Attachment A

NOT FOR PUBLICATION

FILED

JUN 5 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JAMES C. GOODWIN III, Defendant - Appellant.	No. 23-1518 D.C. No. 4:18-cr-00072-DCN-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Submitted May 29, 2024**

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

James C. Goodwin III appeals pro se from the district court's order denying several postconviction motions. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Goodwin first contends that the district court improperly delegated its

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

authority to the Bureau of Prisons ("BOP") to set a payment schedule for his monetary penalties. The record belies this claim. The judgment sets forth a minimum payment schedule and, as the district court explained, the BOP can administer the Inmate Financial Responsibility Program to require payment "at a higher or faster rate than was specified by the sentencing court." *United States v. Lemoine*, 546 F.3d 1042, 1044 (9th Cir. 2008). Therefore, the district court properly denied Goodwin's motion for a temporary injunction.

Goodwin next challenges his obligation to pay restitution and an assessment under the Justice for Victims of Trafficking Act. Goodwin waived these claims by failing to raise them on direct appeal, *see United States v. Gianelli*, 543 F.3d 1178, 1184 (9th Cir. 2008), and in any event has not shown error in the district court's analysis of his contentions.

As to the district court's denial of Goodwin's motions for an extension of time and leave to appeal in forma pauperis, we agree with Goodwin that these matters are now moot. We also find no error in the district court's denial of Goodwin's "motion to seal case or alter language," or in its summary disposition of Goodwin's various motions without a response by the government.

Finally, the district court denied without prejudice Goodwin's motion to compel the government to return property and provide documents. We agree with the district court that Goodwin's motion was deficient because he did not identify

any particular items he wanted returned.[1] We affirm without prejudice to Goodwin filing in the district court a new motion in which he identifies the property he seeks returned.

Goodwin's request for sanctions is denied.

AFFIRMED.

[1] We do not consider the list of items Goodwin provides for the first time on appeal because this was not before the district court.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
  - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

(use "s/[typed name]" to sign electronically-filed documents)

COST TAXABLE	**REQUESTED** *(each column must be completed)*			
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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES C. GOODWIN III,

Defendant - Appellant.

No. 23-1518

D.C. No. 4:18-cr-00072-DCN-1
District of Idaho,
Pocatello

ORDER

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

Goodwin's motion to recall the mandate (Docket Entry No. 30) is denied as unnecessary because the mandate has not yet issued.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Goodwin's petition for rehearing en banc (Docket Entry No. 31) is denied.

All other pending motions are denied.

No further filings will be entertained in this closed case.

§ 2259. Mandatory restitution

(a) In general. Notwithstanding section 3663 or 3663A [18 USCS § 3663 or 3663A], and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter [18 USCS §§ 2251 et seq.].

(b) Scope and nature of order.

(1) Directions. Except as provided in paragraph (2), the order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses.

(2) Restitution for trafficking in child pornography. If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) Determining the full amount of a victim's losses. The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) Determining a restitution amount. After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than $3,000.

(C) Termination of payment. A victim's total aggregate recovery pursuant to this section shall not exceed the full amount of the victim's demonstrated losses. After the victim has received restitution in the full amount of the victim's losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(3) Enforcement. An order of restitution under this section shall be issued and enforced in accordance with section 3664 [18 USCS § 3664] in the same manner as an order under section 3663A [18 USCS § 3663A].

(4) Order mandatory.

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Definitions.

(1) Child pornography production. For purposes of this section and section 2259A [18 USCS § 2259A], the term "child pornography production" means conduct proscribed by subsections (a) through (c) of section 2251 [18 USCS § 2251], section 2251A [18 USCS § 2251A], section 2252A(g) [18 USCS § 2252A(g)] (in cases in which the series of felony violations involves at least 1 of the violations listed in this subsection), section 2260(a) [18 USCS § 2260(a)], or any offense under chapter 109A or chapter 117 [[18 USCS §§ 2241 et seq. or 2421 et seq.]] that involved the production of child pornography (as such term is defined in section 2256 [18 USCS § 2256]).

(2) Full amount of the victim's losses. For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred, or 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, including—

(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) reasonable attorneys' fees, as well as other costs incurred; and

(F) any other relevant losses incurred by the victim.

(3) Trafficking in child pornography. For purposes of this section and section 2259A [18 USCS § 2259A], the term "trafficking in child pornography" means conduct proscribed by section 2251(d), 2252, 2252A(a)(1) through (5), 2252A(g) (in cases in which the series of felony violations exclusively involves violations of section 2251(d), 2252, 2252A(a)(1) through (5), or

2260(b) [18 USCS § 2251(d), 2252, 2252A(a)(1)–(5), 2252A(g), 2260(b)]), or 2260(b) [18 USCS § 2260(b)].

(4) Victim. For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter [18 USCS §§ 2251 et seq.]. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(d) Defined monetary assistance.

(1) Defined monetary assistance made available at victim's election.

(A) Election to receive defined monetary assistance. Subject to paragraphs (2) and (3), when a defendant is convicted of trafficking in child pornography, any victim of that trafficking in child pornography may choose to receive defined monetary assistance from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)).

(B) Finding. To be eligible for defined monetary assistance under this subsection, a court shall determine whether the claimant is a victim of the defendant who was convicted of trafficking in child pornography.

(C) Order. If a court determines that a claimant is a victim of trafficking in child pornography under subparagraph (B) and the claimant chooses to receive defined monetary assistance, the court shall order payment in accordance with subparagraph (D) to the victim from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 [34 USCS § 20101(d)(6)].

(D) Amount of defined monetary assistance. The amount of defined monetary assistance payable under this subparagraph shall be equal to—

(i) for the first calendar year after the date of enactment of this subsection [enacted Dec. 7, 2018], $35,000; and

(ii) for each calendar year after the year described in clause (i), $35,000 multiplied by the ratio (not less than one) of—

(I) the Consumer Price Index for all Urban Consumers (CPI—U, as published by the Bureau of Labor Statistics of the Department of Labor) for the calendar year preceding such calendar year; to

(II) the CPI—U for the calendar year 2 years before the calendar year described in clause (i).

(2) Limitations on defined monetary assistance.

(A) In general. A victim may only obtain defined monetary assistance under this subsection once.

(B) Effect on recovery of other restitution. A victim who obtains defined monetary assistance under this subsection shall not be barred or limited from receiving restitution against any defendant for any offenses not covered by this section.

(C) Deduction. If a victim who received defined monetary assistance under this subsection subsequently seeks restitution under this section, the court shall deduct the amount the victim received in defined monetary assistance when determining the full amount of the victim's losses.

(3) Limitations on eligibility. A victim who has collected payment of restitution pursuant to this section in an amount greater than the amount provided for under paragraph (1)(D) shall be ineligible to receive defined monetary assistance under this subsection.

(4) Attorney fees.

(A) In general. An attorney representing a victim seeking defined monetary assistance under this subsection may not charge, receive, or collect, and the court may not approve, any payment of fees and costs that in the aggregate exceeds 15 percent of any payment made under this subsection.

(B) Penalty. An attorney who violates subparagraph (A) shall be fined under this title, imprisoned not more than 1 year, or both.

HISTORY:

Added Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle A, Ch 1, § 40113(b)(1), 108 Stat. 1907; April 24, 1996, P. L. 104-132, Title II, Subtitle A, § 205(c), 110 Stat. 1231; Dec. 7, 2018, P.L. 115-299, §§ 3(a), (b), 4, 132 Stat. 4384, 4385.

§ 2259A. Assessments in child pornography cases

(a) In general. In addition to any other criminal penalty, restitution, or special assessment authorized by law, the court shall assess—

(1) not more than $17,000 on any person convicted of an offense under section 2252(a)(4) or 2252A(a)(5) [18 USCS § 2252(a)(4) or 2252A(a)(5)];

(2) not more than $35,000 on any person convicted of any other offense for trafficking in child pornography; and

(3) not more than $50,000 on any person convicted of a child pornography production offense.

(b) Annual adjustment. The dollar amounts in subsection (a) shall be adjusted annually in conformity with the Consumer Price Index.

(c) Factors considered. In determining the amount of the assessment under subsection (a), the court shall consider the factors set forth in sections 3553(a) and 3572 [18 USCS §§ 3553(a), 3572].

(d) Imposition and implementation.

(1) In general. The provisions of subchapter C of chapter 227 [18 USCS §§ 3571 et seq.] (other than section 3571 [18 USCS § 3571]) and subchapter B of chapter 229 [18 USCS §§ 3611 et seq.] (relating to fines) apply to assessments under this section, except that paragraph (2) applies in lieu of any contrary provisions of law relating to fines or disbursement of money received from a defendant.

(2) Effect on other penalties. Imposition of an assessment under this section does not relieve a defendant of, or entitle a defendant to reduce the amount of any other penalty by the amount of the assessment. Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

(A) A special assessment under section 3013 [18 USCS § 3013].

(B) Restitution to victims of any child pornography production or trafficking offense that the defendant committed.

(C) An assessment under this section.

(D) Other orders under any other section of this title.

(E) All other fines, penalties, costs, and other payments required under the sentence.

HISTORY:
Added Dec. 7, 2018, P.L. 115-299, § 5(a), 132 Stat. 4386.

§ 2259B. Child Pornography Victims Reserve

(a) Deposits into the Reserve. Notwithstanding any other provision of law, there shall be deposited into the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)) all assessments collected under section 2259A [18 USCS § 2259A] and any gifts, bequests, or donations to the Child Pornography Victims Reserve from private entities or individuals.

(b) Availability for defined monetary assistance. Amounts in the Child Pornography Victims Reserve shall be available for payment of defined monetary assistance pursuant to section 2259(d) [18 USCS § 2259(d)]. If at any time the Child Pornography Victims Reserve has insufficient funds to make all of the payments ordered under section 2259(d) [18 USCS § 2259(d)], the Child Pornography Victims Reserve shall make such payments as it can satisfy in full from available funds. In determining the order in which such payments shall be made, the Child Pornography Victims Reserve shall make payments based on the date they were ordered, with the earliest-ordered payments made first.

(c) Administration. The Attorney General shall administer the Child Pornography Victims Reserve and shall issue guidelines and regulations to implement this section.

(d) Sense of Congress. It is the sense of Congress that individuals who violate this chapter prior to the date of the enactment of the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 [enacted Dec. 7, 2018], 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.

HISTORY:
Added Dec. 7, 2018, P.L. 115-299, § 5(c), 132 Stat. 4387.

2018.

Act Dec. 7, 2018, in subsec. (b), in para. (1), substituted "Except as provided in paragraph (2), the order" for "The order" and deleted "as determined by the court pursuant to paragraph (2)" following "victim's losses", deleted para. (3), which read:

"(3) Definition. For purposes of this subsection, the term 'full amount of the victim's losses' includes 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.",

redesignated para. (2), as para. (3), and inserted new para. (2); in subsec. (c), in the heading, substituted "Definitions" for "Definition", inserted paras. (1)-(3), inserted the para. (4) designator and heading, and in such para., substituted "under this chapter. In the case" for "under this chapter, including, in the case", and inserted "may assume the crime victim's rights under this section,"; and added subsec. (d).

Other provisions:

Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018; findings. Act Dec. 7, 2018, P. L. 115-299, § 2, 132 Stat. 4383, provides:

"Congress finds the following:

"(1) The demand for child pornography harms children because it drives production, which involves severe child sexual abuse and exploitation.

"(2) The harms caused by child pornography begin, but do not end, with child sex assault because child pornography is a permanent record of that abuse and trafficking in those images compounds the harm to the child.

"(3) In Paroline v. United States (2014), the Supreme Court recognized that 'every viewing of child pornography is a repetition of the victim's abuse'.

"(4) The American Professional Society on the Abuse of Children has stated that for victims of child pornography, 'the sexual abuse of the child, the memorialization of that abuse which becomes child pornography, and its subsequent distribution and viewing become psychologically intertwined and each compound the harm suffered by the child-victim'.

"(5) Victims suffer continuing and grievous harm as a result of knowing that a large, indeterminate number of individuals have viewed and will in the future view images of their childhood

sexual abuse. Harms of this sort are a major reason that child pornography is outlawed.

"(6) The unlawful collective conduct of every individual who reproduces, distributes, or possesses the images of a victim's childhood sexual abuse plays a part in sustaining and aggravating the harms to that individual victim.

"(7) It is the intent of Congress that victims of child pornography be compensated for the harms resulting from every perpetrator who contributes to their anguish. Such an aggregate causation standard reflects the nature of child pornography and the unique ways that it actually harms victims.".

§ 3014. Additional special assessment

(a) In general. Beginning on the date of enactment of the Justice for Victims of Trafficking Act of 2015 [enacted May 29, 2015], in addition to the assessment imposed under section 3013 [18 USCS § 3013], the court shall assess an amount of $5,000 on any non-indigent person or entity convicted of an offense under—

(1) chapter 77 [18 USCS §§ 1581 et seq.] (relating to peonage, slavery, and trafficking in persons);

(2) chapter 109A [18 USCS §§ 2241 et seq.] (relating to sexual abuse);

(3) chapter 110 [18 USCS §§ 2251 et seq.] (relating to sexual exploitation and other abuse of children);

(4) chapter 117 [18 USCS §§ 2421 et seq.] (relating to transportation for illegal sexual activity and related crimes); or

(5) section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to human smuggling), unless the person induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(b) Satisfaction of other court-ordered obligations. An assessment under subsection (a) shall not be payable until the person subject to the assessment has satisfied all outstanding court-ordered fines, orders of restitution, and any other obligation related to victim-compensation arising from the criminal convictions on which the special assessment is based.

(c) Establishment of Domestic Trafficking Victims' Fund. There is established in the Treasury of the United States a fund, to be known as the "Domestic Trafficking Victims' Fund" (referred to in this section as the "Fund"), to be administered by the Attorney General, in consultation with the Secretary of Homeland Security and the Secretary of Health and Human Services.

(d) Transfers. In a manner consistent with section 3302(b) of title 31 [31 USCS § 3302(b)], there shall be transferred to the Fund from the General Fund of the Treasury an amount equal to the amount of the assessments collected under this section, which shall remain available until expended.

(e) Use of funds.

(1) In general. From amounts in the Fund, in addition to any other amounts available, and without further appropriation, the Attorney General, in coordination with the Secretary of Health and Human Services shall, for each of fiscal years 2016 through 2027, use amounts available in the Fund to award grants or enhance victims' programming under—

(A) section 204 of the Trafficking Victims Protection Reauthorization Act of 2005 (34 U.S.C. 20705);

(B) subsections (b)(2) and (f) of section 107 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105);

(C) section 214(b) of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20304); and

(D) section 106 of the PROTECT Our Children Act of 2008 (34 U.S.C. 21116).

(2) Limitation. Except as provided in subsection (h)(2), none of the amounts in the Fund may be used to provide health care or medical items or services.

(f) Collection method. The amount assessed under subsection (a) shall, subject to subsection (b), be collected in the manner that fines are collected in criminal cases, including the mandatory imposition of civil remedies for satisfaction of an unpaid fine as authorized under section 3613 [18 USCS § 3613], where appropriate.

(g) Duration of obligation. Subject to section 3613(b) [18 USCS § 3613(b)], the obligation to pay an assessment imposed on or after the date of enactment of the Justice for Victims of Trafficking Act of 2015 [enacted May 29, 2015] shall not cease until the assessment is paid in full.

(h) Health or medical services.

(1) Transfer of funds. From amounts appropriated under subparagraphs (E) and (F) of section 10503(b)(1) of the Patient Protection and Affordable Care Act (42 U.S.C. 254b-2(b)(1)), there shall be transferred to the Fund an amount equal to the amount transferred under subsection (d) for each fiscal year, except that the amount transferred under this paragraph shall not be less than $5,000,000 or more than $30,000,000 in each such fiscal year, and such amounts shall remain available until expended.

(2) Use of funds. The Attorney General, in coordination with the Secretary of Health and Human Services, shall use amounts transferred to the Fund under paragraph (1) to award grants that may be used for the provision of health care or medical items or services to victims of trafficking under—

(A) sections 202, 203, and 204 of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044a, 14044b, and 14044c);

(B) subsections (b)(2) and (f) of section 107 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105); and

(C) section 214(b) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002(b)).

(3) Grants. Of the amounts in the Fund used under paragraph (1), not less than $2,000,000, if such amounts are available in the Fund during the relevant fiscal year, shall be used for grants to provide services for child pornography victims and child victims of a severe form of trafficking (as defined in section 103 of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7102)) under section 214(b) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002(b)).

(4) Application of provision. The application of the provisions of section 221(c) of the Medicare Access and CHIP Reauthorization Act of 2015 [unclassified], section 50901(e) of the Advancing Chronic Care, Extenders, and Social Services Act [unclassified], section 3831 of the CARES Act, section 2101 of the Continuing Appropriations Act, 2021 and Other Extensions Act, section 1201(d) of the Further Continuing Appropriations Act, 2021, and Other Extensions Act [unclassified], section 301(d) of division BB of the Consolidated Appropriations Act, 2021 [unclassified], section 2321(d) of the Continuing Appropriations Act, 2024 and Other Extensions Act [unclassified], section 201(d) of the Further Continuing Appropriations and Other Extensions Act, 2024 [unclassified], section 101(d) of the Further Additional Continuing Appropriations and Other Extensions Act, 2024, and section 101(d) of the Consolidated Appropriations Act, 2024 shall continue to apply to the amounts transferred pursuant to paragraph (1).

HISTORY:

Added and amended May 29, 2015, P. L. 114-22, Title I, § 101(a), Title IX, § 905, 129 Stat. 228, 266; Dec. 22, 2017, P. L. 115-96, Div C, Title I, § 3101(e), 131 Stat. 2049; Feb. 9, 2018, P. L. 115-123, Div E, Title IX, § 50901(f), 132 Stat. 289; Dec. 21, 2018, P.L. 115-392, § 2(b), 132 Stat. 5250; Sept. 27, 2019, P.L. 116-59, Div B, Title I, § 1101(e), 133 Stat. 1103; Nov. 21, 2019, P.L. 116-69, Div B, Title I, § 1101(e), 133 Stat. 1136; Dec. 20, 2019, P.L. 116-94, Div N, Title I, Subtitle D, § 401(e), 133 Stat. 3113; Mar. 27, 2020, P.L. 116-136, Div A, Title III, Subtitle E, Part IV, § 3831(e), 134 Stat. 434; Oct. 1, 2020, P.L. 116-159, Div C, Title I, § 2101(e), 134 Stat. 729; Dec. 11, 2020, P.L. 116-215, Div B, Title II, Subtitle A, § 1201(e), 134 Stat. 1044; Dec. 27, 2020, P.L. 116-260, Div BB, Title III, Subtitle A, § 301(e), 134 Stat. 2922; Sept. 30, 2021, P.L. 117-43, Div D, Title I, § 3103, 135 Stat. 380; Dec. 3, 2021, P.L. 117-70, Div C, Title I, § 2102, 135 Stat. 1504; Feb. 18, 2022, P.L. 117-86, Div B, Title I, § 1102, 136 Stat. 17; Mar. 15, 2022,

P.L. 117-103, Div O, Title IV, § 401, 136 Stat. 788; Sept. 16, 2022, P.L. 117-177, § 1, 136 Stat. 2109; Sept. 30, 2022, P.L. 117-180, Div C, Title I, § 102, 136 Stat. 2133; Dec. 16, 2022, P.L. 117-229, Div B, Title I, § 102, 136 Stat. 2309; Dec. 29, 2022, P.L. 117-328, Div X, § 101, 136 Stat. 5523; Jan. 5, 2023, P.L. 117-347, Title I, § 105(c), 136 Stat. 6204; Sept. 30, 2023, P.L. 118-15, Div B, Title III, Subtitle B, § 2321(e), 137 Stat. 95; Nov. 17, 2023, P.L. 118-22, Div B, Title II, Subtitle A, § 201(e), 137 Stat. 120; Jan. 19, 2024, P.L. 118-35, Div B, Title I, Subtitle A, § 101(e), 138 Stat. 5; Mar. 9, 2024, P.L. 118-42, Div G, Title I, Subtitle A, § 101(e), 138 Stat. 398.

Attachment B

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. JAMES C. GOODWIN, Defendant.	Case No. 4:18-cr-00072-DCN-1 4:21-cv-00344-DCN **MEMORANDUM DECISION AND ORDER**

I. INTRODUCTION

Pending before the Court are Defendant James C. Goodwin's Motion for Extension of Time (Dkt. 83), Motion to Seal Case or Alter Language (Dkt. 88), Motion for Temporary Injunction (Dkt. 89), Motion for Leave to Appeal In Forma Pauperis (Dkt. 92), Motion to Compel Government to Return Property and Provide Documents (Dkt. 103), Motion to Reverse and Rescind Order of Restitution and Assessment (Dkt. 108), and Motion for Summary Judgment (Dkt. 112). The Government has filed nothing in opposition; nonetheless, the matter is ripe for the Court's consideration.

Having reviewed the record and briefs, the Court finds that the facts and legal arguments are adequately presented. Accordingly, in the interest of avoiding further delay, and because the Court finds that the decisional process would not be significantly aided by oral argument, the Court will decide the motion without oral argument. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B). Upon review, and for the reasons set forth below, the Court GRANTS the Motion for Extension, DENIES without prejudice the Motion to Return Property, and DENIES all other Motions.

II. BACKGROUND

On September 30, 2019, the Court sentenced Goodwin to 120 months of incarceration for one count of possession of sexually explicit images of a minor, in violation of 18 U.S.C. § 2252(a)(4)(B), (b)(2), to be followed by a life term of supervised release. Dkt. 51, at 1–3. Goodwin was ordered to pay $3,000 in restitution to the Child Pornography Victims Reserve. Dkt. 51, at 7. The Court also imposed a total assessment of $5,000 pursuant to the Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22. *Id.* Goodwin is currently incarcerated at the Federal Correctional Institution in Englewood, Colorado ("FCI Englewood"). Dkt. 77, at 2.

On September 2, 2021, Goodwin filed a Motion for Extension of Time. Dkt. 83. The Government filed no response.

On December 14, 2021, Goodwin filed a Motion to Seal Case or Alter Language. Dkt. 88. The Government filed no response.

On December 17, 2021, Goodwin filed a Motion for Temporary Injunction. Dkt. 89. The Government filed no response.

On May 2, 2022, Goodwin filed a Motion for Leave to Appeal In Forma Pauperis. Dkt. 92. The Government filed no response.

On May 5, 2022, the Court denied Goodwin's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. Dkt. 95.

On June 7, 2022, the Court denied Goodwin's Motion for Compassionate Release. Dkt. 98.

On June 28, 2022, Goodwin filed a Motion to Compel Government to Return

Property and Provide Documents. Dkt. 103. The Government filed no response.

On July 28, 2022, Goodwin filed a Motion to Reverse and Rescind Order of Restitution and Assessment. Dkt. 108.[1]

On February 2, 2023, Goodwin filed a Motion for Summary Judgment. Dkt. 112. The Government filed no response.

The Court will address each motion in turn. As an overarching theme, however, the Court notes that Goodwin's current slew of motions do not raise any legitimate matters for adjudication. He is admonished that filing repetitive or frivolous motions may result in restrictions on filing.

III. LEGAL STANDARD

"Rule 11 allows for sanctions against an attorney, law firm, or party who violates Rule 11(b) by filing a pleading or motion that is, *inter alia*, frivolous, for an improper purpose, or lacking in evidentiary support." *Meyer v. Bank of Am., N.A.*, 2012 WL 4470903, at *12 (D. Idaho Aug. 14, 2012), *report and recommendation adopted*, 2012 WL 4458141 (D. Idaho Sept. 26, 2012) (citing Fed. R. Civ. P. 11). An action is frivolous if it is "both baseless and made without reasonable and competent inquiry," or "groundless . . . with little prospect of success . . .." *Chevron U.S.A., Inc. v. M & M Petroleum Servs., Inc.*, 658 F.3d 948, 952 (9th Cir. 2011) (cleaned up). A district court has the discretion to impose sanctions under Rule 11 and under "its inherent authority to curb abusive litigation

[1] The Court notes that the Ninth Circuit has issued three decisions relating to some of Goodwin's appellant motions after he filed his Motion to Reverse and Rescind Order of Restitution. Dkt. 109; Dkt. 110; Dkt. 111. The Ninth Circuit denied each of Goodwin's appellant motions. *Id.* These three decisions by the Ninth Circuit have no bearing on Goodwin's civil case and criminal case before the Court.

practices." *DeDios v. Int'l Realty Invs.*, 641 F.3d 1071, 1076 (9th Cir. 2011) (cleaned up).

However, courts should "construe liberally motion papers and pleadings filed by *pro se* inmates and should avoid applying [] rules strictly." *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010).

IV. ANALYSIS

A. Motion for Extension of Time

In this motion, Goodwin generically asks the Court for additional time for his filings because of restrictions relating to quarantine protocols at FCI Englewood. *See* Dkt. 83, at 1. Goodwin does not specify any particular motion that is forthcoming, nor does he explain how much additional time he needs. This motion was filed almost two years ago. Thus, for all intents and purposes, the Court has granted the motion in allowing Goodwin to file papers over the last 20 months. Thus, the Motion is GRANTED, but only as to motions filed prior to the date of this decision. Those pending motions are deemed timely.

B. Motion to Seal or Alter Language

Here, Goodwin motions the Court, "to seal and/or alter language of this case and all cases, filings, papers, and matters pertaining to it." Dkt. 88, at 1. However, this is the only sentence in the motion besides a footnote citing caselaw that courts should liberally construe filings made by pro se litigants. *Id.*, at 1 n.1. As the Court always does, it will liberally construe Goodwin's motion. *Thomas*, 611 F.3d at 1150.

The problem, however, is that even liberally construed, the Court does not know what Goodwin is asking or why. Presumably he wants his entire criminal case sealed, but

he provides no explanation, caselaw, or analysis for his request.[2] Goodwin's single sentence cannot provide the Court adequate information to rule on the request. This motion is frivolous and offers no basis upon which the Court could make a reasoned ruling.

Thus, the Court DENIES this motion.

C. Motion for Temporary Injunction

Goodwin motions the Court for a temporary injunction regarding the Bureau of Prisons deducting too much money from his BOP trust account. Dkt. 89, at 2. Goodwin wishes to stop the BOP from deducting the disputed funds until the Court resolves this matter. *Id.*, at 3.

The BOP is currently taking money out of Goodwin's account pursuant to the restitution and assessment imposed on Goodwin by the Court's Judgment. Dkt. at 51, at 7. Goodwin argues that the BOP is overstepping its authority to take more money than the minimum amount as stated by their policy and cites several cases to back up this contention: *United States v. Lee*, 950 F.3d 439 (7th Cir. 2020); *U.S. v. Block*, 2023 WL 2242672 (D.S.D. Feb. 27, 2023); *Hughey v. U.S.*, 495 U.S. 411 (1990); *U.S. v. Rich*, 603 F.3d 722 (9th Cir. 2010); *U.S. v. Hardy*, 707 F. Supp. 2d 597 (W.D. Pa. 2010); *U.S. v. Ross*, 279 F.3d 600 (8th Cir. 2002); *Kelly v. Robinson*, 479 U.S. 36 (1986); and *U.S. v. Tallent*, 872 F. Supp. 2d 679 (E.D. Tenn. 2012). Goodwin cites several cases from other Circuit, and District, Courts, but these cases are only persuasive authority to the Court. The two U.S. Supreme Court cases and the one Ninth Circuit case that Goodwin cites are

[2] Notably, many documents in Goodwin's case are *already* sealed.

precedential authority, so the Court will consider them here.

The three precedential cases that Goodwin cites deal with issues surrounding restitution. In *Hughey*, the Supreme Court reversed and remanded a decision stating that the defendant had to pay restitution for his conviction because the lower courts misinterpreted a provision of the Victim and Witness Protection Act pertaining to restitution. 495 U.S. at 422.

In *Kelly*, the Supreme Court held that the defendant's restitution obligations, imposed by a state court, were not subject to discharge in Chapter 7 Bankruptcy proceedings. 479 U.S. at 53.

And in *Rich*, the Ninth Circuit held that a deceased Defendant's restitution obligations were to be abated because the assets attached to the restitution were not gained by fraud. 603 F.3d at 726.

While binding, none of these cases relate to Goodwin's situation. The BOP is rightfully deducting money from Goodwin's account pursuant to the Court's Judgment. There is no evidence of fraud by the BOP. There is no evidence that the Court, or the Government, has misinterpreted any federal laws and Goodwin does not provide any specific examples. Lastly, there is no evidence that Goodwin is a party to any bankruptcy proceedings.

It is not "unconstitutional" as Goodwin states nor is it "unethical" for the BOP to comply with the Court's orders. Dkt. 89, at 2. The Court issued a valid Judgment, and the BOP is following its policy pursuant to the Judgment. The Judgment stated, "[w]hile in custody, the defendant shall submit nominal payments of *not less than* $25 per quarter

pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program." Dkt. 51, at 8 (emphasis added). The BOP taking more than the minimum of $25 from his payment account is not restricted by the Judgment or BOP policy. The BOP policy clearly states that adjustments in the payment plan are up to the "discretion of the Unit Manager and is to be decided on a case-by-case basis." Dkt. 89, at 7; BOP Program Statement 5380.08.

Goodwin does not provide any information on his plight other than voicing his disapproval that the BOP is taking out more money than he was expecting and inconsistencies in the amount it deducts each month. *Id.*, at 2. But this is of no import. Goodwin can disagree with the Judgment and BOP policy, but the BOP's actions are in line with both and do not violate any of his rights. Based on the limited information available to the Court, the Court does not see any issues regarding the BOP's conduct.

Thus, this motion is DENIED.

D. Motion for Leave to Appeal In Forma Pauperis

Goodwin next motions the Court to appoint him a public defender in his effort to appeal.[3] Dkt. 92, at 1. However, Goodwin has already appealed, and the Ninth Circuit denied his appeal for not making a "'substantial showing of the denial of a constitutional right.'" Dkt. 109, at 1. The Ninth Circuit also denied his other pending appeal motions as moot. *Id.*

[3] Goodwin does not state what he is appealing in this motion. However, he filed a Notice of Appeal (Dkt. 85) to the Court's decision (Dkt. 82) on his Motion for Compassionate Release. The Court assumes, for this motion, he is referring to his appeal of the Court's Compassionate Release decision. It should also be noted that the Ninth Circuit remanded the Court's first decision on the Motion for Compassionate Release to consider intervening caselaw. Ninth Circuit Case No. 21-30202, Dkt. 13. The Court, again, denied the Motion for Compassionate Release (Dkt. 98). Goodwin has indicated his intent to appeal that decision as well. Dkt. 100.

There is no constitutional right to appointed counsel in post-conviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("The right to appointed counsel extends to the first appeal of right, and no further."). Instead, the decision whether to appoint counsel in post-conviction proceedings (including requests for compassionate release) rests with the discretion of the district court. *United States v. Harrington*, 410 F.3d 598, 600 (9th Cir. 2005). In this case, the Court has reviewed the materials and does not find any circumstances warranting the appointment of Counsel.

Thus, this motion is DENIED.

E. Motion to Compel Government to Return Property and Provide Documents

Goodwin motions the Court to order the Government to return the property that it seized—aside from those items already seized by the Court—and to make an "enumerated list of all seized items." Dkt. 103, at 1.

Federal Rule of Criminal Procedure 41(g) permits "[a] person aggrieved by an unlawful search and seizure or by the deprivation of property [to] move the district court . . . for the return of the property on the ground that such person is entitled to lawful possession of the property." *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993). A defendant has a right to reclaim his property when it is "no longer needed as evidence." *Id.*

Generally, a Rule 41(g) motion is properly denied "if the defendant is not entitled to lawful possession of the seized property, the property is contraband or subject to forfeiture or the government's need for the property as evidence continues." *United States v. Van Cauwenberghe*, 934 F.2d 1048, 1061 (9th Cir. 1991).

Goodwin states he is not seeking the return of the Samsung Galaxy cellphones that

were seized by order of the Court, but he alleges that other items were also seized. Dkt. 103, at 2. Goodwin does not give specifics on which additional items were seized. Without that itemization, there is nothing the Court can rule on. The burden is on a defendant to show that the Government has possession of items that were wrongfully seized or no longer needed for the case. The motion is denied without prejudice.

F. Motion to Reverse and Rescind

In this motion, Goodwin asks the Court to reverse and rescind the restitution and assessment ordered upon him as part of the Court's Judgment. Dkt. 108, at 1.

The Mandatory Restitution Statute, 18 U.S.C. § 2259, requires restitution for offenses involving sexual exploitation and other abuse of children. *United States v. Kennedy*, 643 F.3d 1251, 1260 (9th Cir. 2011). The restitution order must "direct the defendant to pay the victim . . . the full amount of the victim's losses." 18 U.S.C. § 2259(b)(1)). Section 2259 defines the phrase "full amount of the victim's losses" as follows:

> "[F]ull amount of the victim's losses" includes any costs incurred, or 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, including--
>
> (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) reasonable attorneys' fees, as well as other costs incurred; and
> (F) any other relevant losses incurred by the victim.

18 U.S.C. § 2259(c)(2). Under the standard set forth by the Ninth Circuit, the Court must make three determinations in order to award restitution under section 2259: "(1) that the individual seeking restitution is a 'victim' of the defendant's offense; (2) that the defendant's offense was a proximate cause of the victim's losses; and (3) that the losses so caused can be calculated with 'some reasonable certainty.'" *Kennedy*, 643 F.3d at 1263 (cleaned up).

Goodwin argues that the Child Pornography Victims Reserve ("Reserve") is not an identifiable victim under § 3663A(c)(B) and § 2259. Dkt. 108, at 3. In addition, he argues that § 2259 is unconstitutional for violating the Ex Post Facto Clause of the U.S. Constitution. *Id.* Lastly, he argues that the Court did not make a proper determination of his indigency status before ordering the assessment against him in violation of 18 U.S.C. § 3014(a). *Id.*, at 4. Goodwin is demonstrably wrong on all three assertions.

First, § 2259(b)(4) mandates the Court issue a restitution order. Further, under § 2259(b)(4)(B), the Court cannot deny the issuance of a restitution order based on whether "the victim has[] or is entitled to" receive restitution from the Reserve. There is no guarantee that victims will ever need the money from the Reverse or will seek it, but Congress understands children victimized by sexual abuse often do not recover quickly from their injuries. *U.S. v. Laney*, 189 F.3d 954, 966 (9th Cir. 1999). Goodwin already plead guilty that to the crime of possession of sexually explicit images of a minor. In addition, Goodwin admitted at his change of plea hearing that he understood there were identifiable victims in the images he contained on his phones. Dkt. 60, at 18. The National Center for Missing and Exploited Children identified four individuals in the images he

possessed. *Id.*, at 17. Furthermore, the Supreme Court has stated, "[i]t would be inconsistent with this purpose to apply [§ 2259] in a way that leaves offenders with the mistaken impression that child-pornography possession (at least where the images are in wide circulation) is a victimless crime." *Paroline v. U.S.*, 572 U.S. 434, 458 (2014).

Goodwin attempts to muddy the waters when referring to the Reserve as the "identifiable victim", but it is obvious the victims are the individuals that appeared in the sexually explicit images he stored on his phones. Those victims may one day need the Reserve, or are already accessing the Reserve, and that is why the Reserve was created in the first place.

Second, the Supreme Court has interpreted the Ex Post Facto Clause as laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." *California Dept. of Corrections v. Morales*, 514 U.S. 499, 504 (1995). Section 2259 was amended in December 2018, but Goodwin was subject to the provisions of the previous version of the law. There have been no new punishments or increases to his punishments attributed to Goodwin because of the amended § 2259, therefore the Ex Post Facto Clause does not apply.

Third, Goodwin was *not* indigent at the time of sentencing. While he had Court-appointed attorneys during the pendency of this case—indicating his indigency—he retained Curtis Smith prior to sentence. Accordingly, while the Court did not *formally* make any finding on the record about his indigency, the fact he retained counsel illustrated he was not indigent, and the assessment was proper. The Court waived the interest on the assessment, and allowed for a payment plan, but correctly determined Goodwin was able

to pay the assessment itself. Dkt. 61, at 36.

Thus, this motion is DENIED.

G. Motion for Summary Judgment

Finally, Goodwin motions the Court for summary judgment because the Government has not responded to his Motion for Temporary Injunction. The Court has already stated that the Motion for Temporary Injunction is denied, thus this motion will be DENIED as MOOT.

V. CONCLUSION

For the reasons stated above, Goodwin's Motion for Extension of Time is GRANTED as to motions filed prior to this decision, his Motion to Compel Government to Return Property and Provide Documents is DENIED without prejudice, and all other motions are DENIED.

VI. ORDER

IT IS HEREBY ORDERED:

1. The Motion for Extension of Time (Dkt. 83) is **GRANTED, as to motions already filed.**
2. The Motion to Seal Case or Alter Language (Dkt. 88) is **DENIED.**
3. The Motion for Temporary Injunction (Dkt. 89) is **DENIED.**
4. The Motion for Leave to Appeal In Forma Pauperis (Dkt. 92) is **DENIED.**
5. The Motion to Compel Government to Return Property and Provide Documents (Dkt. 103) is **DENIED** without prejudice.

6. The Motion to Reverse and Rescind Order of Restitution and Assessment (Dkt. 108) is **DENIED**.

7. The Motion for Summary Judgment (Dkt. 112) is **DENIED** as **MOOT**.

DATED: June 9, 2023

David C. Nye
Chief U.S. District Court Judge

Attachment C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CURCUIT

JAMES C. GOODWIN III, Petitioner, v. UNITED STATES OF AMERICA, Respondant.	)	Case No. 4:18-cr-00072-DCN-1 4:21-cv-00344-DCN **APPEAL OF THE DISTRICT COURT'S DENIAL OF MOTIONS**

The Petitioner, James Clifford Goodwin III, pro se comes before this Court in appeal to the District Court's decision of denial to his motions of: Motion to Seal or Alter Language; Motion for Temporary Injunction; Motion for Leave to Appeal In Forma Pauperis; Motion to Compel Government to Provide Documents and Return Property; Motion to reverse and Rescind Monetary Penalties; Motions for Summary Judgment, and moves this Court to vacate, set aside, or reverse the District Court's ruling and grant him the relief warranted.

BACKGROUND

The background of this case has been amply presented and is well known to all the parties. As such, it does not bear reiterating here. In interest of respect of this Court's time, the Defendant will forbear from repeating it.

DISCUSSION/ARGUMENT[1]

Unconstitutional, illegal, or improperly imposed sentences violate due process of law, are unconstitutional, and require relief. The same hold for those sentences and judgments which violate or are contrary to, not holding with, the rules, statutes, or ruling case law.

The District Court compiled several of the Petitioner's motions from over two years to answer at once, most of which it has not addressed in that time period. It warned the Defendant of filing "frivolous"motions and threatened sanctions. (See Dkt. 113, at 3). The District Court states and acknowledges that the Government did not disagree with any of the Defendant's motions.[2] It notes that the Government did not even reply to these motion. (See Dist. Idaho R. 7.1(e)(1)[3] and Ninth Circuit R. 31-2.3[4]).

The Petitioner fails to see how contesting violations of the Constitution, due process of law, substantial rights, rules, or statute would be frivolous[5]. So he comes before this Court in appeal of the District Court's denial, seeking

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See Footnote listing at end of brief.

relief.

He addresses each of the District Court's decisions in turn.

A) MOTION FOR EXTENSION OF TIME

Due to the conditions and lock-down quarantine protocol at FCI Englewood caused by COVID-19 and resulting in limited or no access to legal research, materials, or the courts, in 2021, the Petitioner requested an extension of an in determinate period of time to file motions and papers relating to his case. He stated in his request that he would attempt to keep the District Court informed of the changing conditions and circumstances at FCI Englewood and when leniency in filing times would no longer be needed, if the District Court granted his request, so that unnecessary extra time was not taken.

The District Court did not respond, forcing the Defendant to rush replies, with increased stress to, to Government filings, appellate briefs and replies, compassionate release filings, and other motions and papers to meet deadlines set by the rules and courts. This caused an extraordinary and high level of stress and anxiety on the Defendant, affecting his health and relationships with others.

Finally in June 2023, after all the filings had been completed, the District Court responded to the Petitioner's request and granted him an extension of time, almost two years after the time of his request for it. As all of the filings had already been filed timely and FCI Englewood had ended its quarantine protocols completely in May 2023, the point is moot.

B) MOTION TO SEAL OR ALTER LANGUAGE

The District Court expresses confusion with regards to the Petitioner's Motion to Seal Case or Alter Language. As it is noted, this request was filed in 2021. The Government never disagreed with nor responded to it, invoking Dist. Idaho R. 7.1(e)(1).

As a basis for filing this request the Defendant had only a notice posted in the Law Library at FCI Englewood for reference. (See Exhibit/Attachment 1). With this memo as the only information, the Petitioner followed the directions and instructions provided and filed his request with the District Court.

C) MOTION FOR TEMPORARY INJUNCTION

Much of the District Court's reply regarding the Defendant's Motion for Temporary Injunction do not apply and are irrelevant to his request. However, as the District Court raised the issues, the Defendant is obligated to reply to them. If he does not, his silence may be construed a agreement with and acceptance of them.

It appears that the District Court misunderstood the Petitioner's Motion

for Temporary Injunction. He does not dispute its authority to impose lawfully and properly determined and researched—within the statutes and rules—fines, fees, assessments, or orders of restitution. Nor does he question its power to set an explicitly delineated payment schedule or designate a proper court mechanism to collect such, following the court's payment schedule.

However, in issue arises when the court delegates authority to a non-Article III entity—such as the U.S. Probation office or the Bureau of Prisons ("BOP")—to determine the nature or circumstances of a defendant's sentence, such as setting or changing a payment schedule for monetary penalties. (See **U.S. v. Gunning (Gunning II)**, 401 F.3d 1145, 1150 (9th Cir. 2005)("the district court simply does not have the authority to delegate its own scheduling duties—not to the probation office, not to the BOP, not to anyone else")). The Ninth Circuit and other courts have held these assessments and restitution to be punitive. (See **Durst v. U.S.**, 434 U.S. 542, 554 (1978)(citing **U.S. v. Hix**, 545 F.2d 1247 (9th Cir. 1976)); **Wright v. Riveland**, 219 F.3d 905 (9th Cir. 2000); **Prescott v. County of El Dorado**, 177 F.3d 1102 (9th Cir. 1999); **U.S. v. Kovall**, 875 F.3d 1060 (9th Cir. 2017); **U.S. v. Hankins**, 858 F.3d 1273 (9th Cir. 2016); **William A. Grajam v. Haughey**, 646 f.3d 138, 144 (3d Cir. 2011)).

When the BOP modifies the defendant's payment schedule it is changing the nature or circumstances of the defendant's punishment. To do this without order from the court is unconstitutional. For a court to authorize the BOP, or any other entity, to do this at will, or on a whim, of its own accord as it wishes is likewise unconstitutional as violation of the Non-delegation Clause.

The **Gunning II** court stated that it "[did] not doubt that the BOP. like the probation office, has expertise in the payment area." (See **Gunning**, 401 F.3d at 1150). It stated that through the Inmate Financial Responsibility Program ("IFRP") procedure the BOP "will 'help [the] inmate develop a financial plan' and will then 'monitor the inmates progress' in meeting the terms of that plan." (**Id.** (quoting 28 C.F.R. §545.11); see also 28 C.F.R. §545.10). This may be true of the original purpose of the IFRP. It is important to note that there is no "help[ing] [the] inmate develop a financial plan". There is no training or education of budgeting of finance management. The extent of the developing a plan is that all the funds deposited into an inmate's account, from any source, go through a computer which then spits out a number for the inmate to pay. Staff has said, "I have no control to adjust it. It's what the computer says to pay."

The BOP may have authority to make determinations and recommendations for

a payment schedule. It then has the authority, and ability, to petition the court recommending a change to the current payment schedule. This then also maintains the defendant's due process rights in allowing him to challenge the change to the nature or circumstances of his punishment. This is one of the costs of federalism. (See e.g. **Camsoft Data Sys., Inc. v. S. Elecs. Supply, Inc.**, 756 F.3d 327, 339 (5th Cir. 2014)).

The this Circuit has held that the district courts' system of imposing "restitution 'due immediately' as part of sentences where a defendant is committed to a term of imprisonment" with the exception that the "BOP and/or Probation will work out the details of payment. ... constitutes an impermissible delegation of authority to either BOP or Probation." (See **Ward v. Chavez**, 678 F.3d 1042, 1047-48 (9th Cir. 2012)(quoting **United States v. Ward**, 2008 U.S. Dist. LEXIS 103276, 2008 WL 5220959, at *3)).

Ward set forth this Circuit's standard for what qualifies as a "valid restitution order" and held that an order that sets payment due immediately and leaves the "details" up to the BOP fails. (See **id.**).

In the Defendant's case the District Court followed this same pattern of ordering payment due immediately and allowing the BOP to set the details through the IFRP. (See Dkt. 61, at 36; see also Dkt. 113, at 6-7 (stating "the defendant **shall** submit **nominal** payments of not less than $25 per quarter pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program")(emphasis added)). This raises several issues.

First, this Circuit found in **U.S. v. Lemoine**, 546 F.3d 1042 (9th Cir. 2008) that the BOP's IFRP was voluntary for inmates to choose to participate in. This voluntary nature is vital to prevent the impermissible delegate of authority by the district court to the BOP. In the Defendant's case the District Court remove the voluntary nature of the BOP's collection ability when it order that the Defendant "**shall** submit" payment pursuant to the IFRP. This establishes impermissible delegation. The District Court removed all voluntariness and unconstitutionally delegated its authority to the BOP to set the payment schedule. This leads to the second issue.

"[A] court delegates its authority if it gives another body authority to perform some task that is committed to the court. Under [Ninth Circuit] precedent, a sentencing court impermissibly delegates its authority to impose a restitution payment schedule if it requires a defendant to submit to a payment schedule imposed by another body. See **United States v. Gunning (Gunning I)**, 339 F.3d 948, 950 (9th Cir. 2003)(construing order that defendant pay restitution

'as directed by a U.S. probation officer' as assigning to the probation office full control of subsequent payment); **United States v. Gunning (Gunning II)**, 401 F.3d 1145, 1150 (9th Cir. 2005)(construing order that defendant pay restitution while imprisoned through the BOP's [IFRP] as a delegation of scheduling authority)." (**Ward**, 678 F.3d at 1058)(decided after **Lemoine**). The District Court's choice that the Defendant "shall" pay "pursuant" to the IFRP removes any voluntariness and doubt that it unconstitutionally delegated authority to the BOP to set a payment schedule.

Another issues lies in the District Court's use of the word "nominal". Webster's dictionary defines "nominal" as "being something in name or form only —[nominal] head of a party—: TRIFLING —a [nominal] price—". (The Merriam-Webster Dictionary, 10th printing (2016)). Thus, increasing what must be paid in the payment schedule is not only outside the BOP's authority resulting from impermissible delegation of authority, but also a violation of court ordered "nominal" payment. This is not consistent with the District Court's current thinking or the BOP's practice.

Further, courts have found that the phrase "not less than", as used in the District Court's order, means that a defendant may choose to pay more than the $25 quarterly, not that he is required to. (See **Thurman v. Thomas**, 2008 U.S. Dist. LEXIS 7599, at *2-5 (D. Or. Sep. 30, 2008); also **Dixey v. Daniels**, 2007 U.S. Dist. LEXIS 49778 (D. Or. Jul. 5, 2007)).

The Defendant has been compliant with the District Court's unconstitutional order. He has submitted to the BOP's IFRP as required. He has continued to meet his obligation to pay his "monetary penalties" in accordance to the BOP's changing requirements, even when his family has had to send him addition money to do so.

The District Court correctly states that "[i]t is not 'unconstitutional' ... nor is it 'unethical' for the BOP to comply with the Court's orders," when the Court issues "**valid** Judgment". (Dkt. 113, at 6)(emphasis added). Modifying a payment schedule without direct orders from the Court is, as it delegates authority to another entity to set a payment schedule.

However, as previously stated, this is irrelevant—though important and needing to be addressed and decided—to the Defendant's Motion for Temporary Injunction. The District Court's order of monetary penalties itself was invalid. The Government did not dispute this. However, the District Court disagrees that its own order was improper and unconstitutional.

The Defendant requested that an order of temporary injunction to stay the

collection of the disputed monetary penalties be placed upon the BOP while the question was before the courts in the fullness of judicial proceedings. If, at the end of such, the courts ruled against the Defendant, the injunction could be lifted and the BOP could resume the collection of said penalties pursuant to the District Court's order. Alternatively, if the courts ruled in favor of the Defendant, this would decrease the amount to be returned to him due to the collection of invalid and unconstitutional monetary penalties.

The District Court improperly denied the Defendant's motion for injunction. He moves this Court to reverse the District Court's order and impose a temporary injunction on the BOP from collecting the disputed monetary penalties and to place the Defendant in "IFRP Exempt" status until the final resolution of the issue through the full judicial proceedings. This would also apply to all entities attempting to collect these monetary penalties. In the alternate, the Petitioner moves this Court to restrict the BOP to collecting the "nominal" $25 per quarter for the duration of full judicial proceeding with regards to the moneies in question.

D) MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

The Petitioner is confused with the District Court's addressing of his request to file appeal in forma pauperis. It does not address this issue at all, but instead seems to construe this motion as a request for appointment of counsel and explains why it feel it should not appoint counsel for the Petitioner's appeal under 28 U.S.C. §2255. (See Dkt. 113, at 7-8). This error on the District Court's part comes from not addressing the Defendant's motions in a timely manner, when they were presented.

Though not frivolous at the time of filing almost two years ago, neither of these issues are relevant currently and the points are, at this time, moot.

E) MOTION TO COMPEL GOVERNMENT TO PROVIDE DOCUMENTS AND RETURN PROPERTY

The District Court does not contest the Defendant's right to have seized property not forfieted returned. It states that it cannot order property and items returned without knowing what property and items the Government still has in its possession which need to be returned. Therefore, it needs an itemized list of the property and items to be returned.

The Defendant understands, and anticipated, the District Court's need of an enumerated, or itemized, list of the items and property he wants returned. He requested such a list from the Government on several occasion but received no reply. As part of his motion he moved the District Court to compel the Government to proved him with said list as it had refused to do so on its own,

despite the several requests by the Defendant.

The Petitioner was already in custody at the time of the seizure of property and knows only of the items his family informed him were taken. He was never provided with a listing of seized/confiscated items, as required. Many of these items did not belong to the Defendant, but to family members (such as a laptop belonging to a brother residing there (from that brother's bedroom), firearms (belonging to his mother and another brother and taken from his mother's locked bedroom—to which searchers broke down the door—and an RV on the property where the other brother resided), keys and cell phones belonging to his mother. etc.). His family further told him that there were items taken that were not put on the list of seized/confiscated property. They had seen items in agents vehicles, and taken pictures of those item in the vehicles, that were not on any list that was insisted be shown to them. The firearms were among these items.

The Petitioner has valid reason for concern regarding the Government's and law enforcement's seizure and retention of non-forfeited property and items.[6] Because of several instances, he had, and has great concern over these items taken by the Government, through its own actions or those of any agent acting in concert with it. He has been seeking the return of property since shortly after sentencing, in 2019. With this concern and the understanding of the need for an itemized listing of property and items seized and taken, prior to seeking relief from the District Court the Petitioner wrote to the U.S. Attorney's office several times and requested that the Government provide him with an itemized, enumerated list of seized, confiscated, or taken items, and return any non-forfeited property. The Government refused to do either, or to even respond. The only action left available to the Defendant was to go to the courts to obtain both the itemized list of seized property and the return of the property itself.

The burden falls upon the Government to show proof of the need to retain non-forfeited property seized. (See **U.S. v. Mills**, 991 F.3d 609, 612 (9th Cir. 1993)(Government bears burden of demonstrating legitimate reason for retention of the property)). Otherwise it must return that property, even if it was lawfully seized. (See **U.S. v. Moore**, 1999 U.S. App. LEXIS 20350 (9th Cir. 1999) (despite lawful seizure of property, government must return property when it no longer needs it)).

The Petitioner moves this Court to reverse the District Court's denial of his motion to compel Government. He further moves the Court to order the

Government to provide him with an itemized list of all items or property seized, confiscated, or taken, as it has refused to provide such a list or respond, despite multiple requests, so that the Defendant may provide the courts with an accurate itemized list of items to be returned. Otherwise, he asks that an indefinite "**all**" items not forfeited by court order at the time of sentencing, that were seized, confiscated, or taken be returned.

F) MOTION TO REVERSE AND RESCIND

The District Court highlights three ares to address in regard to the Petitioner's motion to reverse and rescind:

1) "that the Child Pornography Victims Reserve ("Reserve") is not an identifiable victim under [18 U.S.C.] §3663A(c)(B) and [18 U.S.C.] §2259",

2) "that §2259 is unconstitutional for violating the Ex Post Facto Clause of the U.S. Constitution"; and,

3) "that the Court did not make a proper determination of his indigency status before ordering the assessment against him in violation of 18 U.S.C. §3014(a)."

The Government did not disagree with, or respond to, the Petitioner's assertions or motion. Though the District Court is obviously and demonstrably in error, the Defendant is obligated to reply to each of these assumptions.

1) RESERVE IS NOT A VICTIM[7]

Given the plain and ordinary meaning of the words used by Congress, the Reserve cannot be considered a "victim" in the Defendant's case, or for the application of restitution pursuant to §2259, under the definition included by Congress in §2259(c)(4), which states:

> (c)(4) Victim. For the purpose of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter. [modified in 2018]

The Reserve cannot rationally be considered a victim of the Defendant's offense. In no way was the Reserve "harmed as a result of [the] commission". It did not even exist at the time the Defendant was charged with his offense.

Established in December of 2018, the Reserve is part of the Amy, Vicky, and Andy Child Pornography Victims Assistance Act of 2018. (See 18 U.S.C. §2259B). It set up a reserve fund in which donations, gifts, bequests, and assessments (id.)(note that "restitution" is notably absent) could be placed for the use of identified victims of child pornography, within limits. At the same time, it was included in 42 U.S.C. §20101(d)(6), which set its upper reserve limits.

Section 2259B states:

(d) It is the sense of Congress that individuals who violate

> this chapter prior to the date of enactment of the Amy, Vicky, and Andy Child Pornography Victims Assistance Act of 2018 [enacted Dec. 7, 2018], but who were sentenced after such a date, shall be subject to the statutory scheme that was in effect at the time the offenses were committed. [not at sentencing]

The District Court is clearly and undeniably incorrect that the Reserve is a victim, under the statute and statements of Congress. It is not an "individual". It was not "harmed by [the] commission of a crime", especially not in the Petitioner's case. It was not even statute or in existence at the time "the offense[] [was] committed". (8)

The Defendant applauds the good intent of the Reserve and agrees with the need for it. It was wise of Congress to include the provision allowing for gifts, donations, and bequests to be placed there in by anyone. The Defendant may freely and voluntarily submit gifts or donations to the Reserve. However, requiring him to pay mandatory assessments or restitution into the Reserve is unconstitutional and must be corrected.

2) §2259 WAS IMPROPERLY IMPOSED AND VIOLATES EX POST FACTO WHEN APPLIED TO DEFENDANT

The District Court states that the Defendant "argues that §2259 is unconstitutional for violating the Ex Post Facto Clause of the U.S. Constitution". (See Dkt. 113, at 10). In this the District Court also errs. The Petitioner does not claim that §2259, §2259A, §2259B, or §3014 are unconstitutional, in and of themselves, for violating the Ex Post Facto Clause. He calls into question their legality and constitutionality when applied to him in his current conviction.

The District Court acknowledges that Congress amended §2259 in December 2018 (see Dkt. 113, at 11) but states that the Defendant "was subject to the provisions of the previous version of the law" (id.) and that "[t]here have been no new punishments or increases to his punishment attributed to [Defendant] because of the amended §2256, therefore the Ex Post Facto Clause does not apply". (Id.) Both of these statements are fundamentally flawed. To understand this we need to briefly look at the short history of the amendments to §2259.

On December 7, 2018, Congress made significant changes to 18 U.S.C. §2259. (See history of §2259, 2018). These changes include, but are not limited to,: "in subsec. (b), ... redesignated para. (2), as para. (3), and inserted new para. (2)", as well as "in subsec. (c), in the heading, substituted "Definitions" for "Definition", inserted paras. (1)-(3), inserted para. (4) designator and heading, and in such para., substituted "under this chapter. In the case" for

"under this chapter, including, in the case," and inserted "may assume the crime victim's rights under this section,"; and added subsec. (d)." Prior to the enacting of the changes to §2259 collection of restitution was accomplished under the Mandatory Victims Restitution Act ("MVRA"). (9)

The Reserve was created by Congress by adding §2259A and §2259B to the changes it made to §2259. At the same time, Congress amended 42 U.S.C. §20101 to include (d)(6), which included the Reserve to that statute. Before December 7, 2018 the Reserve did not exist. Restitution was to be paid to the victim of a defendant's offense, of their legal representative, directly through the courts.

As stated above, in the changes to §2259 that Congress made in December of 2018 was the addition of subsection (b), paragraph (2) in its entirety (see §2259. History, Dec. 7, 2018) entitled "Restitution for trafficking in child pornography." This portion of §2259 set forth that "[i]f the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court ...". It then mandates that the court shall make determination of the victim's loses and the basis for that determination. (See §2259(b)(2) and (b)(2)(A)).

Following the determination that the court **must** make, this portion of §2259 set a mandatory minimum amount of $3000 (see §2259(b)(2)(B)), as well as the "[t]ermination of payment" (see §2259(b)(2)(c)). Not one wit of this existed before Congress' amendment in December 2018. There is no case law or legal standard applying this prior to the Dec. 7, 2018 enactment that the Defendant could find in FCI Englewood's Lexis Nexis system. The offense in this case occurred prior to the date of enactment. This section cannot be applied to him. (See §2259B).

The record shows that no determination was made by either the District Court or the Government. Their "determination" was as follows:

> THE COURT: What about restitution? Is there any agreement on that?
>
> MR. SHIRTS: There is no—there is no victims that specifically requested restitution in this case, Your Honor. I think there was a $3,000 statute, like a mandatory just for the reserve fund. But there was no other victims that came forward that requested any restitution from this case. (See Dkt. 61, at 17-18).

This clearly shows reliance on a statute enacted after the offense occurred to impose restitution, an obvious increase or change in punishment. It further shows that no determination was made, only guesses and speculation.

To continue, §2259 defines "trafficking in child pornography", for the purpose of this section and §2259A, as "conduct proscribed be section 2251(d), 2252, 2252A(a)(1) through (5), 2252A(g)(in cases in which the series of felony violations exclusively involves violations of section 2251(d), 2252, 2252A(a)(1) through (5), 2260(b)), or 2260(b)". (See §2259(c)(3)(which was added on Dec. 7, 2018)). The Defendant's statute of conviction falls within this listing, causing him to fall under the definition of "trafficking in child pornography", and thus subsection (b), paragraph (2) of §2259 (which did not exist prior to the amendments that were added in December of 2018. As previously shown, this subsection was added in December 2018. Prior to this, §2259 could not apply to the statutes of "trafficking in child pornography" defined in §2259(c)(3) as held by §2259(c)(2)).

As previously quoted, §2259B(d) provides the sense of Congress with regards to the retroactivity of the amendments and changes to §2259. That is, they are not to be applied to any offense committed prior to the enactment, even if sentencing occurs after that date. (See §2259B(d)). To do so violates the sense of Congress explicitly defined, and thus the Ex Post Facto Clause.

Additionally, because no victims requested restitution in this case, imposing an order of restitution is, itself, improper. (See **U.S. v. Bara**, 428 F. Supp. 800, 824 (D. Nev. Nov. 4, 2019)(though MVRA of 1996 applied, no victim requested restitution, and thus the court would not order restitution)).

Further, to apply as mandatory a statute and mandatory minimum monetary amount to an offender of defendant to which, or whom, it did not apply, before the enactment of an amendment including such an offense, when the defendant's conduct occurred prior to the enactment clearly increases, and makes more severe, that defendant's punishment. This is in plain violation of the Ex Post Facto Clause and the sense of Congress.

The District Court has plainly erred in its application of §2259, along with the Ex Post Facto Clause. At the time of commission, §2259 and its mandatory restitution did not apply to the statute of conviction, which commission occurred prior to the signing into law of the Amy, Vicky, and Andy Child Pornography Victims Assistance Act of 2018, the amendments to §2259, and the Reserve. Though appropriate to cases and offenses committed after December 7, 2018, when the District Court imposed the mandatory restitution of $3000—caused by the enacting of the amendments to §2259—on the Defendant it increased his punishment or the severity of his punishment and violated the Ex Post Facto Clause and his Sixth Amendment right not to be sentenced on basis

of invalid or inaccurate information. Holding that a mandatory minimum restitution statute applied to the Defendant was inaccurate and invalid information.

In addition, Because the District Court failed to inform the Defendant that it considered there to be a mandatory minimum monetary penalty, his guilty plea is invalid.[10]

The Defendant cannot be said to be "subject to the provisions of the previous version of the law". (See Dkt. 113, at 11). There were no provisions included for "trafficking in child pornography" in the previous version of §2259, nor definitions for statues to be defined as "trafficking in child pornography" subject to him. There was no mandatory "$3,000 statute". (See previous version of §2259; Dkt. 61[11], at 18). The amendments to §2259, including §2259A and §2259B, clearly "alter the definition" and "increase the punishment". (See **California Dept. of Corrections v. Morales**, 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995)).

The previous version of §2259 also requires the the District Court engage in a two-step inquiry to award restitution where it determined that §2259 applied. First, the District Court **must** determine whether the person seeking restitution was a crime victim under §2259. Second, the District Court **must** ascertain the full amount of that victim's losses as defined under §2259. (See **Paroline v. Unknown (In re Unknown)**, 697 F.3d 306 (5th Cir. 2012). This the District Court did not do. (See Dkt. 61, at 17-18, 34). Nor did the Government. (See **U.S. v. Clemans**, 2018 U.S. Dist. LEXIS 171302, at *5-6 (E.D. Cal. Oct. 3, 2018)("It is the Government's burden to prove the amount of the victim's losses by a preponderance of evidence" (citing **Paroline v. U.S.**, 572 U.S. 434, 462, 134 S.Ct. 1710, 188 L.Ed.2d 174 (2014))).

Section 2259 cannot be applied to the Defendant. The Government does not contest this. This order must be vacated. It need not be remanded as both the District Court and the Government had fair and ample opportunity to ascertain the amount and submit evidence of victim losses. (See **U.S. v. Dagostino**, 520 Fed. Appx. 90 (3d Cir. 2013)(holding that where the government did not present evidence of specific losses, the case would not be remended for presentation of such evidence since the government had fair opportunity to submit evidence of victim's losses)). Further, the Government note that no victims requested restitution in the Defendant's case.

3) DEFENDANT WAS INDIGENT AND ASSESSMENT WAS IMPROPERLY APPLIED

The parties all agree, and there is no question, that special assessments

under 18 U.S.C. §3014 can only be imposed on non-indigent defendants, and that a district court must make a determination of indigency or non-indigency at sentencing. The questions then become, was the Defendant indigent, and did the District Court make a proper determination prior to imposing the $5000 assessment.

To view the Defendant's economic circumstances only at sentencing in making a finding of indigency or non-indigency is to take a snap-shot in time. It is not proper or correct. It does not represent the Defendant's ability to pay accurately, realisticly, or reliably. (See **Anderson v. City of Bessemer City**, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985)(district court's conclusion of non-indigency because of retained counsel at sentencing was not "plausible in light of the record viewed in its entirety")).

Ample case law exists, as well as the statute itself, to support the Defendant's assertion that the District Court improperly imposed the special assessment under §3014. The Government does not disagree.

The District Court states that the $5000 special assessment imposed under §3014 was correct because it claims the Defendant was not indigent. The District Court errs in its assumption. It bases and supports its entire claim for its order on Curtis Smith being retained counsel at sentencing. This is not an accurate showing or determination of non-indigency and courts have held it is insufficient to support such a claim. (See **Anderson**, 470 U.S. 564; see also **Chipres-Rodriguez v. U.S.**, 2016 U.S. Dist. LEXIS 87539, at *2 (E.D. Cal. Jul. 6, 2016)(holding that because a defendant has retained counsel does not definitively show non-indigency)). Courts have been warned and alerted to determine if a third party pays for retained counsel for an indigent defendant. (See **Quintero v. U.S.**, 33 F.3d 1133 (9th Cir. 1994)("This opinion is being published to alert trail judges ... to determine whether or not third partied are paying the fees of retained counsel when the defendant is indigent")).

This the District Court did not do. The record is clear on this. The Defendant's mother, sister, and one of his brothers pooled money together and paid the fees for retained counsel when they witnessed the ineffective assistance provided by Court-appointed defense counsel. The Defendant attests to this fact. (See Exhibit/Attachment 2).

The District Court did not make any finding on record showing the Defendant was non-indigent, as required. (See e.g. **U.S. v. Baker**, 8 Fed. Appx. 655, 657 (9th Cir. 2001); see also **U.S. v. Fowler**, 956 F.3d 431, 439-40 (6th Cir. 2019); **U.S. v. Kibble**, 2021 U.S. App. LEXIS 33825, at *8 (4th Cir. 2021); **U.S. v.**

Bhaskar, 2022 U.S. App. LEXIS 17030, overview (2d Cir. 2022)). The District Court acknowledges this fact, recognizing that it "did not **formally** make any finding on record about the [Defendant's] indigency". (See Dkt. 113, at 11) (emphasis in cite). It cannot be inferred that the District Court considered the Defendant's ability to pay. (c.f **U.S. v. Wandahsega**, 924 F.3d 868, 889-90 (6th Cir. 2019)). The District Court also states that the Defendant "had Court-appointed attorney during the pendency of his case—indicating indigency". (See Dkt. 113, at 11). The Defendant's financial status did not improve during his time incarcerated since his arrest, as shown by his Court-appointed appellate counsel and following pro se motion to appeal in forma pauperis. The record implicitly shows that the District Court was aware of the Defendant's indigency at sentencing, and considered him such. (See Dkt. 61, at 36-37). The Government did not disagree with the Petitioner's assertion of his indigency.

"Generally, when the collateral attacker alleges and testifies that he was indigent at the time of the challenged prosecution and the states offers no controverting evidence, he should be deemed to have carried his burden of proof as to indigency." (**Mitchell v. U.S.**, 482 F.2d 295 (5th Cir. 1973)(citing **Kitchens v. Smith**, 401 U.S. 847, 91 S.Ct. 1089, 28 L.Ed.2d 519 (1971))). The Defendant alleged and testified that he was indigent. As the District Court Acknowledged, the Government offered no controverting evidence, nor did it even respond. (See Dkt. 113, at 13). Idaho R. 7.1(e)(1) hold this lack of response to constitute a consent to the granting of the Defendant's motion. (See Dist. Idaho R. 7.1(e)(1)).

The District Court did not make a finding of non-indigency on the record at the time of sentencing as required. The record is silent on this except to imply the Defendant's indigency. The District Court's "snap-shot in time" is inappropriate and inaccurate as the District Court appointed counsel both before and after sentencing—indicating indigency—and retained counsel's fees were paid by a third party. The District Court did not make a determination of this as directed by controlling Ninth Circuit case law. The Defendant maintains and testifies that he is, and was at sentencing, indigent. The Government did not, and does not, dispute this nor offer evidence contrary to the Petitioner's assertion, where as the Defendant does present evidence supporting his claim.

The District Court imposed the $5000 special assessment under §3014 in error and in violation of statue and ruling case law. This Order must be reversed and the special assessment removed.

G) MOTION FOR SUMMARY JUDGEMENT

The District Court gives as reason for denying summary judgment of the Defendant's request for temporary injunction that it had denied that request, though it was all accomplished at the same time. It does not address the motions for summary judgment for the motions on unconstitutional and improperly imposed monetary penalties nor to compel the government to provide an itemized listing of seized items and to return property. As shown, all of these motions have merit and summary judgment was improperly denied.

The Government did not respond to any of the motions addressed by the District Court, nor to the motions for summary judgment. It did not even give notice that it did not intend to respond to them. (See Ninth Cir. R 31-2.3). It remained silent on all of them. Per rules judicial procedure and those governing the court, this "constitutes a consent" to granting them. (See Dist. Idaho R. 7.1(e)(1)).

When neither party contest the granting of a motion or request it is proper for a court to grant it. (See e.g. **De Long Equipment Co. v. Washington Mills Abrasive Co.**, 887 F.2d 1499, 1516 (11th Cir. 1989); also **Guerrero v. Halliburton Energy Servs.**, 231 F. Supp. 797, 802 (E.D. Cal. Feb. 3, 2017)).

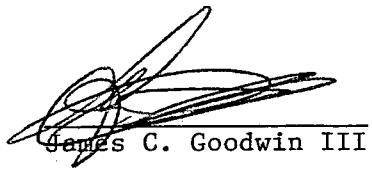
The District Court erred in denying summary judgment on uncontested motions. This warrants remedy and relief.

CONCLUSION

Due to the length of time that passed before the District Court addressed the Defendant's motions and requests, some of them became meaningless and moot. Those that remained were improperly denied. This warrants relief.

For the reasons shown, and those not identified because of the Defendant's inexperience in and with legal process, but which exist, the Petitioner humbly moves this Court to hold to the rules, laws, and statutes established by Congress and courts and grant him the relief sought.

Respectfully submitted this 11 day of July, 2023.



James C. Goodwin III

FOOTNOTES

(1) The Defendant begs this Court's indulgence and asks it to excuse the length of this appeal. The District Court compiled several motions and requests from over a two year period which it responded to all at once, which he must properly address.

(2) It is important to note, and the District Court recognized, that of all the Petitioner's motions and requests which the District Court addresses at this time, not on of these did the Government contest or even respond to, constituting a consent to their granting. (See Dist. Idaho R. 7.1(e)(1)).

(3) Dist. Idaho R. 7.1(e)(1) states in part:

> ... if an adverse party fails to timely file any response documents required to be filed under this rule, such failure may be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application. In addition, the Court, upon motion or its own initiative, may impose sanctions in the form of reasonable expenses incurred, including attorney fees, upon the adverse party and/or counsel for failure to comply with this rule.

(4) Ninth Circuit R. 31-2.3 states in part:

> If appellee does not elect to file a brief, Appellee shall notify the court by letter on or before the due date for the answering brief. Failure to file the brief timely or advise the court that no brief will be file will subject counsel to sanctions.

(5) The District Court ignores the rules even while citing them. (See Dkt. 113, at 1; compare Dist. Idaho R. 7.1(e)(1).

(6) The Defendant's family reported to him the numerous times during the search of his mother's property law enforcement and probation officers eyed appreciatively and fondled several firearms belonging to the Defendant's mother and brother, holding them up and sighting their length, as if to claim them for their own. These firearms had been in secure locations to which the Defendant had no access. Among these firearms was a family heirloom, belonging to his mother and of great sentimental value as well as high collector value, and several sporting rifles of high monetary value belonging to one of the Defendant's brothers. These rifles were taken, "seized", by the agents.

As these firearms were never forfeited, the Petitioner's mother and brother attempted to effect the return of them. These family members were sent back and forth between the different agencies of law enforcement, U.S. Probation, and the U.S. Attorney's office. Each insited that they did not have these coveted rifles and that one or the other of the other agencies had possession of them. This continued for several months. Eventually the Defendant's family were told the rifles were never "seized". When shown pictures of the rifles in agents' vehicles, taken on the family members' cell phones, they were told the rifles were "lost".

The Defendant's brother found legal counsel and upon contact by this attorney the Government contacted the Defendant's mother. It informed her to come pick up the firearms. They had been "found".

During the search, the Defendant's family began documenting and taking photos of what was being taken and "seized". They did this because many items were taken and seen in agents' vehicles that were not on the list of seized items shown to them.

In another instance, law enforcement agents "seized" and then "lost" the spare key to the Defendant's personal vehicle. The vehicle itself was never seized nor even searched. This key is not one easily replaced or able to be duplicated at a local hardware store. It must be laser-cut and custom ordered through a dealer--of which the closest to the Defendant's place of residence is in another state--at great expense. This key has never been returned or replaced.

FOOTNOTES

(7) The Government stated at sentencing, and the District Court accepted it, not disagreeing, that there were no victims requesting restitution in the Defendant's case. (See Dkt. 61, at 17-18). With no victims requesting restitution it is not proper to impose restitution under the pre-2018 statutory scheme. As stated by the Government, and accepted by the District Court at sentencing, no victim is requesting restitution in the Defendant's case, despite what the District Court currently wants to believe.

(8) Mr. Goodwin in not arguing that this is a "victimless crime", or that he should not be held accountable. The victims extend beyond the primary ones found in images of child sexual abuse. There are secondary victims who were never abused sexually or physically who continue to suffer because Mr. Goodwin committed his offense. Family, friends, and loved ones. Children growing up without the positive influence of their father, suffering the neglectful abuses of their mother because their father was not there to temper or prevent it.

Despite Mr. Goodwin's efforts at restoration and restitution, some of these harms can never be healed or corrected, and must be endured for life. Mr. Goodwin does not deny or shrink from this. Nor does he from the suffering of the individuals protrayed in the images.

What he is arguing is that just as he must act and behave correctly and be held accountable, so too must the Government and the court. If it doesn't then correction must be made, punishment enacted. A defendant should not be held to a different and/or higher standard than those called to enact and uphold the rules, laws, statutes, and standards. It is is one's duty to uphold standards, rules, and/or laws then that one must hold, and be held, to these same standards, rules, and/or laws more strictly, or be punished more severely.

(9) The Mandatory Victims Restitution Act or 1996 ("MVRA") would have been the appropriate statute to use for mandatory restitution previous to December 2018. However, eve the MVRA does not apply in the Defendant's case as no victim is seeking restitution. (See **U.S. v. Bara**, 428 F. Supp. 3d 800, 821 (D. Nev. Nov. 4, 2019).

(10) The District Court failed to inform the Defendant the the District Court believed his case carried a mandatory minimum monetary penalty. It has been noted that when a court fails to inform a defendant that his case carries mandatory minimum assessments and/or fines the guilty plea becomes invalid. (See **U.S. v. Fowler**, 956 F.3d 431, 451 (6th Cir. 2020)(guilty plea invalid because court failed to inform defendant of mandatory minimum assessment and fines (Criminal Defense Techniques, Vol. 2, Chap. 45 "Effectiveness of Guilty Pleas" §45.01 "Knowing requirement")).

Though mandatory minimum monetary penalties did not constitutionally apply in the Defendant's case, the District Court applied them. It also failed to inform the Defendant that it considered mandatory minimum assessments and restitution to apply to the Defendant's case prior to accepting a guilty plea, invalidating the Defendant's guilty plea.

(11) Dkt. 61 refers to the oral transcripts of sentencing.

EXHIBIT/ATTACHMENT 1

>>> BOP-RSD/ED Program-Info 11/26/2018 9:39 AM >>>
Please post the following guidance in all Inmate Law Libraries.

NOTICE FOR ALL REGIONAL EDUCATION STAFF, WARDENS, SOEs AND INMATES

DATE: 11-19-2018

GUIDANCE for HAVING CASES *REMOVED* from the Electronic Law Library (ELL):

Inmates may send a written request to the Court which decided their case asking the Court to seal their case or alter language.

If the Court issues an Order granting the inmate's request, and BOP receives a copy of a Court Order, BOP must follow the Court Order by either replacing the case with the case that has the altered language or removing the case altogether that the Court Order directs to be sealed. Otherwise, BOP does not have the authority to determine whether to seal a case, remove language from an official Court document, or remove a case from the ELL.

A listing of court addresses is available on the ELL.

Denise W. Lomax
Bureau Librarian
Federal Bureau of Prisons
Library; Bldg. 400, 3rd. Fl.
320 First St. NW
Washington, DC 20534
(202)307-3029
DLOMAX@BOP.GOV

11-26-18

EXHIBIT/ATTACHMENT 2

Due to FCI Englewood's practice of inefficient mail handling and of holding, not distributing, or not picking up from the local U.S. Post Office inmate mail, the copy of the cancelled check paying for retained counsel's fees by Defendant's family members did not arrive to him in time to be included with this brief, despite having been mailed by his family more than seven days prior to the depositing said brief with prison officials/authorities for filing and mailing.

As such, and because Defendant stated he was including it as evidence, when it arrives he will immediately provide this Court with it, on his word and honor. He apologizes and seeks the Court's forgiveness and patience.

Dated: July 11, 2023

James C. Goodwin III

CERTIFICATE (PROOF) OF SERVICE/MAILING

I James C. Goodwin III, do hereby certify that I have served a copy of these documents and papers, VIA the United States Postal Service, properly addressed, first-class postage prepaid, by depositing said documents with prison officials/authorities at Federal Correctional Institution, Englewood, pursuant to **Houston v. Lack**, 487 U.S. 266, 270-71, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)(holding that a pro se prisoner's filings were deemed filed on the date of delivery to prison officials/authorities for filing with the court); see also **Douglas v. Noelle**, 567 F.3d 1103, 1108-09 (9th Cir. 2008); **Koch v. Ricketts**, 69 F.3d 1191 (9th Cir. 1995), to the following party and address:

Clerk of Court
U.S. Court of Appeals
For the Ninth Circuit
P.O. Box 193939
San Francisco, Ca 94119

I further request that copies of said documents be sent/forwarded to all interested parties.

I, the undersigned, do attest, under pains and penalty of perjury under the laws of the United States of America, that the foregoing and following instruments are true and correct, to the best of my knowledge, and placed for filing and mailing on this 11 day of July, 2030, pursuant to 28 U.S.C. §1746 of the United States Code.

Respectfully submitted,

James C. Goodwin III

Attachment D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES C. GOODWIN III, Petitioner, v. UNITED STATES OF AMERICA, Respondant.	)	Case Nos. 23-1518 4:18-cr-00072-DCN-1 **ADDENDUM TO APPEAL OPENING BRIEF**

In, addendum to his brief asserting improper imposition of monetary penalties and failure to determine indigency at sentencing, the Petitioner, James Clifford Goodwin III, pro se, presents to this Court the evidence showing that a third party paid the fees of retained counsel. In honor and integrity, and in keeping his word, the Defendant presents this financial statement showing that Mr. Thomas Lorell Goodwin, the Defendant's brother, paid the amount of $5,000 to Thomas, Smith, & Wolfe Associates, PLLC. ("TSWA PLLC") in Idaho Falls, Idaho on January 8, 2019. (Non-relevant transactions have been omitted/obscured for the security of the Defendant's brother).

Respectfully submitted on this 2 day of August, 2023.

James C. Goodwin III

EXHIBIT/ATTACHMENT 1

FREE CHECKING-XXXXX5845-20 (continued)

Account Activity (continued)

Post Date	Description	Debits	Credits	Balance
	ALWAYS ON 208-2326902 ID REF# 24540459007292920200244			
01/08/2019	CARD TRANSACTION DESERET BOOK DOWNLOADS DESERETBOOK.CUT REF# 24692169006100217157955	$10.59		
01/08/2019	CARD TRANSACTION TSWA PLLC IDAHO FALLS ID REF# 24055239005400547000054	$5,000.00		
01/08/2019	ELECTRONIC TRANSACTION PAYPAL SA COMPANY INST XFER	$26.20		

CJA-23
(Rev 3/21)

FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT, OR OTHER SERVICES WITHOUT PAYMENT OF FEE

IN THE UNITED STATES ☐ DISTRICT COURT ☒ COURT OF APPEALS ☐ OTHER *(Specify Below)*

IN THE CASE OF

GOODWIN V. **UNITED STATES OF AMERICA**

FOR

AT

LOCATION NUMBER

PERSON REPRESENTED *(Show your full name)*

James Clifford Goodwin III

1 ☐ Defendant - Adult
2 ☐ Defendant - Juvenile
3 ☒ Appellant
4 ☐ Probation Violator
5 ☐ Supervised Release Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other *(Specify)* _____

DOCKET NUMBERS
Magistrate Judge:
District Court: 4:18-cr-00072-DCN-1
Court of Appeals: 23-1518

CHARGE/OFFENSE *(Describe if applicable & check box→)*

Violation of 18 U.S.C. §2252(a)4
Possession of illicit images

☒ Felony
☐ Misdemeanor

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

INCOME & ASSETS

EMPLOYMENT

Do you have a job? ☐ Yes ☒ No Currently incarcerated

IF YES, how much do you earn per month? $27.23 (prison work assignment)

Will you still have a job after this arrest? ☐ Yes ☒ No ☐ Unknown

PROPERTY

Do you own any of the following, and if so, what is it worth?

	APPROXIMATE VALUE	DESCRIPTION & AMOUNT OWED
Home	$	
Car/Truck/Vehicle	$ 1,000/ 200	'93 Mercedes 400E/ '78 Ford F-150
Boat	$	
Stocks/bonds	$	
Other property	$	

CASH & BANK ACCOUNTS

Do you have any cash, or money in savings or checking accounts? ☐ Yes ☒ No

IF YES, give the total approximate amount after monthly expenses $_____

OBLIGATIONS, EXPENSES, & DEBTS

How many people do you financially support? 0

BILLS & DEBTS	MONTHLY EXPENSE	TOTAL DEBT
Housing	$	$
Groceries	$	$
Medical expenses	$	$
Utilities	$	$
Credit cards	$	$
Car/Truck/Vehicle	$	$
Childcare	$	$
Child support	$	$
Insurance	$	$
Loans	$	$
Fines	$	$ 8,450 (court imposed fines)
Other	$	$

I certify under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF DEFENDANT
(OR PERSON SEEKING REPRESENTATION)

August 2, 2023
Date

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis

Instructions for this form: http://www.ca9.uscourts.gov/forms/form04instructions.pdf

9th Cir. Case Number(s) 23-1518; 4:18-cr-00072-DCN-1

Case Name GOODWIN v. UNITED STATES of AMERICA

Affidavit in support of motion: I swear under penalty of perjury that I am financially unable to pay the docket and filing fees for my appeal. I believe my appeal has merit. I swear under penalty of perjury under United States laws that my answers on this form are true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Signature [signature] **Date** August 2, 2023

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees **and** you have a non-frivolous legal issue on appeal. Please state your issues on appeal. (*attach additional pages if necessary*)

Mandatory minimum restitution order imposed under 18 U.S.C. §2259 when no victim sought restitution in Petitioner's case, ordering restitution to be paid to reserve violated the Ex Post Facto Clause of the U.S. Constitution and District Court failed to notify the Defendant it considered there to be a mandatory minimum restitution, invalidating Defendant's guilty plea

Special assessments imposed upon indigent Defendant and no finding of indigency or non-indigency was made at time of sentencing, in violation of statute

Petitioner requested order for temporary injunction be placed on Bureau of Prisons ("BOP") to suspend the collection of improper and unconstitutional restitution and special assessment order imposed on Defendant, until the matter is resolved through the full judicial process.

Petitioner requests summary judgment on uncontested motions of vacation/reversal/rescinding of the order for monetary penalties, compelling the Government to provide itemized list of seized property and return of said property, and temporary injunction against the BOP

Petitioner requested multiple times for leave to file in forma pauperis which were all uncontested be the Government and never addressed by the District Court

Defendant requests that the court compel the Government provide him with an itemized list of seized property, as the Government has ignored several written requests by the Defendant for such. In the alternate, Defendant sought a return of an undeterminate "all" seized property not forfeited by court order

Government did not respond to Petitioner's motions, nor did it notify the court that it did not intend to respond, in violation of Ninth Circuit Rule 31-2.3

See also attached copy of Opening Brief

1. *For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

	Average monthly amount during the past 12 months		Amount expected next month	
Income Source	**You**	**Spouse**	**You**	**Spouse**
Employment	$ 27.23	$ N/A	$ 27.23	$ N/A
Self-Employment	$ 0.00	$ N/A	$ 0.00	$ N/A
Income from real property (such as rental income)	$ 0.00	$ N/A	$ 0.00	$ N/A
Interest and Dividends	$ 0.00	$ N/A	$ 0.00	$ N/A
Gifts	$ 48.00	$ N/A	$ 48.00	$ N/A
Alimony	$ 0.00	$ N/A	$ 0.00	$ N/A
Child Support	$ 0.00	$ N/A	$ 0.00	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ 0.00	$ N/A	$ 0.00	$ N/A
Disability (such as social security, insurance payments)	$ 0.00	$ N/A	$ 0.00	$ N/A
Unemployment Payments	$ 0.00	$ N/A	$ 0.00	$ N/A
Public-Assistance (such as welfare)	$ 0.00	$ N/A	$ 0.00	$ N/A
Other (specify) None	$ 0.00	$ N/A	$ 0.00	$ N/A
TOTAL MONTHLY INCOME:	$ 75.23	$ N/A	$ 75.23	$ N/A

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of Employment	Gross Monthly Pay
Federal Inmate	FCI Englewood	From 2019 To Current	$ 27023
		From To	$
		From To	$
		From To	$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of Employment	Gross Monthly Pay
N/A		From To	$
		From To	$
		From To	$
		From To	$

4. *How much cash do you and your spouse have?* $ 0.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
N/A		$	$
		$	$
		$	$
		$	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.*

Home	Value	Other Real Estate	Value
N/A	$	N/A	$

Motor Vehicle 1: Make & Year	Model	Registration #	Value
1993 Mercedes	400E	???	$ 1,000.00 est.
Motor Vehicle 2: Make & Year	**Model**	**Registration #**	**Value**
1978 Ford	F-150	???	$ 200.00 scrap value

Other Assets	Value
N/A	$
	$
	$

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse	Amount owed to you	Amount owed to your spouse
N/A	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support. If a dependent is a minor, list only the initials and not the full name.*

Name	Relationship	Age
N/A		

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ N/A	$ N/A
- Are real estate taxes included? ○ Yes ○ No		
- Is property insurance included? ○ Yes ○ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ N/A	$ N/A
Home maintenance (repairs and upkeep)	$ N/A	$ N/A
Food	$ 20.00	$ N/A
Clothing	$ 10.00	$ N/A
Laundry and dry-cleaning	$ N/A	$ N/A
Medical and dental expenses	$ N/A	$ N/A
Transportation (not including motor vehicle payments)	$ N/A	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$ N/A	$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
- Homeowner's or renter's	$ N/A	$ N/A
- Life	$ N/A	$ N/A
- Health	$ N/A	$ N/A
- Motor Vehicle	$ N/A	$ N/A
- Other	$ N/A	$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
Specify	$	$

	You	Spouse
Installment payments		
- Motor Vehicle	$ N/A	$ N/A
- Credit Card (name)	$ N/A	$ N/A
- Department Store (name)	$ N/A	$ N/A
Alimony, maintenance, and support paid to others	$ N/A	$ N/A
Regular expenses for the operation of business, profession, or farm (attach detailed statement)	$ N/A	$ N/A
Other (specify) Phone calls to maintain contact w/family	$ 50.00	$ N/A
TOTAL MONTHLY EXPENSES	$ 70.00	$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?* ○ Yes ⊗ No

If Yes, describe on an attached sheet.

10. *Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit?* ○ Yes ⊗ No

If Yes, how much? $

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

I am a federal inmate and currently incarcerated at FCI Englewood, Colorado. As such I am unable to pay any fees as I am indigent.

12. *State the city and state of your legal residence.*

City Downey State Idaho

Your daytime phone number (ex., 415-355-8000) N/A

Your age 50 Your years of schooling Completed High School

Attachment E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES C. GOODWIN III, Petitioner, v. UNITED STATES OF AMERICA, Respondant.	)	**REPLY TO GOVERNMENT'S ANSWERING BRIEF**

The Appellant, before this Court, contests all parts of the Government's Answering Briet and provides this reply.

As the background in this case has been reiterated numerous times, in great detail, and as all parties are well familiar with it, to include anything more than the most relevant parts here would be to waste the Court's time. So, the Petitioner will forbear bear and will include only said relevant points at the pertinent time.

The Appellant was served the Government's Answering Brief on February 21, 2024, as evidenced by the Government's Return Receipt and Certified mailing (tracking number 7020 1810 0001 0028 4309) through the United States postal Service.[1]

The Government focuses its Answering Brief on the issue of seized property belonging to the Petitioner and not returned or forfeited. It Theorizes that all other issues are essentially untimely. The Government further speculates that the court "technically" lacks jurisdiction over all issues raised by the Appellant. The Government is in error.

The Petitioner filed an intent to file direct appeal within 14 days of sentencing. Jonathon D. Hallin was appointed as appellate counsel by the District Court after a conflict of interest with the prior court appointed appellate counsel was raised. The Petitioner told Mr. Hallin that he wished to appeal the very issues raised in the current motion, among others. Mr. Hallin told him that, though these issues merit relief, a direct appeal was not the vehicle and that the Petitioner must appeal them on his own through a motion filed under 28 U.S.C. §2255. When relief was sought under §2255, the District Court stated that monetary penalty orders could not be challenged under §2255. Having no other options, the Appellant filed the motions that led to the instant action.

The first issue the Government addresses in its Answering Brief is the

[1] (For footnotes, see Footnote page at end)

issue of seized property. It is clear from its brief that the Government is in possession of the Defendant's property, and is aware of that fact. The question then becomes not if the property is in the possession of the Government, but if that property should be returned. Courts have held that it should. The District Court seems to indicate that it does. The Government speculates that it does not.

The District Court indicated that it needed an itemized list of the seized property before, and so that, it could order its return. The Petitioner understands this and does not disagree in principle. He was cognizant of this need before he filed his initial request for the property to be returned. As shown in the Excerpt of Record provided by the Government, the Appellant sent several letters to the Government and the Clerk of Court requesting such an itemized list, prior to petitioning the District Court to compel its release. The problem arises that all of those requests went unanswered for over a year.

After more than a year of seeking a list of seized property and receiving naught but silence, the Defendant filed a motion with the District Court to compel the Government to produce said list, or in the alternate if the Government refused, to compel the return of an undefined "all" items seized. less forfeited items.

The District Court could have construed this motion in part to be a request under Fed. R. Civ. P. 34. Instead, neither the court nor the Government responded. (See D. Idaho R. 7.1(c)(1); see also Fed. R. Civ. P. 34(a)(stating a party is required to respond to a document request within 30 days); 9th Cir. R. 31-2.3). Because the Petitioner made his request by mail the Government was entitled to an additional three days under Fed. R. Civ. P. 6(d). The Government did not respond in 33 days. The Government did not respond at all for over two years, until it requested additional time to respond from this very Court.

The Appellant has made request after request for an itemized list of seized property, all of which were not responded to. As the Government is the only one with such a list, and as the Defendant was in custody at the time of the seizure, the Defendant cannot very well provide the court with the list of seized property until the Government produces it.

In suggesting that seized property need not be returned, the Government attempts to shift the burden of proof to the Appellant when that burden clearly and plainly lies elsewhere. "The Government bears the burden of proving a legitimate reason to retain the property." (**United States v. Joshua**, 2023 U.S. Dist. LEXIS 122815, at *7 (D. Alaska Jul. 17, 2023)(quoting **United States v.**

Kaczynski, 416 F.3d 971, 974 (9th Cir. 2005)(internal quotation marks omitted))). This burden mat be defeated, if the Government can demonstrate the property at issue was subject to forfeiture. (See **United States v. Fitzen**, 80 F.3d 387, 389 (9th Cir. 1996)). No effort was made to demonstrate the property at issue was subject to forfeiture. Further, the Petitioner has never sought the return of forfeited property.

Joshua and Kaczynshi make it clear that the Defendant does not bear the burden to prove disputed property's return, and exactly where the burden lies. The Government has not met its burden. The property at issue must needs be returned. The Government also need to produce an itemized list of all seized property taken from the Appellant's place of residence.

In its Brief the Government states that the Defendant admitted that some of the items seized were not his own personal property. These items were not in his possession at the time of seizure, not were they ever. These items were in the bedrooms of other residents during the warrantless search, and seized without a warrant. They were identified by the Defendant only as an example of the overextention and abuse of power. As the search was based on a supervised release condition, no search, or seizure, warrant existed enabling the search and/or seizure of items in the private habitations of other residents, which the Defendant had no access to.

The Government claims that the Appellant's challenges to the monetary penalty orders are waived because his "criminal conviction is now long final" and that it could only (with narrow exception) have been raised on direct appeal, and is thus untimely. This is in direct opposition to what the court appointed counsel told the Petitioner. The Government's argument is a specious argument.

As previously stated, Mr. Hallin told the Defendant that a challenge to monetary penalties was not appealable in direct appeal, but had to be sought in a §2255 motion. The District Court stated that this issue could not be raised in a motion under §2255, but had to be challenged separately. The Government suggests that it can only be raised on direct appeal.

The Government does not contest, or even address, the facts of the Petitioner's challenge to the monetary penalty orders. This lack signifies an acknowledgment and acceptance of, and agreement with, these facts and that the orders for monetary penalties were imposed illegally, unconstitutionally, and improperly. Precedent of deeming unanswered or uncontested issues as construing consent to the validity of them is so well known and established that it bears no need of citation here.

With the parties agreeing that the District Court's orders for monetary penalty in violation of the requirements of the statute and was illegal, unconstitutional, improper, and does not apply, the Government argues rules, ignoring its own violations of the rules.[2] Again, the Government's argument is a specious and deceptive argument.

The Government cites two cases in its claim: **United States v. Gianelli**, 543 F.3d 1178 (9th Cir. 2008) and **United States v. Thiele**, 314 F.3d 399 (9th Cir. 2002).

Gianelli challenged a restitution order in a motion filed under §2255. **Gianelli** is distinct from the Appellant's case. **Gianelli** challenged the amount in a valid , proper, and legally imposed restitution order. He did not challenge the order's legality or constitutionality in its imposition or that it could not be applied to him. In fact, he agreed the order for restitution, other than the amount imposed, was proper, was not in violation of the Ex Post Facto Clause of the United States Constitution, and dealt with no nonconstitutional issues. He argued that his order was improper under **Hughey v. United States**, 495 U.S. 411, 110 S. Ct. 1979, 109 L. Ed. 2d 408 (1990)(holding that the amount of restitution was not predicated upon the government's actual loss and therefore the order was improper).

The Petitioner Challenges the validity of the orders for monetary penalty themselves, that they do not apply, that they are illegal, and they are unconstitutional. The Government signifies that it agrees with these truths by not addressing them in its Answering Brief. The amount would have been accurate if the orders were valid and applied, and was not illegal and in violation of the Ex Post Facto Clause. If. It, however, fails.

The Appellant has established through case law and statute that the District Court's imposition of restitution and assessments was not only improper and does not apply to him, but in violation of statute and the Constitution.

On the argument of restitution alone there are multiple errors. The Statutory Scheme in place at the time the Petitioner was indicted held that restitution must be paid to a victim. The definition of "victim" included by Congress in the applicable statute states:

> (c)(1) Victim. For the purpose of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter. [modified in 2018] (See 18 U.S.C. §2259(c)(4))

By the Government's own admission and statement, no victims had requested restitution in this case. (See Dkt. 61, 18). The Government then proceded to

[2] See Footnote page at end.

claim that it believed that there was a "mandatory minimum" of $3000 for "the Reserve Fund," referring to the minimum $3000 stated in §2259(b)(2)(B) and the Child Pornography Victims Reserve ("Reserve") established in §2259A, §2259B. There arises multiple issues with this.

The "Reserve Fund" the Government refers to did not exist prior to December 7, 2018. It was created when Congress amended §2259 and added §2259A and §2259B, and was included in the revision of 42 U.S.C. §20101(d)(6). As was the mandatory minimum of $3000 which the Government claims applies. Imposing both or either of these in the Appellant's case was not only improper but a violation of the United States Constitution's Ex Post Facto Clause as the amendment was enacted after the commission of his offense and his indictment.

One issue deals with the "mandatory minimum" aspect of the restitution orders. Courts have held that when a defendant is not informed of a mandatory monetary penalty of his potential sentence at the time he chose to plead guilty, that guilty plea does not satisfy the "knowing" element and the, and the sentence, is invalid. (See **United States v. Fowler**, 956 F.3d 431, 451 (6th Cir. 2020)(guilty plea invalid because court failed to inform defendant of mandatory minimum assessment and fines (Criminal Defense Techniques, Vol. 2, Chap. 45 "Effectiveness of Guilty Pleas" §45.01 "knowing requirement"))). The Defendant was not informed of any such "mandatory minimum $3000" penalty at his change of plea hearing. The reason for this may be attributed to the fact that no such mandatory minimum existed at that time. The mandatory minimum found in §2259(b)(2)(B) did not exist until the amendment was enacted on December 7, 2018. Imposing such violates the sense of Congress (see 18 U.S.C. §2259B(d) stating "(d) It is the sense of Congress that individuals who violate this chapter prior to the date of enactment of the Amy, Vicky, and Andy Child Pornography Victims Assistance Act of 2018 [enacted Dec. 7, 2018], but who are sentenced after such a date, shall be subject to the statutory scheme that was in place at the time the offenses were committed [not at sentencing]) and the Ex Post Facto Clause, as well as invalidating the Defendant's guilty plea,

Another issue is that the statutory scheme referred to by the Government in its statement that it thought "there was a $3000 statute, like a mandatory just for the reserve fund" (Dkt. 61, 18) and used by the District Court to sentence the Appellant did not exist at the time of indictment. It cannot be applied retroactively. The Statute explicitly states such, declaring that if a defendant's crime occurred prior to the enactment of the amendment, even if he was sentenced after the enactment, then he is to be sentenced under the

statutory scheme in place at time of the commitment of the crime. Such is the intent of Congress. (See §2259B).

Prior to the enacting of the amendment and changes to §2259 (which included adding all of the current §2259(b)(2)) the collection of restitution was accomplished under and through the Mandatory Victims Restitution Act ("MVRA"). The MVRA set out that restitution was to be paid to the victim(s) of a defendant's offense—not victims of others' offenses—or their legal representative, directly through the courts. However, though the MVRA would have been the correct stature to use to impose a restitution order prior to the enactment of §2259's amendment, even it would be inappropriate in the Appellant's case. The MVRA required that restitution be paid to the victim(s) of a defendant's offense, not a reserve fund. To repeat, the Government clearly and plainly stated that there were no victims seeking restitution in this case to whom the Appellant could pay restitution. (See Dkt. 61, 18; see also **United States v. Bara**, 428 F. Supp. 3d 800, 821 (D. Nev. Nov. 4, 2019)(holding that, even though the MVRA would be the correct statute, it did not apply in the defendant's case as no victims requested restitution)). Additionally, the Government bears the burden of proving specific losses, at the time of sentencing. (See **United States v. Clemans**, 2018 U.S. Dist. LEXIS 171302, at *5-6 (E.D. Cal. Oct. 3, 2018)(citing **Paroline v. United States**, 572 U.S. 434, 462, 134 S. Ct. 1710, 188 L. Ed. 2d 174 (2014)) ("It is the Government's burden to prove the amount of the victim's losses by a preponderance of evidence"); see also **United States v. Dagostino**, 520 Fed. Appx. 90 (3d Cir. 2013)).

Further, under the MVRA a victim is required. (See **Bara**, 428 F. Supp. at 821). Additionally, 18 U.S.C. §3664A(c)(1) holds that the MVRA only applies to certain offenses, namely:

> (c)(1)(A)(i) crimes of violence, as defined in section 16 [18 U.S.C. §16]
> (ii) an offense against property under this title, or under section 416(a) of the Controlled Substance Act (21 U.S.C. §856(a))
> (iii) an offense described in section 3 of [21 U.S.C. §2402]
> (iv) an offense in described in section 1365 [18 U.S.C. §1365]
> (v) an offense under section 670 [18 U.S.C. §670]

A "crime of violence" under §16 is defined as . . .

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

The Supreme Court has held that possession of child pornography does not fall

into this definition of "crime of violence." (See **Torres v. Lynch**, 578 U.S. 452, 466, 136 S. Ct. 1619, 194 L. Ed. 2d 737 (2016)(holding "crime of violence" under 18 U.S.C. §16 "would not cover most of the listed child pornography offenses, including distribution, receipt, and possession of such material")). In light of this, the MVRA would be inappropriate and cannot be applied to the Defendant.

Imposition of the restitution order on the Defendant using a statutory scheme not in place at the time the offense occurred but enacted later clearly increased his punishment in that it imposed a mandatory minimum monetary penalty that did not previously exist (see **California Dept. of Corrections v. Morales**, 514 U.S. 499, 504, 155 S. Ct. 1597, 131 L. Ed. 2d 588 (1995)), and altered the definitions of the statute (See **id.**). The record clearly shows reliance on a statutory scheme enacted after the offense occurred to impose restitution, an obvious increase or change in punishment. It further shows that no determination was made, either regarding victims or amount of restitution, in violation of the statute. Only guesses and speculation were made.

The District Court states that the Petitioner is subject to the previous statutory scheme, yet it sentenced him under the current amended scheme which included a mandatory minimum of $3000 to be paid to the Reserve. There was no Reserve under the previous version of the statute. Nor was there a mandatory minimum of $3000. The previous scheme requires that the District Court must determine whether the person seeking restitution was a crime victim of the Defendant under §2259, and it must ascertain the full amount of that victim's losses, as defined under §2259. (See **Paroline v. Unknown (In re Unknown)**, 697 F.3d 306 (5th Cir. 2012)(subsequent history: **Paroline**, 572 U.S. 434)). The record shows that the District Court did not ascertain the full amount of any losses, but merely asked the Government if there was any agreement on restitution. Nor did it determine whether the person seeking restitution was a crime victim, or if there was even a victim seeking restitution.

The District Court's restitution order violates the sense of Congress. It increased the Appellant's punishment and the severity of that punishment. This is a clear and plain violation of the Ex Post Facto Clause and the Petitioner's Sixth Amendment rights. The District Court's order is improper and invalid. It does not apply to the Petitioner and is void, and must be vacated without remand. (See **Dagostino**, 529 Fed. Appx. 90 (where the Government did not present evidence of specific losses, the case would not be remanded for presentation

of such evidence since the Government had fair opportunity to submit evidence of victim's losses)).

An additional issues revolves around the order for special assessment under 18 U.S.C §3014—the Justice for Victims of Trafficking Act ("JVTA"). The statute plainly and explicitly states that the special assessment under the JVTA may only be imposed on non-indigent defendants. Further, it demands that the court make a review and finding of indigency/non-indigency formally prior to imposing any assessment. Of these points there can be no question.

The appropriateness of the District Court's order then pivots around two vital points: 1) was, and is, the Defendant indigent, and 2)did the District Court make a proper determination and finding of such. If either of these conditions are not met the order cannot stand.

The Defendant asserts, and has demonstrated, that he was, and is, indigent. The Government does not disagree. the District Court itself found that he was indigent in stating that he was unable to pay interest. (See Dkt. 61, 36 (in which the District Court states "the defendant does not have the ability to pay interest. The Court will waive the interest requirement in this case")). Additionally, the District Court determined the Defendant was indigent for the purpose of assigning counsel, twice. These two instances alone, without addressing any others, demonstrate that the Defendant is, and was, indigent, and that the District Court determined him to be.

These examples prove false the claim that the District Court made a determination at sentencing that the Defendant was not indigent. The District Court itself acknowledges that it did not make a finding of indigency or non-indigency on record, as required, prior to imposing the assessment order. (See **United States v. Baker**, 8 Fed. Appx. 655, 657 (9th Cir. 2001); **United States v. Kibble**, 2021 U.S. App. LEXIS 33825, at *8 (4th Cir. 2021); **United States v. Bhaskar**, 2022 U.S. App. LEXIS 17030, overview (2d Cir. 2022); **Fowler**, 956 F.3d 431 (where district court committed plain error in assessing $5000 against defendant as part of sentence for possession of child pornography by failing to address indigency of defendant's ability to pay before imposing assessment)).

Even though the District Court did not make a formal finding of indigency on record, it is theorized that the imposition of the assessment was proper because the Defendant had retained counsel at sentencing. This theory is in error and cannot stand without any evidence based on ability to pay or financial records. Other circuits have recognized the error in implicit findings of

non-indigency. (See **United States v. Barthman**, 983 F.3d 318 (8th Cir 2020)(where district court clearly erred in implicit finding that the defendant was non-indigent and thus in imposing special assessment)). Additionally, the Ninth Circuit has held that courts are to determine whether or not retained counsel's fees have been paid by a third party when the defendant is indigent. (See **Quintero v. United States**, 33 F.3d 1133 (9th Cir. 1994)).

The Petitioner has provided evidence that retained counsel's fees were paid by family members, "a third party." Simply because the Defendant had retained counsel at sentencing is not enough to establish that he is non-indigent. (See **Anderson v. City of Bessemer City**, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985)(district court's conclusion of non-indigency because a defendant has retained counsel does not definitively show non-indigency); see also **Quintero**).

The Defendant has testified that he is, and was at sentencing, indigent. The Government has never disputed this, nor offered evidence to the contrary. Pursuant to ruling Supreme Court holding, the Defendant has carried his burden of proof. (See **Kitchens v. Smith**, 401 U,S, 847, 91 S. Ct. 1089, 28 L. Ed. 2d 519 (1971)("Generally, when the collateral attacker alleges and testifies that he was indigent at the time of the challenged prosecution and the state offers no controverting evidence, he should be deemed to have carried his burden of proof")).

The assessment of $5000 under the JVTA was improperly imposed upon the indigent Petitioner in violation of the statute. It cannot stand and must be vacated and rescinded.

The Appellant's request for stay in the collection of monetary penalties and injunction against the Bureau of Prisons ("BOP") has essentially become moot due to the extensive response time.

The record and statute do not support the District Court's orders for monetary penalties. They are an abuse of discretion. Allowing them to stand would be unconstitutional and a grave miscarriage of justice.

Additionally, **Gianelli**, 543 F.3d 1178 cites **United States v. Broughton-Jones**, 71 F.3d 1143, 1147 (4th Cir. 1995), which held that "[b]ecause a restitution order was imposed when it is not authorized by the [statute] is no less illegal than a sentence of imprisonment that exceeds the statutory maximum, appeals challenging the legality of restitution orders are ... outside the scope of a defendant's otherwise valid appeal waiver" (internal quotation marks omitted).

Gianelli also cites the Ninth Circuit holding in **United States v. Schlesinger**,

49 F.3d 483, 485 (9th Cir. 1994), where this Circuit concluded that **nonconstitutional** errors that have not been raised on direct appeal have been waived and generally may not be reviewed by way of [a habeus petition]". (emphasis added). This restriction does not apply to the Appellant's case as he challenges constitutional and due process errors, whether the order applies, and whether it involved an abuse of discretion. (See **United States v. Heslop**, 694 Fed. Appx. 485, 488 (9th Cir. 2017)(citing **United States v. Zink**, 107 F.3d 716, 717-18 (9th Cir. 1997); also **United States v. Gordon**, 393 F.3d 1044, 1050 (9th Cir. 2004)(raising doubts as to whether claims such as whether a restitution order applies or whether it involved an abuse of discretion can ever be waived).

The second case which the Government cites, **Thiele**, 314 F.3d 399, hold that when a valid issue was not raised by counsel it qualifies as ineffective assistance of counsel, which is well known to be a violation of a defendant's Constitutional due process rights. The Petitioner has shown that Appellate counsel did not raise these issues on direct appeal. In fact, he refused, despite the Defendant's urging. Not because the issues did not have merit or a reasonable likelihood of success, counsel said they did, but because he stated that a direct appeal was not the proper vehicle and they could not be raised there. Now, the Government is suggesting direct appeal is the only vehicle and, as such, the challenge is untimely and waived. Not so. (See **United States v. Tsasie**, 639 F.3d 1213 (9th Cir. 2011)(where restitution order was issued in violation of the procedural and evidentiary requirements of [the statute] appeal of such is not waived); see also **Ratliff v. United States**, 999 F.2d 1023 (6th Cir. 1993)(when prisoner did not raise restitution challenge on direct appeal, but raised it for the first time in petition under §2255, that challenge is not waived if prisoner could show cause for failure to raise it and prejudice)).

The Appellant has provided proof: evidence, case law, and precedent, that the District Court's orders for monetary penalties are both unconstitutional and illegal, and that they were imposed in violation of statute and do not apply in his case. The Government does not oppose, or even address these facts, or the merits of the Petitioner's challenge, signifying that it accepts and agrees that the orders are illegal and improper. It stated that monetary penalties were imposed as part of the Defendant's sentence/punishment. They clearly violate his due process rights and the Ex Post Facto Clause of the Constitution. This raises serious constitutional concerns and need to be remedied.

The Appellant has challenged the issues raised since the day he was

sentenced. He is not just now bringing them, "long after his conviction was final." In his naivete of the judicial process and system he followed the path he has been directed on, and that was placed before him, to the best of his ability, pro se.

"A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleading drafted by lawyers." (**Haines v. Kerner**, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); see also **Mayshack v. Gonzales**, 437 Fed. Appx. 615, 617 (9th Cir. 2011)(holding that courts liberally construe a pro se plaintiff's pleadings and grant[] even more lee way to pro se inmates); **Thomas v, Ponder**, 611 F.3d 1144, 1150 (9th Cir. 2010)("We have, therefore, held consistently that courts should construe liberally motion papers by pro se inmates and should avoid applying summary judgment rules strictly"); **Feldman v. Perill**, 902 F.2d 1445, 1448 (9th Cir. 1990)).

The Appellant asserts that the monetary penalty orders do not apply. They are unconstitutional and illegal. They were imposed in violation of statutes. He further asserts that the Government's retention of seized property is improper and illegal, depriving him of his Constitutional due process right to "life, liberty, and property." The Government's constant refusal to produce the list of seized property is improper and in violation of statute and established ruling case law. These issues require relief. The Government does not disagree, as shown through its silence regarding them.

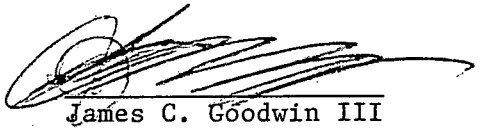
The court is to construe the motions liberally. The Government states that the Appellant's motion for an itemized list of seized property and return of that property could be reclassified, possibly as a Rule 34 motion. His challenge of the monetary penalty orders could also be reclassified, or construed possibly as a Rule 60(b) motion or other appropriate vehicle. Courts routinely reclassify, or view, pro se litigant's motions as something other than what they were filed as.

The monetary penalty orders are illegal, invalid, unconstitutional, do not apply, and are void. Jurisdiction to consider, and grant, the Appellant's motions is not lacking. His right to challenge and appeal these issues was not waived, and it is doubtful it ever could be. (See **Gordon**, 393 F.3d at 1050; **tsasie**, 639 F.3d 1213).

"The Justice Department's mission is not merely to win cases, but to seek justice." (**United States v .Ruiz-Castelo**, 835 Fed. Appx. 187, 191 (9th Cir. 2020)). Justice stands on the side of the Appellant.

The Appellant moves this Court to vacate the District Court's illegal, invalid, and void monetary penalty orders, and to compel the Government to produce an itemized list of seized property and return that property, as is proper. He further moves the Court to impose sanctions on the adverse party covering all attorney fees, court costs and filing fees, and typing, copying, and mailing costs incurred by the Defendant, as required by D. Idaho R. 7.1(e)(1) and 9th Cir. R. 31-2.3. To do otherwise would be injustice and would adversely affect the fairness, integrity, or public reputation of judicial proceedings. (See **United States v. Olano**, 507 U.S. 725, 732, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993); **Rosales-Mireles v. United States**, 585 U.S. ___, 138 S. Ct. 1897, 1911, 201 L. Ed. 2d 376 (2018); **United States v. Pena**, 314 F.3d 1152, 1158 (9th Cir. 2003)).

Respectfully submitted this 1 day of March, 2024.



James C. Goodwin III

FOOTNOTES

[1] Due to the delay in receiving and service upon him of the Government's Answering Brief through the Unite States Postal Service, the Appellant only had 13 days to research and prepare this reply within the scope and restrictions of the Federal Bureau of Prisons system, which restricts access to legal research and material even further. He apologizes to the Court.

[2] In reviewing the Government's response to his motion the Appellant feels it is important to identify the Government's responses to his requests, or lack thereof, and the manner it follows the Rules of procedure.

To begin, D Idaho R. 7.1(c)(1), (e)(1) holds that:

> (c)(1) The responding party must serve and file a response brief, not to exceed twenty (20) pages, within twenty-one (21) days after service upon the party of the memorandum points and authorities of the moving party. The responding party must serve and file with the response brief any affidavits, declarations submitted in accordance with 28 U.S.C. §1746, copies of all photographs, documentary evidence, and other supporting materials on which the responding party intends to rely.;
>
> (e)(1) ... if an adverse party fails to timely file any response documents required to be filed under this rule, such failure may be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application. In addition, the Court, upon motion or its own initiative, may impose sanctions in the form of reasonable expenses incurred, including attorney fees, upon the adverse party and/or counsel for failure to comply with this rule.

Similarly, 9th Cir. r. 31-2.3 governs that "[i]f appellee does not elect to file a brief, appellee shall notify the court by letter on or before the due date for the answering brief. Failure to file the brief timely or advise the court that no brief will be filed will subject counsel to sanctions."

For more than two years the Government has remained silent respecting the Petitioner's repeated requests for an itemized list of seized property, his motions—including those for summary judgment— on the District Court's monetary penalty orders, request for injunction, or return of property. It offered no response, filed or otherwise. The District Court even made note of the Government's silence. The Government did not request additional time to respond, respond within the allotted 21 days, nor advise the court by letter that it did not intend to respond.

these actions are clear violations of D. Idaho R. 7.1 and 9th Cir, R. 31-2.3. Despite this, after its own extensive period of silence, the District Court ruled against the Defendant. Counsel for the Government was never sanctioned. And the Government continued to remain silent, until requesting additional time to respond in October 2023. Pursuant to D. Idaho R. 7.1(e)(1) this silence constituted consent to the granting of the Defendant's motions and should have been viewed as such.

This is not an isolated incident.

The Government file a motion for Extension of Time To File Response to the Appellant's motion under §2255, after the deadline for filing had expired, without providing good cause or excusable neglect for its late filing as required by Fed. R. Civ. P. 6. The petitioner objected to the late filing and extension. The District Court granted the Government's request, despite lacking jurisdiction to do so, and further granted the Government's technically untimely motion to dismiss the §2255 motion. When the Defendant challenged these actions the courts upheld them/

In the Appellant's current U.S.S.G. Amendment 821 sentence reduction/compassionate release motion, the Government has currently exceeded its deadline by more than 45 days without requesting additional time or providing anything but silence. Court appointed counsel in this case, Mr. Sam Macomber from the Federal Defenders Office, told the Defendant that deadlines do not apply to the Government and it can take as long as it likes and no one will do anything about it. There is no end in sight to the Government's delay that violates the Rules.

Now the Government comes before the Court suggesting the Rules bar the Appellant.

"Local rules are 'law of the United States'." (**Marshall v. Gates**, 44 F.3d 722, 725 (9th Cir. 1994)(quoting **United Staets v. Hvass** 355 U.S. 570, 575, 78 S. Ct. 1958, 2 L. Ed. 2d 496 (1958)); see also e.g. **Brunozzi v. Cable Communs., Inc.**, 851 F.3d 990 (9th Cir. 2016); **Broidy Capital Mgmt. LLC v. Muzin**, 61 F.4th 954 (D.C. Cir. 2023); **Ramos v. Louisiana**, 590 U.S. ___, 140 S. Ct. ___, 206 L. Ed. 2d 583, 607 (2020)(quoting Alexander Hamilton, The Federalist, No. 78, p. 529 (J. Cooke ed. 1961))).

This complete disregard for the Rules governing courts and judicial proceedings undermines confidence in, questions the fairness and integrity of, and affects the public reputation of judicial proceedings. This must be remedied. (See **Hollingworth v. Perry**, 588 U.S. 183, 184, 130 S. Ct. 705, 175, L. Ed. 2d 657 (2010)).

CERTIFICATE (PROOF) OF SERVICE/MAILING

I, James C. Goodwin III, do hereby certify that I have served a copy of these documents and papers, VIA the United States Postal Service, properly addressed, first-class postage prepaid, by depositing said documents with prison officials/authorities at Federal Correctional Institution, Englewood, pursuant to **Houston v. Lack**, 487 U.S. 266. 270-71, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)(holding that a pro se prisoner's filings were deemed filed on the date of delivery to prison officials/authorities for filing with the court); see also **Douglas v. Noelle**, 567 F.3d 1103, 1108-09 (9th Cir. 2008); **Koch v. Ricketts**, 69 F.3d 1191 (9th Cir. 1995), to the following party:

Clerk of the Court
U.S. Court of Appeals
For the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119

I further request that copies of said documents be sent/forwarded to all interested parties.

I, the undersigned, do attest, under pains and penalty of perjury under the laws of the United States of America, that the foregoing and following instruments are true and correct, to the best of my knowledge, and placed for filing and mailing on this 1 day of March, 2024, pursuant to 28 U.S.C. §1746 of the United States Code.

Respectfully submitted,

James C. Goodwin III

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES C. GOODWIN III, Petitioner, v. UNITED STATES OF AMERICA, Respondant.	)	Case No. 23-1518 D.C. No. 4:18-cr-00072-DCN **SUPPLEMENT TO BRIEF**

The Petitioner, James Clifford Goodwin III, pro se, asks and moves this Court, regardless of the Court's ruling, to answer the simple question: were monetary penalties imposed in violation of statute and the Ex Post Facto Clause of the United States Constitution, making them improper, illegal, and unconstitutional. The Government does not dispute this fact, nor did this Court. Whether or not this Court decides that the Petitioner's challenge to be untimely or waived, this question needs to be answered. The Petitioner so moves the Court to do so.

Respectfully submitted this 4 day of August, 2024.

James C. Goodwin III

CERTIFICATE (PROOF) OF SERVICE/MAILING

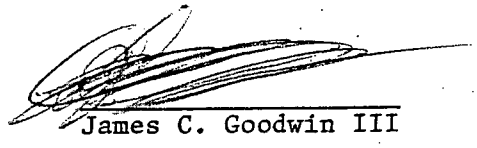
I, James C. Goodwin III, do hereby certify that I have served a copy of these documents and papers, VIA the United States Postal Service, properly addressed, first-class postage prepaid, by depositing said documents with prison officials/authorities at Federal Correctional Institution, Englewood, pursuant to **Houston v. Lack**, 487 U.S. 266. 270-71, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)(holding that a pro se prisoner's filings were deemed filed on the date of delivery to prison officials/authorities for filing with the court); see also **Douglas v. Noelle**, 567 F.3d 1103, 1108-09 (9th Cir. 2008); **Koch v. Ricketts**, 69 F.3d 1191 (9th Cir. 1995), to the following party:

Clerk of the Court
U.S. Court of Appeals
For the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119

I further request that copies of said documents be sent/forwarded to all interested parties.

I, the undersigned, do attest, under pains and penalty of perjury under the laws of the United States of America, that the foregoing and following instruments are true and correct, to the best of my knowledge, and placed for filing and mailing on this 4 day of August, 2024, pursuant to 28 U.S.C. §1746 of the United States Code.

Respectfully submitted,



James C. Goodwin III

Attachment F

FILED

JUN 5 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JAMES C. GOODWIN III, Defendant - Appellant.	No. 23-1518 D.C. No. 4:18-cr-00072-DCN-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Submitted May 29, 2024**

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

James C. Goodwin III appeals pro se from the district court's order denying several postconviction motions. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Goodwin first contends that the district court improperly delegated its

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

authority to the Bureau of Prisons ("BOP") to set a payment schedule for his monetary penalties. The record belies this claim. The judgment sets forth a minimum payment schedule and, as the district court explained, the BOP can administer the Inmate Financial Responsibility Program to require payment "at a higher or faster rate than was specified by the sentencing court." *United States v. Lemoine*, 546 F.3d 1042, 1044 (9th Cir. 2008). Therefore, the district court properly denied Goodwin's motion for a temporary injunction.

Goodwin next challenges his obligation to pay restitution and an assessment under the Justice for Victims of Trafficking Act. Goodwin waived these claims by failing to raise them on direct appeal, *see United States v. Gianelli*, 543 F.3d 1178, 1184 (9th Cir. 2008), and in any event has not shown error in the district court's analysis of his contentions.

As to the district court's denial of Goodwin's motions for an extension of time and leave to appeal in forma pauperis, we agree with Goodwin that these matters are now moot. We also find no error in the district court's denial of Goodwin's "motion to seal case or alter language," or in its summary disposition of Goodwin's various motions without a response by the government.

Finally, the district court denied without prejudice Goodwin's motion to compel the government to return property and provide documents. We agree with the district court that Goodwin's motion was deficient because he did not identify

any particular items he wanted returned.[1] We affirm without prejudice to Goodwin filing in the district court a new motion in which he identifies the property he seeks returned.

Goodwin's request for sanctions is denied.

AFFIRMED.

[1] We do not consider the list of items Goodwin provides for the first time on appeal because this was not before the district court.

Attachment G

FILED

SEP 19 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES C. GOODWIN III,

Defendant - Appellant.

No. 23-1518

D.C. No. 4:18-cr-00072-DCN-1
District of Idaho,
Pocatello

ORDER

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

Goodwin's motion to recall the mandate (Docket Entry No. 30) is denied as unnecessary because the mandate has not yet issued.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Goodwin's petition for rehearing en banc (Docket Entry No. 31) is denied.

All other pending motions are denied.

No further filings will be entertained in this closed case.

Attachment H

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 27 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES C GOODWIN III,

Defendant - Appellant.

No. 23-1518

D.C. No.
4:18-cr-00072-DCN-1

District of Idaho,
Pocatello

MANDATE

The judgment of this Court, entered June 05, 2024, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT