

APPENDIX

APPENDIX INDEX

Fifth Circuit opinion, March 9, 2023App. 1

District court judgment, March 4, 2022.....App. 3

District court sentencing transcript, February 24, 2022App. 10

United States Court of Appeals for the Fifth Circuit

No. 22-30112
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 9, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANDRE ZENO,

Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:19-CR-135-1

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Andre Zeno appeals the 60-month sentence imposed for possession with intent to distribute cocaine. Zeno posits that the district court reversibly erred by not departing below the statutory mandatory minimum based on the safety-valve provision of 18 U.S.C. § 3553(f); he urges that the word “and” in § 3553(f)(1) should be interpreted to mean that a defendant is ineligible for safety-valve relief only if all three disqualifying conditions apply and, based

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 22-30112

on that interpretation, that he is eligible for relief because he does not have a prior three-point offense under § 3553(f)(1)(B).

The government has filed an unopposed motion for summary affirmance, or, alternatively, for an extension of time to file its brief. The government correctly asserts that the issue is foreclosed by *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022), *petition for cert. filed* (U.S. Dec. 21, 2022) (No. 22-6391), which was decided while this appeal was pending. In *Palomares*, the majority used a “distributive approach” to interpret § 3553(f)(1) and concluded that criminal defendants are “ineligible for safety valve relief under § 3553(f)(1) if they run afoul of any one of its requirements.” *Palomares*, 52 F.4th at 647.

Because the government’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), summary affirmance is proper. Accordingly, the motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The government’s alternative motion for an extension of time is DENIED as moot.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

v.

ANDRE ZENO**JUDGMENT IN A CRIMINAL CASE**

§

§

§

Case Number: 3:19-CR-00135-JWD-RLB(1)

USM Number: 04272-509

Dustin Charles Talbot

Defendant's Attorney

THE DEFENDANT:

		One of the Indictment
<input checked="" type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
21:841(a)(1) / Possession with Intent to Distribute 500 Grams or More of Cocaine	05/06/2018	1

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

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 24, 2022

Date of Imposition of Judgment



Signature of Judge

John W. deGravelles
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

March 4, 2022

Date

DEFENDANT: ANDRE ZENO
CASE NUMBER: 3:19-CR-00135-JWD-RLB(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 months. It is ordered that this sentence be served concurrently with any future sentence imposed in docket nos. BR02063402, BR02146651, and BR00503028 in Baton Rouge City Court, Baton Rouge, Louisiana.

The court makes the following recommendations to the Bureau of Prisons:

It is recommended to the Bureau of Prisons that the defendant be housed in a facility capable of providing him with substance abuse treatment, cognitive behavioral treatment, and educational and vocational training.

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: ANDRE ZENO
CASE NUMBER: 3:19-CR-00135-JWD-RLB(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **4 years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. § 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in 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*)

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

DEFENDANT: ANDRE ZENO
 CASE NUMBER: 3:19-CR-00135-JWD-RLB(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, or if placed on probation, within 72 hours of the time you were sentenced, 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 supervision that the probation officer 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 the position or job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ANDRE ZENO
CASE NUMBER: 3:19-CR-00135-JWD-RLB(1)

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a substance abuse assessment and/or treatment program. While participating in the program, you must follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of the substance abuse assessment and/or treatment program, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must assist in the cost of the testing, as approved by the probation officer. You must not attempt to obstruct or tamper with the testing methods.

You must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). Such programs may include group sessions led by a counselor or participation in a program administered by the probation office. You must pay the costs of the cognitive-behavioral treatment program, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

You must participate in an educational services program and follow the rules and regulations of that program. Such programs may include high school equivalency preparation, English as a Second Language classes, and other classes designed to improve your proficiency in skills such as reading, writing, mathematics, or computer use. You must pay the costs of the educational services program, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

You must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training. You must pay the costs of the vocational services program, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

If the judgment imposes a financial penalty, you must pay the financial penalty in accordance with the Schedule of Payments sheet of the judgment. You must also notify the court, through the probation officer, of any changes in economic circumstances that might affect the ability to pay this financial penalty.

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: ANDRE ZENO
 CASE NUMBER: 3:19-CR-00135-JWD-RLB(1)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	N/A	Waived	N/A	N/A

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on 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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ANDRE ZENO
 CASE NUMBER: 3:19-CR-00135-JWD-RLB(1)

SCHEDULE OF PAYMENTS

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

- A** Lump sum payments of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

1 UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF LOUISIANA

3

4 UNITED STATES OF AMERICA : CRIMINAL ACTION

5 VERSUS : NO. 19-00135

6 ANDRE' ZENO : HON. JOHN W. DEGRAVELLES

7 : FEBRUARY 24, 2022

8 =====

9 SENTENCING

10 =====

11 APPEARANCES

12

13 FOR THE UNITED STATES OF AMERICA:

14 MS. JESSICA THORNHILL
15 U.S. ATTORNEY'S OFFICE, MIDDLE DISTRICT OF LOUISIANA
16 777 FLORIDA STREET, SUITE 208
17 BATON ROUGE, LOUISIANA 70801

18 FOR ANDRE' ZENO:

19 MR. DUSTIN TALBOT
20 FEDERAL PUBLIC DEFENDERS OFFICE
21 102 VERSAILLES BOULEVARD
22 SUITE 816
23 LAFAYETTE, LOUISIANA 70501

24 REPORTED BY: GINA DELATTE-RICHARD, CCR

25

26 UNITED STATES COURTHOUSE
27 777 FLORIDA STREET
28 BATON ROUGE, LOUISIANA 70801
29 (225) 389-3564

1 (CALL TO THE ORDER OF COURT)

2 (FEBRUARY 24, 2022)

3 **THE COURT:** WE ARE HERE IN *UNITED STATES VERSUS*
4 *ANDRE' ZENO*, IT'S NUMBER 19-CR-135.

5 WILL COUNSEL ENTER AN APPEARANCE FOR THE RECORD.

6 **MS. THORNHILL:** YOUR HONOR, JESSICA THORNHILL ON
7 BEHALF OF THE UNITED STATES.

8 **THE COURT:** MS. THORNHILL.

9 **MR. TALBOT:** GOOD AFTERNOON, YOUR HONOR. DUSTIN
10 TALBOT ON BEHALF OF MR. ZENO, WHO'S WITH ME AT THE TABLE.

11 **THE COURT:** WE'RE GOING TO START THE SENTENCING THE
12 WAY WE START EVERY SENTENCING IN THIS COURT, WHICH IS TO SAY
13 WE'RE GOING TO SEAL THE COURTROOM FOR A FEW MINUTES TO TAKE UP
14 THE ISSUE OF WHETHER THERE IS ANY COOPERATION AGREEMENT WITH
15 THE GOVERNMENT. THE FACT THAT WE HAVE THIS SEALED PORTION
16 DOESN'T MEAN THAT THERE IS OR IS NOT A COOPERATION AGREEMENT
17 OF SOME KIND AND -- BECAUSE WE DO IT IN EVERY SENTENCING.

18 WITH THAT, MR. JONES, IF YOU WOULD SEAL THE
19 COURTROOM, PLEASE.

20 (THE COURTROOM WAS SEALED)

21 (THE COURTROOM WAS UNSEALED AND THE PROCEEDINGS RESUMED)

22 **THE COURT:** THE RECORD WILL REFLECT THAT THE
23 COURTROOM HAS BEEN UNSEALED AND WE'RE GOING TO PROCEED WITH
24 SOME PRELIMINARY MATTERS.

25 IF YOU WOULD, MR. ZENO, WOULD YOU COME BEHIND THE

1 PODIUM SO THE COURT CAN ADDRESS YOU AND MR. TALBOT.

2 SO, MR. ZENO, THE PROBATION SERVICE PREPARED A
3 WRITTEN PRESENTENCE INVESTIGATION REPORT TO ASSIST ME IN
4 SENTENCING YOU, THAT'S DOCUMENT NUMBER 49, WHICH WAS GIVEN TO
5 THE PARTIES ON NOVEMBER 17TH OF 2021. THEY ALSO DID AN
6 ADDENDUM TO THAT REPORT, WHICH IS DOCUMENT 51, WHICH WAS
7 DISCLOSED TO THE PARTIES ON DECEMBER 21ST, 2021.

8 DID YOU GET THOSE DOCUMENTS AND DID YOU READ THEM?

9 **THE DEFENDANT:** YES, SIR, YOUR HONOR, I DID.

10 **THE COURT:** ALL RIGHT. DID YOU UNDERSTAND THEM?

11 **THE DEFENDANT:** YES, SIR.

12 **THE COURT:** AND DID YOU DISCUSS THOSE WITH
13 MR. TALBOT AND DID HE EXPLAIN THEM TO YOU AND ANSWER ANY
14 QUESTIONS THAT YOU HAD ABOUT THEM?

15 **THE DEFENDANT:** YES, SIR.

16 **THE COURT:** OKAY. AND I DO -- ARE YOU SATISFIED
17 WITH THE REPRESENTATION BY MR. TALBOT, MR. ZENO?

18 **THE DEFENDANT:** YES, SIR, I AM.

19 **THE COURT:** OKAY. I KNOW THERE'S SOME OBJECTIONS
20 WHICH WE'RE GOING TO GET TO. BUT OTHER THAN THE OBJECTIONS
21 WHICH HAVE BEEN FILED, ARE THERE ANY CORRECTIONS, ADDITIONS OR
22 ALTERATIONS WHICH THE DEFENSE WISHES TO MAKE AT THIS TIME?

23 **MR. TALBOT:** NO, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. AND FROM THE UNITED STATES?

25 **MS. THORNHILL:** NONE FROM THE UNITED STATES, YOUR

1 HONOR.

2 THE COURT: OKAY. SO WE'RE GOING TO BEGIN WITH THE
3 FIRST OBJECTION WHICH IS AS TO THE ACCEPTANCE OF
4 RESPONSIBILITY. THE DEFENDANT OBJECTS TO THE FAILURE OF THE
5 PSR TO AWARD HIM A THREE-LEVEL REDUCTION IN HIS OFFENSE LEVEL
6 FOR ACCEPTANCE OF RESPONSIBILITY BASED ON HIS ACCEPTANCE FOR
7 HIS ACTIONS, COOPERATING WITH AUTHORITIES, PROVIDING
8 INFORMATION TO INVESTIGATORS AND THE ASSISTANT U.S. ATTORNEY
9 AND PLEADING GUILTY IN A FASHION THAT WAIVED HIS RIGHT TO
10 APPEAL HIS MOTION TO SUPPRESS.

11 MR. TALBOT, WOULD YOU LIKE, OR MR. ZENO, LIKE TO
12 ADDRESS THE COURT ON THIS?

13 MR. TALBOT: I WOULD, YOUR HONOR. WHAT I WAS TRYING
14 TO POINT OUT IN THE OBJECTION IS THAT -- MR. ZENO HAS OFFERED
15 MORE TO THE COURT TO SHOW HIS ACCEPTANCE THAN A TRADITIONAL
16 CASE.

17 IN OTHER WORDS, YOU KNOW, IN A TRADITIONAL CASE WHEN
18 SOMEONE IS REVOKED FROM THEIR PRETRIAL RELEASE, USUALLY FOR
19 DRUG USE, YOU KNOW, MY ARGUMENT FOR ACCEPTANCE IS ALWAYS THE
20 SAME. I BELIEVE SOMEONE WHO PLEADS GUILTY AND DOESN'T GO TO
21 TRIAL DESERVES ACCEPTANCE OF RESPONSIBILITY. BUT THIS CASE
22 HAS SOME ADDITIONAL THINGS.

23 IT HAS THE INTERVIEW THAT HE GAVE WITH AUTHORITIES
24 THAT ANSWERED THEIR QUESTIONS AND HELPED THEM UNDERSTAND WHAT
25 WAS HAPPENING BEHIND THE SCENES HERE, AND THEN HE PLED GUILTY

1 WITHOUT RESERVING HIS RIGHT TO APPEAL THE MOTION TO SUPPRESS.
2 SO HE GAVE UP A SIGNIFICANT RIGHT TO FURTHER CHALLENGE
3 SOMETHING FOR THE COURT AND I THINK THAT THAT IS A CLEAR
4 INDICATION OF ACCEPTANCE OF RESPONSIBILITY. HE'S NOT FIGHTING
5 THAT. HE'S NOT TRYING TO REVERSE THE CONVICTION ON A
6 TECHNICALITY AT A LATER DATE OR A CONSTITUTIONAL ARGUMENT.
7 HE'S PREPARED TO ACCEPT THE COURT'S JUDGMENT HERE TODAY.

8 AND I THINK THAT THOSE ARE CLEAR INDICATIONS OF
9 ACCEPTANCE OF RESPONSIBILITY THAT KIND OF GO ABOVE AND BEYOND
10 I GUESS THE TRADITIONAL CASE WHERE SOMEONE WAS REVOKED FROM
11 PRETRIAL RELEASE. SO I JUST WANT TO MAKE SURE THAT THAT'S ON
12 THE RECORD; THAT I THINK THOSE ADDITIONAL THINGS KIND OF MOVE
13 THE BALL ACROSS THE GOAL LINE IN THIS CASE AND HE DESERVES
14 ACCEPTANCE.

15 **THE COURT:** ALL RIGHT. THANK YOU, MR. TALBOT.

16 MS. THORNHILL?

17 MS. THORNHILL: THANK YOU, YOUR HONOR.

18 YOUR HONOR, WE CONCUR WITH THE PROBATION OFFICER'S
19 DISAGREEMENT WITH THE DEFENDANT'S OBJECTION SET FORTH IN THE
20 ADDENDUM TO THE PSR.

21 WE WOULD ALSO BRING FORTH THAT, YOU KNOW, IT IS THE
22 DEFENDANT'S BURDEN TO ESTABLISH THEY ARE ENTITLED TO
23 ACCEPTANCE OF RESPONSIBILITY. AND IN THIS SITUATION THERE IS
24 NO DENYING THAT MR. ZENO WAS REVOKED FROM PRETRIAL RELEASE.
25 HE COMMITTED CRIMINAL CONDUCT WHILE ON PRETRIAL RELEASE AND

1 WAS REVOKED. HE TESTED POSITIVE FOR COCAINE ON THREE
2 OCCASIONS.

3 ADDITIONALLY, HE FAILED TO COMPLY WITH COURT ORDERS.
4 HE FAILED TO SUBMIT DRUG SCREENS AT LEAST SIX DIFFERENT TIMES.
5 HE DISREGARDED THE REQUIREMENTS TO CALL IN FOR DRUG SCREEN
6 TESTING. HE CALLED IN LESS THAN HALF THE DAYS REQUIRED EACH
7 MONTH FOR OVER SIX MONTHS. HE ALSO FAILED TO PARTICIPATE IN
8 SUBSTANCE ABUSE TREATMENT AND SPORADICALLY ATTENDED AT TIMES
9 AND JUST STOPPED ATTENDING IN TOTAL.

10 SO, YOUR HONOR, BASED ON THAT, WE BELIEVE THE
11 DEFENDANT'S BEHAVIOR DURING THAT SIX-MONTH PERIOD OF PRETRIAL
12 RELEASE WAS SIGNIFICANT ENOUGH THAT THE COURT REVOKED IT AND
13 ALSO SIGNIFICANT ENOUGH TO NOT GET ACCEPTANCE OF
14 RESPONSIBILITY. WE WOULD POINT TO THE COURT AND WE REFERENCED
15 WITHIN OUR SENTENCING MEMO THAT THERE'S A SIMILAR CASE IN
16 *UNITED STATES VERSUS FLUCAS* WHERE THE FIFTH CIRCUIT UPHELD THE
17 DENIAL OF ACCEPTANCE OF RESPONSIBILITY IN A SIMILAR SCENARIO.

18 THANK YOU, YOUR HONOR.

19 **THE COURT:** THANK YOU, MS. THORNHILL.

20 SO THE COURT IS GOING TO OVERRULE THE OBJECTION.
21 THE COURT DISAGREES WITH THE DEFENDANT'S OBJECTION THAT HE
22 ACCEPTED RESPONSIBILITY FOR THIS OFFENSE. PURSUANT TO UNITED
23 STATES SENTENCING GUIDELINE SECTION 3E1.1 COMMENT N1, IN
24 DETERMINING WHETHER A DEFENDANT QUALIFIES UNDER U.S.
25 SENTENCING GUIDELINE SECTION 3E1.1 SUBSECTION A, APPROPRIATE

1 CONSIDERATIONS INCLUDE THE FOLLOWING:

2 VOLUNTARY TERMINATION OF WITHDRAWAL FROM CRIMINAL
3 CONDUCT OR ASSOCIATIONS, THAT'S B. G IS POST-OFFENSE
4 REHABILITATIVE EFFORTS, THAT IS COUNSELING OR DRUG TREATMENT.

5 AS STATED IN THE PRETRIAL ADJUSTMENT AND ADJUSTMENT
6 FOR ACCEPTANCE OF RESPONSIBILITY SECTION OF THE PRESENTENCE
7 REPORT, WHILE ON PRETRIAL SUPERVISION THE DEFENDANT
8 CONTINUALLY VIOLATED THE CONDITIONS OF HIS RELEASE. HE
9 SUBMITTED MULTIPLE POSITIVE URINE SAMPLES FOR COCAINE. HE WAS
10 AFFORDED INTENSIVE OUTPATIENT TREATMENT AND HE FAILED TO
11 PARTICIPATE IN TREATMENT ON A REGULAR BASIS. HE CONTINUED TO
12 USE COCAINE WHILE IN INTENSIVE OUTPATIENT TREATMENT. HE WAS
13 REFERRED FOR IN-PATIENT SUBSTANCE ABUSE DUE TO CONTINUED DRUG
14 USE WHILE IN INTENSIVE OUTPATIENT TREATMENT, BUT UNFORTUNATELY
15 HE MAINTAINED THAT HE DIDN'T NEED IT.

16 PRIOR TO THE BOND REVOCATION HEARING ON FEBRUARY 9,
17 2021, THE TREATMENT PROVIDER MADE SEVERAL ATTEMPTS TO CONTACT
18 MR. ZENO SINCE DECEMBER 16TH OF 2020 BUT TO NO AVAIL. THE
19 DEFENDANT ALSO FAILED TO APPEAR FOR NUMEROUS DRUG SCREENS AS
20 REQUIRED AND ON FEBRUARY 9, 2021 HE -- HIS BOND WAS REVOKED.

21 IN SUPPORT OF HIS OBJECTION, THE DEFENDANT CITES A
22 PORTION OF UNITED STATES SENTENCING GUIDELINE 3E1.1 COMMENT N3
23 WHICH PROVIDES: "ENTRY OF A PLEA OF GUILTY PRIOR TO THE
24 COMMENCEMENT OF TRIAL COMBINED WITH TRUTHFULLY ADMITTING THE
25 CONDUCT COMPRISING THE OFFENSE OF CONVICTION, AND TRUTHFULLY

1 ADMITTING OR NOT FALSELY DENYING ANY ADDITIONAL RELEVANT
2 CONDUCT FOR WHICH HE IS ACCOUNTABLE UNDER SECTION 1B1.3
3 RELEVANT CONDUCT, SEE APPLICATION NOTE 1A, WILL CONSTITUTE
4 SIGNIFICANT EVIDENCE OF ACCEPTANCE OF RESPONSIBILITY FOR
5 PURPOSES OF SUBSECTION A." BUT THE COURT NOTES THAT UNITED
6 STATES SENTENCING GUIDELINE SECTION 3E1.1 COMMENT N3 FURTHER
7 STATES, "HOWEVER, THIS EVIDENCE MAY BE OUTWEIGHED BY CONDUCT
8 OF THE DEFENDANT THAT IS INCONSISTENT WITH SUCH ACCEPTANCE OF
9 RESPONSIBILITY. A DEFENDANT WHO ENTERS A GUILTY PLEA IS NOT
10 ENTITLED TO AN ADJUSTMENT UNDER THIS SECTION AS A MATTER OF
11 RIGHT."

12 CONSIDERING THE DEFENDANT'S FAILURE TO COMPLY WITH
13 THE CONDITIONS OF RELEASE, EVIDENCED BY ILLEGALLY USING
14 COCAINE, FAILING TO ATTEND MULTIPLE SUBSTANCE ABUSE TREATMENT
15 SESSIONS AND FAILING TO REPORT FOR SEVERAL DRUG TESTS WHILE ON
16 PRETRIAL SUPERVISION, THE COURT FINDS THE DEFENDANT IS NOT
17 ENTITLED TO A REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY
18 BECAUSE THE GOOD ACTIONS DEFENDANT CITES ARE OUTWEIGHED BY HIS
19 CONDUCT THAT IS INCONSISTENT WITH ACCEPTANCE.

20 IN *U.S. v. WATKINS*, WHICH IS 911 F.2ND 983, (5TH
21 CIRCUIT 1990) THE DISTRICT COURT DETERMINED THAT WATKINS WAS
22 NOT ENTITLED TO A TWO POINT REDUCTION FOR ACCEPTANCE OF
23 RESPONSIBILITY FOR THE SOLE REASON THAT WATKINS HAD USED
24 COCAINE WHILE ON RELEASE PENDING SENTENCING. WHILE NOTING
25 THAT WATKINS' STATEMENTS CONCERNING HIS CULPABILITY FOR THE

1 CONVICTED OFFENSE WERE SINCERE, THE DISTRICT COURT EXPLAINED
2 THAT "WATKINS' CONTINUING OR CONTINUED UNLAWFUL BEHAVIOR WHILE
3 ON RELEASE WERE INCONSISTENT WITH AN ACCEPTANCE OF
4 RESPONSIBILITY."

5 PURSUANT TO U.S. SENTENCING GUIDELINE SECTION 3E1.1
6 COMMENT N5, THE SENTENCING JUDGE IS IN A UNIQUE POSITION TO
7 EVALUATE A DEFENDANT'S ACCEPTANCE OF RESPONSIBILITY. AND FOR
8 THIS REASON THE DETERMINATION OF SENTENCING -- OF THE
9 SENTENCING JUDGE IS ENTITLED TO GREAT DEFERENCE.

10 PURSUANT TO UNITED STATES SENTENCING GUIDELINE
11 SECTION 6A1.3 RESOLUTION OF DISPUTED FACTORS; POLICY
12 STATEMENT. "WHEN ANY FACTOR IMPORTANT TO THE SENTENCING
13 DETERMINATION IS REASONABLY IN DISPUTE, THE PARTIES SHALL BE
14 GIVEN AN ADEQUATE OPPORTUNITY TO PRESENT INFORMATION TO THE
15 COURT REGARDING THAT FACTOR." AND THE DEFENDANT HAS BEEN
16 GIVEN THAT OPPORTUNITY. "IN RESOLVING ANY DISPUTE CONCERNING
17 A FACTOR IMPORTANT TO THE SENTENCING DETERMINATION, THE COURT
18 MAY CONSIDER RELEVANT INFORMATION WITHOUT REGARD TO ITS
19 ADMISSIBILITY UNDER THE RULES OF EVIDENCE APPLICABLE AT TRIAL,
20 PROVIDED THE INFORMATION HAS SUFFICIENT INDICIA OF RELIABILITY
21 TO SUPPORT ITS PROBABLE ACCURACY."

22 AND THE COURT DID RESOLVE -- AND THE COURT IS
23 RESOLVING THAT DISPUTE IN FAVOR OF OVERRULING THE OBJECTION IN
24 ACCORDANCE WITH RULE 32(I) FEDERAL RULES OF CRIMINAL
25 PROCEDURE. FOR THESE REASONS THE OBJECTION IS OVERRULED.

1 NOW, THE SECOND OBJECTION IS WITH RESPECT TO THE
2 SAFETY VALVE PROVISION. DEFENDANT OBJECTS TO THE PSR'S
3 FAILURE TO APPLY THAT PROVISION 18 U.S.C. SECTION 3553(F) TO
4 REMOVE THE 60 MONTH MANDATORY MINIMUM ON THE BASIS THAT HE
5 MEETS ALL REQUIREMENTS OF THIS PROVISION.

6 AND, MR. TALBOT, WOULD YOU WANT TO ADDRESS THIS?

7 **MR. TALBOT:** YES, YOUR HONOR. THE PROVISION OF THE
8 NEW SAFETY VALVE THAT'S AT ISSUE IN THIS CASE IS 3553(F)(1)
9 AND THE QUESTION THAT'S MAKING ITS WAY THROUGH ALL THE COURTS
10 RIGHT NOW IS WHETHER THAT PROVISION IS CONJUNCTIVE. WHETHER
11 THE AND IN THAT PROVISION IS A CONJUNCTIVE NEGATIVE PROOF. IN
12 OTHER WORDS, DOES MR. ZENO HAVE TO HAVE EACH OF THE THREE
13 THINGS LISTED IN (F)(1). WE'VE KIND OF LAID ALL THIS OUT IN
14 OUR PLEADINGS. I KNOW THE GOVERNMENT HAS RESPONDED.
15 PROBATION HAS RESPONDED.

16 THE GOVERNMENT POINTED OUT RECENTLY THAT ONE OF THE
17 DECISIONS HAS BEEN VACATED, SO AS WE STAND HERE TODAY, AND I
18 RESEARCHED IT AGAIN THIS MORNING, IT LOOKS LIKE *LOPEZ* FROM THE
19 NINTH CIRCUIT IS STILL OUT THERE AND THAT HOLDS THAT AND MEANS
20 AND, AND THAT IF A DEFENDANT DOESN'T MEET ALL THREE THEN
21 THEY'RE SAFETY VALVE ELIGIBLE, WHICH IS THE ARGUMENT WE'VE
22 PRESENTED TO THE COURT.

23 *GARCON*, THE CASE FROM THE ELEVENTH CIRCUIT, WHICH
24 HELD OTHERWISE, WHICH INTERPRETED THAT IT IS CONJUNCTIVE, BUT
25 THAT A CONJUNCTIVE READING, I GUESS, LEADS TO SOME ABSURDITY

1 IN THEIR VIEW AND THEREFORE THEY'RE GOING TO READ IT
2 DIFFERENTLY UNDER THAT CANNON OF INTERPRETATION. THE GARCON
3 CASE WAS VACATED ON AN *EN BANC* VOTE AT THE ELEVENTH CIRCUIT,
4 AND NOW IT'S PENDING *EN BANC*. I WOULD SUGGEST THAT THAT MEANS
5 SOMETHING. IT MEANS THAT THERE ARE JUDGES AT THE ELEVENTH
6 CIRCUIT THAT DIDN'T AGREE WITH THE DECISION.

7 SO THIS IS PENDING AT THE FIFTH CIRCUIT ALREADY.
8 THERE WAS AN ORAL ARGUMENT RECENTLY, THE GOVERNMENT POINTED
9 THAT OUT TO THE COURT. IT'S PENDING IN SEVERAL OTHER CIRCUITS
10 TOO RIGHT NOW. BUT AS IT STANDS HERE TODAY, THERE'S ONE
11 APPELLATE DECISION AND IT IS IN FAVOR OF WHAT WE'RE ASKING
12 FOR, AND THAT IS THAT THE SAFETY VALVE AMENDMENT, THE CHANGE
13 OF THE SAFETY VALVE IN THE FIRST STEP ACT OF 2018, IT WAS
14 MEANT TO INCLUDE MORE PEOPLE; THAT WAS THE GOAL. THE GOAL WAS
15 TO GIVE JUDGES MORE DISCRETION TO WAIVE MANDATORY MINIMUMS FOR
16 CERTAIN PEOPLE. AND MR. ZENO HAS A CONVICTION FROM DECADES
17 AGO THAT IS A THREE POINT CONVICTION FOR MARIJUANA AND THAT'S
18 THE CONVICTION THAT WOULD HOLD HIM UP.

19 AND I WOULD SUGGEST THAT HE'S THE TYPE OF PERSON
20 THAT THE SAFETY VALVE IS FOR. SOMEONE WHO HAS STAYED OUT OF
21 TROUBLE FOR 15 YEARS AND THAT ONE PRIOR CONVICTION THAT COUNTS
22 FOR POINTS SHOULDN'T MAKE HIM INELIGIBLE FOR THE SAFETY VALVE
23 BECAUSE HE DOESN'T HAVE A TWO POINT VIOLENT OFFENSE AND HE
24 DOESN'T HAVE MORE THAN FOUR POINTS ON HIS CRIMINAL HISTORY.
25 AND THOSE ARE THINGS THAT ARE UNDISPUTED.

1 AND SO I FEEL LIKE THIS IS GOING TO BE DECIDED ABOVE
2 OUR HEADS ONE DAY.

3 **THE COURT:** RIGHT. THAT'S FOR SURE.

4 **MR. TALBOT:** BUT FOR TODAY'S PURPOSES, YOUR HONOR, I
5 THINK YOU SHOULD HOLD CONSISTENT WITH THE NINTH CIRCUIT, THE
6 ONLY CIRCUIT THAT HAS A CURRENT DECISION ON THIS, THAT AND
7 MEANS AND. THAT THE LEGISLATORS, THEY KNOW HOW TO DRAFT
8 STATUTES. MANY PEOPLE READ THESE STATUTES WHEN THEY'RE
9 DRAFTED AND THEY'RE REVIEWED, AND WHEN THEY'VE LEFT THE WORD
10 AND IN THERE THEY MEANT THAT YOU HAVE TO MEET ALL OF THOSE
11 REQUIREMENTS.

12 AND THAT'S BASED ON THE PLAIN MEANING OF THE
13 STATUTE, THE LEGISLATIVE DRAFTING MANUAL CITED IN *LOPEZ* WHICH
14 EXPLAINS TO LEGISLATORS THAT IF YOU WRITE A STATUTE WITH THIS
15 AND THAT THAT MEANS ALL REQUIREMENTS HAVE TO BE MET, THAT THE
16 STRUCTURE OF 3553(F)(1) IS A CONJUNCTIVE NEGATIVE PROOF WHICH
17 GRAMMATICALLY MEANS ALL THE REQUIREMENTS HAVE TO BE MET. AND
18 THEN UNDER THE CANNON OF CONSISTENT USAGES, WHICH IS ALSO
19 DISCUSSED IN *LOPEZ*, WHICH MEANS THAT IF YOU LOOK AT OTHER
20 PROVISIONS AROUND THIS PROVISION THEY'RE STRUCTURED THE WAY
21 THAT WE'RE ASKING THE COURT TO READ 3553(F)(1).

22 AND SO FOR THOSE REASONS WE'D ASK THAT THE COURT
23 RULE THAT HE IS ELIGIBLE UNDER THE NEW SAFETY VALVE STATUTE
24 WHICH WOULD MEAN THAT THE 60-MONTH MANDATORY MINIMUM IS NO
25 LONGER APPLICABLE IN THIS PARTICULAR CASE.

1 THE COURT: ALL RIGHT. THANK YOU, MR. TALBOT.

2 MS. THORNHILL.

3 MS. THORNHILL: THANK YOU, YOUR HONOR.

4 WE ALSO BRIEFED THIS PRETTY DETAILEDLY IN OUR
5 SENTENCING MEMO AS WELL AND PROVIDED THAT TO THE COURT, SO
6 I'LL JUST HIGHLIGHT A FEW ASPECTS TO THAT.

7 IT'S THE UNITED STATES' POSITION THAT THE PHRASE THE
8 DEFENDANT DOES NOT HAVE, THAT NEGATIVE PRO-FACTORY PHRASE, IS
9 DISTRIBUTED TO MODIFY A, B AND C. MEANING THAT EACH OF THOSE
10 HAVE TO BE PART OF IT, THAT THE SENTENCE IS THE PHRASE, "THE
11 DEFENDANT DOES NOT HAVE A, THE DEFENDANT DOES NOT HAVE B AND
12 THE DEFENDANT DOES NOT HAVE C."

13 IN FACT, IN THE ORAL ARGUMENTS THAT THEY HAD EARLIER
14 THIS MONTH IN *UNITED STATES VERSUS PALOMARES*, JUDGE JOLLY SAID
15 HE CAN'T SEE ANOTHER WAY TO POSSIBLY READ IT. THAT'S THE WAY
16 THAT IT'S STRUCTURED IN THAT SENTENCE.

17 FURTHER, IT'S A CLEAR MEANING OF THE WAY THAT IT'S
18 WRITTEN AND TO INTERPRET IT THE WAY THE DEFENDANT WOULD LIKE,
19 AS THE COURT DID IN *LOPEZ*, WOULD RENDER (F)(1) MEANINGLESS,
20 WHICH IS THE SECTION THAT REQUIRES HIM TO HAVE FOUR POINTS.

21 WELL, OBVIOUSLY, IF YOU HAVE A TWO POINT AND A THREE
22 POINT IT'S ALWAYS GOING TO BE MORE THAN FOUR, SO WHY WOULD
23 THAT HAVE BEEN PUT IN THERE? IT RENDERS IT SUPERFLUOUS. AND
24 THERE IS A SPECIFIC CANNON AGAIN SUPERFLUOUS -- EXCUSE ME.
25 REQUIRING THAT A STATUTE BE READ TO GIVE RESPECT TO ALL

1 PROVISIONS SO THAT NO PART WOULD BE INOPERABLE. FURTHER, THE
2 READING THAT THE DEFENDANT DESIRES IS CONTRARY TO THE
3 CONGRESSIONAL INTENT. THERE'S NO DOUBT THAT THE FIRST STEP
4 ACT WAS DESIGNED TO EXPAND PEOPLE THAT THE FIRST STEP ACT LIED
5 TO, BUT IT DID NOT INTEND TO GO FROM ONE POINT TO VIRTUALLY
6 EVERY OTHER PERSON THAT COULD BE OUT THERE. IN FACT, SENATOR
7 GRASSLEY TALKED ABOUT THIS APPLYING TO THE LOW-LEVEL
8 NONVIOLENT OFFENDERS.

9 FURTHER, TO APPLY THIS THE WAY LOPEZ WOULD SUGGEST
10 WOULD LEAD TO ABSURD, IRRATIONAL RESULTS. THIS WOULD ALLOW A
11 DEFENDANT WITH ONE THREE-POINT AND ONE TWO-POINT OFFENSE TO
12 NOT QUALIFY FOR SAFETY VALVE, BUT A DEFENDANT WHO HAS TEN
13 THREE-POINT OFFENSES BUT NO TWO-POINT OFFENSES WOULD BE
14 ELIGIBLE FOR THAT AND THAT'S NOT WHAT THE INTENT WAS BEHIND
15 THIS.

16 THEREFORE, YOUR HONOR, WE BELIEVE THAT THE SAFETY
17 VALVE SHOULD NOT APPLY IN THIS CASE. THANK YOU.

18 **THE COURT:** THANK YOU. THE DEFENDANT'S OBJECTION IS
19 OVERRULED. AND AS STATED IN THE DEFENDANT'S OBJECTION THE NEW
20 STATUTORY SAFETY VALVE PROVISION SET FORTH IN 18 UNITED STATES
21 CODE SECTION 3553(F) PROVIDES: LIMITATION ON APPLICABILITY OF
22 STATUTORY MINIMUMS OF CERTAIN CASES. NOTWITHSTANDING ANY
23 OTHER PROVISION OF THE LAW, IN THE CASE OF AN OFFENSE UNDER
24 SECTION 401, 404, OR 406, OTHER CONTROLLED SUBSTANCES ACT,
25 THAT'S 21 U.S.C. SECTION 841, 844, AND 846, SECTION 1010 OR

1 1013 OF THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT,
2 THAT'S 21 U.S.C. SECTION 960 AND 963 OR SECTION 70503 OR 70506
3 OF TITLE 46, THE COURT SHALL IMPOSE A SENTENCE PURSUANT TO
4 GUIDELINES PROMULGATED BY THE UNITED STATES SENTENCING
5 COMMISSION UNDER SECTION 994, TITLE 28 WITHOUT REGARD TO ANY
6 STATUTORY MINIMUM SENTENCE IF THE COURT FINDS AT SENTENCING,
7 AFTER THE GOVERNMENT HAS BEEN AFFORDED THE OPPORTUNITY TO MAKE
8 A RECOMMENDATION THAT, ONE, THE DEFENDANT DOES NOT HAVE (A),
9 MORE THAN FOUR CRIMINAL HISTORY POINTS, EXCLUDING ANY CRIMINAL
10 HISTORY POINTS RESULTING FROM A ONE-POINT OFFENSE AS
11 DETERMINED BY THE SENTENCING GUIDELINES. (B), A PRIOR
12 THREE-POINT OFFENSE AS DETERMINED UNDER THE SENTENCING
13 GUIDELINES. (C), A PRIOR TWO-POINT VIOLENT OFFENSE AS
14 DETERMINED UNDER THE SENTENCING GUIDELINES.

15 TWO, THE DEFENDANT DID NOT USE VIOLENCE OR CREDIBLE
16 THREATS OF VIOLENCE OR POSSESS A FIREARM OR OTHER DANGEROUS
17 WEAPON OR INDUCE ANOTHER PARTICIPANT TO DO SO IN CONNECTION
18 WITH THE OFFENSE.

19 THREE, THE OFFENSE DID NOT RESULT IN DEATH OR
20 SERIOUS BODILY INJURY TO ANY PERSON.

21 FOUR, THE DEFENDANT WAS NOT AN ORGANIZER, LEADER,
22 MANAGER OR SUPERVISOR OF OTHERS IN THE OFFENSE AS DETERMINED
23 UNDER THE SENTENCING GUIDELINES AND WAS NOT ENGAGED IN A
24 CONTINUAL CRIMINAL ENTERPRISE AS DEFINED IN SECTION 408 OF THE
25 CONTROLLED SUBSTANCES ACT.

1 AND, FIVE, NOT LATER THAN THE TIME OF SENTENCING
 2 HEARING THE DEFENDANT HAS TRUTHFULLY PROVIDED TO THE
 3 GOVERNMENT ALL INFORMATION AND EVIDENCE THE DEFENDANT HAS
 4 CONCERNING THE OFFENSE OR OFFENSES THAT WERE PART OF THE SAME
 5 COURSE OF CONDUCT OR THE COMMON SCHEME OR PLAN, BUT THE FACT
 6 THE DEFENDANT HAS NO RELEVANT OR USEFUL INFORMATION TO PROVIDE
 7 OR THAT THE GOVERNMENT IS ALREADY AWARE OF THE INFORMATION
 8 SHALL NOT PRECLUDE A DETERMINATION BY THE COURT THAT THE
 9 DEFENDANT HAS COMPLIED WITH THIS REQUIREMENT.

10 NOW, THE DEFENDANT ARGUES THAT THE PLAIN LANGUAGE OF
 11 THE STATUTE IS CONJUNCTIVE AND THEREFORE MAKES A DEFENDANT
 12 ELIGIBLE FOR SAFETY VALVE UNLESS HE MEETS ALL OF THE CRITERIA
 13 SET OUT IN SUBSECTIONS A THROUGH C.

14 THE DEFENDANT ARGUES THAT ONE OF SUBSECTION A, B AND
 15 C -- OR C IS NOT ENOUGH FOR A DEFENDANT TO BE BARRED FROM
 16 SAFETY VALVE RELIEF, AND THE DEFENDANT STATES AND SUPPORTS
 17 *UNITED STATES VERSUS LOPEZ*, 988 F.3D 431 AT 437 (9TH CIRCUIT
 18 2021). THE DEFENDANT COMPARES *LOPEZ* WITH *U.S. V GARCON*, 997
 19 F.3D 1301 (11TH CIRCUIT 2021) REACHING THE OPPOSITE
 20 CONCLUSION, HOLDING THAT AND REALLY MEANS OR IN SECTION
 21 3553(F)(1) AND A DEFENDANT IS INELIGIBLE FOR SAFETY VALVE IF
 22 THEY FAIL TO MEET ANY OF THOSE CRITERIA. AND OF COURSE THE
 23 COURT IS AWARE AND HAS BEEN MADE AWARE BY THE PARTIES THAT
 24 THERE HAS BEEN A RE-HEARING *EN BANC* GRANTED IN THE 11TH
 25 CIRCUIT CASE, SO THERE IS GREAT UNCERTAINTY ABOUT THIS ISSUE.

1 BUT IN ANY EVENT, THE DEFENDANT HAS A PRIOR
2 THREE-POINT OFFENSE AS DETERMINED UNDER THE SENTENCING
3 GUIDELINES AS REFLECTED IN PARAGRAPH 42 OF THE PSR. BECAUSE
4 OF THIS, THE DEFENDANT DOES NOT MEET THE CRITERIA FOR THE NEW
5 SAFETY VALVE PROVISION PURSUANT TO 18 U.S.C. SECTION 3553(F)
6 AND THE COURT DISAGREES WITH THE DEFENDANT'S OBJECTION THAT
7 ONE OF SUBSECTION A, B OR C IS NOT ENOUGH FOR A DEFENDANT TO
8 BE BARRED FROM THE SAFETY VALVE PROVISIONS FOR THE REASONS
9 GIVEN IN THE ORIGINAL OPINION IN THE *U.S. V GARCON* CASE AND AS
10 EXPRESSED BY THE GOVERNMENT IN THIS ARGUMENT TODAY.

11 REALIZING, HOWEVER, IT'S AN UNCERTAIN ISSUE. THE
12 COURT'S GOT TO CALL IT LIKE IT SEES IT AND THAT'S LIKE IT SEES
13 IT. WE'LL SEE WHAT THE FIFTH CIRCUIT DOES AND THIS COURT
14 WOULD BE BOUND BY WHATEVER THE FIFTH CIRCUIT ULTIMATELY SAYS
15 AND PERHAPS EVEN THE U.S. SUPREME COURT IF THERE'S ANY
16 DIFFERENCE IN THE CIRCUITS AS TO HOW THEY CONSIDER THIS ISSUE.

17 BUT IN ANY EVENT, THE COURT DOES NOT BELIEVE THAT
18 THE DEFENDANT MEETS ALL OF THE CRITERIA OF THE NEW SAFETY
19 VALVE PROVISION AND THEREFORE THE 60-MONTH MANDATORY MINIMUM
20 TERM IS NOT APPLICABLE IN THIS CASE.

21 FINALLY, THE PROVISIONS OF U.S. SENTENCING GUIDELINE
22 6A1.3 REGARDING RESOLUTION OF DISPUTED POLICY FACTORS THAT THE
23 COURT CITED IN THE RULING ON OBJECTION NUMBER ONE, ALSO APPLY
24 WITH RESPECT TO OBJECTION NUMBER TWO AND, ACCORDINGLY, THE
25 OBJECTION IS OVERRULED.

1 NOW THAT, I BELIEVE, TAKES CARE OF ALL OF THE
2 OBJECTIONS. THE COURT THEREFORE ADOPTS THE UNDISPUTED FACTUAL
3 STATEMENTS AND GUIDELINES COMPUTATIONS RECOMMENDED BY THE
4 PROBATION OFFICE AS REFLECTED IN THE PRESENTENCE INVESTIGATION
5 REPORT AND ADDENDUM.

6 I FIND THAT THE APPLICABLE GUIDELINES IN THIS CASE
7 PROVIDE FOR THE FOLLOWING:

8 TOTAL OFFENSE LEVEL OF 24, CRIMINAL HISTORY CATEGORY
9 II, TERM OF IMPRISONMENT OF 60 TO 71 MONTHS, A PERIOD OF
10 SUPERVISED RELEASE OF FOUR TO FIVE YEARS, THE DEFENDANT IS
11 INELIGIBLE FOR PROBATION, A FINE IN THE SUM OF \$20,000 TO
12 \$5 MILLION, RESTITUTION IS NOT TO EXCEED THE FINE IMPOSED, A
13 SPECIAL ASSESSMENT FEE IN THE AMOUNT OF \$100.

14 MR. ZENO, I READ THE PRESENTENCE REPORT AND ITS
15 ADDENDUM. I'VE READ YOUR LAWYER'S SENTENCING MEMORANDUM.
16 I'VE READ ALL OF THE LETTERS THAT YOUR FAMILY AND FRIENDS SENT
17 IN SUPPORT OF YOU, AND I'VE READ THE GOVERNMENT'S SENTENCING
18 MEMORANDUM AND THE UPDATE ON THE LAW THAT THEY SENT ME
19 RECENTLY AND, AGAIN, THE LETTERS THAT YOUR LAWYER SENT ME IN
20 SUPPORT OF YOU. SO AT THIS TIME YOU HAVE THE RIGHT TO TELL ME
21 WHATEVER YOU WOULD LIKE TO TELL ME BEFORE SENTENCING AND OF
22 COURSE MR. TALBOT WILL BE GIVEN THAT RIGHT AS WELL.

23 **THE DEFENDANT:** GOOD AFTERNOON, YOUR HONOR. I'M
24 ANDRE' ZENO. I'M 55 YEARS OLD. I'VE BEEN BATTLING WITH DRUG
25 ADDICTION OFF AND ON ALL MY LIFE IN MY ADULTHOOD I'D SAY, MY

1 ADULTHOOD. AND THINGS -- THINGS I'VE -- THINGS I'VE DONE --
 2 THINGS I'VE DONE I REGRET THEM. I REGRET THEM TO THE FULLEST.
 3 ESPECIALLY THE HURT THAT I HAVE PUT ON MY MOTHER, I'M THE ONLY
 4 CHILD AND, MY CHILDREN; MY DAUGHTERS, MY GRANDDAUGHTERS AND MY
 5 FIANCE' THAT I WAS SUPPOSED TO MARRY LAST YEAR. DON'T KNOW
 6 WHERE THAT'S AT NOW.

7 BUT THE 28-DAY PROGRAM I FEEL LIKE NOW I'M BEING
 8 HONEST WITH MYSELF. BACK THEN WHEN IT WAS OFFERED TO ME IT
 9 WASN'T GOING TO BE ENOUGH. I NEEDED TO BE LOCKED UP FOR A
 10 WHILE TO COME BACK TO MY OLD SELF. TWENTY-EIGHT DAYS WASN'T
 11 ENOUGH TIME TO DO IT. BUT TRUST AND BELIEVE ME NOW, I
 12 APPRECIATE EVERYTHING FROM THE SMALLEST TO THE LARGEST.

13 I TOOK FOR GRANTED A LOT OF DIFFERENT THINGS. I
 14 DON'T FEEL THAT WAY ANYMORE. I NEEDED THIS TIME. BUT FOR TO
 15 INFRINGE A WHOLE LOT MORE TIME ON ME, I'LL BE 60 YEARS OLD IN
 16 A FEW YEARS. I MEAN MY FAMILY HAVE -- THEY KIND OF, YOU KNOW,
 17 DEPENDED ON ME, FRIENDS AND FAMILY. AND I DON'T KNOW, I GUESS
 18 COMING UP TO THIS -- EVER SINCE THE SUPPRESSION HEARING LAST
 19 YEAR, I MADE SURE I TOOK THE TIME TO GET MYSELF MENTALLY AND
 20 PHYSICALLY STRAIGHT JUST IN CASE YOU WERE UP FOR LETTING THE
 21 SAFETY VALVE GO THROUGH. I WANTED TO MAKE SURE I WAS RIGHT
 22 MENTALLY AND PHYSICALLY AND THAT'S ALL I'VE BEEN DOING SINCE
 23 APRIL OF LAST YEAR; TRYING TO STAY IN THE RIGHT FRAME OF MIND
 24 AND SPIRIT. THAT'S ALL I HAVE TO SAY.

25 **THE COURT:** THANK YOU, MR. ZENO.

1 MR. TALBOT.

2 MR. TALBOT: THANK YOU, YOUR HONOR.

3 YOU KNOW, I WISH I DIDN'T HEAR WHAT MR. ZENO
4 SAID, BUT I HEAR IT OFTEN IN MY PRACTICE WHEN SOMEONE WITH
5 DRUG ADDICTION IS REVOKED FROM THEIR FREEDOM BECAUSE THEY
6 CAN'T COMPLY WITH CONDITIONS. AND THERE'S USUALLY A COUPLE
7 MONTHS THAT GOES BY BEFORE THIS HAPPENS, RIGHT. BUT
8 UNFORTUNATELY I HEAR THIS SOMETIMES, THAT THE REVOCATION IS
9 WHAT SAVED THEM, RIGHT. THAT IT WAS JAIL TIME WHERE THEY
10 CLEANED UP AND DRIED OUT, THAT SOMETIMES WAS THE NECESSARY
11 PUSH. AND THAT'S JUST -- THAT'S A HORRIBLE THING I THINK TO
12 SAY OUT LOUD AND TO EXPERIENCE AS A CRIMINAL DEFENSE LAWYER.
13 YOU KNOW, THAT LOCKING UP MY CLIENT SOMETIMES IS SOMETHING
14 THAT THEY ACKNOWLEDGE WAS A GOOD THING, WHEN IT'S MY JOB TO
15 TRY TO PREVENT THOSE THINGS FROM HAPPENING. BUT MR. ZENO HAS
16 EXPRESSED THIS POINT TO ME BEFORE. THAT THAT'S WHAT HE
17 NEEDED, RIGHT. HE NEEDED THAT TO HELP HIM -- FORCE HIM TO
18 ACKNOWLEDGE HIS COCAINE ADDICTION.

19 AND IN THIS CASE, YOU KNOW, YOUR HONOR, YOU'RE
20 LIMITED TO FIVE YEARS BASED ON THE SAFETY VALVE RULING. I'M
21 ASKING THAT YOU SENTENCE HIM TO FIVE YEARS. AND THE
22 OVERWHELMING REASON FOR THAT IS THAT HE WAS A COURIER, RIGHT.
23 THE WAY THAT OUR DRUG GUIDELINES AND DRUG LAWS WORK IS THE
24 QUANTITY OF DRUGS DETERMINES THE SENTENCING GUIDELINES,
25 DETERMINES THE MANDATORY MINIMUMS. THE REASON THERE'S A FIVE

1 YEAR MANDATORY MINIMUM HERE IS BECAUSE THERE WAS MORE THAN
 2 500 GRAMS OF COCAINE IN THE BRICK OF COCAINE THAT MR. ZENO WAS
 3 TOLD TO DRIVE FROM HOUSTON TO BATON ROUGE.

4 AND IN EXCHANGE HE WAS GOING TO GET A LITTLE BIT OF
 5 MONEY OR A LITTLE BIT OF COCAINE AND HE WAS DOING THAT BECAUSE
 6 OF HIS ADDICTION. THESE AREN'T HIS DRUGS. HE WASN'T
 7 DISTRIBUTING THEM IN BATON ROUGE. HE DOESN'T KNOW WHERE THEY
 8 CAME FROM BEFORE HOUSTON. HE WAS A COURIER. HE WAS A DRUG
 9 MULE WHO WAS GETTING COMPENSATION, RIGHT. THAT IS A CRIME.
 10 HE IS GUILTY OF DISTRIBUTION OF COCAINE EVEN THOUGH HE'S THE
 11 COURIER. BUT THE COURIER IS THE LOWEST LEVEL OF THIS, RIGHT.
 12 IT IS THE PERSON WHO THE KINGPINS, RIGHT, THE MAJOR
 13 TRAFFICKERS, THEY PUT ALL THE RISK ON ZENO, RIGHT, TO MOVE THE
 14 DRUGS FROM A TO B. SO THOSE ARE MITIGATING CIRCUMSTANCES AND
 15 THAT'S WHAT MR. ZENO DID TODAY.

16 HE WAS PULLED OVER -- WE HAD A WHOLE HEARING ABOUT
 17 IT. SOMEONE TIPPED OFF THE POLICE AND SAID THAT MR. ZENO WAS
 18 DRIVING FROM HOUSTON TO BATON ROUGE AND WHEN HE WAS PULLED
 19 OVER, SURE ENOUGH, THE ONLY THING IN THE CAR WAS THE COCAINE.
 20 AND IT WAS PACKAGED. IT WASN'T OPEN. IT WASN'T SOMETHING
 21 THAT HE WAS ALLOWED TO HAVE ACCESS TO. HE WAS BRINGING IT
 22 FROM A TO B. SO THAT COURIER NATURE IS NOT CONSIDERED IN THE
 23 GUIDELINES, RIGHT. IT'S NOT LIKE THE GUIDELINES SAY THE MAJOR
 24 TRAFFICKER GETS A HIGHER GUIDELINE ON THE AMOUNT OF DRUGS AND
 25 THE COURIER GETS A LOWER GUIDELINE. THAT'S WHAT THE 3553(A)

1 FACTORS ARE FOR. AND 60 MONTHS IS A GUIDELINE SENTENCE, SO
2 I'M NOT NECESSARILY ASKING FOR A VARIANCE, THOUGH I WANT THE
3 RECORD TO BE CLEAR THAT I WOULD BE ASKING FOR THAT BUT FOR THE
4 SAFETY VALVE RULING IN CASE THIS CASE COMES BACK, RIGHT? BUT
5 I THINK 60 MONTHS IS MORE THAN SUFFICIENT TIME TO PUSH
6 MR. ZENO.

7 BEFORE THIS TIME HE WAS CAUGHT WITH THE COCAINE, IT
8 HAD BEEN 15 YEARS SINCE HIS PREVIOUS CONVICTION AND HE HAD
9 SPENT NINE YEARS OF THAT SOBER. AND HE HAD SLIPPED BACK INTO
10 HIS COCAINE ADDICTION IN THIS CASE.

11 SO THE MOTIVATING FACTORS HERE, RIGHT, LIKE WHY
12 WOULD THIS DEFENDANT -- WHY WOULD MR. ZENO ENGAGE IN THIS
13 CRIMINAL ACTIVITY? THERE ARE MANY AGGRAVATING ANSWERS TO THAT
14 THAT COULD EXIST, RIGHT; MONEY, PROFIT, PRESTIGE, BUT HIS WAS
15 ADDICTION, RIGHT, HE WAS FEEDING HIS OWN ADDICTION. BUT
16 DURING THAT TIME PERIOD HE'S EMPLOYED. HE'S BEEN EMPLOYED FOR
17 15 YEARS. HIS EMPLOYER IS HERE TODAY SITTING BEHIND ME WHO
18 EMPLOYED HIM AT JANI-KING AND WROTE A LETTER TO THE COURT
19 EXPLAINING WHAT KIND OF WORKER HE WAS.

20 SO EVEN THOUGH HE WAS ADDICTED HE WAS WORKING A
21 LEGITIMATE JOB AND TRYING TO GET INTO THAT LEGITIMATE LIFE,
22 BUT HIS ADDICTION WAS HOLDING HIM BACK.

23 SO, YOUR HONOR, UNDER THE FACTS OF THIS CASE AND
24 MR. ZENO'S AGE, HIS RECOGNITION OVER THE LAST YEAR AND A HALF
25 OF INCARCERATION, THAT HE HAS AN ADDICTION THAT IS NEVER GOING

1 TO GO AWAY THAT HE HAS TO ADDRESS IT. HE HAS TO FIND THOSE
2 TOOLS THAT KEPT HIM SOBER FOR NINE YEARS AND APPLY THOSE GOING
3 FORWARD. THE BUREAU OF PRISONS WILL PROVIDE HIM RESOURCES
4 HE'S NEVER SEEN BEFORE, RIGHT. AND HE WILL GET THOSE
5 RESOURCES WITH FIVE YEARS AND HE'LL HAVE PLENTY OF TIME TO GET
6 THOSE RESOURCES.

7 SO I JUST WANT TO MAKE THE RECORD THAT IN MY
8 SENTENCING MEMO I DID MAKE VARIANCE ARGUMENTS AND I CERTAINLY
9 DON'T WANT TO FORFEIT THOSE ARGUMENTS. I DON'T WANT TO SAY
10 I'M NOT RAISING THEM ANYMORE. I JUST WANT TO MAKE A RECORD
11 THAT THOSE ARE ADDITIONAL THINGS I WOULD BE ADDRESSING TO THE
12 COURT IF THE COURT HAD DISCRETION TO GO BELOW 60 MONTHS IN
13 CASE THAT BECOMES AN ISSUE AT SOME LATER DATE IF THERE'S A
14 DIFFERENT RULING ON THE SAFETY VALVE.

15 SO, YOUR HONOR, FOR ALL OF THESE REASONS I'D URGE
16 THAT YOU SENTENCE MR. ZENO TO THE LOWEST SENTENCE POSSIBLE
17 HERE TODAY. THANK YOU.

18 **THE COURT:** ALL RIGHT. THANK YOU, MR. TALBOT.

19 MS. THORNHILL.

20 MS. THORNHILL: THANK YOU, YOUR HONOR.

21 VERY BRIEFLY. I THINK IT IS CLEAR FROM THE RECORD
22 AND WHAT MR. ZENO SAID, THAT HE DOES HAVE A COCAINE PROBLEM
23 AND I DO HOPE HE CAN GET THE TREATMENT HE NEEDS AND WE BELIEVE
24 THAT A GUIDELINE SENTENCE WOULD BE APPROPRIATE BASED ON THE
25 CRIME ITSELF AND THE CRIMINAL HISTORY OF THE DEFENDANT. THANK

1 YOU.

2 THE COURT: THANK YOU.

3 MR. ZENO I'M GOING TO SENTENCE YOU TO 60 MONTHS;
4 SIX-ZERO MONTHS. AND I'M GOING TO EXPLAIN TO YOU THE REASONS
5 FOR MY SENTENCE. FIRST OF ALL, I WAS VERY IMPRESSED WITH THE
6 LETTERS THAT WERE WRITTEN ON YOUR BEHALF. ALL OF YOUR FAMILY
7 MEMBERS SEEM TO LOVE YOU AND RESPECT YOU AND THINK THE WORLD
8 OF YOU, REALLY. YOUR EMPLOYER TOO. YOUR EMPLOYER SHOWING UP
9 HERE TODAY AT YOUR SENTENCING SPEAKS VOLUMES ABOUT WHAT HE
10 THINKS ABOUT YOU. ALL OF THOSE THINGS WERE CONSIDERATIONS IN
11 DECIDING TO GO TO THE LOW END OF THE GUIDELINE SENTENCE.

12 I'M ALSO IMPRESSED WITH YOU TODAY, MR. ZENO. I HEAR
13 A LOT OF PEOPLE STAND BEFORE ME, JUST LIKE YOU'RE STANDING
14 BEFORE ME, AND TELL ME PRETTY MUCH THE SAME THING YOU TOLD ME.
15 SOMETIMES I BELIEVE THEM, SOMETIMES I DON'T BELIEVE THEM. I
16 BELIEVE YOU, MR. ZENO. YOU SOUND LIKE THAT YOU ARE A SINCERE,
17 INTELLIGENT, ARTICULATE PERSON WHICH MAKES, IN A WAY, MAKES IT
18 A TRAGEDY THAT YOU'VE DONE WITH YOUR LIFE ALL THE GREATER
19 BECAUSE YOU HAVE SO MUCH POTENTIAL, WHICH YOU HAVE,
20 UNFORTUNATELY, BECAUSE OF YOUR DRUG ADDICTION THROWN DOWN THE
21 TOILET.

22 HAVING SAID THAT, IT IS NOT TOO LATE. AS MR. TALBOT
23 JUST MENTIONED, YOU'RE GOING TO BE IN THE FEDERAL BUREAU OF
24 PRISONS WHICH IS DIFFERENT THAN THE STATE SYSTEM. THE FEDERAL
25 BUREAU OF PRISONS HAS ALL KINDS OF REALLY GOOD RESOURCES THAT

1 YOU CAN TAKE ADVANTAGE OF AND IT SOUNDS TO ME LIKE YOU REALLY
2 WANT TO TAKE ADVANTAGE OF. IT ALSO SOUNDS TO ME LIKE YOU NEED
3 TO TAKE ADVANTAGE OF THOSE. BECAUSE IF YOU WENT -- YOU HAVE A
4 TERRIBLE CRIMINAL RECORD. I LOOKED AT YOUR RECORD. IT'S
5 AWFUL. BUT YOU WENT FOR 15 YEARS WITHOUT DOING ANYTHING AND
6 THEN YOU GOT INVOLVED IN THIS THING AND THEN AFTER YOU GOT PUT
7 ON SUPERVISED RELEASE YOU SCREW UP AGAIN MULTIPLE TIMES
8 BECAUSE OF THAT DRUG ADDICTION. THIS IS SOMETHING THAT'S NOT
9 GOING TO GO AWAY. YOU'RE GOING TO HAVE TO DEAL WITH IT. IF
10 YOU DON'T DEAL WITH IT, WHEN YOU GET OUT OF JAIL AFTER 60
11 MONTHS YOU'RE GOING TO TURN AROUND AND DO THE SAME THING. IF
12 YOU DON'T GET A HANDLE ON THIS AND GET YOUR LIFE TURNED AROUND
13 YOU'RE GOING TO BE IN FRONT OF SOME OTHER JUDGE GETTING THIS
14 KIND OF LECTURE YOU'RE GETTING. YOU DON'T WANT THAT.
15 OBVIOUSLY YOU DO NOT WANT THAT AND YOU DON'T NEED TO DO THAT
16 BECAUSE YOU'LL HAVE THE ABILITY TO TURN YOUR LIFE AROUND WHEN
17 YOU ARE THERE AND TAKE ADVANTAGE OF THE RESOURCES THAT WILL BE
18 AVAILABLE TO YOU AND I URGE YOU TO DO THAT.

19 SO AFTER HAVING CONSIDERED THE UNITED STATES
20 SENTENCING GUIDELINES AND THE SENTENCING FACTORS ENUMERATED IN
21 18 U.S.C. SECTION 3553(A), IT IS THE JUDGMENT OF THE COURT
22 THAT THE DEFENDANT ANDRE' ZENO IS HEREBY COMMITTED TO THE
23 CUSTODY OF THE BUREAU OF PRISONS TO BE IMPRISONED FOR A TERM
24 OF 60 MONTHS.

25 IT IS ORDERED THAT THIS SENTENCE BE SERVED

1 CONCURRENTLY WITH ANY FUTURE SENTENCE IMPOSED IN DOCKET
2 NUMBERS BR02063402, BR02146651 AND BR00503028 IN BATON ROUGE
3 CITY COURT, BATON ROUGE, LOUISIANA.

4 IT IS RECOMMENDED TO THE BUREAU OF PRISONS THAT THE
5 DEFENDANT BE HOUSED IN A FACILITY CAPABLE OF PROVIDING HIM
6 WITH SUBSTANCE ABUSE TREATMENT, COGNITIVE BEHAVIORAL TREATMENT
7 AND EDUCATIONAL AND VOCATIONAL TRAINING.

8 UPON RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL
9 BE PLACED ON SUPERVISED RELEASE FOR FOUR YEARS. WITHIN 72
10 HOURS OF RELEASE FROM THE CUSTODY OF THE BUREAU OF PRISONS,
11 THE DEFENDANT SHALL REPORT IN-PERSON TO THE PROBATION OFFICE
12 IN THE DISTRICT TO WHICH HE IS RELEASED.

13 WHILE ON SUPERVISED RELEASE THE DEFENDANT SHALL
14 COMPLY WITH THE 13 STANDARD CONDITIONS AND THE FOLLOWING
15 MANDATORY OR SPECIAL CONDITIONS: 14, 15, 16, 17, 24, 27, 35,
16 38, 39, 44 AND 60 ADOPTED BY THIS COURT IN DETAIL AND GENERAL
17 ORDER 2017:03.

18 IN SUMMARY, THE DEFENDANT MUST NOT COMMIT ANOTHER
19 FEDERAL, STATE OR LOCAL CRIME, NOT UNLAWFULLY POSSESS A
20 CONTROLLED SUBSTANCE, REFRAIN FROM UNLAWFUL USE OF A
21 CONTROLLED SUBSTANCE AND SUBMIT TO DRUG URINALYSES AS REQUIRED
22 BY LAW, COOPERATE IN DNA COLLECTION, PARTICIPATE IN SUBSTANCE
23 ABUSE TREATMENT, SUBMIT TO SUBSTANCE ABUSE TESTING AND NOT
24 TAMPER WITH TESTING, PARTICIPATE IN COGNITIVE BEHAVIORAL
25 TREATMENT, PARTICIPATE IN AN EDUCATIONAL SERVICES PROGRAM,

1 PURSUE A VOCATIONAL SERVICES PROGRAM AND SUBMIT TO A SEARCH
2 AND POSSIBLE SEISURE OF ANY CONTRABAND CONDUCTED BY THE
3 PROBATION OFFICER.

4 THE DEFENDANT MUST PAY THE COST OF ANY TREATMENT
5 SERVICES TO THE EXTENT HE'S ABLE TO DO THAT FINANCIALLY AND
6 THE PROBATION OFFICE WILL DETERMINE THE DEFENDANT'S ABILITY TO
7 PAY AND ANY SCHEDULE FOR PAYMENT SUBJECT TO THIS COURT'S
8 REVIEW UPON REQUEST.

9 THE COURT FINDS THE DEFENDANT DOES NOT HAVE THE
10 ABILITY TO PAY A FINE AND WAIVES THE FINE. IT IS ORDERED THAT
11 THE DEFENDANT SHALL PAY TO THE UNITED STATES A SPECIAL
12 ASSESSMENT FEE OF \$100 WHICH IS DUE IMMEDIATELY. I WILL ORDER
13 THAT THE PRESENTENCE INVESTIGATION REPORT BE MADE A PART OF
14 THE RECORD UNDER SEAL.

15 NOW, MR. ZENO, THE SENTENCE THAT I JUST IMPOSED IS
16 ONE THAT YOU HAVE THE RIGHT TO APPEAL FROM. IF YOU WANT TO
17 APPEAL THE SENTENCE I JUST IMPOSED, YOU HAVE 14 DAYS TO DO IT.
18 AND IF YOU DON'T DO IT WITHIN THAT 14-DAY PERIOD YOU WILL HAVE
19 WAIVED YOUR RIGHT TO APPEAL. IF YOU CANNOT AFFORD A LAWYER
20 ONE WILL BE APPOINTED TO REPRESENT YOU AT NO COST TO YOU. IF
21 YOU CAN'T AFFORD THE TRANSCRIPT OF THESE PROCEEDINGS THAT WILL
22 BE PROVIDED AT NO COST TO YOU. AND IF YOU CAN'T AFFORD THE
23 FILING FEE I WILL DIRECT OUR CLERK OF COURT TO RECEIVE YOUR
24 APPEAL WITHOUT ANY FEE TO YOU.

25 DO YOU UNDERSTAND YOUR RIGHTS OF APPEAL?

1 **THE DEFENDANT:** YES, I DO, YOUR HONOR.

2 **THE COURT:** IS THERE ANYTHING FURTHER FROM THE
3 GOVERNMENT?

4 **MS. THORNHILL:** NOTHING, YOUR HONOR. THANK YOU.

5 **THE COURT:** FROM THE DEFENDANT?

6 **MR. TALBOT:** YOUR HONOR, JUST PLEASE NOTE MY
7 OBJECTION TO THE SENTENCE IMPOSED BASED ON THE SAFETY VALVE.

8 **THE COURT:** I UNDERSTAND AND IT IS SO NOTED AND WITH
9 THAT WE WILL STAND ADJOURNED.

10 **REPORTER'S NOTE:** (*WHEREUPON COURT WAS ADJOURNED.*)

11 C E R T I F I C A T E

12 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
13 FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED
14 NUMBERED MATTER.

15 **S:/GINA DELATTE-RICHARD**

16 GINA DELATTE-RICHARD, CCR

17 OFFICIAL COURT REPORTER

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