

# Supreme Court: Juries Must Determine Facts That Increase Maximum Criminal Fines

Article By:

Trial Department

---

The Supreme Court of the United States recently held in ***Southern Union Company v. United States*** that the Sixth Amendment requires juries to determine facts that increase maximum criminal fines. By requiring the U.S. government to prove additional facts to juries, *Southern Union* will affect how the government prosecutes corporate defendants, who cannot be imprisoned and frequently face criminal fines.

On June 21, 2012, the Supreme Court of the United States held in ***Southern Union Company v. United States***, 2012 WL 2344465 (2012), that the Sixth Amendment requires juries to determine facts that increase maximum criminal fines. In a 6–3 decision, the Supreme Court overturned a U.S. Court of Appeals for the First Circuit ruling upholding an \$18 million criminal penalty against Southern Union Company. By requiring the U.S. government to prove additional facts to juries, *Southern Union* will affect how the government prosecutes corporate defendants, who cannot be imprisoned and frequently face criminal fines. Yet as noted by the dissent, most criminal cases are resolved through plea bargaining. Whether *Southern Union* will strengthen or weaken each party’s bargaining position in such contexts might depend on the unique facts and circumstances of each case.

## Background

Southern Union, a natural gas company, was indicted in 2007 for multiple counts of violating federal environmental statutes, including the **Resource Conservation and Recovery Act of 1976 (RCRA)**. Violations of the RCRA are punishable by a fine of not more than \$50,000 for each day of violation. The first count of the indictment alleged that Southern Union had violated the RCRA by knowingly storing liquid mercury without a permit at its Pawtucket facility. Following a jury trial in the U.S. District Court for the District of Rhode Island, a jury convicted Southern Union of unlawfully storing liquid mercury “on or about September 19, 2002 to October 19, 2004.”

At sentencing, Southern Union noted that the verdict form did not specify which dates the violations occurred and thus the conviction could have arisen from a one-day violation. It argued that imposing any fine greater than the single-day penalty of \$50,000 would require judicial fact-finding in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which reserved to juries the determination of any fact, other than a prior conviction, that increases a criminal defendant’s maximum potential sentence. Although the district court agreed that *Apprendi* applied, it concluded that the jury had

found a 762-day violation, which would have resulted in a maximum fine of \$38.1 million. The court imposed a fine of \$6 million and a community service obligation of \$12 million.

On appeal, the First Circuit affirmed, rejecting the lower court's conclusion that the jury had found a 762-day violation and instead holding that *Apprendi* does not apply to criminal fines. Because the Second and Seventh Circuit had previously held that *Apprendi* applies to criminal fines, the Supreme Court granted *certiorari* to resolve the split.

## The Supreme Court's Decision

Writing for the majority, Justice Sotomayor explained that *Apprendi*'s "core concern" is to reserve to the jury "the determination of facts that warrant punishment for a specific statutory offense." Accordingly, a jury must determine facts that set the maximum amount of a criminal fine.

The majority emphasized that the relevant question is not related to the form of punishment, but to whether the maximum punishment triggers a right to a trial by jury. "Where a fine is so insubstantial that the underlying offense is considered 'petty,' the Sixth Amendment right of a jury trial is not triggered, and no *Apprendi* issue arises." But where a fine is substantial enough to trigger a right to a jury trial, *Apprendi* guards against "judicial factfinding that enlarges the maximum punishment a defendant faces beyond what the jury's verdict or the defendant's admissions allow."

In contrast, writing for the dissent, Justice Breyer concluded that *Apprendi* "does not encompass every kind of fact-related sentencing decision that increases the statutory maximum." Rather, the Sixth Amendment permits a sentencing judge "to determine sentencing facts—facts that are not elements of the crime but are relevant only to the amount of the fine the judge will impose." The dissent further argued that "nothing in early American practice suggests that the Framers thought that the Sixth Amendment jury trial right encompassed a right to have a jury determine fine-related sentencing facts" and that the Supreme Court's opinion in *United States v. Tyler*, 11 U.S. (7 Cranch) 285 (1812), supported this position.

© 2025 McDermott Will & Emery

---

National Law Review, Volume II, Number 190

Source URL: <https://natlawreview.com/article/supreme-court-juries-must-determine-facts-increase-maximum-criminal-fines>