

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES OF AMERICA

OMAR JORGE VALLE ESTRADA
Petitioner,

v.

THE UNITED STATES OF AMERICA
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
FIFTH CIRCUIT COURT OF APPEALS**

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QUESTION PRESENTED FOR REVIEW

The circuits are split on whether a request for a lower sentence preserves for review a claim that the district court has not adequately explained a sentence under § 3553(a). Was the Fifth Circuit correct that no such issue was preserved?

LIST OF PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page of this petition.

CORPORATE DISCLOSURE STATEMENT

No corporations are involved in this case.

PROCEEDINGS IN FEDERAL COURT

The United States District Court for the Northern District of Texas, Dallas Division, entered a judgment of conviction and sentence against your petitioner in docket number 3:21-cr-00447-X-2, styled *United States v. Valle Estrada*, on May 3, 2023. Please see appendix to this Petition, Exhibit iii.

The United States Court of Appeals for the Fifth Circuit then affirmed the sentence in cause number 23-10497, styled *United States v. Valle Estrada*, on June 4, 2024. Appendix, Exhibit ii. This is the judgment sought to be reviewed. A motion for rehearing noting the omission from the court of appeals' opinion was denied without opinion on June 25, 2024. Appendix, Exhibit i.

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for the Fifth Circuit denying rehearing

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Court of Appeals for the Fifth Circuit
affirming the sentence (the judgment
sought to be reviewed)

Exhibit iii: Judgment from the United States District Court, Northern District of Texas, Dallas Division

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CITATION OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

Order of the Fifth Circuit Court of Appeals
denying rehearing (June 25, 2024)
(unreported) Appendix, Exhibit i

Opinion of the Fifth Circuit Court of Appeals
affirming the conviction and sentence
(June 4, 2024) (unpublished) Appendix, Exhibit ii

Judgment of the United States District Court,
Northern District of Texas, Dallas Division,
(May 3, 2023) (unreported) Appendix, Exhibit iii

JURISDICTION

1. On June 4, 2024, the United States Court of Appeals for the Fifth Circuit affirmed the conviction and sentence (Appendix, Exhibit ii). This unpublished opinion is the judgment sought to be reviewed here. On June 13, 2024, your petitioner filed a motion for rehearing, which was denied without opinion on June 25, 2024 (Exhibit ii).

2. No motion for extension of time was necessary.

3. No reliance on Rule 12.5 is made.

6. The Court is empowered to review cases via “writ of certiorari granted upon the petition of any party to any civil or criminal case.” 28 U.S.C.A § 1254(1) (West 2023).

THE STATUTORY PROVISION INVOLVED

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

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant...

18 U.S.C.A. § 3553(a) (West 2023).

STATEMENT OF THE CASE

Your petitioner pled not guilty to a count of Conspiracy to Possess with Intent to Distribute a Schedule II Controlled Substance and a count of Possession with Intent to Distribute that substance. After a jury trial on the merits, the district court sentenced him to 360 months' imprisonment and five years of supervised release.

Your petitioner appealed to the Fifth Circuit Court of Appeals contending that (a) the district court did not demonstrate it had considered 240 months sufficiently to permit meaningful appellate review, (b) the difference between the sentence of 120 to 144 months the Government offered as a plea agreement and the 360-month term assessed entailed the sort of trial penalty the district court tacitly approved before trial, and (c) even considering withdrawal of lenience and matters arising from trial unfavorable to the defendant, a Government argument entailed a manifest miscarriage of justice by endorsing a sentence of two-and-a-half to three times the sentence the Government offered before trial as a supposedly just plea bargain. The Fifth Circuit rejected each of these claims, the first on the ground that your petitioner's trial attorney had not properly preserved the issue.

REASON FOR ALLOWANCE OF THE WRIT

The Fifth Circuit's "has entered a decision in conflict with the decision of" two other "United States court of appeals on the same important matter." Certiorari is appropriate. Sup.Ct.R. 10(a).

Under 18 U.S.C.A. § 3553(a) (West 2023), a trial court must “impose a sentence sufficient, but not greater than necessary” to, among other things, “reflect *the seriousness of the offense*, to promote respect for the law, and to *provide just punishment* for the offense,” to “afford adequate deterrence to criminal conduct,” and to “protect the public from further crimes of the defendant.” *Id.* at (a)(1-2) (emphases added). The trial court must also consider “the sentencing range established for” “the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines – issued by the Sentencing Commission...” *Id.* at (a)(4). And, of course, the guidelines are advisory, not mandatory. *United States v. Booker*, 543 U.S. 220, 245, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

Here your petitioner’s trial counsel urged at sentencing that “30 years’ *punishment is way too excessive* when originally” the Government was “going to let this go for a third of that,” (ROA 1517) (emphasis added), and that your petitioner is “being punished for” insisting on his Sixth Amendment right to trial.” (ROA 1518). Counsel asserted that 240 months – “double of what the Government was originally offering” – would be sufficiently serious. (ROA 1518).

Ultimately the district court sentenced your petitioner to 360 months' imprisonment, (ROA 1522), stating it had fashioned this length of time, first, by "looking at a downward departure under 4C1.1, as if Congress had adopted that at this point in time," which the court explained as "a modified range after I applied a variance under 4C1.1." (ROA 1522, 1526). The court noted that its justification was "three factors in 18 U.S.C. § 3553(a)": the defendant's history and characteristics; the nature and circumstances of the offense; and "promotion of respect for the law and affording adequate deference to criminal conduct." (ROA 1526-7). The district court believed your petitioner "obstructed justice with" a prior false statement and false testimony regarding the proffer agreement. (ROA 1527). But the district court never alluded to or hinted in any way, either orally or in the Statement of Reasons attached to the judgment, (ROA 371-2), that it had considered and rejected the argument for a downward departure to a maximum of 240 months – which would partly remove the evident trial penalty. After passing sentence the district court asked defense counsel, "Is there anything from my justification at odds with my sentence?" Counsel replied, "No, your Honor." (ROA 1528).

In ruling on your petitioner’s claim that the district court did not consider a sentence of only 240 months, the Fifth Circuit held that “In our circuit, objections to ‘the substance of the sentence’ do not preserve objections to ‘the manner in which it was explained,’” citing *United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). (Opinion, p. 2).

This conclusion conflicts with the holdings of at least two other Circuits; the Fourth Circuit has held that an argument “made under § 3553(a) for a sentence different than the one that is eventually imposed” is “sufficient to preserve claims that the district court erred in not adequately explaining its rejection of the sentencing arguments.” *United States v. Boulware*, 604 F.3d 832, 838 (4th Cir. 2010). And the Third Circuit has similarly ruled that:

An objection to [an inadequate explanation] will be preserved if, during sentencing proceedings, the defendant properly raised a meritorious factual or legal issue relating to one or more of the factors enumerated in 18 U.S.C. § 3553(a).

Id., quoting *United States v. Grier*, 475 F.3d 566, 571, n. 11 (3rd Cir. 2004) (brackets in original). This issue is important, since many defendants appeal their sentences and their counsel must know when to object to preserve error.

PRAYER

Your petitioner Omar Jorge Valle Estrada therefore prays, on this the 8th day of September, 2024, that the Court grant certiorari and, on hearing the case, reverse and remand the cause to the United States Court of Appeals for the Fifth Circuit to address your petitioner's first issue on its merits.

Respectfully submitted,

/s/ John Bennett
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Texas State Bar No. 00785691
Attorney for the Petitioner

WORD COUNT

The undersigned hereby certifies that this entire Petition contains 1,756 words.

/s/ *John Bennett*
John Bennett

PROOF OF SERVICE

This is to certify that a true and correct copy of the above Petition for Writ of Certiorari was served by email on both Amy Mitchell, Esq., Assistant United States Attorney, at amy.mitchell@usdoj.gov, and on Brian McKay, Esq., Assistant United States Attorney, at brian.mckay@usdoj.gov, on September 11, 2024.

/s/ *John Bennett*
John Bennett

United States Court of Appeals for the Fifth Circuit

No. 23-10497

United States Court of Appeals

Fifth Circuit

FILED

June 25, 2024

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

OMAR JORGE VALLE ESTRADA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-447-2

ON PETITION FOR REHEARING

Before SMITH, WIENER, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

EXHIBIT I

United States Court of Appeals for the Fifth Circuit

No. 23-10497

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OMAR JORGE VALLE ESTRADA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-447-2

Before SMITH, WIENER, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Omar Jorge Valle Estrada appeals his 360-month sentence following a jury-trial conviction for one count of conspiracy to possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine and one count of possession with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine.

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

I.

First, Estrada contends that the district court imposed a procedurally unreasonable sentence by failing to explain its reasons adequately. But Estrada objected in the district court only to the length of the sentence and the imposition of a so-called “trial penalty.” In our circuit, objections to “the substance of the sentence” do not preserve objections to “the manner in which it was explained.” *United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). So, his claim that the district court failed to explain its reasons is reviewed for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

To prevail on plain error review, Estrada must identify (1) an error (2) that is clear or obvious, rather than subject to reasonable dispute, and (3) that affects his substantial rights. *See id.* If he satisfies those requirements, we may, in our discretion, remedy the error if the error “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.* (internal quotation marks and citation omitted).

Even if we were to assume that the district court clearly or obviously erred, Estrada fails to show that any plain procedural error affected his substantial rights. *See Mondragon-Santiago*, 564 F.3d at 364–65. He fails to raise any contention, and the record provides no indication, that a more detailed explanation would have resulted in a lesser sentence. On this record, Estrada has failed to show plain error.

II.

Second, Estrada avers that the district court imposed a harsher sentence than it otherwise would have because he exercised his right to trial. He asserts that this trial penalty is evident when comparing his pre-trial sentencing exposure with his post-trial sentencing exposure. He preserved that claim, so our review is *de novo*. *See United States v. Gozes-Wagner*, 977 F.3d

323, 335 n.7 (5th Cir. 2020).

Estrada does not show, and the record does not reflect, that the district court made any explicit statements indicating that it was punishing him more severely because he invoked his right to trial. *See United States v. Gozes-Wagner*, 977 F.3d 323, 337 (5th Cir. 2020). Nor does he establish that he was similarly situated to a co-conspirator. *See id.* at 336–37. Instead, he avers that the disparity between his pre-trial sentencing exposure and his ultimate sentence shows that the district court imposed a trial penalty.

But Estrada’s post-trial position was not like his pre-trial position. During plea negotiations, it appears that Estrada’s sentencing exposure was based in part on his willingness to accept responsibility and his providing substantial assistance to the government. When sentencing him post-trial, the district court focused on his failure to accept responsibility and his obstruction of justice during the proceedings. Thus, despite his contentions otherwise, those factors explain adequately why Estrada received a harsher sentence post-trial than if he had accepted the plea offer.

On this record, Estrada has failed to show that the district court imposed an unconstitutional trial penalty at sentencing.

III.

Lastly, Estrada contends that the government engaged in prosecutorial vindictiveness by advocating a sentence that was substantially higher than the sentence endorsed during plea negotiations. Further, he avers that the government should have been estopped from requesting such a disparately longer sentence. Because Estrada did not raise contentions of judicial estoppel or prosecutorial vindictiveness in the district court, such claims are reviewed for plain error. *See United States v. Cluff*, 857 F.3d 292, 301 (5th Cir. 2017).

Estrada fails to establish that the government engaged in actual vindictiveness or that a presumption of vindictiveness should be applied to the government's actions in the district court proceedings. *See United States v. Saltzman*, 537 F.3d 353, 359 (5th Cir. 2008). Estrada fails to cite any case from this court holding that a realistic likelihood of vindictiveness may be demonstrated by the government offering a reduced sentence during plea negotiations and then advocating a within-guideline sentence following the defendant's exercise of his right to trial. Therefore, for purposes of plain-error review, Estrada has failed to demonstrate prosecutorial vindictiveness that is clear or obvious considering existing law. *See Puckett*, 556 U.S. at 135.

In as much as Estrada asserts that the government should have been judicially estopped at sentencing, his contention lacks merit. Judicial estoppel applies when "the estopped party's position [is] clearly inconsistent with its previous one" and "that party [has] convinced the court to accept that previous position." *Gabarick v. Laurin Mar. (Am.) Inc.*, 753 F.3d 550, 553 (5th Cir. 2014) (internal quotation marks and citation omitted).

Estrada fails to show that the government's endorsement of a sentence of 10 to 12 years of imprisonment during plea negotiations was clearly inconsistent with its request for a within-guidelines sentence of 360 to 365 months at sentencing, especially considering the change in circumstances between its endorsement of those different sentences. In short, he fails to show that the district court clearly or obviously erred in failing to estop the government at sentencing.

* * * *

For the reasons explained, the judgment is AFFIRMED.

EXHIBIT ii

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

§ JUDGMENT IN A CRIMINAL CASE

v.

§

§

§ Case Number: 3:21-CR-00447-X(2)

§ USM Number: 62855-509

§ David R Olivas/Brittany Marie Gomez

§ Defendant's Attorney

OMAR JORGE VALLE ESTRADA

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	One and Two of the Indictment, filed on September 21, 2021.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846 Conspiracy to Possess with Intent to Distribute a Schedule II Controlled Substance	08/29/2021	1
21 U.S.C. § 841(a)(1), 841(b)(1)(A)(viii) Possession of a Schedule II Controlled Substance with Intent to Distribute	08/29/2021	2

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

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

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

May 3, 2023

Date of Imposition of Judgment

Signature of Judge

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

May 10, 2023
Date

EXHIBIT III

23-10497.365

DEFENDANT: OMAR JORGE VALLE ESTRADA
CASE NUMBER: 3:21-CR-00447-X(2)

IMPRISONMENT

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

Three Hundred Sixty (360) months on count 1; and Three Hundred Sixty (360) months on count 2 to run concurrently with one another for an aggregated sentence of 360 months.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be committed to the most appropriate facility closest to the Mexican Border; that the defendant participate in educational programs; that the defendant participate in English as a second language programs; and that the defendant get medical attention for his broken foot at the designated institution.

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

EXHIBIT III

23-10497.366

DEFENDANT: OMAR JORGE VALLE ESTRADA
CASE NUMBER: 3:21-CR-00447-X(2)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **five (5) years per count, to run concurrently with one another.**

MANDATORY CONDITIONS

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

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

EXHIBIT III

23-10497.367

DEFENDANT: OMAR JORGE VALLE ESTRADA
 CASE NUMBER: 3:21-CR-00447-X(2)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

EXHIBIT iii

DEFENDANT: OMAR JORGE VALLE ESTRADA
CASE NUMBER: 3:21-CR-00447-X(2)

SPECIAL CONDITIONS OF SUPERVISION

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported upon release from imprisonment, the defendant shall comply with the standard conditions contained in this Judgment and all comply with the mandatory and special conditions stated herein.

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

EXHIBIT iii

23-10497.369

DEFENDANT: OMAR JORGE VALLE ESTRADA
 CASE NUMBER: 3:21-CR-00447-X(2)

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$200.00	\$0.00	\$0.00	\$0.00	

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution
 the interest requirement for the fine restitution is modified as follows:

* 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.

EXHIBIT iii

DEFENDANT: OMAR JORGE VALLE ESTRADA
 CASE NUMBER: 3:21-CR-00447-X(2)

SCHEDULE OF PAYMENTS

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

- A Lump sum payments of \$200.00 due immediately, balance due
 - not later than _____, or
 - in accordance 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 20 (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 2, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

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

- Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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