

No. 21-

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IN THE

Supreme Court of the United States

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DERRICK GRANT,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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**PETITION APPENDIX**

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May 14, 2021

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ject does not mean we discard the plain error standard. *See United States v. Henry*, 797 F.3d 371, 374 (6th Cir. 2015). *Davis* at any rate offers no explanation for failing to preserve his elements-clause argument.

*Aiding and abetting instruction.* Clancy argues that the district court's aiding and abetting instruction was defective because it did not require proof that Clancy knew in advance that an accomplice would use or carry a firearm. Plain error applies here too because he did not raise the objection below. *See Houston*, 792 F.3d at 666.

[6] No error occurred. The district court told the jury that, to convict Clancy under § 924(c), it must find that "while being aided and abetted by others unknown, [he] knowingly used, carried, brandished and discharged a firearm." R.98 at 192–93. Clancy himself used a firearm, so that instruction makes perfect sense. The aiding and abetting portion merely refers to the fact that Clancy robbed the Boost Mobile store with another person.

Clancy invokes *Rosemond v. United States*, 572 U.S. 65, 134 S.Ct. 1240, 188 L.Ed.2d 248 (2014), for the proposition that for one to aid and abet the use of a firearm, the government must show the aider's advance knowledge that a gun would be used. But Clancy ignores an inconvenient fact: a truly smoking gun. "Smoke from the pistol" in video surveillance footage shows that Clancy repeatedly fired his gun inside the Boost Mobile store. R.98 at 132–33. The district court's instruction did not require the jury to find that Clancy aided and abetted others. It required the jury to find that Clancy, "while being aided and abetted by others unknown," used a firearm. R.98 at 193. When a defendant takes "no action with respect to any firearm" and is charged with aiding and abetting, *Rosemond* requires proof that the defendant had "ad-

vance knowledge of a firearm's presence." 572 U.S. at 72, 81, 134 S.Ct. 1240. That defense does not apply because Clancy himself brought a gun into the store, brandished it, and pulled the trigger.

We affirm.



UNITED STATES of America,  
Plaintiff-Appellee,  
v.  
Derrick GRANT, Defendant-Appellant.

No. 19-3824

United States Court of Appeals,  
Sixth Circuit.

Argued: November 10, 2020

Decided and Filed: November 12, 2020

Rehearing En Banc Denied  
December 16, 2020

**Background:** Defendant entered a guilty plea in the United States District Court for the Northern District of Ohio, Christopher A. Boyko, Senior District Judge, to assaulting a designated person, relating to assault, while defendant was awaiting sentencing for armed bank robbery, of prison guard employed by government's private contractor for prison services. Defendant appealed.

**Holdings:** The Court of Appeals, Readler, Circuit Judge, held that defendant assaulted a designated person.

Affirmed.

#### 1. Assault and Battery 223

Pretrial detainee, by assaulting a prison guard employed by United States Marshals Service's private contractor for

prison services, assaulted a “designated person,” for purposes of federal criminal statutes prohibiting an assault of a designated person performing official duties; statutes did not require the guard to be assisting a particular federal officer or employee rather than assisting an agency at large. 18 U.S.C.A. §§ 111(a)(1), 1114.

See publication Words and Phrases for other judicial constructions and definitions.

## 2. Statutes ~~☞~~1091, 1181

When interpreting a statute, courts customarily consider the meaning an ordinary reader would give the statute's text, which is not the same as mechanically parsing down each word of the statute to its dictionary definition, no matter the resulting reading that would give the law.

## 3. Courts ~~☞~~90(2)

A panel of the Court of Appeals has no license to overturn a prior panel's reasoned decision.

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Appeal from the United States District Court for the Northern District of Ohio at Youngstown. No. 4:16-cr-00332—Christopher A. Boyko, District Judge.

ARGUED: Anna M. Greve, TAFT STETTINIUS & HOLLISTER LLP, Cincinnati, Ohio, for Appellant. Rebecca C. Lutzko, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee. ON BRIEF: Anna M. Greve, TAFT STETTINIUS & HOLLISTER LLP, Cincinnati, Ohio, for Appellant. Elizabeth M. Crook, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee.

Before: SUTTON, THAPAR, and READLER, Circuit Judges.

## OPINION

CHAD A. READLER, Circuit Judge.

Federal prisoner Derrick Grant punched a prison guard while awaiting sentencing for an armed robbery conviction. He was charged with (and later pleaded guilty to) violating 18 U.S.C. § 111, which criminalizes assaulting federal officers and those who assist them. Challenging that conviction today, Grant contends that § 111 does not apply where, as here, the assault victim was a private contractor, not a federal employee, and, at the time of the assault, the contractor was not assisting a federal employee. As even Grant acknowledges, however, we do not write on a clean slate in resolving this appeal. We have previously held that § 111 encompasses circumstances like this one, where a private employee performs the same federal duties a federal employee would otherwise fulfill. Accordingly, we affirm the district court's judgment.

### I.

A jury in the Western District of Pennsylvania convicted Derrick Grant of armed bank robbery. Because the Western District of Pennsylvania does not have a federal holding facility, Grant was detained at the Northeast Ohio Correctional Center (NEOCC) while awaiting sentencing. NEOCC, a privately owned and operated prison, contracts with the United States Marshals Service to house federal detainees before trial and/or sentencing.

A week before his sentencing hearing, Grant resolved to punch “the next officer he saw.” And he did just that. When a NEOCC correctional officer tried to move Grant to a different cell, he walked up to her and punched her in the face, causing bruising on her neck and jaw. Grant was arrested, detained, and charged with assaulting a designated person, in violation

of 18 U.S.C. § 111(a)(1). Together with 18 U.S.C. § 1114, these statutes criminalize assaulting “any officer or employee of the United States or of any agency in any branch in the United States Government . . . or any person assisting such an officer or employee in the performance of such duties.” 18 U.S.C. § 1114.

At his probable cause hearing, Grant challenged his detention on the ground that the NEOCC officer, as a private contractor, was not a designated person as that term is used in § 111. In other words, Grant argued, his conduct did not amount to a federal offense. In response, Deputy U.S. Marshal Daniel DeVille testified that the correctional officer assaulted by Grant was an agent of the federal government. She worked for the Marshals Service pursuant to a contract between NEOCC and the Marshals, and at the time she was assaulted, she was assisting DeVille by detaining Grant prior to sentencing. On that basis, the magistrate judge concluded there was probable cause to support the § 111 charge. A grand jury later indicted Grant on the same charge. Following a delay to resolve competency issues, Grant ultimately pleaded guilty and was sentenced to 40 months imprisonment, imposed consecutive to his robbery sentence. He now appeals that conviction and sentence.

## II.

At the outset, the parties debate the proper standard of review. The government believes we should employ plain error review because Grant forfeited his statutory challenge by pleading guilty without objecting to the indictment. *See United States v. Olano*, 507 U.S. 725, 732–34, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993); *United States v. Harris*, 790 F. App’x 673, 675 (6th Cir. 2019). Grant, on the other hand, says he preserved the issue by ob-

jecting at his probable cause hearing, meaning our customary *de novo* standard applies. *See United States v. Moore*, 567 F.3d 187, 190 (6th Cir. 2009). We need not resolve that dispute, however, as the government prevails even under the traditional *de novo* standard.

## III.

[1] 1. Grant’s statute of conviction is twofold. Section 111 criminalizes assaulting “any person designated in section 1114 . . . while engaged in or on account of the performance of official duties.” 18 U.S.C. § 111. Section 1114 in turn instructs that “any person” includes “any officer or employee of the United States or of any agency in any branch in the United States Government . . . or any person assisting such an officer or employee in the performance of such duties.” 18 U.S.C. § 1114. Emphasizing a literal reading of § 1114’s text, Grant asserts that the private prison guard he assaulted was under contract with—and was therefore “assisting”—a federal agency, the United States Marshals Service, but not a specific officer or employee. As a result, Grant says, the private contractor is not a “person” as that term is used in § 111.

Grant’s argument, however, is foreclosed by our recent decision in *United States v. Bedford*, 914 F.3d 422 (6th Cir.), *cert. denied*, — U.S. —, 139 S. Ct. 1366, 203 L.Ed.2d 599 (2019). We held in *Bedford* that a contract carrier delivering mail on behalf of the United States Postal Service was a “person designated” under § 1114. *Id.* at 425. Section 1114’s statutory text, we explained, is “unambiguous, coherent, and consistent with the broader statutory scheme,” and encompasses one who “give[s] support or aid” to an officer or employee of the United States. *Id.* at 427–28. Because the mail carrier, in accordance with the terms of a contract with the Post-

al Service, was “help[ing] carry out[ ] the duties or tasks of the federal superior,” he was assisting the Postal Service within the meaning of § 1114, making him a “designated” person protected under § 111. *Id.* at 428. And the holding in *Bedford*, we recently explained, is not limited to instances where the “designated” person worked under a contract with a federal agency. *See United States v. Scurry*, — F. App’x —, No. 19-4038, 2020 WL 6498675, at \*5 (6th Cir. Nov. 5, 2020). In *Scurry*, we read *Bedford*’s application of §§ 111(a)(1) and 1114 to prohibit assaulting a local police officer assisting the federal Bureau of Alcohol, Tobacco, and Firearms in executing an arrest warrant even when the local officer was not under contract with the ATF. *Id.*

*Bedford*’s reading of § 1114 fairly encompasses today’s case. Grant’s victim was a private prison guard supervising the housing of federal inmates according to a contract with the Marshals Service. If not the victim, a federal employee would have been carrying out those same duties. In that way, the victim was a “person assisting . . . an officer or employee [of the United States] in the performance of [official duties],” making the assault committed upon her a violation of § 111.

We are not alone in reaching this conclusion. Every one of our sister circuits to consider the issue has read § 1114 to encompass private contractors performing similar federal security functions. *See, e.g., United States v. Luedtke*, 771 F.3d 453, 455 (8th Cir. 2014) (finding that a state guard who supervised federal inmates housed in a county jail pursuant to a contract with the Marshals Service is a covered person because he was “serving precisely the same federal interest that a marshal would serve while maintaining custody of a federal prisoner” (citation omitted)); *United States v. Ama*, 97 F.

App’x 900, 902 (10th Cir. 2004) (same); *United States v. Jacquez-Beltran*, 326 F.3d 661, 662–63 (5th Cir.), cert. denied, 540 U.S. 922, 124 S.Ct. 320, 157 L.Ed.2d 221 (2003) (same); *United States v. Murphy*, 35 F.3d 143, 147 (4th Cir. 1994) (same).

2. Grant sees things differently. He argues that § 1114 applies only to a private individual assisting a *particular* “officer or employee,” and not one who instead assists an “agency” at large. Citing dictionary definitions reflecting a semantic difference between an individual employee and an agency, Grant reads § 1114 to cover those who assist the former, but not those who, like the guard victimized here, assist entire agencies through a general contracting relationship. Further, says Grant, because *Bedford* did not grapple with this dichotomy, its holding does not bind us today.

[2] When interpreting a statute, we customarily consider the meaning an ordinary reader would give the statute’s text. *See, e.g., New Prime Inc. v. Oliveira*, — U.S. —, 139 S. Ct. 532, 539, 202 L.Ed.2d 536 (2019). That is not the same as mechanistically parsing down each word of the statute to its dictionary definition, no matter the resulting reading that would give the law. *See United States v. Miller*, 734 F.3d 530, 540 (6th Cir. 2013); Amy Coney Barrett, *Assorted Canards of Contemporary Legal Analysis: Redux*, 70 Case W. Res. L. Rev. 855, 859 (2020) (“[T]extualism isn’t a mechanical exercise, but rather one involving a sophisticated understanding of language as it’s actually used in context.”); Antonin S. Scalia, *A Matter of Interpretation* 23 (“A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means.”). Consider how that distinction plays out here. Read in isolation, assisting “any officer or employee” could

have a different literal meaning than assisting “any agency,” with the latter a collective body. But isolating those statements in the way Grant does strips the statutory text of its context, creating an interpretation at odds with the statute’s plain meaning. *See John Manning, What Divides Textualists from Purposivists?*, 106 Colum. L. Rev. 70, 79–80 (2006) (“[O]ne can make sense of others’ communications only by placing them in their appropriate social and linguistic context”). An ordinary reader (as we consider ourselves to be) of § 1114 would understand the law as protecting federal contractors who assist federal officers without drawing a distinction between assisting an agency or an individual employee of the agency. Nor, to our mind, does that distinction make much sense in this setting. After all, because an agency ultimately acts through individuals, whether it be the agency head or a rank-and-file employee, assisting one is ordinarily the same as assisting the other. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 122, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988) (“[G]overnmental bodies can act only through natural persons . . .”).

[3] Grant, to his credit, makes a vigorous argument as to why *Bedford* was wrongly decided. But we have no license to overturn a prior panel’s reasoned decision. *See Manners v. United States*, 947 F.3d 377, 382 (6th Cir. 2020) (citing *Salmi v. Sec’y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985)). Nor are we inclined to do so, for the reasons just explained. We acknowledge Grant’s concern that *Bedford* and cases like it risk some expansion of federal law to criminalize conduct historically regulated at the state and local level. *See Jacquez-Beltran*, 326 F.3d at 661 (DeMoss, J., concurring) (lamenting this reading of § 1114 as “[r]egretfully . . . further[ing] the cause of federalization of criminal law”). That concern, as with the

more general unease regarding the over-federalization of criminal conduct, is not without merit. *See Gamble v. United States*, — U.S. —, 139 S. Ct. 1960, 2008, 204 L.Ed.2d 322 (2019) (Gorsuch, J., dissenting) (citing Edwin Meese, *Big Brother on the Beat: The Expanding Federalization of Crime*, 1 Texas L. Rev. L. & Pol’y 1, 22 (1997)). With some notable exceptions, however, the scope of federal law is Congress’s decision to make. As to the statutes Grant violated in particular, perhaps a future case will involve conduct so ancillary to a federal function or the “performance of official duties” that we decide the case is not controlled by *Bedford*. But that does not describe today’s case, and we thus see no reason to deviate from the course we previously charted.

We affirm.



Brad SANDEFUR, Plaintiff-Appellant,

v.

Thomas J. DART and Cook County,  
Illinois, Defendants-Appellees.

No. 19-2787

United States Court of Appeals,  
Seventh Circuit.

Argued September 18, 2020

Decided November 4, 2020

**Background:** Trainee who was terminated from the county sheriff’s police academy training program brought action against sheriff and county, alleging disability discrimination in violation of the Americans with Disabilities Act (ADA) and violation of his Fourteenth Amendment due

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

**DERRICK GRANT**

§ **JUDGMENT IN A CRIMINAL CASE**  
§  
§  
§ Case Number: **4:16-CR-00332-CAB(1)**  
§ USM Number: **37550-068**  
§ **Donald Butler**  
§ Defendant's Attorney

**THE DEFENDANT:**

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

The defendant is adjudicated guilty of these offenses:

<b>Title &amp; Section / Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
18:111(A)(1) Assault on Person Assisting Federal Officers	09/19/2016	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)  is  are dismissed on the motion of the United States

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

August 23, 2019

Date of Imposition of Judgment

s/Christopher A. Boyko  
Signature of Judge

CHRISTOPHER A. BOYKO, United States District Judge  
Name and Title of Judge

August 23, 2019  
Date

DEFENDANT: DERRICK GRANT  
CASE NUMBER: 4:16-CR-00332-CAB(1)

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 37 months as to count 1, to run consecutively to current sentence in case 15-CR-265.

The court makes the following recommendations to the Bureau of Prisons:  
Defendant shall be designated for placement at FCI Springfield or FCI Butner.  
Defendant shall participate in Mental Health Treatment.  
Defendant shall participate in Drug Treatment.  
Defendant shall be given credit for time served in federal custody.

The defendant is remanded to the custody of the United States Marshal.  
 The defendant shall surrender to the United States Marshal for this district:

at  a.m.  p.m. on  
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 before 2 p.m. on  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DERRICK GRANT  
CASE NUMBER: 4:16-CR-00332-CAB(1)

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years as to count 1, to run concurrently with current sentence in case 15-CR-265.**

## MANDATORY CONDITIONS

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

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

DEFENDANT: DERRICK GRANT  
CASE NUMBER: 4:16-CR-00332-CAB(1)

## 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 your 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 your 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. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
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. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
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. I understand additional information regarding these conditions is available at the [www.uscourts.gov](http://www.uscourts.gov).

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

Date \_\_\_\_\_

DEFENDANT: DERRICK GRANT  
CASE NUMBER: 4:16-CR-00332-CAB(1)

## **SPECIAL CONDITIONS OF SUPERVISION**

### **Substance Abuse Treatment and Testing**

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

### **Mental Health Treatment**

You must undergo a mental health evaluation and/or participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

### **Mental Health Medications**

You must take all mental health medications that are prescribed by your treating physician.

### **Search / Seizure**

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: DERRICK GRANT  
 CASE NUMBER: 4:16-CR-00332-CAB(1)

## CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
<b>TOTALS</b>	\$100.00		\$0.00	\$0.00

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

\*\* 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.

DEFENDANT: DERRICK GRANT  
 CASE NUMBER: 4:16-CR-00332-CAB(1)

## SCHEDULE OF PAYMENTS

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

- A  Lump sum payments of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (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 20 (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
**It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.**

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

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

- Joint and Several  
 See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
  - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
  - The defendant shall pay the cost of prosecution.
  - The defendant shall pay the following court cost(s):
  - The defendant shall forfeit the defendant's interest in the following property to the United States:

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.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 4:16-CR-332
	)	
Plaintiff,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	
DERRICK GRANT,	)	<u>GOVERNMENT'S MOTION IN LIMINE</u>
	)	
Defendants.	)	

Now comes the United States of America, by and through its counsel, Carole S. Rendon, United States Attorney, and Assistant United States Attorneys Karrie D. Howard and Linda H. Barr, and hereby moves this Honorable Court in Limine to preclude Defendant from raising a defense which challenges Victim's status as a protected person, under 18 U.S.C. §§ 111 and 1114. Specifically, the determination of the Victim's status pursuant to §§ 111 and 1114 is a matter of law to be determined by the Court. See United States v. Bettleyoun, 16 F.3d 850 (8th Cir. 1994); see also United States v. Oakie, 12 F.3d 1436 (8th Cir. 1994) (whether BIA officer is covered by section 111 is a question for the court, but whether victim was a BIA officer at the time of assault is a question for the jury)

**I. Court Should Determine Victim's Status Under Title 18 U.S.C. §§ 111 and 1114**

Section 111 prohibits assault on certain categories of persons designated by 18 U.S.C. § 1114. See United States v. Luedtke, 771 F.3d 453 (8th Cir. 2014)(district court properly denied defendant's motion to dismiss because state guards who were assaulted by [inmates] qualified as a persons assisting federal officers while under a service agreement between a county jail and the

United States Marshals Service). They include “any person assisting [a federal] officer or employee” while “such officer or employee is engaged in or on account of the performance of official duties. Id. at 454 citing 18 U.S.C. § 1114. Here, the Victim, Lynne Poe was employed at the Northeast Ohio Correctional Center by the Corrections Corporation of America, who was contracted with the Department of Justice to manage and account for federal inmates, a function of the U.S. Marshals Service. *See Attachment A: Contract Award.* At the time of the assault, Poe was serving the same federal interest that a marshal would serve while maintaining custody of a federal prisoner. Luedtke, 771 F.3d at 454 citing United States v. Murphy, 35 F.3d 143, 147 (4th Cir. 1994). Since Corrections Officer Lynne Poe was performing a federal function under contract, she qualifies as a person assisting federal officers under § 111. *See Luedtke*, 771 F.3d at 455.

## **II. Conclusion**

Based on the foregoing, this issue is a matter law for the Court to decide, and not an issue of fact to be determined by a jury. Therefore, the Defendant should be precluded from raising any defense which challenges the Poe’s § 111 and § 1114 status as a protected person.

Respectfully submitted,

CAROLE S. RENDON  
United States Attorney

By: /s/ Karrie D. Howard  
Karrie D. Howard (OH: 0082858)  
Assistant United States Attorney  
United States Court House  
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By: /s/ Linda H. Barr  
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Fax No. (330) 375-5492  
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CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of December 2016, a copy of the foregoing Motion in Limine was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Karrie D. Howard  
\_\_\_\_\_  
Karrie D. Howard  
Assistant U.S. Attorney

CONTRACT AWARD				1	105
1. CONTRACT NUMBER ODT-9-C-0003	2. EFFECTIVE DATE 03/01/2009	3. SOLICITATION NUMBER ODT-9-R-0001	4. REQUISITION/PROJECT NUMBER Youngstown		
5. ISSUED BY  United States Department of Justice Office of the Federal Detention Trustee 4601 North Fairfax Drive, Suite 910 Arlington, VA 22203	CODE	6. ADMINISTERED BY <i>if other than item 5</i>  United States Department of Justice Office of the Federal Detention Trustee 4601 North Fairfax Drive, Suite 910 Arlington, VA 22203	CODE		
7. NAME AND ADDRESS OF CONTRACTOR  Corrections Corporation of America 10 Burton Hills Boulevard Nashville, TN 37215	CODE	8. PAYMENT WILL BE MADE BY  United States Marshall Service District of Ohio			
9A. DUNS NUMBER 159734151	9B. TAXPAYER'S IDENTIFICATION NO. 621763875	10. SUBMIT INVOICES <i>(4 copies unless otherwise specified)</i> TO <input type="checkbox"/> ITEM 5 <input type="checkbox"/> ITEM 6 <input checked="" type="checkbox"/> ITEM 8 <input type="checkbox"/> OTHER <i>(Specify)</i>			
11. TABLE OF CONTENTS					
PART I - THE SCHEDULE			PART II - CONTRACT CLAUSES		
<input checked="" type="checkbox"/> A	<b>SOLICITATION/CONTRACT FORM</b>	<input checked="" type="checkbox"/> I	<b>CONTRACT CLAUSES</b>	<input checked="" type="checkbox"/> J	<b>PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.</b>
<input checked="" type="checkbox"/> B	<b>SUPPLIES OR SERVICES AND PRICES/COSTS</b>				
<input checked="" type="checkbox"/> C	<b>DESCRIPTION/SPECS./WORK STATEMENT</b>				
<input checked="" type="checkbox"/> D	<b>PACKAGING AND MARKING</b>				
<input checked="" type="checkbox"/> E	<b>INSPECTION AND ACCEPTANCE</b>				
<input checked="" type="checkbox"/> F	<b>DELIVERIES OR PERFORMANCE</b>				
<input checked="" type="checkbox"/> G	<b>CONTRACT ADMINISTRATION DATA</b>		<input checked="" type="checkbox"/> L	<b>REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS</b>	
<input checked="" type="checkbox"/> H	<b>SPECIAL CONTRACT REQUIREMENTS</b>		<input checked="" type="checkbox"/> M	<b>INSTRS., CONDS., AND NOTICES TO OFFERORS</b>	
12. BRIEF DESCRIPTION					
Contract performance requires the management and operation of a contractor owned and operated detention facility for federal prisoners in accordance with the performance based work statement contained within section c of this document.					
13. TOTAL AMOUNT OF CONTRACT					
14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.					
<p><input type="checkbox"/> A. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. <i>(Check if applicable)</i></p> <p>B. SIGNATURE OF PERSON AUTHORIZED TO SIGN <i>Natasha R. Metcalf</i></p> <p>C. NAME OF SIGNER Natasha R. Metcalf</p> <p>D. TITLE OF SIGNER Vice President, Customer Contracts</p> <p>E. DATE 3/6/09</p>					
<p>15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.</p> <p>A. UNITED STATES OF AMERICA <i>(Signature of Contracting Officer)</i> <i>Anthony Bigesby</i></p> <p>B. NAME OF CONTRACTING OFFICER Anthony Bigesby</p> <p>C. DATE 06 Mar 09</p>					

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OPTIONAL FORM 307 (9-97)  
Prescribed by GSA - FAR (48 CFR) 53.215-1(a)

Attachment A

UNITED STATES DISTRICT COURT

FILED

for the

16 SEP 22 AM 10:30

Northern District of Ohio

CLERK US DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
YOUNGSTOWN

United States of America

)

v.

)

Derrick GRANT

)

)

)

)

)

Case No.

4:16 MC 135

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 19, 2016 in the county of Mahoning in the  
Northern District of Ohio, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
Title 18, U.S.C. Section 111	Assault on a federal officer

This criminal complaint is based on these facts:

See attached affidavit

Continued on the attached sheet.

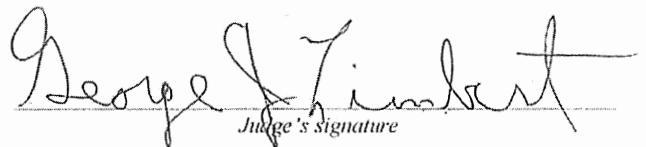
  
Complainant's signature

Daniel K. DeVille, Deputy U.S. Marshal

Printed name and title

Sworn to before me and signed in my presence.

Date: 9-22-16

  
George J. Limbert  
Judge's signature

George J. Limbert, U.S. Magistrate Judge

Printed name and title

City and state: Youngstown, Ohio

**AFFIDAVIT**

I, Daniel K. DeVille, being duly sworn, do hereby declare and state the following:

- 1) I am a Deputy United States Marshal assigned to the Northern District of Ohio. I have been employed with the United States Marshals Service (USMS) since September of 2008. As a Deputy U.S. Marshal, I am authorized under Title 28 U.S.C. Section 564 to enforce the laws of the United States, including Assault on a Federal Officer, Title 18, United States Code Section 111. Prior to my employment with the USMS, I was employed as a local police officer in Ohio for over twelve years. I have a Bachelor's Degree in Organizational Management from Malone University and I am a graduate of the Federal Law Enforcement Training Center Criminal Investigator Training Program at Glynco, Georgia.
- 2) This affidavit is made in support of an application for a criminal complaint charging Derrick GRANT with a violation of 18 U.S.C. Section 111 and is based upon my conversations with other law enforcement agents and sources and upon my examination of various transcripts, reports, and other records. When the contents of documents or statements of others are reported herein, they are reported in substance and part unless otherwise indicated. I have not included in this affidavit all information known by me relating to the investigation. I have set forth only the facts necessary to establish probable cause to support this criminal complaint.
- 3) USMS for the Northern District of Ohio (NDOH) and Western District of Pennsylvania (WDPA) are responsible for maintaining custody of federal prisoners who are detained while their cases are awaiting disposition in federal court. Because neither the NDOH nor WDPA have dedicated facilities to hold these prisoners, they contract with local jails and privately run prison facilities to house the prisoners. Specifically, the USMS for WDPA has a contract with Corrections Corporation of America (CCA) to house federal prisoners at the Northeast Ohio Correctional Center (NEOCC) while their cases are pending. The personnel at NEOCC are, therefore, assisting the USMS in the performance of official duties.
- 4) On December 16, 2015, a federal grand jury in the WDPA returned an indictment in case number 2:15CR265 charging Derrick Grant with Bank Robbery, Armed Bank Robbery, and Using or Carrying a Firearm in Furtherance of a Crime of Violence. On January 15, 2016, Grant appeared for his initial appearance before a magistrate judge. Following a motion by the United States for detention and Grant's waiver of his right to a detention hearing, the magistrate judge granted the motion for detention. On or about January 15, 2016, the USMS for WDPA transferred Grant to NEOCC in Youngstown, Ohio. On May 27, 2016, a jury found Grant guilty as charged in the indictment. His case is set for sentencing on September 27, 2016.

5) While Grant was housed at NEOCC, he was placed in a restrictive housing unit because of some past disciplinary issues that had occurred while he was incarcerated at the facility. On September 19, 2016, NEOCC staff determined that Grant could be moved from the restrictive housing unit back to a general population unit. Correctional Officer (CO) Lynne Poe advised Grant that he was being moved from restrictive housing back to general population and to collect his belongings from the cell. CO Poe continued her duties, checking the doors to the cells to see if they were locked and approached Grant's cell. CO Poe told Grant to close his door when he was done packing his property. Grant then approached CO Poe and punched her in the face with his fist. CO Poe moved away from Grant and requested assistance from other correctional officers.

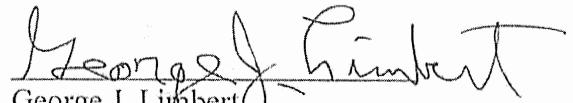
6) NEOCC's security system recorded a video of the assault. A copy of the video was provided to me and entered into evidence at the USMS office in Youngstown, Ohio. A photograph of the injury to CO Poe's face was taken and also provided to me by NEOCC staff.

Based on the foregoing there is probable cause to believe that, Derrick Grant assaulted a person assisting officers and employees of the United States Marshal Service in the performance of official duties, in violation of Title 18 U.S.C. Section 111(a)(1).



Daniel K. DeVille  
Deputy United States Marshal

Sworn before me and subscribed in my presence the 22 day of September, 2016, at Youngstown, Ohio.



George J. Limbert  
United States Magistrate Judge  
Northern District of Ohio

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 4:16-mj-6135  
Plaintiff,  
4:16-cr-332

Plaintiff,

vs.

DERRICK GRANT,  
Defendant.  
FRIDAY, SEPTEMBER 23, 2016  
Youngstown, Ohio

Defendant.

Defendant.

TRANSCRIPT OF **PRELIMINARY AND DETENTION HEARING** PROCEEDINGS  
BEFORE THE HONORABLE GEORGE J. LIMBERT  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Government: *David M. Toepfer,  
Assistant United States Attorney*

For the Defendant: Samuel G. Amendolara, Esquire

For Probation: Ben Jurevicius

Official Court Reporter: Sarah E. Nageotte, RDR, CRR, CRC  
United States District Court  
801 West Superior Avenue  
Court Reporters 7-189  
Cleveland, Ohio 44113  
(216) 357-7186

Proceedings recorded by mechanical stenography from a digital audio recording, transcript produced by computer-aided transcription.

FRIDAY, SEPTEMBER 23, 2016

1	Waiver of Detention Hearing. . . . .	3
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7	Cross-Examination by Mr. Amendolara. . . . .	10
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9	Closing Argument on behalf of Government . . . . .	19
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1 (Proceedings commenced at 3:14 p.m.)

2 - - -

3 COURTROOM DEPUTY: All rise.

4 This Honorable United States District Court for the  
5 Northern District of Ohio is now open for the transaction of  
6 business, the Honorable George J. Limbert presiding.

7 THE COURT: Please be seated.

8 COURTROOM DEPUTY: Court calls Case Number  
9 4:16-mj-6135, United States of America versus Derrick Grant.

10 THE COURT: We are here for probable cause  
11 hearing and a detention hearing.

12 It's my understanding, I have a waiver of detention?

13 MR. AMENDOLARA: That is correct, Your Honor.

14 THE COURT: So we're just proceeding on the  
15 probable cause?

16 MR. AMENDOLARA: That is also correct, Your  
17 Honor.

18 THE COURT: All right. Well, let me at least  
19 read the waiver of detention and the detention order, for  
20 the sake of the record.

21 Derrick Grant, the above-named defendant, accused of  
22 having violated 18 U.S.C. Section 111, being advised of the  
23 nature of the charge and of his rights, under advice of  
24 counsel, waives in open court his right to a detention  
25 hearing and consents that he be held without bail pursuant

1 to Title 18 U.S.C. Section 3142(e) and (i). Defendant  
2 reserves the right to revisit the issue of a detention  
3 hearing at a later time.

4 And it's signed by Derrick Grant.

5 Is that your signature, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: And your legal counsel explained  
8 to you the waiver of detention?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Putting the following order  
11 of detention on the record.

12 The above matter came before the Court on  
13 September 23rd, 2016, pursuant to Rule 46(a) of the Federal  
14 Rules of Criminal Procedure.

15 Defendant was present at the hearing and represented  
16 by Attorney Samuel Amendolara, and the Government was  
17 represented by David M. Toepfer, Assistant U.S. Attorney.

18 Defendant, in open court, after consultation with  
19 counsel, waived his right to a detention hearing and  
20 consented that he be held without bail pursuant to Title 18  
21 U.S.C. Section 3142(e) and (i). Defendant reserves the  
22 right to revisit the issue of a detention hearing at a later  
23 time.

24 The Court also finds that defendant, Derrick Grant,  
25 shall be committed to the custody of the United States

1 Attorney General, or a designated representative, for  
2 confinement to a corrections facility separate, to the  
3 extent practical, from persons awaiting or serving sentences  
4 or being held in custody pending appeal.

5 Further, the Court directs that defendant be afforded  
6 reasonable opportunity for private consultation with his  
7 counsel while in custody.

8 On order of the Court or the request of the attorney  
9 for the United States, the person in charge of the  
10 corrections facility shall deliver defendant to the United  
11 States Marshal for purposes of an appearance in connection  
12 with the court proceeding.

13 It is so ordered.

14 Okay. All right. Now, let's proceed to the probable  
15 cause hearing.

16 Are we going to have opening statements?

17 MR. TOEPPER: I'll waive, Your Honor.

18 MR. AMENDOLARA: I will also waive, Your  
19 Honor.

20 THE COURT: Okay. All right. Government  
21 prepared to call their first witness?

22 MR. TOEPPER: Yes, Your Honor.

23 I'll call Deputy Daniel DeVille.

24 (Witness was sworn)

25 THE COURT: Please be seated on my left.

1 Proceed.

2 **DIRECT EXAMINATION**

3 **BY MR. TOEPFER:**

4 **Q** Please state your name and spell your last name for  
5 the record.

6 **A** Daniel DeVille.

7 D-E-V-I-L-L-E.

8 **Q** What do you do for a living?

9 **A** Deputy United States Marshal.

10 **Q** I'd like to turn your attention back to  
11 September 20 -- I'm sorry. Let me start with this.

12 Are you familiar with the facility called the  
13 Northeast Ohio Correctional Center?

14 **A** Yes. It's a private prison that has contracts with  
15 several U.S. Marshals districts to house prisoners.

16 **Q** And who owns NEOCC?

17 **A** Corrections Corporation of America.

18 **Q** Do you know, does NEOCC and CCA have a contract with  
19 the Marshals Service in the Western District of  
20 Pennsylvania?

21 **A** Yes, they do.

22 **Q** What is the nature of that contract?

23 **A** They house prisoners for the Western District. The  
24 U.S. Marshals Service doesn't have any of its own facilities  
25 or prisons, so whether it's county jails or privately run

1       prisons, we contract, basically, bed space to house  
2       prisoners remanded to the U.S. Marshal Service custody.

3       **Q**       Specifically, are these prisoners who are awaiting the  
4       disposition of cases pending in federal court in the Western  
5       District of Pennsylvania?

6       **A**       Yes.

7       **Q**       As well as the Northern District of Ohio?

8       **A**       Correct.

9       **Q**       I'd like to turn your attention now back to  
10       September 19th, 2016.

11               Are you familiar with an incident involving a Derrick  
12       Grant?

13       **A**       Yes.

14       **Q**       Do you see Mr. Grant in the courtroom today?

15       **A**       I do.

16       **Q**       Would you point to him, please, and tell us what he's  
17       wearing.

18       **A**       At the table, in orange, next to Attorney Amendolara.

19       **Q**       Is NEOCC located within the Northern District of Ohio,  
20       Eastern Division?

21       **A**       It is.

22       **Q**       Tell us what happened that day.

23       **A**       I was notified on the 19th, via e-mail, of an inmate  
24       assault on staff. On the 20th, I responded to the facility,  
25       met with their investigators, watched a video of the

1 assault, collected reports, and reviewed the statements of  
2 the staff of the incident that happened on the 19th.

3 **Q** Tell us specifically what happened.

4 **A** Inmate Grant was advised by Correction Officer Poe  
5 that he was going to be moving from the cell he was housed,  
6 going back to general population, and he just walked up to  
7 her and punched her in the face.

8 **Q** Was there any -- you mentioned a videotape.

9 **A** Did you have a chance to review the video of this  
10 incident?

11 **A** Yes. I watched the video.

12 **Q** What did the video show?

13 **A** An inmate walking out of the cell, right up to the CO,  
14 and a single punch right to the face.

15 **Q** Were the employees at NEOCC able to identify who that  
16 individual was?

17 **A** They were. Several of them identified Inmate Grant as  
18 the one that punched CO Poe.

19 **Q** Why is Inmate Grant at NEOCC right now?

20 **A** He is awaiting sentencing in the Western District of  
21 PA after being found guilty of bank robbery.

22 **Q** And is that in the federal district court in the  
23 Western District of Pennsylvania?

24 **A** Yes, it is.

25 **Q** And is it fair to say that the corrections officers at

1       NEOCC are assisting the United States Marshal Service in  
2       performing their official duties?

3       **A**       Yes, it is.

4       **Q**       Specifically, how are they assisting in performing the  
5       official duties?

6       **A**       By housing the prisoners and guarding them, feeding  
7       them, taking care of, you know, the day-to-day activities of  
8       housing prisoners.

9       **Q**       Did the CO who was assaulted suffer any physical  
10      injuries?

11      **A**       She did. She had a large abrasion and bruise,  
12      swelling on her jaw.

13                    MR. TOEPPER: Your Honor, may I approach the  
14      witness?

15                    THE COURT: Yes.

16      **BY MR. TOEPPER:**

17      **Q**       Deputy DeVille, I'm showing you what's been marked for  
18      identification as Government's Exhibit Number 1.

19                    Do you recognize that?

20      **A**       I do.

21      **Q**       What is it?

22      **A**       A photograph the NEOCC investigators provided me of CO  
23      Poe's face after being struck.

24      **Q**       Based on the information you've gathered, is it your  
25      understanding that photograph is a fair and accurate

1 representation of the injuries she suffered?

2 **A** It is.

3 MR. TOEPPER: No further questions.

4 THE COURT: Okay. Cross-examination.

5 MR. AMENDOLARA: I do, Your Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. AMENDOLARA:**

8 **Q** Deputy Marshal DeVille, you are a employee of the  
9 federal government?

10 **A** I am.

11 **Q** Okay. And you've gone through training to become a  
12 deputy marshal?

13 **A** Correct.

14 **Q** And where did that -- where did that training take  
15 place?

16 **A** In Georgia at the U.S. Marshals Academy.

17 **Q** At the U.S. Marshals Academy?

18 **A** Correct.

19 **Q** Okay. And do you -- do you receive some sort of  
20 commission or is there a ceremony that you swear to protect  
21 the laws of the United States of America?

22 **A** Yes, there is.

23 **Q** Okay. And what is it? Is it a commission?

24 **A** Yeah. I would call it that.

25 **Q** Okay.

1       **A**       Yeah.  We're deputized by the U.S. Marshal Service.

2       **Q**       You're deputized?

3       **A**       Correct.

4       **Q**       And as a result of that, you receive a badge from the  
5       federal government?

6       **A**       I do.

7       **Q**       Okay.  And you've been doing this for how long?

8       **A**       Since 2008.

9       **Q**       Now, this facility that is called the Northeastern  
10      Ohio Correction Facility, they're owned by Correction  
11      Corporation of America you testified?

12      **A**       Correct.

13      **Q**       Okay.  And Correction Corporation of America is a  
14      privately-owned facility?

15      **A**       It is.

16      **Q**       The federal government does not own it?

17      **A**       Correct.

18      **Q**       Okay.  And as a matter of fact, corporal -- excuse  
19      me -- Correction Corporation of America is a company that is  
20      traded in stock on the New York Stock Exchange, is it not?

21      **A**       I'd have to take your word for that, that I --

22      **Q**       You don't know that for sure?

23      **A**       -- don't know.

24      **Q**       Okay.  And have you ever met Lynne Poe before?

25      **A**       I have not.

1       **Q**      Have you ever met Lynne Poe?

2       **A**      No, I have not.

3       **Q**      So you've never even met this woman?

4       **A**      No, I have not.

5       **Q**      Okay. But from what other people told you, you  
6 ascertained that she's an employee of NEOCC?

7       **A**      From what people told me and the reports that I  
8 received from NEOCC, yes.

9       **Q**      Okay. But somebody else wrote those reports?

10      **A**      Correct.

11      **Q**      Okay. And do you have any idea of how long she's been  
12 employed there?

13      **A**      I do not.

14      **Q**      Okay. And do you have any idea of what type of  
15 training she has?

16      **A**      I know everyone that's a CO out there goes through  
17 corrections training. As far as anything past that, no, I  
18 don't know.

19      **Q**      Okay. But you ought to be pretty sure that she's not  
20 a federal employee?

21      **A**      She's a federal contractor.

22      **Q**      Okay. But she's not a federal employee?

23      **A**      Correct.

24      **Q**      She is not a marshal with the marshals department,  
25 correct?

1       **A**     Correct.

2       **Q**     She's not a member of DEA?

3       **A**     No.

4       **Q**     The FBI?

5       **A**     Negative.

6       **Q**     Okay. So she is employed by this private company?

7       **A**     Correct.

8       **Q**     And, again, you don't really know -- you've never  
9       met --

10      **A**     I have not.

11      **Q**     Have you looked into her personnel file at all?

12      **A**     I have not.

13      **Q**     Okay. Is this basically about the most you know about  
14     her, is that this picture -- you've seen a picture of her,  
15     which is really half of her face?

16      **A**     Well, that, and the reports that I read.

17      **Q**     Okay. So you have not conducted any independent  
18     investigation about what happened?

19      **A**     Well, I -- I mean, I read the reports. They all  
20     matched. I watched the video. So I would call that  
21     independent of what they did.

22      **Q**     Okay. Did you talk to Derrick Grant?

23      **A**     I attempted to.

24      **Q**     Okay. And did you have any conversation with him  
25     whatsoever?

1       **A**       Other than reading him his rights and him invoking his  
2       right to an attorney, no.

3       **Q**       Okay. Now, this video that you've talked about, is  
4       this a video camera that's stationary on the wall?

5       **A**       Yes.

6       **Q**       Okay. And I have not seen that, and it's not here in  
7       the courtroom today, right?

8       **A**       Correct.

9       **Q**       Okay. How long is the video?

10      **A**       I mean, the incident or the video?

11      **Q**       The video. The -- the video -- well, let me rephrase  
12       that.

13               Is that -- the incident took about how long?

14      **A**       Seconds.

15      **Q**       Seconds.

16               Okay. How long is the video that you watched?

17      **A**       I believe they burnt ten minutes, a ten-minute block  
18       of the video.

19      **Q**       So that could be a number of things. That could be  
20       ten minutes leading up to the incident and shutting it off,  
21       or it could be moments before the incident and continuing to  
22       run.

23               Can you tell me, in your observation of the video, how  
24       it ran?

25      **A**       No. Because I watched the video at CCA.

1        Unfortunately, it won't work in my government computer  
2        because I don't have access to the software.

3        **Q**        Did you see the entire ten minutes?

4        **A**        No. I watched two, three minutes.

5        **Q**        Okay. Did you pretty much watch the two minutes prior  
6        to the incident leading up to the incident?

7        **A**        Yes.

8        **Q**        And the incident?

9        **A**        Yes.

10       **Q**        Okay. Now, did it appear that Mr. Grant and Ms. Poe  
11       were having some discussions?

12       **A**        Briefly.

13       **Q**        By the way, does the video have audio to it?

14       **A**        That, I don't -- from the distance of where the camera  
15       is, I would say no.

16       **Q**        Okay. Did you hear anything?

17       **A**        I did not hear anything.

18       **Q**        Okay. So you don't know what the conversation, if  
19       there was any, between Mr. Grant and Ms. Poe?

20       **A**        Correct.

21       **Q**        You don't know if it was a -- if there was a  
22       conversation at all? You don't know if it was a friendly  
23       conversation, if they had one? Or you don't know if it was  
24       an argument, whether they had one?

25       **A**        I have what the reports say, which was an instruction

1       given from the guard to the inmate and that was the  
2       conversation.

3       **Q**       Well, I understand that, Marshal.

4               But the point is those things are something that  
5       you've read that somebody else authored, right?

6       **A**       Correct.

7       **Q**       And they're not in the courtroom today to tell us?

8       **A**       They are not.

9       **Q**       Okay. So, basically, you're taking their word for it?

10      **A**       I am.

11      **Q**       Okay. And you filed a criminal complaint in the  
12       district on September 22nd charging a violation of Title 18  
13       Section 111, is that also correct?

14      **A**       Correct.

15      **Q**       And that is assault on a federal officer?

16      **A**       Correct.

17      **Q**       And as you've testified, she is not a federal officer,  
18       per se?

19      **A**       I think that's not a question I can answer. She's a  
20       federal contractor.

21      **Q**       Well, you've answered that, and I've gone through it  
22       before that she is not a U.S. Marshal?

23      **A**       Correct.

24      **Q**       And she is not a member of the FBI?

25      **A**       Correct.

1       **Q**     And she's not a member of the DEA?

2       **A**     Correct.

3       **Q**     Okay. She is employed by a private carrier or  
4       provider?

5       **A**     Correct.

6       **Q**     Okay. And so, basically, you're saying that -- again,  
7       will you tell me what you just did say.

8                 She is a what?

9       **A**     Federal contractor.

10      **Q**     A federal contractor.

11                 Is your theory, then, that she's an agent of yours?

12      **A**     Yes.

13      **Q**     Okay. So being an agent of the federal government,  
14       did you not think it might be prudent or wise to have an  
15       independent investigation into this? Are you not  
16       investigating your own who's made a complaint?

17      **A**     No, I'm not. I'm investigating Inmate Grant.

18      **Q**     You're investigating the incident?

19      **A**     Yes.

20      **Q**     Okay. But you are a member of the marshals  
21       department?

22      **A**     Correct.

23      **Q**     Okay. And you did not think that perhaps bringing in  
24       a different agency to investigate this, rather than you  
25       investigate it, would be prudent?

1       **A**       No.

2       **Q**       Okay. Now, I've asked you about the camera that was  
3                   stationary.

4                   What -- as I reviewed the report, were other members  
5                   of the -- the prison also videoing after the fact?

6                   I thought I saw somebody say that they ran down and  
7                   they were videoing.

8       **A**       Yes. One of the policies out there is if they suspect  
9                   there may be an incident where use of force is needed, they  
10                  videotape it.

11      **Q**       That's kind of to protect themselves?

12      **A**       Correct.

13      **Q**       Were you able to watch that video?

14      **A**       No. They didn't use any force, and, therefore, there  
15                  was really nothing to watch --

16      **Q**       Okay.

17      **A**       -- of interest.

18      **Q**       You testified previously you were notified of this  
19                  incident by way of e-mail?

20      **A**       Correct.

21      **Q**       And was that on the date of the incident?

22      **A**       Yes.

23      **Q**       And you did not go down until the day after?

24      **A**       Correct.

25                   MR. AMENDOLARA: Let me just have a moment,

1 Your Honor.

2 THE COURT: Yes.

3 (Pause in Proceedings)

4 MR. AMENDOLARA: That's all, Your Honor.

5 Thank you very much.

6 THE COURT: Okay. Any redirect?

7 MR. TOEPFER: No, Your Honor.

8 THE COURT: You may be excused.

9 You want to call your next witness.

10 MR. TOEPFER: That's my only witness.

11 I would move Government's Exhibit 1 into evidence for  
12 purposes of today's hearing.

13 THE COURT: Any objection?

14 MR. AMENDOLARA: No objection, Your Honor.

15 THE COURT: It shall be admitted.

16 Defense ready to call their first witness?

17 MR. AMENDOLARA: Your Honor, we have no  
18 witnesses today.

19 THE COURT: Okay. Are we ready for closing  
20 arguments?

21 MR. TOEPFER: Yes, Your Honor.

22 MR. AMENDOLARA: We are.

23 THE COURT: Government should go first.

24 MR. TOEPFER: Your Honor, there's evidence in  
25 this case to support the finding of probable cause that the

1       defendant committed an assault pursuant to 18 -- Title 18  
2       United States Code Section 111.

3           I know there was some testimony concerning the fact  
4       that the victim of this is an employee of CCA, which is a  
5       privately-held corporation. However, the statute with which  
6       Mr. Grant's charged is, again, Title 18 Section 111, and  
7       that statute says that no person shall forcibly assault,  
8       resist, oppose, impede, intimidate, or interfere with any  
9       person designated in Section 1114 of this title.

10          Title 18 United States Code Section 1114 then spells  
11       out specifically individuals that are protected by this  
12       statute. Among those individuals are those who are  
13       assisting federal officers in the performance of their  
14       official duties.

15          In this case, we have testimony to the fact that the  
16       Marshal Service of the Western District of Pennsylvania  
17       contracts with this private company to house prisoners who  
18       are awaiting disposition of their cases in federal court.  
19          Because that is an official function of the Marshal Service  
20       and they have hired these people to assist them in  
21       performing those official duties, the CO in this case is, in  
22       fact, a person designated under Section 1114, and,  
23       therefore, has the protection from being assaulted that is  
24       intended by this statute with which Mr. Grant has been  
25       charged.

1                   So based upon all of that, I would ask the Court to  
2 find that there is probable cause and bind this matter over  
3 to the grand jury.

4                   THE COURT: All right. Okay.

5                   MR. AMENDOLARA: Thank you, Your Honor.

6                   Your Honor, that is precisely the point that we were  
7 trying to bring forward today is whether or not this  
8 individual, who is a private employee of a private company,  
9 has any standing.

10                  It actually is a jurisdictional issue, whether or not  
11 they fall under the umbrella of being a federal officer  
12 doing their federal duty. And along with that, I do not  
13 agree that housing prisoners are -- are -- is that --  
14 qualifies for that either.

15                  So we would respectfully request that you find there  
16 is no probable cause in this matter today.

17                  THE COURT: Okay. Any rebuttal?

18                  MR. TOEPFER: No, Your Honor.

19                  THE COURT: All right. Well, obviously, it's  
20 more of a legal issue than it is a factual issue.

21                  But I believe under Title 18 U.S.C. Section 111(a)(1)  
22 that the assaulted person was assisting officers and  
23 employees of the United States Marshal Service in the  
24 performance of their official duties.

25                  So, therefore, there is probable cause that the

1 defendant assaulted a -- a designated person assisting  
2 federal officers, i.e., the Marshal Service, and, therefore,  
3 he is bound over to the grand jury.

4 And he's also remanded to the custody of the U.S.  
5 Marshals.

6 And we are adjourned.

7 MR. AMENDOLARA: Thank you, Your Honor.

8 MR. TOEPFER: Thank you.

9 COURTROOM DEPUTY: All rise.

10 - - -

11 (Proceedings concluded at 3:34 p.m.)

12

13

14

15 **C E R T I F I C A T E**

16 I certify that the foregoing is a correct transcript  
17 from the record of proceedings in the above-entitled matter.  
18 This transcript was prepared to the best of my ability from  
19 a digital audio recording of the proceedings provided by the  
Court.

20 /s/ Sarah E. Nageotte 12/13/2016  
21 SARAH E. NAGEOTTE, RDR, CRR, CRC DATE  
22

23

24

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No. 19-3824  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Dec 16, 2020  
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DERRICK GRANT,

Defendant-Appellant.

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O R D E R

**BEFORE:** SUTTON, THAPAR, and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.\* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**ENTERED BY ORDER OF THE COURT**



Deborah S. Hunt, Clerk

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\*Judge Nalbandian recused himself from participation in this ruling.