

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ERIC GRZYWINSKI,

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

APPENDIX

/s/ Kevin Joel Page

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INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 21-11135, dated January 5, 2023,
United States v. Grzywinski, 57 F.4th 237 (5th Cir. Jan. 5, 2023).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered October 25, 2021.
United States v. Grzywinski, Dist. Court 3:19-CR-00578-B-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 21-11135

United States Court of Appeals
Fifth Circuit

FILED

January 5, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ERIC GRZYWINSKI,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-578-1

Before HIGGINBOTHAM, DUNCAN, and ENGELHARDT, *Circuit Judges*.

STUART KYLE DUNCAN, *Circuit Judge*:

Eric Grzywinski appeals his 45-year sentence for attempting to produce child pornography. The district court enhanced his sentence based on Grzywinski's prior aggravated sexual assault of a child under Texas law. Grzywinski contests the enhancement because, while the Texas crime can be committed against minors up to 16 years old, he claims the federal predicate offense only includes victims younger than 16. We disagree. The federal enhancement statute at issue, 18 U.S.C. § 2251(e), specifically allows increased sentences for state sex crimes against minors up to 17 years old. *See* 18 U.S.C. § 2256(1). We therefore affirm Grzywinski's sentence.

I.

Grzywinski pled guilty of attempting to produce child pornography in violation of 18 U.S.C. § 2251(a).¹ Grzywinski admitted he repeatedly texted a 15-year-old girl asking her to send him sexually explicit photos of herself. His written plea agreement advised that he could be subject to an enhanced prison sentence under § 2251(e). That section generally imposes 15–30 years of imprisonment. But the sentence climbs to 25–50 years if, as relevant here, the defendant has one prior conviction under a state law “relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children.” § 2251(e).² According to his presentence report (PSR), Grzywinski qualified for this enhancement because, *inter alia*, he previously pled guilty in Texas of aggravated sexual assault of a child in violation of Texas Penal Code § 22.021.³

At sentencing, Grzywinski’s lawyer did not object to the PSR, acknowledged that Grzywinski understood he was facing a 25-year minimum and asked that the sentence run concurrently with his state sentences. The government argued that 25 years were inadequate given Grzywinski’s criminal history and asked for 30–35 years instead. The district court adopted the PSR’s findings and imposed a sentence of 45 years, to run concurrently

¹ All statutory references are to Title 18 of the U.S. Code unless otherwise noted.

² The term climbs to 35 years to life if the defendant has two or more prior convictions, *inter alia*, “under the laws of any State relating to the sexual exploitation of children.” *Ibid.*

³ The aggravated sexual assault charge accused Grzywinski of performing oral sex on a 7-year-old boy he was babysitting. *See TEX. PENAL CODE* § 22.021(a)(1)(B)(iii) & (a)(2)(B). The PSR also reported that Grzywinski pled guilty of three charges of indecency with a child, in violation of Texas Penal Code § 22.11. Two of the indecency charges accused Grzywinski of exposing himself to two children under seventeen. The third accused him of rubbing the genitals of a 7-year-old girl and exposing himself while bathing the child without her parents’ permission.

with Grzywinski's state sentences. Grzywinski timely appealed, contending his sentence was erroneously enhanced under § 2251(e).⁴

II.

Because Grzywinski concedes he did not object to the § 2251(e) enhancement, plain error review applies. *United States v. Najera-Najera*, 519 F.3d 509, 510 (5th Cir. 2008). So, we will reverse only if Grzywinski shows "error that is plain and affects [his] substantial rights, and even then, only if it seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Moya*, 18 F.4th 480, 483 (5th Cir. 2021) (cleaned up) (citation omitted); *see also Puckett v. United States*, 556 U.S. 129, 135 (2009); FED. R. CRIM. P. 52(b).

Grzywinski contests the standard of review, citing cases that *de novo* review sentences "exceed[ing] the statutory maximum," even when the error was unpreserved.⁵ But even if we apply plain error, he urges us to do so "with special sensitivity to the injustice and separation of powers concerns" created by such sentences. These arguments are meritless. Grzywinski's appeal does not concern a sentence that may exceed a statutory maximum. It concerns whether a sentencing enhancement was correctly applied. In such a case, failing to object to the enhancement calls for plain error review. *See Najera-Najera*, 519 F.3d at 510 ("[B]ecause Najera did not object to the basis

⁴ Grzywinski's plea agreement waived his right to "appeal the . . . sentence," while reserving his right to appeal "a sentence exceeding the statutory maximum punishment." Grzywinski argues this appeal falls within that reservation. The government's brief does not mention the appeal waiver, so we will consider the appeal. *See United States v. Story*, 439 F.3d 226, 230–31 (5th Cir. 2006) (court may hear an appeal if the government chooses not to enforce appeal waiver). We express no opinion about whether the appeal waiver would apply, had the government sought to enforce it.

⁵ *See United States v. Del Barrio*, 427 F.3d 280, 282 (5th Cir. 2005) (while unpreserved error "generally results in plain error review," "we review *de novo* a sentence that allegedly exceeds the statutory maximum term") (citing *United States v. Ferguson*, 369 F.3d 847, 849 (5th Cir. 2004)); *see also United States v. Simpson*, 796 F.3d 548, 553 (5th Cir. 2015) (same).

of enhancement, the district court’s decision is reviewed for plain error.”); *see also, e.g., United States v. Sanchez-Arvizu*, 893 F.3d 312, 315 (5th Cir. 2018) (same).

In any event, the standard of review does not matter. As explained below, the district court correctly applied the § 2251(e) enhancement, so there was no error, plain or otherwise.

III.

Grzywinski contends his Texas conviction for aggravated sexual assault of a child⁶ does not qualify as a prior conviction under § 2251(e). That provision reads, in relevant part:

[I]f [the defendant] has one prior conviction under . . . the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be . . . imprisoned for not less than 25 years nor more than 50 years

§ 2251(e). Principally, Grzywinski claims that the relevant predicate crime in § 2251(e) (“abusive sexual contact involving a minor or ward”) applies only to victims under age 16, whereas the Texas statute applies to victims under age 17. *See Tex. Penal Code* § 22.011(c)(1) (defining “child” as “a person younger than 17 years of age”). On that basis, Grzywinski argues that the Texas offense is broader than the federal predicate and so cannot serve as an enhancing offense under § 2251(e). We disagree.

⁶ Specifically, Grzywinski pled guilty of “intentionally or knowingly . . . caus[ing] the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor,” where “the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense.” *Tex. Penal Code* § 22.021(a)(1)(B)(iii) & (a)(2)(B).

To assess whether the Texas offense triggers the § 2251(e) enhancement, we employ a “categorical approach.” *See Descamps v. United States*, 570 U.S. 254, 260–61 (2013); *Taylor v. United States*, 495 U.S. 575, 600–02 (1990); *see also, e.g.*, *United States v. Enrique-Ascencio*, 857 F.3d 668, 676 (5th Cir. 2017). Under that approach, the facts underlying Grzywinski’s Texas conviction are irrelevant. “All that matters is whether the elements of [his Texas] crime match the elements of [the predicate offense under § 2251(e)].” *United States v. Navarro*, 54 F.4th 268, 279 (5th Cir. 2022) (citing *Descamps*, 570 U.S. at 260–61). The Texas statute would not match § 2251(e) if it “criminalizes more conduct than [§ 2251(e)] would reach by its terms.” *Ibid.* (citing *United States v. Montgomery*, 966 F.3d 335, 338 (5th Cir. 2020)). So, put in terms of the categorical approach, Grzywinski’s basic argument is this: because the Texas statute applies to 16-year-old victims, it criminalizes more conduct than § 2251(e), which he claims applies only to 15-year-old victims.

We reject this argument. Section 2251(e) is located in Chapter 110 of Title 18. “For the purposes of [Chapter 110],” the term “‘minor’ means any person under the age of eighteen years.” § 2256(1). So, it is not true that the Texas statute “sweeps more broadly” than § 2251(e). *Descamps*, 570 U.S. at 261. To the contrary, it sweeps more *narrowly*. The Texas crime applies to victims who are 16 years old and younger, whereas the predicate federal offense extends to 17-year-old victims. *See id.* at 257 (prior conviction qualifies if elements are “narrower than” the federal offense). Consequently, Grzywinski’s Texas conviction for aggravated sexual assault of a child qualifies as an enhancing offense under § 2251(e).⁷

⁷ *Accord United States v. Bennett*, 824 F. App’x 236, 238 (5th Cir. 2020) (unpublished), *cert. denied*, 141 S. Ct. 1109 (2021) (given § 2256(1)’s definition of “minor,” no plain error in basing § 2251(e) enhancement on Texas crime of indecency with a child, which applies to 16-year-old victims); *United States v. Hardin*, 998 F.3d 582, 586–87 (4th

In response, Grzywinski relies heavily on *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017), which held that the generic federal offense of “sexual abuse of a minor” applies only to victims under 16. Grzywinski misreads that decision, however. *Esquivel-Quintana* addressed whether an alien’s state statutory rape conviction qualified as “sexual abuse of a minor” under a federal immigration law authorizing removability for that offense. *See* 137 S. Ct. at 1567 (discussing 8 U.S.C. § 1101(a)(43)(A)). The offense was undefined, however, so the Supreme Court had to infer its generic definition from statutory context and analogous state laws. *See id.* at 1569–72. In light of those sources, the Court held that, “in the context of statutory rape offenses focused solely on the age of the participants, the generic federal definition of ‘sexual abuse of a minor’ under § 1101(a)(43)(A) requires the age of the victim to be less than 16.” *Id.* at 1572–73.

Esquivel-Quintana does not control here. One of our unpublished decisions recently explained why. “Unlike the immigration statute at issue in *Esquivel-Quintana*, 18 U.S.C. § 2256 unambiguously defines ‘minor’, as used in § 2251(e), as ‘any person under the age of eighteen years.’” *United States v. Bennett*, 824 F. App’x 236, 238 (5th Cir. 2020) (unpublished), *cert. denied*, 141 S. Ct. 1109 (2021). We adopt that reasoning. *Accord United States v. Hardin*, 998 F.3d 582, 590 (4th Cir. 2021) (holding *Esquivel-Quintana* “does not control [the] analysis” of a similar enhancement provision because it “was interpreting an entirely different statute—the INA, which does not define ‘minor’”). We are not dealing here with a generic federal definition of “sexual abuse of a minor,” but with a statutory definition. *See* § 2256(1). And that definition confirms that the Texas offense at issue does not criminalize more conduct than the federal predicate in § 2251(e).

Cir. 2021) (same result under similar Chapter 110 enhancement with respect to Tennessee statutory rape offense, which applies to 17-year-old victims).

Grzywinski also tries to support his argument by citing several of our decisions, but none help him. Each merely applies *Esquivel-Quintana* to supply the generic definition of “sexual abuse of a minor” to a federal sentencing enhancement that does not define the term.⁸ As explained, those cases are unlike this one because the pertinent enhancement here incorporates a definition of “minor” that eliminates any problem under the categorical approach. *See* §§ 2251(e), 2256(1); *see also Bennett*, 824 F. App’x at 238; *Hardin*, 998 F.3d at 590.

We see no error, plain or otherwise, in the district court’s decision that Grzywinski’s prior commission of aggravated sexual assault of a minor under Texas law qualified him for an enhanced sentence under § 2251(e).⁹

IV.

The district court’s judgment is AFFIRMED.

⁸ *See Sanchez-Arvizu*, 893 F.3d at 315 (under *Esquivel-Quintana*, Texas indecency with a child cannot trigger similar enhancement under 2015 version of U.S.S.G. § 2L1.2(b)(1)(A)(ii) because Texas crime applies to 16-year-old victims); *United States v. Hernandez-Avila*, 892 F.3d 771, 773 (5th Cir. 2018) (under *Esquivel-Quintana*, Texas sexual assault of a minor cannot trigger similar enhancement under 2015 version of U.S.S.G. § 2L1.2(b)(1)(A)(ii) because Texas crime applies to 16-year-old victims); *Shroff v. Sessions*, 890 F.3d 542, 545–46 (5th Cir. 2018) (under *Esquivel-Quintana*, Texas online solicitation of a minor cannot trigger immigration removal provision in 8 U.S.C. § 1101(a)(43)(A)—the same one in *Esquivel-Quintana*—because Texas crime applies to 16-year-old victims); *United States v. Ovalle-Garcia*, 868 F.3d 313, 314 (5th Cir. 2017) (finding Tennessee’s statutory rape statute “does not qualify either as an aggravated felony for purposes of 8 U.S.C. § 1326(b)(2) or as a crime of violence for purposes of U.S.S.G. § 2L1.2(b)(1)(A)(ii)” because “the age of consent in Tennessee is 18”).

⁹ Because we resolve the appeal on this basis, we need not engage in the “modified” categorical approach. *See Descamps*, 570 U.S. at 261. So, we do not decide whether the Texas statute is divisible and, if so, under which part Grzywinski pled guilty. *See United States v. Castro-Alfonso*, 841 F.3d 292, 297 n.2 (5th Cir. 2016) (declining to analyze divisibility where defendant’s arguments failed under the categorical approach).

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ERIC GRZYWINSKI

Case Number: 3:19-CR-00578-B(1)

USM Number: 59734-177

Juan Gabriel Rodriguez

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	Count 1 of the two-count Indictment filed November 6, 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:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 2251 (a) and (e) Attempted Production of Child Pornography	08/01/2019	1

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.

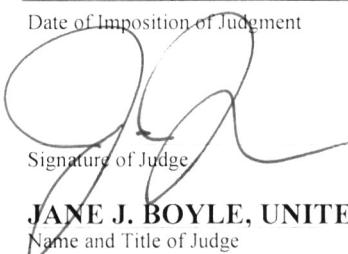
The defendant has been found not guilty on count(s)

Count 2 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.

October 21, 2021

Date of Imposition of Judgment



Signature of Judge

JANE J. BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 25, 2021

Date

DEFENDANT: ERIC GRZYWINSKI
CASE NUMBER: 3:19-CR-00578-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:

45 years (the equivalent of 540 months) as to count 1. This sentence shall run concurrently with any sentence hereafter imposed by the Dallas County Criminal District Court 4 in Dallas, Texas, under Case Nos. F-1925244, F-1925245, and F-1925241.

- The court makes the following recommendations to the Bureau of Prisons:
that the defendant be allowed to participate in all substance abuse treatment programs for which he is eligible, including the Residential Drug Abuse Program (RDAP).

- 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: ERIC GRZYWINSKI
CASE NUMBER: 3:19-CR-00578-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: ERIC GRZYWINSKI
CASE NUMBER: 3:19-CR-00578-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: ERIC GRZYWINSKI
CASE NUMBER: 3:19-CR-00578-B(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall have no contact with any victim of this offense, including by correspondence, telephone, or communication through third parties, except under circumstances approved in advance by the probation officer. The defendant shall not enter onto the premises, travel past, or loiter near any victim's residence, place of employment, or other places frequented by the victim.

The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month. The defendant shall consent to the probation officer's conducting ongoing monitoring of his/her computer/computers. The monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. At the discretion of the probation officer, the monitoring software may be disabled or removed at any time during the term of supervision.

The defendant shall submit to periodic, unannounced examinations of his/her computer/computers, storage media, and/or other electronic or Internet-capable devices, performed by the probation officer at reasonable times and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.

The defendant shall not use any computer other than the one the defendant is authorized to use without prior approval from the probation officer.

The defendant shall not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer.

The defendant shall not use any computer or computer-related equipment owned by his employer except for the strict benefit of his employer in the performance of his job-related duties.

The defendant shall provide the probation officer with accurate information about his entire computer system. The defendant's email shall only be accessed through a pre-approved application.

The defendant shall not install new hardware, perform upgrades, or effect repairs on his computer system without the prior permission of the probation officer.

Without prior approval of the probation officer, the defendant shall not maintain or create a user account on any social networking site (i.e., Facebook, Twitter, Snapchat, Instagram, Grindr, Tinder, etc.) that allows access to persons under the age of 18, or allows for the exchange of sexually-explicit material, chat conversations, or instant messaging. The defendant shall neither view nor access any web profile of users under the age of 18.

The defendant shall not use or possess a web cam or any other hardware that allows for the exchange of video or photographs online.

The defendant shall not access any service or use any software that allows for direct peer-to-peer contact which may include chat rooms, file sharing, or other similar activity without permission from the probation officer.

The defendant shall not engage in or utilize any service that allows peer-to-peer file sharing or file transfer protocol activity.

DEFENDANT: ERIC GRZYWINSKI
CASE NUMBER: 3:19-CR-00578-B(1)

The defendant shall not access any Internet Service Provider account or other online service using someone else's account, name, designation, or alias.

The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e., clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

Without prior permission from the Court or probation officer, the defendant shall have no unsupervised communication or contact with persons under the age of 18; the defendant shall not be at or near places where minors congregate, nor shall the defendant create an opportunity for minors to congregate; the defendant shall not be employed or be a volunteer at places where minors congregate; and the defendant shall not date or befriend someone who has minors.

The defendant shall neither possess nor have under his control any sexually oriented, or sexually stimulating materials of adults or children. This includes visual, auditory, telephonic, electronic media, email, chat communications, instant messaging, or computer programs. The defendant shall not patronize any place where such material or entertainment is available. The defendant shall not use any sex-related telephone numbers.

The defendant shall participate in 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 \$10 per month.

The defendant shall participate in an outpatient program approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

The defendant shall provide to the probation officer any requested financial information.

DEFENDANT: ERIC GRZYWINSKI
 CASE NUMBER: 3:19-CR-00578-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: ERIC GRZYWINSKI
 CASE NUMBER: 3:19-CR-00578-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:
 Motorola e5 Play, Model XT1921, bearing serial number ZY32339QP9 and IMEI 351841091114761

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.