

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEITH MORRIS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

APPENDIX A

**TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Wesley P. Page
Federal Public Defender

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FILED: January 6, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4540
(2:20-cr-00167-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KEITH MORRIS,

Defendant - Appellant.

O R D E R

Keith Morris seeks to appeal his 120-month prison sentence. The Government has moved to dismiss the appeal as barred by Morris' waiver of the right to appeal included in the plea agreement. Upon review of the record, we conclude that Morris knowingly and voluntarily waived his right to appeal and that the issue Morris seeks to raise on appeal falls squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge Thacker, Judge Rushing, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

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KEITH MORRIS, *Petitioner,*

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APPENDIX B

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Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

_____	X	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:20-cr-00167
	:	
v.	:	
	:	
KEITH MORRIS,	:	
	:	APPEAL TRANSCRIPT
Defendant.	:	
_____	X	

TRANSCRIPT OF PLEA HEARING
BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT COURT JUDGE
IN CHARLESTON, WEST VIRGINIA
APRIL 19, 2021

APPEARANCES:

For the Government: Negar Kordestani, Esq.
Assistant United States Attorney
United States Attorney's Office
P.O. Box 1713
Charleston, WV 25326-1713

For the Defendant: Clayton Thomas Harkins, Esq.
Dinsmore & Shohl
P. O. Box 11887
Charleston, WV 25339-1887

Probation Officer: Shamika Wade

Kimberly Kaufman, RMR, CRR, CRC
Federal Official Court Reporter
300 Virginia Street East, Room 6610
Charleston, WV 25301

Proceedings recorded by mechanical stenography; transcript
produced by computer.

1 PROCEEDINGS had before The Honorable Joseph R.
2 Goodwin, Judge, United States District Court, Southern
3 District of West Virginia, in Charleston, West Virginia, on
4 April 19, 2021, at 1:30 p.m., as follows:

5 THE COURT: Good afternoon.

6 THE COURTROOM DEPUTY CLERK: The matter before the
7 Court is *The United States of America v. Keith Morris*,
8 Criminal Action No. 2:20-cr-00167.

9 THE COURT: Is the United States ready?

10 MS. KORDESTANI: Yes, Your Honor.

11 THE COURT: Defendant ready?

12 MR. HARKINS: Yes, Your Honor.

13 THE COURT: Will the defendant and defense counsel
14 please stand.

15 Madam Clerk, would you administer the oath to the
16 defendant.

17 **KEITH MORRIS, DEFENDANT, SWORN**

18 THE COURT: Mr. Harkins, it's my understanding the
19 defendant wishes to plead guilty to the charges contained in
20 Counts Two and Three of the superseding indictment returned
21 against him by the grand jury; is that correct?

22 MR. HARKINS: That's correct, Your Honor.

23 THE COURT: Mr. Morris, do you understand you're
24 now under oath and if you answer any of my questions falsely
25 those answers could be used against you in another

1 prosecution?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Would you state your full name.

4 THE DEFENDANT: Keith Grant Morris, II.

5 THE COURT: How old are you, Mr. Morris?

6 THE DEFENDANT: I'm 33 years old, Your Honor.

7 THE COURT: How much education have you had?

8 THE DEFENDANT: Tenth grade.

9 THE COURT: Can you read and write?

10 THE DEFENDANT: Yes.

11 THE COURT: Go ahead.

12 THE DEFENDANT: Yeah, but like an eighth-grade
13 level.

14 THE COURT: Have you recently been under the care
15 of a doctor, psychiatrist or other medical professional for
16 any serious physical or emotional illness?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you currently, that is today,
19 using any form of controlled substance, medication, alcohol
20 or anything that might affect your ability to understand
21 these proceedings?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you fully able to understand
24 what's going on here?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Harkins, do you have any reason to
2 question the competence of your client?

3 MR. HARKINS: No, sir.

4 THE COURT: Mr. Morris, I find you're competent
5 and capable of entering an informed plea.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you believe you've had adequate
8 time to discuss your case with your lawyer?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has he been able to answer your
11 questions about how best to proceed in this matter?

12 THE DEFENDANT: Yeah, to a certain extent.

13 THE COURT: Do you have other questions you'd like
14 to ask him?

15 THE DEFENDANT: Yes, sir, things about the case
16 that I -- he really couldn't explain to me good enough
17 because he feel like that they might be in the right and I
18 feel like it's questionable.

19 THE COURT: Counsel, anything you can tell me
20 on -- without violating --

21 MR. HARKINS: Yes, Your Honor.

22 Just for the record, I would just state that I have
23 explained all the elements of the several offenses. I've
24 explained it to the best of my ability and answered any
25 questions he's had. To the extent there's any disagreement

1 as to the weight of the evidence, I followed his direction
2 throughout the entirety of this case.

3 THE COURT: So, Mr. Morris, are the things you're
4 unable to learn from your lawyer related to the weight of
5 the evidence or as to what the evidence is?

6 THE DEFENDANT: Yes.

7 THE COURT: Don't talk too much without -- I don't
8 want you to incriminate yourself.

9 THE DEFENDANT: Yeah, it's just how they obtained
10 the evidence from me.

11 THE COURT: How they obtained it from you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Maybe we'll pursue that
14 just a little further here in a minute.

15 I need to ask you, are you satisfied with your lawyer?

16 THE DEFENDANT: Yes, I'm satisfied with him.

17 THE COURT: Mr. Harkins, has Mr. Morris been
18 cooperative with you?

19 MR. HARKINS: Yes, Your Honor, he has.

20 THE COURT: Do you feel like you've had adequate
21 time to prepare?

22 MR. HARKINS: I have, Your Honor.

23 THE COURT: Mr. Harkins, do you know if there's a
24 plea agreement in this case?

25 MR. HARKINS: There is, Your Honor.

1 THE COURT: I'm going to allow you to sit down
2 and, Mr. Morris, I'd ask you to listen carefully as the
3 Assistant United States Attorney makes a proffer or a
4 statement as to what the government says to the Court they
5 will be able to prove in this case.

6 Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Please be seated.

9 THE DEFENDANT: Me too? Stand?

10 THE COURT: Go ahead and sit down.

11 THE DEFENDANT: Yes, sir.

12 MS. KORDESTANI: Your Honor, should I proffer
13 first or summarize the plea agreement first?

14 THE COURT: Summarize the plea agreement.

15 MS. KORDESTANI: Thank you, Your Honor.

16 The plea agreement is in letter form, and it's dated
17 February 24th, 2021.

18 Paragraph 1 provides the parties' understanding of the
19 pending charges and that defendant is charged in a
20 five-count superseding indictment.

21 Count One, he's charged with possession with intent to
22 distribute 50 grams or more of a mixture and substance
23 containing methamphetamine.

24 Count Two, he's charged with being a felon in
25 possession of a firearm.

1 Count Three, he's charged with possession with intent
2 to distribute 40 grams or more of fentanyl.

3 Count Four, he's charged with possession of a firearm
4 in furtherance of drug trafficking.

5 And Count Five, he's charged, again, with being a felon
6 in possession of a firearm.

7 Paragraph 2 provides that the defendant agrees to plead
8 guilty to Counts Two and Three, and upon final disposition
9 the United States will move to dismiss Counts One, Four, and
10 Five of the superseding indictment.

11 Paragraph 3 sets forth the maximum potential penalties
12 both with respect to Count Two and with respect to Count
13 Three. And, finally, provides for the maximum combined
14 penalties, which includes a period of imprisonment of a
15 mandatory minimum of five years and up to 50 years; a fine
16 of \$5,250,000 or twice the gross pecuniary gain or twice the
17 gross pecuniary loss resulting from his conduct, whichever
18 is greater; a term of supervised release of at least four
19 years; a mandatory special assessment of \$200. The Court
20 may further deny certain federal benefits for up to five
21 years, and restitution as so ordered by the Court.

22 Paragraph 4 sets forth the parties' understanding with
23 respect to the payment of that special assessment.

24 Paragraph 5 is a forfeiture provision in which
25 Mr. Morris agrees to forfeit any proceeds or property that

1 are a result of his criminal activity, including two
2 firearms, a Glock, Model 26, 9-millimeter semiautomatic
3 pistol, a SCCY CPX-1, 9-millimeter caliber --

4 THE COURT: You might want to slow down a little
5 bit and say that again.

6 MS. KORDESTANI: Thank you, Your Honor.

7 The paragraph 5 sets forth the forfeiture provision.
8 And the defendant agrees to forfeit any and all property in
9 his possession or under his control which constitute
10 proceeds or is derived from the proceeds of his offense
11 including, but not limited to, a Glock, Model 26,
12 9-millimeter semiautomatic pistol, a SCCY CPX-1,
13 9-millimeter handgun, any ammunition that was seized from
14 him on or about January 23rd, 2020, as well as on or about
15 August 7th, 2020, and a 2012 Volvo S60 car.

16 Paragraph 6 sets forth the parties' understanding with
17 the payment of monetary penalties.

18 Paragraph 7 sets forth that the defendant will be
19 forthright and truthful with the United States and other law
20 enforcement agencies with respect to any inquiries made
21 pursuant to this agreement.

22 Paragraphs 8 and 9 address the obligations defendant
23 owes with respect to the grant of use immunity and any
24 limitations provided with respect to that grant.

25 Paragraph 10 sets forth a -- the parties' agreements

1 with respect to a stipulation of facts that's attached to
2 the plea agreement as Exhibit A and further describes the
3 defendant's waiver of any rights he has under Federal Rules
4 of Evidence 412 -- excuse me. Strike that -- 410.

5 Paragraph 11 provides that the United States and the
6 defendant agree on the base offense level under the U.S.
7 sentencing guidelines and further agree to an adjusted
8 offense level coming to 28. And the parties recognize that
9 neither this Court, nor the probation office, are bound by
10 the parties' agreement with respect to that provision.

11 Paragraph 12 outlines the parties' understanding with
12 respect to the defendant's waiver of his appellate rights
13 and any rights he has to collateral attack, and further
14 outlines the United States' waiver of its right to appeal a
15 certain sentence as issued by this Court.

16 Paragraph 13 addresses the parties' understanding with
17 respect to the defendant's waiver of rights he may have
18 under FOIA and the Privacy Act.

19 Paragraph 14 addresses the parties' understanding with
20 respect to final disposition at sentencing.

21 Paragraph 15 provides the parties' understanding with
22 respect to the voiding of this plea agreement, if any.

23 And paragraph 16 provides that the plea agreement is
24 the entirety of the agreement between the United States and
25 defendant.

1 The defendant has initialed every page of the 11-page
2 plea agreement. He has signed it, as has his lawyer, and I
3 have signed it as well on behalf of the United States.

4 THE COURT: Mr. Morris, if you and your lawyer
5 would stand again.

6 Mr. Harkins, is that a fair summary of the entire
7 agreement between your client and the government?

8 MR. HARKINS: Yes, it is, Your Honor.

9 THE COURT: Mr. Morris, do you understand what
10 this plea agreement does?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Were each of the paragraphs of that
13 plea agreement read to you and discussed with you by your
14 lawyer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand it?

17 THE DEFENDANT: Yes, sir. Yes, Your Honor.

18 THE COURT: Do you want me to accept it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are those your initials on the
21 11 pages of the agreement and your signature on page 12 and
22 on the exhibit?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand you've entered into
25 a stipulation of facts that's attached to this agreement and

1 that those facts -- that stipulation could be used against
2 you if you were to breach your agreement if I accept it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I'll defer acceptance of the plea
5 agreement until a presentence investigation is completed.
6 Nevertheless, I'll direct that the original -- or a copy --
7 the original, rather, be filed and made a part of the
8 record.

9 Mr. Morris, have you received a copy of the superseding
10 indictment that was returned against you --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- the charging paper?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Would you like for me to read it to
15 you or will you waive reading?

16 THE DEFENDANT: I waive it.

17 THE COURT: How do you plead to the charges
18 contained in Counts Two and Three of the superseding
19 indictment?

20 THE DEFENDANT: Guilty, Your Honor.

21 THE COURT: Mr. Morris, before I accept your plea,
22 I want to make sure that there's a factual basis for your
23 plea of guilty, that you understand the nature of the
24 charges against you and the consequences of pleading guilty
25 to those charges.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I want to be sure you understand the
3 constitutional and other legal rights you're giving up by
4 pleading guilty. And, finally, I want to be sure that your
5 plea of guilty here today is entirely voluntary.

6 Let me go over the charge.

7 You're charged in Count Two of the superseding
8 indictment with violating 18 United States Code
9 Section 922(g)(1) and 924(a)(2).

10 922 states in pertinent part that it shall be unlawful
11 for any person who has been convicted in any court of a
12 crime punishable by a term of imprisonment exceeding one
13 year to possess in or affecting interstate commerce any
14 firearm or ammunition.

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: 924 of that chapter of the code
17 provides that whoever does that shall be fined and
18 imprisoned for not more than ten years and/or fined and
19 imprisonment.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If the government had to go to trial
23 in this case, they would have to prove the following
24 essential elements of this crime beyond a reasonable doubt:

25 One, they would have to prove that you had, before you

1 possessed this gun as alleged in Count Three -- Count Two of
2 the indictment, you had been convicted of a crime in a court
3 which crime was subject to punishment exceeding one year in
4 prison.

5 They would have to prove beyond a reasonable doubt that
6 you knowingly possessed a firearm or firearms contained or
7 described in the indictment.

8 They would have to prove beyond a reasonable doubt that
9 you knew you were a convicted felon when you possessed these
10 guns or gun and that that classification as a felon or a
11 person who had been convicted of a crime punishable by more
12 than one year prohibited you from possessing firearms.

13 Finally, they would have to prove that the possession
14 of these guns was in or affecting interstate commerce.

15 Next, as to Count -- what is this Count?

16 THE COURTROOM DEPUTY CLERK: Three.

17 THE COURT: -- Three -- well, let me -- before I
18 get to Three, I'll point out that the indictment for Count
19 Two says that you previously were convicted of attempted
20 murder with use of a firearm in West Virginia, which is a
21 crime punishable by imprisonment for a term exceeding one
22 year.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I'll go on to tell you that the term
25 firearm means any weapon, including a starter pistol, which

1 will or is designed to or may be readily converted to expel
2 a projectile by means of an explosive, the frame or receiver
3 of any such weapon, any firearm muffler or silencer. It
4 does not include antique firearms, but it may include and
5 does include other destructive devices.

6 The term possess means to have something, exercise
7 control over it.

8 An act is done knowingly if it's done voluntarily and
9 intentionally and not because of a mistake, accident or
10 other innocent reason.

11 In or affecting interstate commerce means commerce
12 between a place in one state and some place in another
13 state.

14 Now, let me go on to Count Three. In that count you're
15 charged with violating 21 United States Code
16 Section 841(a)(1). That statute makes it a crime for any
17 person knowingly or intentionally to possess with intent to
18 distribute a controlled substance, in this case fentanyl.

19 If the government had to go to trial on this charge,
20 they would have to prove the following elements beyond a
21 reasonable doubt:

22 One, they would have to prove that you knowingly
23 possessed fentanyl, the controlled substance described in
24 Count Three, that you knew that what you possessed was some
25 form of controlled substance, and you intended to distribute

1 some of it or all of it.

2 Fentanyl is a controlled substance.

3 To possess, again, means to exercise dominion or
4 control over it, to have it at a given time.

5 With intent to distribute means to have in mind or plan
6 in some way to transfer possession of something from one
7 person to another.

8 An act is done knowingly if it's done voluntarily and
9 intentionally and not because of some mistake or accident or
10 innocent reason.

11 Now, Mr. Morris, considering those definitions and
12 explanations of the felon in possession of a firearm count
13 and the drug count, how do you plead?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: Do you plead guilty as to Count Two?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And as to Count Three?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did both of these acts occur in --
20 well, did the first -- let's see here.

21 Did the possession of the firearm occur on or about
22 January 23rd, 2020, at or near Charleston, Kanawha County,
23 West Virginia, and within the Southern District of West
24 Virginia?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did the drug possession with intent to
2 distribute occur on or about August 7th, 2020, at or near
3 Charleston, Kanawha County, West Virginia?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: The Court will note that's also within
6 the Southern District of West Virginia.

7 Now, tell me in your own words what you did that makes
8 you think you're guilty of possessing the firearms.

9 THE DEFENDANT: I had it locked within a safe in
10 my trunk, and I held the key in my possession.

11 THE COURT: And how about the fentanyl?

12 THE DEFENDANT: I had it locked in my glove
13 compartment of a car that I owned and was driving made me
14 have possession of it.

15 THE COURT: All right. And what did you intend to
16 do with the fentanyl?

17 THE DEFENDANT: Use a little bit of it and make a
18 little bit more so I could continue using, Your Honor. To
19 sell a little bit and make some money so I could continue
20 using to support my habit, Your Honor.

21 THE COURT: All right. Let me let you sit down.

22 Ms. Kordestani, will you do that proffer now?

23 MS. KORDESTANI: Yes, Your Honor.

24 If this case were to proceed to trial, the United
25 States would prove beyond a reasonable doubt that on or

1 about January 23rd, 2020, officers with the Charleston
2 Police Department responded to a two-vehicle crash in
3 Charleston, which is within Kanawha County in the Southern
4 District of West Virginia, and searched and located within
5 Mr. Morris's vehicle controlled substances and a firearm.

6 Specifically, on that date the defendant possessed,
7 with intent to distribute, 50 grams or more of what he
8 believed to be methamphetamine, which is a controlled
9 substance, Schedule II, and he also possessed a loaded
10 Glock, Model 26, 9-millimeter semiautomatic pistol.

11 The United States would further prove that on or about
12 August 7th, 2020, detectives with MDENT, or the Metropolitan
13 Drug Enforcement Network Team, traffic stopped Mr. Morris's
14 vehicle in Charleston and that vehicle was a 2012 Volvo S60,
15 and after searching the vehicle located controlled
16 substances and a firearm.

17 Specifically on that date the defendant possessed, with
18 intent to distribute, 40 grams or more of fentanyl, which he
19 knew to be a Schedule II controlled substance. He also
20 possessed a loaded SCCY CPX-1, 9-millimeter caliber handgun.

21 THE COURT: But that's not charged in Count Three,
22 right, the gun?

23 MS. KORDESTANI: That's correct. That was a
24 separate count in the superseding indictment.

25 THE COURT: All right.

1 MS. KORDESTANI: On or about August 7th, 2020, the
2 defendant also told officers who were processing him in
3 connection with his arrest that he knew he was a convicted
4 felon. This defendant was previously convicted on or about
5 December 4th, 2007, in the Circuit Court of Kanawha County,
6 West Virginia, in Case No. 7-F-381 of the felony offense of
7 attempted murder with the use of a firearm in violation of
8 West Virginia Code Sections 60-2-1 and 61-11-8. And he was
9 also previously convicted on or about January 5th, 2018, in
10 the same court, Case No. 17-F-684 of the felony offense of
11 wanton endangerment with a firearm in violation of West
12 Virginia Code Section 61-7-12.

13 The defendant stipulates and agrees that because of
14 these convictions he knows he cannot possess a firearm.

15 The parties further agree that the United States could
16 prove that the firearms in question had traveled in
17 interstate commerce and is operable as a firearm.

18 And, furthermore, the parties stipulate and agree that
19 this defendant is accountable for a total amount of readily
20 provable offense and relevant conduct of at least
21 400 kilograms, but less than 700 kilograms, of converted
22 drug weight.

23 THE COURT: Let's assume I don't accept your plea
24 agreement. How would you prove the things you just said?

25 MS. KORDESTANI: Yes, Your Honor.

1 The United States would offer the testimony of its
2 agents, the defendant's own statements, court records,
3 expert testimony from ATF. We would introduce the firearms
4 in question, as well as the controlled substances and
5 laboratory analysis of the same.

6 THE COURT: All right.

7 Mr. Morris, if you and your lawyer would stand again.

8 Mr. Morris, is what she said as it relates to Count Two
9 and Three of the superseding indictment true?

10 THE DEFENDANT: Yes. Did I possess it?

11 THE COURT: Possession with intent to distribute
12 fentanyl in the amount she said and your possession earlier
13 of the gun she described?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Harkins, are you satisfied, if
16 this case went to trial, there would be no meritorious legal
17 defense to the charge?

18 MR. HARKINS: Yes, Your Honor.

19 THE COURT: Are you satisfied that your client's
20 constitutional and other legal rights have been fully
21 observed?

22 MR. HARKINS: Yes, Your Honor.

23 THE COURT: Do you concur in his now-stated
24 intention to enter a guilty plea to those charges?

25 MR. HARKINS: I do, Your Honor.

1 THE COURT: Mr. Morris, I find there is a
2 sufficient factual basis for your pleas of guilty here
3 today.

4 Do you understand that you're pleading guilty to felony
5 charges and if I accept your pleas you'll be adjudged guilty
6 of those felonies?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand such judgments may
9 deprive you of valuable civil rights such as your right to
10 vote, your right to hold public office, your right to
11 possess any kind of firearm or gun, your right to serve on a
12 jury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand you expose yourself
15 to a maximum penalty of 50 years' imprisonment by entering
16 into this plea -- pleas?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand in addition the
19 Court may fine you up to \$5,250,000 or twice the gross
20 pecuniary gain or loss resulting from your criminal conduct,
21 whichever is greater?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that in addition
24 you'll be subject to a supervised release term of at least
25 four years?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand supervised release
3 means that after a term of imprisonment you will be
4 supervised while on release under rules set by the Court?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that if you did
7 violate your supervised release terms and the Court so
8 found, I could revoke or modify the terms of your supervised
9 release and order you to serve another period in prison?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that in addition
12 you'll be required to pay \$100 on each of these charges;
13 that is, a \$200 special assessment for having been convicted
14 of felony offenses?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Your plea agreement, if accepted,
17 provides you'll pay that from your prison earnings.

18 Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand I may deny you
21 certain federal benefits for a period of years?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand in addition you may
24 be required to make restitution if there are identifiable
25 victims?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: Your plea agreement also contains a
3 criminal forfeiture provision that provides that you agree
4 to forfeit the Glock pistol described in the indictment, any
5 ammunition seized on January 23rd, a 2012 Volvo car as
6 described in the indictment.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: The connection between those things as
11 you were using the car to transport the drugs for sale; is
12 that right?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: And the pistol was there to protect
15 you and the drugs as you went about your business?

16 THE DEFENDANT: More myself. Myself. I really
17 didn't care about the drugs, Your Honor.

18 THE COURT: All right. But you understand you've
19 agreed to forfeit that property?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you discussed with Mr. Harkins
22 the application of the United States sentencing guidelines
23 to your case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I won't be able to determine the

1 applicable United States sentencing guideline in your case
2 until after the probation department conducts a presentence
3 investigation of you and prepares a draft report, provides
4 you and your lawyer copies and the government a copy. Only
5 after everyone's had a chance to make objections, which I'll
6 rule on, and corrections will I be able to determine what is
7 the appropriate guideline range.

8 Do you understand?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Do you understand that's up to me to
11 determine that and the fact that you and the government have
12 agreed as to what you think it is is not binding on me in
13 any way?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that parole has been
16 abolished and if you're sentenced to prison you'll not be
17 released on parole?

18 THE DEFENDANT: Uh-huh. Yes, sir, Your Honor.

19 THE COURT: You also understand that the
20 sentencing guidelines that I just talked about are advisory
21 and that I have the authority to impose a sentence which is
22 less than that called for by the guidelines or more than
23 that called for by the guidelines?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Do you understand even if you don't

1 like my sentence you're going to be bound by these guilty
2 pleas here today and not permitted to change your mind and
3 withdraw them?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand you have a right to
6 testify at your sentencing hearing if you so desire?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Do you understand you may have a right
9 to appeal your conviction if you believe that your guilty
10 pleas here today were somehow unlawful or involuntary or
11 there was some fundamental defect in these proceedings that
12 wasn't waived by your guilty plea or by your plea agreement
13 if I accept it?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Do you understand in your plea
16 agreement you've agreed to give up almost all your appellate
17 rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you discussed all those waivers
20 with your lawyer?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Do you still wish to make those
23 waivers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that in any event

1 any notice of appeal must be filed within 14 days of the
2 entry of the order of sentence and conviction in your case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I find you understand the nature of
5 the charges against you and the consequences of pleading
6 guilty to them.

7 Do you understand you have a right to plead not guilty?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Do you understand by pleading guilty
10 you give up your right to a speedy and public trial by jury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand by pleading guilty
13 you give up your right to force the government to come
14 forward with witnesses and evidence against you?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Do you understand you would have been
17 presumed innocent until such time as the government
18 convinced both the judge and the jury that you were guilty
19 beyond a reasonable doubt?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Do you understand you would have had
22 the right to assistance of counsel at trial?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: Do you understand you and your lawyer
25 would have had the right to confront the government's

1 witnesses, all the evidence that they produced, test the
2 truth of it?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Do you understand by pleading guilty
5 you give up that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand had you desired to
8 go to trial and you wished to call witnesses you would have
9 been entitled to the services of the marshal to go out and
10 subpoena witnesses and bring them here to testify for you?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: Do you understand when you plead
13 guilty you give up your right to call witnesses except at
14 your sentencing?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Do you understand that had you desired
17 to go to trial you would have had the right to take the
18 witness stand and testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand you would have also
21 had the right to go to trial and remain silent; that is, not
22 to take the stand, not to offer any evidence whatsoever on
23 your own behalf?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand I would have

1 instructed the jury that they could neither discuss nor
2 consider your exercise of that constitutional right to
3 remain silent --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- but could only convict you based on
6 an offer of proof that you were guilty beyond a reasonable
7 doubt?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Mr. Morris, I find that you understand
10 the constitutional and other legal rights you're giving up
11 by pleading guilty.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Knowing all these things, do you still
14 wish to enter a guilty plea at this time?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Has any person forced you, threatened
17 you, coerced you, intimidated you or even talked you into
18 entering into these guilty pleas against your will?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: Are you acting freely and voluntarily
21 here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is pleading guilty your own idea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anyone promised you anything or

1 told you something different from what I've told you in
2 order to get you to plead guilty?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: I find your plea of guilty is
5 voluntary.

6 Do you have any questions?

7 THE DEFENDANT: Yes, sir. I got the lady that's
8 in the last case with the fentanyl, her name's Rebecca
9 Marshal. She was at the hotel the day that I got pulled
10 over. My lawyer's been trying to get ahold of her because
11 she got in contact with my lawyer and was supposed to come
12 down and make an affidavit. Since I gave up all of my
13 rights to the trial, I would like her to show up and testify
14 on the stand of what happened that day at my sentencing
15 hearing so you can get an understanding of the -- the whole
16 situation.

17 THE COURT: Well, I have to leave it to your
18 lawyer to act on your behalf to get a subpoena or whatever
19 he needs to do to get that witness to be here.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What's the situation, Counsel?

22 MR. HARKINS: Yes, Your Honor.

23 I have been in contact with Rebecca Marshal and plan to
24 either subpoena her or have her attend voluntarily at the
25 sentencing hearing.

1 THE COURT: All right. I should tell you that I
2 won't continue the sentencing if she's agreed to appear
3 voluntarily and doesn't show up, so you might want to
4 consider serving a summons as well.

5 MR. HARKINS: Understood, Your Honor.

6 THE COURT: Or a subpoena. I'm sorry.

7 Any other questions, Mr. Morris?

8 THE DEFENDANT: No, sir, Your Honor.

9 THE COURT: If not, I'll ask you to sign the
10 written plea of guilty form and ask Mr. Harkins to witness
11 it by his signature.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Let the record reflect that Mr. Morris
14 has executed the written plea of guilty form, that Mr.
15 Harkins has signed it as a witness. It may be filed and
16 made a part of the record in this case.

17 In the case of *The United States of America v. Keith*
18 *Morris*, I find that Mr. Morris is fully competent and
19 capable of entering an informed plea, that there is a
20 sufficient factual basis for his pleas of guilty here today,
21 that he does understand the nature of the charges against
22 him and the consequences of pleading guilty to those
23 charges, that he does understand the constitutional and
24 other legal rights he's giving up by pleading guilty. And I
25 find that Mr. Morris's pleas of guilty here today are

1 entirely voluntary.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I accept your guilty pleas, Mr.
4 Morris. You're now adjudged guilty and you stand convicted
5 of violating 18 United States Code Section 922(g)(1) and
6 924(a)(2), as well as violating 21 United States Code
7 Section 841(a)(1).

8 You can take a seat.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I direct the probation office to
11 conduct a presentence investigation of Mr. Morris, prepare a
12 draft presentence report and disclose its contents to the
13 defendant, his lawyer, and the government no later than
14 June 7.

15 Counsel, make your objections by the 21st of June.

16 The final report will be due to the Court July 6.

17 Parties must file sentencing memoranda with the Court
18 no later than July 12.

19 Is there a stipulation as to the amount of drugs that
20 will count as offense conduct here?

21 MS. KORDESTANI: Yes, Your Honor.

22 THE COURT: All right.

23 MS. KORDESTANI: The parties have agreed and
24 stipulated that the defendant is accountable for at least
25 400 kilograms, but less than 700 kilograms, of converted

1 drug weight.

2 THE COURT: Are there -- given the -- well, I take
3 it there are no issues related to detention or release
4 pending sentencing?

5 MS. KORDESTANI: That's correct, Your Honor.

6 MR. HARKINS: That's correct, Your Honor.

7 THE COURT: All right.

8 Mr. Morris, you stand convicted of a crime that carries
9 a maximum term of imprisonment of ten years or more under
10 the Controlled Substances Act. As such, the Bail Reform Act
11 of 1984 requires that you be confined pending sentencing
12 unless there is a substantial likelihood that somehow a
13 motion for acquittal will be granted or exceptional
14 circumstances exist justifying the release.

15 I should also tell you sentencing will be on July 19th,
16 2021, at 11:00 a.m.

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: Thank you.

19 All right. Mr. Morris, you're remanded to the custody
20 of the marshal pending sentencing.

21 I direct that the person in charge of your confinement
22 make you readily available for consultation with your lawyer
23 and upon a request from an attorney for the United States or
24 an order from a court of the United States deliver you here
25 for the purpose of a court proceeding.

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THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Anything further to come before the Court?

MS. KORDESTANI: No, Your Honor.

MR. HARKINS: No, Your Honor.

THE COURT: All right. Court's adjourned for the day.

(Proceedings concluded at 2:10 p.m., April 19, 2021.)

1 CERTIFICATION:

2 I, Kimberly Kaufman, Official Court Reporter, certify
3 that the foregoing is a correct transcript from the record
4 of proceedings in the matter of United States of America,
5 Plaintiff v. Keith Morris, Defendant, Criminal Action No.
6 2:20-cr-00167, as reported on April 19, 2021.

7
8 s/Kimberly Kaufman, RMR, CRR, CRC

October 18, 2021

9 Kimberly Kaufman, RMR, CRR, CRC

DATE

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEITH MORRIS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

APPENDIX C

**TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**Wesley P. Page
Federal Public Defender**

**Jonathan D. Byrne
Appellate Counsel
*Counsel of Record***

Office of the Federal Public Defender
Southern District of West Virginia
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
304/347-3350
jonathan_byrne@fd.org

Counsel for Petitioner

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

KEITH MORRIS

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:20-cr-00167

USM Number: 05780-509

Clayton Harkins

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) counts two and three of the Superseding Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 922 (g) (1) and 924 (a) (2)	Felon in possession of a firearm	1/23/2020	Two
21 USC § 841 (a) (1)	Possession with intent to distribute (continued)	8/7/2020	Three

The defendant is sentenced as provided in pages 2 through 8 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.

9/23/2021

Date of Imposition of Judgment



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

9/23/2021

Date

DEFENDANT: KEITH MORRIS
CASE NUMBER: 2:20-cr-00167

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
	40 grams or more of fentanyl		

DEFENDANT: KEITH MORRIS
CASE NUMBER: 2:20-cr-00167

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
120 months on counts two and three to run concurrently

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed at an appropriate facility that takes into consideration his prior violent convictions.

☒ 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: KEITH MORRIS

CASE NUMBER: 2:20-cr-00167

SUPERVISED RELEASE

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

4 years on counts two and three to run concurrently

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 the location where 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: KEITH MORRIS
CASE NUMBER: 2:20-cr-00167**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.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: KEITH MORRIS
CASE NUMBER: 2:20-cr-00167

SPECIAL CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

- 1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- 2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- 4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- 5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

DEFENDANT: KEITH MORRIS
CASE NUMBER: 2:20-cr-00167**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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: KEITH MORRIS
CASE NUMBER: 2:20-cr-00167

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The defendant shall pay the \$200 special assessment. If not paid immediately, the defendant shall pay the assessment in payments of not less than \$25 per quarter through participation in the Bureau of Prisons' Inmate Financial Responsibility Program. Any remaining balance shall be paid during the term of supervised release.