

IN THE
United States Supreme Court

UNITED STATES OF AMERICA,
Respondent,

v.

WARREN ALEXANDER,
Petitioner.

**On Appeal From The Court of Appeals
for the Second Circuit**

APPENDIX OF PETITIONER WARREN ALEXANDER

JEREMIAH DONOVAN
Counsel For Petitioner Warren Alexander

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CLOSED, APPEAL, ECF

**U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:20-cr-00037-LAK-2**

Case title: USA v. Washington

Date Filed: 01/15/2020

Date Terminated: 03/16/2022

Assigned to: Judge Lewis A. Kaplan

Defendant_(2)**Warren Alexander***TERMINATED: 03/16/2022**also known as*

Seven

*TERMINATED: 03/16/2022*represented by **Gilbert Calvin Parris**

Law Offices of Gilbert C. Parris PC

30 Wall Street

8th Floor

Manhattan, NY 10005

917-204-3354

Email: defense@gparrislaw.com

LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Marlon Geoffrey Kirton**

Kirton Law Firm

175 Fulton Avenue

Suite 305

Hempstead, NY 11550

516-833-5617

Fax: 516-833-5620

Email: kirtonlawfirm@gmail.com

LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Designation: CJA Appointment***Pending Counts**

18:922G.F FELON IN POSSESSION

(5)

Disposition

IMPRISONMENT: 100 Months.

SUPERVISED RELEASE: 3 Years.

RESTITUTION: \$4,428.11

Highest Offense Level (Opening)

Felony

Terminated Counts

18:2119.F MOTOR VEHICLE THEFT -

CARJACKING

Disposition

Dismissed

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(1)

18:1951.F HOBBS ACT ROBBERY
CONSPIRACY

Dismissed

(2)

18:1951.F HOBBS ACT ROBBERY

Dismissed

(3)

18:924C.F FIREARMS OFFENSE

Dismissed

(4)

Highest Offense Level (Terminated)

Felony

Complaints

None

Disposition**Plaintiff**

USA

represented by **David Robles**

DOJ-USAO

1 Saint Andrews Plaza

New York, NY 10001

212-637-2550

Email: david.robles@usdoj.gov

*ATTORNEY TO BE NOTICED***Jacob Edwin Warren**

United States Attorney's Office, SDNY

One Saint Andrew's Plaza

New York, NY 10007

212-637-2264

Email: jacob.warren@usdoj.gov

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/24/2020	18	Medical Attention Form as to Warren Alexander. (jw) (Entered: 03/26/2020)
03/25/2020	13	Order to Unseal (S1) Superseding Indictment as to Shelly Washington, Warren Alexander. (Signed by Magistrate Judge Sarah L Cave on 3/25/2020)(jbo) (Entered: 03/25/2020)
03/25/2020	14	(S1) SEALED SUPERSEDING INDICTMENT FILED as to Shelly Washington (1) count(s) 1s, 2s, 3s, 4s, Warren Alexander (2) count(s) 1, 2, 3, 4, 5. (jbo) (Entered: 03/25/2020)
03/25/2020		Case Designated ECF as to Warren Alexander. (jbo) (Entered: 03/25/2020)
03/25/2020	16	Minute Entry for proceedings held before Magistrate Judge Sarah L Cave: Initial Appearance on disposition sheet as to Warren Alexander held on 3/25/2020. Deft present with atty Marlon Kirton. AUSA Jacob Warren present. Detention: Risk of Flight/Danger. (jw) (Entered: 03/26/2020)

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03/25/2020		Minute Entry for proceedings held before Magistrate Judge Sarah L Cave: Arraignment on disposition sheet as to Warren Alexander (2) Count 1,2,3,4,5 held on 3/25/2020. Deft present with atty Marlon Kirton. Deft arraigned and pleads not guilty. Next conference set before District Judge on 4/24/20 (control). (jw) (Entered: 03/26/2020)
03/25/2020		Minute Entry for proceedings held before Magistrate Judge Sarah L Cave: Plea entered by Warren Alexander (2) Count 1,2,3,4,5 Not Guilty. (jw) (Entered: 03/26/2020)
03/25/2020	17	CJA 23 Financial Affidavit by Warren Alexander. (Signed by Magistrate Judge Sarah L Cave) Attorney Marlon G. Kirton (jw) (Entered: 03/26/2020)
03/25/2020		Attorney update in case as to Warren Alexander. Attorney Marlon Geoffrey Kirton for Warren Alexander added. (jw) (Entered: 03/26/2020)
04/14/2020	19	NOTICE OF ATTORNEY APPEARANCE: Gilbert Calvin Parris appearing for Warren Alexander. Appearance Type: Retained. (Parris, Gilbert) (Entered: 04/14/2020)
04/21/2020	22	ORDER as to Shelly Washington, Warren Alexander. By a memorandum endorsement dated March 11, 2020 (Dkt. 10), the court reset the pretrial motion briefing schedule for defendant Shelly Washington. The court now sets the same schedule for defendant Warren Alexander. Alexanders motions, if any, must be filed by May 12, 2020. The governments response, if any, must be filed by June 2, 2020. Alexanders reply, if any, must be filed by June 9, 2020. A status conference for defendants Washington and Alexander is set for June 17, 2020 at 11 AM. Time already is excluded for Washington until the June status conference. As to Alexander, a co-defendant joined for trial with Washington, time is excluded also from now until June 17, 2020. (Signed by Judge Lewis A. Kaplan on 4/21/20)(jw) (Entered: 04/21/2020)
04/23/2020	23	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - FIRST MOTION for Disclosure of Possible conflict of interest. Document filed by Warren Alexander. (Parris, Gilbert) Modified on 4/23/2020 (ka). (Entered: 04/23/2020)
04/23/2020		NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - EVENT TYPE ERROR as to Warren Alexander: Notice to Attorney Parris, Gilbert to RE-FILE Document 23, FIRST MOTION for Disclosure of Possible conflict of interest. Use the event type Letter Motion found under the event list Motions. (ka) (Entered: 04/23/2020)
04/23/2020	24	FIRST LETTER MOTION addressed to Judge Lewis A. Kaplan from Gilbert C. Parris dated 4-23-2020 re: Note possible conflict . Document filed by Warren Alexander. (Parris, Gilbert) (Entered: 04/23/2020)
04/27/2020	25	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - MOTION for Extension of Time . Document filed by Warren Alexander. (Parris, Gilbert) Modified on 4/27/2020 (ka). (Entered: 04/27/2020)
04/27/2020		NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - EVENT TYPE ERROR as to Warren Alexander: Notice to Attorney Parris, Gilbert to RE-FILE Document 25, MOTION for Extension of Time .. Use the event type Letter Motion found under the event list Motions. (ka) (Entered: 04/27/2020)
04/28/2020	26	FIRST LETTER MOTION addressed to Judge Lewis A. Kaplan from Gilbert C. Parris dated 04/27/2020 re: Adjournment Request . Document filed by Warren Alexander. (Parris, Gilbert) (Entered: 04/28/2020)
05/01/2020	27	ORDER denying without prejudice 26 LETTER MOTION alter schedule as to Warren Alexander (2). (Signed by Judge Lewis A. Kaplan on 5t/1/2020) (Kaplan, Lewis) (Entered: 05/01/2020)

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- 06/24/2020 Minute Entry for proceedings held before Judge Lewis A. Kaplan: Telephone Conference/Pretrial Conference as to Shelly Washington, Warren Alexander held on 6/24/2020. Defendant Shelly Washington participated as did defense attorney Julia Gatto. Defendant Warren Alexander participated as did defense attorney Gilbert C. Parris. AUSA David Robles present. Court reporter Sonya Moore present. Notes from the conference. Mr. Parris 4/23/2020 letter was addressed. Counsel will review the issues raised and contact the Court at a later date. A motion schedule was set on 2/4/2020 when only Sally Washington was present. There were adjournments and then the schedule has lapsed. Discovery has been sent to the MCC for review by the defendants only recently. The Court recommends defense counsel consult with their clients and the Government regarding whether there is interest in a non-jury trial and also to propose a motion schedule. The Court requested notice by letter whether there is unanimous consent to a bench trial or not and also a proposed motion schedule to be submitted by counsel. Defendants Warren Alexander and Sally Washington waived an in-person appearance today. The next teleconference is scheduled for July 28, 2020 at 9:00 AM. Both defendants remained detained. (Telephone Conference set for 7/28/2020 at 09:00 AM before Judge Lewis A. Kaplan) (jw) (Entered: 06/25/2020)
- 06/30/2020 [28](#) LETTER by USA as to Shelly Washington, Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated June 30, 2020 re: U.S. v. Washington and Alexander, 20 Cr. 37 (LAK) Document filed by USA. (Robles, David) (Entered: 06/30/2020)
- 07/01/2020 [29](#) MEMO ENDORSEMENT as to Warren Alexander on re: [28](#) LETTER by USA as to Shelly Washington, Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated June 30, 2020 re: U.S. v. Washington and Alexander, 20 Cr. 37. ENDORSEMENT: The motion schedule is approved. It is impossible to set a trial date a trial date now. The parties will have to be ready for trial as soon after motions are decided as an opening becomes available. We cannot now forecast where that will occur. (Motions due by 10/23/2020. Responses due by 11/6/2020. Replies due by 11/20/2020) (Signed by Judge Lewis A. Kaplan on 7/1/2020) (ap) (Entered: 07/01/2020)
- 07/24/2020 [30](#) LETTER by USA as to Shelly Washington, Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated July 24, 2020 re: Adjournment Document filed by USA. (Robles, David) (Entered: 07/24/2020)
- 07/27/2020 [31](#) MEMO ENDORSEMENT as to Shelly Washington, Warren Alexander on [30](#) LETTER by USA as to Shelly Washington, Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated July 24, 2020 re: Adjournment. ENDORSEMENT: Application granted. The 7/27/2020 pretrial conference is adjourned until 9/9/2020 at 11:00 AM. Time is excluded from today through 9/9/2020 in the interests of justice for the reasons provided by counsel. So Ordered. (Status Conference set for 9/9/2020 at 11:00 AM before Judge Lewis A. Kaplan) (Time excluded from 7/24/2020 until 9/9/2020) (Signed by Judge Lewis A. Kaplan on 7/24/2020) (lnl) (Entered: 07/27/2020)
- 08/18/2020 Minute Entry for proceedings held before Judge Lewis A. Kaplan: Telephone Conference as to Shelly Washington, Warren Alexander held on 8/18/2020. Defendant Washington did not participate, but attorney Julia Gatto participated. Defendant Alexander did not participate, but attorney Gilbert Parris participated. AUSA David Robles participated. The next conference on 9/9/2020 at 11:00 AM will be held by video. (Court Reporter Kelly Surina) (Mohan, Andrew) (Entered: 08/18/2020)
- 09/09/2020 [32](#) LETTER by USA as to Shelly Washington, Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated September 9, 2020 re: Scheduling for Curcio Hearing Document filed by USA. (Robles, David) (Entered: 09/09/2020)

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- 09/09/2020 [33](#) MEMO ENDORSEMENT as to Shelly Washington, Warren Alexander re: [32](#) Letter Scheduling for Curcio Hearing...ENDORSEMENT: The Curcio hearing of defendant Warren Alexander is set for Wednesday, 9/30/2020 at 9:00 AM by CourtCall video-conference. Likewise, the Curcio hearing for defendant Shelly Washington is set for 10/2/2020 at 9:00 AM. The exact time and date of the hearings will not be confirmed until the Clerk's Office issues the final calendar for production of detained defendants for the week of 9/28/2020. Time from today through and including 10/2/2020 is excluded from speedy trial calculations in the interests of justice for the reasons given above. So Ordered. (Signed by Judge Lewis A. Kaplan on 9/9/2020)(jbo) (Entered: 09/10/2020)
- 09/10/2020 [34](#) MEMO ENDORSEMENT as to Shelly Washington, Warren Alexander on re: [32](#) Letter Scheduling for Curcio Hearing...ENDORSEMENT: Conference set for 10/5/2020 at 9:30 a.m. Time excluded from today through October 5, 2020. I find that the interests of justice served thereby outweigh the interests of the public and the defendants in a speedy trial for the reasons set forth by the government. (Signed by Judge Lewis A. Kaplan on 9/10/2020) (Curcio Hearing set for 10/5/2020 at 09:30 AM before Judge Lewis A. Kaplan.)(jbo) (Entered: 09/10/2020)
- 10/02/2020 [40](#) TRANSCRIPT of Proceedings as to Shelly Washington, Warren Alexander re: Conference held on 9/28/20 before Magistrate Judge Robert W. Lehrburger. Court Reporter/Transcriber: Andrew Walker, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/23/2020. Redacted Transcript Deadline set for 11/2/2020. Release of Transcript Restriction set for 12/31/2020. (McGuirk, Kelly) (Entered: 10/02/2020)
-
- 10/02/2020 [41](#) NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Shelly Washington, Warren Alexander. Notice is hereby given that an official transcript of a Conference proceeding held on 9/28/20 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 10/02/2020)
- 10/02/2020 Minute Entry for proceedings held before Judge Lewis A. Kaplan:Curcio Hearing as to Warren Alexander held by CourtCall Video Conference on 10/2/2020. Defendant Warren Alexander participated along with attorney Gilbert Parris. AUSA David Robles participated. Court reporter was present. Hearing begun and adjourned until 10/30/2020. Defendant remained detained. (Mohan, Andrew) (Entered: 11/05/2020)
- 10/05/2020 [42](#) ORDER as to Warren Alexander. CJA attorney Marlon G. Kirton is re-appointed as counsel to defendant Warren Alexander to consult with him regarding the Curcio issues addressed during the Curcio hearing begun on October 2, 2020 held by video-conference. The conclusion of the Curcio hearing is scheduled to take place by video-conference on Friday, October 30, 2020 at 9:00am (Curcio Hearing set for 10/30/2020 at 09:00 AM before Judge Lewis A. Kaplan) (Signed by Judge Lewis A. Kaplan on 10/2/2020)(jw) (Entered: 10/05/2020)
- 11/20/2020 Minute Entry for proceedings held before Judge Lewis A. Kaplan: Video- Conference Curcio Hearing as to Warren Alexander held on 11/20/2020. Defendant Warren Alexander present with attorneys Gilbert Parris and Marlon Kirton. AUSA David Robles present. Court reporter Kris Sellin present. The Court made the appropriate CARES Act findings and defendant Warren Alexander waived his right to an in-person hearing. Defendant requested that Marlon Kirton be substituted as defense counsel, which was granted by the Court. The next appearance is scheduled as a CourtCall video conference on Friday,

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12/18/2020 at 9:00 AM. Time from today, through 12/18/2020 is excluded from speedy trial calculations in the interests of justice. Defendant remained detained. (jbo) (Entered: 11/20/2020)

- 11/20/2020 [45](#) ORDER as to Warren Alexander. This Order is entered, pursuant to Federal Rule of Criminal Procedure 5(t), to confirm the government's disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and to summarize the possible consequences of violating those obligations. The government shall disclose to the defense all information "favorable to an accused" that is "material either to guilt or to punishment" and that is known to the Government. Id. at 87. This obligation applies regardless of whether the information would itself constitute admissible evidence. The government shall disclose such information to the defense promptly after its existence becomes known to the government so that the defense may make effective use of it in the preparation of its case. For purposes of this Order, the government includes all current or former federal, state, and local prosecutors, law-enforcement officers, and other officials who have participated in the investigation that led to, or prosecution of, the offense or offenses with which the defendant is charged. The government has an affirmative obligation to seek from such sources all information subject to disclosure under this Order (Signed by Judge Lewis A. Kaplan on 11/19/20)(jw) (Entered: 11/20/2020)
- 12/15/2020 [46](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated December 15, 2020 re: Speedy Trial Act Document filed by USA. (Robles, David) (Entered: 12/15/2020)
- 12/16/2020 [47](#) MEMO ENDORSEMENT as to Warren Alexander on re: [46](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated December 15, 2020 re: Speedy Trial Act. ENDORSEMENT: Time excluded from 12/15/2020 to and including 1/6/2021. The interests of justice served thereby outweigh the interests of the defendant and the public in a speedy trial for the reasons stated above. (Signed by Judge Lewis A. Kaplan on 12/15/2020) (ap) (Entered: 12/16/2020)
- 01/08/2021 [49](#) WAIVER OF RIGHT TO BE PRESENT AT CRIMINAL PROCEEDING as to Warren Alexander. (Signed by Judge Lewis A. Kaplan on 1/8/2021) (ap) (Entered: 01/08/2021)
- 01/22/2021 [52](#) LETTER MOTION addressed to Judge Lewis A. Kaplan from Marlon G. Kirton, Esq. dated January 22, 2021 re: Adjournment . Document filed by Warren Alexander. (Kirton, Marlon) (Entered: 01/22/2021)
- 01/25/2021 [53](#) MEMO ENDORSEMENT as to Warren Alexander (2) on [52](#) LETTER MOTION addressed to Judge Lewis A. Kaplan from Marlon G. Kirton, Esq. dated January 22, 2021 re: Adjournment. ENDORSEMENT: Conference adjourned until 2/25/21 at 11 a.m. Time excluded to and including trial date in the interests of justice since these outweigh the interests of the public in and def. in a speedy trial. (Signed by Judge Lewis A. Kaplan on 1/25/2021) (ap) (Entered: 01/25/2021)
- 02/20/2021 Pretrial teleconference set for 2/22/2021 at 09:00 AM before Judge Lewis A. Kaplan. Public and press may dial-in for audio at 888-363-4749 Access Code: 7664205#. (Mohan, Andrew) (Entered: 02/20/2021)
- 02/23/2021 [54](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated February 23, 2021 re: Curcio Hearing and Speedy Trial Act Exclusion Document filed by USA. (Robles, David) (Entered: 02/23/2021)
- 02/23/2021 [55](#) MEMO ENDORSEMENT as to Warren Alexander on [54](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated February 23, 2021 re: Curcio Hearing and Speedy Trial Act Exclusion. ENDORSEMENT: Granted. Time excluded through 3/12/2021 for the reasons stated. SO ORDERED. (Time excluded

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- from 2/23/2021 until 3/12/2021) (Signed by Judge Lewis A. Kaplan on 2/23/2021) (lnl) (Entered: 02/23/2021)
- 03/10/2021 Set/Reset Hearings as to Warren Alexander: Curcio Hearing set for 3/10/2021 at 11:00 AM by CourtCall video-Conference before Judge Lewis A. Kaplan. The audio dial-in for public access is 855-268-7844, Access Code: 67812309# and Pin Number: 9921299# (Mohan, Andrew) (Entered: 03/10/2021)
- 03/10/2021 [56](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated March 10, 2021 re: Speedy Trial Act Exclusion Document filed by USA. (Robles, David) (Entered: 03/10/2021)
- 03/10/2021 Minute Entry for proceedings held before Judge Lewis A. Kaplan: Curcio Hearing as to Warren Alexander held on 3/10/2021. Video-conference Curcio hearing regarding Warren Alexander concluded before Hon. Lewis A. Kaplan. Defendant Warren Alexander present with attorney Marlon Kirton. AUSA David Robles present. Court reporter present. The Court made the appropriate CARES Act findings and defendant Warren Alexander waived his right to an in-person hearing. Defendant Alexander waived any possible conflict. Counsel informed the court that this case is likely to proceed to trial. The Court will put the case on the on as a back-up on the Jury Department jury trial calendar and again in the Fall calendar. Defendant remained detained. (lnl) (Entered: 03/11/2021)
- 03/29/2021 [57](#) MEMO ENDORSEMENT as to Warren Alexander on re: [56](#) The Government submits this letter to respectfully request, with the consent of defense counsel, that the time between today and a control date of June 30, 2021 be excluded pursuant to the provisions of the Speedy Trial Act, § 3161(h)(7)(A), to permit the defense to continue reviewing discovery, prepare for trial, and for the parties to continue engaging in discussions about a potential pretrial resolution...ENDORSEMENT...Time excluded through 6/30/21 as reasons stated above. The exclusion is in the interest of justice. See Above. Time excluded from 3/29/21 until 6/30/21. (Signed by Judge Lewis A. Kaplan on 3/29/21)(jw) (Entered: 03/29/2021)
- 06/16/2021 [59](#) SEALED DOCUMENT placed in vault. (nmo) (Entered: 06/16/2021)
- 07/21/2021 [60](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated July 21, 2021 re: Speedy Trial Act Exclusion Document filed by USA. (Robles, David) (Entered: 07/21/2021)
- 07/22/2021 [61](#) MEMO ENDORSEMENT as to Warren Alexander on re: [60](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated July 21, 2021 re: Speedy Trial Act Exclusion. ENDORSEMENT: Granted. Time excluded through 8/31/21. The interests of justice served therefore outweigh the interests of the public and the def. in a speedy trial. (Signed by Judge Lewis A. Kaplan on 7/22/2021)(ap) (Entered: 07/22/2021)
- 08/31/2021 [62](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated August 31, 2021 re: Scheduling Conference and Exclusion of Time Document filed by USA. (Robles, David) (Entered: 08/31/2021)
- 09/01/2021 [63](#) MEMO ENDORSEMENT as to Warren Alexander on re: [62](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated August 31, 2021 re: Scheduling Conference and Exclusion of Time. ENDORSEMENT: Conference set for 9/28/21 at 3:15 pm. Time excluded through 9/28/21. the interests of justice served those outweigh interests in speedy trial for reasons stated above. (Status Conference set for 9/28/2021 at 03:15 PM before Judge Lewis A. Kaplan) (Signed by Judge Lewis A. Kaplan on 9/1/2021) (ap) (Entered: 09/01/2021)
- 09/24/2021 [64](#) LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated September 24, 2021 re: Adjournment of September 28, 2021 Conference

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		Document filed by USA. (Robles, David) (Entered: 09/24/2021)
09/24/2021	65	TRANSCRIPT of Proceedings as to Shelly Washington, Warren Alexander re: Conference held on 6/24/20 before Judge Lewis A. Kaplan. Court Reporter/Transcriber: Sonya Ketter Moore, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/15/2021. Redacted Transcript Deadline set for 10/25/2021. Release of Transcript Restriction set for 12/23/2021. (Moya, Goretti) (Entered: 09/24/2021)
09/24/2021	66	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Shelly Washington, Warren Alexander. Notice is hereby given that an official transcript of a Conference proceeding held on 6/24/20 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 09/24/2021)
09/28/2021	67	MEMO ENDORSEMENT as to Warren Alexander on 64 LETTER by USA as to Warren Alexander addressed to Judge Lewis A. Kaplan from David J. Robles dated September 24, 2021 re: Adjournment of September 28, 2021. ENDORSEMENT: Application granted. The 9/28/2021 conference is adjourned to a phone conference on 10/14/2021 at 12:00 PM, which will be canceled if the defendant pleads guilty before Mag. Judge Parker on 10/4/2021. Time from today, through and including, 10/4/2021 is excluded from speedy trial calculations in the interests of justice for the reasons provided by counsel. (Status Conference set for 10/14/2021 at 12:00 PM before Judge Lewis A. Kaplan) (Signed by Judge Lewis A. Kaplan on 9/28/2021) (lnl) (Entered: 09/28/2021)
10/04/2021		Minute Entry for proceedings held before Magistrate Judge Katharine H. Parker: Change of Plea Hearing as to Warren Alexander held on 10/4/2021. Defendant appeared courtroom 5A with Attorney Marlon Kirton. A.U.S.A. David Robles present for the Government. Defendant pled guilty to Count Five of the Superseding Indictment. Judge Parker recommends that Judge Kaplan accept the guilty plea. Defendant continued detained. Court reporter present: Carol Ganley. PSI Ordered. Transcript Ordered. Control Date: 12/20/2021. (jbo) (Entered: 10/04/2021)
10/04/2021		Minute Entry for proceedings held before Magistrate Judge Katharine H. Parker: Plea entered by Warren Alexander (2) Guilty as to Count 5. (jbo) (Entered: 10/04/2021)
10/04/2021		Change of Not Guilty Plea to Guilty Plea as to Warren Alexander (2) Count 5. (jbo) (Entered: 10/04/2021)
10/04/2021		Order of Referral to Probation for Presentence Investigation and Report as to Warren Alexander. (Signed by Magistrate Judge Katharine H. Parker on 10/4/21)(jbo) (Entered: 10/04/2021)
10/04/2021	68	CONSENT TO PROCEED BEFORE US MAGISTRATE JUDGE ON A FELONY PLEA ALLOCUTION by Warren Alexander. (jw) (Entered: 10/08/2021)
10/29/2021	69	ORDER as to Warren Alexander. It is HEREBY ORDERED that the defendant's guilty plea is accepted (Signed by Judge Lewis A. Kaplan on 10/29/21)(jw) (Entered: 10/29/2021)
11/04/2021	70	TRANSCRIPT of Proceedings as to Warren Alexander re: Conference held on 10/4/21 before Magistrate Judge Katharine H. Parker. Court Reporter/Transcriber: Carol Ganley, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due

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11/26/2021. Redacted Transcript Deadline set for 12/6/2021. Release of Transcript Restriction set for 2/2/2022. (Moya, Goretti) (Entered: 11/04/2021)

11/04/2021 [71](#) NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Warren Alexander. Notice is hereby given that an official transcript of a Conference proceeding held on 10/4/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/04/2021)

12/07/2021 [72](#) LETTER MOTION addressed to Judge Lewis A. Kaplan from Marlon G. Kirton, Esq. dated December 7, 2021 re: Adjournment . Document filed by Warren Alexander. (Kirton, Marlon) (Entered: 12/07/2021)

12/08/2021 [73](#) MEMO ENDORSEMENT [72](#) LETTER MOTION addressed to Judge Lewis A. Kaplan from Marlon G. Kirton, Esq. dated December 7, 2021 re: Adjournment...ENDORSEMENT...Adjourned until 1/5/2022 at 10:00am. (Signed by Judge Lewis A. Kaplan on 12/8/21) (jw) (Entered: 12/08/2021)

12/08/2021 Set/Reset Deadlines/Hearings as to Warren Alexander: Sentencing set for 1/5/2022 at 10:00 AM before Judge Lewis A. Kaplan (jw) (Entered: 12/08/2021)

02/05/2022 [75](#) SENTENCING SUBMISSION by USA as to Warren Alexander. (Robles, David) (Entered: 02/05/2022)

02/08/2022 [76](#) SENTENCING SUBMISSION by Warren Alexander. (Attachments: # [1](#) Exhibit Family Letters)(Kirton, Marlon) (Entered: 02/08/2022)

02/08/2022 Set/Reset Deadlines/Hearings as to Warren Alexander: Sentencing rescheduled from 2/8/2022 to 3/15/2022 at 02:00 PM in Courtroom 21B, 500 Pearl Street, New York, NY 10007 before Judge Lewis A. Kaplan.. (Mohan, Andrew) (Entered: 02/08/2022)

03/15/2022 [77](#) SENTENCING SUBMISSION by Warren Alexander. (Attachments: # [1](#) Exhibit Employer Letter)(Kirton, Marlon) (Entered: 03/15/2022)

03/15/2022 Minute Entry for proceedings held before Judge Lewis A. Kaplan: Sentencing held on 3/15/2022 for Warren Alexander (2) Count 5. Defendant Warren Alexander present with attorney Marlon Kirton. AUSA Tom Burnett present. Court reporter Andrew Walker present. Defendant sentenced to 100 months incarceration to be followed by a 3 year term of supervised release, and the defendant shall pay the \$100 special assessment immediately. The Court recommends to the BOP that the defendant be designated to a facility as close to the New York metropolitan area as possible and he participate in any appropriate drug treatment programs available. The term of supervised release shall be subject to the mandatory, standard and following special conditions: 1) You must provide the probation officer with access to any requested financial information. 2) you must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule. 3) You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner. It is recommended that you be supervised by the district of residence. The

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defendant will pay restitution in the amount of \$4,428.11. The restitution shall be payable in monthly installments commencing on the 1st day of the second month following the month in which he is released from the term of imprisonment imposed. Each monthly payment shall be equal to 10% of his gross income for the preceding month. (jbo) (Entered: 03/16/2022)

03/15/2022 DISMISSAL OF COUNTS on Government Motion as to Warren Alexander (2) Count 1,2,3,4. (bw) (Entered: 03/16/2022)

03/16/2022 78 ORDER OF RESTITUTION as to (S1 20-Cr-37) Warren Alexander. Upon the application of the United States of America, by its attorney, Damian Williams, United States Attorney for the Southern District of New York, David J. Robles, Assistant United States Attorney, of counsel; the presentence report; the Defendant's conviction on Count Five of the above Indictment; and all other proceedings in this case, it is hereby ORDERED that: 1. Amount of Restitution. WARREN ALEXANDER, the Defendant, shall pay restitution in the total amount of \$4,428.11 to the Victim of the offense charged in Count Five of the Indictment. The names, addresses, and specific amounts owed to each victim are set forth in the Schedule of Victims attached hereto. Upon advice of a change of address, the Clerk of the Court is authorized to send payments to the new address without further order of this Court. 2. Sealing. Consistent with 18 U.S.C. §§3771(a)(8) & 3664(d)(4) and Federal Rule of Criminal Procedure 49.1, to protect the privacy interests of victims, the Schedule of Victims attached hereto shall be filed under seal, except that copies may be retained and used or disclosed by the Government, the Clerk's Office, and the Probation Department, as need be to effect and enforce this Order, without further order of this Court. (Signed by Judge Lewis A. Kaplan on 3/16/2022)(bw) (Entered: 03/16/2022)

03/16/2022 79 JUDGMENT In A Criminal Case. Date of Imposition of Judgment: 3/15/2022. Defendant Warren Alexander (2) pleaded guilty to Count(s) 5. Count(s) All Open are dismissed on the motion of the United States. IMPRISONMENT: 100 Months. - The court makes the following recommendations to the Bureau of Prisons: That consistent with the policies of the BOP, the defendant be designated to a facility as close to the New York metropolitan area as possible, and if appropriate drug treatment is available the defendant should be considered for participation. - The defendant is remanded to the custody of the United States Marshal. SUPERVISED RELEASE: 3 Years subject to the mandatory, standard, and following special conditions: You must provide the probation officer with access to any requested financial information. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule. You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner. It is recommended that you be supervised by the district of residence. Standard Conditions of Supervision (See page 4 of Judgment). ASSESSMENT: \$100.00, due immediately. RESTITUTION: \$4,428.11. Special instructions regarding the payment of criminal monetary penalties: The restitution shall be payable in monthly installments commencing on the 1st day of the second month following the month in which you are released from the term of imprisonment imposed hereby. Each monthly payment shall be equal to 10% of your gross income for the preceding month. Joint and Several (See page 6 of Judgment). (Signed by Judge Lewis A. Kaplan on 3/16/2022)(bw) (Entered: 03/16/2022)

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12/27/22, 10:11 AM

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03/17/2022	80	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/17/2022)
03/25/2022	82	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/25/2022)
03/30/2022	83	NOTICE OF APPEAL by Warren Alexander from 79 Judgment. (tp) (Entered: 03/31/2022)
03/30/2022		Appeal Remark as to Warren Alexander re: 83 Notice of Appeal - Final Judgment. \$505.00 Appeal Fee Waived. Attorney CJA. (tp) (Entered: 03/31/2022)
03/31/2022		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Warren Alexander to US Court of Appeals re: 83 Notice of Appeal - Final Judgment. (tp) (Entered: 03/31/2022)
03/31/2022		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Warren Alexander re: 83 Notice of Appeal - Final Judgment were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/31/2022)
04/07/2022	84	TRANSCRIPT of Proceedings as to Warren Alexander re: Conference held on 3/15/22 before Judge Lewis A. Kaplan. Court Reporter/Transcriber: Andrew Walker, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/28/2022. Redacted Transcript Deadline set for 5/9/2022. Release of Transcript Restriction set for 7/6/2022. (Moya, Goretti) (Entered: 04/07/2022)
04/07/2022	85	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Warren Alexander. Notice is hereby given that an official transcript of a Conference proceeding held on 3/15/22 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 04/07/2022)

PACER Service Center			
Transaction Receipt			
12/27/2022 10:10:47			
PACER Login:	cpnycpa16	Client Code:	
Description:	Docket Report	Search Criteria:	1:20-cr-00037-LAK
Billable Pages:	11	Cost:	1.10



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

June 28, 2021

BY ELECTRONIC MAIL

Marlon Kirton, Esq.
The Kirton Law Firm
175 Fulton Avenue, Suite 305
Hempstead, NY 11550

Re: *United States v. Warren Alexander*, S1 20 Cr. 37 (LAK)

Dear Mr. Kirton:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Warren Alexander ("the defendant") to Count Five of the above-referenced Superseding Indictment. Count Five charges the defendant with being a felon in possession of ammunition on or about November 25, 2019, in violation of Title 18, United States Code, Section 922(g)(1). Count Five carries a maximum term of imprisonment of ten years; a maximum term of supervised release of three years; a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for being a felon in possession of ammunition on or about November 25, 2019 in the Bronx, New York, as charged in Count Five of the Superseding Indictment, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

It is further understood that the defendant shall make restitution in an amount to be specified by the Court in accordance with Title 18, United States Code, Sections 3663, 3663A, and 3664. This amount shall be paid according to a plan established by the Court.

2020.11.02

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The Guidelines provisions in effect as of November 1, 2018, apply in this case.
2. The offense level for Count Five is calculated as follows:
 - a. The Guideline applicable to Count Five is U.S.S.G. § 2K2.1. Pursuant to U.S.S.G. 2K2.1(c)(1)(A), because the defendant used the ammunition charged in Count Five in connection with the commission of another offense – here, the armed carjacking of the Victim on or about November 26, 2019 – the Guidelines applicable to robbery shall apply.
 - b. Pursuant to U.S.S.G. § 2B3.1(a), the base offense level is 20.
 - c. Pursuant to U.S.S.G. § 2B3.1(b)(2)(C), a five-level enhancement applies because a firearm was brandished.
 - d. Pursuant to U.S.S.G. § 2B3.1(b)(5), a two-level enhancement applies because the offense involved carjacking.
 - e. Accordingly, the offense level for Count Five is 27.
3. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 24.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has eleven criminal history points, calculated as follows:

1. On or about June 3, 2019, the defendant was convicted in Queens County Criminal Court of Criminal Possession of a Controlled Substance in the Seventh Degree, in violation of New York Penal Law Section 220.03, a misdemeanor, for which he

was sentenced to a conditional discharge. Pursuant to U.S.S.G. § 4A1.1(c), this sentence results in one criminal history point.

2. On or about July 17, 2019, the defendant was convicted in Queens County Supreme Court of Criminal Possession of a Controlled Substance in the Third Degree, in violation of New York Penal Law Section 220.16(01), a Class B felony. The defendant has not yet been sentenced for this conviction. Pursuant to U.S.S.G. § 4A1.2(a)(4), this conviction results in one criminal history point.
3. On or about June 3, 2019, the defendant was convicted in Queens County Criminal Court of Disorderly Conduct, in violation of New York Penal Law Section 240.20, a violation, for which he was sentenced to a conditional discharge and an order of protection. Pursuant to U.S.S.G. § 4A1.2(c)(1), this conviction results in zero criminal history points.
4. On or about March 16, 2017, the defendant was convicted in Queens County Criminal Court of Criminal Possession of a Controlled Substance in the Seventh Degree, in violation of New York Penal Law Section 220.03, a misdemeanor, for which he was sentenced to a conditional discharge. Pursuant to U.S.S.G. § 4A1.1(c), this sentence results in one criminal history point.
5. On or about April 20, 2016, the defendant was convicted in Queens County Criminal Court of Reckless Endangerment in the Second Degree, in violation of New York Penal Law Section 120.20, a misdemeanor, for which he was sentenced to a conditional discharge. Pursuant to U.S.S.G. § 4A1.1(c), this conviction results in one criminal history point.
6. On or about May 29, 2014, the defendant was convicted in Queens County Criminal Court of Criminal Possession of a Controlled Substance in the Seventh Degree, in violation of New York Penal Law Section 220.03, a misdemeanor, for which he was sentenced to a conditional discharge. Pursuant to U.S.S.G. § 4A1.1(c), this sentence results in one criminal history point.
7. On or about December 19, 2013, the defendant was convicted in Queens County Criminal Court of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree, a misdemeanor, for which he was sentenced to 15 days' imprisonment. Pursuant to U.S.S.G. § 4A1.2(c)(1), this conviction results in zero criminal history points.
8. On or about June 25, 2009, the defendant was convicted in Nassau County Court of Attempted Criminal Possession of a Controlled Substance in the Fifth Degree, a Class E felony, for which he was sentenced to 18 months' imprisonment. Pursuant to U.S.S.G. § 4A1.1(a), this sentence results in three criminal history points.
9. On or about June 17, 2002, the defendant was convicted in Queens County Supreme Court of Attempted Criminal Possession of a Weapon in the Third Degree, a Class

D felony. On August 11, 2003, the defendant was sentenced to a term of imprisonment of two to four years, and was released from custody on February 24, 2006. Pursuant to U.S.S.G. § 4A1.1(a), this sentence results in three criminal history points.

In accordance with the above, the defendant is in Criminal History Category V.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Guidelines range for Count One is 92 to 115 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 24, the applicable fine range is \$20,000 to \$200,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the

determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241, of any sentence within or below the Stipulated Guidelines Range of 92 to 115 months' imprisonment, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal or bring a collateral challenge of any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal or bring a collateral challenge of any fine that is less than or equal to \$200,000, and the Government agrees not to appeal or bring a collateral challenge of any fine that is greater than or equal to \$20,000. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, or impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his removal from the United States is presumptively mandatory

and that, at a minimum, he is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, he recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. Under federal law, an individual may be subject to denaturalization and removal if his naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that he has discussed the possible immigration consequences (including removal or denaturalization) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including his attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from his guilty plea and conviction.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

[REMAINDER INTENTIONALLY LEFT BLANK]

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

AUDREY STRAUSS
United States Attorney

By:

David Robles
Jacob Warren
Assistant United States Attorneys
(212) 637-2550 / 2264

APPROVED:

Maurene Comey
Chief, Violent and Organized Crimes Unit

AGREED AND CONSENTED TO:

Warren Alexander

DATE

APPROVED:

Marlon Kirton, Esq.
Attorney for Warren Alexander

DATE

La4WaleP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 37 (LAK) (KHP)

5 WARREN ALEXANDER,
6 a/k/a "Seven,"

Defendant.

Plea

-----x

8 New York, N.Y.
9 October 4, 2021
10 10:00 a.m.

11 Before:

12 HON. KATHARINE H. PARKER,

13 U.S. Magistrate Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
Southern District of New York

17 BY: DAVID J. ROBLES
Assistant United States Attorney

18 MARLON G. KIRTON

19 Attorney for Defendant
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21
22
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1 (Case called; appearances noted)

2 THE COURT: Good morning.

3 Good morning, Mr. Alexander.

4 THE DEFENDANT: Good morning, your Honor.

5 THE COURT: I'm Judge Parker.

6 We're here for a plea allocution in this matter, U.S.

7 v. Alexander.

8 I have before me a five-count superseding indictment
9 containing various charges against you. I understand you wish
10 to plead guilty to Count Five, which charges you with being a
11 felon in possession of ammunition in or about November 25,
12 2019, in violation of Title 18 of the United States Code,
13 Section 922(g)(1).

14 Mr. Alexander, have you seen a copy of the superseding
15 indictment?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And have you discussed it with your
18 counsel?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Does the defendant wish to waive a public
21 reading of the indictment?

22 MR. KIRTON: Yes, your Honor.

23 THE COURT: I also have before me a document that's
24 entitled consent to proceed before a United States magistrate
25 judge on a felony plea allocution, and it appears to bear your

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1 signature from today. What this form says is that you know you
2 have the right to have your plea taken by a United States
3 district judge but that you are agreeing to have your plea
4 taken by myself, a U.S. magistrate judge, and I have the
5 authority to take your plea, with your consent, and you're
6 still entitled to all of the same rights and protections as if
7 you were before the United States district judge.

8 Before you signed this form, Mr. Alexander, did your
9 lawyer explain it to you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And did you sign it voluntarily?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. Do you still wish to proceed
14 today before me?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Your consent is accepted.

17 Before we get started, I'm going to ask my deputy to
18 place you under oath, Mr. Alexander.

19 THE DEPUTY CLERK: Mr. Alexander, please stand and
20 raise your right hand.

21 (Defendant sworn)

22 THE DEPUTY CLERK: Could you please state your name
23 for the Court.

24 THE DEFENDANT: Warren Alexander.

25 THE DEPUTY CLERK: Thank you. You can be seated.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

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1 THE COURT: Mr. Alexander, you've now been placed
2 under oath, and this means that any statement that you make
3 here today may be used against you by the government in a
4 prosecution for perjury or for making false statements.

5 Do you understand?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: I'd like to explain a little bit more
8 about the proceeding today. I'm going to ask you various
9 questions. Some are personal in nature and others are about
10 the crime to which you wish to plead guilty. I'm also going to
11 review various rights that you have and are giving up by
12 pleading guilty. The purpose of these questions is to make
13 sure that you understand your rights and to make sure that you
14 are voluntarily pleading guilty, of your own free will, and
15 because you are, in fact, guilty of the crime to which you're
16 pleading guilty.

17 Do you understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If at any time you don't understand one of
20 my questions or you want to speak with your lawyer, just say so
21 and I'll give you time to talk with your lawyer to further
22 clarify. OK?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Alexander, how old are you?

25 THE DEFENDANT: 42 years old.

La4WaleP

1 THE COURT: Are you a U.S. citizen?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And I ask that question because pleading
4 guilty can have serious immigration consequences to
5 noncitizens.

6 How far did you go in school?

7 THE DEFENDANT: Some college.

8 THE COURT: Are you currently or have you recently
9 been under the care of a doctor or mental health professional?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Do you have any condition that affects
12 your ability to see or to hear?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Do you have any condition that affects
15 your ability to make judgments or decisions for yourself?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Have you ever been treated or hospitalized
18 for mental illness?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you ever been treated or hospitalized
21 for drug addiction or alcoholism?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: And as you sit here today, are you under
24 the influence of any mind-altering drug or alcohol?

25 THE DEFENDANT: No, your Honor.

La4WaleP

1 THE COURT: How are you feeling physically today?

2 THE DEFENDANT: Healthy.

3 THE COURT: Good.

4 Is your mind clear today?

5 THE DEFENDANT: Yes.

6 THE COURT: And you understand what's happening in
7 this proceeding.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Does either counsel have any objection to
10 Mr. Alexander's competence to plead at this time?

11 MR. ROBLES: No, your Honor.

12 MR. KIRTON: No, your Honor.

13 THE COURT: Mr. Alexander, I'm now going to explain
14 certain constitutional rights that you have. These are rights
15 that you'll be giving up if you enter a guilty plea, so please
16 listen carefully to what I'm about to say. And again, if you
17 don't understand something, stop me and I'll explain it
18 further.

19 Under the Constitution and laws of the United States,
20 you have a right to plead not guilty to the charges contained
21 in the indictment.

22 Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And if you plead not guilty, you'd be
25 entitled, under the Constitution, to a speedy and public trial

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1 by a jury of the charges against you. At the trial, you would
2 be presumed innocent, and the government would be required to
3 prove you guilty beyond a reasonable doubt before you could be
4 found guilty. You could not be convicted unless a jury of 12
5 people agreed unanimously that you are guilty beyond a
6 reasonable doubt.

7 Do you understand all of this?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: If you decided to go to trial, at that
10 trial and at every stage of your case, you would have the right
11 to be represented by a lawyer. If you could not afford one, a
12 lawyer would be appointed to represent you at the government's
13 expense. Even if you retained your own private defense
14 counsel, if you ran out of money, a lawyer would be appointed
15 to continue to represent you. You're entitled to an attorney
16 all the way through trial and not just for a guilty plea, so
17 your decision to plead guilty should not depend on whether you
18 can afford to hire a lawyer.

19 Do you understand?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: During a trial, the witnesses for the
22 prosecution would have to come to court and testify in your
23 presence, where you could see and hear them and your lawyer
24 could cross-examine them. If you wanted, your lawyer could
25 offer evidence on your behalf. You would be able to use the

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1 Court's power to compel witnesses to come to court to testify
2 in your defense even if they didn't want to come.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: At a trial, you would have the right to
6 testify in your own defense if you wanted to, but you would
7 also have the right not to testify. And if you chose not to
8 testify, that could not be used against you in any way. No
9 inference or suggestion of guilt could be permitted from the
10 fact that you chose not to testify.

11 Do you understand?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: If you were convicted at trial, you would
14 have the right to appeal that verdict to a higher court.

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And as I said before, you have the right
18 to plead not guilty, so even right now, even as you sit here
19 today for the purposes of entering a guilty plea, you have the
20 right to change your mind, persist in the not guilty plea, and
21 go to trial. But if you do plead guilty and your plea is
22 accepted, you will give up your right to a jury trial and all
23 the other rights that go with it that I just described.

24 Do you understand all this?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Finally, if you do plead guilty, you're
2 also giving up your right not to incriminate yourself, and I'm
3 going to ask you questions about what you did in order to
4 satisfy myself that you are actually guilty. By pleading
5 guilty, you'll be admitting to your factual as well as your
6 legal guilt.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I'm now going to review the charge against
10 you in Count Five of the superseding indictment and the
11 consequences of pleading guilty to it.

12 Count Five charges you with being a felon in
13 possession of ammunition in or about November 25, 2019, in the
14 Southern District of New York, in violation of Title 18 of the
15 United States Code, Section 922(g)(1). I'm going to ask the
16 government to state the elements of this crime. The elements
17 are things that the government has to prove beyond a reasonable
18 doubt at trial in order for you to be convicted.

19 Go ahead, Mr. Robles.

20 MR. ROBLES: Thank you, your Honor.

21 In order to prove the defendant guilty of Count Five,
22 which is 18 U.S.C. Section 922(g)(1), the government would need
23 to prove the following elements beyond a reasonable doubt:

24 First, that the defendant knowingly possessed
25 ammunition, as charged;

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1 Second, at the time the defendant possessed the
2 ammunition, he had been previously convicted of a crime
3 punishable by a term of imprisonment exceeding one year;

4 Third, that the defendant knew he had previously been
5 convicted of a crime punishable by more than one year in
6 prison; and

7 Fourth, that the possession of the ammunition was in
8 or affecting interstate commerce.

9 The government would also have to prove venue by a
10 preponderance of the evidence.

11 THE COURT: Thank you.

12 Mr. Alexander, do you understand what the government's
13 just said?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: I'm now going to tell you the maximum
16 possible penalty for this crime. The maximum means the most
17 that could possibly be imposed. It does not mean that is what
18 you necessarily would receive, but by pleading guilty, you're
19 exposing yourself to the possibility of receiving any
20 combination of punishments up to the maximum that I'm about to
21 describe.

22 The maximum term of imprisonment for this crime is ten
23 years. This crime also carries a maximum term of supervised
24 release of three years.

25 Supervised release means that after your release from

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1 prison, you may be subject to supervision by the probation
2 department. If you're placed on supervised release and then
3 violate a condition of that release, the district judge can
4 revoke your supervised release and return you to prison without
5 giving you credit for time previously served on postrelease
6 supervision.

7 In addition to these restrictions on your liberty, the
8 maximum possible punishment for this crime includes a maximum
9 fine of \$250,000, twice the gross monetary gain derived from
10 the offense or twice the gross monetary loss to persons other
11 than you, whichever is greatest.

12 A court may also order restitution to the victims of
13 the crime in an amount determined by and pursuant to a schedule
14 set by the court, and the court is required to impose a
15 mandatory special assessment, or fine, of \$100. As I said
16 earlier, pleading guilty can have serious consequences to
17 noncitizens. Although you told me you're not a citizen -- you
18 are a citizen of the United States, I have to tell you, by law,
19 that by pleading guilty, noncitizens may be removed from the
20 U.S. and denied admission to the U.S. or citizenship in the
21 future.

22 Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: A guilty plea also may result in the loss
25 of certain valuable civil rights to the extent you have them

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1 today or could obtain them in the future. These might include
2 the right to vote, the right to hold public office, the right
3 to serve on a jury, and the right to possess any kind of
4 firearm.

5 Do you understand this?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. Alexander, do you understand the
8 charges against you and the consequences of pleading guilty?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand if you enter a guilty
11 plea you would not be able to withdraw the plea, and the only
12 remaining step will be sentencing?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you understand even if you are
15 surprised or disappointed by your sentence, you'll still be
16 bound by the guilty plea?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Have you had enough time to talk with your
19 lawyer about the charges against you and how you wish to plead?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you had enough time to talk with him
22 about the consequences of pleading guilty, including any
23 immigration consequences?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Are you satisfied with your lawyer's

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1 representation of you?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: I have before me a written plea agreement
4 between you and the government. It bears your signature from
5 today.

6 Did you, in fact, sign this agreement?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And Mr. Alexander, did you read the
9 agreement before you signed it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you have a chance to discuss it with
12 your lawyer before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And did your lawyer explain to you all of
15 its terms and conditions?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand its terms and
18 conditions?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Apart from what's contained in this plea
21 agreement, have any promises been made to you in order to get
22 you to plead guilty?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Has anyone threatened you or tried to
25 coerce you into pleading guilty?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: In the plea agreement, the government
3 indicates that a computation of your sentence under a part of
4 our law called the sentencing guidelines would result in a
5 guidelines range of 92 to 115 months in prison.

6 In the plea agreement, you and the government also
7 agree that the correct computation of a fine range in your case
8 is from \$20,000 to \$200,000.

9 Under the plea agreement, neither you nor the
10 government are allowed to argue to the sentencing judge for a
11 computation of ranges that differ from the ones in the
12 agreement. It also provides that neither you nor the
13 government will seek or suggest any upward or downward
14 departure from the stipulated ranges except that you may seek a
15 sentence outside of the agreed-upon guideline range based upon
16 factors to be considered in another part of our law, Title 18
17 of the United States Code Section 3553(a).

18 Mr. Alexander, do you understand that under the plea
19 agreement, the government's reserved the right to seek an
20 adjusted guidelines range if it learns new information about
21 your criminal history or if you fail to clearly demonstrate
22 acceptance of responsibility or if it's determined that you've
23 engaged in conduct currently unknown to the government that
24 constitutes an obstruction of justice or if you commit another
25 crime after signing the agreement?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: I also want to make sure that you
3 understand that the court is not bound by the recommendations
4 and calculations in the plea agreement. Judge Kaplan, who is
5 the sentencing judge, is free to do -- and in fact, he's
6 obliged to do -- his own calculation of the sentencing range in
7 your case, which may result in a different sentencing range
8 than the one set forth in the plea agreement.

9 Do you understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Judge Kaplan has the discretion to give
12 you a prison sentence below or above the range set forth in the
13 plea agreement or that he independently calculates as the
14 appropriate range anywhere up to the maximum sentence I told
15 you about earlier.

16 Do you understand what I've explained?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: In determining the appropriate sentence,
19 the district judge will make an independent determination, as I
20 said, of the appropriate sentencing guidelines range and will
21 also consider a presentence report prepared by the probation
22 department in advance of your sentencing. You and your lawyer
23 will have an opportunity to review that report and challenge
24 any facts in it before your sentencing. Ultimately, the
25 sentencing judge will determine your sentence based on all of

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1 the factors I've explained, and that sentence may be more
2 severe than you expect, but you will not be able to withdraw
3 your guilty plea at that point.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Now, under the plea agreement, you're
7 agreeing not to challenge your conviction, on appeal or
8 otherwise, on the ground that the government failed to produce
9 certain information that might have been helpful to you at
10 trial.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And under the plea agreement, so long as
14 Judge Kaplan sentences you to a prison term of no more than 115
15 months and a fine of no more than 200,000, you're giving up
16 your right to challenge that sentence, whether by direct
17 appeal, through a writ of habeas corpus, or otherwise.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you also understand you're giving up
21 your right to challenge any term of supervised release imposed
22 by the Court up to the maximum I told you about earlier?

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: I'm also obliged to tell you that if you

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1 are not a U.S. citizen, if you plead guilty, you would have no
2 right to withdraw your plea by virtue of any adverse
3 immigration consequences, and under the plea agreement, you
4 agree not to challenge your conviction or any sentence based on
5 adverse immigration consequences.

6 Before I go on, let me ask counsel if there's any
7 other provision of the plea agreement that you'd like me to go
8 over with Mr. Alexander.

9 MR. ROBLES: No, your Honor. Thank you.

10 THE COURT: Mr. Kirton.

11 MR. KIRTON: No, your Honor.

12 THE COURT: Mr. Alexander, aside from what's written
13 in the plea agreement, have any promises been made to you
14 concerning the actual sentence you will receive to influence
15 you to plead guilty?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: And now that you've been advised of the
18 charges against you and the possible penalties you face and the
19 rights you're giving up, Mr. Alexander, do you still wish to
20 plead guilty to Count Five of the superseding indictment?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Is your plea voluntary and made of your
23 own free will?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And with respect to Count Five, how do you

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1 plead; guilty or not guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE COURT: Are you pleading guilty because you
4 committed the offense to which you are pleading guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Tell me in your own words what you did
7 that makes you guilty of this offense.

8 THE DEFENDANT: I illegally possessed ammunition on
9 November 25, 2019. I knew at the time that I was a felon, a
10 cub convicted felon in possession of ammunition in Bronx, New
11 York. I knew what I was doing was wrong at the time.

12 THE COURT: Counsel, do you believe that there is a
13 sufficient factual predicate for a guilty plea?

14 MR. KIRTON: Yes, your Honor.

15 THE COURT: Does the government also agree?

16 MR. KIRTON: I do, your Honor, although I do want to
17 just for clarity of the record, ask the Court to inquire that
18 the defendant knew he had previously been in prison for more
19 than one year. And then I'll proffer for the Court that the
20 ammunition was in and affecting commerce.

21 THE COURT: All right.

22 Mr. Alexander, did you know that you had previously
23 been in prison for more than a year?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And let me ask your counsel, sir, do you

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1 know of any defense that would prevail at trial or other reason
2 why your client should not be permitted to plead guilty to this
3 offense?

4 MR. KIRTON: No, your Honor, and no, your Honor.

5 THE COURT: All right. Thank you.

6 Are there any additional questions that you'd like me
7 to ask your client?

8 MR. KIRTON: No, your Honor.

9 THE COURT: All right.

10 Mr. Alexander, is there anything about this proceeding
11 or what I said that you don't understand.

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Based on your responses to my questions
14 and my assessment of your demeanor during this proceeding, I
15 find that you are competent to enter a guilty plea and I'm
16 satisfied that you understand your rights, including your right
17 to go to trial, and you're aware of the consequences of your
18 plea, including the sentence that may be imposed, and that
19 you're voluntarily pleading guilty and that you've admitted
20 that you are guilty as charged in Count Five of the superseding
21 indictment. So for these reasons, I'll recommend that Judge
22 Kaplan accept your plea.

23 I'm going to ask, Mr. Robles, that you order a copy of
24 the transcript and submit it to Judge Kaplan.

25 Has Judge Kaplan set a sentencing date?

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1 MR. ROBLES: He has not, your Honor. We have a
2 conference, I believe, tentatively scheduled for October 14,
3 but the government will confer with chambers to get that date
4 set as a sentencing.

5 THE COURT: OK. What I'm going to do is to set a
6 control date of January 10.

7 MR. KIRTON: Your Honor, is that a Monday?

8 THE COURT: Hold on.

9 THE DEPUTY CLERK: Yes.

10 THE COURT: Yes?

11 MR. KIRTON: Is it possible to set a date the week
12 before that? I have a trial starting on January the 10th.

13 THE COURT: Absolutely. I can set it in December if
14 you'd like.

15 MR. KIRTON: That's fine. December's fine.

16 THE COURT: How about December 20 for a control date.

17 MR. KIRTON: That's fine.

18 THE COURT: OK. December 20. And again, Judge Kaplan
19 may alter the date, depending on his schedule.

20 All right. Mr. Robles, can you deliver the case
21 summary to probation for purposes of their preparation of a
22 presentence report?

23 MR. KIRTON: Yes, your Honor.

24 THE COURT: All right.

25 Mr. Kirton, I assume you'll be able to meet with your

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1 client and probation in prompt order.

2 MR. KIRTON: That's correct.

3 THE COURT: Great. Thank you.

4 Is there anything further from the government in this
5 matter?

6 MR. ROBLES: No, your Honor. Thank you.

7 THE COURT: Anything further, counsel?

8 MR. KIRTON: No, your Honor. Thank you, Judge.

9 THE COURT: All right. Thank you. We're adjourned.

10 (Adjourned)

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M3FKALES

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

20 CR 37 (LAK)

5 WARREN ALEXANDER,

6 Defendant.

7 -----x

New York, N.Y.
March 15, 2022
2:05 p.m.

9 Before:

10 HON. LEWIS A. KAPLAN,

11 District Judge

12 APPEARANCES

13
14 DAMIAN WILLIAMS
15 United States Attorney for the
16 Southern District of New York
THOMAS SOMERSET BURNETT
Assistant United States Attorney

17 MARLON GEOFFREY KIRTON
18 Attorney for Defendant
19
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21
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25

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1 (Case called)

2 MR. BURNETT: This is Tom Burnett, for the government.

3 MR. KIRTON: Good afternoon. Marlon Kirton, for
4 Mr. Alexander.

5 THE COURT: Mr. Kirton, how are you?

6 MR. KIRTON: Fine, Judge.

7 THE COURT: Mr. Kirton, have you and your client had
8 the presentence report for the necessary period?

9 MR. KIRTON: Yes, your Honor, we have.

10 THE COURT: Mr. Alexander, have you read the
11 presentence report yourself?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. Thank you.

14 The presentence report will be sealed and available to
15 counsel in the event of an appeal.

16 Are there any unresolved objections to the presentence
17 report?

18 MR. BURNETT: None from the government, your Honor.

19 MR. KIRTON: Your Honor, just some minor
20 nonsubstantive objections, your Honor.

21 THE COURT: Okay.

22 MR. KIRTON: Page 14, paragraph number 63 references a
23 person named Annette. She's 37 years old.

24 THE COURT: Tell me the paragraph again, please?

25 MR. KIRTON: Paragraph number 63 on page 14.

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1 THE COURT: And you say she's what age?

2 MR. KIRTON: Thirty-seven years old.

3 THE COURT: Okay.

4 MR. KIRTON: On page 14, same page, paragraph 62
5 references a Christina as being 38, and she's 41.

6 The same paragraph references a Christopher as 25.
7 He's 26.

8 There are two other objections I just want to be very
9 brief on. On page 8 of my sentencing memorandum, I referenced
10 the fact that my client was assaulted in July of 2020 by gang
11 members. If you look at page 5 of the presentence report,
12 paragraph number 11, page 5, paragraph 11 references a
13 disciplinary incident. It's basically the same incident
14 referenced in my sentencing memorandum. It's our position,
15 your Honor, that my client was not fighting; in fact, that he
16 was, in fact, assaulted by gang members. That's consistent
17 with our position in the sentencing memorandum. That would be
18 a nonsubstantive objection to that.

19 THE COURT: All right. Well, I'm not, indeed, called
20 upon to make any determination because paragraph 11 is
21 consistent with your point of view, if maybe not the way you
22 would have preferred they expressed it, and so with the
23 exception of the three corrections to the ages that Mr. Kirton
24 made a few moments ago, which I adopt in the absence of any
25 response from the government on that, I adopt the presentence

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1 report as thus corrected, and I adopt, of course, the guideline
2 computation and range.

3 MR. KIRTON: Your Honor, just one more matter. This
4 just came to my attention about ten minutes ago.

5 Again, this is page 13, paragraph 52, page 13,
6 paragraph 52, the very last line says, "The defendant is a
7 known Lost Boys gang member." I think probably the best way to
8 characterize that is "was," not "is." That's in reference to a
9 2018 arrest.

10 THE COURT: Any objection from the government on that?

11 MR. BURNETT: No, your Honor.

12 THE COURT: All right.

13 So I'll adopt the change that Mr. Kirton requested and
14 change the word "is" to "was," and, otherwise, my ruling
15 stands.

16 I have received, in relation to the sentencing, the
17 presentence report, a sentencing memorandum from Mr. Kirton
18 filed February 8th, a sentencing memorandum from the government
19 filed -- I'm sorry, I'm looking at the wrong document -- filed
20 February 5th, the government's memorandum.

21 Is there anything else of which I ought to be aware?

22 Mr. Kirton?

23 MR. KIRTON: Your Honor, I submitted one additional
24 letter in support of my client from his employer this morning,
25 indicating that he has a job waiting for him upon his release

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1 from prison.

2 THE COURT: Is that attached to one of your letters?

3 MR. KIRTON: That was filed via ECF and emailed to the
4 Court's staff this morning.

5 THE COURT: Was it on your letterhead?

6 MR. KIRTON: On my letterhead, yes.

7 THE COURT: Oh, I have that.

8 MR. KIRTON: Yes. That's the only additional
9 document.

10 THE COURT: I have that. Thank you.

11 MR. KIRTON: Thank you.

12 THE COURT: Mr. Burnett, anything else?

13 MR. BURNETT: No, thank you.

14 THE COURT: Well, Mr. Kirton, I will hear you on
15 behalf of the defendant.

16 MR. KIRTON: Thank you, your Honor.

17 THE COURT: There's one thing I need to do first.

18 Is there any victim of the offense who wishes to be
19 heard here, Mr. Burnett?

20 MR. BURNETT: There is not. There is an excerpt of a
21 conversation with the victim in the PSR, but nothing beyond
22 that.

23 THE COURT: All right. Thank you.

24 Mr. Kirton?

25 MR. KIRTON: Thank you, your Honor.

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1 Your Honor, this case is a very interesting case.
2 When I first met Mr. Alexander, I believe it was at the MDC --
3 MCC after he was presented by the magistrate, I was a bit
4 perplexed because the person that I saw in front of me didn't
5 match his criminal history and didn't match the allegations in
6 the indictment. He seemed to be a very mild-mannered,
7 educated, measured person, a person who has contacts and ties
8 with his -- deep ties with his family -- his family is here in
9 court today -- a man who was working for an insurance company, a
10 man that had his own business doing office cleaning. In fact,
11 he works with his family. It's named after his daughter, who's
12 here in court today. She's in the SUNY system doing very, very
13 well, has a 3.9 GPA.

14 So I see this man, I hear from his family, his
15 employment information is confirmed by his employer, and then I
16 see the facts in this complaint. I see somebody engaging in
17 essentially a Hobbs Act robbery, carjacking with another
18 person. It just didn't make any sense. But as I spoke with
19 him, and I got to understand him, and as I looked through the
20 discovery, it became clear to me that the problem in this
21 case -- and this is not something that he probably wants to talk
22 a lot about -- was he aligned himself in a very damaging
23 personal relationship. He had a relationship with the
24 codefendant in this case. They were not Bonnie and Clyde. I
25 think sometimes when people get in these unfortunate

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1 relationships, sometimes people try to help each other. He
2 tried to help her. She's, I believe, in public housing and not
3 necessarily doing as well as my client, and he tried his best
4 to help her when he could. And, unfortunately, some of the
5 things that she was involved with were not legal. And this is
6 one of them.

7 If you look at -- and we've looked at the discovery.
8 There was a moment where Ms. Washington was with the victim,
9 they were doing whatever they were doing, and if you look at
10 the victim's statement, she was contacting somebody on the cell
11 phone, so seeming to delay her meeting with him. She did not
12 contact my client by text message. There were no string of
13 text messages between my client and Ms. Washington while this
14 matter was going on.

15 We know she eventually did contact him by phone, he
16 did appear, and the arrest is part of the record in this case.

17 It seems to me -- and we also know, from looking at
18 the discovery, your Honor, that the items taken from the
19 victim, though substantial, were literally tossed into the
20 streets of Queens County. He picked her up -- he did what he
21 did, he picked her up and drove back to Queens where she lived
22 in Far Rockaway, and my client also lived in Queens. Along the
23 way, those items were discarded and thrown out of the window.
24 So it's not the classic Bonnie and Clyde situation where people
25 or he was looking to necessarily take advantage of others. He

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1 knows what he did, he was certainly involved in this case, but
2 the items were thrown away. That's not part of the
3 government's filing. It's part of the discovery, they know
4 that, but I think it's a factor that the Court should take into
5 consideration. My client didn't need the money at the time.
6 He had a full-time job, which was verified by probation. He
7 also had his own business, which was verified by probation. He
8 didn't need the money. But this relationship and his
9 unfortunate involvement in it really caused him to commit
10 really, really, really terrible acts. And I think that's what
11 happened in this case.

12 He ended up in a situation that he regrets. He ended
13 up in a situation that was certainly avoidable. But I think --
14 I don't know how the government is going to characterize it as
15 if they were some sort of robbery crew and this is what they
16 did. But I submit to the Court that the evidence in this case
17 argues to the contrary, in terms of her not having a running
18 conversation with him the night of the incident, in terms of
19 the items in question being thrown out into the streets after
20 the robbery took place.

21 Also, if you look at the victim's statement, he says
22 that -- and, apparently, he's a well-to-do producer. He was
23 surprised that his wallet and his jewelry were not taken. That
24 was not taken during this particular robbery. I'm not saying
25 that that doesn't mean it wasn't a robbery; it was a robbery,

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1 it was a carjacking, bad things did happen in that vehicle, but
2 I think -- and I think the facts suggest that this is not
3 necessarily what my client does. This is what he did in this
4 instance, this is what he did in this instance because of the
5 situation that he found himself in. He exercised terrible
6 judgment -- terrible judgment -- to the detriment of the victim
7 in this case, as well as his family.

8 Your Honor, the letter that I submitted to the Court
9 from his employer this morning suggests that, in spite of his
10 current situation, they are prepared to offer him employment
11 upon his release from prison in this case.

12 Also, he had a matter in state court that was recently
13 resolved, so he no longer has any pending state court cases.
14 I've spoken with his attorney. In fact, that was the attorney
15 who was originally on this case. He represented him in the
16 state court case in Queens County. That case has been resolved
17 with a two-year sentence, two years' postrelease supervision.

18 Your Honor, I submit to the Court that a sentence
19 below the guidelines -- below the guidelines is appropriate
20 looking at all the factors under 18 U.S.C. 3553(a). My
21 client's role in the offense is a factor I think the Court
22 should take into consideration. My client's current employment
23 history is something that the Court should take into
24 consideration. My client's ties to his family and to the
25 community is something that the Court should take into

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1 consideration. My client's future plans in terms of being
2 employed, there's no doubt about that, he's not going to be
3 without resources going forward in this case. And whatever
4 counseling, whatever treatment he needs, I'm sure he would be
5 open and available to avail himself of any kind of treatment,
6 any kind of counseling, that he would need to deal with the
7 situation.

8 Finally, I would note, your Honor, I would note – and
9 this is something that happened independently – both myself and
10 his prior attorney are involved in mentoring young people in
11 crisis. I tend to focus on the Far Rockaway community; my
12 colleague focuses on -- he has a podcast. We both invited
13 Mr. Alexander to participate with us in our respective
14 programs. I would love for him to come with me to speak to
15 young people in Far Rockaway about the evils of prior gang
16 membership, about the evils of narcotics trafficking, about the
17 evils of bad associations. And he's willing to do that. And I
18 know, and I've spoken to my colleague, and he is willing to
19 have Mr. Alexander appear on his program, to give similar
20 information to his audience, to his targeted viewers.

21 This is not something I've actually offered in any
22 case that I can think of in terms of any assigned case I've
23 ever had. Mr. Alexander, I submit to the Court, has, I think,
24 something to offer young people. He has something to offer to
25 the community in terms of things to avoid, things you should

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1 not do, how to turn your life around. He went into the prison
2 system without a high school diploma. He got one in the prison
3 system. He also got some college in the prison system.

4 So I think he would be, I think, ideal for us in terms
5 of our program, in terms of helping to mentor at-risk youth in
6 public housing developments.

7 Your Honor, for all those above reasons, I submit that
8 a sentence below the guidelines, in the range of 24 to 40
9 months, would be a reasonable sentence in this case. We know
10 that the codefendant received a 36-month sentence, and I submit
11 to the Court that given -- in our view, anyway -- that she's the
12 one that planned everything, she's the one that put it
13 together, but for my client's extensive record, I think his
14 guidelines would be a lot lower, and I submit to the Court that
15 a sentence below the guidelines in that range is an appropriate
16 sentence.

17 THE COURT: Thank you, Mr. Kirton.

18 Mr. Alexander, you have the right to speak. Is there
19 anything you'd like to say?

20 THE DEFENDANT: Yes, your Honor. Good afternoon.

21 First, I'd like to extend my apologies for the
22 inconvenience I might have caused the courts and anybody else.
23 And I'd like to go on to say a lot of thought was put into -- a
24 lot of thought was put into my pleading to this case, and I've
25 decided to leave it in the hands of God and the judge, your

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1 Honor, in the hopes that you may see my progress before the
2 situation as well as during the situation. Before this matter,
3 I have records showing my progress. I didn't stop because -- I
4 didn't stop because, during my incarceration, I have strived
5 for tremendous progress by staying out of trouble and getting
6 involved in any programs that was presented despite the fact
7 that so much was happening around me, meaning COVID, and also
8 the condition of staff at both facilities, MCC and MDC, where I
9 am now presently being held. I never let those conditions
10 deter me from my continuing progress. I am not here to speak
11 about the conditions of the facility, as I'm sure that you may
12 have already made well aware of, but I am here to speak, as
13 well as show you, my mind's condition and continual progress in
14 the right direction.

15 Yes, I have made many mistakes as well as bad
16 decisions, including this situation, in which I was involved
17 with an individual that was not in the same age, mindset, or
18 goals. I take responsibility for my actions before and after
19 the decision. I have made -- excuse me. I have made the
20 decisions I have made. I am sure that once granted release, I
21 will continue down this path, not only for myself, but for my
22 children and family because they have -- because they need me.
23 It's been very hard, it's been very hard and heartbreaking not
24 being able to see them or speak to them on a continual basis
25 due to the COVID issues for the past two years, not because

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1 they didn't want to see me, but because of the COVID
2 restrictions once again.

3 I am only -- I am the only adult male left after my
4 father's passing away in February 2018. I say that because I
5 know I have a responsibility to my family and to myself, which
6 I've been unable to do because of bad decisions and lapse of
7 judgment.

8 Your Honor, I can't begin to tell you how sorry I
9 am -- I can't begin to tell you how sorry I am that this
10 happened, and those are not just words. Along with my job, I
11 have plans to achieve not only in my community, but also in my
12 neighboring community, as well as by speaking out about harms
13 that has done to families during the violence, but also the
14 people of my own family. Again, I am sorry that this situation
15 ever happened.

16 I hope that you can look at my progress that I
17 presented to you with the awards and the recommendations for my
18 family and also my legal advisor. I want to tell you again
19 that I'm sorry -- I can't say it enough -- that I was even
20 involved in something like this. Because of my
21 decision-making, I was taken away from my family, I was taken
22 away from my young child, who was only four months old when I
23 left. He's now two years old, and I haven't had time to spend
24 with him. I do have other kids that I raised daily that I live
25 with. I'm not a part-time parent, I'm a full-time parent, and

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1 I hope that you can take that into your consideration when you
2 pass judgment.

3 THE COURT: Thank you.

4 Mr. Burnett?

5 MR. BURNETT: Yes, just briefly, your Honor.

6 It's laudable that Mr. Alexander has such a close
7 family life and clearly has played a significant role in the
8 lives of his children and made some efforts to do work and
9 provide for them. But I think Mr. Kirton understated the
10 severity of this crime, the extent of planning that went into
11 it, and the lack of remorse following it.

12 Mr. Alexander, to put it simply, he brought a gun to a
13 carjacking, he had a ski mask he was wearing during the
14 carjacking. This wasn't an accidental or momentary lapse of
15 judgment that he got pulled into. There was clearly considered
16 planning that went into this, and the potential for serious and
17 even deadly danger involved in the crime.

18 It's true that the car and the property that was
19 stolen were ultimately abandoned, and my understanding is it
20 was because the type of car they stole was the kind of car that
21 turns on with a push as opposed to a key, so once it got out of
22 range of the victim, the car effectively stopped running. So
23 the fact that the car and the property were abandoned is more a
24 sign of flight after the robbery effectively failed, more so
25 than a considered judgment to ditch the property for any other

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1 type of reasons.

2 Finally, the social media posts immediately or shortly
3 after the robbery show effectively mocking law enforcement's
4 perceived inability to solve the crime. And all of this is
5 particularly concerning in light of Mr. Alexander's extensive
6 criminal history. This isn't a situation where it's a one-off
7 crime committed as a result of a bad relationship. I take it
8 that the relationship may have had something to do with it, but
9 over and over again throughout his life, Mr. Alexander has put
10 himself in these situations where he's had firearms, he's been
11 in dangerous situations, he's had drugs. He should know better
12 by now, particularly considering the age at which he committed
13 this offense.

14 So, from the government's perspective, a
15 within-guidelines sentence is appropriate here in light of the
16 severity of the crime and the need for specific deterrence and
17 to protect the community from further acts like this.

18 THE COURT: Thank you.

19 Mr. Alexander, please rise for the imposition of
20 sentence.

21 I've read, with a good deal of sympathy and
22 understanding and, in some ways, quite good feelings, the
23 letters from your family members. It's wonderful you have such
24 a good relationship with your family, that you understand your
25 importance to the family, and that you seem to be the kind of

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1 parent you say you are. That's all to the good side. And if
2 I've learned anything doing this job for close to 28 years,
3 there are no complete angels and there are no complete
4 villains; everybody is somewhere in between. The question is
5 which end is one closer to, and how does that manifest itself?
6 And I think Mr. Kirton did a wonderful job of putting the best
7 possible face on this entire situation and on you.

8 And I have genuine sympathy for your family members
9 and the hardship that you, by your actions, have inflicted upon
10 them. In the last analysis, however, there are some things I
11 can't get over here.

12 I can't get over the fact that this is your 12th
13 criminal conviction, your fifth felony conviction, and that you
14 have a long line of incidents involving guns.

15 At the age of 15, you were convicted of assault with
16 intent to cause serious injury with a weapon, and that was a
17 .380 semiautomatic.

18 A little over a year later, you had a youthful
19 offender conviction involving possession of another firearm,
20 which was in your waistband, as the police observed you running
21 down the street wearing a bulletproof vest, which you were not
22 wearing to do community service.

23 When you were 22, you were convicted of attempted
24 assault and attempted criminal possession of a defaced .9
25 millimeter loaded handgun, which, in fact, you were in

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1 possession of. You pleaded it down.

2 And then we have – one, two, three, four, five – six
3 drug convictions, and, in some ways, at least as upsetting as
4 everything else, is this case you resolved by a plea to
5 reckless endangerment, but what you were doing at the age of 36
6 was driving a car at a high rate of speed through a residential
7 neighborhood on the wrong side of the street, running red
8 lights and stop signs, and when you were finally brought to a
9 halt, you were driving on a suspended license and were found
10 with marijuana. You could probably have killed ten or twenty
11 people, depending on the hour of the day or whatever. You were
12 obviously, in some way, not in a psychologically clinical
13 sense, but you were out of your mind. You were taking risks
14 with life that were absolutely outrageous and that you were
15 doing it as a grown adult, with absolutely no regard for your
16 own safety or the safety of anybody who might have been around
17 you.

18 And then we come to the offense of conviction, which
19 is an armed carjacking, for which, obviously, planning and
20 preparation had been done. It was, as Mr. Burnett said, not a
21 spur-of-the-moment thing, not something you were spontaneously
22 caught up in; it was something that you planned to be involved
23 in. You met Ms. Washington at a place that the two of you had
24 agreed upon to steal this guy's car and his property. And
25 then, afterward, you go on Instagram, or some other social

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1 media, to mock the victim for going to the police, to mock law
2 enforcement, and to kind of brag, by saying, no face, no case,
3 because you were wearing a ski mask when you did the
4 carjacking. Well, you've learned no face, no case didn't work
5 out so well here. But this was after the crime had been
6 completed. You just had to crow about what an effective armed
7 robber you were when you thought you had gotten away with it.

8 So my bottom-line confusion is, good family man,
9 probably good parent, extremely dangerous to have on the
10 street, because for the last 21 years or more, what you've been
11 doing is periodically getting your hands on a gun and creating
12 danger for people around you.

13 So it is the judgment of this Court that you be
14 committed to the custody of the Attorney General of the United
15 States, or his designee, for a term of imprisonment of 100
16 months;

17 That you thereafter serve a term of supervised release
18 of three years;

19 And that you pay the mandatory special assessment of
20 \$100.

21 It's further adjudged that you pay restitution in the
22 amount of \$4,428.11, as will be more fully set forth in an
23 order of restitution that I will sign subsequently, once
24 Mr. Kirton and the government get together on it and get it to
25 me, which, frankly, should have happened already.

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1 The restitution will be payable in monthly
2 installments, commencing on the first day of the second month
3 following the month in which you're released from the term of
4 imprisonment imposed hereby. Each monthly payment shall be
5 equal to 10 percent of your gross income for the preceding
6 month.

7 The term of supervised release shall be subject to the
8 mandatory, the standard, and the special conditions of
9 supervision set forth at pages 24 through 26 of the presentence
10 report, which you have told me today you have read.

11 Does either counsel feel it necessary or appropriate
12 for me to read all of the conditions at this point?

13 MR. BURNETT: No, your Honor.

14 THE COURT: Mr. Kirton?

15 MR. KIRTON: No, your Honor.

16 THE COURT: Okay.

17 I advise you, sir, that to whatever extent you haven't
18 waived it, you have the right to appeal from the judgment
19 imposing this sentence.

20 If you wish to appeal, what you have to do first is
21 file a written notice of appeal with the clerk of the district
22 court no later than 14 days after the date on which the written
23 judgment is entered. That could be as soon as today.

24 If you wish to appeal, and you can't afford to pay the
25 fees necessary to do so, you have the right to apply for

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1 permission to appeal as a poor person. If that application
2 were granted, you'd be permitted to appeal without payment of
3 the fees, and if you couldn't afford a lawyer, a lawyer would
4 be appointed for you.

5 Now, there are two other things I want to say before
6 we conclude this afternoon.

7 The first is that if you continue to avoid getting
8 into trouble while serving your services, my understanding is
9 that you will be eligible for what's commonly known as good
10 time, which can be up to 15 percent of the sentence I've
11 imposed. And if you've got that – and it's not up to me, it's
12 up to the Bureau of Prisons – you would get 15 months off the
13 sentence I imposed.

14 As I understand it, you've already got 24 months'
15 credit. So it will be something like, best case for you,
16 85 months less 24, so you have a little over five years to go.
17 I think you should consider that you have been treated
18 leniently in that, given everything I have learned about the
19 crime and about your background, and I wanted your family to
20 know that 100 months is likely to work out to be significantly
21 less than that from now.

22 The other thing I want to make clear is that, but for
23 the harsh conditions of confinement during COVID, which I well
24 understand, this sentence would have been significantly
25 tougher. I think you're a danger on the street, whatever a

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1 gentle fellow you are with your family, and I have to do my
2 duty to the rest of the community to protect them from you.
3 And so I've tried to strike the best balance.

4 You may be seated.

5 Anything further, counsel?

6 MR. BURNETT: Not from the government. Thank you.

7 MR. KIRTON: Yes, your Honor.

8 I'd like my client to serve his sentence as close to
9 New York City as possible, and, also, I'd like the Court to
10 recommend a drug treatment program offered by the Bureau of
11 Prisons.

12 THE COURT: Well, I certainly recommend that he be
13 designated to an institution as close to the city as possible.

14 Now, what's the drug history? Marijuana, I know
15 offhand. There was some cocaine recovered from him once,
16 right?

17 MR. KIRTON: One moment, your Honor. I believe it's
18 in the probation report.

19 THE COURT: We can save a little time.

20 To whatever extent the Bureau of Prisons has an
21 appropriate drug treatment program for this defendant, which I
22 leave to their judgment, I recommend that he be enrolled in it.

23 Anything further?

24 MR. KIRTON: No, your Honor.

25 THE COURT: Okay. Thank you, folks. * * *

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Case 1:20-cr-00037-LAK Document 79 Filed 03/16/22 Page 1 of 6

AO 245B (Rev. 09/19) Judgment in a Criminal Case (form modified within District on Sept. 30, 2019)
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

Warren Alexander

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:20-CR-37-002(LAK)

USM Number: 87962-054

Mr. Marlon Geoffrey Kirton, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 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.

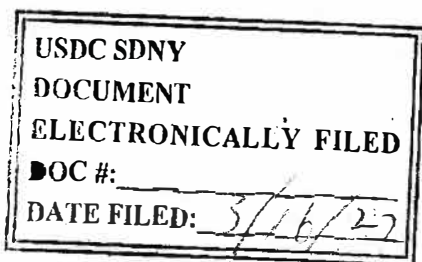
The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Felon in Possession of Ammunition	11/25/2019	5

The defendant is sentenced as provided in pages 2 through 6 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) All Open ☐ is ☒ are dismissed on the motion of the United States.

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



Date of Imposition of Judgment 3/15/2022

Signature of Judge

Hon. Lewis A. Kaplan, U.S.D.J.

Name and Title of Judge

Date

A-061

DEFENDANT: Warren Alexander
CASE NUMBER: 1:20-CR-37-002(LAK)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
100 Months

- ☒ The court makes the following recommendations to the Bureau of Prisons:
That consistent with the policies of the BOP, the defendant be designated to a facility as close to the New York metropolitan area as possible, and if appropriate drug treatment is available the defendant should be considered for participation.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at ☐ a.m. ☐ p.m. on
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Warren Alexander
CASE NUMBER: 1:20-CR-37-002(LAK)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 Years subject to the mandatory, standard, and following special conditions:

You must provide the probation officer with access to any requested financial information.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

It is recommended that you be supervised by the district of residence.

MANDATORY CONDITIONS

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

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: Warren Alexander
CASE NUMBER: 1:20-CR-37-002(LAK)**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. 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: Warren Alexander

CASE NUMBER: 1:20-CR-37-002(LAK)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ 4,428.11	\$	\$	\$

☐ 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>
See Schedule of Victims Filed Under Seal	\$4,428.11	\$4,428.11	

TOTALS	\$	<u>4,428.11</u>	\$	<u>4,428.11</u>
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☒ Restitution amount ordered pursuant to plea agreement \$ 4,428.11

☐ 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: Warren Alexander
CASE NUMBER: 1:20-CR-37-002(LAK)

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, 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:
The restitution shall be payable in monthly installments commencing on the 1st day of the second month following the month in which you are released from the term of imprisonment imposed hereby. Each monthly payment shall be equal to 10% of your gross income for the preceding month.

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
Shelly Washington (001)	4,428.11	4,428.11	

- ☐ 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.

A-67

Case 1:20-cr-00037-LAK Document 83 Filed 03/30/22 Page 1 of 1

Criminal Notice of Appeal - Form A

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/30/2022

NOTICE OF APPEAL

United States District Court

Southern District of New York

Caption:

United States v.

Warren Alexander

Docket No.: 20 cr. 37 (LAK)
Lewis A. Kaplan
(District Court Judge)

Notice is hereby given that Warren Alexander appeals to the United States Court of

Appeals for the Second Circuit from the judgment ☒ other ☐

entered in this action on 3/16/2022 (date) (specify)

This appeal concerns: Conviction only ☐ Sentence only ☒ Conviction & Sentence ☐ Other ☐

Defendant found guilty by plea ☒ trial ☐ N/A ☐

Offense occurred after November 1, 1987? Yes ☒ No ☐ N/A ☐

Date of sentence: 3/15/2022 N/A ☐

Bail/Jail Disposition: Committed ☒ Not committed ☐ N/A ☐

Appellant is represented by counsel? Yes ☒ No ☐ If yes, provide the following information:

Defendant's Counsel: Marlon G. Kirton

Counsel's Address: 175 Fulton Avenue, Suite 305
Hempstead, New York 11550

Counsel's Phone: (516) 833-5617

Assistant U.S. Attorney: David Robles

AUSA's Address: 1 Saint Andrews Plaza
New York, NY 10007

AUSA's Phone: (212) 637-2550

Marlon Kirton
Signature

A-067

22-688-cr
United States v. Alexander

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of May, two thousand twenty-four.

PRESENT:

JOSEPH F. BIANCO,
WILLIAM J. NARDINI,
MARIA ARAÚJO KAHN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

22-688-cr

SHELLY WASHINGTON, a/k/a SEALED
DEFENDANT 1,

Defendant,

WARREN ALEXANDER, a/k/a SEVEN,

Defendant-Appellant.

FOR APPELLEE:

David J. Robles (David Abramowicz, *on the brief*), Assistant United States Attorneys, *for* Damian Williams, United States Attorney for the Southern District of New York, New York, New York.

FOR DEFENDANT-APPELLANT: Jeremiah Donovan, Old Saybrook,
Connecticut.

Appeal from a judgment of the United States District Court for the Southern District of New York (Lewis A. Kaplan, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered on March 16, 2022, is **AFFIRMED**.

Defendant-Appellant Warren Alexander appeals from the district court's judgment of conviction following his guilty plea to one count of possessing ammunition after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). The conviction arose from Alexander's participation in an armed carjacking and robbery in the Bronx in late 2019. The district court sentenced Alexander to a term of 100 months' imprisonment, to be followed by three years of supervised release, and imposed \$4,428.11 in restitution and a \$100 mandatory special assessment. On appeal, Alexander challenges the district court's imposition of the mandatory, standard, and special conditions of supervised release, arguing that the district court erred in only referring to, and adopting, the conditions that were included in the Probation Office's Presentence Investigation Report ("PSR"), as opposed to orally pronouncing them on the record. In addition, Alexander contends that the district court erred in imposing the three special conditions because it failed to explain its reasons for imposing them, and that there was insufficient basis in the record to support such conditions in this case.¹ We assume the parties' familiarity with the underlying facts,

¹ On August 30, 2023, we granted an *Anders* motion filed by Alexander's prior appellate counsel seeking permission to withdraw, granted in part a motion by the government to dismiss the appeal as barred by an appellate waiver in Alexander's plea agreement, and ordered that new counsel be appointed to brief the issues described *supra* relating to the oral pronouncement and one of the special conditions, as well as any other nonfrivolous issue not barred by Alexander's appellate waiver in his plea agreement.

procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

We review a district court’s decision to impose conditions of supervised release for abuse of discretion, and any related questions of law *de novo*. *United States v. Kunz*, 68 F.4th 748, 758 (2d Cir. 2023). Where, as here, the appellant did not object to a condition in the district court despite having an opportunity to do so, we review for plain error, which requires the appellant to show that “(1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant’s substantial rights; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *United States v. Moore*, 975 F.3d 84, 90 (2d Cir. 2020) (internal quotation marks and citation omitted).

I. Oral Adoption of Supervised Release Conditions in the PSR

A defendant is entitled to be present at his sentencing. Fed. R. Crim. P. 43(a)(3); *see also United States v. Thomas*, 299 F.3d 150, 152 (2d Cir. 2002). We have interpreted this rule to require that the sentencing judge pronounce the sentence orally on the record, including any conditions of supervised release, with the exception of certain “routinely-imposed” conditions. *Thomas*, 299 F.3d at 153–54. However, we have suggested that the sentencing judge may satisfy the oral-pronouncement requirement even for supervised release conditions that are not imposed routinely by “indicat[ing] that it would incorporate the conditions listed in the PSR.” *Id.* at 152; *see also United States v. Whitaker*, No. 21-1543, 2023 WL 5499363, at *4 (2d Cir. Aug. 25, 2023) (summary order) (citing *Thomas* to support the proposition that “even where additional burdensome special terms must otherwise be orally pronounced, a district court may still orally reference those terms in summary fashion during sentencing, so long as it is clear to what the court

is referring. It may, for example, refer to special terms already proposed in the PSR . . . , so long as the district court makes clear during sentencing it intends to incorporate the terms.”); *accord United States v. Lateef*, 300 F. App’x 117, 118 (2d Cir. 2008) (summary order) (same).

Here, the district court did not orally describe the conditions of Alexander’s supervised release on the record at sentencing. However, at the beginning of the sentencing, defense counsel represented to the district court that his client had received the PSR, which contained the proposed conditions, and the district court confirmed directly with Alexander that he had read the PSR himself. Later, in imposing Alexander’s sentence, the following colloquy took place regarding the conditions of supervised release:

THE COURT: The term of supervised release shall be subject to the mandatory, the standard, and the special conditions of supervision set forth at pages 24 through 26 of the presentence report, which you have told me today you have read.
Does either counsel feel it necessary or appropriate for me to read all of the conditions at this point?

MR. BURNETT: No, your Honor.
[Prosecutor]

THE COURT: Mr. Kirton?

MR. KIRTON: No, your Honor.
[Defense
Counsel]

THE COURT: Okay.

App’x at 58. The judgment incorporated all the supervised release conditions verbatim from the PSR.

Alexander argues that the district court improperly imposed the conditions of supervised release without orally pronouncing them at sentencing. As a threshold matter, in expressly

agreeing that it was not “necessary or appropriate,” *id.*, for the district court to read aloud the conditions set forth in the PSR, Alexander’s counsel waived any challenge to the district court’s decision to proceed in that manner. *See United States v. Olano*, 507 U.S. 725, 733 (1993) (distinguishing waiver, “the intentional relinquishment or abandonment of a known right,” from forfeiture, the failure to timely assert it (internal quotation marks and citation omitted)); *see also United States v. Spruill*, 808 F.3d 585, 596 (2d Cir. 2015) (“Under Fed. R. Crim. P. 52(b), this court has discretion to correct errors that were *forfeited* because not timely raised in the district court, but no such discretion applies when there has been true *waiver*.”); *United States v. Overstreet*, No. 21-3034-cr, 2023 WL 4286035, at *1 (2d Cir. June 30, 2023) (summary order) (finding challenge to incorporation of special conditions by reference waived where defendant’s counsel stated this approach was “satisfactory”).

Even if Alexander had not waived this challenge, as we indicated in *Thomas*, the district court may satisfy the oral-pronouncement requirement by expressly incorporating conditions in the PSR that had been reviewed by the defendant. *See* 299 F.3d at 152 (finding error where the district court “did not set forth any conditions of the supervision during the sentencing hearing, nor did it indicate that it would incorporate the conditions listed in the PSR”); *see also United States v. Washington*, 904 F.3d 204, 208 (2d Cir. 2018) (finding error where defendant “could not have known before issuance of the written judgment that the District Court would include” a condition from the PSR). As noted above, the district court: (1) confirmed Alexander had reviewed the PSR, which contained the conditions; (2) stated that it was adopting the PSR’s recommended conditions; and (3) imposed conditions in the written judgment, which were identical to the PSR’s recommended conditions. Under these circumstances, Alexander has failed

to demonstrate that the district court committed plain error by not also orally pronouncing the conditions.

II. Special Conditions

Alexander also argues that the district court erred in failing to explain its reasons for imposing the three special conditions, which required him to disclose financial information to the Probation Office (the “Financial Information Condition”), obtain permission from the Probation Office before taking on additional credit obligations (the “Credit Condition”), and submit to searches based on reasonable suspicion (the “Search Condition”). Alexander also asserts that “[t]here is no justification for the [Financial Information and Credit Conditions] if [he] is not required to make restitution payments as a condition of supervised release.” Appellant’s Br. at 5. Finally, Alexander argues that the broad provisions of the Search Condition were not “reasonably related” to permissible sentencing factors and involved a “greater deprivation of liberty than is reasonably necessary” to implement the statutory purposes of sentencing, in violation of 18 U.S.C. § 3583(d).

Although we have held that “[a] district court is required to make an individualized assessment when determining whether to impose a special condition of supervised release, and to state on the record the reason for imposing it . . . , we have also been careful to qualify that while the failure to do so is generally error, we may nonetheless affirm if the district court’s reasoning is self-evident in the record.” *Kunz*, 68 F.4th at 760 (internal quotation marks and citations omitted); *see also United States v. Balon*, 384 F.3d 38, 41 n.1 (2d Cir. 2004).

The district court was not required to make an individualized assessment regarding the propriety of the Financial Information and Credit Conditions because those conditions are

recommended by the United States Sentencing Guidelines (the “Guidelines”) whenever the district court imposes restitution to be paid in installments, *see* U.S.S.G. § 5D1.3(d)(2) (recommending that a defendant be prohibited from incurring new credit card charges or opening additional lines of credit without approval of the probation officer when restitution is to be paid in installments); *id.* § 5D1.3(d)(3) (recommending that a defendant be required to provide his probation officer with access to financial information when the court imposes restitution), as is the case here. *See United States v. Sims*, 92 F.4th 115, 119 n.1 (2d Cir. 2024) (“While the Guidelines technically describe a category of recommended conditions as special because their appropriateness is contingent on whether certain circumstances are present, we consider those recommended conditions to be as necessary to the administration of supervised release as the standard conditions, which are presumed suitable in all cases.” (internal quotation marks and citation omitted)); *see also Thomas*, 299 F.3d at 154 (“Because the District Court required [the defendant] to pay restitution, the Guidelines recommend the imposition of [the Financial Information and Credit] [C]onditions, and the District Court’s failure to articulate them orally is irrelevant . . .”).

But even if the district court was required to make an individualized assessment, its failure to explain its reasons for imposing the three special conditions is not reversible error because those reasons are readily apparent from the record. Because the district court required Alexander to pay restitution in monthly installments equal to ten percent of his gross income for the preceding month, the Financial Information and Credit Conditions are reasonably related to ensuring that the ordered restitution payments will be made.

Alexander also contends that, although the district court ordered restitution with installment payments, the district court plainly erred in imposing these special conditions because

it did not also make the restitution obligation a mandatory condition of supervised release. We disagree. Alexander cites no legal authority for this contention, and it is entirely unclear why the fact that payment of restitution was not listed among the conditions of supervised release in the judgment, but rather was ordered at sentencing and reflected on a separate page of the judgment, would limit a district court's discretionary authority to impose special conditions regarding a defendant's finances that help ensure payment of the restitution order. *See United States v. Napout*, 963 F.3d 163, 183 (2d Cir. 2020) (“[F]or an error to be plain, it must, at a minimum, be clear under current law” (internal quotation marks and citation omitted)). Indeed, as noted above, the Guidelines recommend these special conditions in precisely this circumstance, regardless of whether the restitution order or repayment plan is separately named as a condition of supervised release or is merely contained in the judgment. *See* U.S.S.G. § 5D1.3(d)(2) (recommending Credit Condition “[i]f an *installment schedule* of payment of restitution . . . is imposed” (emphasis added)); *id.* § 5D1.3(d)(3) (recommending Financial Information Condition “[i]f the court imposes an *order of restitution*” (emphasis added)). Therefore, we discern no plain error on this ground.

We find Alexander's challenge to the search condition similarly unpersuasive. The district court imposed a condition allowing searches of, *inter alia*, Alexander's person, property, computer, electronic communications, data storage devices, and cloud storage or media “when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct” and stating that such searches “shall be conducted at a reasonable time and in a reasonable manner.” App'x at 63; PSR at 26. Although the district court did not articulate its reasons for imposing the Search Condition at sentencing, we find its reasons apparent from the record, which reflects the district court's concern with Alexander's lengthy criminal history involving “a long

line of incidents involving guns,” App’x at 55; *see also id.* at 57 (“[W]hat you’ve been doing is periodically getting your hands on a gun and creating danger for people around you.”), and the fact that the offense of conviction involved an armed carjacking. The district court’s reasons for including in the Search Condition the probation officer’s authority to search Alexander’s electronic communications are also clear from the record because (1) Alexander’s co-defendant used social media to communicate with the carjacking victim and also contacted him by phone, (2) the co-defendant and an individual believed to be Alexander used social media afterward to mock the victim for reporting the incident to the police and to mock law enforcement, and (3) Alexander was identified by law enforcement through his contact with the co-defendant via phone and cell-site data.

Moreover, in light of these considerations, the imposition of the Search Condition is reasonably related to the nature of the offense—namely, an armed carjacking and robbery—and the need to afford adequate deterrence and to protect the public from Alexander’s further crimes. *See* 18 U.S.C. § 3553(a)(2)(B)–(C); *see also United States v. Ettinger*, 723 F. App’x 38, 40–41 (2d Cir. 2018) (summary order) (affirming search condition for offense involving receipt and sale of stolen goods despite the defendant’s lack of prior criminal convictions). Alexander has similarly failed to demonstrate that the search condition involved a “greater deprivation of liberty than is reasonably necessary” for these purposes of sentencing. 18 U.S.C. § 3583(d)(2); *see also United States v. Rakhmatov*, No. 21-151, 2022 WL 16984536, at *3 (2d Cir. Nov. 17, 2022) (summary order) (explaining that “limitations on searches to circumstances in which reasonable suspicion of a supervised release violation exists and to a reasonable time and manner of search ensure that the

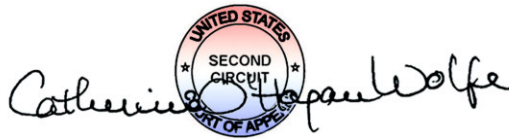
condition imposes no greater restraint on liberty than is reasonably necessary” (internal quotation marks, citation, and alteration marks omitted)).

In sum, we find no plain error in the district court’s imposition of the three special conditions of Alexander’s supervised release.

* * *

We have considered Alexander’s remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

The block contains a handwritten signature in cursive script that reads "Catherine O'Hagan Wolfe". Overlaid on the signature is the official seal of the United States Second Circuit Court of Appeals. The seal is circular with a red outer ring containing the text "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom. Inside the ring, the words "COURT OF APPEALS" are visible at the bottom. The signature is written in black ink.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: May 17, 2024
Docket #: 22-688cr
Short Title: United States of America v. Washington
(Alexander)

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:20-cr-37-2
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Kaplan

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: May 17, 2024
Docket #: 22-688cr
Short Title: United States of America v. Washington
(Alexander)

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:20-cr-37-2
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Kaplan

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to
prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature

22-0688

IN THE

**United States Court of Appeals
for the Second Circuit**

UNITED STATES OF AMERICA,
Appellee,

v.

SHELLEY WASHINGTON, AKA SEALED DEFENDANT 1,
Defendant,

WARREN ALEXANDER, AKA SEVEN,
Defendant-Appellant

**On Appeal From The United States District Court
For the Southern District of New York**

**PETITION FOR REHEARING
WITH SUGGESTION OF REHEARING EN BANC
BY DEFENDANT-APPELLANT WARREN ALEXANDER**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,	:
Appellee,	:
	:
v.	:
	:
SHELLY WASHINGTON, a/k/a	:
SEALED DEFENDANT 1,	: 22-688-cr
Defendant,	
WARREN ALEXANDER, a/k/a/	
SEVEN,	
Defendant-appellant.	

**PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC**

Introduction: The Defendant-Appellant Warren Alexander petitions for a rehearing and suggests a rehearing en banc. His appeal involves one or more questions of exceptional importance, involving an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

Factual and procedural background: Warren Alexander appealed from the district court's judgment of conviction following his guilty plea to one count of possessing ammunition after a felony conviction, in violation of 18 U.S.C. §922(g)(1). The district court imposed upon Alexander a sentence that included three years of supervised release with mandatory, standard, and special conditions of supervision.

During the course of the sentencing proceeding, the following exchange

took place:

THE COURT: The term of supervised release shall be subject to the mandatory, the standard, and the special conditions of supervision set forth at pages 24 through 26 of the presentence report, which you have told me today you have read.

Does either counsel feel it necessary or appropriate for me to read all of the conditions at this point?

MR. BURNETT: No, your Honor.
[Prosecutor]

THE COURT: Mr. Kirton?

MR. KIRTON: No, your Honor.
[Defense Counsel]

THE COURT: Okay.

App'x at 58. The written judgment repeated verbatim all of the supervised release conditions that were set forth in the PSR.

On appeal, we challenged the district court's imposition of the mandatory, standard, and special conditions of supervised release, arguing that the district court erred in adopting by reference the conditions that were included in the Probation Office's Presentence Investigation Report ("PSR"), as opposed to orally pronouncing them on the record. We also contended that the district court erred in imposing the three special conditions because it failed to explain its reasons for imposing them and we argued that there was insufficient basis in the record to support such conditions in his case.

The panel recognized that a defendant is entitled to be present at his sentencing and that the right to be present encompasses the requirement that the

sentencing judge pronounce the sentence orally on the record, including any conditions of supervised release. *Slip op. at 3*. The panel also held, however, that by expressly agreeing that it was not necessary or appropriate for the district court to read aloud the conditions set forth in the PSR, Alexander waived any challenge to the district court's decision to proceed in that manner. *Id.*

We do not contend that there is disagreement among the Courts of Appeal regarding this holding.

The panel also held, however, that even if Alexander had not waived this challenge, the district court may satisfy the oral-pronouncement requirement by expressly incorporating conditions set forth in a PSR that had been reviewed by the defendant. *Id.* at 5; *citing United States v. Thomas*, 299 F.3d 150, 152 (2d Cir. 2002) (finding error where the district court “did not set forth any conditions of the supervision during the sentencing hearing, nor did it indicate that it would incorporate the conditions listed in the PSR”); *United States v. Washington*, 904 F.3d 204, 208 (2d Cir. 2018) (finding error where defendant “could not have known before issuance of the written judgment that the District Court would include” a condition from the PSR).

Discussion: The panel's holding followed long-standing Second Circuit precedent. This Court has long held that a district court's oral pronouncement of sentence need not include any reference to the standard conditions of supervised release, and that the subsequent incorporation of the standard conditions into the written judgment, although those conditions were unmentioned at sentencing,

does not amount to a conflict, but rather reflected a clarification of what the oral pronouncement meant when it imposed a term of "supervised release." *United States v. Truscello*, 168 F.3d 61, 63 (2d Cir. 1999).

Five other circuits disagree. Until last year, the Ninth Circuit was the only other court of appeals that concurred.

The Ninth Circuit, however, sitting en banc in order to overrule prior circuit precedent, has become the most recent circuit court to hold that standard conditions of supervised release must be orally pronounced at sentencing "in order to protect a defendant's due process right to be present at sentencing." *United States v. Montoya*, 82 F.4th 640, 644-45 (9th Cir. 2023) (en banc). The court reasoned that although the sentencing court need not orally pronounce the mandatory conditions of supervised release, "[i]f a condition is discretionary, the district court must orally pronounce it in the presence of the defendant, without regard to how it is classified by the Guidelines." Such a rule, the court held, ensures that a defendant's right to be present at sentencing is protected and more faithfully adheres to the text of [18 U.S.C.] § 3583(d)." *Id.* at 651.

In so ruling, the Ninth Circuit joined the five other circuits that disagree with our circuit. *See United States v. Geddes*, 71 F.4th 1206, 1215 (10th Cir. 2023); *United States v. Matthews*, 54 F.4th 1, 6 (D.C. Cir. 2022); *United States v. Rogers*, 961 F.3d 291, 296–97 (4th Cir. 2020); *United States v. Diggles*, 957 F.3d 551, 558–59 (5th Cir. 2020); *United States v. Anstice*, 930 F.3d 907, 910 (7th

Cir. 2019).¹

Conclusion: The reasoning of these six circuits is persuasive. This Court, sitting en banc, should overturn *Truscello*, and rule that standard conditions of supervised release must be orally pronounced at sentencing.²

Respectfully submitted,

s/s

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¹It must be noted, however, that in holding that a district court must orally pronounce all discretionary conditions of supervised release in the presence of the defendant, the Ninth Circuit also held that this pronouncement requirement is satisfied if the defendant is informed of the proposed discretionary conditions before the sentencing hearing and the district court orally incorporates by reference some or all of those conditions, which gives the defendant an opportunity to object. *Montoya*, 82 F.4th at 652-53. *Contra, Anstice*, 930 F.3d at 909 (two conditions not referenced during sentencing vacated, although they were set forth in PSR); *But see Geddes*, 71 F.4th 1215-16 (district court should have pronounced orally at sentencing the standard conditions, although standard conditions were referred to in PSR); *Rogers*, 961 F.3d at 299-301 (although court-wide standing order provided notice of standard conditions of supervised release to be imposed in every case, failure explicitly to reference standing order was error).

²Cases presenting similar issues are currently before this Court. *See United States v. Horton*, docket no. 22-1339; *United States v. McAdam*, docket no. 22-1268; *United States v. Owens*, docket no. 23-6397.

CERTIFICATE OF COMPLIANCE

1. This petition complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). The petition contains 1134 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Word Perfect 9 and Times-Roman 14 point font.

/s/

JEREMIAH DONOVAN

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of July, two thousand twenty-four.

United States of America,

Appellee,

v.

Shelly Washington, AKA Sealed Defendant 1,

Defendant,

Warren Alexander, AKA Seven,

DefendantAppellant.

ORDER

Docket No: 22-688

Appellant Warren Alexander filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

