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WLF Asks Supreme Court to Require Jury Findings for Criminal Forfeiture (*Mizrahi v. United States*)

“Judicial fact-finding by a mere preponderance for criminal forfeiture eviscerates the Sixth Amendment and invites arbitrary deprivations of property on a massive scale.”

— Cory L. Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to grant certiorari and overrule *Libretti v. United States*, which held that the Sixth Amendment does not require a jury to determine the facts necessary for criminal forfeiture. WLF contends that permitting judges to determine facts necessary to impose criminal forfeiture by a mere preponderance of the evidence violates the Sixth Amendment and erodes the jury’s historic role as a check on government power. The Due Process Institute, National Association of Criminal Defense Lawyers, and National Association for Public Defense joined WLF on the brief.

The case arises from Martin Mizrahi’s conviction after trial in the Southern District of New York on federal fraud and money laundering charges. The district court ordered him to forfeit more than \$4.5 million, relying heavily on its own finding by a preponderance of the evidence that millions of dollars constituted illicit proceeds of narcotics trafficking. The U.S. Court of Appeals for the Second Circuit affirmed the conviction and forfeiture order.

In its amicus brief, WLF argues that criminal forfeiture is punishment, and centuries of common-law practice requires that juries—not judges—find the facts that increase a defendant’s penalty. *Libretti* is thus irreconcilable with that history as well as the Court’s subsequent *Apprendi* line of cases. Its stale rule exposes defendants to billions of dollars in annual forfeitures without the procedural safeguards the Constitution demands. WLF’s brief was prepared with the generous pro bono support of William Havemann, Kristina Alekseyeva, Natalie Nogueira, Samantha Ilagan, and Jonathan Wampler of Milbank LLP.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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