APPENDIX A

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2908 and 23-2500

UNITED STATES OF AMERICA

v.

VICTOR CLAYTON, a/k/a Manny,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal No. 2-18-cr-00524-001)
District Judge: Honorable R. Barclay Surrick

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on April 12, 2024

Before: CHAGARES, *Chief Judge,* PORTER, and SCIRICA, *Circuit Judges.*

(Filed: October 2, 2024)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

SCIRICA, *Circuit Judge.*

Appellant Victor Clayton pleaded guilty to two counts of sex trafficking and/or attempted sex trafficking of a minor in violation of 18 U.S.C. §§ 1591 and 1594(a). He now argues (1) the District Court erred in denying his motion to dismiss the indictment because Congress lacks the authority to regulate purely domestic conduct through 18 U.S.C. § 1591; (2) the District Court erred in denying his motion to withdraw his guilty plea because the plea agreement included an unenforceable term; and (3) the District Court had no basis to award restitution. For the following reasons, we will affirm.

I.[1]

Clayton prostituted two minors—Minor 1 (age 16) and Minor 2 (age 15)—in February and March of 2018. Specifically, Clayton took photographs of Minor 1 and posted them on Backpage.com, and harbored and maintained her in various hotels in Philadelphia to engage in commercial sex acts. Then, on March 12, 2018, Clayton drove with Minor 1 to Linwood, Pennsylvania, where he picked up Minor 2 and drove both girls back to his mother's house in Philadelphia. The next day, he drove Minors 1 and 2 from Philadelphia to Dunn, North Carolina, where he rented a hotel room with the intent of causing both minors to engage in commercial sex acts. On March 15, 2018, Minor 2 contacted family members about her situation and gave them her location. Her family members contacted the police, who arrived at the hotel and arrested Clayton.

[1] Because we write principally for the parties, who are familiar with the factual context and legal history of this case, we will set forth only those facts necessary to our analysis.

On November 15, 2018, a federal grand jury returned an indictment charging Clayton with two counts of sex trafficking and attempted sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591 and 1594(a). Clayton moved to dismiss the indictment on November 19, 2020, which the District Court denied on November 9, 2021. Clayton's trial began on November 15, 2021, but the next day, he chose to plead guilty and enter into a plea agreement with the Government. The plea agreement provided, inter alia, that "[i]f the defendant violates supervised release by committing one or more specified child exploitation offenses, the court will revoke supervised release and require the defendant to serve an additional term of imprisonment of at least 5 years pursuant to 18 U.S.C. § 3583(k)." App. 235. At the plea hearing, the District Court recited the maximum penalty of life in prison and the 10-year mandatory minimum per count, a mandatory minimum of five years supervised release up to a lifetime of supervised release, and that Clayton "could" be reincarcerated for up to five years on each count if he violated supervised release. App. 276. Clayton responded that he understood these penalties. He then pleaded guilty to both counts in the indictment.

On December 23, 2021, Clayton moved to withdraw his guilty plea. The District Court denied his motion in a memorandum and order on July 8, 2022, and denied Clayton's subsequent motion for reconsideration on September 15, 2022. The District Court sentenced Clayton to fifteen years' imprisonment, ten years of supervised release, and a $200 special assessment, as stipulated to in the plea agreement. The District Court subsequently amended its judgment to order restitution in the amount of $3,600.

II.[2]

Clayton first challenges the District Court's denial of his motion to dismiss the indictment. He argues "Congress does not have the power, nor did it intend in its enactment of . . . 18 U.S.C §1591(a)(1) to infringe on wholly domestic criminal activity." Appellant Br. 9. But his argument is unavailing. Section 1591 was enacted as part of the Trafficking Victims Protection Act of 2000 ("TVPA"), Pub. L. No. 106–386, 114 Stat. 1464 (codified as amended in scattered titles of the U.S.C.)—a comprehensive regulatory scheme intended to "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." 22 U.S.C. § 7101(a). In passing the statute, "Congress found that trafficking of persons has an aggregate economic impact on interstate and foreign commerce." *United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007) (citing 22 U.S.C. § 7101(b)(12)). And "case law firmly establishes Congress'[s] power to regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (internal quotation marks omitted). Thus, section 1591 is a valid exercise of Congress's commerce clause power, and the statute is constitutional as applied to Clayton's domestic

[2] The District Court had jurisdiction pursuant to 18 U.S.C. § 3231. We have appellate jurisdiction under 28 U.S.C. §1291. We review challenges to the constitutionality of a criminal statute de novo. *See United States v. Hoffert*, 949 F.3d 782, 787 (3d Cir. 2020). We review a District Court's ruling on a motion to withdraw a guilty plea for abuse of discretion. *See United States v. Martinez*, 785 F.2d 111, 113 (3d Cir. 1986). And finally, "we exercise plenary review over whether an award of restitution is permitted under law." *United States v. Crandon*, 173 F.3d 122, 125 (3d Cir. 1999).

conduct, which included transporting minors across state lines.

Clayton's reliance on *Bond v. United States*, 572 U.S. 844 (2014) is also misplaced. In *Bond*, a statute criminalizing the use of chemical weapons, enacted pursuant to an international treaty against chemical warfare, did not cover the defendant's conduct of spreading a chemical substance outside another individual's house because the statute contained no "clear indication that Congress meant to reach purely local crimes." 572 U.S. at 860. In contrast, section 1591 contains "clear indication[s]" that Congress intended it to cover Clayton's alleged conduct. *Id.* For example, Congress included the language "affecting interstate or foreign commerce" in section 1591. 18 U.S.C §1591(a)(1). This "indicates Congress'[s] intent to regulate to the outer limits of its authority under the Commerce Clause." *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001). Moreover, "the congressional findings incorporated into the TVPA clearly demonstrate Congress's intent to enact a criminal statute addressing sex trafficking at all levels of activity." *United States v. Walls*, 784 F.3d 543, 547 (9th Cir. 2015); *see also* 22 U.S.C. § 7101(b) (12), (14) (providing the findings supporting the statute and noting that "[t]rafficking in persons substantially affects interstate and foreign commerce," and "[n]o comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme"). And finally, we note that Clayton's conduct involved not just purely local activity, but also interstate activity—transporting Minors 1 and 2 from Pennsylvania to North Carolina to engage in commercial sex acts. Accordingly, the District Court properly denied Clayton's motion to dismiss.

Clayton next contends the District Court erred in denying his motion to withdraw

his guilty plea because the plea agreement stated that "[i]f the defendant violates supervised release by committing one or more specified child exploitation offenses, the court will revoke supervised release and require the defendant to serve an additional term of imprisonment of at least 5 years pursuant to 18 U.S.C. § 3583(k)." App. 235. As the Government concedes, that provision is unenforceable as application of section 3583(k)'s five-year mandatory minimum based on a sentencing judge's factual findings made by a preponderance of the evidence violates due process and the right to trial by jury. *See United States v. Haymond*, 588 U.S. 634, 646 (2019) (plurality opinion). But any error stemming from the Government's inclusion of this unenforceable term in the plea agreement was harmless.

First, the District Court correctly advised Clayton at the plea hearing that Clayton "could" be reincarcerated "for five years on each count" if he violated supervised release, not that such term of incarceration was in any way mandatory. App. 276. This remains true post-*Haymond*. Second, the mistake at issue did not concern Clayton's direct sentencing exposure, but rather the possible consequences for any hypothetical future violations of supervised release. "We are hard pressed to imagine how [Clayton's] decision to plead turned on a complete understanding of the potential for further imprisonment if he violated supervised release," *United States v. Warren*, 338 F.3d 258, 259 n.1 (3d Cir. 2003), especially since even if he did violate supervised release, the mandatory minimum would never be imposed. Third, we are satisfied that any "error is unlikely to have affected [Clayton's] willingness to waive his or her rights and enter a guilty plea." *United States v. Powell*, 269 F.3d 175, 184 (3d Cir. 2001). Clayton claims only that "the knowledge of

these potentially onerous supervised release consequences *may* have [played] a role in accepting the plea with more favorable sentencing terms." Appellant Br. 21 (emphasis added). But statements of what a defendant "*might* have done, in the absence of at least some convincing affirmative assertions as to what he *would* have done, are insufficient to demonstrate any actual effect on his substantial rights." *United States v. Dixon*, 308 F.3d 229, 235 (3d Cir. 2002) (emphasis in original).

Finally, we reject Clayton's challenge to the District Court's amended judgment awarding restitution. Clayton argues the restitution does not flow from the offense to which he pleaded guilty because the restitution "was awarded for relevant conduct related to the *actual* sex trafficking of Minor 1," and that he only pleaded guilty to "*attempted* sex trafficking." Appellant Supp. Br. 7 (emphasis in original). But the TVPA calls for mandatory restitution "for any offense under this chapter," 18 U.S.C. § 1593(a), and another section of the act states that "[w]hoever attempts to violate section . . . 1591 shall be punishable in the same manner as a completed violation of that section," *id.* § 1594(a). Thus, restitution is also mandatory for any attempted offenses. In this case, Clayton's attempt crime with respect to Minor 1 involved posting photographs of her online, transporting her across state lines, and harboring and maintaining her in various hotels to engage in commercial sex acts. The Government demonstrated that Clayton collected at least $3,600 as a direct result of this conduct. Accordingly, the District Court was required to order restitution in that amount under the TVPA.

III.

For the foregoing reasons, we will affirm.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2908 and 23-2500

UNITED STATES OF AMERICA

v.

VICTOR CLAYTON, a/k/a Manny,
Appellant

On Appeal from the United States District Court
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District Judge: Honorable R. Barclay Surrick

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on April 12, 2024

Before: CHAGARES, *Chief Judge,* PORTER, and SCIRICA, *Circuit Judges.*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on April 12, 2024. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered September 29, 2022 and the amended judgment entered August 7, 2023, be, and

the same are hereby AFFIRMED. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: October 2, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 18-524
VICTOR CLAYTON	:	
	:	

ORDER

AND NOW, this 9th day of November 2021, upon consideration of the Defendant Victor Clayton's Motion to Dismiss Counts One and Two of the Indictment for Failure to State an Offense (ECF Nos. 90), the Government's Response thereto (ECF No. 91), and Defendant's Reply (ECF No. 95), it is **ORDERED** that the Motion is **DENIED.**[1]

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
R. BARCLAY SURRICK, J.

[1] Defendant raises two arguments in support of his request to dismiss both Counts of the Indictment. First, he contends that that the Indictment should be dismissed because the Trafficking Victims Protection Act ("TVPA") and more specifically, 18 U.S.C. § 1591 of the TVPA—the section under which he was charged—only criminalizes international sex trafficking and not interstate sex trafficking. Second, he contends that Congress lacked the authority to pass § 1591 of the TVPA.

With regard to Defendant's first argument that § 1591 only criminalizes international sex trafficking, the argument is directly contradicted by the statutory language. Section 1591(a) makes it a crime to "knowingly . . . ***in or affecting interstate or foreign commerce*** . . . recruit[], entice[], harbor[], transport[], provide[], obtain[], advertise[], maintain[], patronize[], or solicit[] by any means a person . . . knowing. . . that the person has not obtained the age of 18 years and will be caused to engage in a commercial sex act." 18 U.S.C. § 1529(a)(1) (emphasis added). The statute makes it explicit that sex trafficking affecting both interstate and foreign commerce are punishable. The intent to criminalize domestic sex trafficking is also reflected in the stated purpose of the TVPA, which is found at 22 USC § 7101. There, it states Congress's purposes

and findings of the TVPA, one such finding being that "[t]rafficking in persons substantially affects interstate and foreign commerce." 22 U.S.C. § 7101(b)(12). Moreover, the Third Circuit has on many occasions upheld convictions for sex trafficking under Section 1591 where the convicted conduct was purely domestic and not international. *See, e.g.*, *United States v. Doe*, 785 F. App'x 57, 59 (3d Cir. 2019); *United States v. Senat*, 698 F. App'x 701, 703 (3d Cir. 2017).

Defendant's second argument—that Congress did not have the authority to pass § 1591 and regulate interstate sex trafficking—is also unavailing. Defendant contends that Congress lacked the power under the Constitution's Necessary and Proper Clause to expand the scope of an international treaty dealing with sex trafficking—the United Nations Convention Against Transnational Organized Crime and the Protocols. In particular, Defendant contends that the international treaty demands that state parties criminalize certain offenses that are transnational in nature, and that § 1591(a) goes well beyond this in punishing purely domestic conduct. Not surprisingly, Defendant has offered no cases to support his argument that § 1591(a) is unconstitutional. This is because Congress's authority to enact the TVPA does not derive from an international treaty, but instead from the Commerce Clause of the Constitution.

Under the Commerce Clause, Congress has the "power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005). Congress has concluded that trafficking of persons "substantially affects interstate and foreign commerce." 22 U.S.C. § 7101(b)(12); *see also United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007) ("Congress found that trafficking of persons has an aggregate economic impact on interstate and foreign commerce . . . and we cannot say that this finding is irrational.").

Every court that has considered whether the TVPA and specifically whether § 1591's prohibition of interstate (as opposed to international) trafficking is a valid exercise of Congress's authority under the Commerce Clause, has concluded that it is. *See, e.g.*, *United States v. Walls*, 784 F.3d 543, 548-49 (9th Cir. 2015) (concluding that the Commerce Clause gave Congress authority to regulate human trafficking and enact the TVPA); *United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007) (affirming constitutionality of § 1591 and the TVPA as applied to the defendant's human trafficking, which occurred solely in Florida); *United States v. Campbell*, 111 F. Supp. 3d 340, 346 (W.D.N.Y. 2015) (concluding that § 1591 was a valid exercise of the Congress's power under the Commerce Clause and that the defendant's conspiracy to commit sex trafficking, which occurred solely in New York, had a substantial impact on interstate commerce); *United States v. Paris*, No. 06-64, 2007 WL 3124724, at *8 (D. Conn. Oct. 24, 2007) (rejecting argument that Congress lacked power to regulate purely national sex trafficking).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 18-524
VICTOR CLAYTON	:	

MEMORANDUM

SURRICK, J. **JULY 8, 2022**

Presently before the Court is Defendant Victor Clayton's *pro se* Motion to Withdraw the Guilty Plea Pursuant to Rule 11(d)(2)(B). (ECF No. 181.) For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

In February and March of 2018, Defendant sex trafficked Minor 1, aged 16, and Minor 2, aged 15. (Tr. of Guilty Plea Hr'g at 15, ECF No. 182.) Defendant took photos of Minor 1 that he posted in Backpage advertisements about her, and then transported her to various hotels around Philadelphia, knowing that she would be caused to engage in commercial sex acts. (*Id.* at 15-16.) On March 12, 2018, Defendant drove Minors 1 and 2 from Pennsylvania to North Carolina. Minor 1 spoke with Minor 2 about engaging in commercial sex acts and how Minor 2 would be part of the "team." (*Id.* at 16.) Defendant transported the minors to a room that he rented at the Baymont Inn and Suites in Dunn, North Carolina, knowing that both minors would be caused to engage in commercial sex acts there. (*Id.* at 17.)

On July 24, 2019, a grand jury returned a two-count Indictment charging Clayton with knowingly recruiting, enticing, harboring, transporting, providing, obtaining, and maintaining

Minor 1 and Minor 2, and attempting to do so, knowingly and in reckless disregard for the fact that Minor 1 and Minor 2 were under the age of 18 and would be caused to engage in commercial sex acts, in violation of 18 U.S.C. §§ 1591(a)(1) and 1594(a). (ECF No. 1.)

Throughout his pretrial proceedings and trial, Defendant repeatedly changed his mind about whether he wanted counsel to represent him. On May 22, 2019, Defendant filed a *pro se* motion to remove his court-appointed attorney, Luis Ortiz, Esquire. (ECF No. 21.) On June 5, 2019, Defendant and counsel then jointly filed a motion to withdraw his motion to remove counsel, (ECF No. 22), which the Court granted the following day. (ECF No. 23.) On July 19, 2019, Defendant filed a motion to proceed *pro se*. (ECF No. 28.) After a hearing and colloquy on August 26, 2019, the Court granted Defendant's request to proceed *pro se* with Mr. Ortiz as standby counsel. Later that afternoon, the Government filed a Motion for Reconsideration, requesting that the Court ask Defendant additional questions as part of his colloquy to determine if his waiver of counsel was knowing and intelligent. On October 14, 2019, Defendant filed a motion to appoint Caroline Goldner Cinquanto, Esquire, in addition to standby counsel Mr. Ortiz. (ECF No. 43.) Pursuant to Defendant's request and following a hearing on October 15, 2019, the Court appointed Ms. Cinquanto as standby counsel. (ECF No. 44, 45.) On March 10, 2021, Defendant requested that the Court remove standby counsel. (ECF No. 96.) Following another hearing and colloquy on May 24, 2021, the Court directed both standby counsel to continue to assist Defendant. (ECF No. 104.) On October 18, 2021, Defendant again requested to remove standby counsel. (ECF No. 130.) At a status conference held on November 8, 2021, one week before trial, Defendant withdrew his request to remove standby counsel. (ECF No. 143.) Defendant asserted that he wished to proceed to trial *pro se* with standby counsel. (*Id.*)

At trial, on November 16, 2021, Defendant proceeded *pro se* and made an opening statement to which the Court sustained many appropriate objections. Shortly after, Defendant conferred with standby counsel and requested that the Court permit both Mr. Ortiz and Ms. Cinquanto to represent him. (11/16/21, Tr. Trans., 41, ECF No. 184.) After speaking with Defendant—who informed the Court that having counsel represent him would be in his best interest—the Court granted this request. (*Id.* at 41-42.) Defendant did not ask to proceed by way of hybrid representation. Following the testimony of two witnesses, the Court recessed. During the recess, counsel informed the Court that Defendant wished to enter a plea of guilty. Among other provisions, the guilty plea contained the following language about which Defendant now complains:

> The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to five years per count of conviction. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release. *If the defendant violates supervised release by committing one or more specified child exploitation offenses, the court will revoke supervised release and require the defendant to serve an additional term of imprisonment of at least 5 years pursuant to 18 U.S.C. § 3583(k).*

(Plea Document, 3, ECF No. 177) (emphasis added). Following a thorough colloquy, Defendant entered a plea of guilty to two counts each of sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a)(1) and 1594(a). The plea agreement stipulated that Defendant would be sentenced to, among other things, fifteen years in prison followed by ten years of supervised release. (*Id.* at 1.) The Court deferred acceptance of the plea until after review of the pre-sentence report and dismissed the jury.

Defendant filed the instant *pro se* Motion, requesting that we permit him to withdraw his guilty plea. This Motion will be denied.

II. LEGAL STANDARD

The decision to permit hybrid representation—where a defendant acts as co-counsel to his attorney—is entirely within a district court's discretion. *United States v. Moro*, 505 F. App'x 113, 115 (3d Cir. 2012). Courts have no obligation to consider a defendant's *pro se* filings when the defendant is represented by counsel. *See McKaskle v. Wiggins,* 465 U.S. 168, 183 (1984); *United States v. D'Amario*, 256 F. App'x 569, 571 (3d Cir. 2007). This is because "[a] defendant does not have a constitutional right to choreograph special appearances by counsel." *Id.*

"Once a court accepts a defendant's guilty plea, the defendant is not entitled to withdraw that plea simply at his whim." *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003). If a defendant moves to withdraw his or her guilty plea before the Court imposes a sentence, the Court must permit withdrawal if the defendant shows a "fair and just reason." Fed. R. Crim. P. 11(d)(2)(B). When evaluating a defendant's motion to withdraw, courts consider: (1) whether the defendant asserts his or her innocence; (2) whether the withdrawal would prejudice the Government; and (3) the strength of the defendant's reason to withdraw the plea. *United States v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001). "[A] shift in defense tactics, a change of mind, or the fear of punishment are not adequate reasons to impose on the government the expense, difficulty, and risk of trying a defendant who has already acknowledged his guilt by pleading guilty." *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003).

III. DISCUSSION

Defendant asserts numerous errors, primarily errors of counsel, that he claims should allow him to withdraw his guilty plea. His request to withdraw his guilty plea will be denied. As an initial matter, the Court will deny Defendant's Motion because he has improperly

proceeded by way of hybrid representation. Even if Defendant had filed his Motion properly through counsel, it would still be denied. Defendant's supposed factual assertion of innocence is merely an irrelevant complaint about the quality of the testimony offered at the grand jury proceedings, and his claim of legal innocence is based on a discredited theory that he repeatedly raised throughout the pre-trial stage. Moreover, the Government would be prejudiced if the Defendant were able to enter a plea of guilty mid-trial, when the Government was prepared to present its case, and later change his mind. Finally, Defendant's various complaints about counsel's performance are belied by the record. Because Defendant has not shown that there is any fair and just reason to permit withdrawal of his guilty plea, his Motion will be denied.

A. Defendant may not file his Motion *pro se* because he is represented by counsel.

While "[a] defendant does not have a constitutional right to choreograph special appearances by counsel," *McKaskle,* 465 U.S. at 183, the entirety of Defendant's pre-trial and trial proceedings can be described as just that. During the pretrial stage, he repeatedly waffled between proceeding *pro se* and being represented; at trial, he demanded to proceed *pro se*; after his opening statement, he insisted on a special appearance by counsel to cross-examine two witnesses and negotiate his guilty plea; he now files this motion *pro se*, asserting ineffective assistance, despite being currently represented by counsel. Defendant's indecision has resulted in numerous hearings, colloquies, and filings on the issue of his representation alone. Defendant's plethora of meritless pre-trial motions consumed and wasted the Court's time. We will not entertain yet another one of Defendant's meritless attempts to delay or distract from the litigation at hand. Defendant's request to withdraw his plea will be denied because he is attempting hybrid representation, and we have not granted him leave to do so.

B. Even if Defendant had properly filed his Motion, he would not be entitled to withdraw his guilty plea.

1. Defendant failed to adequately assert his innocence.

Defendant asserts that he is factually innocent because he claims that the testimony given at his grand jury hearing was weak. He also asserts that he is legally innocent because, according to him, the Trafficking Victims Protection Act (TVPA) exceeds Congress's constitutional powers and only criminalizes international sex trafficking, not interstate sex trafficking. Defendant is simply wrong.

In order to assert innocence for the purpose of withdrawing a guilty plea, a defendant's assertion must "be buttressed by facts in the record that support a claimed defense." *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003) (internal citation omitted). "Bald assertions of innocence are insufficient to permit a defendant to withdraw his guilty plea." *Id.* In addition to factual innocence, legal innocence—which occurs when "the government would be unable to prove its case against [the defendant] beyond a reasonable doubt"—can also support a finding of innocence for the purpose of withdrawing a plea of guilty. *United States v. James*, 928 F.3d 247, 254 (3d Cir. 2019).

Defendant can make no showing of factual or legal innocence. Defendant's complaints about the strength of the Government's evidence presented to the grand jury do not amount to factual innocence. The evidence that the Government proffered during his guilty plea colloquy, as summarized in Section I, is more than sufficient to convict him of these charges. And Defendant admitted that all of those facts were true. (Tr. of Guilty Plea Hr'g, 18.) Defendant's opinion about the quality of testimony offered at the grand jury hearing is irrelevant to his guilt or innocence. Defendant has made no more than a bald claim of innocence. Obviously, that is insufficient. *Jones*, 336 F.3d at 252.

Moreover, Defendant's claim of legal innocence regarding the TVPA is wrong. Defendant asserted throughout the pretrial proceedings and even up until the day of trial that he could not be charged with sex trafficking because he alleged that that Congress lacked the authority to pass the TVPA and the TVPA only criminalizes international sex trafficking, not interstate sex trafficking. This Court rejected these baseless claims numerous times and issued an order detailing its rejection of his claims, reasoning:

> With regard to Defendant's first argument that § 1591 only criminalizes international sex trafficking, the argument is directly contradicted by the statutory language. Section 1591(a) makes it a crime to "knowingly . . . *in or affecting interstate or foreign commerce* . . . recruit[], entice[], harbor[], transport[], provide[], obtain[], advertise[], maintain[], patronize[], or solicit[] by any means a person . . . knowing. . . that the person has not obtained the age of 18 years and will be caused to engage in a commercial sex act." 18 U.S.C. § 1529(a)(1) (emphasis added). The statute makes it explicit that sex trafficking affecting both interstate and foreign commerce are punishable. The intent to criminalize domestic sex trafficking is also reflected in the stated purpose of the TVPA, which is found at 22 USC § 7101. There, it states Congress's purposes and findings of the TVPA, one such finding being that "[t]rafficking in persons substantially affects interstate and foreign commerce." 22 U.S.C. § 7101(b)(12). Moreover, the Third Circuit has on many occasions upheld convictions for sex trafficking under Section 1591 where the convicted conduct was purely domestic and not international. *See, e.g., United States v. Doe*, 785 F. App'x 57, 59 (3d Cir. 2019); *United States v. Senat*, 698 F. App'x 701, 703 (3d Cir. 2017).
>
> Defendant's second argument—that Congress did not have the authority to pass § 1591 and regulate interstate sex trafficking—is also unavailing. Defendant contends that Congress lacked the power under the Constitution's Necessary and Proper Clause to expand the scope of an international treaty dealing with sex trafficking—the United Nations Convention Against Transnational Organized Crime and the Protocols. In particular, Defendant contends that the international treaty demands that state parties criminalize certain offenses that are transnational in nature, and that § 1591(a) goes well beyond this in punishing purely domestic conduct. Not surprisingly, Defendant has offered no cases to support his argument that § 1591(a) is unconstitutional. This is because Congress's authority to enact the TVPA does not derive from an international treaty, but instead from the Commerce Clause of the Constitution.
>
> Under the Commerce Clause, Congress has the "power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005). Congress

> has concluded that trafficking of persons "substantially affects interstate and foreign commerce." 22 U.S.C. § 7101(b)(12); *see also United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007) ("Congress found that trafficking of persons has an aggregate economic impact on interstate and foreign commerce . . . and we cannot say that this finding is irrational.").
>
> Every court that has considered whether the TVPA and specifically whether § 1591's prohibition of interstate (as opposed to international) trafficking is a valid exercise of Congress's authority under the Commerce Clause, has concluded that it is. *See, e.g., United States v. Walls*, 784 F.3d 543, 548-49 (9th Cir. 2015) (concluding that the Commerce Clause gave Congress authority to regulate human trafficking and enact the TVPA); *United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007) (affirming constitutionality of § 1591 and the TVPA as applied to the defendant's human trafficking, which occurred solely in Florida); *United States v. Campbell*, 111 F. Supp. 3d 340, 346 (W.D.N.Y. 2015) (concluding that § 1591 was a valid exercise of the Congress's power under the Commerce Clause and that the defendant's conspiracy to commit sex trafficking, which occurred solely in New York, had a substantial impact on interstate commerce); *United States v. Paris*, No. 06-64, 2007 WL 3124724, at *8 (D. Conn. Oct. 24, 2007) (rejecting argument that Congress lacked power to regulate purely national sex trafficking).

(Order, ECF No. 154.) Defendant was also forbidden from making these incorrect arguments before the jury in his proposed opening statement slideshow presentation, as such arguments were not within its purview and would only serve to confuse the issues. Defendant's persistence in making a meritless claim will not satisfy the legal innocence standard. Defendant has failed to show that he is legally or factually innocent.

2. The Government would be prejudiced by Defendant's withdrawal.

Defendant also baselessly asserts that the Government would not be prejudiced if he were permitted to withdraw his guilty plea. However, where the Government is ready for—and in this case proceeds to—trial, prejudice is presumed. *United States v. Crowley*, 529 F.2d 1066, 1072 (3d Cir. 1976) (finding "[t]he existence of prejudice to the Government through defendant's entering the plea on the day of trial . . . when jurors, witnesses and court personnel had been assembled for the trial, and then making the request for withdrawal of the plea several days later . . ."); *United States v. McLaughlin*, 647 F. App'x 136, 142 n.4 (3d Cir. 2016) (observing that

"the [G]overnment would be prejudiced" where the defendant entered a guilty plea on the first day of trial and withdrawal of the plea would force the Government to "reassemble witnesses, court personnel and jurors, all of which had already been assembled once on the day McLaughlin pleaded guilty"); *United States v. Davis*, 106 F. App'x 788, 790 (3d Cir. 2004) ("it clear that the [G]overnment would suffer some degree of prejudice because Davis entered his plea on the day the trial was set to begin"). Here, the Government offered the testimony of two witnesses before Defendant entered his plea of guilty, including the testimony of a police officer who had traveled to Pennsylvania from North Carolina for trial. In addition, the Government would have been required to offer the testimony of the two victims of sex trafficking, who were minors at the time of the offenses. Defendant's choice to withdraw his guilty plea would prejudice the Government by greatly inconveniencing its out-of-state witnesses, its young victim-witnesses, and all the other witnesses expected to testify. Permitting Defendant to withdraw his plea would undoubtedly prejudice the Government.

3. No strong reason merits permitting Defendant to withdraw his guilty plea.

Finally, Defendant baselessly asserts that he did not knowingly and voluntarily enter his guilty plea. Defendant makes numerous complaints about counsel's performance, all of which are belied by the record. Defendant has not raised any viable reason why he should be permitted to withdraw his plea of guilty.

First, Defendant asserts that counsel incorrectly informed Defendant that the maximum allowable fine for his convictions was the minimum required by statute and never told Defendant which appellate rights he would forfeit following his plea. (Def.'s Mot., 3, 5). However, the Court correctly informed Defendant of the fines and his remaining appellate rights at the plea hearing. (Tr. of Guilty Plea Hr'g at 7-9.) Second, Defendant asserts that he was told he needed

to accept or reject the offer immediately, and that neither counsel were prepared for trial and had no defense. (Def.'s Mot., 3-4.) We do not doubt that the Government would not leave such a generous offer open for Defendant to take at his convenience after the jury had been empaneled. Moreover, even if Defendant were correct that counsel was unprepared, this would likely be a result of Defendant's actions; he repeatedly insisted that he would represent himself and then made a bizarre, incriminating opening statement that would have left any lawyer fumbling for a viable strategy. Third, Defendant complains that counsel incorrectly advised Defendant's family, who spoke with him prior to his plea, that the agreement was for ten years of imprisonment and would run concurrently to any violation of supervised release. (*Id.* at 4.) What Defendant's family believed is of no consequence. Defendant was correctly informed of the terms of his plea both in writing and orally, and he told the Court that the Government made him no promises outside of the written agreement. (Tr. of Guilty Plea Hr'g at 12.) Fourth, Defendant asserts that counsel failed to inform him that he could have requested a continuance or extended recess to consider the plea. (Def.'s Mot., 5.) The Court granted the Defendant additional time following the lunch recess to negotiate. Considering the fact that the trial had begun, a request for further time would not have been granted. Fifth, Defendant asserts that he did not admit to any wrongdoing following the plea colloquy. (Def.'s Mot., 7.) The transcript from the hearing shows that is patently false. (Tr. of Guilty Plea Hr'g at 18.)

In addition, Defendant asserts that, despite his sworn statement to the court that he was satisfied with counsel's performance, (*id.* at 9-10), Defendant had in fact lied to the Court that he was satisfied with counsel's performance "simply to move the process alon[g] because at that point it felt pointless to say no." (Def.'s Mot., 5). Defendant has proffered no evidence that could overcome the strong presumption that Defendant was telling the truth when he entered his

plea under oath before the Court. *See Blackledge v. Allison,* 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity."); *United States v. Thomas*, 165 F. App'x 138, 141 (3d Cir. 2006) (holding that a defendant's motion to withdraw his plea based on ineffectiveness was "undermined by his statements at his plea colloquy that he was satisfied to have his lawyer represent him").

Furthermore, Defendant complains that counsel failed to inform him that he could have proceeded *pro se* if he wished. (Def.'s Mot., 5.) His assumption is false. As described above, Defendant repeatedly changed his mind about whether to have counsel represent him, and he began litigating the trial *pro se* with standby counsel. The Court would not have entertained another request—the second during the jury trial alone—to change his representation status. Defendant's desire to continue to waffle about his representation status is not valid reason to withdraw his plea of guilty.

Finally, Defendant asserts a new argument in his reply brief, (ECF No. 190), that his sentence was illegal because his plea agreement contained a provision asserting that any violation of supervised release for committing certain child exploitation crimes would result in an additional minimum of five years in prison, pursuant to 18 U.S.C. § 3583(k) without a jury deciding the underlying facts. Defendant correctly states that Section 3583(k) was ruled unconstitutional in *United States v. Haymond*, 139 S. Ct. 2369 (2019), because the sentence would only be imposed upon a judicial factual finding, in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013).

This provision of the plea agreement, which incorrectly states the law, does not necessitate withdrawal. *Apprendi* held that "any fact [other than the fact of a prior conviction] that increases the penalty for a crime beyond the prescribed statutory maximum must be

submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. An *Apprendi* violation occurs only where there is improper judicial fact finding and a sentence that exceeds the original statutory maximum sentence. *See United States v. Williams*, 235 F.3d 858, 863 (3d Cir. 2000) ("*Apprendi* is not applicable to Williams' sentence, because the sentence actually imposed (seven years and one month) was well under the original statutory maximum of 20 years."). The Third Circuit observed that the *Apprendi* decision suggests that "a District Court's sentence that is under the statutory maximum cannot be constitutionally objectionable under *Apprendi*." *Id.*; *see United States v. Luciano*, 311 F.3d 146, 151 (2d Cir. 2002) ("Violation of *Apprendi* arises when the defendant is sentenced on the basis of a triggering fact not found by the jury to a sentence that exceeds the maximum that would have been applicable but for the triggering fact."); *United States v. Robinson*, 241 F.3d 115, 121 (1st Cir. 2001) ("theoretical exposure to a higher sentence, unaccompanied by the imposition of a sentence that in fact exceeds the otherwise-applicable statutory maximum, is of no consequence."). Defendant's alleged *Apprendi* violation is an entirely theoretical assertion of harm. Because he has not been sentenced as a result of judicial fact-finding, no *Apprendi* error occurred.[1]

[1] Moreover, even if the provision was in error, it was harmless because Defendant cannot show that absent the provision—which is unenforceable but appeared to result in a higher sentence—he would not have entered a plea of guilty. *See United States v. Dixon*, 308 F.3d 229, 236 (3d Cir. 2002) (holding that the possibility that the defendant would not have plead guilty had the court not overstated the maximum sentence was insufficient to establish error); *United States v. Powell*, 269 F.3d 175, 185 (3d Cir. 2001) (establishing that the test for harmless error is "whether the defendant's knowledge and comprehension of the full and correct information would have been likely to affect his willingness to plead guilty.").

IV. CONCLUSION

For the foregoing reasons, Defendant's *pro se* Motion to Withdraw the Guilty Plea Pursuant to Rule 11(d)(2)(B) will be denied. An appropriate order follows.

BY THE COURT:

/s/ R. Barclay Surrick
R. BARCLAY SURRICK, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 18-524
VICTOR CLAYTON	:	

ORDER

AND NOW, this 8th day of July 2022, upon consideration of Defendant Victor Clayton's *pro se* Motion to Withdraw the Guilty Plea Pursuant to Rule 11(d)(2)(B) (ECF No. 181), it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
R. BARCLAY SURRICK, J.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	**CRIMINAL NO. 18-524**
VICTOR CLAYTON	:	

GUILTY PLEA AGREEMENT

Under Rule 11 of the Federal Rules of Criminal Procedure, the government, the defendant, and the defendant's counsel enter into the following guilty plea agreement. Any reference to the United States or the government in this agreement shall mean the Office of the United States Attorney for the Eastern District of Pennsylvania.

1. The defendant agrees to plead guilty to Counts One and Two of the Indictment, each charging him with attempted sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a)(1) and 1594(a), and not to contest forfeiture as set forth in the notice of forfeiture charging criminal forfeiture under 18 U.S.C. § 1594(d) and 28 U.S.C. § 2461(c), all arising from defendant's role in recruiting, causing and attempting to cause juveniles to work as prostitutes. The defendant further acknowledges his waiver of rights, as set forth in the attachment to this agreement.

2. The parties agree that this plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and that the following specific term of imprisonment is the appropriate disposition of this case: fifteen (15) years' incarceration, a term of supervised release of 10 years, restitution, a fine as determined by the Court, and a $200 special assessment. So long as he is not indigent, the defendant is also subject, under 18 U.S.C. § 3014(a)(1), to an

additional special assessment of $5,000 for each violation of 18 U.S.C. § 1591. If the Court does not accept this plea agreement, then either the defendant or the government will have the right to withdraw from the plea agreement and insist that the case proceed to trial.

3. At the time of sentencing, the government will:

a. Consistent with paragraph 2 above, make whatever sentencing recommendation as to fine, forfeiture, and other matters that the government deems appropriate.

b. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and rebut any statement of facts made by or on behalf of the defendant at sentencing.

c. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

4. The defendant understands, agrees, and has had explained to him by counsel that the following statutory maximum and mandatory minimum sentences apply to the Counts charged in the Indictment: Counts One and Two (sex trafficking and attempted sex trafficking of a minor), life imprisonment, a ten-year mandatory minimum term of imprisonment, a mandatory minimum five years of supervised release up to lifetime supervised release, a $250,000 fine, and a $100 special assessment, per count of conviction. So long as he is not indigent, the defendant is also subject under 18 U.S.C. § 3014(a)(1) to an additional special assessment of $5,000 for each violation of 18 U.S.C. § 1591. Full restitution also may be ordered. Forfeiture of all proceeds from the offenses, all property intended to be used to commit or promote the

commission of the offenses, and any visual depiction as described in Title 18 U.S.C. §§ 2251 and 2256, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received as a result of the offenses.

The Total Maximum Penalty is life imprisonment, a ten-year mandatory minimum term of imprisonment, a mandatory minimum five years of supervised release up to lifetime supervised release, a $500,000 fine, a $200 special assessment, and so long as he is not indigent, an additional $10,000 special assessment under 18 U.S.C. § 3014(a)(1). Forfeiture and full restitution also may be ordered.

5. The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to five years per count of conviction. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release. If the defendant violates supervised release by committing one or more specified child exploitation offenses, the court will revoke supervised release and require the defendant to serve an additional term of imprisonment of at least 5 years pursuant to 18 U.S.C. § 3583(k).

6. The defendant agrees to pay a fine and to make restitution as directed by the court.

7. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees fully to disclose all assets in which he has

any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. Accordingly:

a. The defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that his financial statement and disclosures will be complete, accurate, and truthful.

b. The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on him in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

9. The defendant agrees to pay the special victims/witness assessment in the amount of $200 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment. So long as he is not indigent, the defendant is also subject, under 18 U.S.C. § 3014(a)(1), to an additional special assessment of $5,000 for each violation of 18 U.S.C. § 1591.

10. Except as set forth in paragraph 2, the defendant may not withdraw his plea because the Court declines to follow any recommendation, motion, or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

11. Pursuant to USSG § 6B1.4, the parties enter into the following stipulations under the Sentencing Guidelines Manual. It is understood and agreed that: (1) the parties are free to argue (except as stated below) the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments, and departures; (2) these stipulations are not binding upon either the Probation Office or the Court; and (3) the Court may make factual and legal determinations that differ from these stipulations

and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

a. The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense, making the defendant eligible for a 2-level downward adjustment under USSG § 3E1.1(a).

b. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment under USSG § 3E1.1(b).

12. The defendant has been advised and understands that under the Sex Offender Registration and Notification Act (SORNA), a federal law, the defendant must register and keep the registration current in each of the following jurisdictions: the location of the defendant's residence, the location of the defendant's employment, and, if the defendant is a student, the location of the defendant's school. Registration will require that the defendant provide information that includes name, residence address, and the names and addresses of any places at which the defendant is or will be an employee or a student. The defendant understands that he must update his registrations not later than three business days after any change of name, residence, employment, or student status. The defendant understands that failure to comply with these obligations subjects the defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both. This registration will also be a condition of any supervised release. The defendant also understands that independent of supervised release and the federal law requirements, he will be subject to

state sex offender registration requirements, and that these federal law and state requirements may apply throughout his life.

13. If the defendant commits any federal, state, or local crime between the date of this agreement and his sentencing, or otherwise violates any other provision of this agreement, the government may declare a breach of the agreement, and may at its option: (a) prosecute the defendant for any federal crime including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation, based on and using any information provided by the defendant during the investigation and prosecution of the criminal case; (b) upon government motion, reinstate and try the defendant on any counts which were to be, or which had been, dismissed on the basis of this agreement; (c) be relieved of any obligations under this agreement regarding recommendations as to sentence; and (d) be relieved of any stipulations under the Sentencing Guidelines. Moreover, the defendant's previously entered guilty plea will stand and cannot be withdrawn by him. The decision shall be in the sole discretion of the government both whether to declare a breach, and regarding the remedy or remedies to seek. The defendant understands and agrees that the fact that the government has not asserted a breach of this agreement or enforced a remedy under this agreement will not bar the government from raising that breach or enforcing a remedy at a later time.

14. If the Court accepts the recommendation of the parties and imposes the sentence agreed upon in paragraph 2 of this agreement, the parties agree that neither will file any appeal of the conviction and sentence in this case. Further, the defendant agrees that if the Court imposes the recommended sentence he voluntarily and expressly waives all rights to collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution. However, the defendant retains the right to file a claim, if otherwise allowed by law, that an attorney who

represented the defendant during the course of this criminal case provided constitutionally ineffective assistance.

15. If the Court does not accept the recommendation of the parties to impose the sentence stated in paragraph 2 of this agreement, and the defendant nevertheless decides to enter a guilty plea, without objection by the government, then the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.

a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of his sentence.

b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal or petition for collateral relief but may raise only a claim, if otherwise permitted by law in such a proceeding:

(1) that the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth in paragraph 4 above;

(2) challenging a decision by the sentencing judge to impose an "upward departure" pursuant to the Sentencing Guidelines;

(3) challenging a decision by the sentencing judge to impose an "upward variance" above the final Sentencing Guideline range determined by the Court;

(4) that an attorney who represented the defendant during the course of this criminal case provided constitutionally ineffective assistance of counsel; and

(5) that the district court incorrectly denied his Motion to Dismiss Counts One and Two of the Indictment for Failure to State an Offense (ECF No. 90).

If the defendant does appeal or seek collateral relief pursuant to this subparagraph, no issue may be presented by the defendant in such a proceeding other than those described in this subparagraph.

16 The defendant acknowledges that filing an appeal or any collateral attack waived in either of the two preceding paragraphs may constitute a breach of this plea agreement. The government promises that it will not declare a breach of the plea agreement on this basis based on the mere filing of a notice of appeal, but may do so only after the defendant or his counsel thereafter states, either orally or in writing, a determination to proceed with an appeal or collateral attack raising an issue the government deems barred by the waiver. The parties acknowledge that the filing and pursuit of an appeal constitutes a breach only if a court determines that the appeal does not present an issue that a judge may reasonably conclude is permitted by an exception to the waiver stated in the preceding paragraph or constitutes a "miscarriage of justice" as that term is defined in applicable law.

17. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

18. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty.

19. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements, or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements, or understandings will be entered into unless in writing and signed by all parties.

WILLIAM M. McSWAIN
United States Attorney

VICTOR CLAYTON
Defendant

KATAYOUN M. COPELAND
Chief, Criminal Division
Assistant United States Attorney

LUIS A. ORTIZ
Counsel for the Defendant

MICHELLE L. MORGAN
Assistant United States Attorney

CAROLINE GOLDNER CINQUANTO
Counsel for the Defendant

AMANDA REINITZ
Assistant United States Attorney

Date: 11/16/21

Attachment

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	**CRIMINAL NO. 18-524**
VICTOR CLAYTON	:	

ACKNOWLEDGMENT OF RIGHTS

I hereby acknowledge that I have certain rights that I will be giving up by pleading guilty.

1. I understand that I do not have to plead guilty.

2. I may plead not guilty and insist upon a trial.

3. At that trial, I understand

a. that I would have the right to be tried by a jury that would be selected from the Eastern District of Pennsylvania and that along with my attorney, I would have the right to participate in the selection of that jury;

b. that the jury could only convict me if all 12 jurors agreed that they were convinced of my guilt beyond a reasonable doubt;

c. that the government would have the burden of proving my guilt beyond a reasonable doubt and that I would not have to prove anything;

d. that I would be presumed innocent unless and until such time as the jury was convinced beyond a reasonable doubt that the government had proven that I was guilty;

e. that I would have the right to be represented by a lawyer at this trial and at any appeal following the trial, and that if I could not afford to hire a lawyer, the court would appoint one for me free of charge;

f. that through my lawyer I would have the right to confront and cross-examine the witnesses against me;

g. that I could testify in my own defense if I wanted to and I could subpoena witnesses to testify in my defense if I wanted to; and

h. that I would not have to testify or otherwise present any defense if I did not want to and that if I did not present any evidence, the jury could not hold that against me.

4. I understand that if I plead guilty, there will be no trial and I would be giving up all of the rights listed above.

5. I understand that if I decide to enter a plea of guilty, the judge will ask me questions under oath and that if I lie in answering those questions, I could be prosecuted for the crime of perjury, that is, for lying under oath.

6. I understand that if I plead guilty, I have given up my right to appeal, except as set forth in the appellate waiver provisions of my plea agreement.

7. Understanding that I have all these rights and that by pleading guilty I am giving them up, I still wish to plead guilty.

8. I acknowledge that no one has promised me what sentence the Court will impose. I am aware and have discussed with my attorney that, at sentencing, the Court will calculate the Sentencing Guidelines range (including whether any departures apply), and then, in determining my sentence, will consider the Guideline range and all relevant policy statements in the Sentencing Guidelines, along with other sentencing factors set forth in 18 U.S.C. § 3553(a), including

(1) the nature and circumstances of the offense and my personal history and characteristics;

(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; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(5) the need to provide restitution to any victims of the offense.

VICTOR CLAYTON
Defendant

LUIS A. ORTIZ
Counsel for the Defendant

CAROLINE GOLDNER CINQUANTO
Counsel for the Defendant

Dated: 11/16/21