

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ALEXANDER ROSENBLATT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10973
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 26, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALEXANDER ROSENBLATT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-202-1

Before BENAVIDES, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Alexander Rosenblatt pleaded guilty, pursuant to a plea agreement, to two counts of receipt of child pornography. The district court sentenced Rosenblatt to a total sentence of 360 months of imprisonment. It also imposed concurrent terms of 15 years of supervised release. The district court ordered Rosenblatt to pay \$5,000 each in restitution to victims “Pia,” “Ava,” and “Mya,” and \$10,000 in restitution to another victim, “Maureen.”

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Rosenblatt argues that the district court failed to conduct a proximate cause analysis, as required by *Paroline v. United States*, 572 U.S. 434, 460 (2014), when calculating the restitution awards. In regard to the losses suffered by Pia, Ava, and Mya, Rosenblatt argues that the district court failed to comport with the holding in *Paroline* by not first calculating the victims' total losses. Because Rosenblatt argues that the restitution amount exceeds the victims' actual losses, such a claim is not barred by the appeal waiver in his plea agreement. *See United States v. Leal*, 933 F.3d 426, 430-31 (5th Cir.), *cert. denied*, (No. 19-6554), 2019 WL 6689861 (U.S. Dec. 9, 2019).

Because Rosenblatt did not object to the restitution awards in the district court, we review for plain error only. *See id.* at 431. To show plain error, the defendant must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

The letter submitted by Maureen's counsel adequately conducted a proximate cause analysis as it set forth an estimate of the total losses broken down by category, including wage loss, attorneys' fees, and medical expenses. *See Paroline*, 572 U.S. at 446-48. Similarly, the letter by counsel for Pia, Ava, and Mya also included an adequate proximate cause analysis as it emphasized the difficulty in determining the total amount of their losses, estimated the amount of future costs, and listed the amount of restitution already received by each victim. *See id.* Although it did not contain a calculation of total losses, *Paroline* does not stand for the proposition that a district court first must calculate a victim's total losses before conducting a proximate cause analysis. *See id.* at 449. To the extent Rosenblatt argues that *Paroline* required the

district court to engage in additional analysis and discussion at sentencing, that issue is subject to reasonable dispute and, thus, is not clear or obvious error. *See Puckett*, 556 U.S. at 135.

Rosenblatt has not demonstrated that the district court plainly erred in its restitution awards. *See Paroline*, 572 U.S. at 460; *Puckett*, 556 U.S. at 135; *Leal*, 933 F.3d at 432-33. The judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

§ **JUDGMENT IN A CRIMINAL CASE**

§

v.

§

§ Case Number: **3:17-CR-00202-M(1)**§ USM Number: **55609-177****ALEXANDER ROSENBLATT**§ **Cody Cofer**

Defendant.

§ Defendant's Attorney

§

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Counts 1s and 2s of the Superseding Indictment, filed on November 21, 2017.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense**Offense Ended****Count****18 U.S.C. § 2252A(a)(2)(A) Receipt Of Child Pornography****06/19/2015****1s****18 U.S.C. § 2252A(a)(2)(A) Receipt Of Child Pornography****06/19/2015****2s**

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

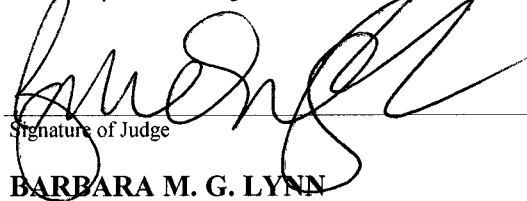
☐ The defendant has been found not guilty on count(s)

☒ **The original Indictment filed on April 4, 2017 and Count 3 of the Superseding Indictment are dismissed on the motion of the United States.**

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 10, 2018

Date of Imposition of Judgment



Signature of Judge

BARBARA M. G. LYNN**CHIEF UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

7-10-18

Date

DEFENDANT: ALEXANDER ROSENBLATT
CASE NUMBER: 3:17-CR-00202-M(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

THREE HUNDRED AND SIXTY (360) MONTHS. This sentence consists of two hundred forty (240) month sentences on each of Counts 1 and 2. One hundred and twenty (120) months of Count 2 shall run concurrently and 120 months of Count 2 shall run consecutively for a total aggregate sentence of three hundred and sixty (360) months.

Pursuant to United States Sentencing Commission, Guidelines Manual, §5G1.3(c) (Nov. 2016), it is this Court's intent for the Defendant to receive a sentence adjustment to account for any time that the Defendant spent in custody beginning on April 5, 2017, that the Bureau of Prisons will not credit under 18 U.S.C. § 3585(b).

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at ☐ a.m. ☐ p.m. on
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALEXANDER ROSENBLATT
CASE NUMBER: 3:17-CR-00202-M(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **FIFTEEN (15) YEARS. This consists of fifteen (15) years on each of Counts 1 and 2, to run concurrently with each other for total supervised release term of FIFTEEN (15) YEARS.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: ALEXANDER ROSENBLATT
CASE NUMBER: 3:17-CR-00202-M(1)

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ALEXANDER ROSENBLATT
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SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. If the defendant is receiving treatment, the defendant may not use alcohol and/or all other intoxicants at any time. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.

The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e., clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.

The defendant shall have no contact with persons under the age of 18, including by correspondence, telephone, internet, electronic communication, or through third parties. The defendant also shall not have access to or loiter near school grounds, parks, arcades, playgrounds, amusement parks or other places where children may frequently congregate. The defendant shall neither seek nor maintain employment or volunteer work at any location and/or activity where persons under the age of 18 congregate, without prior permission of the U.S. Probation Officer. Furthermore, the defendant shall not befriend anyone who has children under the age of 18, without prior permission of the U.S. Probation Officer. This shall not prevent the defendant from attending church or socializing with family members, including children, with the permission of their parents and the U.S. Probation Officer.

The defendant shall have no contact with any victim of this offense, including by correspondence, telephone, or communication through third parties, except under circumstances approved in advance by the probation officer. The defendant shall not enter onto the premises, travel past, or loiter near any victim's residence, place of employment, or other places frequented by the victim.

The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month. The defendant shall consent to the probation officer's conducting ongoing monitoring of his/her computer/computers. The monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. At the discretion of the probation officer, the monitoring software may be disabled or removed at any time during the term of supervision.

DEFENDANT: ALEXANDER ROSENBLATT
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SPECIAL CONDITIONS OF SUPERVISION CONTINUED

Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant is ordered to pay restitution in the amount of \$25,000, payable to the U.S. District Clerk, 1100 Commerce Street, Room 1452, Dallas, Texas 75242. Restitution shall be payable immediately and any unpaid balance shall be payable during incarceration. Restitution shall be disbursed to:

Deborah A. Bianco in trust for "Pia" Bellevue, Washington
\$5,000

Deborah A. Bianco in trust for "Ava" Bellevue, Washington
\$5,000

Deborah A. Bianco in trust for "Mya" Bellevue, Washington
\$5,000

Deborah A. Bianco in trust for "Maureen" Bellevue, Washington
\$10,000

If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than 10 percent of the defendant's gross monthly income, or at a rate of not less than \$50 per month, whichever is greater. Payment shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990 or any other means available under federal or state law. Furthermore, it is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. § 3612(f)(3).

The defendant shall submit to periodic, unannounced examinations of his/her computer/computers, storage media, and/or other electronic or Internet-capable devices, performed by the probation officer at reasonable times and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.

The defendant shall not use any computer other than the one the defendant is authorized to use without prior approval from the probation officer.

The defendant shall not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer.

The defendant shall not use any computer or computer-related equipment owned by his/her employer except for the strict benefit of his/her employer in the performance of his/her job-related duties.

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SPECIAL CONDITIONS OF SUPERVISION CONTINUED

The defendant shall provide the probation officer with accurate information about his/her entire computer system. The defendant's email shall only be accessed through a pre-approved application.

The defendant shall not install new hardware, perform upgrades, or effect repairs on his/her computer system without the prior permission of the probation officer.

Without prior approval of the probation officer, the defendant shall not maintain or create a user account on any social networking site (i.e., MySpace.com, Facebook.com, Adultfriendfinder.com, etc.) that allows access to persons under the age of 18, or allows for the exchange of sexually-explicit material, chat conversations, or instant messaging. The defendant shall neither view nor access any web profile of users under the age of 18.

The defendant shall not engage in or utilize any service that allows peer-to-peer file sharing or file transfer protocol activity.

The defendant shall pay any remaining balance of restitution in the amount of \$25,000, as set out in this Judgment.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	\$200.00	\$0.00	\$25,000.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution of \$25,000.00 to:

DEBORAH BIANCO, IN TRUST FOR AVA
 \$5,000.00

DEBORAH BIANCO, IN TRUST FOR MAUREEN
 \$10,000.00

DEBORAH BIANCO, IN TRUST FOR MYA
 \$5,000.00

DEBORAH BIANCO, IN TRUST FOR PIA
 \$5,000.00

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|--|-------------------------------|--|
| <input checked="" type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input checked="" type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☒ C, ☐ D, or ☐ F below); or
- C ☒ Payment in equal monthly (*e.g., weekly, monthly, quarterly*) installments of at least \$50.00 over a period of _____ (*e.g., months or years*), to commence 60 days (*e.g., 30 or 60 days*) after the date of this judgment; or
- D ☐ Payment in equal 20 (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1s and 2s, which shall be paid immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Any amount less than \$250 in the defendant's commissary account while he is serving his term of imprisonment is not subject to garnishment by the government.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
The defendant shall forfeit a home built tower computer along with a Seagate hard drive bearing Serial No. NASK6SZH; a Hitachi 2TB hard drive bearing Serial No. YAGJ7WWN; and a Seagate 1.5TB hard drive bearing Serial No. 6V50654W.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.