



## CAC Release: Justices Unanimously Conclude that Restitution Under the MVRA Is a Criminal Penalty

**WASHINGTON, DC** – Following today’s decision at the Supreme Court in *Ellenburg v. United States*, a case in which the Court considered whether the Ex Post Facto Clause applies to restitution ordered under the Mandatory Victims Restitution Act (MVRA), Constitutional Accountability Center Senior Appellate Counsel [Smita Ghosh](#) issued the following reaction:

The MVRA requires courts to order restitution to victims as part of their criminal sentences. Today, a unanimous Supreme Court agreed with Petitioner Holsey Ellenburg, Jr. that this restitution is a criminal penalty and the Constitution’s Ex Post Facto Clause should prevent it from being applied retroactively. As a result of the Court’s decision, the government cannot treat Ellenburg’s restitution order—which has already more than doubled due to accumulating interest after it was imposed in the 1990s—as a civil penalty. Lower courts had previously resisted this conclusion



The Court was correct on this front. As our amicus brief in this case explained, when Congress enacted the MVRA, it drew on a tradition of using restitution as a form of criminal punishment that extends as far back as Hammurabi's Code. Writing for the majority, Justice Kavanaugh echoed our brief in explaining that "numerous features" of the MVRA compelled the conclusion that restitution is "plainly criminal," including the fact that it is imposed at the conclusion of a criminal proceeding and criminal defendants face additional imprisonment when they are unable to pay.

The Court's opinion reversed the Eighth Circuit's judgment, but noted that the circuit court could still consider the government's argument that the MVRA does not violate the Ex Post Facto Clause because increasing the term of liability for restitution does not actually impose additional punishment. No matter the resolution of that issue, the recognition of the punitive nature of MVRA restitution validates longstanding efforts to protect defendants facing restitution orders using protections like the Ex Post Facto Clause.