

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JESSE ALANIZ LOPEZ,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals and District Court erred in construing a 1987 Texas robbery conviction as a felony for purposes of Armed Career sentencing, denying the Petitioner's constitutional right to substantive due process under the Fifth Amendment by imposing an excessive sentence in violation of Gall v. United States, 552 U.S. 38 (2007).

TABLE OF CONTENTS

	<u>Page</u>
Question Presented for Review	1
Table of Contents	2
Table of Authorities	3
Opinion Below	5
Jurisdiction	6
Constitutional and Statutory Provisions Involved	6
Statement of the Case	6
Reason for Granting the Writ	7
Conclusion	12
Prayer for Relief	12

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
UNITED STATES SUPREME COURT	
<u>Borden v. United States</u> , 593 U.S. – (2021).....	9, 11
<u>Deschamps v. United States</u> , 570 U.S. 254 (2013).....	10
<u>Gall v. United States</u> , 552 U.S. 38 (2007).....	1, 7-8
<u>Johnson v. United States</u> , 576 U.S. 591 (2015).....	8
<u>Jordan v. Massachusetts</u> , 225 U.S. 167 (1912).....	7
<u>Kimbrough v. United States</u> , 552 U.S. 85 (2007).....	8
<u>Rita v. United States</u> , 551 U.S. 338 (2007).....	8
<u>Smith v. Phillips</u> , 455 U.S. 209 (1982).....	7
<u>Staples v. United States</u> , 511 U.S. 600 (1994).....	12
<u>Tanner v. United States</u> , 483 U.S. 107 (1987).....	7
<u>Williams v. United States</u> , 503 U.S. 193 (1992).....	8, 12
<u>Wooden v. United States</u> , 595 U.S.- (2022).....	9
COURT OF APPEALS	
<u>United States v. Garrett</u> , 24 F.4 th 485 (5 th Cir. 1997).....	11
TEXAS APPELLATE	
<u>Jefferson v. Texas</u> , 144 S.W.3d 612 (Tex.App.-Amarillo 2004, no pet.).....	11
<u>Purser v. Texas</u> , 902 S.W.2d 641 (Tex.App.-El Paso 1995, pet ref'd).....	11
<u>Robinson v. Texas</u> , 144 S.W.3d 612 (Tex.Crim.App. 1980).....	11

CONSTITUTION

U.S.Const., Amend V.....	6
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STATUTES

Federal

18 U.S.C. Sec. 924 (c).....	9
18 U.S.S.G. Sec. 4B1.2(a)(2).....	10
28 U.S.C. Sec. 1254(a).....	6

Texas

Tex.Penal CodeAnn Sec. 29.01 (Vernon 2022).....	10
Tex.Penal CodeAnn Sec. 29.02(a) (Vernon 2022).....	10

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JESSE ALANIZ LOPEZ,

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v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, JESSE ALANIZ LOPEZ, Appellant in the United States Court of Appeals for the Fifth Circuit in Case No. 23-50738 and the Defendant in Case No. MO-22-CR-175, submits this Petition for Writ of Certiorari and respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on August 14, 2024.

OPINION BELOW

On August 14, 2024, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the sentence returned against Petitioner. A copy of the Opinion is attached as Appendix A.

The District Court's Criminal Judgment is attached as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in pertinent part to the case *sub judice*:

No person...shall be deprived of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

The Government obtained a single-count indictment against Petitioner, alleging he had committed the offense of Felon in Possession of a Firearm. Specifically, the indictment alleged that Petitioner, being a convicted felon, had on or about August 16, 2022, knowingly and intentionally possessed a firearm in the Western District of Texas.

Petitioner entered a plea of “guilty” to the single count indictment.

On or about October 12, 2023, the Hon. David Counts, United States District Judge, Western District of Texas, sentenced Petitioner to 188 months incarceration and five years of supervised release.

At the Petitioner’s sentencing hearing on May 10, 2022, the United States District Judge sentenced Petitioner under the Armed Career Criminal Act. Petitioner had been previously convicted as follows:

[A] Robbery CR-14,210 120287 Midland County, Texas (142 Dist.)

[B] Burglary CR-16,044 102089 Midland County, Texas (142 Dist.)

[C] Aggravated Robbery CR-19,339 063093 Midland County, Texas (142 Dist.).

Petitioner’s counsel urged through an objection at the sentencing hearing that the 1987 Texas

state conviction was not a predicate for armed career criminal sentencing, based primarily on a no finding as to victim or deadly weapon.

The District Court overruled the objection. The United States Court of Appeals, for the Fifth Circuit affirmed on or about August 14, 2024.

On or about October 18, 2023, Petitioner filed a Notice of Appeal (ROA.73), contesting the armed career sentence.

REASON FOR GRANTING THE WRIT

The District Court erred, as a matter of law, in construing the 1987 Texas State Robbery conviction as a predicate offense for armed career sentencing. Therefore, the sentencing court's upward departure and the affirmance of the Court of Appeals was unreasonable to a degree that it violates Petitioner's right to substantive due process.

In general, litigants are entitled to a fair adjudication based solely on the evidence adduced at a trial or sentencing hearing. Jordan v. Massachusetts, 225 U.S. 167, 176 (1912); Smith v. Phillips, 455 U.S. 209, 217 (1982). Further, the United States Supreme Court has recognized that due process implies a tribunal both impartial and mentally competent to afford a hearing with a factfinder capable and willing to decide the case solely on the evidence before it. Tanner v. United States, 483 U.S. 107, 117 (1987).

The Government in this case obtained a one-count indictment against Petitioner, alleging that he conspired to possess methamphetamine with the intent to distribute. Petitioner timely pleaded guilty. The District Court, however, sentenced Petitioner outside of the guidelines and under the Armed Career Criminal Act.

A District Court's sentencing is reviewed by the plainly unreasonable standard. Gall v. United

States, 552 U.S. 38, 51 (2007). Under the plainly unreasonable standard, an appellate court evaluates whether the District Court procedurally erred before the appellate court considers the substantive reasonableness of the sentence imposed under an abuse of discretion standard.

Id. When analyzing the substantive reasonableness, the appellate court considers the “totality of the circumstances”, including the extent of any variance from the Guidelines range, while affording deference to the district court’s choice of sentence and keeping in mind that it may not vacate the sentence imposed simply because it would have chosen a different one. If the challenged sentence deviates from the guideline range, the appellate court must decide whether it unreasonably fails to reflect the statutory sentencing factors. Kimbrough v. United States, 552 U.S. 85 (2007); 18 U.S.C. Sec. 3553(a). A non-guideline sentence unreasonably fails to reflect the statutory sentencing factors where it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors. Rita v. United States, 551 U.S. 338 (2007).

In this context, the United States Supreme Court must remand on a showing that the District Court relied upon an invalid factor at sentencing, absent a finding that the error was harmless, i.e., the error did not affect the Court’s selection of the sentence imposed, and that the sentence was reasonable. Williams v. United States, 503 U.S. 193, 200-201 (1992).

The Armed Career Criminal Act requires imposition of a mandatory minimum 15-year term of imprisonment for recidivists of a firearm under 18 U.S.C. Sec. 922(g), who have three prior state or federal convictions for violent felonies. 18 U.S.C. Sec. 924(c); Johnson v. United States, 576 U.S. 591 (2015).

18 U.S.C. sec. 924(e) defines violent felonies as those (1) that have an element of threat, attempt, or use of physical force against another; (2) that involve burglary, arson or extortion; (3) that constitute crime similar to burglary, arson or extortion; (4) under the section's residual clause. Violent felonies must have been committed on different occasions. Wooden v. United States, 595 U.S.-, 142 S.Ct. 1063, 1069 (2022). The approach is whether the elements of the statute of prior conviction are the same or less inclusive than the federal statute under the ACAA. When the prior conviction is for an offense other than enumerated in Section 924(e), the analysis comes as a matter of comparing the elements of the prior offense with the descriptive clause of section 924(e). A prior conviction may serve as a predicate under the elements clause only if the statute of conviction is no more inclusive, i.e. only if the offense necessarily involves the defendant's use of physical force within the meaning of the statute. Borden v. United States, 593 U.S.-, 141 S.Ct. 1817, 1822 (2021). Physical force has as an element—the use, attempted use, or threatened use of physical force against the person by another. Johnson, 559 U.S. at 139 (2015). To determine whether a prior offense constitutes a crime of violence, the Court applies either the categorical analysis or the modified categorical approach. Under the categorical approach, the Court compares the underlying state statute to the guidelines definition of a "crime of violence" if the statute sweeps by the guideline definition of a "crime of violence", the Court will not consider the offense a crime of violence. A criminal offense with a mens rea of recklessness does not constitute a felony under the Armed Career Criminal Act. Borden v. United States, 593 U.S.- 141 S.Ct. 181 (2021).

Thus, the District Court and the Court of Appeals misconstrued the Texas robbery statute. The courts below were to decide whether the Texas Robbery statute refers to different

crimes or just different ways of committing a single crime. This is called “divisibility.”

A statute is divisible, creating multiple crimes, when the statute sets out one or more elements of the offense in the alternative. Descamps v. United States, 570 U.S. 254, 257 (2013).

However, disjunctively listed statutory components do not automatically qualify as elements. When the statute merely lists various factual ways of committing some component of the offense, the statutory components are considered means rather than elements. A statute is divisible only when it lists multiple, alternative elements, and so effectively creates several different crimes. If the statute is divisible, creating multiple crimes, the District Court applies the modified categorical approach to determine which crime was committed.

The Sentencing Guidelines contain a separate definition of “robbery” as one of the crimes constituting a crime of violence. 18 U.S.S.G. Sec. 4B1.2(a)(2). The issue, then in the lower Courts was whether a Texas robbery is a predicate offense, provided it fits the generic definition of robbery.

The Texas robbery statute is found in Tex.Penal CodeAnn. Sec. 29.02(a)(Vernon 2022). Under that section, a person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. Tex.Penal CodeAnn. Sec. 29.01 (Vernon 2022). The elements robbery in Texas are (1) in the course of committing theft and (2) with intent to obtain or maintain control of the property; (3) defendant intentionally, knowingly or recklessly causes bodily injury to another.

Texas courts have long recognized that the actual commission of the offense of theft is not a prerequisite to the commission of the offense of robbery. Robinson v. Texas, 596 S.W.2d 130, 124 (Tex.Crim.App. 1980). This is so because the State of Texas is not required to show a completed theft to establish the corpus delicti of robbery. Purser v. Texas, 902 S.W.2d 641, 647 (Tex.App.-El Paso 1995, pet. ref'd); Jefferson v. Texas, 144 S.W.3d 612, 613-14 (Tex.App.-Amarillo 2004, no pet.).

The affirmance by the Court of Appeals is contra to its own opinion in United States v. Garrett, 24 F.4th 485 (5th Cir. 1997). In Garrett the Court of Appeals for the Fifth Circuit concluded that the Texas Robbery statute is divisible. Garrett concluded that the Texas law provides for two separate criminal offenses. One is if the robbery causes bodily injury; the other, robbery by threat. Id. at 490. Missing, though, is a recognition that robbery can result from a reckless mens rea.

In Petitioner's case, the ACCA should not apply for the reason that the 1987 conviction fails as a predicate. In Case No. CRA-14,210, Texas v. Jesse Lopez, Petitioner pleaded guilty to robbery per a plea agreement. The judgment in CRA-14,210 is signed December 02, 1987. Petitioner and the State of Texas agreed to a 12-year sentence in the Texas Department of Corrections. The 1987 judgment is silent as to a "victim," monetary loss and deadly weapon. The 1987, importantly, also does not have a deadly weapon finding. Therefore, the 1987 criminal judgment cannot be a predicate for robbery causing bodily injury because there is not a victim. Nor, for that matter, the 1987 judgment cannot be a basis for robbery by threat.

A reasonable conclusion is the plea could have been predicated on reckless conduct. As such, that conclusion would place this case within the Borden decision.

The burden of proof to establish a sentencing enhancement is on the government. In this specific case, the Government failed to meet that burden. As such, the District Court acted unreasonably by rendering a sentence under the Armed Career Criminal Act. Williams v. United States, 503 U.S. 193(1992). Under the facts of this case the District Court and the Court of Appeals violated Petitioner's substantive due process. Accord Staples v. United States, 511 U.S. 600, 615 (1994).

Petitioner requests the District Court sentence be vacated for the reasons stated above.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted and prays that the Criminal Judgment be vacated or reversed, and the case be remanded to the United States District Court for the Western District of Texas for resentencing without utilization of the Armed Career Criminal Act. Petitioner further requests such other relief to which he is justly entitled to receive either in law or through equity.

PRAYER FOR RELIEF

Petitioner, JESSE ALANIZ LOPEZ, requests that the Petition for Writ of Certiorari be granted for the reasons stated and that the conviction entered against him be vacated or reversed and this case remanded for re-sentencing, and such other relief to which Petitioner would be entitled to receive in law or in equity.

Respectfully submitted,

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432-570-4014

By: /s/ Steve Hershberger
Steve Hershberger
Texas State Bar # 09543950

Attorney for Petitioner

APPENDIX A

(Opinion of the United States Court of Appeals for the Fifth Circuit)

United States Court of Appeals for the Fifth Circuit

No. 23-50738
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
August 14, 2024

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

JESSE ALANIZ LOPEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:22-CR-175-1

Before JONES, GRAVES, and WILSON, *Circuit Judges.*

PER CURIAM:*

Jesse Alaniz Lopez appeals the 188-month sentence imposed following his conviction for possession of a firearm after a felony conviction. He argues that the district court erred in sentencing him under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1), because his prior

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 23-50738

conviction for robbery under Texas Penal Code § 29.02(a) did not qualify as a violent felony.

Alaniz Lopez specifically argues that the robbery offense could have been committed with recklessness, and the judgment does not clarify that the offense was committed through threats or causing bodily injury. The Government has filed an opposed motion for summary affirmance, or, in the alternative, an extension of time to file a brief, contending that the issue raised on appeal is foreclosed by *United States v. Garrett*, 24 F. 4th 485 (5th Cir. 2022).

We review de novo because Alaniz Lopez preserved his challenge to the characterization of his prior Texas robbery conviction as a violent felony in the district court. *See United States v. Flores*, 922 F.3d 681, 683 (5th Cir. 2019). Applying a modified categorical approach, the indictment and judgment reveal that Alaniz Lopez pleaded guilty to robbery-by-threat; thus, his prior Texas robbery conviction qualifies as a violent felony under the ACCA. *See Garrett*, 24 F. 4th at 491. Alaniz Lopez's challenge to his sentence is unavailing.

We DENY the Government's opposed motion for summary affirmance. We DENY the alternative motion for an extension of time to file a brief and DISPENSE with further briefing. The judgment is AFFIRMED.

APPENDIX B

(Criminal Judgment, United States District Court for the Western of Texas, Midland Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:22-CR-00175(1) DC
USM Number: 16994-510

JESSE ALANIZ LOPEZ

Alias(es):

AKA Tipsy Lopez; **AKA** Slick Lopez; **AKA** Nikki D Lopez;;
AKA Jesse Alanize Lopez; **AKA** Jesse Alaniz Lopez, Jr; **AKA** Jesse Alanez Lopez; **AKA** Jesse A Lopez; **AKA** Jesse Lopez;;
AKA Juan Arturo Lujan; **AKA** Juan Lujan; **AKA** Jesse Alaniz; **AKA** Nickie Dee Lopez; Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Jesse Alaniz Lopez, was represented by Steve Hershberger.

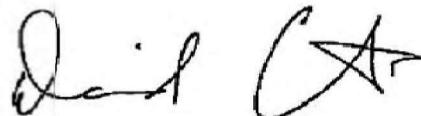
The defendant pled guilty to Count(s) 1, of the Indictment on July 18, 2023. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(e)(1)	Possession of a Firearm by a Convicted Felon	August 16, 2022	1

As pronounced on October 12, 2023, 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.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 13th day of October, 2023.



David Counts
United States District Judge

DEFENDANT: JESSE ALANIZ LOPEZ
CASE NUMBER: 7:22-CR-00175(1) DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **One Hundred Eighty-Eight (188) months. This term to run consecutive to any sentence imposed in Tamper/Fabricate Physical Evidence with intent to Impair pending in Martin County District Attorney's Office, Stanton, TX**, with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

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

That the defendant be incarcerated in a federal facility with a drop out yard.

That the defendant be incarcerated in a federal facility to accommodate the defendant's mental health needs.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of the Judgment.

United States Marshal

DEFENDANT: JESSE ALANIZ LOPEZ
CASE NUMBER: 7:22-CR-00175(1) DC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years**.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: JESSE ALANIZ LOPEZ
CASE NUMBER: 7:22-CR-00175(1) DC

CONDITIONS OF SUPERVISED RELEASE

(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.

DEFENDANT: JESSE ALANIZ LOPEZ
CASE NUMBER: 7:22-CR-00175(1) DC

- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- [12] If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: JESSE ALANIZ LOPEZ
 CASE NUMBER: 7:22-CR-00175(1) DC

CRIMINAL MONETARY PENALTIES/SCHEDEULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW722CR000175-001 to ensure proper application to your criminal monetary penalty.**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTAL:	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$100.00**.

Fine

The fine is waived because of the defendant's inability to pay.

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

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

* 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.