

APPENDIX

APPENDIX A

Fifth Circuit opinion.....1a

APPENDIX B

Judgment of conviction..... 14a

APPENDIX C

Preliminary order of forfeiture..... 21a

APPENDIX D

Order of money judgment..... 24a

APPENDIX E

Federal Rule of Criminal Procedure 32.2 26a

APPENDIX F

Federal Rule of Criminal Procedure 35 31a

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

United States Court of Appeals
Fifth Circuit

FILED

April 20, 2020

Lyle W. Cayce
Clerk

No. 18-50784

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

DAVID DAVALOS, SR.,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:16-CR-1115-11

Before JOLLY, GRAVES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Defendant-Appellant David Davalos, Sr. (“Mr. Davalos”) challenges several aspects of the criminal sentence imposed on him by the district court. Having considered his arguments, we affirm in part, vacate in part, and remand this case for further proceedings.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 18-50784

I. BACKGROUND

In August 2016, a federal grand jury returned a nine-count indictment against Mr. Davalos and 25 others. Mr. Davalos was specifically named in two counts: Count Three, which charged him with conspiring to possess with intent to distribute five or more kilograms of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A); and Count Five, which alleged that he opened, used, and maintained a premise in Crystal City, Texas, for the purpose of distributing cocaine in violation of 21 U.S.C. § 856(a)(1) and (b).

The indictment included both (1) a notice of demand for forfeiture of real property; and (2) a money judgment with a provision regarding substitute assets. In January 2017, the government filed a bill of particulars stating that it sought the criminal forfeiture of both the property named in the indictment and additional properties described in the bill.

In March 2017, Mr. Davalos pleaded guilty to Counts Three and Five of the indictment without a plea agreement. The government offered a factual basis supporting the plea, which Mr. Davalos admitted with two exceptions. Specifically, Mr. Davalos (1) objected to the drug quantity and drug proceeds in the factual basis, and (2) notified the court that he did not agree to the government's forfeiture provisions. The district court approved Mr. Davalos's plea, but deferred matters related to the forfeiture to the sentencing hearing.

In May 2018, the government filed an advisory regarding the items of which it intended to seek forfeiture at the upcoming sentencing hearing. The advisory noted that, with respect to Mr. Davalos, the government planned to seek (1) "[a] sum of money equal to the proceeds obtained by [Mr. Davalos] from the violations he has pled guilty to"; (2) real property located at 310 West Zapata Street in Crystal City, Texas; (3) \$4,118.00 in U.S. currency; and (4) a 2004 Cadillac Escalade.

No. 18-50784

Mr. Davalos's sentencing hearing took place on August 29, 2018. During the hearing, the court held a sealed bench conference to resolve issues regarding drug quantity, role adjustments, and forfeiture. Following the bench conference, the court determined that Mr. Davalos was subject to a guideline sentence of 210–262 months for Count Three and 210–240 months for Count Five. The district court found the advisory guideline sentencing ranges “adequate” and imposed a concurrent 235-month term of imprisonment on each count. The court also sentenced Mr. Davalos to supervised release.

The district court did not enter its written judgment until September 6, 2018. That judgment included an order of forfeiture and a forfeiture money judgment. However, the government had not yet filed a motion for a preliminary order of forfeiture or motion for entry of money judgment. It did not do so until several weeks after entry of the district court's written judgment. The district court then entered a preliminary order of forfeiture and an order of money judgment. Those orders were filed 83 and 97 days after Mr. Davalos's sentencing, respectively. Mr. Davalos filed his notice of appeal on September 19, 2018.

On appeal, Mr. Davalos challenges (1) the district court's entry of the preliminary order of forfeiture and order of money judgment; and (2) his within-guidelines sentence. He also seeks remand to conform the district court's oral pronouncement of sentence to its written judgment.

II. ORDER OF FORFEITURE AND MONEY JUDGMENT

Mr. Davalos advances two challenges to the forfeiture and money judgment entered against him. We address each in turn.

A. Rule 32.2

Mr. Davalos contends that the district court exceeded its subject-matter jurisdiction when it entered a preliminary order of forfeiture and order of

No. 18-50784

money judgment more than fourteen days after his sentencing and the entry of judgment. Existing caselaw dictates otherwise.

The imposition of criminal forfeiture is governed by Federal Rule of Criminal Procedure 32.2. That rule provides that the court, when forfeiture is contested, must conduct a hearing after it finds the defendant guilty. Fed. R. Crim. P. 32.2(b)(1)(B). If the court “finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria.” Fed. R. Crim. P. 32.2(b)(2)(A). Unless it is “impractical” to do so, the court “must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).” Fed. R. Crim. P. 32.2(b)(2)(B). Rule 32.2(b)(4) provides that the preliminary forfeiture order becomes final either “[a]t sentencing” or “at any time before sentencing if the defendant consents.” Fed. R. Crim. P. 32.2(b)(4). The district court must “include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing.” Fed. R. Crim. P. 32.2(b)(4)(B). The court must also include the forfeiture order, either directly or by reference, in the judgment. *Id.*

Here, while the written judgment entered by the district court included an order of forfeiture and a forfeiture money judgment, the government did not actually move for a preliminary order of forfeiture or for entry of money judgment until more than a month after sentencing. The preliminary order of forfeiture was not issued until 83 days after sentencing, and the order of money judgment was entered 97 days after sentencing.

Mr. Davalos therefore argues that the district court lacked subject matter jurisdiction to enter either the preliminary order of forfeiture or the

No. 18-50784

order of money judgment. While subject matter jurisdiction is reviewed *de novo* as a question of law, *Gandy Nursery, Inc. v. United States*, 318 F.3d 631, 636 (5th Cir. 2003), this court’s precedent makes clear that Mr. Davalos’s argument is incorrect. The issue presented here is not jurisdictional, and plain error review applies.

In *United States v. Marquez*, a \$2 million money judgment was entered against the defendant. 685 F.3d 501, 509 (5th Cir. 2012). Although the district court included the money judgment in the defendant’s criminal judgment, it failed to enter a preliminary order of forfeiture. *See id.* at 507, 510. On appeal, the defendant argued that the money judgment was improperly issued because the district court failed to comply with Rule 32.2’s requirements. *Id.* at 509. The panel applied plain error review to the forfeiture issue because the defendant did not object to the district court’s failure to enter the preliminary order of forfeiture. *See id.* at 510. Applying plain error review, the panel affirmed the district court because the defendant could not show that his substantial rights were affected by the district court’s errors. *Id.* Although no preliminary order was entered, this court allowed the money judgment to stand.

The *Marquez* panel deemed the rules set forth in Rule 32.2 “procedural requirements.” *Id.* at 509; *see also id.* at 510 (“*Marquez* has the burden of showing that these procedural defects affected his substantial rights.”). And “three-judge panels . . . abide by a prior Fifth Circuit decision until the decision is overruled, expressly or implicitly, by either the United States Supreme Court or by the Fifth Circuit sitting en banc.” *Cent. Pines Land Co. v. United States*, 274 F.3d 881, 893 (5th Cir. 2001) (quoting *United States v. Kirk*, 528 F.2d 1057 (5th Cir.1976)). We therefore apply plain error review to the issue at hand.

No. 18-50784

On plain error review, this court may not correct an error in the district court unless (1) there is error; (2) the error is plain; and (3) the error affects substantial rights. *United States v. Gomez*, 905 F.3d 347, 353 (5th Cir. 2018). Even when all three of those conditions are met, this court may only exercise its discretion to notice a forfeited error if the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.*

With respect to the first two prongs of the plain error analysis, Mr. Davalos has satisfied his burden. Rule 32.2’s mandates are clear, and the district court’s deviation from those mandates is plainly erroneous. But Mr. Davalos has not demonstrated that the district court’s failure to follow Rule 32.2 affected his substantial rights.

“As a general rule, an error affects a defendant’s substantial rights only if the error was prejudicial.” *United States v. Gonzalez-Rodriguez*, 621 F.3d 354, 364 (5th Cir. 2010) (citing *United States v. Olano*, 507 U.S. 725, 734 (1993)). “Error is prejudicial if there is a reasonable probability that the result of the proceedings would have been different but for the error.” *Id.* (citation omitted). “The probability of a different result must be sufficient to undermine confidence in the outcome of the proceedings.” *Id.* (citation omitted).

Mr. Davalos has not shown that there is a reasonable probability that the result of his proceedings would have been any different had the district court followed the appropriate procedures. *See, e.g., Marquez*, 685 F.3d at 510. As such, he is not entitled to relief on this ground.

B. *Honeycutt* and 21 U.S.C. § 853

In addition to his argument regarding Rule 32.2, Mr. Davalos asserts that the money judgment entered against him should be vacated in light of *Honeycutt*, a recent Supreme Court decision addressing forfeiture from an individual drug conspiracy defendant relating to the proceeds of a criminal

No. 18-50784

conspiracy. See *Honeycutt v. United States*, 137 S. Ct. 1626, 1630 (2017). We agree.

21 U.S.C. § 853 governs forfeiture of property constituting or derived from proceeds a defendant obtained as the result of certain drug crimes. *Id.* *Honeycutt* concerned how Section 853 operates when two or more defendants act as part of a conspiracy, *id.*, as is the case here. The case established that, under Section 853, a defendant may not be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire. *Id.* at 1635.

In this case, the government’s multi-party indictment was issued before publication of *Honeycutt*. It sought a money judgment of \$5,980,000.00 against all defendants, for which they would be jointly and severally liable. At the sentencing hearing, the district court initially found “that there is a money judgment in the case of the amount alleged of [\$]5,980,000, but that is joint and several liability.” The government then alerted the district court to *Honeycutt*, which was decided in the period between filing of the indictment and the sentencing hearing. After the government indicated that it was only seeking \$1,794,000.00 because of *Honeycutt*, the following exchange occurred:

THE COURT: The total amount of the money judgment is 5,980,000, but that is everybody combined. Not just you alone. And you said it was one what?

AUSA: 1.794 million.

THE COURT: Okay. Once – I don’t really know how to say this now because the case law has gotten really strange about joint and several liability.

AUSA: And he would just be liable, not jointly and severally, just for him, for the 1.794.

THE COURT: Okay, you’re not – this is not joint and several liability?

AUSA: No, Your Honor.

No. 18-50784

THE COURT: All right. So your amount only, alone, would be 1.794 million, not the 5.98. Okay? Everybody else will be responsible for the rest of it. Okay?

There was no more discussion regarding the money judgment.

Mr. Davalos argues that the district court erred by entering a money judgment against him for \$1.794 million without making any factual findings about whether he actually acquired that amount or other substitute property as a result of the crime. We review *de novo*. See *United States v. Rasco*, 123 F.3d 222, 226 (5th Cir. 1997).

The government contends only that the district court “did hold a lengthy hearing where it was determined that the conspiracy was responsible for proceeds in the amount of \$5,980,000” and that its imposition of the \$1,794,000 money judgment against Mr. Davalos was “procedurally and substantively reasonable and should be affirmed.” It cites no law in support of that argument. And the Supreme Court made clear in *Honeycutt* that the provisions of Section 853(a) “are in accord with the limitation of forfeiture to property the defendant himself obtained.” *Honeycutt*, 137 S.Ct. at 1633.

Because the money judgment entered against Mr. Davalos is without sufficient factual support, it should be vacated and this case remanded for the purpose of making factual findings regarding the appropriate money judgment.¹

¹ Given this finding, we do not address the parties’ dispute regarding whether the district court should have required the government to make a showing under Section 853(p) prior to entering the money judgment. We note, however, that even Section 853(p)—“the sole provision of § 853 that permits the [g]overnment to confiscate property untainted by the crime”—is limited to property “up to the value of the tainted property.” *Honeycutt*, 137 S.Ct. at 1633–34 (internal quotation marks and citation omitted). As explained above, the district court here made no factfinding regarding that value.

No. 18-50784

III. OTHER PROVISIONS OF SENTENCE

Mr. Davalos raises two additional challenges to his sentence, arguing that (1) the district court committed reversible plain error because it misstated the applicable standard in its Statement of Reasons; and (2) the case should be remanded because the district court's oral pronouncement of sentence conflicts with its written judgment. While we find Mr. Davalos's first argument unpersuasive, we agree that this case should be remanded so that the district court can amend the written judgment.

A. Statement of Reasons

When the spread of an applicable guideline sentencing range exceeds 24 months, federal law requires the district court to state—in open court and at the time of sentencing—its “reason for imposing a sentence at a particular point within the range.” 18 U.S.C. § 3553(c)(1). Here, the spreads of the applicable guideline sentencing ranges were 52 months for Count Three and 30 months for Count Five.² However, the district judge filed a Statement of Reasons incorrectly stating that Mr. Davalos's sentence was within an advisory guideline range that “does not exceed 24 months.” Mr. Davalos therefore argues that this court should vacate his sentence and remand for resentencing.

Because Mr. Davalos did not raise an objection regarding this issue below, this court's review is for plain error. We therefore consider whether the district court committed plain error that affected Mr. Davalos's substantial rights. *See Gomez*, 905 F.3d at 353. We conclude that it did not.

“While the sentencing court is required to state ‘the reasons for its imposition of the particular sentence,’ a full explanation of the sentencing

² The district court determined that Mr. Davalos was subject to a guideline sentence of 210–262 months for Count Three and 210–240 months for Count Five.

No. 18-50784

factors is not required in every case.” *United States v. Duke*, 788 F.3d 392, 396 (5th Cir. 2015) (citing *Rita v. United States*, 551 U.S. 338, 356 (2007)). Indeed, when the district court imposes a within-guidelines sentence, “‘little explanation’ is required” to satisfy 18 U.S.C. § 3553(c). *Id.* (citing *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005)). Rather, “[t]he sentencing judge should set forth enough to satisfy the appellate court that [s]he has considered the parties’ arguments and has a reasoned basis for exercising h[er] own legal decisionmaking authority.” *Id.* (cleaned up).

Here, the district court’s oral statement of reasons for the imposition of Mr. Davalos’s particular sentence was sufficient to meet the mandate of 18 U.S.C. § 3553(c). *See, e.g., Rita*, 551 U.S. at 359 (“Where a matter is as conceptually simple as in the case at hand and the record makes clear that the sentencing judge considered the evidence and arguments, we do not believe the law requires the judge to write more extensively.”); *Mares*, 402 F.3d at 519 (“When the judge exercises her discretion to impose a sentence within the Guideline range and states for the record that she is doing so, little explanation is required.”). The district court made a statement immediately before announcing Mr. Davalos’s particular sentence, noting that it was taking into account “the advisory guidelines, as well as the policy statements of those guidelines, together with other sentencing factors such as the nature and circumstances of the offense, the seriousness of the offense, the history and characteristics of the defendant, the need to promote respect for the law and to provide just punishment for the offense, [and] the need to deter future criminal conduct and to protect the public.” The court also advised that it was taking into account “the allocution of the parties, as well as the factual information contained within the presentence report.”

This court’s opinion in *Ramos* is a useful analogue. There, the district court orally imposed a 144-month term of imprisonment and the written

No. 18-50784

judgment reflected the same 144-month term, but the Statement of Reasons stated that the term of imprisonment was 135 months. *United States v. Ramos*, 33 F. App'x 704, *2 (5th Cir. 2002) (per curiam) (unpublished). A panel of this court noted that the district court “stated orally the reasons for imposing the particular sentence,” concluding that “[t]he only logical conclusion for the discrepancy . . . is that the numeral ‘135’ in the ‘Statement of Reasons’ section of the written judgment is merely a clerical error.” *Id.* The panel found that “such a clerical error does not create doubts as to the period of incarceration the district court intended to impose” and “did not affect [the defendant’s] substantial rights.” *Id.*

Here, we conclude the same. Because the district court orally stated its reasons for imposing the particular sentence it did, the dictates of 18 U.S.C. § 3553(c) were satisfied. The clerical error in the subsequent Statement of Reasons did not affect Mr. Davalos’s substantive rights.

B. Written Judgment

Both parties acknowledge that, with respect to several special conditions associated with Mr. Davalos’s term of supervised release, there is conflict between the district court’s written judgment and oral pronouncement.

During the district court’s oral pronouncement of sentence, it said to Mr. Davalos: “one of your standard conditions is that you’re not supposed to associate with known felons.” But the district court went on to state that Mr. Davalos had “the Court’s permission to associate with” his son, brothers, and nephew, listing six individuals who were specifically exempted from the condition. That amendment to the standard condition does not appear in the written judgment.

There is additional conflict between the oral pronouncement and the written judgment regarding where Mr. Davalos may live after his release from prison. During sentencing, the district court said:

No. 18-50784

Now, this next condition, I'm – I'm imposing it right now in case something goes haywire in terms of the – the valid place for Mr. Davalos to live.

Mr. Davalos, I don't know yet what's going to happen with the forfeiture on your house, so I'm imposing this out of an abundance of caution. If, when you get out, you've got a place to live, probation will file a motion with me, [and] I'll remit this next condition. Okay?

That the first six months of your term of supervised release or your terms of supervised release, you shall reside at a residential reentry center for a term of six months, and you shall follow the rules and regulations of the center; that once employed, you shall pay 25 percent of your weekly gross income, so long as that amount does not exceed the daily contract rate.

While the written judgment reflects the imposition of a condition requiring Mr. Davalos to reside in a residential reentry center for a term of six months, it does not provide that this condition will be “remitted” if Mr. Davalos “has a valid residence to go to” when he is released from prison.

If a written judgement “broadens the restrictions of requirements of supervised release from an oral pronouncement,” the “appropriate remedy is remand to the district court to amend the written judgment to conform to the oral sentence.” *United States v. Mireles*, 471 F.3d 551, 558 (5th Cir. 2006). We therefore conclude that this case should be remanded to the district court so that, with respect to the two issues discussed in this section, it may conform the written judgment to its oral pronouncement.

IV. CONCLUSION

For the reasons stated above, we VACATE the forfeiture money judgment provision of Mr. Davalos's sentence. We REMAND this case to the district court so that it may (1) conduct factfinding regarding the appropriate value of the money judgment in accordance with *Honeycutt*; and (2) conform

No. 18-50784

the written judgment to its oral pronouncement of sentence. In all other respects, we AFFIRM.

FILED

UNITED STATES DISTRICT COURT
Western District of Texas
DEL RIO DIVISION

SEP 6 2018

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY dy DEPUTY CLERK

UNITED STATES OF AMERICA

v.

Case Number: DR:16-CR-01115-AM(11)

USM Number: 77513-380

DAVID DAVALOS, SR.

Defendant

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, DAVID DAVALOS, SR., was represented by Michael W. McCrum.

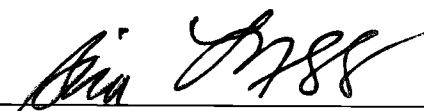
The defendant pled guilty to Count(s) Three and Five of the Indictment on March 30, 2017. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s)

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute More Than 5 Kilograms of Cocaine	From on or about October 1, 2012 until on or about the date of this Indictment	Three
21 U.S.C. § 856	Maintaining Drug Involved Premises	From on or about October 1, 2012 until on or about the date of this Indictment	Five

As pronounced on August 29, 2018, the defendant is sentenced as provided in pages 2 through 7 of the judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for the district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by the Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 6th day of September, 2018



ALIA MOSES
United States District Judge

Arresting Agency: DEA

Defendant: DAVID DAVALOS, SR.
Case Number: DR:16-CR-01115-AM(11)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 235 months as to count 3; 235 months as to count 5. Terms to run concurrent with credit for time served from August 17, 2016 through September 1, 2016, pursuant to 18 U.S.C. § 3584(a).

The Court makes the following recommendation to the Bureau of Prisons:

That the defendant serve this sentence at F. C. I. Bastrop, if possible.

The defendant shall surrender for service of sentence at the institution designed by the Bureau of Prisons at or before 2:00 PM when notified to report by the United States Marshal, but no earlier than November 30, 2018.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
At _____ with a certified copy of the Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: DAVID DAVALOS, SR.
Case Number: DR:16-CR-01115-AM(11)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years on Count 3 and (3) years on Count 5, terms to run concurrent.

While on supervised release, the defendant shall comply with the mandatory, standard, and if applicable, the special conditions that have been adopted by the court, and shall comply with the following additional condition(s):

- X The defendant shall reside in a residential reentry center for a term of Six (6) months. The defendant shall follow the rules and regulations of the center. Further, once employed the defendant shall pay 25% of his/her weekly gross as long as it does not exceed the contract rate.
- X The defendant shall abstain from the use of alcohol and any and all intoxicants.
- X The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program shall include testing and examination to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment if financially able.
- X The defendant shall not use or possess any controlled substances without a valid prescription. If a valid prescription exists, the defendant must disclose the prescription information to the probation officer and follow the instructions on the prescription.
- X The defendant shall submit to substance abuse testing to determine if the defendant has used a prohibited substance. The defendant shall not attempt to obstruct or tamper with the testing methods. The defendant shall pay the costs of testing if financially able.
- X The defendant shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.
- X The defendant shall provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

Defendant: DAVID DAVALOS, SR.
Case Number: DR:16-CR-01115-AM(11)

CONDITIONS OF SUPERVISION

Mandatory Conditions

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not unlawfully possess a controlled substance.
- 3) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug test thereafter (as determined by the court) but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- 4) The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- 5) If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- 6) If convicted of a domestic violence crime as defined in 18 U.S.C. §3561(b), the defendant shall participate in an approved program for domestic violence.
- 7) If the judgment imposes a fine or restitution, it is a condition of supervision that defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- 8) The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- 9) The defendant shall notify the court of any marital change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the Court or probation officer instructs the defendant to report to a different probation office or within a different timeframe. The defendant shall not leave the judicial district without permission of the court or probation officer.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court.
- 4) The defendant shall answer truthfully the questions asked by the probation officer.
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

Defendant: DAVID DAVALOS, SR.
Case Number: DR:16-CR-01115-AM(11)

- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless excused from doing so. If the defendant does not have full time employment, he or she shall try to find full-time employment, unless excused from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position of job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 day in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the Court.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- 10) The defendant shall 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) The defendant shall 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 the defendant poses a risk to another person (including an organization), the court may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- 14) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- 15) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- 16) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the court, unless the defendant is in compliance with the payment schedule.
- 17) If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office, or as ordered by the Court.

Defendant: DAVID DAVALOS, SR.
Case Number: DR:16-CR-01115-AM(11)

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly order otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 111 E. Broadway, Suite 100 Del Rio, Texas 78840.

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTAL	\$200.00	\$.00	\$.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of \$200. The debt is incurred immediately.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

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.

FORFEITURE

The defendant is ordered to forfeit the following money judgment to the United States:

A sum of money equal to One Million Seven Hundred Ninety-Four Thousand Dollars (\$1,794,000.00), which represents the proceeds from and the value of the property involved in the violations charged in the indictment for which the defendants assessed a money judgment solely liable.

FORFEITURE

The defendant is ordered to forfeit the following property to the United States:

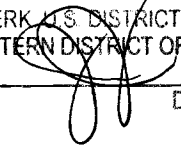
Real Property located and situated at 310 West Zapata Street, Crystal City, Zavala County, Texas, with all buildings, appurtenances, and improvements thereon and any and all surface and sub-surface rights, title, and interests, if any, and being more fully described as follows:

THE SURFACE ONLY IN AND TO LOT THREE (3) IN BLOCK ONE HUNDRED FIFTY (150) IN THE CITY OF CRYSTAL CITY, ZAVALA COUNTY, TEXAS, ACCORDING TO THE OFFICIAL MAP AND PLAT OF SAID CITY RECORDED IN VOLUME I, PAGE 640 OF THE DEED RECORDS OF SAID COUNTY.

FILED

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

NOV 20 2018

CLERK U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID DAVALOS, SR. (11),

Defendant.

CRIMINAL NO. DR-16-CR-1115-AM

PRELIMINARY ORDER OF FORFEITURE

Came on to be considered the United States of America's Motion for Preliminary Order of Forfeiture (ECF No. 1143), pursuant to Title 21 U.S.C. §§ 853(n)(1)-(7), and Fed. R. Crim. P. 32.2(b)(2), 32.2(b)(2)(B), and 32.2(c)(1), and this Court being fully and wholly apprised in all its premises, finds that the United States has established by a preponderance of the evidence a nexus between the property described below, and the violations of Title 21 U.S.C. §§ 841(a)(1) & (b)(1)(A), 846, and 856(a)(1) & (b), by virtue of Defendant DAVID DAVALOS, SR.'s Guilty Plea (ECF No. 742), the Court's order at sentencing, and the Judgment in a Criminal Case (ECF No. 1146, page 7), and that the Defendant has an interest in said property. As such, said Motion is meritorious, and hereby is in all things **GRANTED**.

IT IS THEREFORE **ORDERED** that all right, title, and interest of Defendant DAVID DAVALOS, SR. in certain property, namely:

Real Property located and situated at **310 West Zapata Street, Crystal City, Zavala County, Texas**, with all buildings, appurtenances, and improvements thereon and any and all surface and sub-surface rights, title, and interests, if any, and being more fully described as follows:

THE SURFACE ONLY IN AND TO LOT THREE (3) IN BLOCK ONE HUNDRED FIFTY (150) IN THE CITY OF CRYSTAL CITY, ZAVALA COUNTY, TEXAS, ACCORDING TO THE OFFICIAL MAP AND PLAT OF SAID CITY RECORDED IN VOLUME 1, PAGE 640 OF THE DEED RECORDS OF SAID COUNTY,

hereinafter referred to as the Subject Real Property, be, and hereby is, **FORFEITED** to the United States of America.

IT IS FURTHER **ORDERED** that upon entry of the Preliminary Order of Forfeiture, the United States of America, through its lawfully designated agents and agencies, including the United States Marshals Service, shall seize, take custody, control, and possession of the Subject Real Property, whether held by the defendant or a third party.

IT IS FURTHER **ORDERED** that the United States shall cause publication for at least 30 consecutive days on an official government internet website (www.forfeiture.gov) of the notice of the Preliminary Order of Forfeiture and of its intent to dispose of the Subject Real Property in such manner as the United States directs. The United States shall send notice to any person or entity who reasonably appears to be a potential petitioner with standing to contest the forfeiture in the ancillary proceeding.

IT IS FURTHER **ORDERED** that the United States shall send Direct Notice of the Preliminary Order of Forfeiture, Appendix A, which is attached to the United States of America's Motion for Preliminary Order of Forfeiture, and incorporated herein, to those known to the United States to have an interest in the Subject Real Property.

IT IS FURTHER **ORDERED** that in the event a third-party petition is filed as to the Subject Real Property, the United States shall commence discovery proceedings to resolve any third-party issues, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas, pursuant to Fed. R. Civ. P. 45.

IT IS FURTHER **ORDERED** that the Defendant, his attorneys, agents, spouse, and anyone acting on his behalf, and all persons or entities acting in concert or participation with any of the

above, and all persons and entities having actual knowledge of this Order, shall not directly or indirectly, transfer, sell, assign, pledge, distribute, hypothecate, encumber, attach or dispose of in any manner; cause to be transferred, sold, assigned, pledged, distributed, hypothecated, encumbered, attached or disposed of in any manner; or take, or cause to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of the Subject Real Property.


IT IS FURTHER **ORDERED** that the Defendant, his attorneys, agents, spouse, and anyone acting on his behalf, and all persons or entities acting in concert or participation with any of the above, and all persons and entities having actual knowledge of this Order, shall not use or permit the Subject Real Property to be used for any illegal activity.

IT IS FURTHER **ORDERED** that the owners of the Subject Real Property are required to maintain the present condition of the Subject Real Property, including timely payment of all mortgages, insurance, utilities, taxes, and assessments, until further order of this Court.

SIGNED this 20th day of November, 2018.


ALIA MOSES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

FILED
DEC 04 2018
CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

UNITED STATES OF AMERICA,)

Plaintiff,)

V.)

DAVID DAVALOS, SR. (11),)

Defendant.)

CRIMINAL NO. DR-16-CR-1115-AM

ORDER OF MONEY JUDGMENT

Pending before the Court is the United States of America's Motion for Entry of Money Judgment (ECF No. 1164), pursuant to Fed. R. Crim. P. 32.2(c)(1) and Title 21 U.S.C. § 853(p). This Court being fully and wholly apprised in all its premises, finds that the United States has proven by a preponderance of the evidence that the money judgment described below represents the amount of proceeds obtained by Defendant DAVID DAVALOS, SR. from the violations of Counts Three and Five of the Indictment (ECF No. 2), specifically Title 21 U.S.C. §§ 841(a)(1) & (b)(1)(A), 846, and 856(a)(1) & (b), by virtue of the Defendant's Guilty Plea (ECF No. 742) and the Court's determination of a money judgment amount at Sentencing (ECF No. 1146, page 7). Said Motion is meritorious and should be, and hereby is, in all things GRANTED.

IT IS THEREFORE, **ORDERED** that any and all right, title, and interest of Defendant DAVID DAVALOS, SR. in the following:

Money Judgment: A sum of money equal to **One Million Seven Hundred and Ninety-Four Thousand Dollars (\$1,794,000.00)**, which represents the proceeds from and the value of the property involved in the violations in the indictment for which the defendants assessed a money judgment are solely liable,

hereinafter referred to as the Individual Money Judgment be, and hereby is FORFEITED to the United States of America.

IT IS FURTHER **ORDERED** that the United States of America shall, at its option, be entitled to the forfeiture of any other property (substitute assets) owned by Defendant DAVID DAVALOS, SR. equivalent to the value of the Individual Money Judgment and that this Court shall retain jurisdiction of this matter to settle any disputes arising from application of this clause.

SIGNED this 4th day of December, 2018.


ALIA MOSES
UNITED STATES DISTRICT JUDGE

Rule 32.2. Criminal Forfeiture.

Federal Court Rules

Federal Rules of Criminal Procedure

Title VII. Post-conviction Procedures

As amended through October 24, 2018

Rule 32.2. Criminal Forfeiture

- (a) **Notice to the Defendant.** A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute. The notice should not be designated as a count of the indictment or information. The indictment or information need not identify the property subject to forfeiture or specify the amount of any forfeiture money judgment that the government seeks.
- (b) **Entering a Preliminary Order of Forfeiture.**
 - (1) **Forfeiture Phase of the Trial.**
 - (A) *Forfeiture Determinations.* As soon as practical after a verdict or finding of guilty, or after a plea of guilty or nolo contendere is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.
 - (B) *Evidence and Hearing.* The court's determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.
 - (2) **Preliminary Order.**
 - (A) *Contents of a Specific Order.* If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth

the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

- (B) *Timing.* Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).
- (C) *General Order.* If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:
 - (i) lists any identified property;
 - (ii) describes other property in general terms; and
 - (iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of the money judgment has been calculated.

- (3) **Seizing Property.** The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

- (4) **Sentence and Judgment.**

- (A) *When Final.* At sentencing-or at any time before sentencing if the defendant consents-the preliminary forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c).
- (B) *Notice and Inclusion in the Judgment.* The court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The court must also include the forfeiture order, directly or by reference, in the judgment, but the court's failure to do so may be corrected at any time under Rule 36.

- (C) *Time to Appeal.* The time for the defendant or the government to file an appeal from the forfeiture order, or from the court's failure to enter an order, begins to run when judgment is entered. If the court later amends or declines to amend a forfeiture order to include additional property under Rule 32.2(e), the defendant or the government may file an appeal regarding that property under Federal Rule of Appellate Procedure 4(b). The time for that appeal runs from the date when the order granting or denying the amendment becomes final.

(5) **Jury Determination.**

- (A) *Retaining the Jury.* In any case tried before a jury, if the indictment or information states that the government is seeking forfeiture, the court must determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict.
- (B) *Special Verdict Form.* If a party timely requests to have the jury determine forfeiture, the government must submit a proposed Special Verdict Form listing each property subject to forfeiture and asking the jury to determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

(6) **Notice of the Forfeiture Order.**

- (A) *Publishing and Sending Notice.* If the court orders the forfeiture of specific property, the government must publish notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.
- (B) *Content of the Notice.* The notice must describe the forfeited property, state the times under the applicable statute when a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition.
- (C) *Means of Publication; Exceptions to Publication Requirement.* Publication must take place as described in Supplemental Rule G(4)(a)(iii) of the Federal Rules of Civil Procedure, and may be by any means described in Supplemental Rule G(4)(a)(iv). Publication is unnecessary if any exception in Supplemental Rule G(4)(a)(i) applies.
- (D) *Means of Sending the Notice.* The notice may be sent in accordance with Supplemental Rules G(4)(b)(iii)-(v) of the Federal Rules of Civil Procedure.

(7) **Interlocutory Sale.** At any time before entry of a final forfeiture order, the court, in

accordance with Supplemental Rule G(7) of the Federal Rules of Civil Procedure, may order the interlocutory sale of property alleged to be forfeitable.

(c) **Ancillary Proceeding; Entering a Final Order of Forfeiture.**

- (1) **In General.** If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding, but no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment.
 - (A) In the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true.
 - (B) After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Federal Rule of Civil Procedure 56.
- (2) **Entering a Final Order.** When the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights. If no third party files a timely petition, the preliminary order becomes the final order of forfeiture if the court finds that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. The defendant may not object to the entry of the final order on the ground that the property belongs, in whole or in part, to a co-defendant or third party; nor may a third party object to the final order on the ground that the third party had an interest in the property.
- (3) **Multiple Petitions.** If multiple third-party petitions are filed in the same case, an order dismissing or granting one petition is not appealable until rulings are made on all the petitions, unless the court determines that there is no just reason for delay.
- (4) **Ancillary Proceeding Not Part of Sentencing.** An ancillary proceeding is not part of sentencing.

- (d) **Stay Pending Appeal.** If a defendant appeals from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of

forfeiture but must not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents in writing or on the record.

(e) **Subsequently Located Property; Substitute Property.**

- (1) **In General.** On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:
 - (A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or
 - (B) is substitute property that qualifies for forfeiture under an applicable statute.
- (2) **Procedure.** If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court must:
 - (A) enter an order forfeiting that property, or amend an existing preliminary or final order to include it; and
 - (B) if a third party files a petition claiming an interest in the property, conduct an ancillary proceeding under Rule 32.2(c).
- (3) **Jury Trial Limited.** There is no right to a jury trial under Rule 32.2(e).

Cite as Fed. R. Crim. P. 32.2

History.

As added Apr. 17, 2000, eff. Dec. 1, 2000; amended Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.

Rule 35. Correcting or Reducing a Sentence.

Federal Court Rules

Federal Rules of Criminal Procedure

Title VII. Post-conviction Procedures

As amended through October 24, 2018

Rule 35. Correcting or Reducing a Sentence

- (a) **Correcting Clear Error.** Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.
- (b) **Reducing a Sentence for Substantial Assistance.**
 - (1) **In General.** Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.
 - (2) **Later Motion.** Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:
 - (A) information not known to the defendant until one year or more after sentencing;
 - (B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or
 - (C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.
 - (3) **Evaluating Substantial Assistance.** In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance.
 - (4) **Below Statutory Minimum.** When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.
- (c) **"Sentencing" Defined.** As used in this rule, "sentencing" means the oral announcement of the sentence.

Cite as Fed. R. Crim. P. 35

History.

As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 28, 1983, eff. Aug. 1, 1983; Oct. 12, 1984, eff. Nov. 1, 1987; Apr. 29, 1985, eff. Aug. 1, 1985; Oct. 27, 1986, eff. Nov. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2004, eff. Dec. 1, 2004; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.