

NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2026

OSARETIN GODSPOWER OMORUYI,
a/k/a Nelson Bright, a/k/a Bright, Nelson,

PETITIONER

V.

UNITED STATES OF AMERICA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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October 16, 2026

QUESTIONS PRESENTED FOR REVIEW

- I. The district court erred in calculating restitution amount and ordering restitution for 11 victims of the fraud because there was insufficient evidence of loss amount. The government failed to meet its burden of proof by a preponderance of evidence that the victims suffered the ordered loss amount.

LIST OF PARTIES

United States Court of Appeal for the First Circuit

Petitioner/Appellant: Osaretin Godspower Omoruyi, a/k/a Nelson Bright, a/k/a Bright Nelson

Defendant-Appellant: Osakpamwan Henry Omoruyi, a/k/a Clifford Bernard, a/k/a Bernard Clifford

Respondent: United States of America

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	2
TABLE OF AUTHORITIES.....	4
OPINION BELOW.....	5
JURISDICTION.....	6
STATEMENT OF THE FACTS.....	7
REASON FOR GRANTING THE WRIT.....	14
CONCLUSION.....	19
APPENDIX.....	20
(Judgment of the First Circuit Court of Appeals, Nos. 23-1957, 24-1561, July 15, 2026, Order, denying Petition for Rehearing and Rehearing En Banc, September 8, 2026).	

CASES	TABLE OF AUTHORITIES	PAGES
<u>In re Winship</u> , 397 U.S. 358 (1970).....		17
<u>United States v. Alphas</u> , 785 F.3d 775 (1 st Cir.2015).....		19
<u>United States v. Naphaeng</u> , 906 F.3d 173 (1 st Cir. 2010).....		14,15,16,18
<u>United States v. Salas-Fernandez</u> , 620 F.3d 45 (1 st Cir.2010).....		15
<u>United States v. Simon</u> , 12 F.4 th 1 (1 st Cir.2021).....		14, 18
<u>Treatise and Statutes and other sources</u>		
The Mandatory Victims Restitution Act (MVRA) 18 U.S.C. §3663A.....		54,55,60

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The Petitioner, Osaretin Godspower Omoruyi, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered on July 15, 2026.

OPINION BELOW

On July 15, 2026, the Court of Appeals entered its Opinion affirming the Petitioner's sentence and conviction. Judgment is attached at Appendix 1. The Petition for Rehearing was denied on September 8, 2026, and is attached at Appendix 2.

JURISDICTION

On July 15, 2026, the United States Court of Appeals for the First Circuit entered its Opinion affirming Petitioner's conviction and denying his challenge to the court's restitution order. (Court of Appeals for the First Circuit, Dkt. No. 24-1561) Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendment V:

No person shall...be deprived of life, liberty, or property without due process of law...

STATEMENT OF THE FACTS

Introduction

On March 23, 2021, a criminal complaint was filed in U.S. District Court in Boston charging Petitioner and two others with Bank and Wire Fraud Conspiracy. (Presentence Investigation Report, 10/23/23, [hereinafter PSR] at 3, para. 1). On March 1, 2023, a Superseding Indictment charged Petitioner along with his brother, Osakpamwan Henry Omoruyi (Henry) with opening bank accounts in both their own name and under alias for the purpose of laundering money for a Nigerian fraud organization. Petitioner was charged in counts one, three and four of the indictment with Bank Fraud, Bank Fraud Conspiracy, and Money Laundering Conspiracy. (PSR at 4, para. 12). Petitioner and his co-defendant were alleged to have laundered approximately \$2 million in fraud proceeds. (PSR at 5, para. 13). On June 14, 2023, following an eight-day trial Petitioner was found guilty on all counts. (D.E. at 22, No. 185).

The Trial

At the outset, the government, during its opening, told the jury that Petitioner and Henry did not participate in the fraudulent schemes used to obtain money from various victims. (Transcript of Trial, Day One, 6/5/23 at 124-25 [hereinafter 'Day One at _']). Their role was confined to opening bank accounts to receive the proceeds of the fraud after the fraud was successful.

(Day One at 123). The government reiterated that the co-defendants were charged together in a single conspiracy.

A conspiracy is an agreement between two or more people to do something that is illegal. So, when the defendants agreed to work with each other and with other people to lie to banks, to open accounts in fake names, and to use those accounts to receive fraud money, that's conspiracy to commit bank fraud. (Day One at 131).

Multiple government witnesses testified that they were the victims of fraud, primarily romance frauds and unemployment compensation fraud. The victims were communicating online with people they believed were romantic partners, potential roommates, and friends in need of a loan. (Transcript of Trial, Day One, 6/5/23 at 145-149, [hereinafter "Day One at _], Transcript of Trial Day Two, 6/6/23, 23-48 [hereinafter "Day Two at _], Transcript of Trial Day Three, 6/7/23 at 68-84, [hereinafter "Day Three at _], Transcript of Trial Day Four, 6/8/23 at 17-23, 45-53 [hereinafter "Day Four at _"], Transcript of Trial, Day Five, 6/9/23 at 20-32, [hereinafter "Day Five at _"], at 158-170, Transcript of Trial, Day Six, 6/12/23 at 130-138). These witnesses testified they sent the money to various bank accounts.

The government submitted evidence to show that various bank accounts were opened in Petitioner's and Henry's names using their passports as identification. Furthermore, bank accounts in the name of Clifford Barnard, Nelson Bright (or Bright Nelson) and Zion Cleaning were opened using fake passports with Petitioner's and Henry's picture. (Day Three at 104-108, 112-113, Day Five at 34-50, 54-63, 67-95). The government

submitted evidence to show that some funds deposited in the Clifford Barnard and Nelson Bright accounts were later transferred to accounts in the name of Petitioner and Henry. (Day Seven at 36-56).

The government submitted evidence recovered from the search of two locations; 20 Bailey Court in Canton (where both brothers resided at the time), (Day Two at 139-150), and Prime Storage in Quincy (a storage locker maintained, paid for and accessed by Henry but not by the Petitioner). (Day Two at 76-92). The evidence included prepaid debit cards, multiple fake and authentic passports, including ones in the names of Petitioner and Henry as well as Nelson Bright and Clifford Barnard, licenses, cash, bank statements, also in the name of Nelson Bright and Clifford Barnard and multiple cell phones. (Day Two 76-92).

On of the items recovered from the search of 20 Bailey Court was a cell phone. (Day Two at 148-49). The government alleged the phone belonged to Petitioner. (Day Six at 32-36). The records indicated that numerous text messages were sent from between the providing bank account numbers and information for the Nelson Bright accounts. (Day Six at 47, 50-53). The records also showed two text messages between Henry and Petitioner sharing the Nelson Bright bank account information (Day Six at 53-54) and two text messages sharing the Clifford Bernard bank information. (Day Six at 68-69).

A cooperating witness, Mike Oziegbe Amiegbe, testified that he had pled guilty to conspiracy to commit mail fraud. He testified he opened banks

accounts with fake passports to process the proceeds of fraudulent scams. (Transcript of Trial Day Four, 6/8/23 at 55, [hereinafter “Day Four at_”]). Amiegbe testified he knew Henry and another man, McPherson Osemwegie were involved in unemployment fraud because they had a conversation about it. (Day Four at 66). He also testified that although he knew Petitioner, Osemwegie did not have any conversations about fraud with Petitioner and he had no knowledge that Petitioner was involved with employment fraud. (Day Four at 146-47).

The last witness for the government was a forensic accountant. The accountant testified that he reviewed 22 bank accounts for five account holders, Petitioner, (Osaretin Omoruyi), Henry Omoruyi, Clifford Bernard, Nelson Bright and Zion Cleaning for the period of 2018-2021. (Day Seven at 6-8). Incoming transfers to these accounts totaled \$1,352,000. (Day Seven at 8). The accountant testified that these five account holders sent \$920,757.48 overseas to Nigeria. (Day Seven at 56). The government entered into evidence a summary chart of all the bank accounts’ activity. (Day Seven at 82).

The Verdict

The jury returned a verdict of guilty on all counts. (Day Eight at 13-14).

Sentencing

Probation prepared the Presentence Investigation Report (PSR) on September 26, 2023. (PSR at 1). The PSR grouped Counts One, Three and

Four for guideline calculation. (PSR at 19, para. 51). Probation calculated the loss amount as more than \$2 million. (PSR at 5, para 13). Probation aggregated the money flowing through accounts in the name of Petitioner, Henry, Nelson Bright, Clifford Bernard, and Philip Weah, (a pseudonym the government attributed to Macpherson Osemwegie). (PSR at 4-5, para 13, 14).¹ For a total offense level of 32. (PSR at 19-21, para. 51-61).

Restitution Hearing

On April 23, 2024, the district court held an Evidentiary Hearing to determine the amount of restitution owed. The day prior to the hearing, the government gave the court and defense counsel a list of victims they felt were entitled to restitution, multiple 302 forms memorializing FBI interviews with potential victims, and victim impact statements. (Restitution Hearing, 4/23/24, at 3, [hereinafter “Restitution Hearing at_”). The government did not introduce in evidence the 302 forms, or the victim witness statements in evidence. The government did not offer any testimony at the hearing.

The district court ordered Petitioner to pay 11 victims a total amount of \$615, 805.65 in restitution. Petitioner and Henry were joint and severally liable for the total amount. (Amended Judgment, D.E. at 33, No. 281, at p. 6). The court relied exclusively on the non-introduced 302s, victim impact statements and trial testimony, when ordering restitution for the victims.

¹Macpherson who was indicted with Petitioner and Henry pleaded guilty to conspiracy before trial. (PSR at 4, para. 11)

(Restitution Hearing at 6-11), repeatedly stating it could not rely on the PSR. (Restitution Hearing at 4, 6,9,10).

The court declined to rely on the amounts listed in the PSR because at least one victim listed in the PSR, L.C., admitted to the FBI that the money she sent to the Bright Nelson and Clifford Bernard accounts was not her money. (Restitution Hearing at 6,7). She stated that she received the money into her bank account from various people and sent that money on to other accounts, including the accounts in the name of Nelson Bright and Clifford Bernard. (Restitution Hearing at 6-7). In total she received \$180,000 which she forwarded on to other accounts. (Restitution Hearing at 7). L.C., the victim, acknowledged that she had retained a percentage of the money coming into and leaving her account.

The court only ordered restitution for victims who stated at trial or in 302s, or victim impact statements, that the money they sent was their own personal money. (Restitution Hearing at 4). However, at no time did the government offer any evidence, other than the victims' say so, that the money sent to Petitioner's accounts originated with the victims and was in fact their own property.

Appeal

On appeal the Petitioner argued that the District Court erred in calculating the restitution amounts for 11 victims of the fraud because there was insufficient evidence that the victim's suffered the court ordered loss

amount. Petitioner argued that the government only proved that money from the victim's account was deposited in Petitioner's account. The government failed to show where the funds withdrawn from the victim's account originated. This was essential in the present case because the government submitted evidence that at least one of the "victims" was part of the money laundering scheme and admitted that the money withdrawn from her account and deposited in Petitioner's account was not her money. The Court of Appeals held that the district court did not err when it ordered restitution because the victim impact statements and the FBI investigative reports, neither of which were offered under oath, were sufficient evidence to support the district court's loss calculation.

REASON FOR GRANTING THE WRIT

- I. **The district court erred in calculating restitution amount and ordering restitution for 11 victims of the fraud because there was insufficient evidence of loss amount. The government failed to meet its burden of proof by a preponderance of evidence that the victims suffered the ordered loss amount.**

Argument

Restitution is governed by The Mandatory Victims Restitution Act (MVRA) 18 U.S.C. 3663A. The MVRA requires a defendant to pay restitution to a victim who is “directly and proximately harmed as a result of” defendant’s offense of conviction. 18 U.S.C. §3663A (a)(2). Under the MVRA, the government bears the burden of proving, by a preponderance of the evidence, that victim’s actual loss was caused by the conduct of which a defendant was convicted. United States v. Naphaeng, 906 F.3d 173, 179 (1st Cir. 2018). This Court will uphold a district court’s restitution order “as long as the court’s order reasonably responds to some reliable evidence”. United States v. Simon 12 F.4th 1, 64-65 (1st Cir.2021). This standard “has some teeth”. Guess work and rough approximations will not suffice. Id. at 65. An order of restitution must “not confer a windfall upon a victim”. Naphaeng, 906 F.3d at 179.

In the present case, the district court relied on victim impact statements and 302 forms to determine restitution amounts for the victims who did not testify at trial. The government never introduced any of these

statements into evidence at the restitution hearing. Nor were the statements and 302 forms made part of the presentence report. Restitution amounts “must have a rational basis in the record”. United States v. Salas-Fernandez, 620 F.3d 45, 48 (1st Cir.2010). For the people who did not testify at trial therefore, there is no basis in the record for the court’s restitution award. Those awards should be vacated.

In any event, even if the victim’s impact statements and 302s forms had been admitted at the restitution hearing, those statements cannot meet the government’s burden of proof by a preponderance of the evidence. Naphaeng, 906 F.3d at 179 (government bears burden of proving actual loss by preponderance).

Besides the trial testimony of some of the victims, the government’s evidence consisted of bank statements for the accounts in the name of Petitioner, Nelson Brights and Zion Cleaning. Those statements showed various amounts deposited in these accounts. The government never offered any evidence to show the duration of the funds in the victims’ accounts or where the funds withdrawn from the victim’s account originated. The government merely assumed that each deposit in Petitioner’s accounts represented a loss of the victims’ *own* money. However, it became obvious when the government began investigating the restitution issue that this was not a valid assumption.

One ‘victim’, L.C., admitted in her victim impact statement and her interview with the FBI that the money withdrawn from her account and deposited in Petitioner’s accounts was not her money. But rather was money the fraudsters deposited in her account. This victim’s statement revealed that while she may have begun as a romance fraud victim, she ended up as an unwitting or witting co-conspirator. L.C. admitted that none of the \$180,000 which flowed through her various accounts and was deposited in Petitioner’s account was her own money. She stated that over time, she withdrew approximately \$180,000 and sent the money to various addresses and accounts, including accounts in the name of Nelson Bright. (PSR at 7, para.19, Sealed Appendix at 7). L.C. stated the money was deposited in her accounts by “Hector”, a person with whom she believed she was in a romantic relationship. (Evidentiary Hearing at 7, Sealed Appendix at 53). None of the funds were her own money. Moreover, L.C. admitted that she was allowed to keep some of the money Hector deposited in her account for her own use. In the end, after the victim discovered that “Hector” was not a real person, she kept for her own personal use the last \$14,000 deposited into her account.

Thus, although it appeared from the bank statements and the PSR that L.C. deposited her own money into Petitioner’s accounts that was not in fact the case. Any recovery by L.C. would have been an undeserved “windfall”. Naphaeng, 906 F.3d at 179. Although the court did not order restitution for L.C., her statements put the government on notice that it

could not assume that the funds deposited in Petitioner's account belonged to the victim making the deposits and that some 'victims' were also co-conspirators, unwitting or otherwise. (Evidentiary Hearing at 13, Appendix at 61).

While it is true that the district court realized, in light of L.C.'s statements, that it could not rely on the PSR or the bank statements to accurately determine restitution, ("I can't rubber stamp the whole list" Evidentiary Hearing at 6,9,10, Sealed Appendix at 52,55,56). The court, nevertheless, erred in relying on the victim's impact statements and FBI interviews to provide the necessary proof by a preponderance of the evidence. Once the government and the court were on notice that some of deposits into Petitioner's account were not in fact the victim's own money, the preponderance of the evidence standard demands that evidence concerning the origins of the funds be submitted to the court. It is not enough that the victims claim in their statements that the money is their own money. Given the real possibility that some of the victims were participating in the money laundering and might not (unlike L.C) give inculpatory statements to the FBI, the preponderance of the evidence standard requires documentary proof that the funds received into Petitioner's account represented the victim's actual loss. In re Winship, 397 U.S. 358372 (1970) (preponderance standard requires that the existence of a fact is more probable than its nonexistence).

This is especially so given the extremely large sums of money certain victims claimed to have sent to various accounts over the years. One victim, P. C., claimed to have sent between 5 and 6 million Australian dollars of her own and her relative's money to her romance scammer. Given the large sums of money at play, coupled with L.C.'s admission that she was participating in the money laundering, the preponderance standard demands that the government offer further evidence of the origins of the money received into the accounts in question. Naphaeng, 906 F.3d at 179 (restitution order should "not confer a windfall upon [the] victim"), Simon, 12 F.4th at 64 ("causal nexus must exist between the loss and the conduct – a nexus that is neither too remote factually nor too remote temporally").

Because of the government's failure to prove restitution amounts by a preponderance, the restitution order should be vacated, and the case remanded for documentary proof that the money deposited in Petitioner's account belonged to the victims. United States v. Alphas, 785 F.3d 775, 786-87 (1st Cir. 2015) ("The Mandatory Victims Restitution Act (MVRA) 18 U.S.C. §3663A authorizes a court to award restitution only in the amount of the victim's actual loss).

CONCLUSION

For the above reasons, this Court should grant the Petition for a Writ of Certiorari.

Dated at Portland, Maine this 16th day of October 2026.

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