

statutory limits, but the Court made “clear . . . that the ‘statutory maximum’ for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*. In other words, the relevant ‘statutory maximum’ is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings.”<sup>99</sup>

Then, in *United States v. Booker*,<sup>100</sup> the Court held that the same principles limit sentences that courts may impose under the federal Sentencing Guidelines.<sup>101</sup> As the Court restated the principle in *Booker*, “[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.”<sup>102</sup> Attempts to distinguish *Blakely* were rejected. The Court concluded that the fact that the Guidelines were developed by the Sentencing Commission rather than by Congress “lacks constitutional significance.”<sup>103</sup> Instead, the Guidelines were suspect in application because, on the one hand, they curtailed the role of jury factfinding in determining the upper range of a sentence and, on the other hand, they mandated sentences from which a court could depart only in a limited number of cases and after separately finding the existence of factors not presented to the jury.<sup>104</sup> The mandatory nature of the Guidelines was also important to the Court’s formulation of a remedy.<sup>105</sup> Rather than engrafting a jury trial

<sup>99</sup> 542 U.S. at 303–304 (italics in original; citations omitted). In *Southern Union Co. v. United States*, 567 U.S. \_\_\_, No. 11–94, slip op. (2012), the Court cited this passage in *Blakely* as a springboard to its conclusion that the *Apprendi* line of cases apply in imposing criminal fines. The maximum fine that could be imposed in *Southern Union Co.* was pegged to the number of days a violation continued, but the jury was not asked to determine the duration of the violation. The Court saw no “principled basis” for treating criminal fines differently from imprisonment or capital punishment. In all these cases, the Sixth Amendment guards against “judicial factfinding that enlarges the maximum punishment a defendant faces beyond what the jury’s verdict or the defendant’s admissions allow.”

<sup>100</sup> 543 U.S. 220 (2005).

<sup>101</sup> Under the Sentencing Reform Act of 1984, the United States Sentencing Commission adopted binding Sentencing Guidelines, and courts were required to impose sentences within the narrow, defined ranges. A judge could depart from the applicable Guideline only upon finding in writing that an aggravating or mitigating factor was present that had not adequately been considered by the Commission. See *Mistretta v. United States*, 488 U.S. 361 (1989).

<sup>102</sup> 543 U.S. at 244.

<sup>103</sup> 543 U.S. at 237. Relying on *Mistretta v. United States*, 488 U.S. 361 (1989), the Court also rejected a separation-of-powers argument. *Id.* at 754–55.

<sup>104</sup> 543 U.S. at 233–35.

<sup>105</sup> There were two distinct opinions of the Court in *Booker*. The first, authored by Justice Stevens and joined by Justices Scalia, Souter, Thomas, and Ginsburg (the same Justices who comprised the five-Justice *Blakely* majority), applied *Blakely* to