

A

United States Court of Appeals
for the Fifth Circuit

No. 21-10434

United States Court of Appeals
Fifth Circuit

FILED

September 6, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

STEVEN RIAD JALLOUL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-94-1

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Steven Riad Jalloul pleaded guilty to two counts of preparing false tax returns in violation of 26 U.S.C. § 7206(2). At sentencing, the district court ordered him to pay \$14,100,029.87 in restitution to the IRS. Jalloul did not object. He now challenges that restitution order, arguing it is a criminal monetary penalty that exceeds the maximum statutory sentence because it is

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-10434

neither authorized by the statute of conviction, nor agreed to in the plea agreement. Because the restitution order was authorized by the statute and Jalloul agreed to it in his plea agreement, we AFFIRM.

* * *

The Government first argues that Jalloul’s appeal is barred by the appeal-waiver provision in his plea agreement. But this appeal falls within the agreement’s exception for a direct appeal of “a sentence exceeding the statutory maximum.” *See United States v. Kim*, 988 F.3d 803, 811 (5th Cir. 2021) (holding “an otherwise valid appeal waiver is not enforceable to bar a defendant’s challenge on appeal that his sentence, including the amount of a restitution order, exceeds the statutory maximum”), *cert. denied*, 142 S. Ct. 225 (2021). Nevertheless, Jalloul’s appeal ultimately fails.

“Because a restitution order that exceeds the court’s statutory authority is an illegal sentence, which always constitutes plain error, we review *de novo* the legality of a restitution order, regardless of whether the defendant raised this objection at sentencing.” *United States v. Penn*, 969 F.3d 450, 458 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 2526 (2021); *see also United States v. Swenson*, 25 F.4th 309, 322 (5th Cir. 2022). The Government seeks leave to file a supplemental brief arguing that plain-error review applies. Although some cases have applied plain-error review, we need not here resolve which standard of review applies because Jalloul’s arguments fail even under the more lenient one. *See United States v. Pursley*, 22 F.4th 586, 591 (5th Cir. 2022). Therefore, the Government’s motion for leave to file a supplemental brief is DENIED as moot.

A district court may impose restitution only as authorized by statute. *Penn*, 969 F.3d at 458. Restitution is generally not statutorily authorized for Title 26 offenses. *See* 18 U.S.C. § 3663. But 18 U.S.C. § 3663(a)(3) allows a district court to “order restitution in any criminal case to the extent agreed

No. 21-10434

to by the parties in a plea agreement.” 18 U.S.C. § 3663(a)(3); *United States v. Stout*, 32 F.3d 901, 905 n.5 (5th Cir. 1994) (quoting § 3663(a)(3)). We treat plea agreements like contracts, considering a defendant’s reasonable understanding of the agreement and construing ambiguities against the Government. *See United States v. Escobedo*, 757 F.3d 229, 233 (5th Cir. 2014); *United States v. Story*, 439 F.3d 226, 231 (5th Cir. 2006).

Jalloul’s plea agreement stated that the district court could impose “restitution to victims or to the community, which may be mandatory under the law, and which the defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone.” Further, the paragraph detailing the defendant’s agreement stipulated, “The defendant fully understands that any financial obligation imposed by the Court, including a restitution order and/or the implementation of a fine, is due and payable immediately. . . . The defendant understands that the defendant has a continuing obligation to pay in full as soon as possible any financial obligation imposed by the Court.”

Jalloul argues that the plea agreement’s language is ambiguous, and he did not explicitly agree to pay restitution. We held in *United States v. Miller* that identical plea language unambiguously constituted an agreement to pay restitution. 406 F.3d 323, 330 (5th Cir. 2005). Jalloul contends this line was dicta, but he is wrong. *See United States v. Wallace*, 964 F.3d 386, 390 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 910 (2020) (noting that alternative holdings are binding and not dicta); *United States v. Segura*, 747 F.3d 323, 328 (5th Cir. 2014). Because Jalloul agreed to pay restitution, the criminal monetary penalty was authorized by law. *See* § 3663(a)(3); *Stout*, 32 F.3d at 905 n.5.

AFFIRMED.

B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

STEVEN RIAD JALLOULCase Number: **3:19-CR-00094-B(1)**USM Number: **58485-177****Stephen L. Jones and Bejan Kamran Ghatreeh**

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Counts 11 and 12 of the 12-count Indictment filed February 21, 2019
<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:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
26 U.S.C. § 7206(2) Preparing False Tax Returns	02/10/2017	11
26 U.S.C. § 7206(2) Preparing False Tax Returns	02/08/2018	12

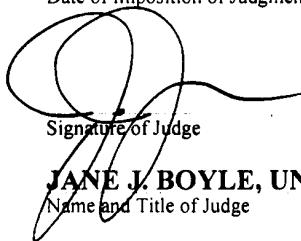
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Counts 1 thorough 10 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.

April 20, 2021

Date of Imposition of Judgment



Signature of Judge

JANE J. BOYLE, UNITED STATES DISTRICT JUDGE
 Name and Title of Judge

April 26, 2021

Date

21-10434.87

DEFENDANT: STEVEN RIAD JALLOUL
CASE NUMBER: 3:19-CR-00094-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:
36 months on each of Counts 11 and 12, to run consecutively, for a total aggregate sentence of 72 months.

- The court makes the following recommendations to the Bureau of Prisons:
That the defendant be allowed to serve his sentence at FCI Seagoville, 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: STEVEN RIAD JALLOUL
CASE NUMBER: 3:19-CR-00094-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **one (1) year on each of Counts 11 and 12, 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 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: STEVEN RIAD JALLOUL
CASE NUMBER: 3:19-CR-00094-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: STEVEN RIAD JALLOUL
CASE NUMBER: 3:19-CR-00094-B(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant is ordered to pay restitution in the amount of \$14,100,029.87, payable to the U.S. District Clerk, 1100 Commerce Street, Room 1452, Dallas, Texas 75242. Restitution shall be payable immediately and any unpaid balance shall be payable during incarceration. Restitution shall be disbursed to:

Internal Revenue Service
Attn: Mail Stop 6261, Restitution
33 W. Pershing Avenue
Kansas City, MO 64105
RE: Steven Riad Jalloul 3:19-CR-094-B

If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than 10 percent of the defendant's gross monthly income, or at a rate of not less than \$50 per month, whichever is greater. Payment shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990 or any other means available under federal or state law. Furthermore, it is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. § 3612(f)(3).

The defendant shall not be employed in any fiduciary capacity or any position allowing access to credit or personal financial information of others, unless the defendant's employer is fully aware of the offense of conviction and with the approval of the probation officer.

The defendant shall not be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the business of tax preparation without the probation officer's approval.

The defendant shall not enter into any self-employment while under supervision without prior approval of the probation officer.

The defendant shall provide to the probation officer complete access to all business and personal financial information.

The defendant shall pay any remaining balance of restitution in the amount of \$14,100,029.87, as set out in this Judgment.

DEFENDANT: STEVEN RIAD JALLOUL
CASE NUMBER: 3:19-CR-00094-B(1)

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$200.00	\$14,100,029.87	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until after such determination. *An Amended Judgment in a Criminal Case (AO245C) will be entered*
 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 of \$14,100,029.87 to:

Internal Revenue Service
Attn: Mail Stop 6261, Restitution
33 W. Pershing Avenue
Kansas City, MO 64105
RE: Steven Riad Jalloul 3:19-CR-94-1

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:
 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: STEVEN RIAD JALLOUL
 CASE NUMBER: 3:19-CR-00094-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 \$ 14,100,029.87 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 monthly (e.g., weekly, monthly, quarterly) installments of not less than 10 percent of the defendant's gross monthly income, or at a rate of not less than \$50 per month, whichever is greater, until the balance is paid in full, to commence 60 days (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 \$200.00 for Counts 11 and 12, 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) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.