

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES,
Respondent,

v.

ROBERT POLIERO,
Petitioner

On Petition For a Writ of Certiorari
To the United States Court of Appeals
For the First Circuit

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

The Petitioner asks leave to file the attached Petition for Writ of Certiorari without prepayment of costs, and to proceed *In Forma Pauperis*.

Petitioner has previously sought and been granted leave to proceed *In Forma Pauperis* in both the United States Court of Appeals for the First Circuit and the United States District court of Maine. Your undersigned counsel was appointed to represent Petitioner by the Court of Appeals pursuant to the Criminal Justice Act of 1964, U.S.C. §3006A. Pursuant to Rule 39(1) of the Rules of the Supreme Court of the United States, no declaration or affidavit is attached.

November 24, 2023

Jeffrey W. Langholtz
Counsel of Record for Petitioner
260 Main Street
Biddeford, ME 04005
(207) 283-4744

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES,

Respondent,

v.

ROBERT POLIERO,

Petitioner

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

**PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

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November 24, 2023

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QUESTION PRESENTED

Whether the District Court committed procedural error when it applied a 4-level enhancement pursuant to USSG §3B1.1, despite defendant's limited responsibilities, circumscribed authority, and short-lived involvement.

**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment and Decision of the United States Court of Appeals for the First Circuit in *United States v. Poliero*, Nos. 22-1343, 22-1344 (1st Cir. Aug. 30, 2023).

OPINIONS BELOW

The Judgment and Decision of the United States Court of Appeals for the First Circuit, attached as Appendix A. The Judgment of the United States District Court for the District of Maine, attached as Appendix B.

.

JURISDICTION

The Judgment of the Court of Appeals was entered on August 30, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND RULES INVOLVED

21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846. USSG §3B1.1

STATEMENT

On June 12, 2019, a Grand Jury returned a single-count indictment charging Robert Poliero with Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1). He entered a plea of not guilty to the indictment on June 20, 2019. Subsequently he was also indicted on September 10, 2019, and charged with Conspiracy to Distribute and Possess with the Intent to Distribute Methamphetamine in violation of 21 U.S.C. §§841(a)(1) and 846. Mr. Poliero entered a plea of guilty with respect to both indictments on July 21, 2021.

A drug trafficking organization (hereinafter referred to as DTO) began operating in northern Maine during the summer of 2018. Mr. Poliero joined the DTO after the start of the conspiracy and traveled to Georgia with others between early 2019 and May 2019 to obtain shipments of methamphetamine that were distributed primarily in Aroostook County, Maine. On May 19, 2019, while making the return trip with methamphetamine, his vehicle was stopped by law enforcement and a search of the vehicle resulted in the seizure of approximately 6,100 grams of a mixture or substance containing methamphetamine.

Originally, Joel Strother, the leader of the DTO sourced methamphetamine by traveling to Georgia, Arizona, California and Mexico. The drugs were distributed to coconspirators. Mr. Strother was responsible for recruiting and leading DTO members. Mr. Poliero inadvertently rose in

the DTO's ranks as the law enforcement was closing in on the organization. The group's activities spanned approximately one year beginning on or about July 1, 2018, and ending on or about May 19, 2019. Mr. Poliero began transporting methamphetamine when Strother fled the area in April 2019. Therefore, Mr. Poliero supplied members of the already established DTO for approximately one month.

Crystal Greenlaw, co-conspirator and former girlfriend of Strother, arranged for suppliers to contact Mr. Poliero when Strother fled. Later in the conspiracy, Greenlaw also connected Poliero to the methamphetamine sources in Mexico. Mr. Poliero had no part in building the organization or recruiting its members, rather his activities focused on acquiring and transporting methamphetamine. Mr. Poliero's claim that Greenlaw provided suppliers with Poliero's phone number was congruent with United States Probation's position. Mr. Poliero's statement to law enforcement and probation that the "recipient of the great majority of Poliero's supply was [one coconspirator]" is consistent with his limited function within the DTO.

Probation acknowledges that Mr. Poliero was only a "mid-level participant[s] . . . who engaged in out-of-state drug/money transports." Strother, rather than Poliero, was responsible for organizing and leading an organization that consisted of approximately 17 individuals.

Sentencing occurred on May 2, 2022, before the Honorable Lance E. Walker. The guideline sentencing range was calculated and sentence was

imposed. The Court stated, "I'm going to find an offense level of 44 rather than 49. But that finding is somewhat, if not entirely, academic on the basis that any offense level above 43 is treated as a 43, so it doesn't change the guideline sentence - - a guideline range a whit. Mr. Poliero's base offense level should remain a 38 and it will remain at 38 . . . The record supports attributing at least 90,000 kilograms of converted drug weight to Mr. Poliero. Even based on conservative assumptions, at least 3,970 grams of actual methamphetamine were seized -- either seized from Mr. Poliero or otherwise attributed to him. Credible evidence from witnesses, including but not limited to CS-2, and as Mr. Heimbach just mentioned, CS-1 as well, provide ample evidence to attribute to Mr. Poliero at least another 530 grams of actual methamphetamine or 5.3 kilograms of methamphetamine mixture.

Mr. Poliero should and will receive a 4-level enhancement under the guidelines 3B1.1(c) for playing an aggravating role in the conspiracy. In addition, to my conclusion, which is really coextensive on this point with the conclusion drawn by the government in its sentencing memo, let me say the following: Mr. Poliero exercised the requisite degree of leadership to be considered an organizer, not merely a supervisor, because he recruited and controlled other participants.

The criminal organization here involved more than five participants. Poliero recruited accomplices, instructed other participants to make sales or purchases of methamphetamine, and directed other participants to send or

collect money for drugs. That alone, in my conclusion, is enough to qualify for a 4-level enhancement.

The fortuity that other individuals played more significant roles in the conspiracy and even operated the conspiracy before Poliero joined it is, in my estimation, entirely irrelevant so long as Mr. Poliero otherwise meets the criteria for leadership under the guidelines, and I conclude that he does.”

Mr. Poliero objected to the 4-level enhancement.

REASON FOR GRANTING THE PETITION

Criminal sentences imposed under the advisory guidelines must be reviewed for procedural error which includes miscalculating the Guidelines range. Substantive reasonableness is addressed only after it is clear that no significant procedural error has occurred *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). The instant matter provides the court with a vehicle to clarify the ambiguous aggravating role enhancement provisions outlined in USSG §3B1.1.

A 4-level enhancement will apply “if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” *U.S.S.G. §3B1.1(a)*. The court must consider certain factors to determine the appropriateness of the enhancement including, the status of defendant’s decision-making authority; the type of participation in the offense; whether accomplices were recruited; whether defendant gained a larger share of the criminal proceeds; defendant’s role in planning or

organizing the offense; the nature and scope of the illegal activity; and the degree of control and authority defendant exercised over others. *U.S.S.G. §3B1.1(a). cmt. n.4*. Coordinating others in criminal activity does not necessarily imply leadership. *United States v. Carrero-Hernandez*, 643 F.3d 344, 350 (1st Cir. 2011). The defendant must have acted as organizer or leader and controlled others to warrant the 4-level enhancement. The activity must also be consistent with the guidelines requirement for numerosity or extensiveness. *United States v. Lucena-Rivera*, 750 F.3d 43, 50 (1st Cir. 2014).

“Section 3B1.1 requires the exercise of some authority in the organization, the exertion of some degree of control, influence, or leadership.” *United States v. Martinez*, 584 F.3d 1022, 1026 (11th Cir. 2009) (internal quotation marks omitted). The quantity of Methamphetamine transported or the fact that defendant may have had closer contacts with drug sources is not necessarily indicative of leadership. Based on the limited time that Mr. Poliero was acting on behalf of the DTO, his lack of recruitment activity, and his primary focus on acquisition, transport and financial activity, a 4-level leadership enhancement constitutes error.

CONCLUSION

For the reasons set forth above, this Petition for Certiorari should be granted.

Dated: November 24, 2023

Respectfully Submitted,

Jeffrey W. Langholtz
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260 Main Street
Biddeford, ME 04005
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United States Court of Appeals For the First Circuit

Nos. 22-1343
22-1344

UNITED STATES OF AMERICA,

Appellee,

v.

ROBERT POLIERO, a/k/a Charlie,

Defendant, Appellant.

JUDGMENT

Entered: August 30, 2023

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: Robert Poliero's sentence is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: Joel B. Casey, Donald E. Clark, Benjamin M. Block, Nicholas S. Heimbach, Raphaelle A. Silver, Jeffrey W. Langholtz, Johnathan G. Nathans, Robert Poliero

United States Court of Appeals For the First Circuit

Nos. 22-1343
22-1344

UNITED STATES OF AMERICA,

Appellee,

v.

ROBERT POLIERO, a/k/a Charlie,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Lance E. Walker, U.S. District Judge]

Before

Barron, Chief Judge,
Selya and Gelpí, Circuit Judges.

Jeffrey W. Langholtz on brief for appellant.
Darcie N. McElwee, United States Attorney, and Benjamin M.
Block, Assistant United States Attorney, on brief for appellee.

August 30, 2023

SELYA, Circuit Judge. In these consolidated sentencing appeals, defendant-appellant Robert Poliero claims that the district court erred by adopting a four-level role-in-the-offense enhancement when formulating his guideline sentencing range – an enhancement premised on the degree of organizational responsibility that he allegedly shouldered within the charged conspiracy. See USSG §3B1.1(a). Because we conclude that the record supports the factual findings underpinning the enhancement, we affirm the appellant's sentence.

I

We briefly rehearse the relevant facts and travel of the case. Because this appeal follows a guilty plea, "[w]e draw the facts from the plea agreement, the change-of-plea colloquy, the [undisputed portions of the] presentence investigation report (PSI Report), and the transcript of the disposition hearing." United States v. Almonte-Nuñez, 771 F.3d 84, 86 (1st Cir. 2014).

A

In July of 2018, a new drug-trafficking organization (DTO) began operating in Maine. Joel Strother headed up the DTO. Strother took the lead in obtaining methamphetamine from suppliers, directing drug distribution, recruiting personnel to assist in the transportation and sale of drugs, managing the DTO's finances, and the like.

Strother's leadership and control of the DTO was not to last. In April of 2019, Strother fled from the area for undisclosed reasons. Following his abrupt decampment, the appellant — who was already a member of the DTO — took on more responsibility for some of the tasks that Strother had previously handled. Notably, the appellant assumed responsibility for acquiring methamphetamine from suppliers. As a part of his acquisition activities, the appellant determined the monthly quantity of methamphetamine that the DTO would purchase. And once he acquired the methamphetamine, the appellant supplied members of the DTO with the drugs that they needed for further distribution and sale.

The authorities eventually caught wind of the DTO's activities. On May 19, 2019, law enforcement officers — acting on information that the appellant was transporting controlled substances — stopped his vehicle while he was driving through York, Maine. A search of the vehicle turned up approximately 6,100 grams of a mixture containing methamphetamine, a handgun, and three boxes of ammunition. The appellant was arrested on the spot.

As a part of their follow-up investigation, officers procured a warrant to search the appellant's Facebook account. Perscrutation of the messages sent and received in that account shed light on the role that the appellant played in the DTO following Strother's departure. The messages showed that, on

numerous occasions, the appellant directed other members of the DTO to send or collect money in relation to the purchase and sale of methamphetamine. In a representative instance, the appellant sent \$2,000 or more to an associate, directing that person to pay \$1,000 to a particular supplier, take a \$100 fee for himself, and put the balance in a safe.

B

On June 12, 2019, a federal grand jury sitting in the District of Maine handed up an indictment charging the appellant with a single count of possession with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. See 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). In a subsequent indictment, the appellant (along with sixteen other individuals) was charged with conspiracy to distribute and to possess with intent to distribute fifty grams or more of methamphetamine or 500 grams or more of a mixture or substance containing methamphetamine. See id. §§ 841(a)(1), (b)(1)(A)(viii), 846. The appellant initially maintained his innocence but later changed course: on July 21, 2021, he entered guilty pleas to both charged counts.

The probation office then prepared the PSI Report. In that report, the probation office concluded – as relevant here – that the appellant was an organizer or leader of the charged conspiracy. Thus, it recommended that a four-level role-in-the-offense enhancement should apply in the calculation of the

appellant's guideline sentencing range. See USSG §3B1.1(a). The appellant objected to this enhancement, but the probation office held firm.

After applying all the relevant enhancements and reductions, including the role-in-the-offense enhancement, the final version of the PSI Report set the appellant's total offense level at forty-nine. Pursuant to the guidelines commentary, however, the appellant's total offense level was treated as forty-three. See USSG Ch. 5, Pt. A, cmt. n.2. Coupled with a criminal history category of I, this yielded a guideline sentencing range of life imprisonment.

The district court convened the disposition hearing on May 2, 2022. In advance of the hearing, the appellant submitted a sentencing memorandum in which he again objected to the applicability of the role-in-the-offense enhancement. He argued that his role in the DTO warranted at most a two-level enhancement. See USSG §3B1.1(c). The government, in turn, argued in favor of the four-level enhancement. The district court sided with the government: it found that the appellant had "recruited accomplices, instructed other participants to make sales or purchases of methamphetamine, and directed other participants to send or collect money for drugs." Applying the four-level enhancement, the district court computed the appellant's total offense level as forty-four and – pursuant to the guidelines

commentary previously cited – reduced that level to forty-three. Matching this offense level with the appellant's criminal history category (I), the court determined the appellant's guideline sentencing range to be life imprisonment.

At the end of the disposition hearing, the court imposed a downwardly variant sentence of 216 months' imprisonment on each count of conviction (to run concurrently). The court added that the sentence was "completely untethered from the guidelines" and that it "would impose the same sentence even if the applicable sentencing guideline range would have been reduced by any or all of the objections made by the defendant." This timely appeal followed.

II

These are rifle-shot appeals: the appellant challenges only the district court's application of the four-level enhancement for his role in the offense. Generally, "[a]ppellate review of a criminal defendant's claims of sentencing error involves a two-step pavane." United States v. Miranda-Díaz, 942 F.3d 33, 39 (1st Cir. 2019). Under this framework, "we first determine whether the sentence imposed is procedurally reasonable and then determine whether it is substantively reasonable." United States v. Clogston, 662 F.3d 588, 590 (1st Cir. 2011). Here, however, the appellant challenges only the procedural

reasonableness of his sentence, and we cabin our analysis accordingly.

The appellant's claim of error was preserved below and, thus, our review is for abuse of discretion. See United States v. Illarraza, 963 F.3d 1, 7 (1st Cir. 2020). This mode of review is neither monolithic nor appellant-friendly. "[U]nder its aegis, we assay the district court's findings of fact for clear error." Id. at 7-8. In addition, "we afford de novo review to the sentencing court's interpretation and application of the sentencing guidelines, and evaluate its judgment calls for abuse of discretion." United States v. Ruiz-Huertas, 792 F.3d 223, 226 (1st Cir. 2015). "[W]e remain mindful that inquiries into a defendant's role in the offense are 'notoriously factbound.'" United States v. Rivera, 51 F.4th 47, 51 (1st Cir. 2022) (quoting United States v. Ventura, 353 F.3d 84, 89 (1st Cir. 2003)). As a result, "battles over a defendant's status . . . will almost always be won or lost in the district court." United States v. Graciani, 61 F.3d 70, 75 (1st Cir. 1995).

Against this backdrop, we turn to the key guideline provision. That provision directs sentencing courts to apply a four-level enhancement if "the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." USSG §3B1.1(a). "The government bears the burden of proving the applicability of upward role-in-the-

offense adjustments by a preponderance of the evidence." Rivera, 51 F.4th at 51. To carry its burden, the government must adduce evidence that satisfies both the scope and status requirements. See id.

The scope requirement is satisfied if the evidence "show[s] that the enterprise involved five or more participants or was otherwise extensive." Id. That requirement need not detain us: the record shows quite plainly that the DTO was a sprawling organization that easily crossed the guideline provision's numerosity threshold – and the appellant does not argue to the contrary.

By contrast, the status requirement bears the brunt of the appellant's attack. To satisfy that requirement, the government must show that the appellant "acted as an organizer or leader of the enterprise." Id. The district court found that the government had carried the devoir of persuasion on this point, and the appellant asserts that this finding was clearly erroneous. We disagree.

"To qualify as an 'organizer,' 'the defendant must have exercised some degree of control over others involved in the commission of the offense or he must have been responsible for organizing others for the purpose of carrying out the crime.'" United States v. Hernández, 964 F.3d 95, 102 (1st Cir. 2020) (quoting United States v. Carrero-Hernández, 643 F.3d 344, 350

(1st Cir. 2011)); see United States v. Tejada-Beltran, 50 F.3d 105, 112 (1st Cir. 1995) ("One may be classified as an organizer, though perhaps not as a leader, if he coordinates others so as to facilitate the commission of criminal activity."). The guidelines offer a list of factors that courts should consider in determining whether a defendant exercised such control within a particular organization. These factors include:

the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

USSG §3B1.1, cmt. n.4. "This list is 'representative rather than exhaustive,' and 'proof of each and every factor' is not necessary to establish that a defendant acted as an organizer or leader." Rivera, 51 F.4th at 52 (quoting Tejada-Beltran, 50 F.3d at 111).

Viewed in its entirety, the record supports the district court's determination that the appellant acted as an organizer within the DTO. The record reveals multiple instances in which the appellant directed and coordinated the actions of others so as to carry out the DTO's illegal activities and achieve its unlawful objectives. For example, record evidence shows that the appellant instructed others regarding how and when to send, parcel out, and collect money in exchange for drugs. There is, moreover, evidence

that the appellant recruited at least one other person to traffic drugs for the DTO. Given this body of evidence, we conclude that the district court did not commit clear error in finding that the appellant satisfied the status requirement. It follows, then, that the district court acted within the ambit of its discretion in imposing the four-level "organizer" enhancement.

The appellant resists this conclusion. He insists that certain pieces of evidence identified by the government are not, by themselves, sufficient to show that he acted as an organizer. Specifically, he contends that the fact that he was found in possession of a large quantity of methamphetamine is not enough to show that he was an organizer. But the appellant is setting up a straw man: there is nothing in the record suggesting that the district court imposed the role-in-the-offense enhancement based on the singular fact that the appellant possessed a large quantity of illegal drugs. The contrary is true. The court's imposition of the enhancement rested on a holistic appraisal of the facts in the record that showed, with conspicuous clarity, the appellant's exercise of control over other actors within the DTO.

There is one loose end. The appellant seems to suggest that — even if he did exercise some degree of control over others — he did not exercise such control for a sufficiently long period of time to be considered an organizer. This argument is poorly developed: the appellant cites no authority for the proposition that an individual must

exercise control over others for some particular interval in order to be classified as an organizer for purposes of section 3B1.1. Even were we to overlook the likely waiver that attends this suggestion, see United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived."), our case law counsels against adoption of any such temporal requirement, cf. Hernández, 964 F.3d at 102-03 (concluding that evidence showing that defendant coordinated activities of another individual on one occasion sufficed to justify application of leadership enhancement). Thus, we reject the appellant's suggestion that his exercise of control was of an insufficient duration to ground application of the four-level role-in-the-offense enhancement.

III

We need go no further.¹ For the reasons elucidated above, the challenged sentence is

Affirmed.

¹ Inasmuch as we have upheld the role-in-the-offense enhancement, we need not reach the government's alternative argument that the sentence may stand – notwithstanding the fate of the enhancement – because the district court explicitly untethered it from the guidelines. See, e.g., United States v. Ouellette, 985 F.3d 107, 110 (1st Cir. 2021) (holding that where district court would have imposed same sentence regardless of guidelines calculations, any error in guideline calculations is harmless); United States v. Tavares, 705 F.3d 4, 26-27 (1st Cir. 2013) ("An error is harmless if it 'did not affect the district court's selection of the sentence imposed.'" (quoting Williams v. United States, 503 U.S. 193, 203 (1992))); see also Rivera, 51 F.4th at 53 (collecting cases).

United States District Court
District of Maine

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ROBERT POLIERO
AKA CHARLIE

Case Number: 1:19-cr-00105-LEW-1 &
1:19-cr-00171-LEW-5

USM Number: 13642-036

Jeffrey W. Langholtz, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment in 1:19-cr-00105-LEW-1 and count 1 of the Indictment in 1:19-cr-00171-LEW-5.

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

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

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)	Possession with Intent to Distribute 50 Grams of Methamphetamine and 500 Grams of Methamphetamine Mixture	5/19/2019	1 (1:19-cr-00105-LEW-1)
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)	Conspiracy to Distribute Controlled Substances (50 Grams of Methamphetamine and 500 Grams of Methamphetamine Mixture)	5/19/2019	1 (1:19-cr-00171-LEW-5)

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 shall notify the court and United States attorney of material changes in economic circumstances.

May 2, 2022

Date of Imposition of Judgment

/s/ Lance E. Walker

Signature of Judge

Lance E. Walker, U.S. District Judge

Name and Title of Judge

May 3, 2022

Date Signed

DEFENDANT: ROBERT POLIERO
AKA CHARLIE
CASE NUMBER: 1:19-cr-00105-LEW-1 &
1:19-cr-00171-LEW-5

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 216 months on Count 1 of 1:19-cr-00105-LEW-1 and 216 months on Count 1 of 1:19-cr-00171-LEW-5, to be served concurrently.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant for enrollment in the 500 Hour Comprehensive Drug Treatment Program.
Placement in a BOP facility as close to Maine as possible.
- ☒ 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 _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT POLIERO
AKA CHARLIE
CASE NUMBER: 1:19-cr-00105-LEW-1 &
1:19-cr-00171-LEW-5

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 5 years on Count 1 of 1:19-cr-00105-LEW-1 and 5 years on Count 1 of 1:19-cr-00171-LEW-5, to be served concurrently.

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 additional drug tests during the term of supervision, but not more than 120 drug tests per year thereafter, as directed by the probation officer.
☐ 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)*

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 of this judgment.

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

DEFENDANT: ROBERT POLIERO
AKA CHARLIE
CASE NUMBER: 1:19-cr-00105-LEW-1 &
1:19-cr-00171-LEW-5

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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ROBERT POLIERO
AKA CHARLIE
1:19-cr-00105-LEW-1 &
CASE NUMBER: 1:19-cr-00171-LEW-5

SPECIAL CONDITIONS OF SUPERVISION

- 1) Defendant shall not use or possess any controlled substance, alcohol or other intoxicant; and shall participate in a program of drug and alcohol abuse therapy to the supervising officer's satisfaction. Defendant shall pay/co-pay for services during such treatment to the supervising officer's satisfaction. Defendant shall not obstruct or tamper, or try to obstruct or tamper, in any way, with any tests;
- 2) The defendant shall participate in mental health treatment, as directed by the supervising officer, until released from the program by the supervising officer. Defendant shall pay/co-pay for services during such treatment, to the supervising officer's satisfaction;
- 3) Defendant shall not own or possess any firearm or other dangerous weapon, or knowingly be at any time in the company of anyone known by the defendant to possess a firearm or other dangerous weapon; and
- 4) A United States probation officer may conduct a search of the defendant and of anything the defendant owns, uses, or possesses if the officer reasonably suspects that the defendant has violated a condition of supervised release and reasonably suspects that evidence of the violation will be found in the areas to be searched. Searches must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release.

DEFENDANT: ROBERT POLIERO
 AKA CHARLIE
 CASE NUMBER: 1:19-cr-00105-LEW-1 &
 1:19-cr-00171-LEW-5

CRIMINAL MONETARY PENALTIES

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

	<u>Count</u>	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA</u> <u>Assessment *</u>	<u>JVTA Assessment **</u>
	1 (1:19-cr-105)	\$ 100.00	\$ 0.00	\$ 0.00		
	1 (1:19-cr-171)	\$ 100.00	\$ 0.00	\$ 0.00		
Totals:		\$ 200.00	\$ 0.00	\$ 0.00		

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

☐ The defendant 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>
TOTALS	\$ _____	\$ _____	

☐ 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.

DEFENDANT: ROBERT POLIERO
AKA CHARLIE
CASE NUMBER: 1:19-cr-00105-LEW-1 &
1:19-cr-00171-LEW-5

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$200.00 due immediately, balance due
☒ Any amount that the defendant is unable to pay now is due and payable during the term of incarceration. Upon release from incarceration, any remaining balance shall be paid in monthly installments, to be initially determined in amount by the supervising officer. Said payments are to be made during the period of supervised release, subject always to review by the sentencing judge on request, by either the defendant or the government.
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.