No. 25-1238

In the Supreme Court of the United States

MARTIN MIZRAHI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Amendment entitles a defendant to have the jury find the facts essential to criminal forfeiture beyond a reasonable doubt.

PARTIES TO THE PROCEEDING

Petitioner is Martin Mizrahi. Respondent is the United States of America.

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OPINION BELOW

The order of the court of appeals (Pet. App. 1a-8a) is available at 2025 WL 3120167.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 2025. A petition for rehearing was denied on January 30, 2026 (Pet. App. 9a-10a). The petition for a writ of certiorari was filed on April 27, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of conspiring to commit wire fraud and bank fraud, in violation of 18 U.S.C. 1349; one count of wire fraud, in violation of 18 U.S.C. 1343; one

count of bank fraud, in violation of 18 U.S.C. 1344; one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h); one count of money laundering, in violation of 18 U.S.C. 1956(a)(1); one count of aggravated identity theft, in violation of 18 U.S.C. 1028A; and one count of conspiring to operate an unlicensed money transmitting business, in violation of 18 U.S.C. 371. Judgment 1-2. He was sentenced to 60 months of imprisonment, to be followed by two years of supervised release. Judgment 3-4. The court also ordered forfeiture in the amount of $4,545,704. Pet. App. 25a-31a. The court of appeals affirmed. *Id.* at 1a-8a.

1. Petitioner and three other individuals—Joel Zubaid, David Goran, and Julian Rebiga—participated in a conspiracy to defraud banks, credit card companies, and other entities and to launder money obtained from those schemes along with drug-trafficking proceeds. Pet. App. 3a.

One of the fraud schemes involved the unauthorized access and use of the e-mail account assigned to a nonprofit organization's chief financial officer to wire millions of dollars of the organization's funds to bank accounts controlled by Zubaid and Goran. Pet. App. 3a. Zubaid and Goran obtained $1.57 million from the fraud and provided approximately $690,000 to petitioner to launder using cryptocurrency. *Ibid.*; see Gov't C.A. Br. 6-7.

With respect to the drug-trafficking proceeds, Zubaid and Goran regularly picked up hundreds of thousands of dollars in cash from sources linked to a Mexican drug cartel. Pet. App. 3a. Zubaid and Goran then delivered the cash in bulk to petitioner, who wired the money through his wholly owned company, converted it to Bitcoin, and sent it to cryptocurrency wal-

lets provided to him by Zubaid. *Ibid.* Petitioner received a commission for doing so. *Ibid.*; see Gov't C.A. Br. 4-6.

2. A grand jury in the Southern District of New York returned a superseding indictment charging petitioner with one count of conspiring to commit wire fraud and bank fraud, in violation of 18 U.S.C. 1349; one count of wire fraud, in violation of 18 U.S.C. 1343 and 2; one count of bank fraud, in violation of 18 U.S.C. 1344 and 2; one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h); one count of money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i) and 2; one count of aggravated identity theft, in violation of 18 U.S.C. 1028A and 2; and one count of conspiring to operate an unlicensed money transmitting business, in violation of 18 U.S.C. 371. Superseding Indictment 1-13. The superseding indictment also included a forfeiture allegation under 18 U.S.C. 981(a)(1)(C), 18 U.S.C. 982(a)(2)(A), and 28 U.S.C. 2461(c) that sought forfeiture of all property that constituted or was derived from proceeds traceable to the commission of the offenses. Superseding Indictment 13-14.

The case proceeded to trial, and a jury found petitioner guilty on all counts. Pet. App. 4a. The district court sentenced petitioner to 60 months of imprisonment, to be followed by two years of supervised release. Judgment 3-4. The court also ordered the forfeiture of $4,545,704, finding by a preponderance of the evidence that petitioner laundered $3,855,704 in drug-trafficking proceeds and $690,000 in wire-fraud proceeds. Pet. App. 4a, 25a-31a.

3. The court of appeals affirmed in a nonprecedential summary order. Pet. App. 1a-8a. As part of that appeal, petitioner "concede[d that] the law in th[e] Cir-

cuit is clear that the factual predicate for and the amount of proceeds subject to criminal forfeiture need not be submitted to a jury and proven beyond a reasonable doubt." *Id.* at 5a. And the court cited this Court's decision in *Libretti* v. *United States*, 516 U.S. 29 (1995), along with prior circuit decisions, in support of the correctness of that concession. Pet. App. 5a.

ARGUMENT

Petitioner contends (Pet. 14-27) that the Sixth Amendment guarantees a right to jury factfinding on criminal forfeiture and argues that this Court should overrule its contrary holding in *Libretti* v. *United States*, 516 U.S. 29 (1995). That argument lacks merit. This Court has repeatedly denied petitions for writs of certiorari raising similar contentions,[*] and it should follow the same course here.

1. The court of appeals correctly recognized that the Sixth Amendment right to a jury does not extend to factfinding underlying a criminal forfeiture order. In *Libretti*, this Court considered a defendant's argument that the right to a jury determination on criminal forfeiture "has both a constitutional and a statutory founda-

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[*] See, *e.g.*, *Esformes* v. *United States*, 144 S. Ct. 485 (2023) (No. 23-95); *Elbeblawy* v. *United States*, 141 S. Ct. 2740 (2021) (No. 20-7940); *Bradley* v. *United States*, 141 S. Ct. 2763 (2021) (No. 20-7198); *Afriyie* v. *United States*, 589 U.S. 1225 (2020) (No. 19-7259); *Stevenson* v. *United States*, 580 U.S. 1161 (2017) (No. 16-900); *Crews* v. *United States*, 580 U.S. 974 (2016) (No. 16-6183); *Miller* v. *United States*, 580 U.S. 928 (2016) (No. 16-5841); *Sigillito* v. *United States*, 574 U.S. 1104 (2015) (No. 14-7586); *Wilkes* v. *United States*, 574 U.S. 1049 (2014) (No. 14-5591); *Phillips* v. *United States*, 569 U.S. 1031 (2013) (No. 12-8549); *Dantone, Inc.* v. *United States*, 549 U.S. 1071 (2006) (No. 06-71); *Braun* v. *United States*, 546 U.S. 1076 (2005) (No. 05-599).

tion." 516 U.S. at 48. Rejecting that proposition, the Court instead held that "the right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection." *Id.* at 49.

Petitioner asserts (Pet. 20-24) that this Court should overrule *Libretti* in light of subsequent cases construing the Sixth Amendment, but no sound basis exists for doing so. In *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), this Court held, as a matter of federal constitutional law, that "[o]ther 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. In *Southern Union Co.* v. *United States*, 567 U.S. 343 (2012), the Court held "that the rule of *Apprendi* applies to the imposition of criminal fines." *Id.* at 360. *Libretti's* determination that the Sixth Amendment does not require a jury to engage in factfinding in the forfeiture context, however, does not conflict with *Apprendi* or *Southern Union.*

By its terms, the rule in *Apprendi* and *Southern Union* applies only to determinate sentencing schemes in which a factual determination "increases the penalty for a crime beyond the prescribed statutory maximum." *Apprendi*, 530 U.S. at 490. But, unlike criminal sentences or the fine at issue in *Southern Union*, the amount of money or property that a defendant may be required to forfeit is not subject to any such statutory maximum. See 21 U.S.C. 853(a)(1) (requiring mandatory forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of [the] violation"); 18 U.S.C. 981(a)(1)(C) (requiring mandatory forfeiture of "[a]ny property, real or personal, which constitutes or is derived

from proceeds traceable to [the] violation"); 18 U.S.C. 982(a)(1) (requiring mandatory forfeiture of "any property, real or personal, involved in [the] offense, or any property traceable to such property"); 18 U.S.C 982(a)(2) (requiring mandatory forfeiture of "any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of [the] violation"). And a "judge cannot exceed his constitutional authority by imposing a punishment beyond the statutory maximum if there is no statutory maximum." *United States* v. *Fruchter*, 411 F.3d 377, 383 (2d Cir.), cert. denied, 546 U.S. 1076 (2005); see *United States* v. *Bradley*, 969 F.3d 585, 591 (6th Cir. 2020) ("Unlike a statutory minimum or maximum based on a certain fact—say a fine for every day of a violation—criminal forfeiture requires a defendant to forfeit the property he used in or received from his crime."), cert. denied, 141 S. Ct. 2763 (2021).

This Court has also recognized that the *Apprendi* line of cases is compatible with the conclusion that the facts underlying a criminal forfeiture need not be proved to a jury beyond a reasonable doubt. After the Court in *United States* v. *Booker*, 543 U.S. 220 (2005), reached its constitutional holding on the federal sentencing guidelines, it considered which portions of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, 98 Stat. 1987 (18 U.S.C. 3551 *et seq.*), it had to "sever and excise as inconsistent with the Court's constitutional requirement." *Booker*, 543 U.S. at 258. At the outset of that analysis, the Court explained that "[m]ost of the statute is perfectly valid." *Ibid.* It then listed examples of those "perfectly valid" provisions, including 18 U.S.C. 3554, governing criminal "forfeiture." *Booker*, 543 U.S. at 258; see *Fruchter*, 411 F.3d at 382

("*Booker* itself suggests that a district court's forfeiture determination * * * does not offend the Sixth Amendment.").

2. Every court of appeals that has considered the question has recognized that *Apprendi* and its progeny do not alter *Libretti's* holding that the Sixth Amendment does not require jury findings on criminal forfeiture. See, *e.g.*, *United States* v. *Saccoccia*, 564 F.3d 502, 507 (1st Cir.), cert. denied, 558 U.S. 891 (2009); *Fruchter*, 411 F.3d at 382-383 (2d Cir.); *United States* v. *Leahy*, 438 F.3d 328, 331-333 (3d Cir.) (en banc), cert. denied, 549 U.S. 1071 (2006); *United States* v. *Day*, 700 F.3d 713, 732-733 (4th Cir. 2012), cert. denied, 569 U.S. 959 (2013); *United States* v. *Simpson*, 741 F.3d 539, 559-560 (5th Cir.), cert. denied, 572 U.S. 1127 (2014); *Bradley*, 969 F.3d at 591 (6th Cir.); *United States* v. *Tedder*, 403 F.3d 836, 841 (7th Cir.), cert. denied, 546 U.S. 1075 (2005); *United States* v. *Sigillito*, 759 F.3d 913, 935 (8th Cir. 2014), cert. denied, 574 U.S. 1104 (2015); *United States* v. *Phillips*, 704 F.3d 754, 769-771 (9th Cir. 2012), cert. denied, 569 U.S. 1031 (2013); *United States* v. *Cline*, 148 F.4th 1162, 1177 (10th Cir. 2025), cert. denied, 146 S. Ct. 1527 (2026); *United States* v. *Cabeza*, 258 F.3d 1256, 1257 (11th Cir. 2001) (per curiam). As with past petitions raising this issue, see p. 4 n.*, *supra*, no review of that consensus is warranted here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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