

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUN 26 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
STEVEN GERARD WALKER,  
Defendant-Appellant.

No. 18-10211

D.C. No.  
1:16-cr-00088-LJO-SKO-1  
Eastern District of California,  
Fresno

ORDER

Before: MELLOY,\* BYBEE, and N.R. SMITH, Circuit Judges.

The panel judges have voted to deny appellant's petition for rehearing and recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for rehearing and petition for rehearing en banc, filed June 2, 2020, is DENIED.

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\* The Honorable Michael J. Melloy, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

**FOR PUBLICATION****UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee*,  
v.  
STEVEN GERARD WALKER,  
*Defendant-Appellant*.

No. 18-10211

D.C. No.  
1:16-cr-00088-LJO-  
SKO-1

OPINION

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O'Neill, District Judge, Presiding

Argued and Submitted October 24, 2019  
San Francisco, California

Filed March 20, 2020

Before: Michael J. Melloy,\* Jay S. Bybee, and N. Randy  
Smith, Circuit Judges.

Opinion by Judge Bybee

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\* The Honorable Michael J. Melloy, United States Circuit Judge for  
the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

**SUMMARY\*\***

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**Criminal Law**

The panel affirmed a criminal judgment in a case in which the defendant, who pleaded guilty to being a felon in possession of a firearm, challenged the application of a fifteen-year-minimum sentencing enhancement under the Armed Career Criminal Act (ACCA) based on his 1998, 1999, and 2014 domestic-violence convictions under California Penal Code § 273.5.

The defendant argued that his § 273.5 convictions do not qualify as categorical violent felonies under the ACCA. The panel held that this contention is foreclosed by *United States v. Laurico-Yeno*, 590 F.3d 818 (9th Cir. 2010); *Banuelos-Ayon v. Holder*, 611 F.3d 1080 (9th Cir. 2010); and *United States v. Ayala-Nicanor*, 659 F.3d 744 (9th Cir. 2011). Because no Supreme Court or en-banc opinion from this court has obviously limited or otherwise abrogated those decisions, and because the defendant did not show that California law regarding § 273.5 has changed, the panel reaffirmed *Laurico-Yeno* and its progeny.

The defendant also argued that the Sixth Amendment requires a jury, not a sentencing judge, to find that a defendant's prior convictions were for crimes on different occasions, and that the district court therefore transgressed the Sixth Amendment by deciding that the defendant had committed three separate felonies. The panel held that this

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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UNITED STATES V. WALKER

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argument is foreclosed by *United States v. Grisel*, 488 F.3d 844 (9th Cir. 2007) (en banc), which held that a sentencing judge may find the dates of prior offenses in deciding if a defendant has committed three or more violent felonies. The panel explained that because *Mathis v. United States*, 136 S. Ct. 2243 (2016), only proscribed judges from determining whether a given factual scenario substantively qualifies as a predicate offense, *Grisel* is not clearly irreconcilable with *Mathis*'s reasoning or theory.

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**COUNSEL**

Peggy Sasso (argued), Assistant Federal Defender; Heather E. Williams, Federal Defender; Office of the Federal Public Defender, Fresno, California; for Defendant-Appellant.

Ross Pearson (argued), Assistant United States Attorney, Camil A. Skipper, Appellate Chief; McGregor W. Scott, United States Attorney; United States Attorney's Office, Fresno, California; for Plaintiff-Appellee.

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**OPINION**

BYBEE, Circuit Judge:

Defendant Steven Walker challenges the application of a fifteen-year-minimum sentencing enhancement under the Armed Career Criminal Act (ACCA) to his sentence for being a felon in possession of a firearm. He makes two arguments. First, he says that his predicate domestic-violence convictions do not qualify as categorical violent felonies under the ACCA. Second, he claims that the district court

transgressed the Sixth Amendment by deciding that Walker had committed three separate felonies. Walker's assertions, however, are foreclosed by precedent. As such, we affirm.

### I. FACTS AND PROCEDURAL BACKGROUND

Walker was found in possession of a firearm. He had three prior felony convictions for "willfully inflict[ing] corporal injury" on a spouse or cohabitant in violation of California Penal Code § 273.5. His three prior convictions occurred in 1998, 1999, and 2014.

Walker pleaded guilty to being a felon in possession of a firearm. But he did not admit to having been convicted of three separate incidents violating § 273.5. The United States presented certified copies of the prior judgments. The district court determined that Walker had been previously convicted of three separate violent felonies, requiring that he be sentenced to a mandatory-minimum fifteen-year sentence under the ACCA. *See* 18 U.S.C. § 924(e)(1). He appeals this sentence.<sup>1</sup>

### II. DISCUSSION

Walker raises two issues concerning his sentence. First, he claims that his three prior convictions under California Penal Code § 273.5 do not qualify as a "violent felony" under the ACCA, 18 U.S.C. § 924(e)(2)(B)(i). Second, he argues

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<sup>1</sup> We review *de novo* a district court's determination that a prior conviction qualifies as a "violent felony" under the ACCA. *United States v. Walton*, 881 F.3d 768, 770–71 (9th Cir. 2018). Constitutional questions are also reviewed *de novo*. *United States v. Holden*, 908 F.3d 395, 399 (9th Cir. 2018).

that it was error under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), for the district court to have determined that his prior convictions were separate incidents, and that such determination had to be made by a jury. We will consider each in turn.

A. *Convictions Under § 273.5 Constitute a Categorical “Violent Felony”*

The ACCA makes it “unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . [to] possess in or affecting commerce, any firearm . . . .” 18 U.S.C. § 922(g)(1). Any person who violates § 922(g)(1) “and has three previous convictions . . . for a violent felony” shall be imprisoned for a minimum of fifteen years. *Id.* § 924(e)(1). A prior conviction may qualify as a “violent felony” only if it “has as an element the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i). Walker contends that his convictions under § 273.5 cannot qualify because intent to harm the victim is not an element of that crime.<sup>2</sup> Specifically, he points to several California cases speaking to how convictions may be obtained under various assault-and-battery statutes without showing an intent to harm the victim.

Walker’s argument, however, collides headlong with our precedents. In *United States v. Laurico-Yeno*, we determined that § 273.5 was a “crime of violence” for the purposes of U.S. Sentencing Guideline § 2L1.2(b)(1)(A). 590 F.3d 818,

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<sup>2</sup> Section 273.5 provides in relevant part: “Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim . . . is guilty of a felony.” Cal. Penal Code § 273.5(a).

821–23 (9th Cir. 2010). That provision increases a sentence if the defendant committed three or more “crimes of violence.” U.S. Sentencing Guidelines Manual § 2L1.2(b)(3)(E) (U.S. Sentencing Comm’n 2018). “Crime of violence” in the Sentencing Guidelines is defined identically to the phrase “violent felony” in the ACCA: “[a]ny other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.” *Id.* § 2L1.2 cmt. n.2. We therefore emphasized in *Laurico-Yeno* how § 273.5 punishes a “person who willfully inflicts” injury upon a cohabitant “where willfully is a synonym for intentionally.” 590 F.3d at 821.

In *Banuelos-Ayon v. Holder*, we held that § 273.5 “is a categorical crime of violence” for the purposes of 18 U.S.C. § 16(a), which has language identical to § 924(e)(1) and U.S.S.G. § 2L1.2 Application Note 2. 611 F.3d 1080, 1086 (9th Cir. 2010). We specifically noted that under § 273.5 a defendant must “willfully inflict[] . . . a *direct application of force* on the victim.” *Id.* at 1084 (emphasis in original) (quoting *People v. Jackson*, 91 Cal. Rptr. 2d 805, 810 (Cal. Ct. App. 2000)).

We reaffirmed both *Laurico-Yeno* and *Banuelos-Ayon* in *United States v. Ayala-Nicanor*, 659 F.3d 744, 753 (9th Cir. 2011). Ayala argued that *Johnson v. United States*, 559 U.S. 133 (2010), undermined *Laurico-Yeno* because even a “slight touching” might constitute domestic violence under § 273.5. *Ayala-Nicanor*, 659 F.3d at 749–50. We were not persuaded by the argument that several California Court of Appeal decisions showed minor touching could violate § 273.5. *Id.* at 750. We explained that *Laurico-Yeno* had determined that minimal touching could not give rise to a conviction under

§ 273.5. *Id.* at 749–50. We concluded that “nothing in *Johnson* undermines the validity of *Laurico-Yeno*, a conclusion we already reached in *Banuelos-Ayon*, and that we reaffirm today.” *Id.* at 752.

We find no grounds to depart from our prior reading of § 273.5 here.<sup>3</sup> As a three-judge panel, “[w]e will not overrule the decision of a prior panel of our court absent an en banc proceeding, or a demonstrable change in the underlying law.” *Kohler v. Presidio Int'l, Inc.*, 782 F.3d 1064, 1070 (9th Cir. 2015). A panel may find controlling circuit precedent overruled when “the reasoning or theory of our prior circuit authority is *clearly irreconcilable* with the reasoning or theory of intervening higher authority.” *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc) (emphasis added). Generic assertions that our precedents are inconsistent with higher authority will not do: “It is not enough for there to be ‘some tension’ between the intervening higher authority and prior circuit precedent, or for the intervening higher authority to ‘cast doubt’ on the prior circuit precedent.” *Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012) (citations omitted). Instead, “[t]he intervening higher precedent must be ‘clearly inconsistent’ with the prior circuit precedent.” *Id.*

No Supreme Court or en-banc opinion from our court has obviously limited or otherwise abrogated our decisions in

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<sup>3</sup> Walker also asserts that interpretations of California’s general assault-and-battery statutes are applicable here because § 273.5 is just another battery statute and simple battery could include non-violent touching. We considered and rejected this argument in *Laurico-Yeno*. 590 F.3d at 822. In that case we found this argument lacking and concluded that § 273.5 penalizes domestic violence with “intentional use of force that results in a traumatic condition.” *Id.*

*Laurico-Yeno, Ayala-Nicanor, or Banuelos-Ayon.* Nor has Walker shown that California law regarding § 273.5 has changed. We therefore reaffirm *Laurico-Yeno* and its progeny.

**B. A Sentencing Judge May Determine the Number of Prior Convictions**

We turn next to Walker’s contention that the Sixth Amendment forbids a sentencing judge from determining whether prior convictions occurred on separate occasions. For Walker to receive the fifteen-year mandatory minimum under the ACCA, he must have had “three previous [violent felony] convictions . . . committed on occasions different from one another.” 18 U.S.C. § 924(e)(1). Walker asserts that the Sixth Amendment requires a jury, not a sentencing judge, to find that a defendant’s prior convictions were for crimes committed on different occasions. But, once again, Walker’s argument is foreclosed by circuit precedent.

Under *Apprendi*, facts that increase the penalty of a conviction must be found by the jury beyond a reasonable doubt. 530 U.S. at 490. However, a sentencing judge may find “the fact of a prior conviction” and enhance the sentence accordingly. *Id.* The specific issue here is whether a judge can find that each conviction was a “separate” incident for the purposes of applying the ACCA.

We previously held that a sentencing judge may find the dates of prior offenses in deciding if a defendant has committed three or more violent felonies. See *United States v. Grisel*, 488 F.3d 844, 845–47 (9th Cir. 2007) (en banc), *abrogated-in-part on other grounds by United States v. Stitt*, 139 S. Ct. 399 (2018). *Grisel* rejected the argument that the

sentencing judge's finding the dates of a given offense fell "outside [Apprendi's] prior-conviction exception." *Id.* at 846. We explained that "the date of the offense" is a fact determinable on "the face of the document demonstrating Defendant's prior conviction." *Id.* at 847. Hence, the date of the offense is intimately connected with the fact of a prior conviction. *Id.* As we noted in *Grisel*, our decision accorded with the decisions of no fewer than six circuits. *See id.* n.1; *see, e.g.*, *United States v. Burgin*, 388 F.3d 177, 186 (6th Cir. 2004) ("[T]he 'different occasions' requirement of § 924(e) cannot be significantly distinguished from 'the fact of a prior conviction.'"). And, since *Grisel*, at least one other circuit has found no Sixth Amendment problem with a sentencing judge determining whether a defendant's prior convictions were for crimes committed on separate occasions. *See, e.g.*, *United States v. Blair*, 734 F.3d 218, 228 (3d Cir. 2013) (rejecting the argument that a jury must find the dates of prior convictions and collecting cases explaining the same).

To get around *Grisel*, Walker claims that the case has been implicitly overruled by *Mathis v. United States*, 136 S. Ct. 2243, 2253 (2016). Specifically, he points to discussions in *Mathis* explaining that a "non-elemental fact" cannot be used to enhance sentences under the ACCA. Thus, he asserts that because the dates of his prior convictions are non-elemental facts, they cannot be considered by the sentencing judge for the purposes of applying the ACCA.

Context, however, shows that *Mathis* is not so encompassing as to abrogate *Grisel*. The only issue in *Mathis* was whether judges could determine if a crime was an ACCA predicate for statutes "enumerat[ing] various factual means of committing a single element" of a given crime—i.e., whether the categorical approach could apply to these types of

statutes. *Mathis*, 136 S. Ct. at 2249. The Supreme Court’s concern was that judges would necessarily consider the facts *underlying the offense*—an approach antithetical to ACCA jurisprudence. *Id.* at 2251. In line with the Court’s prior holdings, *Mathis* concluded that “a sentencing judge may look only to ‘the elements of the [offense], not to the facts of [the] defendant’s conduct’” in determining whether the state-law conviction was an ACCA predicate. *Id.* (alterations in original). *Mathis*, therefore, only proscribed judges from determining whether a given factual scenario substantively qualifies as a predicate offense. *See id.* at 2252 (“[A] judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense.”). *Mathis* did not speak to courts looking at dates of conviction.

With no on-point discussion in *Mathis* regarding how judges determine the number of prior offenses, Walker fails to show that *Grisel* “is clearly irreconcilable with [*Mathis*’s] reasoning or theory.” *Miller*, 335 F.3d at 893. To the extent that *Mathis* expresses broader disfavor of factual determinations by sentencing judges, it is not clear whether and how this disfavor extends beyond determining that a given state-law crime is an ACCA predicate. *See United States v. Dunn*, 728 F.3d 1151, 1156 (9th Cir. 2013) (“Although the circuit opinion need not be expressly overruled by the Supreme Court, both the circuit and Supreme Court cases must be ‘closely on point.’” (quoting *Miller*, 335 F.3d at 899)). Pointing to “some tension” between [stray statements in *Mathis*] and prior circuit precedent” is not enough for the panel to consider *Grisel* overruled. *Lair*, 697 F.3d at 1207. In finding that Walker had been convicted of three or more violent felonies, the sentencing judge needed to look no further than the face

of the certified judgments to determine these convictions were for distinct acts. *See United States v. Harris*, 447 F.3d 1300, 1304 (10th Cir. 2006) (“The time, place, and substance of the prior convictions can ordinarily be ascertained from court records associated with those convictions, and the Supreme Court has held that the Constitution allows sentencing courts to rely on such records to make findings about prior convictions.”); *accord United States v. Thompson*, 421 F.3d 278, 282–83 (4th Cir. 2005) (explaining that the “date, statutory violation, and the like” are “as much a part of the conviction as the fact that twelve jurors agreed about the defendant’s guilt”); *United States v. Santiago*, 268 F.3d 151, 156 (2d Cir. 2001) (Sotomayor, J.) (“[W]e read *Apprendi* as leaving to the judge, consistent with due process, the task of finding not only the mere fact of previous convictions but other related issues as well.”). Thus, per *Grisel*, the district court did not err in making a finding that Walker committed three separate offenses.

### III. CONCLUSION

Despite his best efforts, Walker has failed to demonstrate that our prior decisions are obviously inconsistent with intervening Supreme Court opinions. We therefore cannot and will not declare our prior precedents *causa non grata*. The judgment is

**AFFIRMED.**

# UNITED STATES DISTRICT COURT

## Eastern District of California

UNITED STATES OF AMERICA

v.

**STEVEN GERARD WALKER****JUDGMENT IN A CRIMINAL CASE**Case Number: **1:16CR00088-001**

Defendant's Attorney: Roger Shahriar Bonakdar, Appointed

**THE DEFENDANT:**

pleaded guilty to count(s) 1 of the Indictment.  
 pleaded nolo contendere to count(s) \_\_\_\_ which was accepted by the court.  
 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	Date Offense Concluded	Count Number
18 U.S.C. §922(g)(1)	FELON IN POSSESSION OF A FIREARM AND AMMUNITION (Class A Felony)	May 25, 2016	1

The defendant is sentenced as provided in pages 2 through 7 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) \_\_\_\_.  
 Count(s) \_\_\_\_ dismissed on the motion of the United States.  
 Indictment is to be dismissed by District Court on motion of the United States.  
 Appeal rights given.  Appeal rights waived.

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 or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

5/21/2018

Date of Imposition of Judgment

/s/ Lawrence J. O'Neill

Signature of Judicial Officer

Lawrence J. O'Neill, United States District Judge

Name &amp; Title of Judicial Officer

5/25/2018

Date

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
180 months.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:  
The Court recommends that the defendant be incarcerated at Lompoc, CA or in a California facility, but only insofar as this accords with security classification and space availability. The Court recommends the defendant participate in the 500-Hour Bureau of Prisons Substance Abuse Treatment Program.
- 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 \_\_\_\_ 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 \_\_\_\_ on \_\_\_\_.
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Officer.

If no such institution has been designated, to the United States Marshal for this district.

## RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

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United States Marshal

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By Deputy United States Marshal

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:  
60 months.

## MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
- You must cooperate in the collection of DNA as directed by the probation officer.
- 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 the location where you reside, work, are a student, or were convicted of a qualifying offense.
- You must participate in an approved program for domestic violence.

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

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the Court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the Court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

### SPECIAL CONDITIONS OF SUPERVISION

1. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
2. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
3. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
4. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
5. As directed by the probation officer, the defendant shall complete up to 20 hours of unpaid community service per week until employed for at least 30 hours per week or participating in a previously approved educational or vocational program.
6. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.
7. The defendant shall submit to the search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer in the lawful discharge of the officer's supervision functions with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100		

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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:

The interest requirement is waived for the  fine  restitution

The interest requirement for the  fine  restitution is modified as follows:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

\*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.

## 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 payment of \$ 100.00 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 \_\_\_\_ (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 the date of this judgment; or
- D.  Payment in equal \_\_\_\_ (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/probation 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:

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

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

- 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:  
Preliminary Order of Forfeiture filed April 23, 2018 is made FINAL.

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.