

Wiley Helps Persuade Supreme Court to Overturn Ruling in Retroactive Restitution Case

January 23, 2026

Wiley helped persuade the U.S. Supreme Court to vacate an Eighth Circuit decision in *Ellingburg v. United States*, a high-stakes ruling with significant implications for defendants nationwide who face increased long-term debt as a result of retroactively imposed restitution penalties. As urged by Wiley in an *amicus* brief, the Court held that restitution under the Mandatory Victims Restitution Act (MVRA) is criminal punishment subject to the Ex Post Facto Clause.

Wiley's brief, which was cited in Justice Thomas' concurring opinion, asserted that the Eighth Circuit erred in holding that such restitution is a civil remedy rather than a criminal sanction, and in failing to recognize that the Clause bars retroactive laws of both a criminal and civil nature.

The Court, in a unanimous January 20 opinion, found that the statute's structure and language, as well as the potential punishments for unpaid restitution, constituted criminal punishment and therefore did invoke the Ex Post Facto Clause.

[Read the full decision here.](#)

Krystal B. Swendsboe, partner in Wiley's Litigation and Issues and Appeals practices, served as counsel of record for the brief. The Wiley team on the brief also included associate Grace Moore.

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