APPENDIX A

2024 WL 4441426
Only the Westlaw citation is currently available.
United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff - Appellee,
v.
Zodiac AZUCENAS, Defendant - Appellant.

No. 23-783
|
Argued and Submitted June 6, 2024 Pasadena, California
|
FILED OCTOBER 8, 2024

Appeal from the United States District Court for the Southern District of California, Janis L. Sammartino, District Judge, Presiding, D.C. No. 3:19-cr-02688-JLS-1

Attorneys and Law Firms

Mark R. Rehe, Assistant U.S. Attorney, San Diego, CA, for Plaintiff-Appellee.

Marisa Conroy, Law Office of Marisa Conroy, Encinitas, CA, for Defendant-Appellant.

Before: CLIFTON and COLLINS, Circuit Judges, and RODRIGUEZ, District Judge. *

MEMORANDUM **

***1** Appellant Zodiac Azucenas, a 44-year-old United States citizen, was found guilty by a jury of one count of receiving child pornography (18 U.S.C. § 2252(a)(2)) and one count of possessing child pornography (18 U.S.C. § 2252(a)(4)(B)).

From September to December 2016, Azucenas engaged in several sexually explicit online conversations via Facebook Messenger with a 15-year-old girl in the Philippines. Azucenas persuaded the girl to provide photos and videos of her breasts and genitals in exchange for money.

Through performing its own self-initiated searches designed to keep the platform free from sexual exploitation of minors, Facebook discovered these sexually explicit conversations and images. After Facebook employees reviewed the explicit materials, Facebook filed three "CyberTips" with the National Center for Missing & Exploited Children ("NCMEC") in late December 2016 and January 2017. Soon thereafter, the NCMEC forwarded the CyberTips to law enforcement agencies, including the San Diego Internet Crimes Against Children Task Force, where the matter was assigned to Homeland Security Investigations ("HSI") Agent William Thompson ("Agent Thompson").

After locating the Filipino victim and learning more about Azucenas's efforts to induce her to provide sexual images, Agent Thompson applied for and received a state search warrant for Azucenas's Facebook account in April 2017. In addition to confirming the same chats and images memorialized in the CyberTips, the results of this search revealed that Azucenas exchanged sexual photos with other female Facebook users who appeared to be in their teens.

In January 2018, after several months of investigating Azucenas, Agent Thompson applied for and received a federal search warrant for Azucenas's house. In executing this search warrant, HSI agents and the San Diego Police Department discovered a computer and two hard drives that belonged to Azucenas, containing images and videos of minors engaged in sexually explicit conduct.

Azucenas was subsequently charged with one count of receiving child pornography and one count of possessing child pornography. After a jury returned guilty verdicts on both counts, the district court imposed a sentence of 90 months in prison and 10 years of supervised release on each count (concurrent), plus $33,000 in restitution to eleven identifiable victims in the child pornography found in Azucenas's possession.

Azucenas contends that the district court committed three reversible errors. First, Azucenas argues that the district court erred in denying his motion to suppress the child pornography found on his computer. Specifically, he alleges that the district court erred in determining that Facebook did not act as an agent of the government when it searched and reviewed his private user chats; in concluding that the private search doctrine applied to the NCMEC forwarding Facebook's reports of child exploitation materials to law enforcement officials; and in failing to apply the correct "common-law trespassory test" required by *United States v. Jones*, 565 U.S. 400, 409 (2012).

***2** Second, Azucenas alleges that the district court applied the 2018 Amy, Vicky, and Andy Child Pornography Victim Assistance Act ("AVAA") to calculate his restitution payment amount but should have instead relied on the statute in effect at the time of the commission of his crimes, the 1996 Mandatory Victim Restitution Act ("MVRA"). Because the AVAA provided a broader definition of "total loss" than the MVRA and required a minimum restitution award per victim, Azucenas argues that sentencing him under the AVAA exposed him to a higher restitution award and thereby violated the Ex Post Facto Clause of the United States Constitution.

Third, Azucenas asserts that the district court failed to provide sufficient justification for imposing two supervised release conditions: i) Special Condition 7 prohibits Azucenas from associating with any child under age 18 absent adult supervision or the probation officer's approval, including his 8- or 9-year old half-sister in the Philippines; and ii) Special Condition 11 requires Azucenas to participate in sex offender treatment methods that he alleges are unreliable.

We have jurisdiction under 28 U.S.C. § 1291, and, for the following reasons, we affirm Azucenas's conviction and sentence.

I.

Azucenas first challenges the district court's denial of his motion to suppress the child pornography found on his computer and hard drives.

In reviewing a denial of a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions *de novo*. *United States v. Vandergroen*, 964 F.3d 876, 879 (9th Cir. 2020). We conclude that the lower court did not err in rejecting Azucenas's argument that Facebook acted as an agent of the government when it conducted its search of his user-to-user messages.

The Fourth Amendment guarantees the right to be free from "unreasonable searches and seizures." U.S. CONST. amend. IV. But the Fourth Amendment only "limits searches conducted by the government, not by a private party, unless the private party acts as an 'instrument or agent' of the government." *United States v. Young*, 153 F.3d 1079, 1080 (9th Cir. 1998) (per curiam). To determine whether a private party acted as an agent of the government under the Fourth Amendment, courts consider "(1) whether the government knew of and acquiesced in the intrusive conduct; and (2) whether the party performing the search intended to assist law enforcement efforts or further his own ends." *United States v. Cleaveland*, 38 F.3d 1092, 1093 (9th Cir. 1994) (citation and internal quotation marks omitted).

With respect to the first *Cleaveland* requirement, the government "must be involved in the search 'either directly as a participant or indirectly as an encourager of the private citizen's actions.' " *United States v. Rosenow*, 50 F.4th 715, 731 (9th Cir. 2022) (quoting *United States v. Walther*, 652 F.2d 788, 791 (9th Cir. 1981)). Here, an affidavit from a Facebook employee affirmed that Facebook's searches of Azucenas's messages and corresponding filing of CyberTips to the NCMEC were not at law enforcement's request, with Facebook having "no record of receiving legal process from the government."

We considered a similar scenario in *Rosenow*. There, Yahoo investigated numerous user accounts that it suspected of selling child pornography and notified the NCMEC of its results. *Id.* at 725. Because there was no evidence that Yahoo "was spurred into investigating [the defendant] by the government" or otherwise "incentivized, directed, or encouraged" to continue its investigations by law enforcement, we concluded that there was insufficient government participation to trigger Fourth Amendment scrutiny. *Id.* at 732–33. For this same reason, in the absence of any law enforcement assistance requests or other direction, we cannot find that the government "knew of and acquiesced in" Facebook's independent review of Azucenas's user-to-user messages. *Cleaveland*, 38 F.3d at 1094. [1]

***3** In analyzing the second *Cleaveland* requirement, we examine whether the private party acted to "assist law enforcement efforts," or whether it had a "legitimate, independent motivation to further its own ends." *Id.* (citation and internal quotations omitted). The affidavit from the Facebook employee explained that Facebook possessed "an independent business purpose in keeping its platform safe and free from harmful content and conduct, including content and conduct that sexually exploits children." As we explained in *Rosenow*, such a "desire to purge child pornography from [ESPs'] platforms" represents "a legitimate, independent motive apart from any interest that the ESPs had in assisting the government." *Rosenow*, 50 F.4th at 734. Once such independent motive is established, "[t]hat motivation [is] not

negated by any dual motive to detect or prevent crime or assist the police." *Cleaveland*, 38 F.3d at 1094.

The district court also correctly concluded that because the NCMEC and Agent Thompson relied upon the same evidence that had been obtained and reviewed by Facebook personnel for Facebook's own business purpose, the private search doctrine was applicable. This doctrine exempts Fourth Amendment scrutiny of any later government review of the same facts already disclosed by a private search. *See* *United States v. Jacobsen*, 466 U.S. 109, 117 (1984).

In challenging the district court's finding, Azucenas urges us to conclude that the NCMEC qualifies as a government agent, as the Tenth Circuit did in *United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016). But doing so would not salvage Azucenas's argument. In *Ackerman*, AOL identified that an email included one attachment consisting of child pornography and then provided this email (containing three other unreviewed attachments) to the NCMEC. *Id.* at 1305–06. The NCMEC then expanded on AOL's initial search by examining the email itself as well as the three other attachments never reviewed by AOL. *Id.* The Tenth Circuit thus concluded that the private search doctrine was inapplicable. *Id.* at 1306–07.

However, as even Azucenas acknowledges, Facebook provided an affidavit in this matter affirming that its employees reviewed the entire contents of the files uploaded to the NCMEC. Accordingly, regardless of whether we define the NCMEC as a state actor, the record makes plain that the NCMEC did not exceed the scope of Facebook's private search. "Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now-nonprivate information." *United States v. Tosti*, 733 F.3d 816, 821 (9th Cir. 2013) (quoting *Jacobsen*, 466 U.S. at 117) (finding no Fourth Amendment violation where detective searches of child pornography on the defendant's computer derived from a private party's original search). Since there is no evidence in the record indicating that the NCMEC exceeded the scope of Facebook's private search, we need not further analyze whether the NCMEC is a state actor, and we conclude that the private search doctrine is applicable.

Azucenas also insists that the lower court failed to apply the "common-law trespassory test" articulated in *United States v. Jones*, 565 U.S. 400, 409 (2012) (explaining that a search occurs if law enforcement trespasses on a constitutionally protected area to obtain information, even if the trespass does not violate a reasonable expectation of privacy). But *Jones*, which addresses the scope of what constitutes a "search" under the Fourth Amendment, has no bearing on this case, in which the relevant search was fully conducted by a private entity, namely, Facebook.

For these reasons, we conclude that there was insufficient governmental involvement in Facebook's searches of Azucenas's account to trigger Fourth Amendment protection.

II.

Second, we find that the lower court did not violate the Ex Post Facto Clause of the United States Constitution by ordering Petitioner to pay $33,000 in restitution under a version of 18 U.S.C. § 2259 that post-dated his underlying criminal conduct.

***4** For a criminal or penal law to be ex post facto, the law "must be retrospective, that is, it must apply to events occurring before its enactment" and "it must disadvantage the offender affected by it." *Weaver v. Graham*, 450 U.S. 24, 29 (1981). At the time of the offense conduct—September 22, 2017 (Count One) and January 9, 2018 (Count Two)—the MVRA was in effect. At sentencing, however, the court applied the AVAA, an amendment to the MVRA not made effective until December 7, 2018. The AVAA amended the MVRA, *inter alia*, to i) impose a minimum award of $3,000 per victim and ii) expand the definition of "full amount of the victim's losses." [2] 18 U.S.C. § 2259(c)(2).

Because Azucenas failed to object to the application of the AVAA—and, in fact, agreed that it was the applicable statute—we review for plain error. For Azucenas to prevail under plain error review, he must demonstrate "(1) an error, (2) that is plain, (3) that affects substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Smith*, 424 F.3d 992, 1000 (9th Cir. 2005) (citing *Johnson v. United States*, 520 U.S. 461, 467 (1997)). Plain error "is so clear-cut, so obvious, a competent district judge should be able to avoid

it without benefit of objection." *Id.* at 1002 (quoting *United States v. Turman*, 122 F.3d 1167, 1170 (9th Cir. 1997)).

With respect to the first two prongs of plain error review, the district court committed a plain error in applying the AVAA rather than the MVRA, the statute in effect at the time of the offense conduct. The Supreme Court has cautioned, "[r]etroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The AVAA does not contain language permitting retroactive application. In fact, 18 U.S.C. § 2259B(d) provides, "[i]t is the sense of Congress that individuals who violate this chapter prior to the date of the enactment of the [AVAA], but who are sentenced after such date, shall be subject to the statutory scheme that was in effect at the time the offenses were committed." The district court thus erred in imposing restitution under the AVAA.

However, under the third prong of the plain error test, Azucenas still "bears the burden of persuading us that his substantial rights were affected." *United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc) (holding an error affects a criminal defendant's substantial rights where "the probability of a different result is sufficient to undermine confidence in the outcome of the proceeding" (citation and internal quotation marks omitted)).

***5** Here, the government sought the minimum amount permissible under the AVAA ($3,000) for each of the 11 victims for a total of $33,000. At the April 14, 2023 sentencing hearing, Azucenas's counsel conceded that the "Government has submitted extensive documentation from 11 alleged victims" and "I have no contrary factual information regarding the restitution, which is why I had intended to stipulate to the amount." At the April 28, 2023 restitution hearing, the district court concluded that each victim substantiated losses resulting from Azucenas's possession of images of their sexual abuse. Indeed, the district court observed "these victims could have requested and this Order could have been for much more ... than what I'm doing," explaining "many of these victims had far more than the $3,000."

First, the record supports that the lower court based its imposition of $3,000 per victim on the evidence advanced by the prosecution, rather than a simple application of the minimum restitution amount statutorily mandated by the AVAA. Because the MVRA still required courts to impose restitution in the amount of any loss proven by any victim, it is not clear how the AVAA's introduction of a $3,000 minimum restitution amount—to the extent the Court even relied on it—prejudiced Azucenas's rights. *See* *Paroline v. United States*, 572 U.S. 434, 445 (2014) (holding the MVRA "requires a court to order restitution for the full amount of the victim's losses" (internal quotation marks omitted)).

Further, in his opening brief, Azucenas failed to carry his burden to establish that any change in the definition of the scope of available restitution made any practical difference in this case and that the use of the MVRA's definition would have resulted in a different outcome.

III.

Where a defendant objects to a condition of supervised release at sentencing, we review for abuse of discretion the conditions of supervised release imposed by a district court. *See* *United States v. Bee*, 162 F.3d 1232, 1234 (9th Cir. 1998). In applying this standard of review, "we give considerable deference to a district court's determination of the appropriate supervised release conditions, reviewing those conditions deferentially." *United States v. Weber*, 451 F.3d 552, 557 (9th Cir. 2006). "In short, conditions are permissible if they are reasonably related to the goal of deterrence, protection of the public, or rehabilitation of the offender, and involve no greater deprivation of liberty than is reasonably necessary for the purposes of supervised release." *United States v. Rearden*, 349 F.3d 608, 618 (9th Cir. 2003) (citation and internal quotation marks omitted).

At the time of sentencing, Azucenas objected to the lower court's imposition of Special Condition 7, which prohibits him from associating with any child under age 18—including his 8- or 9-year-old half-sister residing in the Philippines—without adult supervision or the probation officer's approval. Azucenas alleges that we have previously recognized "the fundamental right to familial association" as a "particularly significant liberty interest," thereby triggering an enhanced procedural requirement that mandates the sentencing judge

to "point to the evidence in the record on which it relies and explain how on the basis of that evidence the particular restriction is justified." *United States v. Wolf Child*, 699 F.3d 1082, 1092 (9th Cir. 2012). Azucenas asserts that the district court failed to provide such an explanation justifying this restriction.

Azucenas offers no evidence that his relationship with a half-sibling rises to the level of an "intimate relationship" akin to a life partner, child, or fiancé required to trigger such enhanced procedural requirements. *See United States v. Magdaleno*, 43 F.4th 1215, 1222 (9th Cir. 2022) (rejecting applying enhanced procedural requirements where appellant failed to present any evidence of an "intimate relationship" with siblings and half-siblings). Indeed, the record does not even establish that Azucenas has met the child.

***6** Under our standard deferential review of supervised release conditions, a district court "need not state at sentencing its reasons for imposing each condition of supervised release, so long as its reasoning is apparent from the record." *Id.* at 1221. Following Azucenas's objection to Special Condition 7, the sentencing judge explained that the penalty "bears a reasonable relationship to what occurred here." We agree. The evidence substantiates that Azucenas initiated contact with minors on Facebook to solicit nude photos and engage in sexual conversations, and, accordingly, this restriction on such communications protects the public.

Further, the sentencing judge explained a reasonable limitation to Special Condition 7, noting "[i]t's not going to restrict him from seeing [children] as long as there's somebody there, as long as probation knows about it." The record makes plain that Special Condition 7 serves to protect the public, while still being tailored to avoid impinging on Azucenas's liberty. *See* *United States v. Blinkinsop*, 606 F.3d 1110, 1121 (9th Cir. 2010) (noting "with approval" that special conditions limiting interaction with children for a defendant convicted of a child pornography crime "can be tailored" by requiring permission of the probation officer); *United States v. Apodaca*, 641 F.3d 1077, 1084–85 (9th Cir. 2011) (upholding a condition of release that allowed a defendant convicted of possessing child pornography to have contact with children in the presence of their duly notified parent or legal guardian).

Because Azucenas failed to object to Special Condition 11 at the time of sentencing, we review for plain error. *Magdaleno*, 43 F.4th at 1221.

Azucenas appeals Special Condition 11 to the extent it requires him to take a visual reaction time assessment (commonly called "Abel testing"), a diagnostic exam for sex offenders that studies "visual reaction time" based on how long a subject stares at slides of various categories of adults and children. We find this argument to be without merit. We have previously held that a district court "could reasonably conclude that the Abel test has value in rehabilitation and protection of the public as part of a treatment program for assessing a sex offender's interest in children." *United States v. Stoterau*, 524 F.3d 988, 1007 (9th Cir. 2008); *see also* *United States v. Daniels*, 541 F.3d 915, 926 (9th Cir. 2008) (holding that the district court "did not abuse its discretion in imposing a condition of supervised release that may require [appellant who pled guilty to possessing child pornography] to submit to Abel and polygraph testing"). Accordingly, Azucenas cannot establish that the district court committed plain error in imposing Special Condition 11.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2024 WL 4441426

Footnotes

* The Honorable Xavier Rodriguez, United States District Judge for the Western District of Texas, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 We have also expressly rejected Azucenas's argument that an Electronic Service Provider's ("ESP") compliance with the requirement contained in the Protect Our Children Act of 2008 to report any child sexual exploitation to the NCMEC transforms the ESP into a government agent. *See* *Rosenow*, 50 F.4th at 730–32.

2 Specifically, prior to the passage of the AVAA, 18 U.S.C. § 2259 defined the "full amount of the victim's losses" as including any "costs incurred by the victim for—(A) medical services relating to physical, psychiatric, or psychological care; (B) physical and occupational therapy or rehabilitation; (C) necessary transportation, temporary housing, and child care expenses; (D) lost income; (E) attorneys' fees, as well as other costs incurred; and (F) any other losses suffered by the victim as a proximate result of the offense." *See* *United States v. Kennedy*, 643 F.3d 1251, 1260 (9th Cir. 2011) (quoting 18 U.S.C. § 2259(b)(3) (1996) (amended 2018)). The AVAA amendment includes losses "that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim." 18 U.S.C. § 2259(c)(2).

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APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
ZODIAC AZUCENAS (1)

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

Case Number: 3:19-CR-02688-JLS

Jennifer L Coon
Defendant's Attorney

USM Number 86069-298

☒ Modification of Restitution Order (18 U.S.C § 3664)

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☒ was found guilty on count(s) 1 and 2 of the Information
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title and Section / Nature of Offense	**Count**
18:2252(a)(2); 18:2253 - Receipt Of Images Of Minors Engaged In Sexually Explicit Conduct; Criminal Forfeiture	1
18:2252(a)(2); 18:2253 - Possession Of Images Of Minors Engaged In Sexually Explicit Conduct; Criminal Forfeiture	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment.
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ is dismissed on the motion of the United States.

☒ Assessment : $100 as to each count 1 and 2 for a total of $200 imposed

☒ JVTA Assessment*: $5,000 as to each count 1 and 2 for a total of $10,000 is waived
The Court finds the defendant indigent
*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

☒ No fine ☒ Forfeiture pursuant to order filed 9/8/2021 , included herein.

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 any material change in the defendant's economic circumstances.

April 14, 2023
Date of Imposition of Sentence

HON. JANIS L. SAMMARTINO
UNITED STATES DISTRICT JUDGE

DEFENDANT: ZODIAC AZUCENAS (1) Judgment - Page **2** of **6**
CASE NUMBER: 3:19-CR-02688-JLS

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 90 months as to each count 1 and 2 to run concurrent for a total of 90 months.

☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
☒ The court makes the following recommendations to the Bureau of Prisons:
1. Residential Drug Abuse Program (RDAP)
2. Placement at FCI Terminal Island or in Southern California to facilitate family visits.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant must surrender to the United States Marshal for this district:
☐ at _____ A.M. on _____
☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ on or before
☐ 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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of:
10 years as to each count 1 and 2 to run concurrent for a total of 10 years.

MANDATORY CONDITIONS

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant 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. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4. ☐ The defendant 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. ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☐ The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7. ☐ The defendant must participate in an approved program for domestic violence. (check if applicable)

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

STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.

3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.

4. The defendant must answer truthfully the questions asked by their probation officer.

5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.

7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.

10. The defendant 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. The defendant 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.

13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS OF SUPERVISION

1. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.

2. Submit your person, property, residence, abode, vehicle, papers, computer, social media accounts, any other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation/supervised release or unlawful conduct, and otherwise in the lawful discharge of the officer's duties. 18 U.S.C. §§ 3563 (b)(23); 3583 (d)(3). Failure to submit to a search may be grounds for revocation; you must warn any other residents that the premises may be subject to searches pursuant to this condition.

3. Consent to third party disclosure to any employer, potential employer, concerning any restrictions that are imposed by the court.

4. Not use or possess any computer, computer-related devices (pursuant to 18 U.S.C. § 1030(e)(1)), which can communicate data via modem, dedicated connections or cellular networks, and their peripheral equipment, which are capable of accessing, storing or transmitting visual depictions of sexually explicit conduct involving children as defined by 18 U.S.C. § 2256(2) and/or actual sexually explicit conduct involving adults as defined by 18 U.S.C § 2257(h)(7) without prior approval of the Court or Probation, all of which are subject to search and seizure. The offender must consent to installation of monitoring software and/or hardware on any computer or computer-related devices owned or controlled by the offender that will enable the probation officer to monitor all computer use and cellular data. The offender must pay for the cost of installation of the computer software.

5. Not associate with, or have any contact with, any known sex offenders unless in an approved treatment and/or counseling setting.

6. Not have any contact, direct or indirect, either telephonically, visually, verbally or through written material, or through any third-party communication, with the victim or victim's family, without prior approval of the probation officer.

7. Not initiate any contact (personal, electronic, or otherwise) or associate with anyone under the age of 18, unless in the presence of a supervising adult who is aware of the offender's deviant sexual behavior and nature of offense and conviction, with the exception of the offender's biological children, unless approved in advance by the probation officer.

8. Not accept or commence employment or volunteer activity without prior approval of the probation officer, and employment should be subject to continuous review and assessment by the probation officer.

9. Not loiter within 200 yards of a school, schoolyard, playground, park, amusement center/park, public swimming pool, arcade, daycare center, carnival, recreation venue, library and other places primarily frequented by persons under the age of 18, without prior approval of the probation officer.

10. Not possess or view any materials such as videos, magazines, photographs, computer images or other matter that depicts "sexually explicit conduct" involving children as defined by 18 USC § 2256(2) and/or "actual sexually explicit conduct" involving adults as defined by 18 USC § 2257(h)(1), and not patronize any place where such materials or entertainment are the primary material or entertainment available.

11. Complete a sex offender evaluation, which may include periodic psychological, physiological testing, and completion of a visual reaction time (VRT) assessment, at the direction of the court or probation officer. If deemed necessary by the treatment provider, the offender shall participate and successfully complete an approved state-certified sex offender treatment program, including compliance with treatment requirements of the program. The Court authorizes the release of the presentence report, and available psychological evaluations to the treatment provider, as approved by the probation officer. The offender will allow reciprocal release of information between the probation officer and the treatment provider. The offender may also be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay. Polygraph examinations may be used following completion of the formal treatment program as directed by the probation officer in order to monitor adherence to the goals and objectives of treatment and as a part of the containment model.

12. Reside in a residence approved in advance by the probation officer, and any changes in residence shall be pre-approved by the probation officer.

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AO 245S Judgment in Criminal Case
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 6

DEFENDANT: ZODIAC AZUCENAS (1)
CASE NUMBER: 3:19-CR-02688-JLS

RESTITUTION

The defendant shall pay restitution in the amount of $33,000.00 unto the United States of America.

This sum shall be paid ___ immediately.
X as follows:

Pay restitution in the amount of $33,000.00 through the Clerk, U. S. District Court. Payment of restitution shall be forthwith. During any period of incarceration the defendant shall pay restitution through the Inmate Financial Responsibility Program at the rate of 50% of the defendant's income, or $25.00 per quarter, whichever is greater. The defendant shall pay the restitution during his supervised release at the rate of $200 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the restitution judgment. Restitution is to be paid to the following victims and distribution is to be made on a pro rata basis.

Victim	Amount
"Violet" of the At School Series	$3,000
"Jenny" of the Jenny Series	$3,000
"Jane" of the CinderBlockBlue Series	$3,000
"Henley" of the BluePillowl Series	$3,000
"Cara" of the MotorCouch Series	$3,000
"Sierra" of the JanSocks 1 Series	$3,000
"Emily" of the TightsNGold Series	$3,000
"Ava" of the Sweet Purple Sugar Series	$3,000
"Sarah" of the Marineland Series	$3,000
"Lily" of the Vicky Series	$3,000
"April" of the AprilBlonde Series	$3,000

Until restitution has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

X The interest requirement is waived.

___ The interest is modified as follows: