

ALD-099

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **21-3233**

UNITED STATES OF AMERICA,

v.

CHRISTOPHER THIEME,  
a/k/a John Thieme,  
Appellant

(D.N.J. Crim. No. 2:16-cr-00294-001)

Present: JORDAN, RESTREPO and SCIRICA, Circuit Judges

Submitted are:

- 1) By the Clerk for possible summary action pursuant to 3rd Circuit Local Appellate Rule 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures;
- 2) Appellee's Response to possible summary action;
- 3) Appellant's Response to possible summary action; and
- 4) Appellant's motion for appointment of counsel

in the above-captioned case.

Respectfully,

Clerk

(continued)

RE: U.S.A. v. Christopher Thieme  
C.A. No. 21-3233  
Page 2

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ORDER

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The District Court's order entered on November 10, 2021, is summarily affirmed because the appeal does not present a substantial question. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6; see also *Murray v. Bledsoe*, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam) (explaining that this Court may uphold a district court's decision on any basis supported by the record). The appellant appeals from the District Court's order denying his motion to vacate the restitution order in his case. A criminal defendant taking an appeal must file it within 14 days after entry of the judgment or the order sought to be appealed. See Fed. R. App. P. 4(b)(1)(A)(i). The time-limit is not jurisdictional, but here, the Government has argued that a purported appeal of the restitution order would be untimely. See *Manrique v. United States*, 137 S. Ct. 1266, 1272 (2017). Thieme filed his challenge in October 2021—more than four years after his conviction and sentence became final. Also, a collateral attack would be fruitless because restitution is not a sufficient restraint on liberty to meet the “in custody” requirement of federal habeas statutes. See *United States v. Ross*, 801 F.3d 374, 379-80 (3d Cir. 2015). Even if it were, the District Court would lack jurisdiction to consider the motion as one under section 2255 because this Court has not authorized it. See 28 U.S.C. § 2255(h). We decline to treat his appeal as an application to file a successive section 2255 motion because, as explained, he could not meet the custodial requirements of the habeas statute. The motion for appointment of counsel is denied.

By the Court,

s/L. Felipe Restrepo  
Circuit Judge

Dated: April 4, 2022  
Sb/cc: Christopher Thieme  
Mark E. Coyne, Esq.

A P P E N D I X     " B "

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,  
v.  
CHRISTOPHER THIEME,  
Defendant.

Criminal Action No. 16-00294 (SDW)

**ORDER**

November 10, 2021

**WIGENTON**, District Judge.

This matter, having come before this Court on Christopher Thieme's ("Defendant") Motion to Vacate Restitution Order and for Return of Restitution (D.E. 41) pursuant to U.S.C. § 3663A, and this Court having considered the parties' submissions, for the reasons set forth on the record.

**IT IS** on this 10<sup>th</sup> day of November, 2021

**ORDERED** that Defendants' Motion (D.E. 41) is **DENIED**.

/s/ Susan D. Wigenton

SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk  
cc: Parties

A P P E N D I X      " C "

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

3 UNITED STATES OF AMERICA, CRIMINAL NUMBER:  
4 v. 2:16-cr-00294-SDW  
5 CHRISTOPHER THIEME, MOTION TO VACATE RESTITUTION  
6 Defendant. Pages 1 - 3

9                   Martin Luther King Building & U.S. Courthouse  
9                   50 Walnut Street  
10                  Newark, New Jersey 07101  
10                  Wednesday, November 10, 2021  
10                  Commencing at 5:14 p.m.

12 B E F O R E: THE HONORABLE SUSAN D. WIGENTON  
UNITED STATES DISTRICT JUDGE

Joanne L. Sekella  
Official Court Reporter  
sekella@gmail.com  
(908) 310-1177

19 Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

1 (PROCEEDINGS held in open court before The Honorable  
2 SUSAN D. WIGENTON, United States District Judge, at 5:14 p.m.)

3 THE COURT: This is the matter of *United States vs.*

4 Christopher Thieme and it is under Docket 16-294.

5 This is a motion that was filed by the defendant pro  
6 se to vacate restitution and to return money that had been  
7 collected towards restitution. Specifically, the defendant is  
8 seeking return of \$275 that has been collected on a total  
9 restitution amount that was ordered by this Court in the  
10 amount of \$1,033.50.

11                   Defendant pled guilty on June 21st, 2016. He was  
12 sentenced by this Court on December 19th, 2016, with a  
13 corrected judgment being filed on December 22nd, 2016.

14 He received a sentence of 210 months and an order of  
15 restitution as it related to the victim was imposed by the  
16 Court in the amount of \$1,033.50.

17 Defendant has filed this application on October 21st,  
18 2021, asking that the Bureau of Prison be enjoined from  
19 further collecting any money towards restitution and that all  
20 money that has been previously collected be returned, in  
21 addition to the entire restitution being vacated.

22 The Government timely opposed the application. And  
23 at this time the defendant's motion is being denied. It has  
24 not been filed in a timely manner. Specifically, he would  
25 have had 14 days from the day of his sentence or one year

1 after conviction became final to file a 2255 motion. Neither  
2 of which has occurred.

3 Nothing additional has happened as it relates to  
4 defendant's case and no new information has been brought to  
5 the Court's attention that would warrant the Court revisiting  
6 the sentence that was imposed.

7 Defendant has further failed to set forth any  
8 justifiable basis for restitution to be vacated in this matter  
9 under Title 18 United States Code, sections 3663, 3663(A) and  
10 3664. There is no mechanism that is provided for vacating  
11 restitution in this matter. And nothing, as I have already  
12 indicated, has been presented to the Court that would require  
13 the Court to revisit the issue of restitution on top of the  
14 fact that this matter has been filed out of time.

15 So defendant's request is denied and an appropriate  
16 order will issue relating to this oral decision.

17 (The proceeding is adjourned at 5:17 p.m.)

18

19 FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

20 I certify that the foregoing is a correct transcript  
21 from the record of proceedings in the above-entitled matter.

22 /S/ Joanne Sekella, CCR, CRCR, RMR

December 2, 2021

23 Official Court Reporter

Date

24

25

A P P E N D I X " D "

UNITED STATES DISTRICT COURT  
District of New Jersey

UNITED STATES OF AMERICA

v.

CASE NUMBER 2:16-CR-00294-SDW-1

CHRISTOPHER THIEME

Defendant.

**AMENDED JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)**

**Date of Original Judgment:** 12/19/2016

**Reason for Amendment:** Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

The defendant, CHRISTOPHER THIEME, was represented by PATRICK N. MCMAHON, AFPD.

The defendant pleaded guilty to count(s) 1,2 of the INFORMATION on 6/21/2016. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

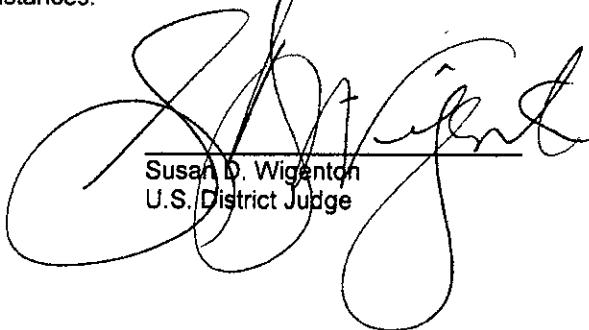
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:1958(A) AND 1201(D)	ATTEMPT TO KIDNAP/MURDER AND COMMIT THEFT OF PROPERTY	1/4/2016	1
18:1958(A) AND 1201(D)	RACKETEERING - MURDER	12/2015	2

As pronounced on December 19, 2016, 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.

It is ordered that the defendant shall pay to the United States a special assessment of \$200.00 for count(s) 1,2, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall 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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Signed this 22<sup>nd</sup> day of December, 2016.

  
Susan D. Wigenton  
U.S. District Judge

Judgment - Page 2 of 7

Defendant: CHRISTOPHER THIEME  
Case Number: 2:16-CR-00294-SDW-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 210 months, consisting of 210 months on Count One and 120 months on Count Two to be served concurrently to each other.

The defendant shall remain in custody pending service of sentence.

**RETURN**

I have executed this Judgment as follows:

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Defendant delivered on \_\_\_\_\_ To \_\_\_\_\_  
At \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: CHRISTOPHER THIEME  
Case Number: 2:16-CR-00294-SDW-1

## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years. This term consists of terms of 3 years on each of Counts One and Two, both terms to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

The defendant shall submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

### **COMPUTER MONITORING**

You shall submit to an initial inspection by the U.S. Probation Office, and to any unannounced examinations during supervision, of your computer equipment. This includes, but is not limited to, personal computer, personal digital assistants, entertainment consoles, cellular telephones, and/or any electronic media device which is owned or accessed by you. You shall allow the installation on your computer of any hardware or software systems which monitor computer use. You shall pay the costs of the computer monitoring program. You shall abide by the standard conditions of computer monitoring. Any dispute as to the applicability of this condition shall be decided by the Court.

### **MENTAL HEALTH TREATMENT**

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Officer shall supervise your compliance with this condition.

### **NEW DEBT RESTRICTIONS**

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You shall not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

Judgment - Page 4 of 7

Defendant: CHRISTOPHER THIEME  
Case Number: 2:16-CR-00294-SDW-1

**RETURN**

I have executed this Judgment as follows:

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At \_\_\_\_\_, Defendant delivered on \_\_\_\_\_ To \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: CHRISTOPHER THIEME  
Case Number: 2:16-CR-00294-SDW-1

## STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 17) You shall cooperate in the collection of DNA as directed by the Probation Officer.  
*(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);*
- 18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including commingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the

Defendant: CHRISTOPHER THIEME  
Case Number: 2:16-CR-00294-SDW-1

financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

- 19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;
- 20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

*For Official Use Only - - - U.S. Probation Office*

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) \_\_\_\_\_  
Defendant \_\_\_\_\_  
Date \_\_\_\_\_

U.S. Probation Officer/Designated Witness \_\_\_\_\_  
Date \_\_\_\_\_

Defendant: CHRISTOPHER THIEME  
Case Number: 2:16-CR-00294-SDW-1

## RESTITUTION AND FORFEITURE

### **RESTITUTION**

The defendant shall make restitution in the amount of \$1,033.50. Payments should be made payable to the U.S. Treasury and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to:

J.B.  
(address to be submitted separately.)

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$50.00, to commence 30 days after release from confinement.

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.

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

A P P E N D I X     " E "

Constitutional and Statutory Provisions Involved

CONTENTS

- \* Amendment V, U.S. Constitution
- \* Amendment VIII, United States Constitution
- \* 28 U.S.C. § 1651(a)
- \* 18 U.S.C. § 3664(k) and (o)
- \* 18 U.S.C. § 3663A
- \* 18 U.S.C. § 3663

Constitutional and Statutory Provisions Involved

The Fifth Amendment to the federal constitution, in pertinent part reads:

"No person shall . . . be deprived of life, liberty, or property without due process of law;"

The Eighth Amendment to the federal constitution, in its entirety, reads:

"Excessive bail shall not be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted."

28 U.S.C. § 1651(a), in its entirety, reads:

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to usages and principles of law."

18 U.S.C. § 3664, in pertinent parts, reads:

(k) "A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified in the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(o) A sentence that imposes an order or restitution is a final judgment notwithstanding the fact that -- (1) such a sentence can subsequently be -- (A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and Section 3742

[18 U.S.C. § 3742] or chapter 235 of this title; (B) appealed and modified under section 3742; (C) amended under subsection (d)(5); or (D) adjusted under section 3664(k), 3572, or 3613A [18 U.S.C. § 3664(k), 3572, or 3613A;"

## § 3663. Order of restitution

(a) (1) (A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c) [18 USCS § 3663A(c)], may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B) (i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the

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victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110 [18 USCS § 2241 et seq. or 2251 et seq.]—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care,

transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate; and

(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title [18 USCS §§ 1028(a)(7) or 1028A(a)], pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.

(c) (1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii) []), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2) (A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title [18 USCS §§ 981 et seq. or 1961 et seq.] or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 3612(c) [18 USCS § 3612(c)] or any other provision of law, a penalty assessment under section 3013 [18 USCS § 3013] or a fine under subchapter C of

chapter 227 [18 USCS §§ 3571 et seq.] shall take precedence over an order of restitution under this subsection.

**(6)** Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

**(7) (A)** The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

**(B)** No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

**(d)** An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664 [18 USCS § 3664].

## **§ 3663A. Mandatory restitution to victims of certain crimes**

**(a) (1)** Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

**(2)** For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

**(3)** The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

**(b)** The order of restitution shall require that such defendant—

**(1)** in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

**(A)** return the property to the owner of the property or someone designated by the owner; or

**(B)** if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

**(i)** the greater of—

**(I)** the value of the property on the date of the damage, loss, or destruction; or

**(II)** the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c) (1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16 [18 USCS § 16];

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) an offense described in section 3 of the Rodchenkov Anti-Doping Act of 2019 [21 USCS § 2402];

(iv) an offense described in section 1365 [18 USCS § 1365] (relating to tampering with consumer products); or

(v) an offense under section 670 [18 USCS § 670] (relating to theft of medical products); and

**(B)** in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

**(2)** In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

**(3)** This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) or (iii) if the court finds, from facts on the record, that—

**(A)** the number of identifiable victims is so large as to make restitution impracticable; or

**(B)** determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

**(d)** An order of restitution under this section shall be issued and enforced in accordance with section 3664 [18 USCS § 3664].