No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER DAVID CLARK,

***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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QUESTION 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.

The questions presented is: 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 restitution order.

PARTIES TO THE PROCEEDING

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

- United States of America
- Christopher David Clark

RELATED PROCEEDINGS

UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

United States v. Christopher David Clark
Case Nos. 25-11441, 25-11466
Judgment Date: August 18, 2026

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA

United States v. Christopher David Clark
Case No. 8:24-cr-441-JSM-NHA
Judgment Date: April 25, 2025

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PETITION FOR WRIT OF CERTIORARI

Christopher David Clark respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

Mr. Clark pleaded guilty in the United States District Court for the Middle District of Florida to one count each of receipt and possession of child pornography. The Amended Judgment in a Criminal Case reflects the district court's finding that Mr. Clark owes $14,500.00 in restitution. The Amended Judgment identifies 24 victims and specifies the amount of restitution due to each individual victim. A copy of the Amended Judgment is attached as Appendix A. The Eleventh Circuit's August 18, 2026 opinion affirming the Amended Judgment is unpublished but available on Westlaw at *United States v. Christopher David Clark*, Nos. 25-11441 & 25-11466, 2026 WL 2409789, and is attached as Appendix B.

JURISDICTION

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

The opinion of the Eleventh Circuit Court of Appeals was issued on August 18, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment VI to the United States Constitution 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.

Additionally, 18 U.S.C. § 2259(b) provides:

> **(1) Directions.**--Except as provided in paragraph (2), the order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses.
>
> **(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.

INTRODUCTION

This case presents concerns the Sixth Amendment's applicability to criminal restitution orders made pursuant to 18 U.S.C. § 2259, an issue that has splintered the lower courts for over a decade without any consistent rationale emerging.

The Sixth Amendment guarantees that a jury, not a judge, must find any fact that increases a statutory penalty. 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. 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.

This issue was squarely raised below, fully preserved, and decided against Mr. Clark. It has 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. It also involves a compulsory financial penalty imposed on an indigent defendant without regard to his ability to pay, enforceable through continued supervision and

reincarceration. Because of the importance of this question, Mr. Clark's petition for a writ of certiorari should be granted.

STATEMENT OF THE CASE

I. District court proceedings

Mr. Clark was charged with one count of receipt of child pornography and one count of possession of child pornography in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1) and 2252(a)(4)(B) and (b)(2), respectively. Doc. 21. He pleaded guilty without an agreement. Doc. 81 at 32.

Pursuant to 18 U.S.C. § 2259(b), a district court shall order restitution in cases where a defendant, like Mr. Clark, was convicted of trafficking in child pornography. Mr. Clark objected to restitution under the Fifth and Sixth Amendments, arguing that his rights to due process and to a jury trial were violated because restitution for the victims was not pled in the indictment, he did not admit facts pertaining to restitution during his guilty plea, and facts necessary to support restitution were not proven to a jury beyond a reasonable doubt. Doc. 51 at 2; *see also* Doc. 82 at 27, 31; Doc. 84 at 4-6. Mr. Clark argued that by requiring restitution based on judge-found facts, § 2259's restitution provision ran afoul of this Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013). Doc. 51 at 2; *see also* Doc. 84 at 4-5. However, Mr. Clark recognized that in *Dohrmann v. United States*, 442 F.3d 1279, 1281 (11th Cir. 2006), the Eleventh Circuit held that *Apprendi* did not apply to restitution orders. Doc. 51 at 2.

The district court held a restitution hearing where the government requested $193,000 in restitution on behalf of 24 victims. Doc. 63 at 1-9; Doc. 84. The request was made pursuant to 18 U.S.C. § 2259, which sets a minimum restitution amount of $3,000 per victim. The government provided documents submitted by the victims to support the loss amounts. Docs. 53, 53-1, 53-2, 53-3, 53-4, 53-5, 62-2, 63-3.

The district court rejected Mr. Clark's constitutional arguments during the hearing. Doc. 84 at 6-7. The district court recognized that it was obligated "to determine the amount of total restitution then determine the defendant's causal contribution to the damages, and then subtract out what they have already received." *Id.* at 2. The district court voiced concern that the victims' requests, which the government submitted prior to the hearing, did not have information as to how much the victims had already received in restitution. *Id.* at 2, 7. Additionally, the documents would not have up-to-date information because they pre-dated the hearing and provided no information as to how much restitution the victims anticipated receiving between the time the documents were submitted and the date of the hearing. *Id.* at 3. Despite not having this information, the district court granted $500 for all but one of the victims, who was awarded $3,000 because the documents submitted on her behalf provided details as to her damages. *Id.* at 7.

Following the restitution hearing, the district court entered the Amended Judgment in a Criminal Case, which reflected $14,500 in total restitution. Doc. 65 at 7-8. As the district court directed at the hearing, the Amended Judgement broke that

amount down into $500 for each payee except one, "Savannah", who was granted $3,000 in restitution. *Id.* Mr. Clark appealed.[1] Doc. 68.

II. Appellate proceedings

On appeal, Mr. Clark argued again that imposing restitution based on judicial factfinding violated his rights under the Fifth and Sixth Amendments. He recognized that this argument was foreclosed by the Eleventh Circuit's decision in *United States v. Kluge*, 147 F.4th 1291, 1302-03 (11th Cir. 2025), *petition for writ of certiorari denied*, 146 S. Ct. 2708 (2026). Mr. Clark nonetheless argued for purposes of further review that a mandatory restitution award based on judicial factfinding violated his rights under the Fifth and Sixth Amendments. 11th Cir. Doc. 27 at 13-17.

The Eleventh Circuit affirmed the district court's restitution findings. *Clark*, 2026 WL 2409789, at *1-2. The Court held that the issue of whether the Fifth and Sixth Amendment were violated by restitution being imposed based on judicial factfinding, rather than jury factfinding, was resolved, and foreclosed, by the decision in *Kluge*. *Id.* at *1. In *Kluge*, the Court held that restitution orders under 18 U.S.C. § 2259 are not criminal penalties that triggered the Sixth Amendment right to a jury trial under *Apprendi*. 147 F.4th at 1302. Because the Eleventh Circuit was bound by its prior decision in *Kluge*, it rejected Mr. Clark's argument that the award of

[1] This case involved two notices of appeal and, as a result, two appellate cases. Docs. 65, 68. Mr. Clark filed an Amended Notice of Appeal because the initial notice was not clear that it referred to the Amended Judgment entered on April 25, 2025, rather than the original judgment entered on April 22, which did not include the restitution determination. Doc. 68. n.1. The appeals were identical and the appellate court issued a single opinion for both cases. *Clark*, 2026 WL 2409789, at *1-2.

restitution in his case was unconstitutional and affirmed the decision of the district court. *Clark*, 2026 WL 2409789, at *1.

REASONS FOR GRANTING THE WRIT

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

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

In *Apprendi v. New Jersey*, this Court held that the Sixth Amendment requires that any fact, other than the fact of a prior conviction, that increases 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. at 490. "[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*, 570 U.S. at 103 & 116. 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 or 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.

II. The Eleventh Circuit's decision that a jury need not find the facts necessary to trigger a restitution order under § 2259(b)(2) is wrong.

In holding that *Apprendi* and *Alleyne* don't apply to 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 a 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. Clark'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 statutes, too, describe restitution as a 'penalty' imposed on the defendant as part of his criminal sentence, as do our cases."). That § 2259(b)(2) requires a Court order the defendant to pay restitution and even sets a mandatory minimum amount—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.

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

A. 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).

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

1. 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);[2] *United States v.*

[2] 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.

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, stakes out a fourth position entirely: 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.

2. State courts are similarly inconsistent as to their analysis of how the Sixth Amendment interacts with restitution.

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, the Kansas Supreme Court dropped any pretense of analysis and concluded that because a majority of courts concluded restitution does not implicate a defendant's Sixth Amendment right to a jury under one rationale or another, it would do the same. *State v. Arnett*, 496 P.3d 928, 933 (Kan. 2021).

Intermediate state appellate courts have likewise differed in which of the various approaches they take. *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-17-93, 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. W2003-751-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.

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 though 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.

CONCLUSION

For the foregoing reasons, Mr. Clark respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

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