowa L. Rev. 93, 102 (2014). Restitution is no longer a tool used to simply reimburse the victim’s loss. Rather, “restitution orders currently compensate for emotional, psychological, and hedonic harms—as well as for expenses restitution did not previously reimburse, including costs victims incur in hiring their own lawyers (since prosecutors represent the state), past and future lost wages, and other financial losses previously deemed ‘consequential damages.’” *Id.*

A couple Arizona cases show just how far restitution has expanded.

In *E.H. v. Slayton*, for example, the Arizona Supreme Court paved the way for a surviving sister to use restitution to recover the future earnings of a six-year-old decedent. *E.H. v. Slayton*, 568 P.3d 377, ¶ 2 (Ariz. 2025). The court acknowledged that future earnings might be difficult to calculate. *Id.* at ¶¶ 22-27. But it returned the case to the trial court to conduct that inquiry. *Id.* at ¶ 28. The Tenth Circuit reached the same conclusion in *U.S. v. Serawop*, 505 F.3d 1112, 1123-25 (10th Cir. 2007).

And in *State v. Davis*, the Arizona Court of Appeals approved a restitution order for future child-rearing costs. *State v. Davis*, 593 P.3d 336, ¶¶ 14-25 (Ariz. App. 2026). The defendant was the father of six children and killed the mother. *Id.* at ¶ 2. Grandparents then adopted the children and sought restitution for the adoption fees and the costs of raising the children. *Id.* at ¶¶ 3-5. The majority approved the order. *Id.* at ¶¶ 14-25. The dissent, on the other hand, noted that this was the very sort of costs that would have previously been submitted to a civil jury. *Id.* at ¶¶ 33-34 (Cattani, J., dissenting). But, again, the majority's decision isn't an anomaly. Tennessee has likewise authorized child-maintenance restitution. *State v. Dennis*, 739 S.W.3d 256, 262-67 (Tenn. Crim. App. 2026).

The explosion in restitution is not limited to its scope; the numbers tell the same story.

Nationally, courts order billions of dollars in restitution. The 2023 Annual Report of the United States Sentencing Commission reported, “the total amount of

restitution ordered in individual cases was \$13.1 billion, the third highest amount in more than two decades.” U.S. Sentencing Commission, 2023 Annual Report 18. One year later, that number was up to “\$13.5 billion, the highest amount in more than two decades.” U.S. Sentencing Commission, 2024 Annual Report 16. The 2025 Annual Report provided the combined total of restitution and fines: \$25.6 billion. U.S. Sentencing Commission, 2025 Annual Report 17.

The same is happening in the states. Courts are ordering and collecting more and more restitution. Arizona, for example, collected \$21.3 million in 2025. *See* Restitution Collected By Courts Dashboard.¹ That is up from just under \$20.7 million in 2024 and \$19.1 million in 2023. *Id.* That’s not the amount ordered; that’s the amount actually collected.

The growing importance of restitution has repeatedly led jurists, scholars, and attorneys to call on this Court to decide whether *Apprendi* applies to restitution.

Chief among these calls is Justice Gorsuch’s dissent from the denial of certiorari—joined by Justice Sotomayor—in *Hester v. U.S.*, 586 U.S. 1104, 1105-07 (2019) (Gorsuch, J., dissenting from denial of certiorari); *see also Rimlawi v. U.S.*, 604 U.S. ___, 145 S. Ct. 518, 518-19 (2025) (Gorsuch, J., dissenting from denial of certiorari).

Justices Gorsuch and Sotomayor are not alone. For example, in *U.S. v. Leahy*, Judge McKee opined that *Blakely* had undermined the Third Circuit’s prior decision

¹ Available at <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Restitution-Collected-by-Courts>.

that restitution had no maximum. *U.S. v. Leahy*, 438 F.3d 328, 339-40 (3d Cir. 2006) (McKee, J., concurring in part and dissenting in part). Judge McKee—and four additional judges—would have therefore held that a jury must determine restitution. *Id.* Judge Bye was of the same opinion in *U.S. v. Carruth*, 418 F.3d 900, 904-06 (8th Cir. 2005). And writing in his private capacity, Judge William Acker, Jr., observed the problem in a 2013 law review article. William 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 (2013).

Scholars, too, have pointed out that there is no reasoned basis for depriving defendants of a jury decision for restitution.

Wayne LaFave’s treatise *Criminal Procedure*, for example, dismantled both theories for refusing to grant a jury trial for restitution. Wayne LaFave, *Criminal Procedure* § 26.6(c) Restitution (5th ed. 2025). The authors found the first justification—restitution is not punishment—unpersuasive in light of *Paroline v. U.S.*, 572 U.S. 434 (2014). In *Paroline*, the authors observed, this Court concluded that restitution served a punitive purpose. LaFave, *Criminal Procedure* § 26.6(c). The second justification—the no-maximum theory—made no sense to the authors in light of how restitution works. *Id.* Restitution schemes, the authors noted, “do not permit or require trial courts to order *any* restitution as part of a sentence without first finding that the offense caused some loss, and that limitation is enforceable by appellate review.” *Id.* (emphasis in original). As a result, the authors concluded:

“The maximum and minimum restitution authorized by the conviction alone is zero.” *Id.*

The authors of LaFave’s treatise are not alone; multiple law review articles have encouraged this Court to determine whether restitution deserves a jury. *See* Lula A. Hagos, *Debunking Criminal Restitution*, 123 Mich. L. Rev. 469, 487-88 (2024); Courtney E. Lollar, *What Is Criminal Restitution?*, 100 Iowa L. Rev. 93, 149-52 (2014); 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, 463-64 (2014).

Attorneys have also asked this Court to decide whether *Apprendi* applies to restitution. Such cases have included *Rimlawi v. U.S.*, No. 24-23; *Shah v. U.S.*, No. 24-25; *Jacob v. U.S.*, No. 24-5032; *Arnett v. Kansas*, No. 21-1126; and *Thomas v. U.S.*, No. 24-5366.

None of those cases, however, had the benefit of this Court’s recent decision in *Ellingburg v. U.S.*, 607 U.S. 163 (2026). This Court’s unanimous declaration that restitution under the Mandatory Victim Restitution Act is punishment undermines the no-punishment theory. *See id.* at 166.

And further percolation won’t help. We’ve now reached a point where judges are unwilling to swim against the current until this Court takes the issue up. That’s what the Supreme Court of Kansas said in *State v. Robison*, 496 P.3d 892, 897 (Kan. 2021). It acknowledged that Justice Gorsuch’s dissent in *Hester* “might signal that the Supreme Court will eventually take up the question” *Id.* But the court saw

“no reason why we should take up that mantle in its place.” *Id.* And though it recognized that the reasoning among the circuits was not uniform, the Kansas Supreme Court saw no need to wade into the conflict. *Id.* “We are content to side with the majority of the circuit courts of appeal.” *Id.*

At this point, the only way to fix the problem is to grant review.

3. This case presents an opportunity to address both the no-punishment theory and the no-maximum theory in a posture that permits a clear constitutional ruling.

This case provides a clean vehicle to resolve whether *Appendi* applies to restitution.

First, the Arizona Court of Appeals adopted both the no-punishment theory and the no-maximum theory to refuse Mr. Alvarez’s request for a jury determination of restitution. *State v. Alvarez*, 1 CA-CR 24-0426, 2025 WL 1561684, ¶ 7 (Ariz. App. 2025, unpub.) (Appendix A). This case thus presents the opportunity to address both theories at once.

Second, the federal constitutional issue was preserved and presented at every level of court below. Mr. Alvarez asked for a jury, and grounded that request on the federal constitution. *Id.* at ¶ 3. Mr. Alvarez then raised the issue again on direct appeal and the Arizona Court of Appeals expressly rejected his claim. *Id.* at ¶¶ 6-14. Mr. Alvarez then filed a petition for review in the Arizona Supreme Court, again raising the federal constitutional issue. The Arizona Supreme Court denied review. Mr. Alvarez has raised and preserved the federal constitutional issue at every level.

Third, this case presents a laudably mundane example of restitution. While restitution has expanded to include future losses, the restitution requested in this case addressed only liquidated damages—expenses related to holding a funeral and attending court. *Alvarez*, 2025 WL 1561684, ¶ 3. While a restitution case involving future losses might appear more interesting, it carries significant risks for misconstruction. Courts would note the expansive nature of the restitution and seek distinctions. Linking the constitutional holding to an atypical restitution order may thus encourage courts to try to draw a line so that a jury is only needed for prospective losses (as opposed to liquidated damages) or if the total restitution amount exceeds some number (as opposed to a more reasonable request). This case offers no such distractions. Announcing the rule in a case that addresses only liquidated damages minimizes any risk of confusion.

Fourth, this case originates from state litigation. While this Court’s rulings apply broadly, there is a risk to deciding constitutional issues like this in federal cases. Again, the risk is based on distinction. When this Court construes constitutional issues in the context of federal statutes, states may incorrectly believe this Court’s decision was motivated by the interpretation of the federal statute. This case avoids that problem. It does not require this Court to interpret the Mandatory Victims Restitution Act or any other federal restitution scheme. Nor does it require this Court to decide whether some feature unique to federal restitution law establishes a maximum, minimum, or other limit on restitution. This case squarely presents the constitutional issue: whether the Sixth Amendment

permits a judge to find the facts necessary to impose mandatory criminal restitution. Resolving that question in a state case makes the nationwide application of this Court's ruling apparent.

Finally, there is no harmless-error holding that would cloud the constitutional question. The Arizona Court of Appeals looked at the trial court's restitution order and found sufficient evidence to support the order, but it never analyzed whether the error was harmless. *Alvarez*, 2025 WL 1561684, ¶ 13. The constitutional question matters; no alternative holding renders it irrelevant. This also means this Court can take the standard step of addressing the constitutional issue and then remanding to the Arizona Court of Appeals to determine whether the error was harmless. *See Neder v. U.S.*, 527 U.S. 1, 25 (1999); *see also Erlinger v. U.S.*, 602 U.S. 821, 849-50 (2024) (Roberts, C.J., concurring) (encouraging the lower court to consider harmlessness on remand).

CONCLUSION

Under *Apprendi* and *Blakely*, a jury must decide any fact (other than a prior conviction) necessary to expose a defendant to punishment beyond what is authorized by the verdict alone.

Restitution is a punishment. And restitution requires additional factual findings. Conviction alone does not authorize a positive amount of restitution. Before the judge can order any restitution over \$0, a factfinder must decide 1) that the victim suffered financial loss, 2) the defendant's criminal conduct caused that loss, and 3) the amount of the loss.

Yet courts across the country have consistently refused to apply *Apprendi* to restitution.

This Court should grant certiorari and ultimately rule that a jury must decide the facts necessary to order restitution.

Respectfully submitted,

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