

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 22-2275

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*v.*

DELVAREZ LONG,

*Defendant-Appellant.*

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Appeal from the United States District Court for the  
Southern District of Indiana, Indianapolis Division.

No. 1:21-cr-00212-001-TWP-TAB-1 — **Tanya Walton Pratt**, *Chief Judge*.

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ARGUED AUGUST 1, 2023 — DECIDED AUGUST 22, 2023

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Before WOOD, HAMILTON, and KIRSCH, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This case presents another variation on the challenges posed for sentencing judges by instructions from Congress and the Supreme Court about the required, permissible, and prohibited roles of rehabilitation in sentencing.

Appellant Delvarez Long is serving an above-guideline prison term for possessing a firearm after being convicted of

a felony. He argues on appeal that the district court plainly erred by imposing a prison term in part to rehabilitate him, contrary to 18 U.S.C. § 3582(a) as construed in *Tapia v. United States*, 564 U.S. 319 (2011). We affirm. Rehabilitation is an important consideration in most sentences. *Tapia* permits a judge to discuss rehabilitation so long as she does not make rehabilitation a primary consideration in deciding whether to impose a prison sentence or how long it should be. Our review of this record does not show a plain error under *Tapia*.

#### *I. Factual Background and Procedural History*

Indianapolis police officers arrested Long on an outstanding warrant for domestic battery. They discovered a stolen firearm in his waistband and cocaine in plain view. Long was charged under 18 U.S.C. § 922(g)(1) with possessing a firearm as a convicted felon.

Long decided to plead guilty, and the district court combined his guilty-plea hearing with his sentencing. The court found his advisory guideline range was 33 to 41 months in prison. Long's counsel argued for a 33-month sentence and asked the court to recommend that the Bureau of Prisons place him in a drug treatment program. The government argued for an above-guideline sentence of 60 months on the ground that Long's criminal history score was underrepresentative.

After hearing from counsel and Long himself, the court said it intended to impose an above-guideline sentence of 51 months in prison to be followed by three years of supervised release with conditions of drug testing and treatment. The court then explained its reasons. It started by noting that Long had four felony convictions and several other convictions,

and that the guideline calculation understated his criminal history. Long's history of domestic violence, in particular, was "very concerning" to the court, which considered as relevant conduct an incident in which Long threatened his girlfriend with what she believed to be a handgun, waved it in her face, and threatened to hurt her. Long was charged with felony intimidation in state court for this conduct, but the charge was ultimately dismissed. The threat did not add to his criminal history calculation.

The court recognized that Long had been "afforded the opportunity for rehabilitation by probation, parole, supervision, community corrections, jail sentences, and even a prison sentence." After acknowledging that Long accepted responsibility for his crime, the court emphasized that it was "a very serious offense" to carry a loaded, stolen handgun while possessing cocaine. The court noted that Long had admitted he was addicted to drugs and requested treatment, and that he "was abusing cocaine on a regular basis ... had possession of some fentanyl, which is a very dangerous and deadly drug, ... [a]nd he's experimented with both ecstasy and Adderall." The court also mentioned that Long owed approximately \$80,000 in child support and had limited employment history, though he had obtained a high school diploma in prison.

The court then made the statements at the heart of this appeal:

Mr. Long needs to gain control of his life by maintaining sobriety, establishing legitimate employment, and taking care of his children. He needs some domestic violence assistance, because he was—he's violent. He's domestically

violent. He needs to get his child support paid and become a productive member of society.

So the Court is ordering this sentence to promote respect for the law and provide just punishment, and it is a long enough time that the defendant can participate in prison industries, as well as learn some job skills so that — that he can use upon his release. Those are the reasons the Court intends to impose the stated sentence.

The court asked counsel if they had any reasons why sentence should not be imposed as stated. Counsel responded no, and the court imposed the announced sentence. The court recommended to the Bureau of Prisons that Long be allowed to participate in a drug treatment program.

## II. *Analysis*

On appeal, Long argues that the district court plainly erred by imposing his prison sentence in part to rehabilitate him. He and the government agree that plain-error review applies because he did not object in the district court when he had the opportunity to do so before the sentence was actually imposed.

To succeed on appeal, Long must establish that (1) there was an error, (2) it was clear or obvious, and (3) it affected his substantial rights. If he makes those showings, we must exercise our discretion to decide whether (4) the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016) (applying plain-error review to sentencing). We decide this case at step two: if there was an error, it was not clear or obvious.

Under 18 U.S.C. § 3582(a), sentencing courts must “recog-niz[e] that imprisonment is not an appropriate means of pro-moting correction and rehabilitation.” The Supreme Court held in *Tapia v. United States*, 564 U.S. 319, 332 (2011), that the statute “precludes sentencing courts from imposing or lengthening a prison term to promote an offender’s rehabili-tation.” Rehabilitation under § 3582(a) includes “treatment, training, and like programs” of the kind mentioned in § 3553(a)(2)(D), such as “educational or vocational training, medical care, or other correctional treatment.” *Tapia*, 564 U.S. at 333. Although rehabilitation is one of the statutory pur-poses of sentencing under § 3553(a), “imprisonment is not an appropriate means of pursuing that goal.” *Id.* at 328.

A district judge facing a convicted defendant, and consid-ering § 3582(a) and *Tapia*, on one hand, and the need to con-sider rehabilitation on the other, faces—pick your meta-phor—a cognitive tightrope, or a minefield, or the challenge of not thinking about the elephant in the room. See *United States v. Shaw*, 39 F.4th 450, 459 (7th Cir. 2022). In deciding first whether the sentence should include any prison time, the judge must consider rehabilitation as a goal but may not use prison for rehabilitative purposes. If a prison term will be im-posed, the judge may not consider the possibility that prison will contribute to rehabilitation in deciding how long the prison term should be. But the judge should also consider re-habilitation in deciding other aspects of the sentence, includ-ing a supervised release term and conditions, as well as fines and restitution. Finally, in explaining the sentence, the judge may encourage the defendant to take advantage of any reha-bilitation opportunities available in prison, such as treatment and counseling for substance abuse and addiction, edu-ca-tional programs, and job training and work experience. In

explaining the entire sentencing package, which aims to serve multiple goals, it can be easy for even the most conscientious judge to refer to rehabilitation goals without making unmistakably clear that those goals did not affect the length of the prison term. See *id.* at 461–62 (Hamilton, J., concurring).

So how does *Tapia* play out in appellate review of sentencing transcripts? The parties disagree. Long relies on statements in *Shaw* and *United States v. Spann*, 757 F.3d 674 (7th Cir. 2014), to argue that a district court errs under *Tapia* when it imposes a sentence based *at all* on a defendant's need for rehabilitation. Long would have us search sentencing transcripts for even a hint that rehabilitative aims have affected a prison term. The government argues, on the other hand, that *Tapia* prevents a court only from imposing a prison term based *primarily* on rehabilitation.

The government's interpretation of *Shaw* matches the majority view among circuits and is truer to *Tapia*, which allows sentencing courts to discuss rehabilitation.<sup>1</sup> *Tapia* explained

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<sup>1</sup> Most circuits (First, Second, Third, Fourth, Fifth, Sixth, and Eighth) agree that *Tapia* errors exist only when the record demonstrates that rehabilitation was the district court's primary consideration in determining the length of the prison term. *United States v. Del Valle-Rodriguez*, 761 F.3d 171, 174–75 (1st Cir. 2014); *United States v. Lifshitz*, 714 F.3d 146, 150 (2d Cir. 2013); *United States v. Schonewolf*, 905 F.3d 683, 691–92 (3d Cir. 2018); *United States v. Bennett*, 698 F.3d 194, 201–02 (4th Cir. 2012); *United States v. Garza*, 706 F.3d 655, 660 (5th Cir. 2013); *United States v. Deen*, 706 F.3d 760, 768 (6th Cir. 2013); *United States v. Replogle*, 678 F.3d 940, 943 (8th Cir. 2012). Three circuits (Ninth, Tenth, and Eleventh) hold that a prison term cannot be based on any rehabilitative concerns. *United States v. Joseph*, 716 F.3d 1273, 1281 n.10 (9th Cir. 2013); *United States v. Thornton*, 846 F.3d 1110, 1116 (10th Cir. 2017); *United States v. Vandergrift*, 754 F.3d 1303, 1310 (11th Cir. 2014).

that a district court does not err by “discussing the opportunities for rehabilitation within prison or the benefits of specific treatment or training programs.” 564 U.S. at 334.

In *Shaw*, we concluded that the district court stepped over the *Tapia* line by selecting the length of the prison sentence *only* because “[t]hat period of time will give [the defendant] a chance, hopefully, ... to look at the programs [he would] be offered in prison in a totally different light.” 39 F.4th at 457. We explained that the need for rehabilitation “is not applicable when a court imposes a term of imprisonment.” *Id.*

*Shaw* went on to clarify, however, that district courts may mention rehabilitation “as one of several reasons for the imposed prison terms” if the context makes clear “that other permissible factors were the primary considerations behind the prison sentences.” *Id.* at 458. Remand was needed in *Shaw* because “the court did not explain how any other considerations factored into the length chosen,” and the transcript gave the impression that rehabilitation was the “driving force” for the decision. *Id.* at 459; see also *id.* at 458–59 (emphasizing that rehabilitation was the “primary reason,” “only reason cited,” and the “sole basis” for the district court’s choice of sentence).

Long also relies on a comment in *Spann* that a judge would violate the rule of *Tapia* by “basing his sentence even in part” on the defendant’s need to learn skills in prison. 757 F.3d at 675. But it is hard to reconcile that dictum with the broader teaching of *Shaw*. Apart from one non-precedential decision,<sup>2</sup> we have not cited *Spann* for the proposition that a court may not base a prison sentence even “in part” upon rehabilitation. Meanwhile, other cases from this circuit and others align with

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<sup>2</sup> *United States v. Elam*, 587 F. App’x 337, 338 (7th Cir. 2014).

*Shaw's* focus on whether rehabilitation was the district court's primary reason for its decisions about prison.

Both *United States v. Burrows*, 905 F.3d 1061 (7th Cir. 2018), and *United States v. Lucas*, 670 F.3d 784 (7th Cir. 2012), are instructive. In each case, we affirmed the defendant's sentence because context showed that the sentencing court did not impose the sentence to promote rehabilitation. In *Burrows*, the district court explained that the sentence would be "sufficient ... to address the harm" and to give the defendant "time to avail [him]self of the sex offender treatment as an adult." 905 F.3d at 1063. We determined that—when read in context with the court's other justifications for the sentence (general and specific deterrence and the seriousness of the offense)—the district court's statement did not show that it imposed the sentence primarily to promote rehabilitation. *Id.* at 1067–68; cf. *Shaw*, 39 F.4th at 458 (vacating sentence where explanation indicated rehabilitation was "the primary reason for the length of the imposed prison term").

In *Lucas*, the district court said that its sentence would "serve to hold the defendant accountable, serve as a deterrent, protect the community, provide the opportunity for rehabilitative programs and achieve parity with sentences of similarly-situated offenders." 670 F.3d at 795. We concluded that "the mere mention that Lucas would have the opportunity to take part in rehabilitative programs" was not prohibited under *Tapia*. *Id.*

The district court's explanation for its sentence in this case is close to the courts' explanations in *Burrows* and *Lucas*. Here, the court did not impose Long's sentence based primarily on rehabilitation. After announcing the intended sentence, the court first noted, without providing any other reason, that the

sentence “takes into account his criminal history that the Court believes is understated, as well as the relevant conduct” in threatening his girlfriend. The court then referred to Long’s criminal history and the seriousness of his offense throughout its explanation:

- Long is ... coming before the Court for being a felon in possession of a firearm. This is Mr. Long’s fourth felony conviction. The defendant has a juvenile delinquency and adult criminal history. As an adult, he has convictions for operating without a license, possession of cocaine, forgery, resisting law enforcement, driving while suspended, and the battery with bodily injury to a pregnant woman.
- The Court agrees with the government that his criminal history is understated in the guideline calculation. The Court also considers as relevant conduct the June 27th incident in which the defendant threatened his girlfriend with what she believed to be a handgun.... And this history of domestic violence is very concerning to the Court. She was definitely afraid of this defendant.
- The defendant committed a very serious offense when he carried this loaded and stolen handgun with cocaine in his possession.

Only in the district court’s final statements were there references to Long needing rehabilitation. Cf. *Bennett*, 698 F.3d at 201 (affirming where district court did not refer to

rehabilitative needs until the end of its sentencing explanation and had repeatedly referred to a permissible reason for the prison term). The court noted here that Long’s “employment history is limited,” that he “had drug addictions and he’s requesting treatment,” and that he “needs some domestic violence assistance, because … he’s violent.” Still, the court did not connect these rehabilitative needs to the length of Long’s proposed prison term.

But the court went on to mention a rehabilitative program—vocational training—in connection with the length of the sentence. The sentence would be “long enough” to allow Long to “participate in prison industries, as well as learn some job skills.” In the next sentence, the court said that, with the other factors it had discussed at length, “Those are the reasons the Court intends to impose the stated sentence.”

Although the court did not place great emphasis on rehabilitation, this passage supports an inference that prison programming was at least *a* reason for the length of the prison term. Under the strict reading of *Tapia* that Long urges, one could find error here. But the transcript overall does not show that rehabilitation drove the court’s choice of the prison term.<sup>3</sup>

For these reasons, we doubt that the district court erred, but we do not need to decide that question. At a minimum,

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<sup>3</sup> Another indication that the court did not impose Long’s prison sentence to promote rehabilitation can be found in its written Statement of Reasons. The court noted that the above-guideline sentence was based on Long’s understated criminal history and history of domestic violence, without mentioning rehabilitation. The form includes boxes for “drug or alcohol dependence” and “to provide the defendant with needed educational or vocational training,” but the court did not check either as an explanation for the prison sentence.

any mistake would not have been “clear or obvious,” as required to reverse on plain-error review. *Molina-Martinez*, 578 U.S. at 194. Whether and to what extent the court weighed rehabilitation in determining Long’s sentence is not clear from the transcript, and as noted, the legal standard remains the subject of debate among circuits. “Plain” errors “cannot be subtle, arcane, debatable, or factually complicated.” *United States v. Ramirez*, 783 F.3d 687, 694 (7th Cir. 2015); accord, *United States v. Holman*, 840 F.3d 347, 355 (7th Cir. 2016) (affirming sentence on plain-error review; court’s comments about defendant’s addiction permissibly explained benefits of available treatments or treated addiction as mitigating factor).

The ambiguity in the district court’s explanation is not surprising. Section 3582(a) and *Tapia* put district courts in a difficult position. Courts must ignore rehabilitation as a goal when imposing or lengthening a prison sentence, even though they must consider rehabilitation at the same hearing, when deciding about supervised release and appropriate conditions. See 18 U.S.C. § 3583(c). As we said in *Shaw*, *Tapia* forces courts to demonstrate “their consideration of the offender’s need for rehabilitation while also disavowing that consideration as a reason for any resulting term of imprisonment.” 39 F.4th at 459. We ordinarily want a judge to engage with a defendant’s individual history and challenges rather than to apply the Sentencing Guidelines mechanically. In that engagement, though, *Tapia* can cast a shadow over thoughtful comments that address a defendant’s unique circumstances or encourage a defendant to take advantage of rehabilitative programs while incarcerated.

We therefore reaffirm the thrust of *Shaw*: to show a *Tapia* error, a defendant must show that the district court focused

exclusively or disproportionately on rehabilitation in deciding whether to impose a prison term or how long a term should be. References to rehabilitative programs in prison in passing or when describing opportunities available while serving a sentence selected for permissible reasons will not lead us to find error, let alone plain error. At the same time, it might be helpful for a sentencing court to include a candid and explicit disclaimer to the effect that rehabilitation goals did not affect whether a prison term was imposed or how long it would be.

The judgment of the district court is AFFIRMED.

**UNITED STATES DISTRICT COURT**  
Southern District of Indiana

UNITED STATES OF AMERICA

v.

DELVAREZ LONG

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 1:21CR00212-001

USM Number: 54851-509

Joshua S. Moudy

Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) 1

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 offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
18§922(g)(1)	Possession of a Firearm by a Convicted Felon	04/02/2021	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.

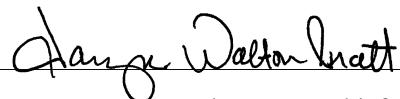
The defendant has been found not guilty on count(s)

Count(s) dismissed on the motion of the United States.

**IT IS ORDERED** that the defendant shall 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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

July 19, 2022

Date of Imposition of Sentence:



Hon. Tanya Walton Pratt, Chief Judge  
United States District Court  
Southern District of Indiana

Date: 7/20/2022

**A CERTIFIED TRUE COPY**

Roger A.G. Sharpe, Clerk  
U.S. District Court  
Southern District of Indiana

By   
Deputy Clerk



DEFENDANT: Delvarez Long

CASE NUMBER: 1:21CR00212-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **51 months**.

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

- **Placement as close to Indianapolis as possible at the lowest security level applicable.**
- **Placement in substance abuse treatment, including RDAP, if eligible.**

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

- at
- 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 was delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

BY: \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Delvarez Long  
CASE NUMBER: 1:21CR00212-001

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

### MANDATORY CONDITIONS

1. You shall not commit another federal, state, or local crime.
2. You shall not unlawfully possess a controlled substance.
3. You shall refrain from any unlawful use of a controlled substance. You shall submit to one drug test within 15 days of release from imprisonment and at least two periodic 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 shall 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 shall cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You shall 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 shall participate in an approved program for domestic violence. *(check if applicable)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant shall comply with the conditions listed below.

### CONDITIONS OF SUPERVISION

1. You shall report to the probation office in the federal judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the federal judicial district where you are being supervised without the permission of the supervising court/probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.

DEFENDANT: Delvarez Long

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9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.
12. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.
13. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.
14. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
15. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.
16. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.
17. You shall participate in a mental health treatment program, as approved by the probation officer, and abide by the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). You shall take all mental health medications that are prescribed by your treating physician. The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.
18. You shall provide the probation officer access to any requested financial information and shall authorize the release of that information to the U.S. Attorney's Office for use in connection with the collection of any outstanding fines and/or restitution.
19. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.
20. You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay: mental health treatment. The probation officer shall determine your ability to pay and any schedule of payment.

DEFENDANT: Delvarez Long

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I understand that I and/or the probation officer may petition the Court to modify these conditions, and the final decision to modify these terms lies with the Court. If I believe these conditions are being enforced unreasonably, I may petition the Court for relief or clarification; however, I shall comply with the directions of my probation officer unless or until the Court directs otherwise. Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

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Defendant

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Date

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U.S. Probation Officer/Designated Witness

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Date

DEFENDANT: Delvarez Long

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**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$100.00	\$1,000.00		

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

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, 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.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>Totals</b>			

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 the  fine  restitution

the interest requirement for the  fine  restitution is modified as follows:

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

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

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

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## 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 payment of \$ \_\_\_\_\_ 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,  F or  G 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**  If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.
- G**  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

Defendant and Co-Defendant Names and Case Numbers (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee

- 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:

**A Sig Sauer P365 9mm semiautomatic handgun, bearing serial number 66A220791, and any ammunition associated with the offense.**

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.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, ) Cause No.  
vs. ) 1:21-cr-0212-TWP-TAB  
DELVAREZ LONG, ) Indianapolis, Indiana  
Defendant. ) July 19, 2022  
 ) 10:34 a.m.  
 )  
 )

**Before the Honorable  
TANYA WALTON PRATT**

OFFICIAL REPORTER'S TRANSCRIPT OF  
PLEA AND SENTENCING

**For Plaintiff:**

Kelsey Massa, Esq.  
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**For Defendant:**

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Court Reporter:

David W. Moxley, RMR, CRR, CMRS  
United States District Court  
46 East Ohio Street, Room 340  
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND  
TRANSCRIPT CREATED BY COMPUTER-AIDED TRANSCRIPTION

1 (In open court.)

2 THE COURT: Good morning. We are on the record. This  
3 is the United States of America versus Delvarez Long, our case  
4 number is 1:21-cr-212, and we're here this morning for both a  
5 change of plea and sentencing hearing.

6 We'll begin by having counsel state your name and  
7 introduce those at your table, beginning with the government.

8 MS. MASSA: Assistant United States Attorney Kelsey  
9 Massa on behalf of the United States. I also have ATF Special  
10 Agent Emma Brown here at counsel table with me. Good morning,  
11 Your Honor.

12 THE COURT: Good morning.

13 And at our defendant's table?

14 MR. MOUDY: Good morning, Your Honor. Josh Moudy here  
15 for Delvarez Long.

16 THE COURT: Okay. Thank you, Counsel.

17 Mr. Moudy, it's my understanding that Mr. Long wishes  
18 to enter a plea of guilty to Count 1 of the indictment. That  
19 count is unlawful possession of a firearm by a convicted felon.  
20 He's pleading without the benefit of a plea agreement, and  
21 you're also prepared for sentencing; am I correct?

22 MR. MOUDY: That is correct, Your Honor.

23 THE COURT: Ms. Massa, are there any identifiable  
24 victims of the offense?

25 MS. MASSA: No, Your Honor.

1                   THE COURT: Mr. Long, you filed a petition to enter a  
2 plea of guilty. Are you prepared to go forward with your  
3 hearing?

4                   THE DEFENDANT: Yes, ma'am.

5                   THE COURT: All right. I'm going to put you under  
6 oath, so I need you to raise your right hand as best you're  
7 able.

8                   (The defendant is sworn.)

9                   THE COURT: You may put your hand down.

10                  Mr. Long, now that you're under oath, if you answer  
11 any of my questions falsely, those answers could later be used  
12 against you in another prosecution for either perjury or making  
13 a false statement; do you understand?

14                  THE DEFENDANT: Yes, ma'am.

15                  THE COURT: What is your full name?

16                  THE DEFENDANT: Delvarez Shamarr Long.

17                  THE COURT: And how old are you, Mr. Long?

18                  THE DEFENDANT: Thirty-eight.

19                  THE COURT: And how far did you go in your education?

20                  THE DEFENDANT: Diploma.

21                  THE COURT: You got a high school diploma?

22                  THE DEFENDANT: Yes, ma'am.

23                  THE COURT: Okay. So you don't have any problems  
24 reading?

25                  THE DEFENDANT: No, ma'am.

1                   THE COURT: Have you been treated recently for any  
2 mental illness?

3                   THE DEFENDANT: No, ma'am.

4                   THE COURT: Have you been treated recently for any  
5 addictions to narcotic drugs of any kind?

6                   THE DEFENDANT: No, ma'am.

7                   THE COURT: Are you currently under the influence of  
8 any medication or other substance that might affect your  
9 ability to understand today's proceedings?

10                  THE DEFENDANT: No, ma'am.

11                  THE COURT: Mr. Long, have you received a copy of the  
12 indictment? That's the document with the written charges that  
13 have been made against you in this case.

14                  THE DEFENDANT: Yes, ma'am.

15                  THE COURT: And have you fully discussed the charge  
16 and the case in general with Mr. Moudy?

17                  THE DEFENDANT: Yes, ma'am.

18                  THE COURT: Sir, you've agreed to plead guilty to  
19 Count 1, unlawful possession of a firearm by a convicted  
20 person. This is a very serious federal offense. It's a  
21 violation of a federal statute, Title 18 United States Code,  
22 Section 922(g)(1). It is a Class C felony that, under  
23 statutory provisions, carries 10 years' imprisonment, a fine  
24 of up to \$250,000, and up to three years of supervised release.  
25 Do you understand the possible penalty range?

1                   THE DEFENDANT: Yes, ma'am.

2                   THE COURT: When I talk about supervised release,  
3 you'd be subject to supervision by a federal probation officer;  
4 you would have to comply with a number of conditions, such as  
5 no new arrests or convictions. If it was alleged that you had  
6 violated those conditions, you would have a hearing, and if  
7 found in violation you could be ordered to return to prison on  
8 this exact same charge, do you understand?

9                   THE DEFENDANT: Yes, ma'am.

10                  THE COURT: In addition to being fined up to \$250,000,  
11 you will have to pay a mandatory special assessment fee of  
12 \$100; do you understand?

13                  THE DEFENDANT: Yes, ma'am.

14                  THE COURT: Ms. Massa, are there any other penalties  
15 that need to be mentioned on this charge?

16                  MS. MASSA: No, Your Honor.

17                  THE COURT: Mr. Long, have you had sufficient time to  
18 talk with your lawyer about the government's evidence against  
19 you in this case?

20                  THE DEFENDANT: Yes, ma'am.

21                  THE COURT: And have you and your lawyer talked about  
22 ways in which you might defend yourself when you were making  
23 the decision whether you would plead guilty or proceed with a  
24 jury trial?

25                  THE DEFENDANT: Yes, ma'am.

1                   THE COURT: Are you fully satisfied with the counsel,  
2 representation, and advice that's been given to you by your  
3 attorney?

4                   THE DEFENDANT: Yes, ma'am.

5                   THE COURT: Mr. Long, you've agreed to plead to  
6 Count 1, unlawful possession of a firearm by a convicted  
7 person, and you're pleading without the benefit of a plea  
8 agreement. Has anyone used any force or made any threats to  
9 get you to plead guilty?

10                  THE DEFENDANT: No, ma'am.

11                  THE COURT: Has anyone made any promises or assurances  
12 about what's going to happen to get you to plead guilty?

13                  THE DEFENDANT: No, ma'am.

14                  THE COURT: Are you pleading guilty of your own free  
15 will and because you are, in fact, guilty?

16                  THE DEFENDANT: Yes, ma'am.

17                  THE COURT: Sir, the offense that you're pleading to,  
18 as we've talked about, is a felony offense. If your plea is  
19 accepted, you'll be adjudged guilty. And a federal felony  
20 adjudication may deprive you of very valuable civil rights,  
21 such as the right to vote, the right to hold public office, the  
22 right to serve on a jury, and the right to possess any kind of  
23 firearm; do you understand?

24                  THE DEFENDANT: Yes, ma'am.

25                  THE COURT: And knowing all of these factors, do you

1 still wish to enter this plea of guilty?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Sir, you do have a right to plead not  
4 guilty to any offense charged against you and to maintain that  
5 plea, but when you plead guilty you give up that right; do you  
6 understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You have a right to a trial by jury, but  
9 when you plead guilty, you give up that right; do you  
10 understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: At trial, you would be presumed innocent  
13 and the government alone would have the burden of proof.  
14 Ms. Massa would have to prove your guilt beyond a reasonable  
15 doubt. But, because you're pleading guilty and admitting to  
16 your guilt, she no longer has to meet that burden of proof; do  
17 you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: You do have a right to the assistance of  
20 counsel for your defense, you have a right to have an attorney  
21 furnished free of charge if you could not afford to hire one,  
22 and you maintain your right to counsel at all stages of a  
23 criminal proceeding; do you understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Sir, you have a right to see and hear all

1 of the witnesses against you and have them cross-examined in  
2 your defense by your attorney, but when you plead guilty, you  
3 give up that right; do you understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You also have a right to testify in your  
6 own defense, but you also have a right to decline to testify,  
7 and you could not be made or compelled to testify unless you  
8 voluntarily elected to do so, but when you plead guilty, you  
9 give up that right; do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If you had gone to trial and you and  
12 Mr. Moudy made the decision that you would not testify at your  
13 trial, I would have admonished the jury and instructed them  
14 that they couldn't discuss that fact or hold it against you in  
15 any way, but when you plead guilty, you give up that right; do  
16 you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You are also giving up your right to use  
19 the court's power of subpoena to compel witnesses to come in  
20 and testify or provide evidence in your defense; do you  
21 understand?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you further understand that by entering  
24 a plea of guilty, if the plea is accepted by the Court, there  
25 were be no trial and you will have waived, or given up, your

1 right to trial, as well as all of the rights associated with  
2 trial that I've just described?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Because you're pleading without a  
5 plea agreement, it's left up to my discretion the sentence that  
6 will be imposed in this matter; do you understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: So the first thing we're going to talk  
9 about are the elements of the offense. The elements of  
10 possession of a firearm by a convicted felon are: One, that  
11 you, the defendant, knowingly possessed a firearm; two, at the  
12 time that you possessed the firearm, you knew that you had  
13 previously been convicted of a crime punishable by a term of  
14 imprisonment exceeding one year; three, the firearm that you  
15 knowingly possessed was in or affecting interstate commerce.  
16 Do you understand the elements of Count 1?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: By pleading guilty, you're admitting that  
19 the government could prove each of these elements against you  
20 beyond a reasonable doubt; do you understand?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Mr. Long, as I stated, because there's no  
23 plea agreement, I'm going to use my discretion to fashion a  
24 sentence within the statutory range that we talked about  
25 earlier. That's up to 10 years' imprisonment. And to help

1 me determine the appropriate sentence, I'm going to consider  
2 several factors. I will consider the factors that are set  
3 forth in Title 18 United States Code, Section 3553(a). And  
4 that would be things such as the nature and circumstances of  
5 the offense. I'll consider your criminal history, I'll  
6 consider your personal history and characteristics, I will  
7 consider the need to promote respect for the law, to provide  
8 just punishment, to provide adequate deterrence to criminal  
9 conduct of this nature. Those are some of the things that I'll  
10 consider; do you understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: I will also consult with the United States  
13 Sentencing Guidelines to help me determine the sentence, but  
14 you should understand that the sentencing guidelines are not  
15 mandatory or binding on the Court. Rather, they're advisory in  
16 nature; do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Once I have accepted your plea of guilty,  
19 you'll be bound by your guilty plea; do you understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: If I impose a sentence higher or lower  
22 than any recommendation that you and Mr. Moudy make, or higher  
23 or lower than any recommendation that the government lawyer  
24 makes, or if I determine a different guideline sentencing range  
25 than what you have and your attorney have determined, or if I

1 decide to sentence you outside of the advisory sentencing  
2 guideline range for any reason, or if I determine a criminal  
3 history category that is different than what you and your  
4 attorney have determined, you will not be able to withdraw from  
5 your plea of guilty for any of those reasons; do you  
6 understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You will still be bound by your plea of  
9 guilty and not allowed to withdraw; do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: I can order a fine to be imposed, I can  
12 order a term of supervised release, and I'll determine the  
13 conditions and the length of that supervised release; do you  
14 understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: I can also order the forfeiture of any  
17 right, title, and interest in any property, money, firearms,  
18 contraband that was seized incident to your arrest or that is  
19 related to this case; do you understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: If you were not a United States citizen,  
22 pleading guilty and a conviction for this offense would likely  
23 have consequences on your immigration status, and you would  
24 likely be deported after service of any executed sentence, but  
25 you are a United States citizen; am I correct?

1                   THE DEFENDANT: Yes, ma'am.

2                   THE COURT: All right. Very good.

3                   By pleading guilty, I can impose the same punishment  
4 as if you had pled not guilty, had gone to trial and been  
5 convicted by a jury; do you understand?

6                   THE DEFENDANT: Yes, ma'am.

7                   THE COURT: Sir, you do have appellate rights. You  
8 have both a statutory, as well as a constitutional, right to  
9 appeal any conviction that's imposed. You can appeal the  
10 sentence and the way your sentence is determined. If you are  
11 unable to afford to hire an attorney to represent you in an  
12 appeal, an attorney would be appointed to represent you. And  
13 any notice of appeal has to be filed within 14 days after entry  
14 of judgment, so that would be after you get sentenced; do you  
15 understand?

16                  THE DEFENDANT: Yes, ma'am.

17                  THE COURT: All right. At this time we need to  
18 establish a factual basis. And, Ms. Massa, how are you going  
19 to do that?

20                  MS. MASSA: Your Honor, the government will proceed by  
21 proffer. The parties have essentially stipulated to the facts  
22 in the Presentence Report, but I have some additional facts to  
23 proffer that go to the elements of the offense.

24                  THE COURT: All right. You may proffer.

25                  MS. MASSA: Thank you, Your Honor. Should this case

1 have proceeded to trial, the government would have been  
2 prepared to prove the following facts:

3           In March of 2021, detectives with the Indianapolis  
4 Metropolitan Police Department Violent Crimes Unit learned that  
5 Delvarez Long had an outstanding warrant for domestic battery  
6 and was also wanted for questioning in a homicide  
7 investigation.

8           On April 2nd, 2021, investigators with the Violent  
9 Crimes Unit located Mr. Long at the Budget 8 Motel at 6850  
10 East 21st Street in Indianapolis. That location is within the  
11 Southern District of Indiana.

12           They observed Mr. Long come out of the motel and get  
13 into a parked blue Ford Expedition in the parking lot, which  
14 investigators knew was registered to Mr. Long's current  
15 girlfriend. The Violent Crimes Unit gave commands to Long to  
16 exit the vehicle. Initially he did not comply, but eventually  
17 he opened the driver's side door and was taken into custody by  
18 the IMPD.

19           When Long got out of the vehicle, investigators could  
20 see a black handgun in the side of his waistband. The firearm  
21 was determined to be a Sig Sauer P365 9mm semiautomatic handgun  
22 bearing Serial Number 66A220791. It had previously been  
23 reported as stolen. There was also a small bag of suspected  
24 powder cocaine in plain view in the driver's door panel.

25           Detective Schwomeyer, with IMPD, read Long his Miranda

1 rights. He acknowledged his rights and stated he found the  
2 firearm while cleaning an abandoned house. Long admitted the  
3 powder substance was cocaine and more had fallen inside the  
4 door panel. Long reported he had a cocaine habit and sold some  
5 of the product he bought to support his habit.

6 Long had a total -- oh, and at this point, Your Honor,  
7 I will clarify that the PSR has the amounts incorrect. The  
8 Marion County forensic lab determined that there was 5.6 grams  
9 of cocaine and 1.4 grams of fentanyl actually recovered from  
10 Mr. Long. He also had \$446 in cash on his person.

11 The defendant had prior felony convictions, which  
12 prohibit him from possessing a firearm: to wit, felony  
13 convictions as referenced in paragraphs 28, 29, and 32 of the  
14 Presentence Report. Mr. Long had knowledge of those prior  
15 felony convictions.

16 THE COURT: Why don't you read them into the record.

17 MS. MASSA: Sure thing, Your Honor.

18 Possession of cocaine as a felony out of Marion  
19 County, Indiana, as referenced in paragraph 28. Forgery as a  
20 felony, also out of Marion County, from 2010, as referenced in  
21 paragraph 29. And domestic -- or, I'm sorry, battery with  
22 bodily injury to a pregnant woman as a felony out of Marion  
23 County Superior Court in 2016, as detailed in paragraph 32.

24 THE COURT: Okay. And you're alleging that Mr. Long  
25 knew that he had these prior felonies --

1 MS. MASSA: Yes, Your Honor.

2 THE COURT: -- sentences of over one year?

3 MS. MASSA: That's correct, Your Honor.

4 THE COURT: And did the firearm travel in interstate  
5 commerce?

6 MS. MASSA: Yes, it did, Your Honor. I did neglect to  
7 mention that. It did travel in interstate commerce prior to  
8 Mr. Long's possession of it on April 2nd of 2021.

9 THE COURT: Okay. All right. Thank you.

10 Mr. Long, did you hear what Ms. Massa just stated as  
11 the factual basis?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And is what she stated the truth? Is that  
14 what happened?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Is there anything that you need to change  
17 or correct about that factual basis?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: And what about you, Mr. Moudy? Any -- do  
20 you agree with that factual basis?

21 MR. MOUDY: We do, Your Honor. There's nothing to  
22 add.

23 THE COURT: The Court will find that a factual basis  
24 exists for the plea of guilty, an independent record of the  
25 factual basis has been made, and that factual basis contains

1 each of the essential elements of the offense that Defendant is  
2 pleading to.

3 Mr. Long, I don't have any other questions for you.  
4 Do you have any questions for me or your attorney about  
5 anything that we've discussed thus far?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: In light of everything that I've explained  
8 to you, and upon advice from your attorney, how do you plead to  
9 the charge in Count 1, unlawful possession of a firearm by a  
10 convicted person?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you plead guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: It is the finding of the Court in the case  
15 the United States of America versus Delvarez Long, that  
16 Mr. Long is fully competent and capable of entering an informed  
17 plea, he is aware of the nature of the charges and the  
18 consequences of the plea, the plea of guilty is knowing and  
19 voluntary, it is supported by an independent basis in fact that  
20 contains each of the essential elements of the offense. The  
21 plea is therefore accepted and the defendant is now adjudged  
22 guilty of Count 1.

23 And it is the Court's understanding that the parties  
24 are prepared to proceed with sentencing. Mr. Moudy, have you  
25 and your client had an opportunity to review the Presentence

1 Investigation Report together?

2 MR. MOODY: We have, Your Honor.

3 THE COURT: And do you -- you do have an objection to  
4 the --

5 MR. MOODY: That's correct. We have a --

6 THE COURT: -- PSR? Which we will --

7 MR. MOODY: Yes, we have an objection to one of the  
8 enhancements, Your Honor.

9 THE COURT: Okay. Let's discuss that now.

10 MR. MOODY: Okay.

11 THE COURT: Defendants object to paragraph 15.

12 Mr. Long objects to the four-point enhancement for the use of a  
13 firearm in connection with allegedly possessing with intent to  
14 distribute cocaine. You say, although there was cocaine found  
15 in the vehicle, there's no evidence that the firearm was used  
16 in connection with dealing in the cocaine; correct?

17 MR. MOODY: Essentially that there's no evidence that  
18 this was a drug trafficking crime, yes, Your Honor.

19 THE COURT: All right. And your response, Ms. Massa?

20 MS. MASSA: Your Honor, the government has actually  
21 somewhat reconsidered its position in relation to that. I have  
22 discussed this with Probation, and after some additional  
23 follow-up with my case agent, given the amounts of drugs  
24 recovered in this case, my understanding from my case agent is  
25 that if she were to testify, all she would be able to say is

1 that it could go either way. The drugs certainly could be  
2 intended for distribution, but they could also be consistent  
3 with a user amount.

4 Even though Mr. Long did make statements in --  
5 regarding to the fact that he occasionally deals some of the  
6 controlled substances that he purchases, in addition to  
7 purchasing them for personal use and the money recovered, the  
8 standard is a preponderance. But I think that, given the  
9 weight of the evidence, I'm not sure it rises to the level of  
10 more likely than not or a preponderance.

11 THE COURT: So you agree that there should be no  
12 four-level increase for --

13 MS. MASSA: On that basis, Your Honor, the government  
14 does agree that the preponderance standard just has not been  
15 met, but we are proceeding under the alternative theory that  
16 the government outlined in our sentencing memorandum in  
17 relation to the intimidation arrest. I think there is evidence  
18 that the defendant possessed another firearm in connection with  
19 that felony. So that is the government's position, that we are  
20 proceeding on that theory and there should still be the  
21 plus-four enhancement under 2K2.1(c) (6) (B), but in relation to  
22 intimidation, not to the drug trafficking.

23 THE COURT: All right. So your argument is that --  
24 are you arguing that he possessed the same firearm, the 9mm Sig  
25 Sauer?

1 MS. MASSA: No, Your Honor. The -- 2K2.1(c)(6)(B)  
2 only states that the defendant possessed any firearm. It's the  
3 government's position that we are not required to show it was  
4 the same firearm in the offense of conviction. This was, by  
5 all accounts, an additional firearm that the defendant either  
6 had at the time on April 2nd or had obtained after that arrest.

7 THE COURT: What was the date of that -- of that --

8 MS. MASSA: June 27, 2021, Your Honor. He had bonded  
9 out for the unlawful firearm possession charge on April 2nd and  
10 committed this other offense while out on bond. The United  
11 States then adopted the April 2nd, 2021, incident federally,  
12 but did not adopt the June 27th incident because there was no  
13 firearm recovered.

14 THE COURT: No firearm was recovered on June 27?

15 MS. MASSA: That's correct, Your Honor. But, as  
16 referenced in the government's sentencing memo and the probable  
17 cause affidavit that was filed along with it, jail calls  
18 revealed that the defendant had a discussion with another  
19 individual that would indicate that he had hidden an object  
20 underneath a trashcan while police were outside the home and  
21 that another individual then went to retrieve it. It's the  
22 government's position that that is consistent with the  
23 defendant hiding a firearm under the trashcan.

24 I'm sure that Mr. Moudy may argue that there's no  
25 indication that this was a real firearm, but it's the

1 government's position that if there was no real firearm  
2 involved, then there was no need to hide any object from the  
3 police.

4 THE COURT: He never called it a firearm in the jail  
5 call?

6 MS. MASSA: No, Your Honor.

7 THE COURT: What did he call it, an object or --

8 MS. MASSA: "It."

9 THE COURT: "It"?

10 MS. MASSA: And that's referenced in the probable  
11 cause affidavit attached as Exhibit 1 to the government's  
12 sentencing memo.

13 THE COURT: Okay. All right. And the Court also --  
14 you submitted a video, which the Court has viewed.

15 MS. MASSA: That's correct, Your Honor. The  
16 government submitted, as Exhibit 2, body cam video that  
17 includes the victim's initial interaction with police. She  
18 describes how the defendant pointed a gun at her, stated that  
19 he would body her like he did his child's mother. She  
20 described the gun as a black 9mm. She explained that she had  
21 seen it on other occasions, as well. She told officers that it  
22 was located inside the couch cushions in the home.

23 I'd also proffer, and sort of put on the record, that  
24 she's visibly shaken in that video. She appears to be  
25 frightened. She's speaking quietly to make sure the defendant

1 can't hear her. So all of that evidence, Your Honor, is enough  
2 to show, by a preponderance, that the defendant possessed  
3 another firearm on June 27, 2021.

4 Courts have found that in terms of applying relevant  
5 conduct in sentencing enhancements, that a course of conduct --  
6 or that possessing multiple firearms within a short period of  
7 time qualifies as a course of conduct if they have a pattern of  
8 unlawfully possessing firearms. And that is what we have here  
9 in this case, so it's the government's position that the  
10 plus-four enhancement should apply on that theory.

11 THE COURT: Okay. All right, Mr. Moudy, you may  
12 respond.

13 MR. MOUDY: Thank you, Your Honor. First of all, as  
14 the government has stated, my first argument would be that no  
15 gun was ever found. Not only was no gun found, but the IMPD  
16 got a warrant to search the house, which one would assume they  
17 did thoroughly, and also ran a dog around the outside of the  
18 house.

19 I know the Court has watched the body cam, and the  
20 alleged victim in that matter indicates to the responding  
21 officer that Mr. Long had not left the house since she called.  
22 And, therefore, I believe I heard the argument say -- or,  
23 excuse me, the government say that Mr. Long placed a gun  
24 outside, or at least they believed that he placed a gun outside  
25 after the alleged event. I just don't think the facts lead up

1 to that, necessarily indicate that.

2                   One would think that after professional officers  
3 search a house with the understanding -- or with the belief  
4 that a gun is in the residence, that they would have thoroughly  
5 searched and looked for one. And if the body cam is accurate,  
6 it indicates that Mr. Long had never left the house.

7                   So one questions whether a gun actually exists. And I  
8 think that question, Your Honor, does not enable the  
9 government's evidence for this enhancement to rise to a  
10 preponderance. It could be anything. I have not heard those  
11 calls, but anything could have been discussed. It could be  
12 money, it could be keys to a car. Anything could be hidden.

13                  And after running a dog around the house, one would  
14 think that that would have been a thorough enough search,  
15 especially considering Mr. Long had indicated of never leaving  
16 the house that day from the time of the phone call. So, Your  
17 Honor, we don't believe the four-point enhancement on the  
18 June 2021 incident should be applied. Thank you.

19                  THE COURT: Okay. Anything else, Ms. Massa?

20                  MS. MASSA: Your Honor, I would just point out that  
21 the probable cause affidavit notes that the officers on scene  
22 searched inside the trashcan in question, but did not search  
23 underneath it. And the defendant did, in fact, leave the  
24 house, because he left to speak to the officers on scene prior  
25 to his arrest.

1                   So I understand the defendant's position. It's the  
2 government's position that the standard is a preponderance and  
3 that we have met that given the victim's description of the  
4 firearm, and the jail calls as referenced in the probable cause  
5 affidavit. I would leave it up to the Court to make the  
6 determination, of course. Thank you.

7                   THE COURT: All right. I'm going to give the  
8 defendant the benefit of the doubt. I'll sustain the  
9 objection.

10                  MR. MOODY: Thank you, Your Honor.

11                  THE COURT: Any other objections or corrections to the  
12 Presentence Report, Defendant?

13                  MR. MOODY: There are not for Mr. Long, Your Honor.

14                  THE COURT: All right. Government, have you reviewed  
15 the Presentence Investigation Report?

16                  MS. MASSA: Yes, Your Honor.

17                  THE COURT: And other than the objection from the  
18 defendant that the Court has just ruled on, do you have any  
19 other objections or corrections that need to be made to the  
20 report?

21                  MS. MASSA: The only correction is the drug amount  
22 that I've already read into the record. No other corrections  
23 or objections.

24                  THE COURT: Okay. All right, the Court is going to  
25 accept the Presentence Investigation Report with the rulings

1 that have just been made, the correction to the drug amount, as  
2 well as the Court sustained the objection to the four-point  
3 increase under 2K2.1(b) (6) (B) .

4 Pursuant to the guidelines, the base offense level is  
5 level 20. And that's because Mr. Long committed the instant  
6 offense after sustaining a felony conviction for a crime of  
7 violence, namely the battery resulting in bodily injury to a  
8 pregnant woman, in case number 49G04-1607-F5-025355, so the  
9 base offense level is 20.

10 For the specific offense characteristic that the  
11 firearm was stolen, there's a two-level increase. The adjusted  
12 offense level is level 22.

13 The defendant has accepted responsibility by pleading  
14 guilty, so he's entitled to the two-level decrease. And,  
15 Government, do you have a motion with respect to the additional  
16 one level?

17 MS. MASSA: Yes, Your Honor, we would move for the  
18 additional one level off.

19 THE COURT: The additional one-level motion is  
20 granted. You're going to get the full three-level reduction  
21 for acceptance of responsibility because, by pleading guilty,  
22 you have saved the time and expense of a trial. The total  
23 offense level is level 23.

24 Mr. Long has a criminal history that warrants criminal  
25 history points, that being the conviction on October 25th,

1 2016, for battery with bodily injury to a pregnant woman, in  
2 the Marion Superior Court, and that conviction is three  
3 criminal history points.

4 MR. MOUDY: Your Honor, may I interrupt for one  
5 second?

6 THE COURT: Yes.

7 MR. MOUDY: I believe the Court put on the record that  
8 the final offense level was 23.

9 THE COURT: I'm sorry. 19.

10 MR. MOUDY: Thank you.

11 THE COURT: Nineteen.

12 Battery with bodily injury is three criminal history  
13 points. A score of three puts us in criminal history category  
14 II, and that puts us in an advisory guideline range of 33 to 41  
15 months' imprisonment.

16 At this time, Mr. Moudy, you may present any evidence  
17 and argument on your client's behalf.

18 And, Mr. Long, you're allowed to make a statement of  
19 allocution, which means you can say whatever you would like to  
20 say on your behalf.

21 And the Court did receive a letter in support, that  
22 the Court has reviewed.

23 MR. MOUDY: Thank you, Your Honor.

24 THE COURT: How will you proceed, Counsel?

25 MR. MOUDY: No evidence, just argument.

1                   THE COURT: Are you going to -- is your client going  
2 to allocute?

3                   MR. MOODY: Would you like to speak?

4                   THE DEFENDANT: I just want to say sorry to the courts  
5 and my family.

6                   THE COURT: All right. Go ahead, Counsel.

7                   MR. MOODY: Your Honor, Delvarez Long comes from a  
8 family that has provided him with love and support, and a  
9 family that he sees regularly. They were led by his mother  
10 who, in Delvarez's words, made it happen. She made sure that  
11 her children had a roof on their head, clothes on their back,  
12 and food in their stomachs. And she also made sure that her  
13 children saw their extended family. And Delvarez has said that  
14 she became his best friend.

15                  But, being a single parent can be difficult, Your  
16 Honor, and it's sometimes hard to identify issues with your  
17 children or to know who to turn to for professional help. And  
18 nearly all of Delvarez's siblings have encountered the criminal  
19 justice system in some way. We certainly know Delvarez has.

20                  And there are certainly, Your Honor, underlying  
21 issues. Drug addiction, mental health issues are -- commonly  
22 seem to go hand in hand, and that could be a contributing  
23 factor for Delvarez. We ask that the Court consider that when  
24 fashioning a sentence. We also ask the Court to consider his  
25 criminal history more than simply as points, but to notice that

1 Delvarez did not have a violent criminal history until 2016.

2 Your Honor, we think that a sentence of 33 months  
3 provides just punishment and provides respect for the law. It  
4 also reflects the seriousness of the offense and will work  
5 towards deterring Delvarez to commit another crime in the  
6 future. Your Honor, considering the drug addiction issues,  
7 we'd also ask that the Court recommend that he be placed in the  
8 RDAP program when in the BOP. Thank you.

9 THE COURT: Okay. Thank you.

10 Ms. Massa?

11 MS. MASSA: Thank you, Your Honor. As explained and  
12 described in the government's sentencing memo, I think a  
13 sentence of 60 months is still appropriate here. I understand  
14 that is an upward variance from the guidelines, but I think the  
15 3553(a) factors, on the whole, weigh in favor of a more  
16 significant sentence here.

17 First, the nature and circumstances of the offense.  
18 Of course, this Court is well aware that guns in the hands of  
19 convicted felons drive so much of the crime that we see in this  
20 district, but, of course, Mr. Long is not just a convicted  
21 felon. He's also a convicted domestic abuser. The government  
22 has outlined, in detail in its sentencing memorandum, the risk  
23 factors that go along with firearms in domestic relationships  
24 and abusive relationships.

25 I think that is seen played out here in the June 27,

1 2021, incident. I understand that the Court did not apply the  
2 sentencing enhancement, but under 3553, the Court certainly can  
3 still consider that conduct. There is evidence that the  
4 defendant threatened his girlfriend with at least what appeared  
5 to be a firearm. She reported that immediately to police.  
6 Again, she's visibly shaken on that video. Her story is  
7 consistent.

8 And she also explains some of the genesis of that  
9 argument, which is consistent with domestic violence  
10 relationships. The defendant was jealous, was concerned that  
11 she had potentially been unfaithful to him. He didn't know  
12 where she was at a particular point. And, again, that is  
13 entirely consistent with the cycle of abuse, with coercive  
14 control, and with those sort of power and control dynamics that  
15 are too often present in domestic relationships. And the  
16 presence of a firearm in that context makes it all the more  
17 dangerous, and so I would ask the Court to consider all of that  
18 under 3553(a).

19 And it's especially concerning in relation to the  
20 defendant's prior conviction in 2016 for battery with bodily  
21 injury to a pregnant woman. The facts, as detailed in the PSR,  
22 are brutal. I think, in a lot of ways, that woman is lucky to  
23 be alive. And, frankly, I think it speaks to the power and  
24 control that continues in a lot of these relationships in that  
25 she has filed a letter in support of him today.

1                   So I just put all that in front of the Court. I think  
2 a significant sentence is important to protect the public and  
3 to promote respect for the law, which Mr. Long has not shown.  
4 I'd also argue that his criminal history is somewhat  
5 understated in that he does not receive criminal history points  
6 for the forgery and for the controlled substances conviction,  
7 so it somewhat undercounts his criminal history category. So I  
8 would argue that an upwards variance is appropriate on that  
9 score, as well.

10                  So, for all of those reasons, Your Honor, I think the  
11 defendant has shown a history with firearms. He will, I think,  
12 continue to victimize women in relationships with him, so I  
13 think a significant sentence is appropriate. It would send a  
14 message that guns in the hands of domestic abusers is  
15 unacceptable. And for those reasons, Your Honor, the  
16 government is seeking an upward variance and a sentence of 60  
17 months. Thank you.

18                  THE COURT: Okay. Mr. Moudy, you may.

19                  MR. MOUDY: I'm sorry?

20                  THE COURT: You get any final comments, Counsel.

21                  MR. MOUDY: I have nothing to say on that, Your Honor,  
22 no.

23                  THE COURT: Okay. All right, the Court is prepared to  
24 state what the sentence will be. And, Counsel, you will each  
25 have a final opportunity to state any legal objections before

1 sentence is finally imposed.

2 Pursuant to the Sentencing Reform Act of 1984, it is  
3 the judgment of the Court that the defendant, Delvarez Long, is  
4 hereby committed to the custody of the Bureau of Prisons, to be  
5 imprisoned for a term of 51 months. This sentence is an  
6 above-guideline variance. It is sufficient, but not greater  
7 than necessary, for the defendant. It takes into account his  
8 criminal history that the Court believes is understated, as  
9 well as the relevant conduct that occurred on June 27th.

10 The defendant shall pay a fine to the United States in  
11 the amount of \$1,000. The Court is departing from the  
12 guideline range based on the defendant's financial resources  
13 and future ability to pay. The Court finds that the defendant  
14 does not have the ability to pay interest and waives the  
15 interest requirement. The defendant shall notify his probation  
16 officer of any material changes in economic circumstances that  
17 might affect his ability to pay the fine.

18 The defendant shall forfeit to the United States the  
19 Sig Sauer P365 9mm semiautomatic handgun, bearing Serial Number  
20 66A220791, and any ammunition associated with the offense.

21 The Court is going to order a three-year term of  
22 supervised release based upon the defendant's personal history  
23 and characteristics, and to assist in his rehabilitation and  
24 reintegration into the community.

25 While on supervised release, the defendant shall not

1 commit another federal, state, or local crime; he shall  
2 cooperate with the collection of a DNA sample; refrain from any  
3 unlawful use of a controlled substance; and submit to one drug  
4 test within 15 days of placement on supervised release and at  
5 least two periodic tests thereafter as directed by his  
6 probation officer.

7 To promote respect for the law, prevent recidivism,  
8 and aid in adequate supervision, the Court intends to order the  
9 additional conditions of supervision that are referenced in the  
10 Presentence Report. And, Mr. Moudy, have you and your client  
11 reviewed those additional conditions?

12 MR. MOUDY: Yes, we have, Your Honor.

13 THE COURT: And do you object to any of these  
14 conditions?

15 MR. MOUDY: No.

16 THE COURT: Since you have reviewed them with your  
17 client and you do not object to any of the conditions, would  
18 you waive a formal reading of these conditions into the record?

19 MR. MOUDY: We will, Your Honor.

20 THE COURT: Thank you.

21 The same questions, Ms. Massa: Have you reviewed the  
22 conditions, any objection to any, and will you also waive a  
23 formal reading?

24 MS. MASSA: Yes, the government has reviewed them, we  
25 have no objections, and we would waive a formal reading.

1                   THE COURT: Thank you.

2                   The Court is going to order all these additional  
3 conditions of supervised release, Mr. Long. A majority of  
4 these conditions are just administrative requirements of being  
5 placed on supervised release. Some of these conditions are  
6 going to assist your probation officer in monitoring you. They  
7 are for the protection of the community, they're going to  
8 address your history of substance abuse and domestic violence,  
9 and get you some treatment for all of these things so you can  
10 become a law-abiding citizen.

11                  The Court is also going to order that you pay the \$100  
12 special assessment, which is due immediately.

13                  The sentence that the Court intends to impose is 10  
14 months above the advisory guideline range. The Court believes  
15 it is appropriate considering the 3553(a) factors. The Court  
16 has considered the nature and circumstances of the offense,  
17 your criminal history, your personal history and  
18 characteristics, the need for the sentence to reflect the  
19 seriousness of the offense, to promote respect for the law,  
20 provide just punishment, provide adequate deterrence to conduct  
21 of this nature by others who might try to do similar things.

22                  Delvarez Long is a 38-year-old man coming before the  
23 Court for being a felon in possession of a firearm. This is  
24 Mr. Long's fourth felony conviction. The defendant has a  
25 juvenile delinquency and adult criminal history. As an adult,

1 he has convictions for operating without a license, possession  
2 of cocaine, forgery, resisting law enforcement, driving while  
3 suspended, and the battery with bodily injury to a pregnant  
4 woman.

5 He has been afforded the opportunity for  
6 rehabilitation by probation, parole, supervision, community  
7 corrections, jail sentences, and even a prison sentence. The  
8 Court agrees with the government that his criminal history is  
9 understated in the guideline calculation.

10 The Court also considers as relevant conduct the  
11 June 27th incident in which the defendant threatened his  
12 girlfriend with what she believed to be a handgun. She  
13 informed the police officers that the defendant waved it in her  
14 face and threatened to body her like he had bodied her baby's  
15 mama. She was visibly shaken. And this history of domestic  
16 violence is very concerning to the Court. She was definitely  
17 afraid of this defendant.

18 Regarding his characteristics, Mr. Long was born into  
19 the nonmarital union of his parents. He was raised by his  
20 mother and extended family in Indianapolis. His family -- his  
21 father was absent, but he indicated that he had a close  
22 relationship with his uncle, so he had a male influence.

23 The defendant reports that his mother is his best  
24 friend. During his childhood, she was protective and she made  
25 certain that the defendant and his siblings' basic needs were

1 always met and they had extra amenities. The defendant has  
2 good memories from his childhood. Unfortunately, as defense  
3 counsel mentioned, the defendant and all of his siblings have  
4 serious criminal histories.

5 The defendant has never been married. His girlfriend  
6 recently lost twins that she and the defendant were expecting.  
7 Mr. Long does have six children from prior relationships. He  
8 owes approximately \$80,000 in child support for his eldest  
9 child. His youngest children were adjudicated Children in Need  
10 of Services, or Child in Need of Services, and received  
11 services when they were very young, and they were placed in  
12 relatives' care. Mr. Long reports that he is in contact with  
13 all of his children.

14 With respect to his health, he says he's relatively  
15 healthy with the exception of, I believe he has asthma and high  
16 blood pressure. He has participated in court-ordered anger  
17 control counseling, but reports no mental health diagnoses. He  
18 did report to the probation officer that he is interested in  
19 mental health treatment for assistance in dealing with his  
20 grief over the loss of both, his grandmother and the unborn  
21 twins.

22 Mr. Long admits that he had drug addictions and he's  
23 requesting treatment. At the time of his arrest, he says he  
24 was abusing cocaine on a regular basis. He also had possession  
25 of some fentanyl, which is a very dangerous and deadly drug,

1 but I guess he was using that, also. And he's experimented  
2 with both ecstasy and Adderall.

3 The defendant attended high school through the ninth  
4 grade. He attained a GED in the Department of Corrections. He  
5 said today he's got a diploma. His employment history is  
6 limited.

7 To his credit, Mr. Long has accepted responsibility by  
8 pleading guilty, and he's expressed remorse. He said he was  
9 sorry. The defendant committed a very serious offense when he  
10 carried this loaded and stolen handgun with cocaine in his  
11 possession. He admitted to officers that he is a drug abuser.  
12 He admitted to officers that he does sell cocaine to support  
13 his habit.

14 Mr. Long needs to gain control of his life by  
15 maintaining sobriety, establishing legitimate employment, and  
16 taking care of his children. He needs some domestic violence  
17 assistance, because he was -- he's violent. He's domestically  
18 violent. He needs to get his child support paid and become a  
19 productive member of society.

20 So the Court is ordering this sentence to promote  
21 respect for the law and provide just punishment, and it is a  
22 long enough time that the defendant can participate in prison  
23 industries, as well as learn some job skills so that -- that he  
24 can use upon his release. Those are the reasons the Court  
25 intends to impose the stated sentence.

4 MS. MASSA: No, Your Honor.

5 THE COURT: And do you, Mr. Moudy?

6 MR. MOODY: No, Your Honor.

9                   Mr. Long, I'm going to give you your appellate rights.  
10                Sir, you have a right to appeal your conviction if you believe  
11                your guilty plea was somehow unlawful or involuntary or if  
12                there's some other fundamental defect in the proceedings that  
13                was not -- or some other fundamental defect in the proceedings.  
14                You also have a right to appeal your sentence if you believe it  
15                is contrary to law.

With few exceptions, any notice of appeal must be filed within 14 days after written judgment is entered in your case. If you cannot afford the filing fee or cannot afford to pay a lawyer to appeal for you, a lawyer would be appointed to represent you in an appeal.

21                   If you intend to appeal, you can tell me now and we'll  
22 have the clerk of court prepare the notice of appeal for you.  
23 Otherwise, you have to let Mr. Moudy know within 14 days, and  
24 he can make that filing for you. You only have that 14-day  
25 window to appeal. Do you understand your appellate rights?

1                   THE DEFENDANT: Yes, ma'am.

2                   THE COURT: And do you want to appeal today, or do you  
3 want to wait and talk to your lawyer?

4                   THE DEFENDANT: Yeah, I appeal.

5                   THE COURT: All right. We'll have the clerk file the  
6 notice of appeal.

7                   Are there any other matters to take up for the  
8 government?

9                   MS. MASSA: No, Your Honor.

10                  THE COURT: Any other matters, Mr. Moudy? Did you  
11 want some representations?

12                  MR. MOUDY: Yes, please.

13                  THE COURT: Which ones do you want?

14                  MR. MOUDY: Just any facility as close as possible,  
15 depending upon his security level, to Indianapolis. And then,  
16 also, RDAP, please.

17                  THE COURT: The Court will make a recommendation that  
18 the Bureau of Prisons designate a facility as close to  
19 Indianapolis with the lowest security level that he qualifies  
20 for. And the Court will make a recommendation that the  
21 defendant be allowed to participate in the RDAP or other drug  
22 treatment program.

23                  MR. MOUDY: Thank you, Your Honor.

24                  THE COURT: All right. We are adjourned and the  
25 defendant is remanded to the custody of the United States

1 Marshal.

2 THE COURTROOM DEPUTY: All rise.

3 (Proceedings adjourned at 11:18 a.m.)

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7 CERTIFICATE OF COURT REPORTER

8

9 I, David W. Moxley, hereby certify that the  
10 foregoing is a true and correct transcript from  
11 reported proceedings in the above-entitled matter.

12

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14

15 /S/ David W. Moxley August 25, 2022  
16 DAVID W. MOXLEY, RMR/CRR/CMRS  
17 Official Court Reporter  
Southern District of Indiana  
Indianapolis Division

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