APPENDIX

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United States Court of Appeals
For the First Circuit

Nos. 22-1444, 22-1449

UNITED STATES,

Appellee,

v.

BERNARD GADSON,

Defendant, Appellant.

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

[Hon. Jon D. Levy, U.S. District Judge]

Before

Kayatta, Selya, and Howard,
Circuit Judges.

Chauncey B. Wood, with whom Danya F. Fullerton, and Wood & Nathanson, LLP, were on brief, for appellant.

Benjamin M. Block, Assistant United States Attorney, with whom Darcie N. McElwee, United States Attorney, was on brief, for appellee.

August 9, 2023

KAYATTA, Circuit Judge. Bernard Gadson was sentenced to 110 months' imprisonment after pleading guilty to crimes arising from his role in a bank fraud scheme. On appeal, he challenges the procedural reasonableness of his sentence, asserting that the district court miscalculated the appropriate Guidelines sentencing range. He also challenges the inclusion of certain amounts in the court's restitution order. For the following reasons, we affirm Gadson's prison sentence, and vacate in part the restitution order.

I.

We begin by summarizing the factual background and procedural history that form the basis of Gadson's appeals. "Because [Gadson pleaded] guilty, we draw the relevant facts from the change-of-plea colloquy, the unchallenged portions of the Presentence Investigation Report ('PSR'), and the sentencing hearing transcript." United States v. González-Andino, 58 F.4th 563, 565 (1st Cir. 2023) (quoting United States v. Díaz-Rivera, 957 F.3d 20, 22 (1st Cir. 2020)).

On October 25, 2021, Gadson pleaded guilty to three crimes stemming from his involvement in a bank fraud conspiracy: (i) attempted bank fraud, in violation of 18 U.S.C. §§ 2, 1344(2); (ii) aiding and abetting aggravated identity theft, in violation of 18 U.S.C. §§ 2,

1028A(1); and (iii) criminal contempt,[1] in violation of 18 U.S.C. § 401(3). As relevant here, Gadson and his coconspirators obtained the names and personal information (including dates of birth and social security numbers) of real individuals, and then used that information to apply for loans for themselves in those persons' names, with no intention of repaying the loans. To support the loan applications, Gadson and his coconspirators also created and used fraudulent supporting documents, such as counterfeit driver's licenses, pay stubs, and lease agreements. The specific conduct that formed the basis for the bank fraud and identity theft charges occurred in January 2019.

The district court sentenced Gadson to 110 months' imprisonment. In determining the total offense level for bank fraud and criminal contempt (which were grouped together under the applicable United States Sentencing Guidelines), the court added twelve levels under section 2B1.1 for the monetary losses associated with Gadson's conduct, including losses stemming from uncharged relevant conduct. See United States v. Flete-Garcia, 925 F.3d 17, 28 (1st Cir. 2019). Pursuant to the applicable Guidelines commentary, the court looked to "intended loss" rather than "actual loss" because the "intended loss" was the greater of the two. U.S.S.G. § 2B1.1, cmt. n.3(A).

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[1] Gadson was initially arrested in August 2019 and subsequently released on bond. The criminal contempt charge resulted from conduct that violated the terms of his pretrial release.

Additionally, the court denied Gadson's requested three-level reduction for acceptance of responsibility under section 3E1.1. The government had initially agreed in Gadson's plea agreement to recommend that the district court apply the reduction. And the PSR recommended that Gadson receive the reduction (although it said it was a "close call"), noting the parties' agreement. But the government had reserved the right to change its view, and ultimately opposed the credit because Gadson, according to the government, "falsely den[ied], and frivolously contest[ed], relevant conduct" during the sentencing proceedings.

The district court sided with the government, resting the denial on the fact that Gadson had not "truthfully admitted the conduct that . . . comprise[d] the offense of conviction." Although he had pleaded guilty, Gadson contested the government's characterization of his role in the scheme. He disputed the application of a three-level increase for his role as a "manager or supervisor" of the scheme, as well as the inclusion of much of the conduct taken into account for the purpose of determining loss under section 2B1.1. The court rejected Gadson's contentions, and asked "whether his challenging [of] the findings in the [presentence] report associated with his role [was] frivolous and so lacking in merit as to disqualify him from acceptance of responsibility credit." The court then observed that Gadson had incorrectly "disputed . . . his role in the conspiracy, shifting blame to his co-conspirators [and] characterizing himself as a minor player relative to them." The court found "ample evidence that he was

the top person in this criminal activity," and determined that Gadson "ha[d] not accepted that." "With that background," the court could not "in good faith conclude that he ha[d] sufficiently taken responsibility for his actions so as to receive a reduction."

Ultimately, the court calculated a total offense level of twenty-seven for bank fraud and criminal contempt, yielding a Guidelines sentencing range of 100-125 months. The court then imposed a downward-variant sentence of 80 months for those counts, to run consecutively with the mandatory minimum sentence of 24 months for identity theft and a 6-month sentence pursuant to 18 U.S.C. § 3147 for committing a new offense while on pretrial release.

The court also ordered restitution in the amount of $256,537. Included in that calculation was an auto loan for $107,437 issued by TD Bank to Gadson in October 2020. Gadson obtained the loan in his own name but submitted fraudulent documents regarding his income and employment when applying for it. Gadson was current on all payments on the loan at the time of sentencing, and the court applied a credit of $13,196 for the amount already paid off.

II.

Gadson argues that his prison sentence was procedurally unreasonable based on two Guidelines calculation errors. First, he challenges the district court's use of "intended loss" rather than "actual loss" in determining his offense level for the bank fraud and

criminal contempt counts. Second, he asserts that the court erred in denying the three-level reduction for acceptance of responsibility. We address these arguments in turn.

A.

Gadson concedes that he did not raise his "actual loss" argument to the district court, and thus we review it for plain error. See United States v. Lewis, 963 F.3d 16, 25 (1st Cir. 2020). "In order to establish plain error, a defendant must show that: '(1) there was error; (2) the error was plain; (3) the error affected [his] substantial rights; and (4) the error adversely impacted the fairness, integrity, or public reputation of judicial proceedings.'" Id. (alteration in original) (quoting United States v. Clemens, 738 F.3d 1, 10 (1st Cir. 2013)).

We begin our review with the relevant Guidelines text. For certain theft crimes, including Gadson's, section 2B1.1 specifies a base offense level and then provides for offense-level increases depending on the amount of the loss. U.S.S.G. § 2B1.1(a), (b)(1). If, for example, the loss is more than $6,500 and less than or equal to $15,000, two levels are added; if the loss is more than $15,000 and less than or equal to $40,000, four levels are added, and so on. U.S.S.G. § 2B1.1(b)(1)(B), (C).

The Guidelines themselves do not define "loss," but the Guidelines commentary to section 2B1.1 provides that "loss is the greater of actual loss or intended

loss." U.S.S.G. § 2B1.1, cmt. n.3(A). The commentary then defines "actual loss" as "the reasonably foreseeable pecuniary harm that resulted from the offense," and defines "intended loss" as "the pecuniary harm that the defendant purposely sought to inflict." U.S.S.G. § 2B1.1, cmt. n.3(A)(i)-(ii).

As discussed above, the district court here determined that intended loss was greater than actual loss, ultimately resulting in a twelve-level increase in Gadson's total offense level. Gadson asserts on appeal that the district court should have used actual loss instead of intended loss, and that, had the court done so, he would have received at most a ten-level increase under section 2B1.1.

Gadson thus asks us to reject the commentary's definition of "loss." In Stinson v. United States, 508 U.S. 36 (1993), the Supreme Court held that the Guidelines commentary should be "treated as an agency's interpretation of its own legislative rule," and that, accordingly, the commentary "must be given 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" Id. at 44-45 (quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945)). Applying Stinson, we have held that "disregarding commentary in favor of a guideline or statute is permissible 'only when "following one will result in violating the dictates of the other."'" United States v. Duong, 665 F.3d 364, 368 (1st Cir. 2012) (quoting United States v. Piper, 35 F.3d 611, 617 (1st Cir. 1994)).

Gadson makes no argument that he could prevail if Stinson applied. Instead, he asserts that the Supreme Court's decision in Kisor v. Wilkie, 139 S. Ct. 2400 (2019), changed the standard for deferring to the commentary. Kisor clarified that courts should not defer to an agency's interpretation of its own regulation "unless the regulation is genuinely ambiguous." Id. at 2415; see Lewis, 963 F.3d at 23-24 (noting that although Kisor rejected a challenge to the Auer/Seminole Rock doctrine of agency deference, "[i]t is nevertheless fair to say that Kisor sought to clarify the nuances of judicial deference to agency interpretations of regulations"). "And before concluding that a rule is genuinely ambiguous, a court must exhaust all the 'traditional tools' of construction." Kisor, 139 S. Ct. at 2415 (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843 n.9 (1984)). "Then, '[i]f genuine ambiguity remains,' a court must ensure that 'the agency's reading [is] "reasonable,"' meaning that it 'must come within the zone of ambiguity the court has identified after employing all its interpretive tools.'" Lewis, 963 F.3d at 24 (alterations in original) (citation omitted) (quoting Kisor, 139 S. Ct. at 2415-16).

Applying Kisor, Gadson argues that "loss" as used in section 2B1.1 unambiguously means "actual loss." Gadson further asserts that even if "loss" were ambiguous, defining that term to include "intended loss" would not be reasonable.

Gadson must do more than simply prove that the Guidelines mean what he says they mean. Rather, because we are reviewing Gadson's claim for plain error,

he must prove that the district court's error "was plain – which is to say, clear or obvious." United States v. Romero, 906 F.3d 196, 209 (1st Cir. 2018). And even assuming that Kisor abrogated Stinson, and further assuming that the district court committed error by using intended loss, any such error was not "clear or obvious."

Gadson concedes that his reading of section 2B1.1 does not directly follow from First Circuit precedent. "With no binding precedent on his side, [he] cannot succeed on plain-error review unless he shows his [loss] theory is compelled by the guidelines' language itself." Id. at 207. In making that argument, Gadson cites heavily from United States v. Banks, 55 F.4th 246 (3d Cir. 2022), in which the Third Circuit reviewed de novo whether section 2B1.1 encompasses intended loss. Id. at 255 n.29. That court concluded that "in the context of a sentence enhancement for basic economic offenses, the ordinary meaning of the word 'loss' is the loss the victim actually suffered." Id. at 258. The court, applying Kisor, placed "no weight" on the commentary's definition to the contrary. Id.

In reaching its conclusion, the Third Circuit explained, "The Guideline does not mention 'actual' versus 'intended' loss; that distinction appears only in the commentary. That absence alone indicates that the Guideline does not include intended loss." Id. at 257. The court also relied in part on dictionaries, finding, "Our review of common dictionary definitions of 'loss' point to an ordinary meaning of 'actual loss.' None of

these definitions suggest an ordinary understanding that 'loss' means 'intended loss.'" Id. at 258.

Because the Third Circuit was reviewing the question de novo, it expressed no opinion as to whether its interpretation was "clear or obvious." So even if we were to agree with that court's ultimate conclusion that "loss" means actual loss, it would not resolve the matter here. See Lewis, 963 F.3d at 27 (concluding, with respect to a pure question of law, that "any error, if there was one, could not have been 'clear or obvious' as required to establish plain error"); Romero, 906 F.3d at 209 (same); United States v. Caraballo-Rodriguez, 480 F.3d 62, 76 (1st Cir. 2007) (same). The Third Circuit itself provided reason to believe that its conclusion in Banks was not necessarily "obvious," noting that in certain contexts "'loss' could mean pecuniary or non-pecuniary loss and could mean actual or intended loss." Banks, 55 F.4th at 258.

More importantly, our discussions of section 2B1.1 in past opinions put paid to the claim that it is "obvious" that "loss" does not encompass intended loss. Although we have never squarely addressed a challenge to the commentary's use of intended loss (either before or after Kisor), we have regularly – both before and after Kisor – explained the concept in the context of loss calculation challenges. See, e.g., United States v. Akoto, 61 F.4th 36, 45 (1st Cir. 2023) (quoting the commentary to explain that loss for purposes of section 2B1.1 is "the greater of actual loss or intended loss"); United States v. Carrasquillo-Vilches, 33 F.4th 36, 41-42 (1st Cir. 2022) (same); United States v. Rueda, 933 F.3d 6, 8 (1st

Cir. 2019) (same); Flete-Garcia, 925 F.3d at 28 (same); United States v. Stokes, 829 F.3d 47, 54 (1st Cir. 2016) (same). In none of these cases have we expressed any doubt regarding the use of intended loss. To the contrary, we have described such use approvingly, noting that "[i]n fraud cases, amount of loss is meant to be a proxy for the harm (both actual and intended) inflicted by the fraudster's nefarious activities," Flete-Garcia, 925 F.3d at 33 (emphasis added), and that "intended loss is frequently a better measure of culpability than actual loss," United States v. Appolon, 695 F.3d 44, 67 (1st Cir. 2012) (emphasis added). These statements provide, at the very least, reasonable arguments as to why "loss" as used in section 2B1.1 does not unambiguously mean only actual loss, and why "intended loss" falls within that term's "zone of ambiguity."[2] See Kisor, 139 S. Ct. at 2415-16. Accordingly, using intended loss in this case was not "clear or obvious" error.[3]

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[2] The existence of reasonable arguments in support of these positions does not necessarily mean that we would find such positions correct if they were squarely presented on the merits. We reiterate that, for purposes of this opinion, we have only assumed (without deciding) that the district court committed error. See Romero, 906 F.3d at 209 (concluding that an alleged Guidelines interpretation error was not plain, without "tak[ing] a definitive stand on" the meaning of the relevant Guidelines section); Caraballo-Rodriguez, 480 F.3d at 70 (noting that the court's conclusion that an alleged error of statutory interpretation was not plain did not constitute a "ruling on the merits" of the statute's meaning).

[3] Gadson briefly mentions that the rule of lenity demands a narrow interpretation of section 2B1.1. But it is hardly clear how invoking lenity – a rule reserved for circumstances in which "substantial ambiguity as to the guideline's meaning persists even

As discussed above, our conclusion is not in direct tension with the Third Circuit's holding in Banks. Further, our opinion is consistent with a more similar case from the Fourth Circuit, United States v. Limbaugh, No. 21-4449, 2023 WL 119577 (4th Cir. Jan. 6, 2023). There, as here, the court reviewed for plain error "whether the commentary defining 'loss' [to include intended loss] . . . can be reconciled with the text of § 2B1.1's 'loss' provision." Id. at *4. The court observed that it had never directly addressed the "loss" issue, but it "ha[d] routinely deferred to and relied on those commentary definitions in reviewing challenges to loss calculations." Id. "Under those circumstances," the court (like this court today) could not "say that the district court committed a 'clear' or 'obvious' error" by using intended loss. Id.

B.

Gadson additionally argues that the district court erred in denying the three-level reduction for acceptance of responsibility. "We review 'a sentencing court's factbound determination that a defendant has

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after a court looks to its text, structure, context, and purposes," United States v. Pinkham, 896 F.3d 133, 138 (1st Cir. 2018) (quoting United States v. Suárez-González, 760 F.3d 96, 101 (1st Cir. 2014)) – could make it "obvious" that section 2B1.1 compels a particular reading of "loss." Gadson fails to bridge this gap.

Additionally, because we reject Gadson's intended loss argument, we need not address his claim that the district court erred in including the TD Bank auto loan in the loss calculation. Gadson concedes that such error becomes material only if the district court plainly erred in using intended loss.

not accepted responsibility' for clear error." United States v. D'Angelo, 802 F.3d 205, 209 (1st Cir. 2015) (quoting United States v. Jordan, 549 F.3d 57, 60 (1st Cir. 2008)); see United States v. Coleman, 884 F.3d 67, 73 (1st Cir. 2018).

Section 3E1.1(a) provides for a two-level decrease "[i]f the defendant clearly demonstrates acceptance of responsibility for his offense." U.S.S.G. § 3E1.1(a). If the defendant qualifies for that two-level decrease, and the defendant's offense level before that reduction was sixteen or more, then section 3E1.1(b) provides for an additional one-level decrease upon a motion by the government "stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty." U.S.S.G. § 3E1.1(b).[4]

As relevant here, the commentary to section 3E1.1 lists the following as "appropriate considerations" in "determining whether a defendant qualifies under subsection (a)": "truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully

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[4] As noted above, the government opposed any reduction for acceptance of responsibility, and thus made no motion for the additional one-level decrease. "But in practice, a district court retains some ability to grant the [additional] reduction even if the government" makes no motion under section 3E1.1(b). United States v. Rivera-Morales, 961 F.3d 1, 16 (1st Cir. 2020). "This ability is narrowly circumscribed: a sentencing court may exercise it only 'when the government's withholding of the predicate motion "was based on an unconstitutional motive" or "was not rationally related to any legitimate government end."'" Id. (quoting United States v. Meléndez-Rivera, 782 F.3d 26, 30 (1st Cir. 2015)).

admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct)"; "post-offense rehabilitative efforts"; and "the timeliness of the defendant's conduct in manifesting the acceptance of responsibility." U.S.S.G. § 3E1.1, cmt. n.1. The commentary also adds that "[a] defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility, but the fact that a defendant's challenge is unsuccessful does not necessarily establish that it was either a false denial or frivolous." Id.

On appeal, Gadson asserts that he is entitled to the reduction based upon his guilty plea "well in advance of trial," the district court's recognition of his post-offense rehabilitative efforts, and the probation officer's support for the reduction. But he does not contest the district court's factual findings that Gadson had, without merit, "disputed . . . his role in the conspiracy" and "ha[d] not accepted" "that he was the top person in this criminal activity" – the findings that formed the basis for the district court's decision to deny the reduction.

Gadson fails to explain why, based on the Guidelines commentary or anything else, his guilty plea and rehabilitative efforts should outweigh his false denial of his role in the scheme. "A defendant who pleads guilty is not entitled to a downward adjustment for acceptance of responsibility as a matter of right." United States v. Muriel, 111 F.3d 975, 982 (1st Cir. 1997).

Further, "[i]t is within the discretion of the district court to deny a reduction on the basis of its determination that a defendant has resorted to half-truths or evasions from the truth in an effort to minimize his or her culpability." Id. at 982-83. Accordingly, we cannot conclude that the district court clearly erred in determining that Gadson had not accepted responsibility.

III.

Finally, Gadson asserts that the district court should not have included the TD Bank auto loan in the restitution order. Because the government agrees with Gadson, we vacate the restitution order to that extent and remand this matter to the district court without addressing it on the merits. See United States v. Foley, 783 F.3d 7, 27-28 (1st Cir. 2015).

IV.

For the foregoing reasons, we affirm Gadson's prison sentence. We vacate in part (as to the TD Bank loan), and otherwise affirm the district court's restitution order, and remand for further proceedings consistent with this opinion.

United States District Court
District of Maine

UNITED STATES OF AMERICA	**AMENDED JUDGMENT IN A CRIMINAL CASE**
v.	Case Number: 2:19-cr-00122-JDL-2, 2:21-cr-00163-JDL-1
BERNARD GADSON	USM Number: 01711-138
Date of Original Judgment: May 26, 2022 (Or Date of Last Amended Judgment)	Luke Rioux, Esq. Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Counts Three and Four of the Superseding Indictment in Docket No. 2:19-cr-00122-JDL-2 and Count One of the Information in Docket No. 2:21-cr-00163-JDL-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 offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
18 U.S.C. § 1344(2), 18 U.S.C. § 2	Attempted Bank Fraud	January 14, 2019	Three (2:19-cr-00122-JDL-2)

18 U.S.C. § 1028A(1), 18 U.S.C. § 1028A(1)	Aiding and Abetting Aggravated Identity Theft	January 14, 2019	Four (2:19-cr-00122-JDL-2)
18 U.S.C. §§ 401(3), 3147	Criminal Contempt, While on Pretrial Release	April 2021	One (2:21-cr-00163-JDL-1)

The defendant is sentenced as provided in pages 2 through 9 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) Counts One, Two and Five in Docket No. 2:19-cr-00122-JDL-2 ☐ 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 26, 2022
Date of Imposition of Judgment

/s/ Jon D. Levy
Signature of Judge

Jon D. Levy, Chief U.S. District Judge
Name and Title of Judge

June 1, 2022
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 80 months on each of Count Three of Docket No. 2:19-cr-00122-JDL-2 and Count One of Docket No. 2:21-cr00163-JDL-1, to be served concurrently. The defendant is also sentenced to a term of 6 months imprisonment pursuant to 18 U.S.C. § 3147, to be served consecutively to Count Three of Docket No. 2:19-cr-00122-JDL-2 and consecutively to Count One of Docket No. 2:21-cr-00163-JDL-1. The defendant is also sentenced to 24 Months on Count Four of Docket No. 2:19-cr-00122-JDL-2, to be served consecutive to Count Three of Docket No. 2:19-cr00122-JDL-2, consecutive to Count One of docket number 2:21-cr-00163-JDL-1, and consecutive to the six-month sentence pursuant to 18 U.S.C. § 3147. The total term of imprisonment is 110 months.

☒ The court makes the following recommendations to the Bureau of Prisons: Placement at a facility close to Boston, Massachusetts to facility friends and family visitation

☒ 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.

/s/ _____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of of 4 years on each of Count Three of Docket No. 2:19-cr-00122-JDL-2 and Count One of Docket No. 2:21-cr-00163-JDL-1 and 1 year on Count Four of Docket No. 2:19cr-00122-JDL-2, all 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.

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 _____

SPECIAL CONDITIONS OF SUPERVISION

1. Defendant shall provide the supervising officer any requested financial information;
2. Defendant shall report to the supervising officer any financial gains, including income tax refunds, lottery winnings, inheritances, and judgments, whether expected or unexpected. Defendant shall apply them to any outstanding court ordered financial obligations;
3. Defendant shall not incur new credit charges or open additional lines of credit without the supervising officer's advance approval;

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;
5. Defendant shall destroy any false identity documents and shall not establish any false identity;
6. Under the Supervising Officer's direction, Defendant shall arrange to surrender forthwith to the authorities involved in any then pending criminal charges; and
7. Defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program (which may include partial or full restriction of computer(s), internet/intranet, and/or internet-capable devices), and shall pay for services, directly to the monitoring company. The defendant shall submit to periodic or random unannounced searches of his/her computer(s), storage media, and/or other electronic or internet-capable device(s) performed by the probation officer. This may include the retrieval and copying of any prohibited data. Or, if warranted, the removal of such system(s) for the purpose of conducting a more comprehensive search.

CRIMINAL MONETARY PENALTIES

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

Count	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
2019 Dkt. Ct. 2	$100	$256,537 ($13,196 credit toward restitution; $243,341 outstanding)	$0		
2019 Dkt. Ct. 4	$100	$0	$0		
2021 Dkt. Ct. 1	$100	$0	$0		
Totals	$300	$256,537	$0		

☐ 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.

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* 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.

☒ The defendant shall receive credit for any amounts previously paid.

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.

Name of Payee	**Total Loss*****	**Restitution Ordered**	**Priority or Percentage**
UMass Five College Federal Credit Union Attn: Jim Wage 200 Westgate Center Dr. Hadley, MA 01035 Reference: Bernard Gadson, Rahshjeem Benson & Rosa		9,500.00	1
TOTALS		See Page 8 for 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.

*** 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.

§ 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:

ADDITIONAL RESTITUTION PAYEES

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Freedom Credit Union Attn: Cheryl L. Podgorski 1976 Main Street Springfield, MA 01103 Reference: Bernard Gadson, Rahshjeem Benson & Rosa Novikov		$9,500.00	1

* 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.

Evergreen Credit Union Attn: Michael R. Dorey VP Audit & Deposit Operations 225 Riverside St. Portland, ME 04103 Claim: B1125138		$5,000.00	1
Cuna Mutual (Insurance) Group (in relation to Evergreen FCU claim) CUMIS Insurance Society Inc. PO Box 1221 Madison, WI 53701-1221 Claim: B1125138		$14,500.00	2
CPort Federal Credit Union Attn: Kelly Chaisson PO Box 777 Portland, ME 04103 Reference: Bernard Gadson, Rahshjeem Benson & Rosa Novikov		$5,000.00	1

FinSecure (in relation to CPort FCU claim) Payable to: Berkley Regional Insurance Company Attn: Darren Fields, Esquire Kazlow & Fields 8100 Sandpiper Circle, Suite 204 Baltimore, MD 21236		$4,500.00	2
Northeast Federal Credit Union 1 Pool St. Biddeford, ME 04005 Reference: Bernard Gadson, Rahshjeem Benson & Rosa Novikov		$9,500.00	1
TruChoice Federal Credit Union PO Box 10659 Portland, ME 04104 Claim: Novikov, R. Restitution		$49,500.00	1
TOTALS		See Page 8 for Totals	

ADDITIONAL RESTITUTION PAYEES

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
First Citizens Federal Credit Union		$4,500.00	1
New Bedford Credit Union Attn: Fraud Department 1150 Purchase St. New Bedford, MA 02740 Claim: Reference: Bernard Gadson, Rahshjeem Benson & Rosa Novikov		$17,600.00	1
Wings Financial		$15,000.00	1
Genisys Credit Union		$5,000.00	1
TD Bank		$107,437.00	1
TOTALS		$256,537.00	

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 $243,641.00 due immediately ($256,867.00 total amount due

* 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.

minus $13,196.00 restitution credit), 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 $ o (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after the date of this

D ☐ Payment in equal (*e.g., weekly, monthly, quarterly*) installments of $ o (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after release from 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.
ROZA S NOVIKOV 2:19-cr-00080-DBH-1		$107,000.00	UMass Five College Federal Credit Union, Freedom Credit Union, Evergreen Credit Union, Cuna Mutual (Insurance)

		Group, CPort Federal Credit Union, FinSecure, Northeast Federal Credit Union & TruChoice Federal Credit Union
RAHSHJEE M BENSON 2:19-cr-00122-DBH-1	$115,000.00	UMass Five College Federal Credit Union, Freedom Credit Union, Evergreen Credit Union, Cuna Mutual (Insurance) Group, CPort Federal Credit Union, FinSecure, Northeast Federal Credit Union, TruChoice Federal Credit Union & New Bedford Credit Union

☐ 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) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA, Plaintiff -versus- BERNARD GADSON, Defendant	CRIMINAL ACTION Docket No: 2:19-122-JDL-2 2:21-163-JDL

Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Sentencing** held before **THE HONORABLE JON D. LEVY**, United States District Court Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine, on the 26th day of May 2022 at 10:22 a.m. as follows:

Appearances:

For the Government: Sheila W. Sawyer, Esquire
Assistant United States Attorney

For the Defendant: Luke S. Rioux, Esquire

Also Present: Heather Belanger, U.S. Probation

Lori D. Dunbar, RMR, CRR
Official Court Reporter

(Prepared from manual stenography and computer aided transcription)

* * *

[49] 12:45 p.m. I will see you all back in the courtroom at that time.

(A recess was taken from 11:58 a.m. to 12:58 p.m.)

THE COURT: I want the record to be clear that the Court is receiving as part of the evidentiary record of this sentencing all of the exhibits that the parties have marked and presented to me, which I have carefully considered. I have also carefully considered the memoranda of law that the attorneys submitted beforehand, and I have also carefully considered the revised presentence investigation report, except to the extent that I have expressly not adopted or modified provisions of the report during the first half of this or the first part of this proceeding or in comments I'm about to make. Except to that express extent, I am adopting all of the report in its entirety as my findings in support of the sentence that I'm about to impose.

One item that needs to be addressed before I turn to the sentencing arguments and the guidelines is there was an objection I believe also raised by the defendant to whether the – assuming that he was found to be a manager/supervisor of criminal activity, which I do find, whether it involved five or more persons. And I want to specifically state on the record that I do find that indeed it did involve five or more persons. Specifically they included Mr. Gadson, Mr. Benson, Ms. Novikov, Ms. Chicha, and L.R.

[50] I want to now turn to the question of acceptance of responsibility under the guidelines. I've already found that the defendant's position and evidence

with respect to his role was – is unpersuasive and I've rejected that position. And then there's an additional question of whether his challenging the findings in the report associated with his role is frivolous and so lacking in merit as to disqualify him from acceptance of responsibility credit in this case, mindful of the fact that he has pled guilty to all the charges – not all the charges but to those that he and the Government have agreed he would plead to with the Government agreeing to dismiss other matters.

So the question, then, is whether he's – I should view him as by having challenged his role as also then disqualifying him from acceptance of responsibility it seems to me centers on the fact that what he disputed was his role in the conspiracy, shifting blame to his coconspirators, characterizing himself as a minor player relative to them, and suggesting that they hold primary responsibility for the crimes and that indeed Ms. Novikov has lied about him and his role to benefit someone else.

Now, the presentence investigation report reflected that, because of the criminal conduct in Minnesota, whether acceptance of responsibility should be given to Mr. Gadson in this case is necessarily a close call. And so I'm considering [51] the – in trying to weigh his challenging fundamental points about the criminal conduct that's at issue here as – as sufficiently serious as to disqualify him from acceptance of responsibility.

With that background, I conclude that it does disqualify him, that he – in other words, that the record

before me persuades me that he hasn't truthfully accepted responsibility here. He hasn't truthfully admitted the conduct that can provide – that comprise the offense of conviction. There's substantial ample evidence that he was the top person in this criminal activity, and he has not accepted that. And so I cannot in good faith conclude that he has sufficiently taken responsibility for his actions so as to receive a reduction. So for that reason I am not going to grant the three-level reduction.

In light of that, the following modifications have to be made to the sentencing guideline calculations in the report. Paragraphs 38 and 39 of the revised presentence report are deleted. Total offense level in Paragraph 40 becomes 27. Paragraph 84 is revised to reflect the total offense level of 27. For Count 3 of Docket No. 19-CR-122 and Count 1 of Docket No. 21-CR-163, a total offense level of 27 and a criminal history category of IV, that results in a sentencing guideline range of 100 to 125 months. For Docket No. 19-CR-122, Count 4, the guideline sentencing range is the minimum term of [52] imprisonment required by statute of 24 months, and the aggregate sentencing range is 124 to 149 months.

I want to, however, make clear that, although I conclude that he's not entitled to credit for acceptance of responsibility under the guidelines, I do feel that he is entitled to some variant sentence in acknowledgment of the fact that he's pleaded guilty and certainly to that degree has largely accepted responsibility in that respect, and by doing so he has saved the Government

from trial in this case, and furthermore his stated willingness to proceed by video, it seems to me that those form the basis for a variant sentence in this case, and they will be reflected in my final sentencing determination.

Now, before I move on to discuss some more considerations regarding the sentence in this case, I want to know whether, counsel, you have any question or other comment with respect to the summary I've provided regarding the guidelines in view of the rulings I've made regarding acceptance of responsibility. Attorney Sawyer?

MS. SAWYER: No, I think they're correctly calculated, Your Honor.

THE COURT: Thank you. Attorney Rioux?

MR. RIOUX: Nothing further, thank you.

THE COURT: All right. The nature and circumstances of the offending conduct in this case has been I think well [53] discussed already in connection with the arguments we've had up to this point in time. The revised presentence report reflects that Mr. Gadson helped to organize and led a conspiracy to engage in fraudulent schemes to borrow money using stolen IDs. This required the production of bogus documents, including bogus leases, pay stubs, residential lease agreements, as I said, in the names of victims, all which was used to support fraudulent loan applications. This went on for in excess of a year. It involved extensive travel and coordination of efforts between

Mr. Gadson, Mr. Benson, and Ms. Novikov. It's notable that Mr. Gadson was receiving the majority of the proceeds of these frauds and Ms. Benson – Mr. Benson and Ms. Novikov received less, far less.

This type of financial fraudulent criminal conduct is – can have devastating effects for its victims, that is, numerous people's credit potentially is ruined, at least for a time. Of course, the institutions lending the money don't see repayment. And it's – the seriousness of the criminal conduct here is underscored by the fact that it was an ongoing scheme, not simply one or two isolated incidents. There's true social harm associated with this type of fraud, and the sentencing ranges that Mr. Gadson faces reflect that it is conduct which deserves a serious sentence.

Mr. Gadson himself is now age 31. He had a difficult childhood, no doubt. He's a father of two children now ages [54] eight and two. He has – does not have a significant established history of gainful employment but at least in recent years became involved with a social club as an owner.

His criminal history reflects that he has been involved in encounters with law enforcement pretty much throughout his adult life. I should say it started actually as a teenager. And he has a number of charged conduct for which he has not been convicted, which was either previously dismissed or is pending, some of which is, not all of which, but some of which is consistent with a same pattern of criminal behavior that's charged here, that is, fraudulent behavior, criminal use

of IDs, identity theft, things of that sort. And so it would appear that – yes.

PROBATION OFFICER: May I approach, Your Honor?

THE COURT: You may.

(The Court conferred with the probation officer.)

THE COURT: Let me be clearer than I have been. I am not going to consider any charged conduct for which there are no convictions in my determination of sentence in this case, and so I am effectively striking my comments with respect to charged conduct that is pending for which there are no convictions. It simply won't be considered in my calculation or my determination of sentence in this case.

Rather, let me state that his criminal history up to – leading up to this offense, the offenses for which he is [55] charged here, reflects that he has trouble and has had trouble conforming to the requirements of the law during his life.

Now, I mentioned that Mr. Gadson has two children, eight and two. The revised presentence report reflects that he has been involved as a parent, has been supportive of them. That's all to his credit. And I also think that what's promising with respect to the defendant and should be factored in the sentence is that he has demonstrated during the period that he's been incarcerated a serious effort to try and advance himself in a prosocial way. He has completed one of the longer lists of educational programs I've received in

connection with a sentencing. He's had positions of trust in the institution. And this all bodes well at least for Mr. Gadson having the potential to rehabilitate himself and come out of a period of incarceration and hopefully live a positive, lawful life.

Furthermore, in consideration – in considering sentence in this case there's a few other factors that I think are important. As has been pointed out by Mr. Rioux, Mr. Gadson has been confined during the pandemic. The conditions of pretrial incarceration are harsher than usual, with very limited – less – I should say more limited social opportunities and opportunities for contact with others. I mentioned earlier that I'm taking into consideration in arriving at a variant sentence his willingness to proceed by [56] video and the fact that he did accept responsibility in the sense of pleading guilty in this matter.

What is also significant is for me to consider disparities and unwarranted disparities in sentencing and in particular in this case the sentence that was previously imposed on Mr. Benson. I've already discussed the fact that in connection with the criminal conduct associated with this conspiracy that's before me today, the defendant was the leader. He made the most profit and was I think – can fairly be characterized as the mind or the mastermind of the effort that it took to put together the fraudulent scheme by acquiring fraudulent documents and equipping others to be in a position to walk into a financial institution and fraudulently take out loans.

So as between him and Mr. Benson, I think that a disparity in sentence is appropriate for that reason. But more than that is the fact that Mr. Gadson is before me today having pled guilty also now to criminal contempt for his conduct in Minnesota, having been released on bail for this type of fraudulent conduct and then repeating it, which is extremely troubling, extraordinarily brazen, and suggests a complete disregard for the requirements of law. After all, Mr. Gadson had been released on bail. He had made assurances that he would comply with the requirements of bail. And so Mr. Gadson and Mr. Benson's situations are really quite [57] different.

Furthermore, in Mr. Gadson's case we have, in addition to the events in Minnesota, significant violations of requirements of bail associated with his out-of-state travel, and that included extensive airline travel to Miami, Los Angeles, Las Vegas, Puerto Rico, and the like, without permission of his supervising officer. And that also reflects poorly on the seriousness with which the defendant takes these matters and views himself as responsible to follow the rules that apply to everyone else.

The law requires me to consider what is the purpose of the sentence that's being imposed here and there's a number of possibilities. There's a few that stand out in this case.

The first is to reflect the seriousness of the conduct. I've already spoken to that here. This was a serious offense; it went on for some time.

Secondly, to provide adequate deterrence and specifically in this case to provide adequate deterrence to the defendant, Mr. Gadson. He was not deterred by the indictment in this case and by a bail order. And so I have to be – I have to be concerned regarding his willingness and ability to comply with the law, not return to criminal behavior, and the sentence should reflect that and it should provide a sufficient message to him that if he continues to think that he can get away with things like this and he's [58] apprehended and he appears before a judge, he'll be facing very harsh consequences. And so in that respect also the sentence should protect the public from further crimes by the defendant.

Now, counsel, before I conclude my analysis, is there any aspect of your arguments that I have not addressed that you believe needs to be addressed, Attorney Sawyer?

MS. SAWYER: I don't believe so, Your Honor, thank you.

THE COURT: Attorney Rioux?

MR. RIOUX: No, there is not, thank you.

THE COURT: Mr. Gadson, I ask that you stand at this time. Because there are multiple counts in this case and because of the requirements of the laws that are involved, there's several different components that make up the ultimate sentence in this case and so I have to explain them.

First, on Count 3 of Docket No. 19-CR-122 and Count 1 of Docket No. 21-CR-163, I am proposing a variant sentence concurrent on both counts of 80 months imprisonment.

With respect to Title 18 of the United States Code Section 3147, I am imposing an additional consecutive sentence of six months. So that's six months to be served consecutively to the sentence I've imposed on Count 3 of 19-CR-122 and consecutively to Count 1 of 21-CR-163.

On Count 4 of Docket No. 19-CR-122, I'm imposing a [59] 24-month sentence that is consecutive to Count 3 of 19-CR-122 and consecutive to Count 1 of 21-CR-163 and consecutive to the six months pursuant to Title 18 U.S.C. Section 3147. The resulting aggregate term of imprisonment in this case is 110 months.

In addition, I'm imposing a period of supervised release as follows: On Count 3 of 19-CR-122 and Count 1 of 21-CR-163 concurrent terms of supervised release of four years, and on Count 4 of 19-CR-122 a term of supervised release of one year also to be served concurrent with the others. So in effect, then, or in the end supervised release for a period of four years.

I am not imposing a fine. I conclude at this point in time that Mr. Gadson doesn't have the means with which to pay a fine and therefore I'm not ordering one. I am, however, ordering restitution as is required. The total restitution in this case is $256,537. Mr. Gadson receives a credit for $13,196, leaving a balance of $243,341. Finally, I'm imposing a special assessment in

this case of $100 on each count, there are three counts, so that's a total of $300.

I want the record to reflect that I have carefully considered each of the defendant's objections under the guidelines and to the revised presentence report. With respect to the guidelines, the record should reflect that, even if I had accepted an objection that I have not, under the [60] Title 18 sentencing factors the sentence would be the same, even without consideration of guidelines, because that's a sentence that I conclude is under all the facts and circumstances fair and just.

Attorney Sawyer, at this point are there any counts that need to be ordered dismissed?

MS. SAWYER: Yes, Your Honor. At this time the Government would move to dismiss Counts 1, 2, and 5 of Criminal Case No. 19-122.

THE COURT: That motion is granted and they are ordered dismissed. And before I advise the defendant of his rights of appeal, first, Attorney Sawyer, is there any aspect of the sentence I have not addressed that needs to be addressed?

MS. SAWYER: Not that I can think of, Your Honor.

THE COURT: Attorney Rioux?

MR. RIOUX: No aspect that is unaddressed, thank you.

THE COURT: Thank you.

MR. RIOUX: I would ask, Your Honor, if it's time now, for designation to a facility in the northeast region as practically close as possible to his family in Boston.

THE COURT: I will make that recommendation to the Bureau of Prisons, that is, that he be incarcerated in the northeast and as close to the city of Boston as possible so

* * *