No.

IN THE SUPREME COURT OF THE UNITED STATES

PHILLIP DANIEL LOVE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When a district court rejects a party's nonfrivolous sentencing argument, the court is required to explain why. *Rita v. United States*, 551 U.S. 338, 357 (2007). If a defendant contends on appeal that the district court ignored his arguments, some circuits—including the Ninth Circuit—deem the defendant's claim forfeited unless he specifically objected, after the pronouncement of sentence, to the claimed failure of explanation. Other circuits hold—more in line with this Court's decision in *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020)—that requiring a *post hoc* objection is formalistic and unnecessary, and thus that a defendant may preserve his claim by simply presenting arguments under 18 U.S.C. § 3553 for a sentence different than the one imposed.

The question presented is:

> To preserve a claim that the district court failed to explain its rejection of nonfrivolous sentencing arguments, is a party required to specifically object to the claimed error after the pronouncement of sentence?

RELATED PROCEEDINGS

(1) United States District Court, District of Arizona;
United States v. Love, No. 4:17-cr-01470-RCC-JR-1 (May 7, 2019)

(2) United States Court of Appeals for the Ninth Circuit;
United States v. Love, No. 19-10156 (December 22, 2022)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER

OPINION BELOW

The court of appeals issued a memorandum disposition at —Fed. Appx.—, 2022 WL 17844678 (9th Cir. 2022).

JURISDICTION

The court of appeals filed its decision on December 22, 2022, and then denied rehearing on February 7, 2023. App. 1, 8.[1] This Court has jurisdiction under 28 U.S.C. § 1254(1).

RULES INVOLVED

Fed. R. Crim. P. 51 provides:

> (a) Exceptions Unnecessary. Exceptions to rulings or orders of the court are unnecessary.
>
> (b) Preserving a Claim of Error. A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

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[1]As used herein, "App." refers to Mr. Love's consecutively-paginated Appendix, "ER" to his Excerpts of Record before the Ninth Circuit, "STER" to his Supplement to the Excerpts of Record, "PSR" to the Presentence Investigation Report, and "ECF No." to the Ninth Circuit's online docket.

Fed. R. Crim. P. 52 provides:

> (a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.
>
> (b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

STATEMENT OF THE CASE

A. TRIAL LEVEL PROCEEDINGS.

In 2018, Mr. Love entered an "open" guilty plea to possession, distribution, and production of child pornography. 3-ER 496. The district court had jurisdiction under 18 U.S.C. § 3231.

At the end of the change of plea hearing, the district court ordered a PSR and psychosexual evaluation. 2-ER-331-33. Mr. Love did not ultimately participate in a presentence interview or submit to a psychosexual evaluation. PSR ¶¶ 15, 67. Nonetheless, the record contained illuminating information about Mr. Love.

A court-ordered competency evaluation from earlier in the case, for example, reported that Mr. Love was physically abused throughout his childhood with "'hand'" and "'fist, all the time.'" 4-ER-504-05, 508. The evaluation also indicated that even though Mr. Love espoused unpopular

sovereign citizen beliefs in this case, his beliefs were genuine and not an attempt at malingering. *See* ER 4-ER-509, 521. Moreover, the evaluator noted a diagnosis of unspecified personality disorder, but offered a "guarded[ly]" optimistic prognosis for treatment because Mr. Love did "not meet full criteria for a personality disorder diagnosis, and instead only evidence[d] a few symptoms of narcissistic personality disorder[.]" 4-ER-518.

The PSR echoed these mitigating facts, and more. The PSR left no room for doubt that Mr. Love had abysmal male role models as a child. Mr. Love's biological "father served a prison sentence[,]" and after Mr. Love's "mother remarried, [] he witnessed domestic violence against" her. PSR ¶ 61. In addition, Mr. Love was "severely abused for many years by his stepfather and his mother, although aware of the abuse, did nothing to protect him." PSR ¶ 50. *Accord* PSR ¶ 61 (Mr. Love was "physically abused by his second stepfather").

Mr. Love traced his own sexual misbehavior to his stepfather's abuse. In a pretrial statement, Mr. Love told interviewing agents that his stepfather got him into child pornography by forcing him "'to do things [he] never enjoyed, intended doing[,]'" including the acts—which involved his

younger half-sister—underlying a prior state court conviction. PSR ¶¶ 7-9. Mr. Love further reported being molested himself, and that when he searched for child pornography as an adult, he looked for images involving people who were around the same age as he was when he "started getting molested[.]" PSR ¶ 8. Unsurprisingly, the PSR recited that Mr. Love wrestled with depression throughout his life, was placed in special education in school, and had a history of truancy, tardiness, and conduct violations. PSR ¶¶ 65, 69.

Noting an advisory Sentencing Guidelines range of life imprisonment, probation reported that the maximum available sentence was an aggregate 90-year statutory maximum based on Mr. Love's offenses of conviction. PSR ¶ 96. Without any analysis, probation recommended a *de facto* life sentence of 90 years. PSR, p. 21. The government concurred, citing Mr. Love's offense conduct, his prior conviction, his declination to participate in a psychosexual evaluation, the harm caused by child pornography, and its distaste for Mr. Love's in-court behavior. STER-8-19; 3-ER-414-20.

In Mr. Love's sentencing memorandum, defense counsel asked for a statutory minimum sentence of 25 years, which was twenty years longer than the sentence Mr. Love received in his prior state court case. 3-ER-

366-68, 420. Counsel noted that Mr. Love pled guilty to the charged offenses, had once received a plea offer for 15-25 years, and even more fundamentally, deserved an opportunity for rehabilitation rather than a 90-year "death sentence[.]" 3-ER-366-68, 412-13.

In his sentencing allocution, Mr. Love spoke at length in support of jurisdictional objections to the prosecution, which arose out of his sovereign citizen beliefs. 3-ER-371-412. In addition, Mr. Love passionately disagreed that he was a "sick, sadistic, twisted bastard, this evil person." 3-ER-410. Instead, he told the district court that he was charitable, generous with the homeless, and performed random acts of kindness. 3-ER-410-11. Moreover, Mr. Love told the court that he was abused for his "whole life" but "never got help for that[,]" and thus that "[n]obody was ever there for" him. 3-ER-411-12. At bottom, Mr. Love swore that he would "never harm another human being, never. Never, never, never, never." 3-ER-412. In sum, Mr. Love characterized himself as a "helpful, generous, and giving person" who "stand[s] up for [his] rights." 3-ER-411-12.

With one minor exception, the district court adopted the PSR. 3-ER-420. The court then explained Mr. Love's sentence, in full, as follows:

> The record should reflect that, from day one, Mr. Love has refused to accept the jurisdiction of this

> Court. That's his right. It should also reflect that, after he pled guilty, he was told by me that, if he wanted to participate in the preparation of the presentence report, he would have every opportunity to do so. He chose not to do that. He chose not to speak to probation; therefore, the limited information I have about him is based upon the fact that he himself chose not to participate.
>
> He also chose not to participate in the psychosocial evaluation. Again, a choice he had every right to make, but a choice which he made, and again, it deprived this Court of any information that it could use in terms of mitigation in this case.

3-ER-420. With those limited remarks, the court imposed a sentence of 90 years in custody, lifetime supervised release, and $45,000 in restitution. 3-ER-420-22.

B. APPELLATE PROCEEDINGS.

On appeal, Mr. Love argued that the district court improperly ignored his nonfrivolous sentencing arguments. ECF No. 65 at 50-55. He acknowledged that his trial lawyer did not specifically object to the court's error at sentencing, and thus that the court of appeals would likely apply plain error review under existing Ninth Circuit precedent. *Id.* at 49-50. Mr. Love nonetheless argued that where, as here, "a defendant complies with Fed. R. Crim. P. 51(b) by 'informing the court . . . of the action [he] wishes the court to take'—*i.e.*, by requesting a sentence different than the

one imposed—the [c]ourt should find the claims of error preserved and thus review for abuse of discretion." *Id.*

The court of appeals rejected Mr. Love's request for abuse of discretion review. App. 5 ("Because Love did not raise his current claim[] of procedural error at sentencing, we review only for plain error."). And, as is so often the case, the standard of review featured prominently in the court's denial of relief, as follows:

> The district court's explanation for the sentence, while brief, does not amount to plain error. The presentence report and sentencing memorandum recited the sentencing factors that Love argues should have been specifically addressed, and the court clearly found, in accordance with the Government's and the probation office's recommendations, that a sentence at the statutory maximum was nonetheless justified. The court considered Love's objections, specifically agreeing that the presentence report had overstated Love's prior state court sentence. There was no plain error in the court's explanation of the sentence of imprisonment.

App. 6.

ARGUMENT

The Court should grant certiorari for two reasons. First, the courts of appeals are split regarding the proper standard of review to apply under the circumstances of this case—*viz.*, when a defendant argues on appeal that

the sentencing judge ignored his nonfrivolous mitigation arguments, but the defendant did not specifically object to the district court's failure of explanation at the sentencing hearing. Sup. Ct. R. 10(a). Second, although the Court expressly left this issue open in *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 767 (2020), *Holguin-Hernandez* weighs heavily in favor of Mr. Love's contention that the Ninth Circuit falls on the wrong side of the circuit split. Sup. Ct. R. 10(c).

With more than 90% of federal criminal cases proceeding to sentencing[2]—and nearly 10,000 criminal appeals filed each year[3]— this Court's voice is necessary to maintain a uniform and evenhanded federal sentencing framework which, in the modern era, has become "nearly as critical a stage for the defendant as the trial itself." *United States v. Rutgard*, 116 F.3d 1270, 1294 (9th Cir. 1997).

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[2]https://www.uscourts.gov/statistics-reports/statistical-tables-federal-judiciary-december-2021 (last visited May 5, 2023).

[3]https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables (last visited May 5, 2023).

A. THE CIRCUITS ARE SPLIT REGARDING WHAT STANDARD OF REVIEW TO APPLY WHEN A DEFENDANT DOES NOT SPECIFICALLY OBJECT AT SENTENCING THAT THE DISTRICT COURT IGNORED HIS NONFRIVOLOUS MITIGATION ARGUMENTS.

After *United States v. Booker*, 543 U.S. 220, 260-68 (2005), appellate courts review sentences for "reasonableness." On reasonableness review, the courts of appeals "must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence[.]" *Gall v. United States*, 552 U.S. 38, 51 (2007). "Assuming that the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *Id.* Plain error review applies to forfeited issues. Fed. R. Crim. P. 51-52.

In *Rita v. United States*, 551 U.S. 338, 357 (2007), the Court addressed the explanation requirement in greater detail, and held that "[w]here the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence" than the one imposed, "the judge will

normally . . . explain why he has rejected those arguments." This requirement underlies Mr. Love's claim for relief on appeal. *See* ECF No. 65 at 50-55.

Faced with similar facts, the Fourth Circuit has held—consistent with Mr. Love's view—that "[b]y drawing arguments from § 3553 for a sentence different than the one ultimately imposed, an aggrieved party sufficiently alerts the district court of its responsibility to render an individualized explanation addressing those arguments, and thus preserves its claim." *United States v. Lynn*, 592 F.3d 572, 578 (4th Cir. 2010). *Lynn* reasoned that "[r]equiring a party to lodge an explicit objection after the district court explanation would saddle busy district courts with the burden of sitting through an objection—probably formulaic—in every criminal case." *Id.* (quotation marks omitted). Accordingly, "[w]hen the sentencing court has already heard argument and allocution from the parties and weighed the relevant § 3553(a) factors before pronouncing sentence, [there is] no benefit in requiring the defendant to protest further." *Id.* at 578-79 (quotation marks and citation omitted).

The Second Circuit and Eleventh Circuits have similarly applied abuse of discretion review to such claims, even absent a particularized

objection at sentencing. *See United States v. Corsey*, 723 F.3d 366, 370-72, 374, 377 (2d Cir. 2013); *United States v. Livesay*, 525 F.3d 1081, 1087-91, 1093-94 (11th Cir. 2008).

As the Third Circuit has noted, by contrast, a number of other circuits (including the Third and the Ninth) have adopted a contrary view: that "to preserve the objection for appeal and to avert plain error review, a defendant must object after the sentence is pronounced to the district court's failure to meaningfully consider his argument." *United States v. Flores-Mejia*, 759 F.3d 253, 256-58 (3rd Cir. 2014), *citing United States v. Davila–Gonzalez*, 595 F.3d 42, 47 (1st Cir. 2010); *United States v. Mondragon–Santiago*, 564 F.3d 357, 361 (5th Cir. 2009); *United States v. Vonner*, 516 F.3d 382, 385–86 (6th Cir. 2008) (*en banc*); *United States v. Rice*, 699 F.3d 1043, 1049 (8th Cir. 2012); *United States v. Rangel*, 697 F.3d 795, 805 (9th Cir. 2012); *United States v. Romero*, 491 F.3d 1173, 1177–78 (10th Cir. 2007); *United States v. Wilson*, 605 F.3d 985, 1033–34 (D.C.Cir. 2010).

As *Flores-Mejia* further observed, the Seventh Circuit appears to have issued decisions on both sides of the split. 759 F.3d at 258 n.5, *citing United States v. Cunningham*, 429 F.3d 673, 679-80 (7th Cir. 2005) (abuse

of discretion) *and United States v. Anderson*, 604 F.3d 997, 1003 (7th Cir. 2010) (plain error).

For purposes of Mr. Love's petition, the upshot of this legal landscape is that his claim is not only heavily litigated across the country, but that the applicable standard of review will depend—unfairly—on geography. This Court should grant certiorari to resolve the circuit split on this important and recurring issue. Sup. Ct. R. 10(a).

B. *HOLGUIN-HERNANDEZ* WEIGHS IN MR. LOVE'S FAVOR.

In *Holguin-Hernandez*, the Court addressed how defendants may preserve *substantive* reasonableness challenges for appeal. 140 S. Ct. at 764. Under a straightforward application of Rules 51 and 52, the Court held that "[b]y 'informing the court' of the 'action' he 'wishes the court to take,' Fed. Rule Crim. Proc. 51(b), a party ordinarily brings to the court's attention his objection to a contrary decision. See Rule 52(b)." *Id.* at 766. In the context of substantive reasonableness, preservation thus obtains "where a criminal defendant advocates for a sentence shorter than the one ultimately imposed." *Id.* Particularly because the Federal Rules " dispense with the need for formal 'exceptions' to a trial court's rulings[,]" the Court

concluded that "[n]othing more is needed to preserve the claim that a longer sentence is unreasonable." *Id.*, *citing* Fed. R. Crim. P. 51(b).

Holguin-Hernandez declined "to decide what is sufficient to preserve a claim that a trial court used improper *procedures* in arriving at its chosen sentence." *Id.* at 767 (original emphasis). But as for the specific procedural challenge at issue in this case—that the district court ignored Mr. Love's mitigation arguments—*Holguin-Hernandez* tips the scales in Mr. Love's favor. After all, what else can a litigant do to inform the court "of the action the party wishes the court to take," Fed. R. Crim. P. 51(b) other than *present his arguments*? After both parties have done so, it becomes the judge's responsibility to decide who (if anyone) is correct, and—as Congress has directed—explain "the reasons for its imposition of the particular sentence[.]" 18 U.S.C. § 3553(c). As *Holguin-Hernandez* teaches, requiring litigants to reiterate their arguments would impose an "exception" requirement, but exceptions are "unnecessary" under the applicable rules. Fed. R. Crim. P. 51(a).

For the foregoing reasons, the question presented in this case has not been settled by this Court. Sup. Ct. R. 10(c). Because the Ninth Circuit's rule conflicts with *Holguin-Hernandez*, it should not stand. *Id.*

CONCLUSION

The Court should grant this petition for a writ of certiorari.

Respectfully submitted,

Dated: May 8, 2023

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APPENDIX

NOT FOR PUBLICATION

FILED

DEC 22 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. PHILLIP DANIEL LOVE, Defendant-Appellant.	No. 19-10156 D.C. No. 4:17-cr-01470-RCC-JR-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted June 14, 2022**
San Francisco, California

Before: BYBEE, CALLAHAN, and COLLINS, Circuit Judges.

Defendant Phillip Daniel Love appeals the district court's final judgment convicting him for possessing, distributing, and producing child pornography, sentencing him to 90 years' imprisonment, and ordering him to pay $3,000 in restitution to each of 15 victims. We affirm Love's conviction and his term of imprisonment, but we vacate the restitution order and the supervised release

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes that this case is suitable for decision without oral argument. *See* FED. R. APP. P. 34(a)(2)(C).

portion of his sentence and remand.

1. Although Love's unconditional plea of guilty waives "the right to appeal all nonjurisdictional antecedent rulings and cures all antecedent constitutional defects," he may still attack the guilty plea itself. *United States v. Chavez-Diaz*, 949 F.3d 1202, 1206 (9th Cir. 2020) (citation omitted). Because a "constructive denial of counsel" would invalidate Love's plea, we may consider whether the district court abused its discretion in refusing to substitute counsel, such that Love was constructively denied counsel altogether. *See United States v. Velazquez*, 855 F.3d 1021, 1034 (9th Cir. 2017). There was no such abuse of discretion here.

In reviewing a denial of a motion for substitution, we consider three factors: "(1) the adequacy of the district court's inquiry; (2) the extent of the conflict between the defendant and counsel; and (3) the timeliness of defendant's motion." *United States v. Minasyan*, 4 F.4th 770, 775 n.2 (9th Cir. 2021) (citation omitted). Although there was clearly a conflict between Love and his attorney, the district court did not abuse its discretion in concluding that appointment of new counsel was not warranted because the conflict was due to Love's obstreperous behavior. *See United States v. Roston*, 986 F.2d 1287, 1292–93 (9th Cir. 1993). The district court reasonably concluded that Love's disruptive conduct was intentional and would extend to whatever counsel might be appointed to represent him. Indeed, one of the psychologists who evaluated Love in connection with his competency

proceedings described Love's strategy as resting in part on the hope that a refusal to "consent[] to participate in legal proceedings" might lead to dismissal of the charges. Moreover, counsel's refusal to file frivolous motions does not provide a basis for finding a conflict warranting replacement of appointed counsel. *See United States v. McKenna*, 327 F.3d 830, 844 (9th Cir. 2003). The court was not required in this case to undertake a more formal inquiry because "the judge's own observations" throughout the course of the proceedings "provide[d] a sufficient basis for reaching an informed decision." *United States v. Smith*, 282 F.3d 758, 764 (9th Cir. 2002) (citation omitted). And although Love's initial requests to relieve his attorney were timely, the other factors nonetheless confirm that the district court did not abuse its discretion in refusing to replace counsel with another attorney. In short, there was no constructive "complete denial of counsel" sufficient to invalidate Love's guilty plea. *Velazquez*, 855 F.3d at 1034 (citation omitted).

2. "A defendant may withdraw a plea of guilty before sentencing if 'the defendant can show a fair and just reason for requesting the withdrawal.'" *United States v. Yamashiro*, 788 F.3d 1231, 1236–37 (9th Cir. 2015) (quoting FED. R. CRIM. P. 11(d)(2)(B)). The district court did not abuse its discretion in concluding that Love's later claims of pain at the change-of-plea hearing did not render his plea involuntary. At the plea hearing, the district court specifically asked Love

about his broken hand and his pain medication. Although Love stated at one point that he was "in pain," he confirmed that he was deciding to plead guilty by his "own free will" and also that the pain medication was not affecting his decision to plead guilty.

The district court also did not abuse its discretion in denying Love's request to withdraw his plea based on his alleged failure to be informed of, or to comprehend, the jurisdictional elements of the child-pornography charges against him.[1] The district court provided a copy of the indictment to Love in open court and went through it with him, count by count, asking him at various points if he wanted specific portions read to him. *See Bousley v. United States*, 523 U.S. 614, 618 (1998) (stating that providing defendant with a copy of the indictment "give[s] rise to a presumption that the defendant was informed of the nature of the charges against him"). The prosecutor also explained each charge to Love at the plea hearing. Moreover, the record preceding the plea hearing included Love's specific criticisms of the expansive understanding of the interstate-commerce power on which the child-pornography charges against him were based, further confirming

[1] Although the district court's brief written order does not discuss this ground, the order confirms that the court reviewed the entire transcript of Love's plea colloquy (even if it recited the wrong date for that transcript) and that the court was satisfied that the plea was voluntarily given. The court's focus on Love's hand-pain claim was understandable, given that Love described it as the "main point" of his motion.

that Love was well aware of the jurisdictional elements of these charges. *See United States v. Vonn*, 535 U.S. 55, 74–75 (2002) (holding that a court examining validity of a plea may consider preceding hearings that the defendant "may be presumed to recall"). The record amply confirms that Love adequately understood the nature of the charges, *see* FED. R. CRIM. P. 11(b)(1)(G), and there was no basis to set aside the plea on this ground.[2] *See United States v. Aguilar-Vera*, 698 F.3d 1196, 1202 (9th Cir. 2012).

3. Because Love did not raise his current claims of procedural error at sentencing, we review only for plain error. *See United States v. Blinkinsop*, 606 F.3d 1110, 1114 (9th Cir. 2010). Applying that standard, we reject Love's challenges to his sentence of imprisonment.

In context, the district court's comments that Love's failure to participate in a presentence interview or a psychosocial evaluation "deprived th[e] [c]ourt of any information that it could use in terms of mitigation in this case," merely reflected the court's observation that Love had declined the opportunity to provide additional grounds for mitigation. The court's remark did not mean that the court

[2] The district court did not commit plain error in failing to set aside Love's guilty plea based on a supposedly inadequate factual basis for the plea. Given Love's own admissions, and his express agreement with the bulk of what the prosecutor stated that the evidence would show, the transcript of the plea hearing contains an adequate factual basis.

was unaware of the mitigating information that was contained in the presentencing report or that Love had mentioned briefly during his plea colloquy. On the contrary, the court confirmed that it had read the presentencing report and Love's sentencing memorandum.

The district court's explanation for the sentence, while brief, does not amount to plain error. The presentence report and sentencing memorandum recited the sentencing factors that Love argues should have been specifically addressed, and the court clearly found, in accordance with the Government's and the probation office's recommendations, that a sentence at the statutory maximum was nonetheless justified. The court considered Love's objections, specifically agreeing that the presentence report had overstated Love's prior state court sentence. There was no plain error in the court's explanation of the sentence of imprisonment. *See Blinkinsop*, 606 F.3d at 1114 ("Adequate explanation not only derives from the judge's pronouncement of the sentence, but 'may also be inferred from the PSR [presentence investigation report] or the record as a whole.'" (citation omitted) (brackets added by *Blinkinsop*)).

4. The Government concedes that the restitution order should be vacated and remanded so that the district court may apply the analysis that *Paroline v. United States*, 572 U.S. 434 (2014), requires before imposing restitution under the pre-2018 amendment version of 18 U.S.C. § 2259. Love contends that vacatur of

the restitution order undoes the entire "sentencing package" and that we should therefore vacate the remainder of the sentence as well. We agree that, because Love's term of supervised release contains a special condition relating to restitution, his term of supervised release should also be vacated and reconsidered. However, Love's term of imprisonment, which has already been set at the statutory maximum, cannot reasonably be viewed as dependent upon, or part of a package with, any additional judgment as to whether the restitution order can or should be reinstated. Accordingly, we vacate only the restitution order and the "supervised release portion" of Love's sentence, and we remand for the "limited purpose" of reconsidering restitution and "imposing a new supervised release sentence." *United States v. Reyes*, 18 F.4th 1130, 1139 (9th Cir. 2021). Love's sentence of 90 years' imprisonment is affirmed.

AFFIRMED IN PART, VACATED IN PART, and REMANDED.

FILED

FEB 7 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. PHILLIP DANIEL LOVE, Defendant-Appellant.	No. 19-10156 D.C. No. 4:17-cr-01470-RCC-JR-1 District of Arizona, Tucson ORDER

Before: BYBEE, CALLAHAN, and COLLINS, Circuit Judges.

The petition for panel rehearing filed on February 2, 2023 (Dkt. 96) is DENIED.