No. _____

In the
Supreme Court of the United States

Vonteak Alexander, Real Party in Interest,

Petitioner,

v.

Jane Doe,

Respondent.

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

Appendix

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57 F.4th 667
United States Court of Appeals, Ninth Circuit.

IN RE: Jane DOE,
Jane Doe, Petitioner,
v.
United States District Court for the District of Nevada, Las Vegas, Respondent,
Vonteak Alexander; United States of America, Real Parties in Interest.

No. 22-70098
|
Argued and Submitted September 19, 2022 San Francisco, California
|
Filed October 25, 2022
|
Amended January 18, 2023

Synopsis

Background: Sex trafficking victim filed petition for writ of mandamus pursuant to Crime Victims' Rights Act (CVRA) alleging that district court erred in concluding that it lacked statutory authority to order her assailant to pay restitution.

Holdings: The Court of Appeals, Graber, Circuit Judge, held that:

[1] district court had statutory authority to order defendant to pay restitution, and

[2] defendant's plea agreement obligated him to pay restitution.

Petition granted.

Opinion, 51 F.4th 1023, amended and superseded.

Procedural Posture(s): Petition for Writ of Mandamus; Petition for Rehearing; Petition for Rehearing En Banc.

West Headnotes (6)

[1] **Mandamus** Scope of inquiry and powers of court

In reviewing petition for writ of mandamus pursuant to Crime Victims' Rights Act (CVRA), Court of Appeals applies ordinary standards of appellate review, such as de novo review for legal conclusions, clear-error review for factual findings, and abuse-of-discretion review for discretionary judgments. 18 U.S.C.A. § 3771(d)(3).

[2] **Sentencing and Punishment** Effect of plea bargain or other agreement

District court had statutory authority to order defendant convicted of sex trafficking to pay restitution to his victim to extent agreed to by defendant in plea agreement, even if defendant's conduct, or crimes to which defendant pled guilty, would not otherwise have given rise to mandatory restitution. 18 U.S.C.A. § 3663(a)(3).

[3] **Sentencing and Punishment** Effect of plea bargain or other agreement

If defendant has agreed to pay restitution in plea agreement, then district court has statutory authority to order agreed-upon restitution. 18 U.S.C.A. § 3663(a)(3).

[4] **Criminal Law** Representations, promises, or coercion; plea bargaining

Plea agreements are contractual in nature and are measured by contract law standards.

[5] **Criminal Law** Representations, promises, or coercion; plea bargaining

In interpreting plea agreement, court must review plea agreement as a whole and, if plea

agreement's terms have clear meaning, then its analysis is complete, but if term of plea agreement is not clear on its face, court looks to facts of case to determine what parties reasonably understood to be agreement's terms; if, after examining extrinsic evidence, court still finds ambiguity regarding what parties reasonably understood to be terms of agreement, it must then interpret any remaining ambiguity in defendant's favor.

[6] **Criminal Law** Representations, promises, or coercion; plea bargaining

Sentencing and Punishment Effect of plea bargain or other agreement

Provision of defendant's plea agreement in which he "acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim," agreed that court could consider "losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct," and agreed to pay victim "full amount of the victim's losses" as defined in Mandatory Restitution for Sexual Exploitation of Children Act obligated defendant to pay restitution, even though he was not charged with any crimes subject to restitution under Act; everyone who negotiated plea agreement understood that defendant agreed to pay restitution to victim, and defendant's only objection was to sufficiency of evidence supporting particular amounts requested. 18 U.S.C.A. § 2259(b)(3).

***668** Petition for Writ of Mandamus, D.C. No. 2:17-cr-00072-RFB

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Before: Susan P. Graber, Michelle T. Friedland, and Lucy H. Koh, Circuit Judges.

Order; Opinion by Judge Graber

***669 ORDER**

The opinion filed on October 25, 2022, and published at 51 F.4th 1023, is hereby amended by the opinion filed concurrently with this order. With the opinion so amended, the panel has voted to deny the petition for panel rehearing. Judges Friedland and Koh have voted to deny the petition for rehearing en banc, and Judge Graber has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it.

The petition for panel rehearing and petition for rehearing en banc, Docket No. 33, are DENIED. No further petitions for rehearing will be accepted.

AMENDED OPINION

GRABER, Circuit Judge:

When Jane Doe was twelve years old, Defendant Vonteak Alexander drove her from California to Las Vegas, Nevada, knowing that she would engage in prostitution. Jane Doe eventually alerted authorities that she was a missing juvenile, and police officers arrested Defendant. Facing five serious criminal charges, Defendant entered into a written plea agreement. Pursuant to that agreement, in exchange for the government's promise to drop the five charges, Defendant would plead guilty to two lesser crimes and would pay restitution to Jane Doe. The district court presided over several hearings aimed at determining the proper amount

of restitution. After a new lawyer took over Defendant's representation, Defendant argued for the first time that the district court lacked statutory authority to order any restitution whatsoever. The district court reluctantly agreed with Defendant's legal argument. Accordingly, the court issued an order denying Jane Doe's request for restitution on the sole ground that the court lacked statutory authority to award it.

Jane Doe then filed this petition for a writ of mandamus pursuant to 18 U.S.C. § 3771(d)(3), a provision of the Crime Victims' Rights Act. We publish this opinion to reiterate what we held in two cases decided three decades ago: that 18 U.S.C. § 3663(a)(3) grants statutory authority to district courts to award restitution whenever a defendant agrees in a plea agreement to pay restitution. United States v. McAninch, 994 F.2d 1380, 1384 n.4 (9th Cir. 1993); United States v. Soderling, 970 F.2d 529, 534 n.9 (9th Cir. 1992) (per curiam). Because the district court has statutory authority to carry out the parties' intent that Defendant pay Jane Doe restitution, we grant the petition and instruct the district court to address, in the first instance, Defendant's evidentiary challenges and other arguments concerning the appropriate amount of restitution.

FACTUAL AND PROCEDURAL HISTORY

The government originally indicted Defendant on five counts that pertained to sex trafficking: (1) conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 1594; (2) sex trafficking, in violation of ***670** 18 U.S.C. § 1591; (3) conspiracy to transport for prostitution or other sexual activity, in violation of 18 U.S.C. § 2423; (4) transportation for prostitution or other criminal activity, in violation of 18 U.S.C. § 2423; and (5) coercion and enticement, in violation of 18 U.S.C. § 2422. The parties entered into plea negotiations, and the government later filed a criminal information charging Defendant with only two counts of interstate travel in aid of unlawful activity, in violation of 18 U.S.C. § 1952(a)(3)(A). The criminal information does not specify the nature of the unlawful activity.

The government and Defendant then negotiated a binding plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (C). Defendant agreed to plead guilty to the two counts in the criminal information and to pay restitution. In exchange, the government agreed to dismiss the indictment and to forgo bringing any additional charges stemming from the investigation. Defendant admitted that he drove Jane Doe from California to Las Vegas, Nevada, with the intent that Jane Doe engage in unlawful activity and that he then attempted to facilitate Jane Doe's engaging in unspecified unlawful activity. The parties agreed to be bound by any sentence within the range of 60 months to 96 months of imprisonment.

The plea agreement also required Defendant to pay restitution:

> The Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim(s). See 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).

Section 2259(b)(3) [1] defines the "full amount of the victim's losses" to include six categories of loss, including some costs of medical care and reasonable attorneys' fees.

1 Since Defendant committed his crimes in 2016, Congress has relabeled § 2259(b)(3) as subsection (c)(2), and Congress made a conforming change to § 1593(b)(3), which formerly cited § 2259(b)(3) and now cites § 2259(c)(2). Unless otherwise noted, we refer to the versions of §§ 1593 and 2259 that were in effect in 2016.

The district court then presided over a plea colloquy. The government's lawyer summarized the terms of the plea agreement and stated, with respect to restitution, that Defendant "agrees to pay the victim the full amount of victim's losses as defined in 18 U.S.C. § 2259(b)(3)." Defendant and his lawyer agreed with the summary. The court accepted Defendant's guilty plea and scheduled sentencing.

The district court later presided over a sentencing hearing. Defendant sought the low end of the plea agreement's range,

60 months; Jane Doe and the government sought the high end, 96 months; and the court sentenced Defendant to 96 months in prison. Consistent with a victim's statement that she had filed before sentencing, Jane Doe requested $15,000 in restitution. Defendant's lawyer requested that restitution be considered later, during a separate hearing. He elaborated that the government bore the burden of proof as to restitution and that, in his view, the government failed to provide sufficient evidence to support the restitution amount. The court agreed to defer a decision on restitution and later scheduled a hearing on restitution. [2]

2 Although restitution remained undecided, the district court entered a judgment of conviction, and Defendant timely appealed. A motions panel of this court granted Defendant's unopposed motion to stay the direct appeal pending final resolution of this mandamus petition. Case No. 21-10164, Docket No. 19.

***671** On the day before the scheduled hearing, Defendant filed a motion pertaining to restitution. Defendant argued that Jane Doe had used the wrong legal formula when calculating restitution. In particular, 18 U.S.C. § 1593(b)(3) defines the full amount of the victim's losses as having "the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act." (Emphasis added.) In calculating loss, Jane Doe used the formula supplied by § 1593(b)(3) but not found expressly in § 2259(b)(3). In his motion, Defendant asserted that § 1593(b)(3) "employs a unique restitution calculation that differs significantly from Sections 2259 and 3663." According to Defendant, the "unique loss provisions" of § 1593(b)(3) should not apply here. Defendant argued, instead, that "the Court should reject Jane Doe's proposed restitution calculation[ ] of $15,000 ... in favor of a restitution calculation consistent with 18 U.S.C. §§ 2259(c)(2) or 3663A(b)(2)." [3] In short, Defendant asked the court to calculate loss pursuant to § 2259's definition, as the parties had agreed, and not pursuant to § 1593's definition.

3 The passage contains two typographical errors, which we have corrected here and on page 18. Defendant cited "§ 2559," a statute that does not exist. From context, it is clear that he meant § 2259. The passage also contains an extra open-parens, which we have omitted.

At the scheduled hearing the next day, Defendant's lawyer reiterated that § 2259, not § 1593, provides the correct method for calculating restitution. The district court "agree[d] with [Defendant's lawyer] that 2259 is the statute that applies." Turning to Jane Doe's request for restitution, the district court specifically found that Defendant did not force Jane Doe into acts of prostitution; Defendant was not "her pimp." The court therefore denied restitution to the extent that it depended on that theory.

But the court was clear that other categories of restitution, as defined by § 2259, such as current and future medical and psychological expenses, were potentially available to Jane Doe. Because Defendant's motion was filed late on the day before the hearing, the district court allowed Jane Doe time to file a supplemental request for restitution. On a separate topic, Defendant's lawyer informed the court and the parties that he was moving out of state but that another lawyer from his office would represent Defendant going forward.

Jane Doe timely filed a supplemental request for restitution. Instead of the original $15,000, Jane Doe now requested approximately $1.5 million. Tracking the categories in § 2259(b)(3), she sought lost future earnings, future medical expenses, attorney's fees, transportation costs, and past lost wages.

About six months later, Defendant—now represented by a new lawyer—filed an opposition to restitution. Defendant argued for the first time that the district court "lacks authority to order restitution." According to Defendant, because he did not commit a crime under any statute that permits or mandates an order of restitution, the court lacked authority to order restitution.

***672** The parties then appeared for a final hearing on restitution. Defendant's lawyer stated that "I recognize that [Defendant] in his plea agreement agreed to pay restitution." But, Defendant's lawyer continued, § 2259 does not "allow the Court to order restitution." In response to the court's questions about how Defendant could renounce his agreement to pay restitution, Defendant's lawyer responded candidly: "I was not a party to this plea agreement, Your Honor. I came aboard this case I think after four to five years of litigation and have tried my very best to get up to speed."

The government took the "same lockstep" position as Jane Doe's and "st[ood] by th[e] plea agreement," asking the court to order restitution to Jane Doe. With respect to the court's authority to order restitution, Jane Doe's lawyer stated that, "if there is this plea agreement which articulates and calls out that restitution, the Court has the authority" to order restitution.

Defendant's lawyer conferred with him and stated that "he is requesting that the Court impose restitution of $1,000." His lawyer continued that Defendant "is understanding that his plea agreement – in his plea agreement he agreed to pay restitution." Defendant also raised, in the alternative, several arguments against the specific requests for restitution, such as a lack of evidentiary support and a lack of proximate cause.

In May 2022, the district court issued a short order denying restitution. "The Court finds that despite the egregious conduct admitted by Defendant in this case it cannot order restitution to Jane Doe." The court held that § 2259 was not directly applicable because Defendant "did not commit any of the enumerated offenses under the relevant chapter." The court rejected the argument that the plea agreement itself "could provide a basis for restitution" because a "consent to application does not itself expand the Court's legal authority." The court concluded that "while the Court finds that [Defendant] committed egregious acts by which Jane Doe suffered and will continue to suffer, the Court simply does not find that it has the authority to order restitution to Jane Doe in this case."

Jane Doe timely filed this petition. Title 18 U.S.C. § 3771(d)(3) requires us to issue a decision within 72 hours unless the parties stipulate to an alternative schedule. The parties stipulated to a longer time frame, and a motions panel issued an opinion adopting the parties' stipulated schedule. Jane Doe v. U.S. Dist. Ct. (In re Doe), 50 F.4th 1247, 1253 (9th Cir. 2022). We now issue this opinion on the merits of the petition.

STANDARD OF REVIEW

[1] In most cases in which a petitioner seeks a writ of mandamus, we apply the stringent standard of review described in Bauman v. United States District Court, 557 F.2d 650, 654–55 (9th Cir. 1977). Here, though, Jane Doe seeks mandamus through 18 U.S.C. § 3771(d)(3), the Crime Victims' Rights Act's provision aimed at protecting victims' rights. We held in Kenna v. United States District Court for the Central District of California, 435 F.3d 1011 (9th Cir. 2006), that the Bauman factors do not apply in this circumstance; instead, we review for "an abuse of discretion or legal error." Id. at 1017. Some other circuits disagreed but, in 2015, Congress amended the statute in a way that clarifies that Kenna got it right: "In deciding such application, the court of appeals shall apply ordinary standards of appellate review." 18 U.S.C. § 3771(d)(3). Accordingly, we apply the ordinary standards of appellate review, such as de novo review ***673** for legal conclusions, clear-error review for factual findings, and abuse-of-discretion review for discretionary judgments. See In re Wild, 994 F.3d 1244, 1254 n.10 (11th Cir. 2021) (en banc) (holding that "the [statute] (as amended in 2015 to resolve a then-existing circuit split) directs us to 'apply ordinary standards of appellate review' in deciding the mandamus petition, see 18 U.S.C. § 3771(d)(3)—rather than the heightened 'clear usurpation of power or abuse of discretion' standard that typically applies in the mandamus context" (second citation omitted)), cert. denied, —— U.S. ——, 142 S. Ct. 1188, 212 L.Ed.2d 54 (2022). We therefore review de novo the questions of law raised by the parties here. Balla v. Idaho, 29 F.4th 1019, 1024 (9th Cir. 2022).

DISCUSSION

[2] Jane Doe asserts a single legal argument: the district court erred in concluding that it lacked statutory authority to order restitution. We agree. In enacting 18 U.S.C. § 3663(a)(3), Congress expressly granted district courts authority to order restitution whenever a defendant has agreed in a plea agreement to pay restitution. Defendant did so. Therefore, pursuant to the plain meaning of the statutory text and consistent with binding precedent, the district court had statutory authority to order restitution.

[3] We begin with the statutory text. Section 3663(a)(3) provides: "The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement." Congressional intent is clear. If a defendant has agreed to pay restitution in a plea agreement, then the plain meaning of the statutory text grants the district court statutory authority to order the agreed-upon restitution.

Our cases, decided shortly after Congress enacted the provision, confirm that straightforward reading. "[S]ection 3663(a)(3) clearly provides that plea agreements allowing for restitution greater than the losses caused by the offenses of conviction are authorized by law." Soderling, 970 F.2d at 534 n.9. "Under 18 U.S.C. § 3663(a)(3), ... a court can order restitution in any criminal case to the extent agreed to by the parties to a plea agreement." McAninch, 994 F.2d at 1384 n.4. Decisions by our sister circuits are in accord. E.g., United States v. Maturin, 488 F.3d 657, 661 (5th Cir. 2007); United States v. Blake, 81 F.3d 498, 507 (4th Cir. 1996); United States v. Guthrie, 64 F.3d 1510, 1514 (10th Cir. 1995); United States v. Silkowski, 32 F.3d 682, 688–89 (2d Cir. 1994).

The statutory text and our cases are thus clear: in "any" criminal case, regardless of the crimes of conviction, and regardless of the defendant's conduct, a defendant may agree in a plea agreement to pay restitution to a victim. See, e.g., Olympic Forest Coal. v. Coast Seafoods Co., 884 F.3d 901, 906 (9th Cir. 2018) ("[T]he term 'any' [is] broad and all-encompassing."). Section 3663(a)(3) authorizes the district court to order restitution in that circumstance. In other words, even if the defendant's conduct, or the crimes to which a defendant pleads guilty, would not otherwise give rise to mandatory restitution, a defendant may agree to pay restitution, and the district court has authority to enforce that agreement by ordering restitution.

We note that § 3663(a)(3) potentially benefits the government and victims by allowing them to achieve an order of restitution through a plea agreement without regard to the defendant's crimes of conviction. Importantly, though, § 3663(a)(3) also potentially benefits defendants. The statute allows defendants to plead guilty to crimes that carry less severe penalties ***674** overall but that do not, by themselves, authorize restitution. Here, for example, Defendant initially faced sex-trafficking charges that carried mandatory minimum sentences far greater than the 96-month sentence that he received though the plea deal. Without § 3663(a)(3)'s allowance of restitution in any plea deal, victims such as Jane Doe might object to plea deals to lesser charges, complicating a defendant's attempt to avoid more serious charges and longer terms of imprisonment. Section 3663(a)(3) thus gives the government, victims, and defendants flexibility to reach a just result for all involved.

Defendant does not dispute that § 3663(a)(3) authorizes district courts to award restitution as agreed to by the parties in a plea agreement. Rather, Defendant argues that the district court lacked authority to award restitution under the plea agreement in this case.[4] First, Defendant argues that the restitution provision in the plea agreement unambiguously limited the district court's authority such that the court could award restitution only for those crimes that trigger mandatory restitution under 18 U.S.C. § 2259. Because none of Defendant's conduct amounted to a crime that fell within that category, Defendant argues, the district court lacked authority to award Jane Doe restitution under the plain terms of the plea agreement. Second, Defendant argues that even if the plea agreement is ambiguous, we should interpret that ambiguity in his favor and hold that the district court lacked authority to award restitution under the plea agreement. We reject both arguments.

4 We reject, as unsupported by the record, Defendant's alternative argument that Jane Doe waived reliance on § 3663(a)(3). Nothing in the record suggests that Jane Doe intentionally relinquished the right to rely on § 3663(a)(3). See United States v. Depue, 912 F.3d 1227, 1232–33 (9th Cir. 2019) (en banc) (describing the requirements to prove waiver). To the contrary, Jane Doe expressly argued to the district court that, because the parties agreed to restitution in the plea agreement, the court had the authority to order restitution.

[4] **[5]** Our methodology for interpreting a plea agreement is settled. United States v. Clark, 218 F.3d 1092, 1095 (9th Cir. 2000). We begin "with the fundamental rule that plea agreements are contractual in nature and are measured by contract law standards." Id. (brackets, citation, and internal quotation marks omitted). We review the plea agreement as a whole and, if the terms of the plea agreement have a clear meaning, then our analysis is complete. Id. at 1095–96. "If, however, a term of a plea agreement is not clear on its face, we look to the facts of the case to determine what the parties reasonably understood to be the terms of the agreement."

Id. at 1095. "If, after we have examined the extrinsic evidence, we still find ambiguity regarding what the parties reasonably understood to be the terms of the agreement," we then interpret any remaining ambiguity in the defendant's favor. Id.

To reiterate, the restitution provision in the plea agreement stated:

> The Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim(s). See 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).

***675** We begin with the most natural reading of the paragraph. The operative sentence—the agreement to pay—is the final sentence: Defendant agreed to pay Jane Doe the six categories of loss defined in § 2259(b)(3). The preceding sentence describes the conduct that the court may consider in determining loss: "losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved." Putting it all together, Defendant agreed to pay Jane Doe the six categories of loss described in § 2259, and the court could consider all of Defendant's conduct in calculating loss.

Those final two sentences of the restitution provision thus appear to authorize the district court to order restitution resulting not only from the counts of conviction but also from the dismissed counts and uncharged conduct. Unlike in United States v. Phillips, 174 F.3d 1074, 1077 (9th Cir. 1999), in which the defendant "did not specifically agree to pay restitution for [specific] counts in exchange for the government's promise to drop those charges," Defendant's plea agreement here specified that restitution would encompass the dismissed counts and uncharged conduct, and his plea agreement obligated the government to dismiss the original indictment in exchange for his consent to the plea deal.

[6] But the first sentence of the restitution provision, when viewed in isolation, is not a model of clarity. In that sentence, Defendant "acknowledges" that his conduct gives rise to "mandatory restitution," and the sentence ends with a citation to § 2259. Section 2259 itself mandates restitution only for crimes defined in Chapter 110 of Title 18. 18 U.S.C. § 2259(a). Neither the crimes of conviction nor the originally charged crimes in the indictment fall within Chapter 110, so the purpose of the sentence is not entirely clear.[5] Read in conjunction with the later sentences, however, we interpret the first sentence as simply acknowledging Defendant's obligation to pay restitution.

5 As described in text, § 2259 authorizes restitution only for convictions under Chapter 110. In the same plea agreement, Defendant pleaded guilty only to two counts of violating 18 U.S.C. § 1952(a)(3)(A). Those counts do not fall within Chapter 110, so those counts do not trigger § 2259's mandatory restitution provision. For the restitution paragraph to have any meaning, then, it must mean more than simply that Defendant's convictions trigger § 2259. To the extent that Defendant advances an interpretation that necessarily renders the restitution paragraph void on its face, we reject that interpretation. See United States v. Medina-Carrasco, 815 F.3d 457, 462 (9th Cir. 2015) (rejecting, as "contrary to basic principles of contract interpretation," an interpretation of a plea agreement that "would render meaningless" a provision of the plea agreement); accord United States v. Schuman, 127 F.3d 815, 817 (9th Cir. 1997) (per curiam); United States v. Michlin, 34 F.3d 896, 901 (9th Cir. 1994).

It is possible to read the restitution paragraph in a more constrained manner. Specifically, one could interpret the passage as an agreement to pay restitution only to the extent that the district court later determined that Defendant's conduct resulted in the commission of a crime encompassed by § 2259, that is, a crime defined in Chapter 110. Because the district court found (and Jane Doe does not challenge in the mandamus petition) that Defendant's conduct did not violate § 2259, Defendant would owe no restitution. In particular, one could read the first sentence as providing that Defendant agrees to pay mandatory restitution only to the extent that his "conduct," had it been charged as a crime, would "give[ ] rise to mandatory restitution ... [pursuant to] § 2259." The third

sentence's citation of § 2259 comports with this interpretation: ***676** "Defendant agrees to pay the victim(s) the 'full amount of the victim's losses' as defined in 18 U.S.C. § 2259(b)(3)."

But that interpretation contradicts other parts of the plea agreement. For example, the first sentence, read in its entirety, does not suggest that, if the district court later found (as it did here), that Defendant did not commit any crime under Chapter 110, then he would not have to pay any restitution. The first sentence states only that "[t]he Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution." (Emphasis added.) That sentence, read in its entirety, suggests that Defendant knows that he will have to pay restitution; only the amount is at issue. Similarly, the limited interpretation contradicts the second sentence, which provides that the court may consider losses from all conduct when "assessing such restitution," including the counts of conviction and the dismissed counts. Because neither the counts of conviction nor the dismissed counts fall within Chapter 110, it makes little sense to interpret "such restitution" as encompassing only the conduct that could have been charged under Chapter 110.

These competing interpretations show that the restitution provision is ambiguous. Accordingly, our next step is to "look to the facts of the case to determine what the parties reasonably understood to be the terms of the agreement." Clark, 218 F.3d at 1095. In our view, the record plainly reflects that the parties all understood that Defendant had agreed to pay restitution, limited to the categories of loss described in § 2259(b)(3). Defendant objected to the use of a definition other than the definition found in § 2259; he disputed the factual sufficiency of the evidence supporting the restitution amount; and he disputed whether Jane Doe had shown proximate cause. But, until Defendant's new lawyer took the assignment, the record contains no suggestion whatsoever that anyone thought that Defendant could escape paying restitution altogether because of a lack of statutory authority, if the court later held that Defendant had not committed an offense triggering the mandatory restitution provision in § 2259. See id. at 1096 (looking to the understanding of "those who negotiated the agreement").

During the plea colloquy, the government's lawyer summarized that Defendant "agrees to pay the victim the full amount of victim's losses as defined in 18 U.S.C. § 2259(b)(3)." Defendant and his lawyer agreed with the government's summary. During sentencing, Defendant's lawyer objected substantively on the sole ground that the evidence supporting the restitution amount was insufficient. Before the first restitution hearing, Defendant objected only to Jane Doe's calculation method, which used the criteria particular to § 1593; indeed, Defendant expressly asked the court to use "a restitution calculation consistent with 18 U.S.C. §§ 2259(c)(2) or 3663A(b)(2)." During the first restitution hearing, Defendant's lawyer argued that § 2259 supplies the right formula for the amount that Defendant would have to pay, "which is a separate analysis than the analysis" under § 1593. During the second restitution hearing, Defendant requested that the district court "impose restitution" of a lower amount.

All of that conduct is consistent with our interpretation of the restitution provision; none of the conduct is consistent with the more limited interpretation of the restitution provision. Everyone who negotiated the plea agreement understood that Defendant agreed to pay restitution to Jane Doe. Defendant objected to the sufficiency of the evidence supporting particular amounts requested, and he insisted that restitution be limited to the categories ***677** found in § 2259. But Defendant's obligation to pay was never in doubt. In sum, "the extrinsic evidence unambiguously demonstrates" that Defendant agreed to pay restitution for Jane Doe's loss, as defined in § 2259(b)(3). Clark, 218 F.3d at 1096. Accordingly, the rule that ambiguities are construed against the government does not apply. See id. ("Only if the extrinsic evidence regarding the parties' intent fails to resolve the term's ambiguity must the court apply the rule construing ambiguous terms against the drafting party.").

CONCLUSION

We grant the petition for a writ of mandamus. Defendant agreed to pay restitution, limited to the six categories of loss described in 18 U.S.C. § 2259(b)(3). Title 18 U.S.C. § 3663(a)(3) grants district courts authority to award restitution whenever a defendant agrees in a plea agreement to pay restitution. Accordingly, the district court has statutory authority to order restitution, and the court's holding to the contrary was legal error. We instruct the district court to address the parties' remaining arguments, including any factual disputes concerning the amount of loss, any factual disputes as to whether Defendant's conduct proximately caused the losses, and any other arguments raised by the parties.

PETITION GRANTED.

All Citations

57 F.4th 667, 2023 Daily Journal D.A.R. 380

Case No. 22-70098

United States Court of Appeals
for the Ninth Circuit

In re Jane Doe, Petitioner

Petition for Panel Rehearing and En Banc Consideration by Real Party in Interest Vonteak Alexander

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Statement in Support of Rehearing and En Banc Review

Respondent Vonteak Alexander respectfully petitions for rehearing and en banc consideration of the panel's published decision in this mandamus appeal finding restitution permissible under the parties' binding plea agreement. The panel's opinion warrants further review for three reasons.

First, the panel misapprehended a material fact. Fed. R. App. P. 40(a)(2). In describing the offense conduct, the opinion states Alexander "kidnapped" Jane Doe. *In re Doe*, 51 F.4th 1023, 1025 (9th Cir. 2022). This assertion is unsupported by the parties' binding plea agreement and the district court's findings. It is requested the panel amend its opinion to correct this assertion as to Alexander's conduct.

Second, the panel's decision violates the well-settled rule that federal courts have "no inherent power to award restitution." *United States v. Follet*, 269 F.3d 996, 998 (9th Cir. 2001). The statutory authority to impose restitution cannot be broadened beyond the statutory limits Congress sets. *Id.*

Here, the plea agreement's restitution provision provides:

> The Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to

> the victim(s). *See* 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).[1]

In re Doe, 51 F.4th at 1030.

But the conduct to which Alexander's pled guilty did not give rise to mandatory restitution either under § 2259 or any other restitution statute. Thus, the panel incorrectly held the binding plea conveyed statutory authority to impose restitution.

Third, the panel's decision breaks with binding precedent governing plea agreement interpretation. Intervention is necessary to maintain uniformity of this Court's decisions on the important issue of plea agreement interpretation. Fed. R. App. P. 35(a).

When "the terms of the plea agreement on their face have a clear and unambiguous meaning," "this [C]ourt will not look to extrinsic evidence to determine their meaning." *United States v. Clark*, 218 F.3d 1092, 1095 (9th Cir. 2000). Rather, this Court must "'enforce the literal

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[1] Alexander entered his plea agreement in 2017. Congress relabeled § 2259(b)(3) as subsection (c)(2) in 2018. Pub. Law 115-299, 132 Stat. 4384, 4385 (Dec. 7, 2018).

terms' of a plea agreement, construing only ambiguous language in the defendant's favor." *United States v. Hammond*, 742 F.3d 880, 883 (9th Cir. 2014) (quoting *United States v. Franco-Lopez*, 312 F.3d 984, 989 (9th Cir. 2002)).

The panel violated this precedent by failing to: (1) interpret and enforce the literal terms of the restitution provision as written; and (2) construe any perceived ambiguities in Alexander's favor. Instead, the panel restructured the restitution provision, reading its three sentences in reverse order. Treating the third sentence as the operative sentence, the panel found the first sentence acknowledging restitution was mandatory under § 2259 "not entirely clear." *In re Doe*, 51 F.4th at 1030–31. It then interpreted the ambiguity created by its reverse-order reading against Alexander and found he agreed to pay restitution under 18 U.S.C. § 3663(a)(3)—a statute that does not mandate restitution for the conduct to which he pled. *Id.*

The panel's departure from quintessential doctrine governing plea agreement interpretation violates Alexander's rights under the plea agreement and jeopardizes the legitimacy of the plea agreement process. Given the importance of the plea process to our criminal

justice system, rehearing is necessary to bring the parties' binding plea agreement's restitution provision in accord with its literal language, construing ambiguities against the government.

Analysis and Authority

I. The opinion misstates a material fact, necessitating panel correction.

The opinion begins by incorrectly asserting "Alexander kidnapped Jane Doe." *In re Doe*, 51 F.4th at 1025. There was no charge or conviction of kidnapping. And neither the parties' binding plea agreement nor any district court findings support the panel's assertion.

The government—after consultation with Doe, her mother, and her counsel—entered into a binding plea agreement with Alexander to a criminal information. Appendix-94–95.[2] Alexander pled guilty to two counts of interstate travel in aid of unlawful activity under 18 U.S.C. § 1952(a)(3)(A). Addendum-4.

The binding plea identifies the offense elements as:

> 1. The Defendant traveled in interstate or foreign commerce; and
>
> 2. The Defendant traveled with the intent to promote, manage, establish, carry or facilitate the promotion,

[2] "Appendix" references Petitioner's Appendix, Dkt. 1-2.

> management, establishment, or carrying on, of any unlawful activity; and
>
> 3. Thereafter, the Defendant performed or attempted to perform the specified unlawful activity in violation of the State in which it was committed.

Addendum-5.[3]

The binding plea also contains a "carefully crafted" (Appendix-200) factual basis:

> On or about March 28, 2016, Vonteak Alexander drove a rented car carrying "A.B.W." from within California to Las Vegas, Nevada using a facility of interstate commerce with the intent to facilitate, otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of unlawful activity by "A.B.W." "A.B.W." committed acts of unlawful activity between March 28, 2016, and April 16, 2016.
>
> Alexander knew or should have known that "A.B. W." was a vulnerable victim by virtue of being a missing person. Alexander admits that he traveled in interstate commerce with the intent to have "A.B.W." engage in acts of unlawful activity that violated the laws of the State of Nevada, and thereafter Alexander attempted to facilitate, promote, manage, or establish "A.B.W." to engage in acts of unlawful activity that violate the laws of the State of Nevada.

Addendum-6.

[3] The nature of the unlawful activity remained unspecified in the information and plea. *See In re Doe*, 51 F.4th at 1025; Addendum-3–14.

After reviewing the binding plea agreement with the parties, the district court accepted it as written. Appendix-34–35.

During the restitution proceedings, counsel for Doe summarily alleged she had been kidnapped by Alexander. Appendix-146 n.11, 67. The district court correctly advised, however, this claim had not been shared with the defense and was "not part of the record." Appendix-67–68. The district court thus made no finding that Alexander engaged in kidnapping.

The opinion's statement that Alexander "kidnapped" Doe is inaccurate and expands the offense conduct beyond the parties' agreement and the district court's findings, prejudicing Alexander. This unsupported assertion also publicly besmudges Alexander, placing him in danger from others in prison. And it requires other courts to accept the erroneous assertion as true given the opinion's precedential effect.

This Court recently amended another published opinion in this matter to correct factual errors describing Alexander's conduct. *Compare* Dkt. 24, *with* Dkts. 26, 27 (published at *In re Doe,* 50 F.4th 1247, 1259 (9th Cir. 2022)). A similar correction is requested here to accurately represent the scope of Mr. Alexander's criminal conduct.

II. Contrary to Circuit precedent, the panel exceeded statutory authority to impose restitution.

The panel granted mandamus relief without ever resolving the actual issue underlying Doe's claim—whether the district court lacked statutory authority to impose restitution under § 2259. The district court correctly determined no restitution was authorized because the conduct to which Alexander pled does not give rise to mandatory restitution under § 2259, despite the parties' initial erroneous belief to the contrary. Appendix-217–218. Section 2259 applies only to convictions under Chapter 110 of the United States Code, not to Alexander's convictions under Chapter 95. Appendix-217.

Contrary to the government's summary suggestion on appeal, the parties' mistake of law was not a mere citation error. Gov. Response, Dkt. 6, p. 10 n.4. The parties undertook "painstaking[]" efforts to reach the binding plea agreement, Appendix-96–97, 200, and each sentence of the restitution provision references § 2259 or its terms. *In re Doe*, 51 F.4th at 1030.

The district court was therefore correct that restitution is not statutorily mandated or authorized, despite the plea's restitution provision. Appendix-217–218, 185–195; Addendum-28–40; *see also*

Follet, 269 F.3d at 998 (as federal courts have "no inherent power to award restitution," restitution cannot be broadened beyond the statutory limits Congress sets).

Doe nonetheless sought mandamus relief seeking, for the first time, restitution under a separate, permissive restitution provision—18 U.S.C. § 3663. Petition, Dkt. 1. The panel thus examined whether "§ 3663(a)(3) grants statutory authority to district courts to award restitution whenever a defendant agrees in a plea agreement to pay restitution." *In re Doe*, 51 F.4th at 1025, 1028–29. This inquiry, however, improperly recast the binding restitution provision's terms. Untethered from the plea's written terms, the panel granted mandamus relief without ever resolving the actual issue underlying Doe's claim—whether the district court lacked authority to impose restitution under § 2259.

The panel's ultimate conclusion, that the plea agreement was merely an agreement to pay restitution under 18 U.S.C. § 3663(a)(3), is erroneous. Section 3663(a)(3) only permits a court to "order restitution in any criminal case *to the extent agreed to* by the parties in a plea agreement. 18 U.S.C. § 3663(a)(3) (emphasis added). It does not allow

"courts to award restitution *whenever* a defendant agrees in a plea agreement to pay restitution." *In re Doe*, 51 F.4th at 1025. Rather, any such agreement is cabined "to the extent" of the agreement. 18 U.S.C. § 3663(a)(3). The "extent" of the parties' restitution agreement here is imposition of mandatory restitution under § 2259.

The panel thus improvidently detoured through "extrinsic evidence" to expand the plea agreement. The restitution provision's clear language prohibits inquiry beyond its terms. *Clark*, 218 F.3d at 1095.

This detour was also erroneous. Contrary to the panel's suggestion, Alexander challenged his obligation to pay once it was discovered § 2259 does not mandate restitution in this case. *Compare* Appendix-185–195; Addendum-28–40 (arguing restitution is not mandated under § 2259 or authorized by the plea), *with In re Doe*, 51 F.4th at 1032 (erroneously asserting the "obligation to pay was never in doubt"). The literal language of the restitution provision's terms, coupled with Alexander's challenge below, disproves the panel's assertion that "extrinsic evidence unambiguously demonstrates" he agreed to pay for Doe's loss absent a statutory mandate to do so.

III. Contrary to Circuit precedent, the panel restructured the binding plea agreement's restitution provision against its clear language, interpreting the resulting ambiguity against Alexander.

The panel violated Circuit precedent by failing to interpret the parties' binding plea agreement's literal text as written. The panel also violated Circuit precedent by interpreting ambiguity against Alexander. The panel was not permitted to reconstruct the plea to void the erroneous acknowledgment. Rehearing is necessary to ensure the binding plea agreement is interpreted and applied as written in accord with the parties' understanding when it was entered.

A. Ninth Circuit precedent holds the government to a plea agreement's literal terms and construes any ambiguities against it.

Courts are often guided by contract principles in interpreting plea agreements. *See Breazeale v. Victim Servs.*, 878 F.3d 759, 769 (9th Cir. 2017). But this Court has "declined to extend the contract law analogy to invalidate a plea bargain based on a mutual mistake of law." *United States v. Barron*, 172 F.3d 1153, 1158 (9th Cir. 1999) (citing *United States v. Zweber*, 913 F.2d 705, 711 (9th Cir. 1990); *United States v. Partida-Parra*, 859 F.2d 629, 634 (9th Cir. 1988)).

Two contract principles routinely apply to plea agreements: (1) limiting the plea agreement to its literal terms; and (2) construing ambiguities against the government, as the drafter.

First, courts typically hold the government to a plea agreement's "literal terms." *United States v. Johnson*, 187 F.3d 1129, 1134 (9th Cir. 1999) (internal quotations omitted). Strict compliance with a plea's terms "encourages plea bargaining," "'an essential component of the administration of justice.'" *United States v. Alcala-Sanchez*, 666 F.3d 571, 575 (9th Cir. 2012) (quoting *Santobello v. New York*, 404 U.S. 257, 260 (1971)). Holding the government to the "literal terms of the plea agreement it made" ensures it "gets what it bargains for but nothing more." *United States v. Transfiguracion*, 442 F.3d 1222, 1228 (9th Cir. 2006) (quoting *United States v. Pruitt*, 32 F.3d 431, 433 (9th Cir. 1994)).

Second, because the government drafts plea agreements, the government "'is responsible for any lack of clarity such that ambiguities are construed in favor of the defendant.'" *Davies v. Benov*, 856 F.3d 1243, 1247 (9th Cir. 2017) (quoting *United States v. Charles*, 581 F.3d 927, 931 (9th Cir. 2009)). This Court "steadfastly" applies this *contra proferentem* rule to plea agreements, *Transfiguracion*, 442 F.3d at 1228,

"in light of the parties' respective bargaining power and expertise," *United States v. De la Fuente*, 8 F.3d 1333, 1338 (9th Cir. 1993).

But the contract law analogy is imperfect given heightened due process protections afforded defendants in criminal cases. *Barron*, 172 F.3d at 1158. A "defendant's underlying 'contract' right is constitutionally based and therefore reflects concerns that differ fundamentally from and run wider than those of commercial contract law." *United States v. Clark*, 218 F.3d 1092, 1095 (9th Cir. 2000) (quoting 5 Wayne R. Lafave, Jerold H. Israel & Nancy J. King, *Criminal Procedure*, § 21.2(d), at 57 (2d ed.1999)).

Contract principles give way, "as they must, to substantive and procedural requirements" protecting defendants' rights, such as the Federal Rules of Criminal Procedure. *Breazeale*, 878 F.3d at 769 (citing Fed. R. Crim. P. 11 (governing plea agreements)). "The interests at stake and the judicial context in which they are weighed require that something more than contract law be applied." *Barron*, 172 F.3d at 1158. Thus, this Court holds a plea agreement cannot be invalidated based on a mutual mistake of law. *Id.* at 1159.

B. The panel erroneously disregarded the literal terms of the plea agreement, construing the resulting ambiguity against Alexander.

The panel failed to honor this Court's established principles guiding plea agreement interpretation when it invalidated the restitution provision in the parties' binding plea agreement by rewriting it. Correction of the panel's flawed analysis is needed to maintain uniformity in the Court's decisions and protect the plea process.

The restitution provision provides:

> The Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim(s). *See* 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).

In re Doe, 51 F.4th at 1030.

To interpret this restitution provision, a reviewing court must determine what Alexander "reasonably understood to be its terms at the time of the agreement." *United States v. Anderson*, 970 F.2d 602, 607 (9th Cir. 1992), *as amended*, 990 F.2d 1163 (9th Cir. 1993) (citing *United States v. Packwood*, 848 F.2d 1009, 1011 (9th Cir. 1988)).

Here, the provision's first sentence identifies the parties' foundational understanding for restitution—the belief that restitution was mandatory under 18 U.S.C. § 2559. *See In re Doe*, 51 F.4th at 1030. The first sentence is thus the operative sentence against which the balance of the provision relies.

The second and third sentences, in turn, direct the district court how to calculate restitution under § 2259. The second sentence explains "such restitution" (referring to the mandated restitution under § 2259 in the first sentence) can include Doe's losses arising from Alexander's conviction, dismissed counts, and uncharged conduct. *In re Doe*, 51 F.4th at 1030. The third sentence states the calculation will include the "full amount" of Doe's losses "as defined in 18 U.S.C. § 2259(b)(3)." *Id.*

Yet the panel restructured the restitution provision, reading its three sentences in reverse order. Doing so, it asserted the first sentence meant only that Alexander "knows that he will have to pay restitution; only the amount is at issue." *In re Doe*, 51 F.4th at 1031. This assertion misinterprets the parties' plain language. Alexander specifically "acknowledge[d] that the conduct to which he is entering a

plea is gives [sic] rise to mandatory restitution to the victim(s)," citing "18 U.S.C. § 2259." *Id.* at 1026, 1030. Because § 2259 does not mandate restitution, the parties' mutual mistake of law on this point prohibits a restitution award under the binding plea's terms.

Treating the third sentence as the operative sentence, the panel found the first sentence acknowledging restitution was mandatory under § 2259 "not entirely clear." *In re Doe*, 51 F.4th at 1030–31. With this organizational reformation, the panel interpreted the third sentence to stand as Alexander's flat "agree[ment] to pay Jane Doe the six categories of loss defined in § 2559(b)(3)." *Id.* It next interpreted the second sentence as defining the conduct the district "court may consider in determining loss," ignoring that "such restitution" references that mandated by § 2259. *Id.* at 1030. It concluded by stating "the purpose of the [first] sentence," "when viewed in isolation," "was not entirely clear," because the conduct did not give rise to mandatory restitution. *Id.* at 1031.

Construing the ambiguity created by its reverse-order reading against Alexander, the panel "interpret[ed] the first sentence as simply acknowledging Defendant's obligation to pay restitution," without

addressing the mutual mistake of law. *Id.* Based on its created ambiguity and disregarding the literal text, the panel found Alexander agreed to pay restitution under 18 U.S.C. § 3663(a)(3)—a statute that does not mandate restitution for the conduct to which he pled. *Id.* But even if an ambiguity existed, the panel was required to construe the ambiguity in Alexander's favor as the government drafted the plea agreement. *De la Fuente*, 8 F.3d at 1339 (noting the rule of *contra proferentem* applies when "each party's proffered interpretation is neither clearly supported by the language of the agreement nor 'necessarily inconsistent with it either'").

The panel's reconstruction of a binding plea agreement requires correction. The panel failed to interpret the restitution provision according to its "literal terms," *Packwood*, 848 F.2d at1012, or read its sentences in context, *Flores-Figueroa v. United States*, 556 U.S. 646, 652 (2009). It instead employed a reverse-order reading that stripped the restitution provision of both, construing the resulting ambiguity against Alexander.

The restitution agreement hinges on the mutual acknowledgment that restitution is mandated under § 2259. That the restitution's

acknowledgment is legally erroneous did not allow the panel to rewrite and invalidate it. A mutual mistake of law cannot alter a plea agreement. *Transfiguracion*, 442 F.3d at 1229 ("The inability to rescind a plea agreement based on a mutual mistake of law applies to criminal defendants as well as to the government."); *see also United States v. Manzo*, 675 F.3d 1204, 1210–11 (9th Cir. 2012) (same)

The panel was required to enforce the restitution provision as written. Had it done so, it would have had to affirm the district court's decision that it could not order restitution in this case.

The panel was not free to alter the agreement's terms to avoid a mutual mistake of law, nor was it free to correct the error in the government or Doe's favor. And the panel was not free to expand the extent of the agreement beyond its terms. Review is requested to correct the panel's interpretive errors.

Conclusion

Plea agreements are essential to our criminal justice system as it is "a system of pleas, not a system of trials." *Lafler v. Cooper*, 566 U.S. 156, 170 (2012). It is imperative this Court maintain its precedent requiring courts to interpret plea agreements according to their literal

terms and construe any ambiguities against the government. Otherwise, there is no incentive for defendants to engage in pleas that will not be honored.

Dated: December 19, 2022.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

s/ Amy B. Cleary
Amy B. Cleary
Assistant Federal Public Defender

s/ Wendi L. Overmyer
Wendi L. Overmyer
Assistant Federal Public Defender

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Mr. Vonteak Alexander No. 24190-111
FCI Victorville Medium II
P.O. Box 3850
Adelanto, CA 92301

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Petition for Panel Rehearing and En Banc Consideration
by Party in Interest Vonteak Alexander

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APPENDIX

51 F.4th 1023
United States Court of Appeals, Ninth Circuit.

IN RE: Jane DOE,
Jane Doe, Petitioner,
v.
United States District Court for the District of Nevada, Las Vegas, Respondent,
Vonteak Alexander; United States of America, Real Parties in Interest.

No. 22-70098
|
Argued and Submitted September 19, 2022 San Francisco, California
|
Filed October 25, 2022

Synopsis

Background: Sex trafficking victim filed petition for writ of mandamus pursuant to Crime Victims' Rights Act (CVRA) alleging that district court erred in concluding that it lacked statutory authority to order her assailant to pay restitution.

Holdings: The Court of Appeals, Graber, Circuit Judge, held that:

[1] district court had statutory authority to order defendant to pay restitution, and

[2] defendant's plea agreement obligated him to pay restitution.

Petition granted.

Procedural Posture(s): Petition for Writ of Mandamus.

West Headnotes (6)

[1] **Mandamus** Scope of inquiry and powers of court

In reviewing petition for writ of mandamus pursuant to Crime Victims' Rights Act (CVRA), Court of Appeals applies ordinary standards of appellate review, such as de novo review for legal conclusions, clear-error review for factual findings, and abuse-of-discretion review for discretionary judgments. 18 U.S.C.A. § 3771(d)(3).

[2] **Sentencing and Punishment** Effect of plea bargain or other agreement

District court had statutory authority to order defendant convicted of sex trafficking to pay restitution to his victim to extent agreed to by defendant in plea agreement, even if defendant's conduct, or crimes to which defendant pled guilty, would not otherwise have given rise to mandatory restitution. 18 U.S.C.A. § 3663(a)(3).

[3] **Sentencing and Punishment** Effect of plea bargain or other agreement

If defendant has agreed to pay restitution in plea agreement, then district court has statutory authority to order agreed-upon restitution. 18 U.S.C.A. § 3663(a)(3).

[4] **Criminal Law** Representations, promises, or coercion; plea bargaining

Plea agreements are contractual in nature and are measured by contract law standards.

[5] **Criminal Law** Representations, promises, or coercion; plea bargaining

In interpreting plea agreement, court must review plea agreement as a whole and, if plea agreement's terms have clear meaning, then its analysis is complete, but if term of plea agreement is not clear on its face, court looks to facts of case to determine what parties reasonably understood to be agreement's terms; if, after examining extrinsic evidence, court still finds ambiguity regarding what parties reasonably understood to be terms of agreement, it must then interpret any remaining ambiguity in defendant's favor.

[6] **Criminal Law** Representations, promises, or coercion; plea bargaining

Sentencing and Punishment Effect of plea bargain or other agreement

Provision of defendant's plea agreement in which he "acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim," agreed that court could consider "losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct," and agreed to pay victim "full amount of the victim's losses" as defined in Mandatory Restitution for Sexual Exploitation of Children Act obligated defendant to pay restitution, even though he was not charged with any crimes subject to restitution under Act; everyone who negotiated plea agreement understood that defendant agreed to pay restitution to victim, and defendant's only objection was to sufficiency of evidence supporting particular amounts requested. 18 U.S.C.A. § 2259(b)(3).

***1024** Petition for Writ of Mandamus, D.C. No. 2:17-cr-00072-RFB

Attorneys and Law Firms

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Amy B. Cleary (argued), Rene L. Valladares, and Wendi L. Overmyer, Assistant Federal Public Defenders, Federal Public Defender's Office, Las Vegas, Nevada; Christopher Oram, Law Office of Christopher R. Oram LTD, Las Vegas, Nevada, for Real Party in Interest Vonteak Alexander.

Before: Susan P. Graber, Michelle T. Friedland, and Lucy H. Koh, Circuit Judges.

OPINION

GRABER, Circuit Judge:

***1025** Defendant Vonteak Alexander kidnapped Jane Doe, who was then 12 years old, and drove her from California to Las Vegas, Nevada, knowing that she would engage in prostitution. Jane Doe eventually alerted authorities that she was a missing juvenile, and police officers arrested Defendant. Facing five serious criminal charges, Defendant entered into a written plea agreement. Pursuant to that agreement, in exchange for the government's promise to drop the five charges, Defendant would plead guilty to two lesser crimes and would pay restitution to Jane Doe. The district court presided over several hearings aimed at determining the proper amount of restitution. After a new lawyer took over Defendant's representation, Defendant argued for the first time that the district court lacked statutory authority to order any restitution whatsoever. The district court reluctantly agreed with Defendant's legal argument. Accordingly, the court issued an order denying Jane Doe's request for restitution on the sole ground that the court lacked statutory authority to award it.

Jane Doe then filed this petition for a writ of mandamus pursuant to 18 U.S.C. § 3771(d)(3), a provision of the Crime Victims' Rights Act. We publish this opinion to reiterate what we held in two cases decided three decades ago: that 18 U.S.C. § 3663(a)(3) grants statutory authority to district courts to award restitution whenever a defendant agrees in a plea agreement to pay restitution. United States v. McAninch, 994 F.2d 1380, 1384 n.4 (9th Cir. 1993); United States v. Soderling, 970 F.2d 529, 534 n.9 (9th Cir. 1992) (per curiam). Because the district court has statutory authority to carry out the parties' intent that Defendant pay Jane Doe restitution, we grant the petition and instruct the district court to address, in the first instance, Defendant's evidentiary challenges and other arguments concerning the appropriate amount of restitution.

FACTUAL AND PROCEDURAL HISTORY

The government originally indicted Defendant on five counts that pertained to sex trafficking: (1) conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 1594; (2) sex trafficking, in violation of 18 U.S.C. § 1591; (3) conspiracy to transport for prostitution or other sexual activity, in violation of 18 U.S.C. § 2423; (4) transportation for prostitution or other criminal activity, in violation of 18 U.S.C. § 2423; and (5) coercion and enticement, in violation of 18 U.S.C. § 2422. The parties entered into plea negotiations, and the government later filed a criminal information charging Defendant with only two counts of interstate travel in aid of unlawful activity, in violation of 18 U.S.C. § 1952(a)(3)(A). The criminal information does not specify the nature of the unlawful activity.

The government and Defendant then negotiated a binding plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (C). Defendant agreed to plead guilty to the two counts in the criminal information and to pay restitution. In exchange, the government agreed to dismiss the indictment and to forgo bringing any additional charges stemming from the investigation. Defendant admitted that he drove Jane Doe from California to Las ***1026** Vegas, Nevada, with the intent that Jane Doe engage in unlawful activity and that he then attempted to facilitate Jane Doe's engaging in unspecified unlawful activity. The parties agreed to be bound by any sentence within the range of 60 months to 96 months of imprisonment.

The plea agreement also required Defendant to pay restitution:

> The Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim(s). See 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).

Section 2259(b)(3) [1] defines the "full amount of the victim's losses" to include six categories of loss, including some costs of medical care and reasonable attorneys' fees.

1 Since Defendant committed his crimes in 2016, Congress has relabeled § 2259(b)(3) as subsection (c)(2), and Congress made a conforming change to § 1593(b)(3), which formerly cited § 2259(b)(3) and now cites § 2259(c)(2). Unless otherwise noted, we refer to the versions of §§ 1593 and 2259 that were in effect in 2016.

The district court then presided over a plea colloquy. The government's lawyer summarized the terms of the plea agreement and stated, with respect to restitution, that Defendant "agrees to pay the victim the full amount of victim's losses as defined in 18 U.S.C. § 2259(b)(3)." Defendant and his lawyer agreed with the summary. The court accepted Defendant's guilty plea and scheduled sentencing.

The district court later presided over a sentencing hearing. Defendant sought the low end of the plea agreement's range, 60 months; Jane Doe and the government sought the high end, 96 months; and the court sentenced Defendant to 96 months in prison. Consistent with a victim's statement that she had filed before sentencing, Jane Doe requested $15,000 in restitution. Defendant's lawyer requested that restitution be considered later, during a separate hearing. He elaborated that the government bore the burden of proof as to restitution and that, in his view, the government failed to provide sufficient evidence to support the restitution amount. The court agreed to defer a decision on restitution and later scheduled a hearing on restitution. [2]

2 Although restitution remained undecided, the district court entered a judgment of conviction, and Defendant timely appealed. A motions panel of this court granted Defendant's unopposed motion to stay the direct appeal pending final resolution of this mandamus petition. Case No. 21-10164, Docket No. 19.

On the day before the scheduled hearing, Defendant filed a motion pertaining to restitution. Defendant argued that Jane Doe had used the wrong legal formula when calculating restitution. In particular, 18 U.S.C. § 1593(b)(3) defines the full amount of the victim's losses as having "the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act." (Emphasis added.) In calculating loss, Jane

Doe used the formula supplied by § 1593(b)(3) but not found expressly in § 2259(b)(3). In his motion, Defendant asserted that § 1593(b)(3) "employs a unique restitution calculation that ***1027** differs significantly from Sections 2259 and 3663." According to Defendant, the "unique loss provisions" of § 1593(b)(3) should not apply here. Defendant argued, instead, that "the Court should reject Jane Doe's proposed restitution calculation[ ] of $15,000 ... in favor of a restitution calculation consistent with 18 U.S.C. §§ 2259(c)(2) or 3663A(b)(2)."[3] In short, Defendant asked the court to calculate loss pursuant to § 2259's definition, as the parties had agreed, and not pursuant to § 1593's definition.

3 The passage contains two typographical errors, which we have corrected here and on page 18. Defendant cited "§ 2559," a statute that does not exist. From context, it is clear that he meant § 2259. The passage also contains an extra open-parens, which we have omitted.

At the scheduled hearing the next day, Defendant's lawyer reiterated that § 2259, not § 1593, provides the correct method for calculating restitution. The district court "agree[d] with [Defendant's lawyer] that 2259 is the statute that applies." Turning to Jane Doe's request for restitution, the district court specifically found that Defendant did not force Jane Doe into acts of prostitution; Defendant was not "her pimp." The court therefore denied restitution to the extent that it depended on that theory.

But the court was clear that other categories of restitution, as defined by § 2259, such as current and future medical and psychological expenses, were potentially available to Jane Doe. Because Defendant's motion was filed late on the day before the hearing, the district court allowed Jane Doe time to file a supplemental request for restitution. On a separate topic, Defendant's lawyer informed the court and the parties that he was moving out of state but that another lawyer from his office would represent Defendant going forward.

Jane Doe timely filed a supplemental request for restitution. Instead of the original $15,000, Jane Doe now requested approximately $1.5 million. Tracking the categories in § 2259(b)(3), she sought lost future earnings, future medical expenses, attorney's fees, transportation costs, and past lost wages.

About six months later, Defendant—now represented by a new lawyer— filed an opposition to restitution. Defendant argued for the first time that the district court "lacks authority to order restitution." According to Defendant, because he did not commit a crime under any statute that permits or mandates an order of restitution, the court lacked authority to order restitution.

The parties then appeared for a final hearing on restitution. Defendant's lawyer stated that "I recognize that [Defendant] in his plea agreement agreed to pay restitution." But, Defendant's lawyer continued, § 2259 does not "allow the Court to order restitution." In response to the court's questions about how Defendant could renounce his agreement to pay restitution, Defendant's lawyer responded candidly: "I was not a party to this plea agreement, Your Honor. I came aboard this case I think after four to five years of litigation and have tried my very best to get up to speed."

The government took the "same lockstep" position as Jane Doe's and "st[ood] by th[e] plea agreement," asking the court to order restitution to Jane Doe. With respect to the court's authority to order restitution, Jane Doe's lawyer stated that, "if there is this plea agreement which articulates and calls out that restitution, the Court has the authority" to order restitution.

***1028** Defendant's lawyer conferred with him and stated that "he is requesting that the Court impose restitution of $1,000." His lawyer continued that Defendant "is understanding that his plea agreement – in his plea agreement he agreed to pay restitution." Defendant also raised, in the alternative, several arguments against the specific requests for restitution, such as a lack of evidentiary support and a lack of proximate cause.

In May 2022, the district court issued a short order denying restitution. "The Court finds that despite the egregious conduct admitted by Defendant in this case it cannot order restitution to Jane Doe." The court held that § 2259 was not directly applicable because Defendant "did not commit any of the enumerated offenses under the relevant chapter." The court rejected the argument that the plea agreement itself "could provide a basis for restitution" because a "consent to application does not itself expand the Court's legal authority." The court concluded that "while the Court finds that [Defendant] committed egregious acts by which Jane Doe suffered and will continue to suffer, the Court simply does not find that it has the authority to order restitution to Jane Doe in this case."

Jane Doe timely filed this petition. Title 18 U.S.C. § 3771(d)(3) requires us to issue a decision within 72 hours unless the parties stipulate to an alternative schedule. The parties stipulated to a longer time frame, and a motions panel issued an opinion adopting the parties' stipulated schedule. Jane Doe v. U.S. Dist. Ct. (In re Doe), 50 F.4th 1247, 1253 (9th Cir. 2022). We now issue this opinion on the merits of the petition.

STANDARD OF REVIEW

[1] In most cases in which a petitioner seeks a writ of mandamus, we apply the stringent standard of review described in Bauman v. United States District Court, 557 F.2d 650, 654–55 (9th Cir. 1977). Here, though, Jane Doe seeks mandamus through 18 U.S.C. § 3771(d)(3), the Crime Victims' Rights Act's provision aimed at protecting victims' rights. We held in Kenna v. United States District Court for the Central District of California, 435 F.3d 1011 (9th Cir. 2006), that the Bauman factors do not apply in this circumstance; instead, we review for "an abuse of discretion or legal error." Id. at 1017. Some other circuits disagreed but, in 2015, Congress amended the statute in a way that clarifies that Kenna got it right: "In deciding such application, the court of appeals shall apply ordinary standards of appellate review." 18 U.S.C. § 3771(d)(3). Accordingly, we apply the ordinary standards of appellate review, such as de novo review for legal conclusions, clear-error review for factual findings, and abuse-of-discretion review for discretionary judgments. See In re Wild, 994 F.3d 1244, 1254 n.10 (11th Cir. 2021) (en banc) (holding that "the [statute] (as amended in 2015 to resolve a then-existing circuit split) directs us to 'apply ordinary standards of appellate review' in deciding the mandamus petition, see 18 U.S.C. § 3771(d)(3)—rather than the heightened 'clear usurpation of power or abuse of discretion' standard that typically applies in the mandamus context" (second citation omitted)), cert. denied, —— U.S. ——, 142 S. Ct. 1188, 212 L.Ed.2d 54 (2022). We therefore review de novo the questions of law raised by the parties here. Balla v. Idaho, 29 F.4th 1019, 1024 (9th Cir. 2022).

DISCUSSION

[2] Jane Doe asserts a single legal argument: the district court erred in concluding that it lacked statutory authority ***1029** to order restitution. We agree. In enacting 18 U.S.C. § 3663(a)(3), Congress expressly granted district courts authority to order restitution whenever a defendant has agreed in a plea agreement to pay restitution. Defendant did so. Therefore, pursuant to the plain meaning of the statutory text and consistent with binding precedent, the district court had statutory authority to order restitution.

[3] We begin with the statutory text. Section 3663(a)(3) provides: "The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement." Congressional intent is clear. If a defendant has agreed to pay restitution in a plea agreement, then the plain meaning of the statutory text grants the district court statutory authority to order the agreed-upon restitution.

Our cases, decided shortly after Congress enacted the provision, confirm that straightforward reading. "[S]ection 3663(a)(3) clearly provides that plea agreements allowing for restitution greater than the losses caused by the offenses of conviction are authorized by law." Soderling, 970 F.2d at 534 n.9. "Under 18 U.S.C. § 3663(a)(3), ... a court can order restitution in any criminal case to the extent agreed to by the parties to a plea agreement." McAninch, 994 F.2d at 1384 n.4. Decisions by our sister circuits are in accord. E.g., United States v. Maturin, 488 F.3d 657, 661 (5th Cir. 2007); United States v. Blake, 81 F.3d 498, 507 (4th Cir. 1996); United States v. Guthrie, 64 F.3d 1510, 1514 (10th Cir. 1995); United States v. Silkowski, 32 F.3d 682, 688–89 (2d Cir. 1994).

The statutory text and our cases are thus clear: in "any" criminal case, regardless of the crimes of conviction, and regardless of the defendant's conduct, a defendant may agree in a plea agreement to pay restitution to a victim. See, e.g., Olympic Forest Coal. v. Coast Seafoods Co., 884 F.3d 901, 906 (9th Cir. 2018) ("[T]he term 'any' [is] broad and all-encompassing."). Section 3663(a)(3) authorizes the district court to order restitution in that circumstance. In other words, even if the defendant's conduct, or the crimes

to which a defendant pleads guilty, would not otherwise give rise to mandatory restitution, a defendant may agree to pay restitution, and the district court has authority to enforce that agreement by ordering restitution.

We note that § 3663(a)(3) potentially benefits the government and victims by allowing them to achieve an order of restitution through a plea agreement without regard to the defendant's crimes of conviction. Importantly, though, § 3663(a)(3) also potentially benefits defendants. The statute allows defendants to plead guilty to crimes that carry less severe penalties overall but that do not, by themselves, authorize restitution. Here, for example, Defendant initially faced sex-trafficking charges that carried mandatory minimum sentences far greater than the 96-month sentence that he received though the plea deal. Without § 3663(a)(3)'s allowance of restitution in any plea deal, victims such as Jane Doe might object to plea deals to lesser charges, complicating a defendant's attempt to avoid more serious charges and longer terms of imprisonment. Section 3663(a)(3) thus gives the government, victims, and defendants flexibility to reach a just result for all involved.

Defendant does not dispute that § 3663(a)(3) authorizes district courts to award restitution as agreed to by the parties in a plea agreement. Rather, Defendant argues that the district court lacked authority to award restitution under the ***1030** plea agreement in this case.[4] First, Defendant argues that the restitution provision in the plea agreement unambiguously limited the district court's authority such that the court could award restitution only for those crimes that trigger mandatory restitution under 18 U.S.C. § 2259. Because none of Defendant's conduct amounted to a crime that fell within that category, Defendant argues, the district court lacked authority to award Jane Doe restitution under the plain terms of the plea agreement. Second, Defendant argues that even if the plea agreement is ambiguous, we should interpret that ambiguity in his favor and hold that the district court lacked authority to award restitution under the plea agreement. We reject both arguments.

4 We reject, as unsupported by the record, Defendant's alternative argument that Jane Doe waived reliance on § 3663(a)(3). Nothing in the record suggests that Jane Doe intentionally relinquished the right to rely on § 3663(a)(3). See United States v. Depue, 912 F.3d 1227, 1232–33 (9th Cir. 2019) (en banc) (describing the requirements to prove waiver). To the contrary, Jane Doe expressly argued to the district court that, because the parties agreed to restitution in the plea agreement, the court had the authority to order restitution.

[4] **[5]** Our methodology for interpreting a plea agreement is settled. United States v. Clark, 218 F.3d 1092, 1095 (9th Cir. 2000). We begin "with the fundamental rule that plea agreements are contractual in nature and are measured by contract law standards." Id. (brackets, citation, and internal quotation marks omitted). We review the plea agreement as a whole and, if the terms of the plea agreement have a clear meaning, then our analysis is complete. Id. at 1095–96. "If, however, a term of a plea agreement is not clear on its face, we look to the facts of the case to determine what the parties reasonably understood to be the terms of the agreement." Id. at 1095. "If, after we have examined the extrinsic evidence, we still find ambiguity regarding what the parties reasonably understood to be the terms of the agreement," we then interpret any remaining ambiguity in the defendant's favor. Id.

To reiterate, the restitution provision in the plea agreement stated:

> The Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution to the victim(s). See 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).

We begin with the most natural reading of the paragraph. The operative sentence—the agreement to pay—is the final sentence: Defendant agreed to pay Jane Doe the six categories of loss defined in § 2259(b)(3). The preceding sentence describes the conduct that the court may consider in determining loss: "losses derived from the counts of conviction as well as losses caused from dismissed counts

and uncharged conduct in which the Defendant has been involved." Putting it all together, Defendant agreed to pay Jane Doe the six categories of loss described in § 2259, and the court could consider all of Defendant's conduct in calculating loss.

Those final two sentences of the restitution provision thus appear to authorize the district court to order restitution resulting not only from the counts of conviction but also from the dismissed counts and uncharged ***1031** conduct. Unlike in United States v. Phillips, 174 F.3d 1074, 1077 (9th Cir. 1999), in which the defendant "did not specifically agree to pay restitution for [specific] counts in exchange for the government's promise to drop those charges," Defendant's plea agreement here specified that restitution would encompass the dismissed counts and uncharged conduct, and his plea agreement obligated the government to dismiss the original indictment in exchange for his consent to the plea deal.

[6] But the first sentence of the restitution provision, when viewed in isolation, is not a model of clarity. In that sentence, Defendant "acknowledges" that his conduct gives rise to "mandatory restitution," and the sentence ends with a citation to § 2259. Section 2259 itself mandates restitution only for crimes defined in Chapter 110 of Title 18. 18 U.S.C. § 2259(a). Neither the crimes of conviction nor the originally charged crimes in the indictment fall within Chapter 110, so the purpose of the sentence is not entirely clear.[5] Read in conjunction with the later sentences, however, we interpret the first sentence as simply acknowledging Defendant's obligation to pay restitution.

5 As described in text, § 2259 authorizes restitution only for convictions under Chapter 110. In the same plea agreement, Defendant pleaded guilty only to two counts of violating 18 U.S.C. § 1952(a)(3)(A). Those counts do not fall within Chapter 110, so those counts do not trigger § 2259's mandatory restitution provision. For the restitution paragraph to have any meaning, then, it must mean more than simply that Defendant's convictions trigger § 2259. To the extent that Defendant advances an interpretation that necessarily renders the restitution paragraph void on its face, we reject that interpretation. See United States v. Medina-Carrasco, 815 F.3d 457, 462 (9th Cir. 2016) (rejecting, as "contrary to basic principles of contract interpretation," an interpretation of a plea agreement that "would render meaningless" a provision of the plea agreement); accord United States v. Schuman, 127 F.3d 815, 817 (9th Cir. 1997) (per curiam); United States v. Michlin, 34 F.3d 896, 901 (9th Cir. 1994).

It is possible to read the restitution paragraph in a more constrained manner. Specifically, one could interpret the passage as an agreement to pay restitution only to the extent that the district court later determined that Defendant's conduct resulted in the commission of a crime encompassed by § 2259, that is, a crime defined in Chapter 110. Because the district court found (and Jane Doe does not challenge in the mandamus petition) that Defendant's conduct did not violate § 2259, Defendant would owe no restitution. In particular, one could read the first sentence as providing that Defendant agrees to pay mandatory restitution only to the extent that his "conduct," had it been charged as a crime, would "give[ ] rise to mandatory restitution ... [pursuant to] § 2259." The third sentence's citation of § 2259 comports with this interpretation: "Defendant agrees to pay the victim(s) the 'full amount of the victim's losses' as defined in 18 U.S.C. § 2259(b)(3)."

But that interpretation contradicts other parts of the plea agreement. For example, the first sentence, read in its entirety, does not suggest that, if the district court later found (as it did here), that Defendant did not commit any crime under Chapter 110, then he would not have to pay any restitution. The first sentence states only that "[t]he Defendant acknowledges that the conduct to which he is entering a plea is gives [sic] rise to mandatory restitution." (Emphasis added.) That sentence, read in its entirety, suggests that Defendant knows that he will have to pay restitution; only the amount is at issue. Similarly, the limited interpretation contradicts the second sentence, which provides that the court may consider losses from all conduct ***1032** when "assessing such restitution," including the counts of conviction and the dismissed counts. Because neither the counts of conviction nor the dismissed counts fall within Chapter 110, it makes little sense to interpret "such restitution" as encompassing only the conduct that could have been charged under Chapter 110.

These competing interpretations show that the restitution provision is ambiguous. Accordingly, our next step is to "look to the facts of the case to determine what the parties reasonably understood to be the terms of the agreement." Clark, 218 F.3d at 1095. In our view, the record plainly

reflects that the parties all understood that Defendant had agreed to pay restitution, limited to the categories of loss described in § 2259(b)(3). Defendant objected to the use of a definition other than the definition found in § 2259; he disputed the factual sufficiency of the evidence supporting the restitution amount; and he disputed whether Jane Doe had shown proximate cause. But, until Defendant's new lawyer took the assignment, the record contains no suggestion whatsoever that anyone thought that Defendant could escape paying restitution altogether because of a lack of statutory authority, if the court later held that Defendant had not committed an offense triggering the mandatory restitution provision in § 2259. See id. at 1096 (looking to the understanding of "those who negotiated the agreement").

During the plea colloquy, the government's lawyer summarized that Defendant "agrees to pay the victim the full amount of victim's losses as defined in 18 U.S.C. § 2259(b)(3)." Defendant and his lawyer agreed with the government's summary. During sentencing, Defendant's lawyer objected substantively on the sole ground that the evidence supporting the restitution amount was insufficient. Before the first restitution hearing, Defendant objected only to Jane Doe's calculation method, which used the criteria particular to § 1593; indeed, Defendant expressly asked the court to use "a restitution calculation consistent with 18 U.S.C. §§ 2259(c)(2) or 3663A(b)(2)." During the first restitution hearing, Defendant's lawyer argued that § 2259 supplies the right formula for the amount that Defendant would have to pay, "which is a separate analysis than the analysis" under § 1593. During the second restitution hearing, Defendant requested that the district court "impose restitution" of a lower amount.

All of that conduct is consistent with our interpretation of the restitution provision; none of the conduct is consistent with the more limited interpretation of the restitution provision. Everyone who negotiated the plea agreement understood that Defendant agreed to pay restitution to Jane Doe. Defendant objected to the sufficiency of the evidence supporting particular amounts requested, and he insisted that restitution be limited to the categories found in § 2259. But Defendant's obligation to pay was never in doubt. In sum, "the extrinsic evidence unambiguously demonstrates" that Defendant agreed to pay restitution for Jane Doe's loss, as defined in § 2259(b)(3). Clark, 218 F.3d at 1096. Accordingly, the rule that ambiguities are construed against the government does not apply. See id. ("Only if the extrinsic evidence regarding the parties' intent fails to resolve the term's ambiguity must the court apply the rule construing ambiguous terms against the drafting party.").

CONCLUSION

We grant the petition for a writ of mandamus. Defendant agreed to pay restitution, limited to the six categories of loss described in 18 U.S.C. § 2259(b)(3). Title 18 U.S.C. § 3663(a)(3) grants district courts authority to award restitution whenever ***1033** a defendant agrees in a plea agreement to pay restitution. Accordingly, the district court has statutory authority to order restitution, and the court's holding to the contrary was legal error. We instruct the district court to address the parties' remaining arguments, including any factual disputes concerning the amount of loss, any factual disputes as to whether Defendant's conduct proximately caused the losses, and any other arguments raised by the parties.

PETITION GRANTED.

All Citations

51 F.4th 1023, 2022 Daily Journal D.A.R. 11,088

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA
v.
VONTEAK ALEXANDER

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17-cr-00072-RFB
USM Number: 24190-111

Date of Original Judgment: 5/4/2021 *(Or Date of Last Amended Judgment)*

PAUL RIDDLE, AFPD, KATHRYN NEWMAN, AFPD
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One and Two of Criminal Information filed 5/15/2019.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1952(a)(3)(A)	Interstate Travel in Aid of Unlawful Activity	4/16/2016	1
18 U.S.C. § 1952(a)(3)(A)	Interstate Travel in Aid of Unlawful Activity	4/16/2016	2

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) Any remaining ☑ 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.

5/10/2022
Date of Imposition of Judgment

Signature of Judge

RICHARD F. BOULWARE, II U.S. District Judge
Name and Title of Judge

5/10/0202
Date

***Restitution/JVTA removed.**
p 3, 5, 6, 7; p 4 added.

DEFENDANT: VONTEAK ALEXANDER
CASE NUMBER: 2:17-cr-00072-RFB

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :
Ninety-six (96) months; Forty-eight (48) months as to Count One to run consecutive to Count Two, Forty-eight (48) months as to Count Two to run consecutive to Count One.

☑ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be designated to the facility at Terminal Island, California

☑ 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: VONTEAK ALEXANDER
CASE NUMBER: 2:17-cr-00072-RFB

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : Three (3) years as to Counts One and Two; to run concurrent to one another.

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, not to exceed 104 tests annually..
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. § 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. * ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: VONTEAK ALEXANDER
CASE NUMBER: 2:17-cr-00072-RFB

* 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 specific risks posed by your criminal record and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the specific risks posed by your criminal record.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: VONTEAK ALEXANDER
CASE NUMBER: 2:17-cr-00072-RFB

SPECIAL CONDITIONS OF SUPERVISION

1. **No Contact** – You must not communicate, or otherwise interact, with the victim, either directly or through someone else, without first obtaining the permission of the probation office

Further conditions to be added upon release from BOP custody.

DEFENDANT: VONTEAK ALEXANDER
CASE NUMBER: 2:17-cr-00072-RFB

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00 **[$100 per count]**	$ 0.00 *	$ 0.00	$ 0.00	$ 0.00 *

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

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

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

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
*			

TOTALS	$ 0.00	$ * 0.00

* ☐ Restitution amount ordered pursuant to plea agreement $ *

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

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

☐ the interest requirement is waived for ☐ 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: VONTEAK ALEXANDER
CASE NUMBER: 2:17-cr-00072-RFB

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☑ Lump sum payment of $ 200.00* due immediately, balance due.

☐ not later than _____, or
☐ in accordance with ☐ 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:

*

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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.

2022 WL 1472887
Only the Westlaw citation is currently available.
United States District Court, D. Nevada.

UNITED STATES of America, Plaintiff,
v.
Vonteak ALEXANDER, Defendant.

Case No. 2:17-cr-00072-RFB
|
Signed 05/10/2022

Attorneys and Law Firms

Elham Roohani, Christopher Burton, U.S. Attorney's Office, Las Vegas, NV, for Plaintiff.

RESTITUTION ORDER

RICHARD F. BOULWARE, II, UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

***1** Before the Court is Jane Doe's Motion for Restitution [ECF No. 272], Defendant's response to Jane Doe [ECF No. 316], Jane Doe's Supplemental Memorandum [ECF No. 321], and Defendant's final reply to Jane Doe [ECF No. 353]. The Court held various hearings and conferences in this case relevant to restitution and they are incorporated by reference here. [ECF Nos. 83, 137, 146, 300, 318] For the reasons stated below, the Court denies Jane Does' request for restitution.

II. PROCEDURAL HISTORY

Mr. Alexander pled guilty on May 15, 2019, pursuant to a binding plea agreement to two counts of Interstate Travel in Aid of Unlawful in violation of 18 U.S.C. § 1952. The victim in this case sought restitution in a filing prior to sentencing. [ECF 272]. In this initial filing the victim sought $15,000 pursuant to 18 U.S.C. § 1593(a) and pursuant to 18 U.S.C. § 2259. This argument was based primarily on the assertion that the victim had been transported by Alexander for the purpose of engaging in prostitution and that the victim was thus entitled Alexander's alleged ill-gotten gains from her coerced prostitution. Alexander was sentenced on May 4, 2021, to 96 months in custody and three years of supervised release. [ECF No. 302] At this initial sentencing the Court imposed mandatory restitution in the amount of $5,000 pursuant to the JVTA. The Court deferred ruling on any other restitution award.

The Court held a virtual hearing on restitution on August 5, 2021. At the hearing the Court found that restitution could not be based upon any alleged ill-gotten gains from the victim being coerced into prostitution by Alexander under Section 1593 as the record did not demonstrate that he had coerced her into prostitution or had retained any proceeds from such illegal activity. The Court did find that the record, including the PSR and plea agreement, established that the victim had engaged prostitution and that Alexander had transported her knowing that she would engage in such activity. At the hearing on August 5, 2021, Alexander through his counsel conceded that Section 2259 was applicable to this case and that the victim in this case could collect under that statute. While he did contest at the hearing any restitution based upon him receiving any proceeds from any alleged criminal activity of the victim, he did not contest that Section 2259 applied to his restitution and he did not contest that he had admitted in his plea agreement that Section 2259 applied. The Court continued the hearing to a future date to allow the victim's attorney to file a response to a late filing of defense counsel. The parties did agree that the JVTA did not apply in this case and that it should not be in the judgment.

Jane Doe subsequently filed a memorandum seeking restitution in the amount of $1,466,482.82. [ECF No. 321] The argument for restitution rested on Section 2259 and again on Section 1593. Jane Doe argued that based upon lost future income, future medical expenses (including psychological and psychiatric care), and attorney fees and costs. Jane Doe provided detailed calculations and projections as to the various restitution categories.

***2** Alexander opposed this revised restitution request from Jane Doe. Alexander argued that, despite having previously conceded in court and in his plea agreement that Section 2259 applied to his case for the purpose of imposing restitution, the Court could not lawfully impose a restitution award as his counts of conviction fall outside the authority of Section 2259.

III. DISCUSSION

The Court finds that despite the egregious conduct admitted by Defendant in this case it cannot order restitution to Jane Doe.

First, and foremost, the Court finds that Jane Doe is not entitled to restitution under Section 2259 because Alexander

did not commit any of the enumerated offenses under the relevant chapter. Section 2259 provides that a district court "shall order restitution for any offense" under Chapter 110 of Title 18. Alexander, however, pled guilty to two counts of Interstate Travel in Aid of Unlawful Activity under 18 U.S.C. § 1952(a)(3)(A). This offense is not an offense in Chapter 110. The Court thus finds that it cannot order restitution pursuant to Section 2259.

Second, the Court rejects Jane Doe's argument that the Court can find based upon the record that Defendant Alexander has committed an offense under Chapter 110 even if he did not admit to one in his plea allocution. The Court, having reviewed the record and heard evidence in this case, does not find that the record establishes that Alexander committed an offense under Chapter 110. While the Court acknowledges that various assertions as to Alexander's conduct have been made by Jane Doe, the Court does not find that such assertions and the record are legally sufficient to establish that Alexander committed a sex offense under Chapter 110. United States v. Kennedy, 643 F.3d 1251, 1260 (9th Cir. 2011).

Third, the Court is also not persuaded that it can order restitution simply because Alexander agreed in his plea agreement that Section 2259 could provide a basis for restitution. The Court must still find that the statute authorizes an award of restitution. A consent to application does not itself expand the Court's legal authority under the statute.

Fourth, the Court also rejects Jane Doe's argument that restitution can be based upon 18 U.S.C. § 1593. The Court has already considered and rejected this argument previously. [ECF No. 317]. The Court finds that holding still applies to Jane Doe's request.

Finally, the Court also finds that it must amend the Judgment as the parties and the Court all agreed that restitution under the Justice for Victims of Trafficking Act ("JVTA"), 18 U.S.C. § 3014, does not apply in this case. [ECF No. 318] The Judgment must be amended to remove any award of restitution in this case.

In conclusion, while the Court finds that Alexander committed egregious acts by which Jane Doe suffered and will continue to suffer, the Court simply does not find that it has the authority to order restitution to Jane Doe in this case.

IV. CONCLUSION

IT IS HEREBY ORDERED that the request for restitution is DENIED. The Defendant's Motion [ECF 316] is GRANTED consistent with this order.

IT IS FURTHER ORDERED that the Court will file an Amended Judgment removing any award of restitution in this case.

All Citations

Slip Copy, 2022 WL 1472887

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Attorneys for the United States

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

United States of America,

Plaintiff,

vs.

Vonteak Alexander,

Defendant.

CASE NO: 2:17-cr-00072-RFB

BINDING PLEA AGREEMENT UNDER FEDERAL RULE CRIMINAL PROCEDURE 11 (c)(1)(A) and (C)

Plaintiff United States of America, by and through NICHOLAS A. TRUTANICH, United States Attorney, Elham Roohani and Christopher Burton, Assistant United States Attorneys, the Defendant VONTEAK ALEXANDER, and the Defendant's attorney, PAUL RIDDLE, ESQ, Assistant Federal Public Defender, submit this Binding Plea Agreement under Federal Rule Criminal Procedure 11(c)(1)(A) and (C).

I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and VONTEAK ALEXANDER (the Defendant). This Plea Agreement, if accepted, binds the Defendant and the United States Attorney's Office for the District of Nevada, and the Court. It does not bind

any other prosecuting, administrative, or regulatory authority, or the United States Probation Office.

The Plea Agreement sets forth the parties' agreement regarding criminal charges referenced in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It does not control or prohibit the United States or any agency or third party from seeking any other civil or administrative remedies directly or indirectly against the Defendant.

II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS

A. Guilty Plea. The Defendant knowingly and voluntarily agrees to plead guilty to the Superseding Criminal Information:

Count 1: Interstate Travel in Aid of Unlawful Activity, in violation of 18 U.S.C. § 1952(a)(3)(A); and

Count 2: Interstate Travel in Aid of Unlawful Activity, in violation of 18 U.S.C. § 1952(a)(3)(A).

B. Waiver of Trial Rights. The Defendant acknowledges that he has been advised and understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain rights guaranteed to all Defendants by the laws and the Constitution of the United States. Specifically, the Defendant is giving up:

1. The right to proceed to trial by jury on all charges, or to a trial by a judge if the Defendant and the United States both agree;

2. The right to confront the witnesses against the Defendant at such a trial, and to cross-examine them;

3. The right to remain silent at such a trial, with assurance that his silence could not be used against him in any way;

4. The right to testify in his own defense at such a trial if he so chooses;

5. The right to compel witnesses to appear at such a trial and testify in the Defendant's behalf;

6. The right to have the assistance of an attorney at all stages of such proceedings; and

7. The right to be indicted by a grand jury.

C. Withdrawal of Guilty Plea. The Defendant will not seek to withdraw his guilty plea after he has entered it in court.

D. Additional Charges. The United States agrees not to bring any additional charges against the Defendant arising out of the investigation in the District of Nevada which culminated in this Plea Agreement and based on conduct known to the United States, except that the United States reserves the right to prosecute the Defendant for any crime of violence as defined by 18 U.S.C. § 16.

III. ELEMENTS OF THE OFFENSES

A. The elements of Interstate Travel in Aid of Unlawful Activity under 18 U.S.C. § 1952(a)(3)(A) are:

1. The Defendant traveled in interstate or foreign commerce; and

2. The Defendant traveled with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity; and

3. Thereafter the Defendant performed or attempted to perform the specified unlawful activity in violation of the laws of the State in which it was committed.

IV. FACTS SUPPORTING GUILTY PLEA

A. The Defendant will plead guilty because he is, in fact and under the law, guilty of the crime charged.

B. The Defendant acknowledges that if he elected to go to trial instead of pleading guilty, the United States could prove his guilt beyond a reasonable doubt. The Defendant further acknowledges that his admissions and declarations of fact set forth below satisfy every element of the charged offenses.

C. The Defendant waives any potential future claim that the facts he admitted in this Plea Agreement and any accompanying filings were insufficient to satisfy the elements of the charged offenses.

D. The Defendant admits and declares under penalty of perjury that the facts set forth below are true and correct:

On or about March 28, 2016, Vonteak Alexander drove a rented car carrying "A.B.W." from within California to Las Vegas, Nevada using a facility of interstate commerce with the intent to facilitate, otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of unlawful activity by "A.B.W." "A.B.W." committed acts of unlawful activity between March 28, 2016, and April 16, 2016.

Alexander knew or should have known that "A.B.W." was a vulnerable victim by virtue of being a missing person. Alexander admits that he traveled in interstate commerce with the intent to have "A.B.W." engage in acts of unlawful activity that violated the laws of the State of Nevada, and thereafter Alexander attempted to facilitate, promote, manage, or establish "A.B.W." to engage in acts of unlawful activity that violate the laws of the State of Nevada.

The foregoing took place in the State and Federal District of Nevada and elsewhere.

V. COLLATERAL USE OF FACTUAL ADMISSIONS

The facts set forth in Section IV of this Plea Agreement shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) at sentencing for any purpose. If the Defendant does not plead guilty or withdraws his guilty pleas, the facts set forth in Section IV

of this Plea Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting any evidence, argument or representation offered by or on the Defendant's behalf. The Defendant expressly waives all rights under Federal Rule Criminal Procedure 11(f) and Federal Rule of Evidence 410 regarding the use of the facts set forth in Section IV of this Plea Agreement.

VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

A. Discretionary Nature of Sentencing Guidelines. The Defendant acknowledges that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") in determining the Defendant's sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

B. Reduction of Offense Level for Acceptance of Responsibility. Under USSG § 3E1.1(a), the United States will recommend that the Defendant receive a two-level downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false or misleading information to the United States, the Court, Pretrial Services, or the Probation Office; (e) denies involvement in the offense or provides conflicting statements regarding his involvement or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates the conditions of pretrial release.

Under USSG §3E1.1(b), the United States **will not** move for an additional one-level downward adjustment for acceptance of responsibility before sentencing because the Defendant

did not communicate his decision to plead guilty in a timely manner. The United States **was therefore unable** to avoid preparing for trial and to efficiently allocate its resources.

C. Criminal History Category. The Defendant acknowledges that the Court may base his sentence in part on the Defendant's criminal record or criminal history. The Court will determine the Defendant's Criminal History Category under the Sentencing Guidelines.

D. Relevant Conduct. The Court may consider any counts dismissed under this Plea Agreement and all other relevant conduct, whether charged or uncharged, in determining the applicable Sentencing Guidelines range and whether to depart from that range.

E. Additional Sentencing Information. The parties may provide information to the United States Probation Office and the Court regarding the nature, scope, and extent of the Defendant's criminal conduct and any aggravating or mitigating facts or circumstances. Good faith efforts to provide truthful information or to correct factual misstatements shall not be grounds for the Defendant to withdraw his guilty plea.

The Defendant acknowledges that the United States Probation Office may rely on additional information it obtains through its investigation in calculating the Sentencing Guidelines. The Defendant also acknowledges that the Court may rely on this and other additional information as it calculates the Sentencing Guidelines range and makes other sentencing determinations, and the Court's reliance on such information shall not be grounds for the Defendant to withdraw his guilty plea.

VII. APPLICATION OF SENTENCING STATUTES

A. Maximum Penalty. The maximum penalty for each count of Interstate Travel in Aid of Unlawful Activity under 18 U.S.C.§ 1952(a)(3)(A) is a five-year prison sentence, a fine of $250,000, or both. *See* 18 U.S.C. § 1952(a)(3)(A); 18 U.S.C. § 3571(b)(3).

B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in

18 U.S.C. § 3553(a) in determining the Defendant's sentence. However, the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the Defendant's sentence.

C. Parole Abolished. The Defendant acknowledges that his prison sentence cannot be shortened by early release on parole because parole has been abolished.

D. Supervised Release. In addition to imprisonment and a fine, the Defendant may be subject to a term of supervised release up to three years. *See* 18 U.S.C. § 3583(b)(2). Supervised release is a period of time after release from prison during which the Defendant will be subject to various restrictions and requirements. If the Defendant violates any condition of supervised release, the Court may order the Defendant's return to prison for all or part of the term of supervised release.

E. Special Assessment. The Defendant will pay a $100.00 special assessment per count of conviction at the time of sentencing for a total of $200.00.

VIII. POSITIONS REGARDING SENTENCE

In setting forth the following sentencing recommendations, the parties have taken into consideration all of the factors set forth in 18 U.S.C. § 3553(a), including:

> (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 . . . .
> (5) any pertinent policy statement . . . .
> (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.

See 18 U.S.C. § 3553(a).

The United States will recommend that the Court sentence the Defendant to a sentence within the applicable sentencing guideline range as determined by the Court, unless the Defendant commits any act that could result in a loss of the downward adjustment for acceptance of responsibility. In any event, the United States will not seek a sentence higher than 96 months.

The Defendant may request a downward adjustment pursuant to 18 U.S.C. § 3553 from any sentence the Court may impose. In any event, the Defendant may not directly or indirectly seek a sentence lower than 60 months.

The Defendant acknowledges that this agreement will be binding on the Court pursuant to Federal Rule Criminal Procedure 11(c)(1)(A) and (C). **Either party may withdraw from this plea agreement if the Court does not sentence the Defendant within the specified range of 60 to 96 months.** This Plea Agreement does not require that United States file any pre- or post-sentence downward departure motion under USSG § 5K1.1 or Federal Rule Criminal Procedure 35. The United States reserves its right to defend any lawfully imposed sentence on appeal or in any post-conviction litigation. The United States will move to dismiss the Indictment at the time of sentencing.

IX. RESTITUTION

The Defendant acknowledges that the conduct to which he is entering a plea is gives rise to mandatory restitution to the victim(s). *See* 18 U.S.C. § 2259. The Defendant agrees that for the purpose of assessing such restitution, the Court may consider losses derived from the counts of conviction as well as losses caused from dismissed counts and uncharged conduct in which

the Defendant has been involved. The Defendant agrees to pay the victim(s) the "full amount of the victim's losses" as defined in 18 U.S.C. § 2259(b)(3).

The Defendant further acknowledges that if his offense conduct occurred after May 29, 2015, and unless the Sentencing Court finds the Defendant to be indigent, an additional mandatory special assessment of $5,000.00 per count must be imposed pursuant to the Justice for Victims of Trafficking Act of 2015, which amends 18 U.S.C. § 3014.

X. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS

Before or after sentencing, upon request by the Court, the United States, or the Probation Office, the Defendant will provide accurate and complete financial information, submit sworn statements, and/or give depositions under oath concerning his assets and his ability to pay. The Defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will release funds and property under his control in order to pay any fine, forfeiture, or restitution ordered by the Court.

XI. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS

A. Plea Agreement and Decision to Plead Guilty. The Defendant acknowledges that:

(1) He has read this Plea Agreement and understands its terms and conditions;

(2) He has had adequate time to discuss this case, the evidence, and this Plea Agreement with his attorney;

(3) He has discussed the terms of this Plea Agreement with his attorney;

(4) The representations contained in this Plea Agreement are true and correct, including the facts set forth in Section IV; and

(5) He was not under the influence of any alcohol, drug, or medicine that would impair his ability to understand the Agreement when he considered signing this Plea Agreement and when he signed it.

The Defendant understands that he alone decides whether to plead guilty or go to trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought against him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The Defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced or threatened him to enter into this Plea Agreement.

B. Waiver of Appeal and Post-Conviction Proceedings. The Defendant knowingly and expressly waives: (a) the right to appeal any sentence imposed by the district court within the range of 60 to 96 months; (b) the right to appeal the manner in which the Court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture imposed by the district court.

The Defendant also knowingly and expressly waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

The Defendant reserves only the right to appeal any portion of the sentence higher than 96 months.

The Defendant acknowledges that the United States is not obligated or required to preserve any evidence obtained in the investigation of this case.

C. Removal/Deportation Consequences. The Defendant understands and acknowledges that if he is not a United States citizen, then it is highly probable that he will be

permanently removed (deported) from the United States as a consequence of pleading guilty under the terms of this Plea Agreement. The Defendant has also been advised if his conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and will not be allowed to return to the United States at any time in the future. The Defendant desires to plead guilty regardless of any immigration consequences that may result from his guilty plea, even if the consequence is automatic removal from the United States with no possibility of returning. The Defendant acknowledges that he has specifically discussed these removal/deportation consequences with his attorney.

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XII. ADDITIONAL ACKNOWLEDGMENTS

This Plea Agreement resulted from an arms-length negotiation in which both parties bargained for and received valuable benefits in exchange for valuable concessions. It constitutes the entire agreement negotiated and agreed to by the parties. No promises, agreements or conditions other than those set forth in this agreement have been made or implied by the Defendant, the Defendant's attorney, or the United States, and no additional promises, agreements or conditions shall have any force or effect unless set forth in writing and signed by all parties or confirmed on the record before the Court.

NICHOLAS A. TRUTANICH,
United States Attorney

DATE 5/15/19

(for)
ELHAM ROOHANI
Assistant United States Attorney

DATE 5/9/19

PAUL RIDDLE
Assistant Federal Public Defender
Counsel for Defendant ALEXANDER

DATE 05/09/19

VONTEAK ALEXANDER
Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. VONTEAK ALEXANDER, Defendant.	Case No. 2:17-cr-00072-RFB Las Vegas, Nevada Wednesday, May 15, 2019 10:36 a.m. INITIAL APPEARANCE AND PLEA ***C E R T I F I E D C O P Y***

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: **CHRISTOPHER BURTON, AUSA**
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COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

LAS VEGAS, NEVADA; WEDNESDAY, MAY 15, 2019; 10:36 A.M.

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P R O C E E D I N G S

COURTROOM ADMINISTRATOR: Now calling United States of America versus Vonteak Alexander, Case Number 2:17-cr-00072-RFB. This is the time for the initial appearance and arraignment and plea.

Starting with counsel for Government, please note your appearance for the record.

MR. BURTON: Good morning, Your Honor. Christopher Burton on behalf of the United States.

THE COURT: Good morning.

MR. RIDDLE: Good morning, Your Honor. Paul Riddle on behalf of Vonteak Alexander, who's present and in custody.

THE COURT: Good morning, Mr. Riddle. Good morning, Mr. Alexander.

THE DEFENDANT: Good morning.

THE COURT: So, Mr. Alexander, I understand you want to withdraw your plea of guilty and enter a -- not guilty and enter a plea of guilty pursuant to a plea agreement with the Government. Is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right, Mr. Alexander. In order for me to accept your waiver of indictment and your plea, I'm going to need to ask you some questions. The answers to my questions

have to be provided under oath. So if you could please raise your right hand.

VONTEAK ALEXANDER, having duly been sworn, was examined and testified as follows:

THE COURT: All right, Mr. Alexander. You can take your seat and remain seated throughout the proceeding. Just make sure the microphone is pulled in front of you so we can record your answers --

THE DEFENDANT: Sure.

THE COURT: -- to my questions or hear them.

Mr. Alexander, how old are you?

THE DEFENDANT: 35 years old.

THE COURT: And how far did you go in school?

THE DEFENDANT: A high school diploma.

THE COURT: Did you -- do you read, write, and understand the English language?

THE DEFENDANT: Yes.

THE COURT: Do you suffer from any medical condition or other condition that makes it difficult for you to understand what's happening today?

THE DEFENDANT: No, sir.

THE COURT: Have you recently taken any medication or any other substance that makes it difficult for you to understand what's happening today?

THE DEFENDANT: No, sir.

THE COURT: Can you tell me in your own words what the purpose of this hearing is today.

THE DEFENDANT: Change of plea, sir.

THE COURT: Okay. Thank you.

Does either counsel have any doubt as to Mr. Alexander's competence to waive indictment and enter a plea?

MR. BURTON: No, Your Honor.

MR. RIDDLE: No, sir.

THE COURT: All right, Mr. Alexander. Based upon my observations of you, your answers to my questions, and the representation of counsel, I do find you're competent to waive indictment and enter a plea today.

Mr. Alexander, have you had sufficient time to speak with your attorneys about your case?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. You understand that at this point in time, Mr. Alexander, you're proceeding by a criminal information? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that you have agreed to waive indictment in this case? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that if you didn't agree to waive the indictment, the Government would have to go to the grand jury to obtain an indictment against you in order for the

case to proceed? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that by waiving indictment you're relieving the Government of its legal obligation to go to the grand jury to seek an indictment against you? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand the grand jury doesn't have to indict you, and that if the Government chose to present evidence, the grand jury could choose not to indict you on the charges in the information? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

And have you had sufficient time to speak with Mr. Riddle, your attorney, about the waiver of indictment?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about the waiver of indictment before the Court approves your waiver?

THE DEFENDANT: No, sir.

THE COURT: And did you sign the waiver of indictment?

THE DEFENDANT: Yes, sir.

THE COURT: And, Mr. Riddle, did you sign the waiver of indictment?

MR. RIDDLE: I did, Your Honor.

THE COURT: All right. The Court finds that,

Mr. Alexander, you're competent to waive indictment and will approve the waiver of indictment at this time.

Mr. Alexander, have you had sufficient time to speak with Mr. Riddle about your plea?

THE DEFENDANT: Yes, sir.

THE COURT: Has he answered all of your questions?

THE DEFENDANT: Yes, sir.

THE COURT: Are you fully satisfied with his representation of you?

THE DEFENDANT: Yes, sir.

THE COURT: You understand you're proceeding pursuant to a criminal information which charges you with two counts? The first count being Interstate Travel in Aid of Unlawful Activity in violation of Title 18, United States Code, Section 1952(a)(3)(A), and the second count is Interstate Travel in Aid of Unlawful Activity as well in violation of Title 18, United States Code, Section 1952(a)(3) -- (a)(3)(A).

You understand that those are the two charges that you're pleading guilty to?

THE DEFENDANT: Yes, sir.

THE COURT: And, Mr. Riddle, has your client received a copy of the criminal information?

MR. RIDDLE: He has, Your Honor.

THE COURT: And do you waive a public reading of the information?

MR. RIDDLE: Yes, sir.

THE COURT: All right.

Mr. Alexander, do you understand that by pleading guilty today you're giving up some very important rights to a jury trial and other rights?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand?

Now, I'm going to describe the rights to you. I want you to listen carefully to the rights I'm about to describe because these are the rights you will be giving up by pleading today. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: If you continued with a plea of not guilty, you would be entitled to a public and speedy jury trial. At the trial you would be entitled to the representation of counsel. If you couldn't afford counsel, counsel would be provided at Government expense.

At the trial the Government would have to present witnesses and evidence against you, and your attorney would have the opportunity to be able to challenge that evidence and cross-examine those witnesses. At the trial your attorney could also present witnesses and evidence on your behalf. At the trial you could testify on your own behalf, but if you chose not to testify, the fact that you didn't testify could not be used against you.

At the trial you couldn't be convicted unless the jury unanimously, that's each and every one of them, found you guilty beyond a reasonable doubt as to each and every element of the offense with which you are charged. At the trial if you were convicted, you would have an unrestricted right to appeal both your conviction and sentence, rights to appeal which you've agreed to restrict and limit in the plea agreement that I have in front of me.

Do you understand, Mr. Alexander, that you're giving up the rights that I've just described by pleading guilty today pursuant to the plea agreement?

THE DEFENDANT: Yes, sir.

THE COURT: And do you do so knowingly and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: Now, you understand that in this case you are charged with Unlawful Activity -- excuse me -- Interstate Travel In Aid of Unlawful Activity? That particular charge has three elements. And the first is that you traveled in interstate or foreign commerce; the second is that you traveled with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of an unlawful activity; and, third, that you performed or attempted to perform the specified unlawful activity in violation of the laws of the state in which it was committed.

Do you understand that those are the elements of the

charge to which you're pleading?

THE DEFENDANT: Yes, sir.

THE COURT: And do counsel agree that those are the elements of the charge to which Mr. Alexander is pleading?

MR. BURTON: Yes, Your Honor.

MR. RIDDLE: Yes, sir.

THE COURT: Now, in this case, Mr. Alexander, you understand that you're pleading pursuant to what's called a binding plea agreement? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, what that means is if I accept your plea today, the plea will be binding on the attorneys, the parties, that's you and your attorney, the Government, and the Court. It means that at the time of sentencing, based upon my reading of this, the Court must sentence you within the range of 60 to 96 months.

Is that correct, counsel?

MR. BURTON: Yes, Your Honor.

MR. RIDDLE: That is correct, Your Honor.

THE COURT: So, Mr. Alexander, what you have to understand is I don't have the authority to sentence you below 60 months. If I did do that, then that would be a violation of my acceptance of the binding plea, and you could or the Government could appeal that sentence. I also don't have the authority to sentence you above 96 months. If I did that, you

and your attorney could appeal any sentences above 96 months based upon a violation of this being a binding plea. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: That means I have to give you a sentence, if I accept the plea, between 60 and 96 months at the time of sentencing. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, I want you to understand that the Court has to determine the sentencing guidelines and how they apply to your case before I impose sentence. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that if my determination of the guidelines is different than what you hoped for or expected, you would not be able to withdraw your guilty plea at the time of sentencing without a valid legal reason? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that if you receive a sentence within that range I described that's different than what you hoped for or expected, you would not be able to withdraw your guilty plea at sentencing without a valid legal reason? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that there -- that parole has been abolished in the federal system and your sentence cannot be shortened by parole? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, this is different from good time credit or the application of the First Step Act, Mr. Alexander. Those are credits that can be given to you under the law by the Bureau of Prisons. This Court, however, has no authority to make a determination about how those credits apply to you while you're incarcerated. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that after any period of incarceration the Court can impose a period of supervised release? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand that while on supervised release there would be certain terms and conditions that you'd have to follow, and if you didn't follow those terms and conditions, you could be sent back to prison without any credit for any previous time that you served in prison? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that the maximum term of supervised release is three years in this case?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that the Court must impose a special assessment of $100 per count at the time of sentencing?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that if you're not a natural-born citizen of the United States, this conviction can have immigration consequences which can include your deportation and being permanently barred from reentering this country? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, in this case you pled guilty or are pleading guilty pursuant to a plea agreement. Is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: Did you review it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about the plea agreement at this time?

THE DEFENDANT: No, sir.

THE COURT: Okay.

Mr. Burton, could you please summarize the essential terms of the plea agreement in this case.

MR. BURTON: Certainly, Your Honor.

Your Honor, as the Court has already noted, this is a binding plea agreement filed jointly by the parties under Federal Rule of Criminal Procedure 11(c)(1)(A) and (C). The

parties are the United States of America and Vonteak Alexander. And the plea agreement, if accepted, binds the defendant, the United States Attorney's Office for the District of Nevada, and the Court. It does not bind any other prosecuting, administrative, or regulatory authority or the United States Probation Office.

Under the plea agreement, the defendant knowingly and voluntarily agrees to plead guilty to both counts in the criminal information, specifically, Count One, Interstate Travel In Aid of Unlawful Activity, in violation of Title 18, United States Code, Section 1952(a)(3)(A), and Count Two, Interstate Travel In Aid of Unlawful Activity, in violation of 18 -- Title 18, United States Code, Section 1952(a)(3)(A).

The plea agreement contains a number of trial rights the defendant acknowledges waiving by entering into this guilty plea, and the defendant agrees that he will not seek to withdraw his guilty plea after he has entered it in court.

The United States agrees not to bring any additional charges against the defendant arising out of the investigation in the District of Nevada which culminated in this plea agreement and based on conduct known to the United States, except that the United States reserves the right to prosecute the defendant for any crime of violence as defined by Title 18, United States Code, Section 16.

The plea agreement contains the elements of the

offenses to which the defendant is pleading as well as the facts supporting his guilty plea. There is also in addition a sealed memorandum in support of the plea agreement containing facts that the defendant acknowledges as well.

The defendant acknowledges that the Court must consider the United States Sentencing Guidelines in determining the defendant's sentence, and that the Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

The defendant is entitled under United States Sentencing Guidelines Section 3E1.1(a) to a two-level downward adjustment for acceptance of responsibility so long as the conditions listed in 6(b) of the plea agreement are found to not apply. Under United States Sentencing Guidelines Section 3E1.1(b) the United States will not move for an additional one-level downward adjustment for acceptance of responsibility before sentencing as the defendant did not communicate his decision to plead guilty in a timely manner and the United States prepared for trial and was unable to efficiently allocate its resources as a result.

The defendant acknowledges that the Court may base its sentence in part on his criminal record and criminal history as well as any counts dismissed under the plea agreement and all other relevant conduct, whether charged or uncharged, in

determining the applicable sentencing guideline range and whether to depart from that range.

The plea agreement advises the defendant that the maximum penalty for each count of Interstate Travel In Aid of Unlawful Activity is a five-year prison sentence, a fine of $250,000, or both. And the defendant acknowledges that the Court must consider the factors set forth in Title 18, United States Code, Section 3553(a) in determining his sentence.

The plea agreement outlines the positions of the parties regarding the defendant's sentence which are, after taking into account Title 18, United States Code, Section 3553(a), as follows: The United States will recommend that the Court sentence the defendant to a sentence within the applicable sentencing guideline range as determined by the Court, unless the defendant commits any act that could result in a loss of the downward adjustment for acceptance of responsibility. However, in any event, the United States will not seek a sentence higher than 96 months. The defendant may request a downward adjustment pursuant to Title 18, United States Code, Section 3553 from any sentence the Court may impose, but in any event the defendant may not directly or indirectly seek a sentence lower than 60 months.

The defendant acknowledges that this agreement will be binding on the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (C), and either party may withdraw

from this plea agreement if the Court does not sentence the defendant within the specified range of 60 to 96 months. Pursuant to the plea agreement, the United States will move to dismiss the indictment against the defendant after sentencing.

The plea agreement advises the defendant and the defendant acknowledges that the conduct to which he is entering a plea gives rise to mandatory restitution to the victim under Title 18, United States Code, Section 2259, and the defendant agrees to pay the victim the full amount of victim's losses as defined in Title 18, United States Code, Section 2259(b)(3).

The defendant further acknowledges that if the offense conduct occurred after May 29, 2015, and unless the sentencing court finds the defendant to be indigent, an additional mandatory special assessment of $5,000 per count must be imposed pursuant to the Justice For Victims of Trafficking Act of 2015. There is a number of acknowledgments and waivers that the defendant agrees to in the plea agreement, including his waiver of appellate and post-conviction rights, with the exception of nonwaivable claims of ineffective assistance of counsel and his right to appeal any portion of his sentence that is higher than 96 months.

Your Honor, those are the essential terms of the plea agreement.

THE COURT: Thank you, Mr. Burton.

Mr. Riddle, do you agree those are the essential terms

of the plea agreement?

MR. RIDDLE: I do, Your Honor.

THE COURT: Mr. Burton, one question I have is I want to make sure I am understanding. Is there any agreement as to what position the Government will take as to the sentence within the range?

MR. BURTON: The position of the Government will be within a guideline range, but there is no position stated in the plea agreement as to what the low end or mid range or high end of that range.

THE COURT: Okay. Because sometimes you all will say in the plea agreement the Government will be seeking the high or low end, right. And in this case, in other words, the Government can seek either 60 months or 96 months based upon the terms of the plea agreement. Is that correct? Anywhere within that range.

MR. BURTON: No, I apologize, Your Honor. The Government agrees to seek a sentence within the guidelines range.

THE COURT: Okay.

MR. BURTON: So whatever the guidelines range is the Government will seek a sentence within that range. With the understanding being that in any event the Government will never -- not seek a sentence above 96 months.

THE COURT: I see. So if I make the determination that

the guidelines range is -- the low end is above 96 months, the Government would then essentially be asking for a variance --

MR. BURTON: Correct.

THE COURT: -- down to 96 months.

MR. BURTON: Correct.

THE COURT: Okay. If I identify a range that will include 96 months, but goes lower than that at the low end, then the Government would be free to ask for a sentence within whatever that range is up to 96 months?

MR. BURTON: Correct.

THE COURT: Based upon the agreement.

MR. BURTON: Correct. And let me make a caveat here. If the guideline range is lower than 96 months and the guideline range does not include 96 months, then the Government will not recommend a sentence higher than that guideline range.

THE COURT: Right. So, in other words, if I make the determination that the guideline range -- the high end, let's say, is 87 months of the range, the Government pursuant to this agreement could not ask for a sentence above 87 months.

MR. BURTON: Correct, Your Honor.

THE COURT: Okay. Thank you.

And, Mr. Riddle and Mr. Alexander, do you agree that that's the agreement you've reached with the Government?

MR. RIDDLE: Yes, Your Honor.

THE COURT: Mr. Alexander, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And I just want to be clear. What that means is after I determine the guidelines, if the guidelines range that I determine has a high end, let's say, of 87 months or maybe 78 months -- and, again, I don't know what that range is right now, but let's say it's 78 months. The Government has agreed in this case that it couldn't seek a sentence above 78 months. However, if I were to determine the guidelines range were going to be, let's say, for example, 78 to 108 months, the Government could ask for a sentence of no more than 96 months, and it would sentence -- and it would ask for a sentence within the 78 to 96-month range.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Because I know the guidelines can be a little bit confusing, particularly in this case where they're agreeing, as Mr. Burton said, to a sentence within the range, but they can't say exactly what that's going to be because I still have to determine the guidelines range at the time of sentencing. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand as I sit here today, Mr. Alexander, I have no idea what the guidelines range determination will be so I can't tell you that. I make that determination at the time of sentencing based upon the

information I receive. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

Mr. Burton, what I am going -- well, we'll do this when we get to the end, but I want to talk a little bit about what information is going to be shared with probation or not because this would be a case where I actually would restrict the information for different reasons related to privacy and also as it relates to the plea agreement in this case. But we'll circle back after that.

But, Mr. Alexander and Mr. Riddle, you agree that the summary from Mr. Burton are the terms of the plea agreement in this case?

MR. RIDDLE: I do, Your Honor, yes.

THE DEFENDANT: Yes, sir.

THE COURT: All right. And, Mr. Alexander, I want to make sure you understand that there are certain waivers -- certain waiver of appeal in this case -- in this agreement. If you look at page 10, line 9, do you see that in that section, Mr. Alexander, you've agreed to waive certain rights to appeal you have? Do you see that?

THE DEFENDANT: Yes, sir.

THE COURT: In other words, you could only appeal the conviction or sentence based upon what's identified in that section. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Now, I also want to make sure you understand -- or I want to make sure I establish a certain factual basis to support the plea. So in this case the facts supporting the guilty plea are on page 3 of the plea agreement. Do you see that, page 3, line 22, where it says *Facts Supporting Guilty Plea*, Mr. Alexander?

THE DEFENDANT: Yes, sir.

THE COURT: See that section that continues onto page 4, line 20? Do you see that?

THE DEFENDANT: Yes, sir.

THE COURT: Did you read that section before you signed the plea agreement?

THE DEFENDANT: Yes, sir.

THE COURT: You understand by signing the plea agreement you're admitting each and every one of the facts in that section?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that by -- based upon that admission I can use those facts for the purpose of both your conviction and sentence in this case?

THE DEFENDANT: Yes, sir.

THE COURT: All right, Mr. Burton. Does the Government require any further allocution with respect to the plea?

MR. BURTON: No, Your Honor.

THE COURT: All right.

Mr. Alexander, do you have any remaining questions about your plea or the plea agreement?

THE DEFENDANT: No, sir.

THE COURT: You understand also that in this case there's something called mandatory restitution which may apply, which means that the Court could impose a special assessment of $5,000 per count at the time of sentencing? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. I'm not saying that I would. I'm just saying that I have the authority to do that.

THE DEFENDANT: Yes, sir.

THE COURT: And I don't think I actually went over the maximums. Even though we have a binding plea, I still think I have to go over the maximum penalties.

The maximum penalties for the count to which you're pleading is five years in prison and a fine of $250,000 or both. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, in this case there's a binding plea. So the Court, if it accepts the plea, which I intend to do, will be bound to sentence you within the guidelines range, but I still think that I am legally obligated to inform you about the maximum penalties under each count. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

Mr. Alexander, is anyone forcing you in any way to enter your plea today?

THE DEFENDANT: No, sir.

THE COURT: And do you have any final questions before you formally enter your plea to the two counts in the criminal information?

THE DEFENDANT: No, sir.

THE COURT: With respect to Count One of the criminal information charging you with Interstate Travel in Aid of Unlawful Activity in violation of Title 18, United States Code, Section 1952(a)(3)(A), how do you plead, guilty or not guilty?

THE DEFENDANT: Guilty, sir.

THE COURT: With respect to Count Two charging you with un -- Interstate Travel In Aid of Unlawful Activity in violation of Title 18, United States Code, Section 1952(a)(3)(A), how do you plead, guilty or not guilty?

THE DEFENDANT: Guilty, sir.

THE COURT: It's the finding of the Court you're fully competent and capable of entering a guilty plea, that your guilty plea is knowing and voluntary, that you're aware of the nature of the charge, the consequences of your guilty plea, and there's a factual basis supporting each and every element of the offense with which you are charged. I, therefore, adjudicate

you guilty of this offense at this time.

We will set the sentencing in this case. Before we do, Mr. Burton, I am going to direct that you not provide discovery to probation without me approving which portions of the discovery are to be produced. Because of what's in this discovery, as I'm sure you can appreciate, I think it would be appropriate for me to approve whatever would be released. I think what would be appropriate to do with the initial release would simply be, Mr. Burton, the publicly-available documents. If I think it's necessary for probation to receive other documents, then probation can request that from me and I will approve them accordingly. However, I am directing the Government and the Defense not to share any discovery with probation in this case without approval of the Court.

And, Mr. Burton, you can also communicate that to the other individual witness's attorney in this case, A.B.W.'s attorney, so that she is aware of the Court's order. So there will be no sharing of any information when it comes to the discovery in this case, and that if the Court were to approve that, I would still seek to have a conference or hearing where that individual's attorney would be present before any such information would be shared.

MR. BURTON: And I just want to make sure I understand the Court's order. When you say "publicly-available documents," are you referring to what has been filed on the docket or are

you referring to, for example, police reports and excluding hospital medical records?

THE COURT: That's a good -- that's a good point, Mr. Burton. So, in other words -- I'll make this easier.

You are not to produce to the probation any documents in this case. If probation wants to use documents, they can use the documents from the public portion of the docket.

MR. BURTON: Okay.

THE COURT: That way we don't have to go back and forth as to what's publicly available or not. Because there's so many filings in this case, that would be a more tedious task. So in this case I'm going to direct you and Mr. Riddle not to provide any documents at all to probation. And then I will review with probation as necessary what they may need to provide, but because there's so many filings in this case, I wouldn't want there to be an inadvertent production of material that I deemed not to be appropriate to produce.

So you're not to produce anything, and that way the record will be clear because the probation office has access to the -- to the public docket. Okay? Does that clarify?

MR. BURTON: Yes, Your Honor, with one question.

THE COURT: Yes.

MR. BURTON: I apologize. Would that include the transcript from the evidentiary hearing? I'm trying to remember if that has been sealed or not.

THE COURT: Yes, it would include -- so, in other words, if they're seeking any documents, they will be directed and you should direct them to simply seek them from the Court directly.

MR. BURTON: Look at the docket.

THE COURT: That way -- that way you all are not in the position of having to try to understand or interpret the Court's order. If you receive any requests, either side, from probation for records, simply tell them that I directed you to direct their request to me.

MR. BURTON: Understood, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Riddle.

MR. RIDDLE: Judge, there's one other matter. The parties have agreed to recommend to this Court that pending sentencing -- I guess we don't have a sentencing date yet, but pending sentencing that Mr. Alexander be released to the halfway house with certain conditions.

THE COURT: Is that a joint request or is that just a request of ...

MR. BURTON: It's a stipulation. The parties to the -- to the matter have agreed, Your Honor, with the caveat being that obviously Your Honor has discretion obviously to the extent that you want to hear from Pretrial Services --

THE COURT: Right.

MR. BURTON: -- and they wish to weigh in on what those conditions look like or what their recommendation would be.

THE COURT: Right. But you're not opposing --

MR. BURTON: Correct.

THE COURT: So, Mr. Riddle, what we should do is I would want at least to hear from Pretrial Services and have them be involved. We can come back this afternoon and have them appear. Let's see what we've got in terms of time.

How about 2 o'clock? Does that work for everyone?

MR. BURTON: That works for me, Your Honor.

THE COURT: Mr. Riddle?

MR. RIDDLE: Yes, Your Honor.

THE COURT: So we'll come back at 2 o'clock and have probation present, and we'll go through any issues as relates to release. And it would certainly be helpful to have them comment on any conditions. It would be my intention, having reviewed this record, to go along with the stipulated request of the parties and release Mr. Alexander, but I do want to have Pretrial Services -- excuse me, I said probation -- Pretrial Services ... I guess, is it probation now? I guess it's still Pretrial Services.

MR. RIDDLE: It's still pretrial.

THE COURT: I always have to remind myself of that. Pretrial Services be involved. So we'll come back at 2 o'clock to finalize conditions and terms of release. Okay?

MR. RIDDLE: Thank you, Judge.

THE COURT: Anything else -- sure. Anything else we need to do at this time? Mr. Riddle?

MR. RIDDLE: We still do need the sentencing date, Your Honor.

THE COURT: Oh.

COURTROOM ADMINISTRATOR: Your Honor, August 22nd, 2019, at 3 p.m.

THE COURT: Okay.

MR. RIDDLE: Thank you, Judge.

THE COURT: All right. Anything else then?

MR. BURTON: Not from the Government, Your Honor. Thank you.

MR. RIDDLE: Nothing further, Your Honor. Thank you.

THE COURT: Thank you. We'll be adjourned.

(Whereupon the proceedings concluded at 11:05 a.m.)

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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: December 31, 2021.

/s/ **Patricia L. Ganci**

Patricia L. Ganci, RMR, CRR

CCR #937