

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

In the

United States Court of Appeals
For the Eleventh Circuit

No. 22-13892

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SEAN CHRISTOPHER FINNELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:20-cr-80086-RS-1

No. 23-10358

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SEAN CHRISTOPHER FINNELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:20-cr-80086-RS-1

Before WILSON, LUCK, and BRASHER, Circuit Judges.

PER CURIAM:

Sean Finnell was convicted of possession of child pornography and sentenced to 160 months in prison, lifetime supervised release, and ordered to pay restitution, fines, and a special assessment

under the Justice for Victims of Trafficking Act. He raises three challenges to his sentence on appeal. First, he argues that the conditions placed on his lifetime supervised release are overbroad and violate his First Amendment rights. Second, he argues that the restitution award should be vacated because the amount of restitution was not determined by a jury and because the district court did not disaggregate the victims' losses. Third, he challenges the imposition of a \$5,000 special assessment under the JVTA because he says he is indigent. For the reasons stated below, we affirm the district court's imposition of the conditions on his supervised release and restitution award, and we vacate the JVTA special assessment and remand the case for further determination by the district court.

I.

A jury convicted Sean Finnell of possession of child pornography under 18 U.S.C. § 2252(a)(4)(B). The district court sentenced him to 160 months in prison and supervised release for life. As a condition of his supervised release, the district court prohibited Finnell from possessing or using a computer without prior court approval and from accessing any sexually explicit materials involving adults or children. The district court also ordered him to pay a \$5,000 special assessment under the JVTA and \$106,500 in restitution. Finnell objected to the conditions of his supervised release, the JVTA assessment, and the restitution award at sentencing. The district court rejected each of his arguments. Finnell timely appealed.

II.

We review the imposition of special conditions of supervised release for abuse of discretion. *United States v. Zinn*, 321 F.3d 1084, 1087 (11th Cir. 2003). But if a defendant “fails to clearly state the grounds for an objection in the district court . . . he waives the objection on appeal” and we review for plain error. *Id.*

We review the amount of a district court’s restitution award for an abuse of discretion. *United States v. Rothenberg*, 923 F.3d 1309, 1327 (11th Cir. 2019). We review the legality of a restitution order *de novo* and the underlying factual findings for clear error. *United States v. Osman*, 853 F.3d 1184, 1188 (11th Cir. 2017). And we “review the district court’s decision that a defendant can afford a special assessment for clear error.” *United States v. Doak*, 47 F.4th 1340, 1361 (11th Cir. 2022).

III.

A.

Finnell first asks us to vacate two conditions the district court imposed on his lifetime supervised release: the condition that he not use a computer apart from work and the condition that he not possess any pornography, including adult pornography.

When imposing special conditions on supervised release, a district court should consider whether each condition: “(1) is reasonably related to the [18 U.S.C.] § 3553(a) factors; (2) involves no greater deprivation of liberty than is reasonably necessary to serve the purposes of punishment specified in § 3553(a)(2); and (3) is consistent with any pertinent policy statements issued by the

Sentencing Commission.” *United States v. Carpenter*, 803 F.3d 1224, 1238 (11th Cir. 2015); *see also* 18 U.S.C. § 3583(d). The section 3553 factors include the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence to deter future criminal conduct, and the need to protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(1)-(2). The weight given to each factor is “a matter committed to the sound discretion of the district court.” *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008). Conditions imposed need not be based on the offense of conviction as long as they reasonably relate to the section 3553 factors. *See United States v. Moran*, 573 F.3d 1132, 1139 (11th Cir. 2009).

Finnell argues that the first special condition of his supervised release—that he cannot possess or use a computer except for employment purposes approved by the district court—is improper under the Supreme Court’s decision in *Packingham v. North Carolina*, 582 U.S. 98 (2017), because it involves a greater deprivation of his liberty than is reasonably necessary. In *Packingham*, the Supreme Court held that a law that prohibits registered sex offenders from accessing social networking websites violates the First Amendment. *Id.* at 108. The government argues that our precedent establishes that *Packingham* does not apply to this type of supervised release condition. We agree with the government.

We have held that *Packingham* did not undermine a condition of supervised release that prohibits a convicted sex offender from using a computer except for work and with the prior

permission of the district court. In *United States v. Bobal*, 981 F.3d 971 (11th Cir. 2020), we distinguished *Packingham* from that condition of supervised release for three reasons. First, we reasoned that, although the law in *Packingham* restricted sex offenders beyond the completion of their sentence, Bobal’s restriction did not extend beyond his supervised release term. *Id.* at 977. Second, we noted that the law in *Packingham* applied to all registered sex offenders, not just those who used a computer or other electronic means to commit their offenses, and thus the law was not sufficiently narrowly tailored. But because Bobal’s use of an electronic device was at the core of his offense—communicating with a minor via text message—the prohibition on his use of a computer prevented him from repeating that offense. *Id.* Finally, unlike the law in *Packingham*, Bobal’s restriction allowed him to obtain court permission to use a computer for his employment, and Bobal could seek a modification of his release for other reasons. *Id.* Thus, we held that Bobal’s conditions on his supervised release were distinguishable from *Packingham* and did not violate the First Amendment.

Finnell argues that his sentence is distinguishable from *Bobal* for three reasons: (1) we reviewed Bobal’s sentence for plain error, (2) Finnell never communicated with minors, and (3) Bobal was permitted to later move to modify the conditions of his supervised release, while Finnell claims our decision in *United States v. Cordero*, 7 F.4th 1058, 1070 (11th Cir. 2021) does not allow him to seek a modification. We address each argument in turn.

We ordinarily review conditions of supervised release for abuse of discretion, but we review for plain error when the defendant fails to properly state his objection in the district court. *See United States v. Zinn*, 321 F.3d at 1087. The parties disagree about whether Finnell properly stated his objection to the conditions of his supervised release in the district court, and therefore about what standard of review should apply. But we do not think it matters because his challenge fails either way.

If we review the district court’s imposition of the conditions on Finnell’s supervised release for plain error, our holding in *Bobal* directly applies and forecloses his arguments. And if we review the issue for abuse of discretion, our precedent after *Bobal* also forecloses his arguments. Indeed, after we decided *Bobal*, we reviewed a similar computer restriction imposed on a 30-year term of supervised release for abuse of discretion and upheld that condition. *See United States v. Coglianese*, 34 F.4th 1002, 1010 (11th Cir. 2022). We noted that “[w]e have uniformly upheld similar restrictions, so long as the defendant . . . has the ability to seek permission from the probation office to use a computer and/or access the internet for specified purposes.” *Id.* Finnell may seek permission from the district court to use a computer for employment purposes, and as the district court noted at sentencing, may move to modify the conditions of his supervised release when he is released from prison. Thus, we reject Finnell’s argument that *Bobal* is inapposite because we applied the plain error standard of review.

We also reject Finnell's attempt to distinguish *Bobal* on the grounds that he accessed and saved thousands of images of child pornography on the internet and did not communicate with the minors directly like the defendant in *Bobal*. The district court found that Finnell was "a clear and present danger to children all across the world." It found that Finnell lacked both remorse for his crimes and recognition of the seriousness of his offense. Indeed, Finnell stated at sentencing that he believed minors have the right to express themselves through child pornography and that the images he possessed were of minors freely expressing themselves. He also stated that he failed to see the criminality in his actions and the need for any punishment.

The sentencing guidelines recommend a condition limiting the use of a computer when a defendant used a computer to commit a sex offense like Finnell did here. U.S.S.G. § 5D1.3(d)(7)(B). The district court considered the section 3553 factors and all the evidence before it and concluded that the sentence was appropriate. Based on all the evidence, we do not believe the district court abused its discretion or committed plain error by imposing this condition of supervised release on Finnell.

We also reject Finnell's argument that our decision in *Cordero* holds that he is not allowed to seek a modification of his supervised release. 7 F.4th 1058. We agree with the government that *Cordero* only held that a defendant cannot contest the legality or constitutionality of his supervised release via a motion to modify. *Id.* at 1070. We did not hold that a defendant may no longer

move to modify the restrictions on his supervised release. Rather, the district court made clear at sentencing that Finnell may do just that when he gets out of prison. Thus, we reject this argument as well.

We now turn to Finnell's challenge to the condition of his supervised release that he may not access sexually explicit material depicting minors or adults. He argues that this condition is overbroad and unjustified as it pertains to adult pornography and therefore violates his First Amendment rights. The parties again dispute whether we should review this condition for plain error or abuse of discretion. We again conclude that the district court did not err under either standard of review.

The government says this condition was appropriate because Finnell's lack of remorse shows that he cannot distinguish between legal and illegal pornography—i.e., that all pornography should be legal and that he saw nothing wrong with what he did. We agree. Although Finnell's conviction was for child pornography, Finnell demonstrated that he could not or would not distinguish between child pornography and adult pornography and showed a complete lack of remorse for his crimes. For these reasons and the reasons stated above, we hold that the district court was well within its discretion to order a total prohibition on all sexually explicit material to defer Finnell's future criminal conduct and to protect the public.

B.

Finnell next argues that we should vacate the district court’s restitution award because (1) the jury made no findings about the victims’ losses or the number of victims, and (2) the district court did not disaggregate the victims’ losses. We reject both arguments.

The Violence Against Women Act of 1994 requires district courts to order restitution for covered offenses, including Finnell’s conviction. *See* 18 U.S.C. § 2259. The district court may not decline to award restitution because a defendant is indigent. *Id.* § 2259(b)(4)(B)(i). The district court must “determine the full amount of the victim’s losses that were incurred or are reasonably projected to be incurred by the victim” and “order restitution in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000.” *Id.* § 2259(b)(2)(A)-(B).

Finnell first argues that *Apprendi v. New Jersey* and its progeny establish that a court may not award restitution absent a jury finding without violating the Sixth Amendment. In *Apprendi*, the Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 530 U.S. 466, 490 (2000). We then held that *Apprendi* does not apply to restitution orders. *Dohrmann v. United States*, 442 F.3d 1279, 1281 (11th Cir. 2006). Finnell argues that the Supreme Court abrogated *Dohrmann* in *Southern Union Co. v. United States*, 567 U.S. 343 (2012), which applied

Apprendi to criminal fines. The Court held that it has “never distinguished one form of punishment from another” in stating *Apprendi*’s rule, and that “our decisions broadly prohibit judicial fact-finding that increases maximum criminal ‘sentences,’ ‘penalties,’ or ‘punishments.’” *Id.* at 350. Finnell argues this holding extends to criminal restitution.

We disagree. Nothing in *Southern Union* leads us to conclude that it abrogated our holding in *Dohrmann* such that *Apprendi* and its progeny apply to restitution orders. The Court in *Southern Union* specifically explained that there could not “be an *Apprendi* violation where no maximum is prescribed.” 567 U.S. at 353. Our analysis in *Dohrmann* turned on the absence of a maximum award in the restitution statute, and there is similarly no maximum here. 44 F.3d at 1281. And since *Southern Union*, several of our sister circuits have declined to extend *Apprendi* to restitution. *See United States v. Vega-Martinez*, 949 F.3d 43, 54 (1st Cir. 2020); *United States v. Sawyer*, 825 F.3d 287, 297 (6th Cir. 2016); *United States v. Thunderhawk*, 799 F.3d 1203, 1209 (8th Cir. 2015); *United States v. Bengis*, 783 F.3d 407, 412–13 (2d Cir. 2015); *United States v. Rosbottom*, 763 F.3d 408, 420 (5th Cir. 2014); *United States v. Green*, 722 F.3d 1146, 1148–51 (9th Cir. 2013); *United States v. Wolfe*, 701 F.3d 1206, 1216–18 (7th Cir. 2012); *United States v. Day*, 700 F.3d 713, 732 (4th Cir. 2012). We thus conclude that the district court was not required to submit the question about the victims’ losses to the jury.

Finnell separately argues that the restitution award violates the Sixth Amendment under *Alleyne v. United States*, 570 U.S. 99

(2013) because a jury did not determine the number of victims of Finnell's crimes. In *Alleyne*, the Supreme Court extended *Apprendi* to mandatory minimums so that facts triggering mandatory minimums must be found by a jury. *Id.* at 103. Finnell argues the district court violated his Sixth Amendment right because a jury did not identify each victim of his crimes and therefore did not determine the statutory mandatory minimum he would owe in restitution. But that argument must fail for the same reason his first argument does: *Apprendi* does not apply to restitution orders, and nothing in our precedent or the Supreme Court's precedent has abrogated our holdings. *See Dohrmann*, 442 F.3d 1279.

Finnell's second argument regarding the district court's restitution order is that the district court erred in the amount of restitution it awarded because it did not disaggregate the losses. That is, Finnell says the district court was required to separate the victims' losses caused by Finnell's possession of the images and the losses caused by the initial abuse. But we have held that "a district court is not required to determine, calculate, or disaggregate the specific amount of loss caused by the original abuser-creator or distributor of child pornography before it can decide the amount of the victim's losses caused by the later defendant who possesses and views the images." *United States v. Rothenberg*, 923 F.3d 1309, 1333 (11th Cir. 2019). The district court made an appropriate finding of Finnell's restitution based on the evidence before it. Thus, we reject this argument.

C.

Finnell's last argument is that we should vacate the district court's imposition of a \$5,000 special assessment under the JVTA because he is indigent. The JVTA provides that the district court should impose this assessment "on any non-indigent person" convicted of certain offenses. 18 U.S.C. § 3014(a)(3). Finnell argues that there was sufficient evidence that he was indigent because a magistrate judge previously found him indigent, and the probation officer reported he could not pay the JVTA assessment because he had \$100 in his checking account, no income or assets, and \$7,000 in credit card debt. He notes that the district court determined that he could not pay a fine yet still imposed the JVTA assessment. He also argues that the district court gave no explanation for finding him non-indigent and imposing the JVTA assessment after he objected to it on the grounds of indigency.

The government says the district court did not err because indigency can be based on future earnings and because it did not know Finnell's financial status because he declined a presentence interview and did not sign the release forms to permit the probation officer to verify his financial information. The government also argues that Finnell failed to sufficiently raise the issue at sentencing.

We agree with Finnell that the district court gave no explanation for its imposition of the JVTA assessment in light of Finnell's objections on the basis of indigency. After the government asked the district court to impose the JVTA assessment, the district court

determined that Finnell could not pay a fine, but immediately imposed the JVTA assessment. Finnell later asked the district court to clarify whether it was imposing the assessment and the court said that it was. Finnell cited the statute, pointed out that it only applies to non-indigent persons, stated that he is indigent and has no ability to pay the assessment, and argued that the court should not order the JVTA assessment. The district court provided no other reasoning for imposing the assessment.

It is true that other circuits have held that indigency for purposes of the JVTA assessment can be determined based on future potential earnings. *See, e.g., United States v. Rosario*, 7 F.4th 65, 70 (2d Cir. 2021); *United States v. Norton*, 48 F.4th 124, 133–34 (3d Cir. 2022). It is also true that the record may support a finding that Finnell may be able to pay the JVTA assessment when he gets out of prison. But the district court failed to explain its reasoning for imposing the JVTA assessment in light of Finnell’s objection and evidence on the record that Finnell might be indigent.

In the context of fines imposed under the sentencing guidelines, we have held that “when the record provides no guidance as to the court’s reason(s) for imposing a fine, we must remand the case so that the necessary factual findings can be made.” *United States v. Hernandez*, 160 F.3d 661, 666 (11th Cir. 1998); *see also* U.S.S.G. § 5E1.2(a). The same is true in the context of the JVTA assessment. The district court must provide some reason on the record for imposing the JVTA assessment when the defendant has presented evidence of indigency and has objected to the

assessment. Because the district court failed to do so, we vacate its ruling and remand for the district court to make the necessary factual findings.

IV.

For the reasons stated above, we **AFFIRM IN PART AND VACATE AND REMAND IN PART.**

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA

v.

SEAN CHRISTOPHER FINNELL

AMENDED

JUDGMENT IN A CRIMINAL CASE

§

§

§

Case Number: **9:20-CR-80086-RS(1)**

§ USM Number: **26452-104**

§

§ Counsel for Defendant: **Kristy Militello**

§ Counsel for United States: **Gregory Schiller**

THE DEFENDANT:

| | | |
|-------------------------------------|---|----------------------------|
| <input 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 checked="" type="checkbox"/> | was found guilty on count(s) after a plea of not guilty | 1 of the Indictment |

The defendant is adjudicated guilty of these offenses:

| Title & Section / Nature of Offense | Offense Ended | Count |
|---|----------------------|--------------|
| 18:2252(a)(4)(B) and (b)(2) Possession Of Child Pornography | 08/11/2020 | 1 |

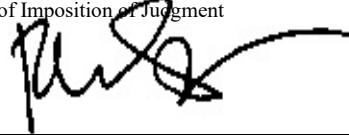
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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 1, 2023

Date of Imposition of Judgment



Signature of Judge

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

February 1, 2023

Date

IMPRISONMENT

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

160 months as to count 1.

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

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

SUPERVISED RELEASE

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

MANDATORY CONDITIONS

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

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

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

Adam Walsh Act Search Condition: The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Computer Possession Restriction: The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

Data Encryption Restriction: The defendant shall not possess or use any data encryption technique or program.

Employer Computer Restriction Disclosure: The defendant shall permit third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon the defendant.

Financial Disclosure Requirement: The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors: The defendant shall have no personal, mail, telephone, or computer contact with children under the age of 18.

No Contact with Minors in Employment: The defendant shall not be employed in a job requiring contact with children under the age of 18.

No Involvement in Youth Organizations: The defendant shall not be involved in any children's or youth organization.

No New Debt Restriction: The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Restricted from Possession of Sexual Materials: The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering

to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Sex Offender Registration: The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

Sex Offender Treatment: The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

| | Assessment | Restitution | Fine | AVAA Assessment* | JVTA Assessment** |
|---------------|-------------------|--------------------|-------------|-------------------------|--------------------------|
| TOTALS | \$100.00 | \$106,500 | \$0.00 | \$500.00 | \$5,000.00 |

- 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$106,500**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** 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.

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 \$100.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

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 forfeit the defendant's interest in the following property to the United States:

FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.

APPENDIX C

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

1. As to the first question presented, the provisions below are involved.

- The First Amendment to the U.S. Constitution provides, in relevant part: “Congress shall make no law . . . abridging the freedom of speech. . . .”
- Section 3583(d) of title 18 of the U.S. Code provides, in relevant part:

(d) Conditions of Supervised Release.—

. . . The court may order, as a further condition of supervised release, to the extent that such condition—

- (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and
- (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate

- Section 3553(a), provides in relevant part:

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

* * *

2. As to the second question presented, the provisions below are involved.

- The Sixth Amendment to the U.S. Constitution provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law”
- Section 2259 of title 18 of the U.S. Code provides, in relevant part:

(a) In General.—

Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and Nature of Order.—

(1) Directions.—

Except as provided in paragraph (2), the order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses.

(2) Restitution for trafficking in child pornography.—If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) Determining the full amount of a victim's losses.—

The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) Determining a restitution amount.—

After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than \$3,000.

(C) Termination of payment.—

A victim's total aggregate recovery pursuant to this section shall not exceed the full amount of the victim's demonstrated losses. After the victim has received restitution in the full amount of the victim's losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(3) Enforcement.—

An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(4) Order mandatory.—

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c)Definitions.—

(1) Child pornography production.—

For purposes of this section and section 2259A, the term “child pornography production” means conduct proscribed by subsections (a) through (c) of section 2251, section 2251A, section 2252A(g) (in cases in which the series of felony violations involves at least 1 of the violations listed in this subsection), section 2260(a), or any offense under chapter 109A or chapter 117 that involved the production of child pornography (as such term is defined in section 2256).

(2) Full amount of the victim’s losses.—For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—

- (A)** medical services relating to physical, psychiatric, or psychological care;
- (B)** physical and occupational therapy or rehabilitation;
- (C)** necessary transportation, temporary housing, and child care expenses;
- (D)** lost income;
- (E)** reasonable attorneys’ fees, as well as other costs incurred; and
- (F)** any other relevant losses incurred by the victim.

(3)Trafficking in child pornography.—

For purposes of this section and section 2259A, the term “trafficking in child pornography” means conduct proscribed by section 2251(d), 2252, 2252A(a)(1) through (5), 2252A(g) (in cases in which the series of felony violations exclusively involves violations of section 2251(d), 2252, 2252A(a)(1) through (5), or 2260(b)), or 2260(b).

(4) Victim.—

For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim’s rights under this section, but in no event shall the defendant be named as such representative or guardian.

- Section 3664 of title 18 of the U.S. Code provides, in relevant part:

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant’s dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.