

No. _____

In the

Supreme Court of the United States

Jeffrey Alvarez,
Applicant,

v.

State of Arizona,
Respondent.

**Unopposed Application for an Extension of Time to File a
Petition for Writ of Certiorari
to the Arizona Court of Appeals**

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Application

To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:

Petitioner Jeffrey Alvarez respectfully requests an extension of time of 30 days to file a petition for writ of certiorari in this case, from September 2, 2026, to and including October 2, 2026.

1. The Arizona Court of Appeals issued its unpublished decision on June 3, 2025 (Appendix A). Mr. Alvarez filed a petition for review in the Arizona Supreme Court. The Arizona Supreme Court denied review on June 4, 2026 (Appendix B). This created a petition deadline of September 2, 2026.

2. The Office of the Attorney General does not object to this requested extension.

3. This application is being filed more than 10 days before the present due date as required by Supreme Court Rule 13.5. This Court would have jurisdiction to entertain this petition for writ of certiorari under 28 U.S.C. § 1257(a).

4. Other than 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). This right applies to financial penalties like fines, and also applies to any fact that would increase a mandatory minimum. *Southern Union Co. v. United*

States, 567 U.S. 343, 349 (2012) (fines); *Alleyne v. United States*, 570 U.S. 99, 103 (2013) (increasing minimum).

5. After Mr. Alvarez’s conviction, the victim requested restitution.

6. Arguing that restitution is a punishment, Mr. Alvarez asked for a jury trial on restitution.

7. The trial court denied Mr. Alvarez’s request and decided restitution without the benefit of a jury trial.

8. Before the Arizona Court of Appeals, Mr. Alvarez argued the trial court erred when it denied his request for a jury trial on restitution.

9. The Arizona Court of Appeals affirmed, concluding that restitution is not a punishment. *State v. Alvarez*, 1 CA-CR 24-0426, 2025 WL 1561684 (Ariz. App. 2025, Unpub.) (Appx. A).

10. Mr. Alvarez filed a petition for review in the Arizona Supreme Court.

11. While the petition was pending, this Court issued *Ellingburg v. United States*, 607 U.S. 163 (2026). In *Ellingburg*, this Court unanimously held that restitution under the Mandatory Victims Restitution Act of 1996 was a punishment for purposes of the Ex Post Facto Clause.

12. Arizona’s restitution scheme largely aligns with the MVRA:

The MVRA in <i>Ellingburg</i>	Restitution in Arizona
“The MVRA labels restitution as a ‘penalty’ for a criminal ‘offense.’” <i>Ellingburg</i> , 607 U.S. at 166.	Arizona is the same. Restitution ordered “is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.” Ariz. Rev. Stat. § 13-604(C).
“A court may order restitution only with respect to a criminal ‘defendant’ and only after that defendant’s conviction of a qualifying crime.” <i>Ellingburg</i> , 607 U.S. at 166.	Arizona is the same. “If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime” Ariz. Rev. Stat. § 13-604(C).
“Restitution is imposed during ‘sentencing’ for the offense.” <i>Ellingburg</i> , 607 U.S. at 166.	Arizona is the same. Restitution is discussed in the statute that deals with the “Authorized disposition of offenders.” Ariz. Rev. Stat. § 13-604. This statute is contained within Arizona’s criminal code, Title 13. The statute is further contained within chapter 6, addressing “Classifications of Offenses and Authorized Dispositions of Offenders.” The Arizona Rules of Criminal Procedure contemplate the imposition of restitution at sentencing. Ariz. R. Crim. P. 26.10(v)(3).
“At the sentencing proceeding where restitution is ordered, the Government, not the victim, is the party adverse to the defendant.” <i>Ellingburg</i> , 607 U.S. at 166.	Arizona is the same. Although the victim may retain counsel, the relevant party remains the State of Arizona. <i>See</i> Ariz. R. Crim. P. 26.10(v)(2)(B) & (3). The Arizona Supreme Court addressed this when deciding whether a victim could collect attorney fees in restitution. <i>State v. Reed</i> , 502 P.3d 979 (Ariz. 2022). The court concluded that the prosecutor is the primary enforcer of a victim’s rights, and attorney fees are not recoverable unless the prosecutor is “unwilling or unavailable to enforce” those rights. <i>Id.</i> at ¶¶ 26-28.

13. Mr. Alvarez filed a Notice of Supplemental Authority addressing *Ellingburg* in the Arizona Supreme Court.

14. The Arizona Supreme Court denied review. (Appendix B).

15. The decision in this case warrants review. Arizona’s decisions clash with this Court’s binding decisions. Under *Apprendi* and its progeny, a defendant is entitled to a jury determination of any fact (other than prior convictions) that would increase his punishment. And under *Ellingburg*, restitution is punishment. Indeed, Justice Gorsuch has repeatedly called for a review of this very question. Just last year he issued a dissent from the denial of certiorari in *Rimlawi v. United States*, 604 U.S. ___, 145 S.Ct. 518 (2025) (Gorsuch, J., dissenting from denial of certiorari) (joined with two other cases). And before that he dissented from the denial of certiorari in *Hester v. United States*, that time joined by Justice Sotomayor. *Hester v. United States*, 586 U.S. 1104 (2019) (Gorsuch J., dissenting from denial of certiorari). Justice Gorsuch’s view has been that a jury must determine the facts needed to increase a range of penalties, including financial penalties. *Rimlawi*, 145 S.Ct. at 518. “If all that is true, it is difficult to see how a judge’s factual findings might suffice to increase a criminal defendant’s exposure to a restitution award.” *Id.* This Court’s recent decision in *Ellingburg* only makes Justice Gorsuch’s observation more poignant and timely.

16. This 30-day extension is requested to accommodate the workload of both undersigned counsel. In addition to his own case load, counsel of record Steinfeld heads the Appeals Unit in his office and thus has administrative and supervision duties. Counsel Steinfeld also recently drafted an *Amicus Curiae* brief for the Maricopa County Indigent Representation Offices filed in *Kian v. Florida*, No. 25-6623. Although familiar with the case because he handled the restitution

matter in the trial court, cocounsel Moskowitz is newly appointed to the appellate case. He also has been handling a case load with active due dates.

For these reasons, Mr. Alvarez asks that an order be entered extending the time to file a petition for writ of certiorari to and including October 2, 2026.

Respectfully submitted,

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