

No. _____

In the

Supreme Court of the United States

David Cadena,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did the district court impose a substantively unreasonable sentence when it varied upward from the advisory sentencing range to the statutory maximum for reasons already factored into the Guidelines?

PARTIES TO THE PROCEEDING

Petitioner is David Cadena, who was the Defendant-Petitioner in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below. No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Fifth Circuit:

- *United States v. Cadena*, No. 21-10873, 2022 U.S. App. LEXIS 9812, at *1 (5th Cir. Apr. 12, 2022)
- *United States v. Cadena*, 3:19-CR-00631-(B)(1) (N.D.T.X. Aug. 26, 2021)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner David Cadena seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at *United States v. Cadena*, No. 21-10873, 2022 U.S. App. LEXIS 9812, at *1 (5th Cir. Apr. 12, 2022). The district court did not issue a written opinion.

JURISDICTION

The Fifth Circuit entered judgment on August 26, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RULES AND GUIDELINES PROVISIONS

This petition involves 18 U.S.C. § 3553(a):

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—

- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation of supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—
- (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct and
- (7) the need to provide restitution to any victims of the offense.

STATEMENT OF THE CASE

On the morning of September 21, 2019, David Cadena, Petitioner, entered a Dallas parking garage while intoxicated. (ROA.79). He then walked around the garage spraying a fire extinguisher. (ROA.79). When Mr. Cadena encountered a woman in the parking lot, he assaulted her with the fire extinguisher and stole her vehicle, soon thereafter crashing it into a wall. (ROA.80). Both Mr. Cadena and the woman were taken to the hospital. (ROA.80). The woman's injuries as a result of the assault were severe and life-threatening, and she continues to experience pain to this day. (ROA.212). Mr. Cadena here makes no effort to minimize or excuse the extraordinary harm he caused, which the government described at-length in its motion for upward variance. (ROA. 87-92).

The government charged Mr. Cadena with one count of Carjacking Resulting in Serious Bodily Injury, in violation of 18 U.S.C. § 2119(2). (ROA.23-25). On April 15, 2021, Mr. Cadena pleaded guilty to the one-count indictment without a plea agreement. (ROA.145). When preparing the presentence investigation report (PSR), U.S. Probation applied a series of enhancements based on Mr. Cadena's conduct, which resulted in a total offense level of 31. (ROA.213-15). This, combined with a Criminal History Category of II, resulted in an advisory sentencing range of 121 to 151 months imprisonment. (ROA.222). Meanwhile, Mr. Cadena objected to the 2-level enhancement based on physical restraint. (ROA.228-30) and the government moved for an upward variance to the statutory maximum, 300 months. (ROA.85-103).

The district court held its sentencing hearing on August 26, 2021. There the district court sustained Mr. Cadena's objection to the physical restraint Guidelines enhancement, which lowered his advisory sentencing range to 97 to 121 months imprisonment. (ROA.166). The court then granted the government's motion for an upward variance and sentenced Mr. Cadena to the statutory maximum of 300 months imprisonment. (ROA.195-97). Defense counsel had requested that the district court not upwardly vary to the statutory maximum. (ROA.167).

The Fifth Circuit affirmed, holding that Mr. Cadena's objection to aggravating factors already factored into his guidelines range was foreclosed under its precedent. *United States v. Cadena*, No. 21-10873, 2022 U.S. App. LEXIS 9812, at *1-3 (5th Cir. Apr. 12, 2022). The Fifth Circuit also held that Cadena had not established substantive unreasonableness. *Id.* This Petition follows to challenge the gratuitous upward variance applied to Mr. Cadena's sentence and the unreasonableness of the sentence itself, which was more than double the top of the advisory sentencing range.

REASON FOR GRANTING THIS PETITION

Mr. Cadena's lengthy sentence was an upward variance based on circumstances already contemplated by the Sentencing Commission in its Guidelines enhancements. After the district court applied these enhancements, it still more-than-doubled the advisory sentencing range when it sentenced Mr. Cadena to 300 months imprisonment. This Court should vacate and reverse for resentencing under a proper balancing of the appropriate factors.

I. The district court imposed an unreasonable sentence upon Mr. Cadena.

A. Standard of Review

This Court reviews substantive reasonableness under an abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). Petitioner's trial counsel preserved this point of error by requesting a sentence lower than what the court ultimately imposed. (ROA.167).

B. The district court erred when it varied upward from the advisory sentencing range.

Appellate review of a sentencing decision for "reasonableness" is proper regardless of whether the sentence is within or outside of the guidelines range. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). But when a sentence is above-guidelines, the district court does not benefit from a presumption of reasonableness. *See Rita v. United States*, 551 U.S. 338, 347 (2007).

In reviewing a challenge to the substantive reasonableness of a non-Guidelines sentence, the sentence unreasonably fails to reflect the statutory sentencing factors

when: (1) the court does not account for a factor that should have received significant weight; (2) the court gives significant weight to an irrelevant or improper factor; or (3) the court makes a clear error of judgment in balancing the sentencing factors. *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013) (quoting *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006)). Those factors include:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed --
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the established sentencing range;
- (5) any pertinent policy statements issued by the Sentencing Commission;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution.

18 U.S.C. § 3553(a).

Although the Sentencing Guidelines are advisory rather than mandatory, they are the product of careful study based on extensive empirical evidence derived from

the review of thousands of individual sentencing decisions. *Gall v. United States*, 552 U.S. 38, 46 (2007). As such, a district court must more thoroughly articulate its reasons when it imposes a non-Guideline sentence than when it imposes a sentence under authority of the Sentencing Guidelines. *United States v. Smith*, 440 F.3d 704, 707 (5th Cir. 2006). These reasons should be fact-specific and consistent with the sentencing factors enumerated in 18 U.S.C. § 3553(a). *Id.* A checklist recitation of the factors is neither necessary nor sufficient for a sentence to be reasonable as the purpose of the district court's statement of reasons is to enable the reviewing court to determine whether, as a matter of substance, the sentencing factors support the sentence. *United States v. Smith*, 440 F.3d 704, 707.

Here, the district court's above-Guidelines sentence was based primarily on the instant offense, which was already accounted for by the Sentencing Guidelines. Unlike some Guidelines sections that do not take a fully holistic view of the underlying conduct, U.S. Sentencing Guidelines Manual (USSG) § 2B3.1 considered just about everything. Here, based on Mr. Cadena's assault of the victim, he received the following offense-level enhancements:

- A 4-level enhancement under USSG § 2B3.1(b)(2)(D) for use of a dangerous weapon (the fire extinguisher) in the carjacking
- A 6-level enhancement under USSG § 2B3.1(b)(3)(C) because victim sustained permanent or life-threatening bodily injury
- A 2-level enhancement under USSG § 2B3.1(b)(5) because the robbery was a carjacking offense

(ROA.214). In fact, there was nothing outside the heartland of a robbery offense that Mr. Cadena did which was not taken into account by a Guidelines enhancement.

Here's how defense counsel explained it at the sentencing hearing:

Your Honor, I think a variance of that nature, more than doubling the guidelines, would show an insufficient consideration of the guidelines, themselves. I know the Court has great respect for the guidelines and has used them over the years, and I know why. It's because the guidelines weren't just slapped together overnight.

This is the result of the Sentencing Commission putting a lot of work, experts they have hired putting in a lot of work to try to give guidance to the Court. And they never just let it sit, they adjust this and they adjust that.

...

Your Honor, I'd ask the Court to consider that this is not the type of case where there's just some aggravating facts about the defendant or aggravating facts about the offense, itself, that escapes the guidelines so the real guidelines can't be calculated.

Like, for example, if there were a defendant who robbed two banks, the Government could only prove that he robbed one. When it came time for sentencing, because of the way the guidelines work, he would only have his guidelines calculated for the one bank robbery and escape responsibility for the second bank robbery.

In that case, an upward variance might be warranted, but that's not this type of case. Every aggravated fact about Mr. Cadena and every aggravated fact about this offense is taken into consideration.

...

To arrive at the sentence the Government is requesting, Your Honor -- and I know the Government is requesting a variance and not a departure -- but if this were a departure, it would take an upward departure of nine levels to get

where the Government wants, or the Court would have to depart on the criminal history category from II all the way to VI for a person who has never even been to prison once, have to go all the way to VI and then add another six offense levels.

And I have never seen any kind of departure or anything of that nature in a case when all the aggravated facts are taken into consideration. It's just that the Government is unhappy that -- that it doesn't result in a higher sentence. So for that reason, I think that an upward variance of the statutory maximum would be unwarranted.

(ROA.167-71). As a result, an upward variance to the statutory maximum was not appropriate here.

C. Even if an upward variance were justified, the district court's 300-month sentence was excessive.

Courts can also evaluate whether the “degree of the departure or the sentence as a whole is unreasonable.” *United States v. Rajwani*, 476 F.3d 243, 250 (5th Cir. 2007), *modified on other grounds*, 479 F.3d 904 (5th Cir. 2007). Additionally, when reviewing a non-Guidelines sentence, courts may consider the extent of the variance, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance. *Chandler*, 732 F.3d at 437 (quoting *United States v. Broussard*, 669 F.3d 537, 551 (5th Cir. 2012)). Here, the PSR's guideline range was 97 to 121 months. (ROA.166). Yet the district court sentenced Petitioner to 300 months, the statutory maximum, when the Guidelines already accounted for most of the facts that formed the basis for the variance. (See ROA.167-71). Under the totality of the circumstances, this was unreasonable. Justice does not require Mr. Cadena to suffer the maximum possible sentence here.

CONCLUSION

Petitioner respectfully prays that this Court grant this Petition, vacate his 300-month sentence, and remand for a sentence that properly serves the statutory sentencing goals.

Respectfully submitted,

JASON D. HAWKINS
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United States v. Cadena

United States Court of Appeals for the Fifth Circuit

April 12, 2022, Filed

No. 21-10873 Summary Calendar

Reporter

2022 U.S. App. LEXIS 9812 *; 2022 WL 1087814

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus
DAVID CADENA, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Northern District of Texas. USDC No. 3:19-CR-631-1.

Counsel: For United States of America, Plaintiff - Appellee: Gary C. Tromblay, Assistant U.S. Attorney, Leigha Amy Simonton, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX.

For David Cadena, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Northern District of Texas, Lubbock, TX; John MacIntyre Nicholson, Federal Public Defender's Office, Northern District of Texas, Dallas, TX.

Judges: Before DAVIS, JONES, and ELROD, Circuit Judges.

Opinion

PER CURIAM:*

David Cadena appeals the sentence imposed following his guilty-plea conviction for carjacking resulting in serious bodily injury in violation of [18 U.S.C. § 2119\(2\)](#). He argues that his 300-month above-guidelines sentence of imprisonment is substantively unreasonable because it was too harsh and his applicable guidelines range already accounted for the various factors that the court cited as justification for an 179-month upward variance from the top

of that range.

Cadena's challenge to the substantive reasonableness of his sentence was preserved, and our review is for abuse of discretion. See [Holguin-Hernandez v. United States](#), 140 S. Ct. 762, 766-67, 206 L. Ed. 2d 95 (2020); [United States v. Scott](#), 821 F.3d 562, 567 (5th Cir. 2016). In reviewing an [*2] above-guidelines sentence for substantive reasonableness, this court considers "the totality of the circumstances, including the extent of any variance from the [g]uidelines range," to determine whether the [18 U.S.C. § 3553\(a\)](#) factors support the sentence. [United States v. Fraga](#), 704 F.3d 432, 440 (5th Cir. 2013) (internal quotation marks and citation omitted). A sentence is substantively unreasonable if it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." [United States v. Warren](#), 720 F.3d 321, 332 (5th Cir. 2013) (internal quotation marks and citation omitted). "Appellate review for substantive reasonableness is highly deferential, because the sentencing court is in a better position to find facts and judge their import under the [§ 3553\(a\)](#) factors with respect to a particular defendant." [Fraga](#), 704 F.3d at 439 (internal quotation marks and citation omitted).

The record shows that the district court gave due consideration to the [§ 3553\(a\)](#) factors and emphasized the nature and circumstances of the offense—which involved Cadena striking the victim with a fire extinguisher multiple times on the head and other parts of her body resulting in severe, near-death injuries—and the need [*3] to afford adequate deterrence, promote respect for the law, protect the public, and provide just punishment. Additionally, his argument that his sentence was substantively unreasonable because the district court based his sentence on aggravating factors that were already factored into his guidelines range is foreclosed. See [United States v. Brantley](#), 537 F.3d 347, 350 (5th Cir. 2008). Accordingly, Cadena has not shown that his sentence is substantively unreasonable. See [Warren](#), 720 F.3d at 332. Moreover, the extent of the variance in this case is similar to others we have affirmed. See [United States v. Hebert](#), 813 F.3d 551, 561-63 (5th Cir. 2015); [United States](#)

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

v. McElwee, 646 F.3d 328, 344-45 (5th Cir. 2011); *United States v. Key*, 599 F.3d 469, 475-76 (5th Cir. 2010); *United States v. Mejia-Huerta*, 480 F.3d 713, 717, 723 (5th Cir. 2007).

The district court's judgment is AFFIRMED.

End of Document

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

DAVID CADENACase Number: **3:19-CR-00631-B(1)**USM Number: **59620-177****John M Nicholson**

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	Count 1 of the one-count Indictment filed December 3, 2019
<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:

Title & Section / Nature of Offense**Offense Ended****Count**

18 U.S.C. § 2119(2) Carjacking Resulting in Serious Bodily Injury

09/21/2019

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 26, 2021

Date of Imposition of Judgment



Signature of Judge

JANE J. BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 27, 2021

Date

Appendix B

21-10873.113

DEFENDANT: DAVID CADENA
CASE NUMBER: 3:19-CR-00631-B(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:

300 months as to count 1. The sentence shall run concurrently with any sentence imposed in Case No. F-1976554, pending in Dallas County Criminal District Court 5 in Dallas, Texas, as this case is related to the instant offense.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be allowed to serve his sentence at FCI Three Rivers, if eligible. Further, the Court recommends that the defendant be allowed to participate in the Residential Drug Abuse Treatment Program (RDAP) while in custody of the Bureau of Prisons, if eligible.
- ☒ 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: DAVID CADENA
CASE NUMBER: 3:19-CR-00631-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **five (5) years.**

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 additional conditions on the attached page.

DEFENDANT: DAVID CADENA
CASE NUMBER: 3:19-CR-00631-B(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.
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. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: DAVID CADENA
CASE NUMBER: 3:19-CR-00631-B(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25 per month.

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment.

DEFENDANT: DAVID CADENA
 CASE NUMBER: 3:19-CR-00631-B(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$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 the Schedule of Payments page 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: |

* 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: DAVID CADENA
CASE NUMBER: 3:19-CR-00631-B(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 (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.
- ☐ 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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.