APPENDICES to Petition for WRIT of *Certiori*

Zackary Ellis Sanders

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7054

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ZACKARY ELLIS SANDERS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis, III, Senior District Judge. (1:20-cr-00143-TSE-1)

Argued: March 22, 2024 Decided: July 9, 2024

Amended: July 10, 2024

Before NIEMEYER, KING, and BENJAMIN, Circuit Judges.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge King and Judge Benjamin joined.

ARGUED: Jonathan Shapiro, WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW, Lexington, Virginia, for Appellant. Joseph Attias, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. **ON BRIEF:** Nina J. Ginsberg, DIMUROGINSBERG, PC, Alexandria, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Aidan Taft Grano-Mickelsen, Assistant United States Attorney, Richmond, Virginia, William Clayman, Trial Attorney, Annie Zanobini, Assistant United States Attorney, Seth Schlessinger, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

NIEMEYER, Circuit Judge:

Following Zackary Sanders's convictions for violating federal child pornography laws, the district court ordered the forfeiture, pursuant to 18 U.S.C. § 2253(a), of nine electronic devices on which Sanders stored child pornography and with which he committed the crimes. Objecting to the forfeiture, Sanders contended that § 2253(a) is not so broad as to require the forfeiture of non-contraband items contained on the nine electronic devices, such as personal photographs, personal business records, and the like. Accordingly, he requested that the district court order the government "to allow his forensic expert to segregate and make digital copies of non-contraband" items. The district court refused his request, concluding that "nowhere does [§ 2253(a)] provide that only some portion of the property containing child pornography should be subject to forfeiture. Nor does the statute provide that non-contraband material on the devices should be separated from contraband materials on the devices and returned to a defendant."

On appeal from the district court's order, Sanders challenges the court's reading of § 2253(a). He also claims, for the first time on appeal, that the forfeiture order's inclusion of his non-contraband items was "plainly excessive under the Eighth Amendment."

For the reasons that follow, we affirm.

I

Following an investigation, the FBI uncovered evidence that Sanders had, for over two years, engaged in communications with underage boys, some as young as 13 years old, through various social media and communication applications. In these communications,

Sanders had the minors send him videos and pictures of themselves naked and in compromising positions — writing degrading words across their bodies, masturbating, or slapping their testicles repeatedly — some of which he later used as blackmail when one of the minors threatened to disclose Sanders's conduct. Sanders stored these videos and photos, as well as other depictions of child pornography downloaded from the Internet, on the same electronic devices that he used to communicate with the minors.

Sanders was indicted in 12 counts for the production, receipt, and possession of child pornography, in violation of 18 U.S.C. §§ 2251(a) and (e), 2252(a) and (b). The indictment also provided Sanders with notice that "all matters that contain visual depictions" of child pornography and "any property . . . used or intended to be used to commit" the child pornography offenses, including his various electronic devices, would be forfeited as part of his sentence upon conviction.

Following a seven-day trial, a jury convicted Sanders on all 12 counts.

Prior to sentencing, the government filed a motion, pursuant to 18 U.S.C. § 2253(a), for the forfeiture of nine devices — three laptops, two Apple iPads, two Apple iPhones, and two thumb drives — that it had seized from Sanders and that Sanders had used to produce, receive, and possess child pornography. Simultaneously, it opposed Sanders's contemporaneous motion under Federal Rule of Criminal Procedure 41(g) for return of the non-contraband files stored on the devices. In his Rule 41(g) motion, Sanders also objected to the entry of the proposed order of forfeiture. While Sanders acknowledged that he was not entitled to the return of any property subject to forfeiture, he argued that the forfeiture statute did not reach so broadly as to require the forfeiture of non-contraband items that

were also stored on the electronic devices. He claimed that they represented "more than a decade of [his] life, including personal photographs, personal and business records, educational records, records of theater performances, contact information and emails." He requested that the court "direct the government to allow his forensic expert to segregate and make digital copies of non-contraband data and image files that are stored on the electronic devices subject to forfeiture using a protocol that was previously approved by the FBI and the prosecution team for producing discovery."

Following additional briefing on the issue, the district court ordered the forfeiture of the nine electronic devices in their entirety and denied Sanders's request to copy non-contraband items. The court observed that, as a textual matter, § 2253(a) made no exception for "non-contraband material" or "non-contraband portions of property," and it therefore concluded that "there [was] no doubt that the plain and unambiguous text of 18 U.S.C. § 2253(a) require[d] the forfeiture of the electronic devices in their entirety." The district court also observed that the process of distinguishing contraband and non-contraband material in this case would have been "more complicated than merely separating pornographic images from non-pornographic ones" because evidence at trial had "demonstrated that [Sanders] offered employment in his businesses to several of the minor victims." As such, "some of the business files [Sanders] [sought] to be returned may [have] contain[ed] information identifying [Sanders's] minor victims," requiring a "detailed review of each file to ensure that no contraband material was inadvertently disclosed to the defendant," which would have been "entirely unworkable given finite government resources." Finally, the court observed that any burden on Sanders from the

loss of access to non-contraband files was "a result of [his] own wrongdoing," as he was "the one who decided to commingle family photographs and business records with images of child pornography."

From the district court's order, dated August 19, 2022, Sanders filed this appeal. And for the first time on appeal, he also challenges the district court's forfeiture order as an "excessive fine" under the Eighth Amendment.

II

The criminal forfeiture statute at issue and as relevant provides:

> A person who is convicted of an offense . . . involving a visual depiction [of child pornography] . . . shall forfeit to the United States such person's interest in —
>
> (1) any visual depiction . . . or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction . . . ; [and]
>
> * * *
>
> (3) any property, real or personal, used . . . to commit . . . such [child pornography] offense . . . .

18 U.S.C. § 2253(a). Thus, these provisions require the forfeiture, following convictions involving child pornography, of (1) *all depictions* of child pornography, (2) *any matter containing* such depictions, and (3) *any property used* to commit the crimes involving depictions of child pornography.

In this case, the district court found that all nine of the electronic devices at issue *contained* visual depictions of child pornography and that all nine devices were *used* to

commit the child pornography offenses of conviction. Accordingly, it ordered the forfeiture of all nine devices "in their entirety" to the government.

While Sanders agrees that the nine devices were used to commit the crimes and therefore were forfeitable, he contends that the scope of the forfeiture must be limited to the devices themselves and the actual depictions of child pornography in the devices and may not include non-contraband items, such as family pictures and business documents that he had stored on them. To make his argument, he focuses on the definitional scope of two terms — "other matter," as used in § 2253(a)(1), and "property," as used in § 2253(a)(3). He argues that "other matter" refers to "any computer file," not the entire electronic device, and similarly that "property" refers to the devices themselves and only the *contraband* computer files, but not the *non-contraband* computer files. Accordingly, he contends that the district court erred in refusing to order the government to return to him non-contraband files contained on the nine electronic devices.

Before addressing the reasoning underpinning each of Sanders's arguments, we will begin with the text of the forfeiture statute, *see Taylor v. Grubbs*, 930 F.3d 611, 616 (4th Cir. 2019), and, in light of Sanders's arguments, specifically with the text of the two subsections at issue, § 2253(a)(1) and § 2253(a)(3).

A

As to § 2253(a)(1), the text provides that a defendant convicted of a crime involving child pornography forfeits two classes of things: (1) "any visual depiction" of child pornography and (2) "any book, magazine, periodical, film, videotape, or other matter

which *contains* any such visual depiction" of child pornography. 18 U.S.C. § 2253(a)(1) (emphasis added). While the forfeiture of any "depiction" does not give rise to any argument here, the second portion, forfeiting any "matter" that contains such a depiction, does.

To be sure, standing alone, "any . . . other matter" is a broad term. But "[t]o strip a word from its context is to strip that word of its meaning." *Biden v. Nebraska*, 143 S. Ct. 2355, 2378 (2023) (Barrett, J., concurring). In context, "matter" is given meaningful definition from at least three separate textual sources. *First*, its context with "any book, magazine, periodical, film, [or] videotape" suggests that "matter" shares meaning with those neighboring words, giving it a more precise meaning under the interpretive canon of *noscitur a sociis*. *See United States v. Williams*, 553 U.S. 288, 294 (2008) (recognizing the canon to "counsel[] that a word is given more precise content by the neighboring words with which it is associated"). Thus, "matter" cannot be read, by force of that canon, to refer to earth, rock, air, or water; rather, it would refer to any medium, like a "videotape" or a "film," that could contain a recording of visual depictions, such as electronic devices.

Second, "any other matter" is restricted to things that can *contain* visual depictions, inasmuch as the term "matter" is followed in the text by the modifying clause, "which contains any such visual depictions." While trees, bushes, and grass are matter, they cannot contain visual depictions; but electronic devices can. Thus, the latter, but not the former, falls within the statute's scope.

Third, the statute limits "any other matter" to something that can contain *visual depictions* of child pornography, and "visual depictions" is a term defined to include "data

stored on [a] computer disk." 18 U.S.C. § 2256(2)(B)(5). Thus, because matters containing visual depictions include matters that can contain *data stored on a computer disk*, the nine devices at issue in this case would qualify as "matter."

Moreover, the forfeiture statute's inclusion of "any other matter" was deliberately broad so as to serve as a catchall to encompass devices or media that could hold or contain visual depictions of child pornography. This is evidenced by Congress's direction that the scope of forfeiture be liberally construed. *See* 18 U.S.C. § 2253(b) (incorporating provisions of the Controlled Substances Act, 21 U.S.C. § 853 (addressing the criminal forfeiture of property)); 21 U.S.C. § 853(o) (providing for the liberal construction of forfeiture "to effectuate its remedial purposes").

We thus readily conclude that § 2253(a)(1) requires the forfeiture of electronic devices that contain visual depictions of child pornography.

Sanders argues to the contrary that "any other matter" refers only to contraband computer files, not the entire electronic device. We find, however, that this reading is textually unsupportable. Sanders argues that books, magazines, periodicals, films, and videotapes, unlike electronic storage devices, are items that can be "separately viewed, copied, and transmitted, and from which content cannot be removed without destroying the original form." He maintains that the devices themselves, unlike the files stored within them, "share none of these features." He explains,

> Nor does child pornography often appear in books, magazines, periodicals, films, and videotapes that are not also dedicated to that content further distinguishing them from storage devices like computers and cellphones which rarely store information solely devoted to child pornography. Because the focus of § 2253(a)(1) is to remove depictions of child pornography from

> circulation, forfeiting physical devices storing large quantities of personal information unrelated to any child pornography offense does not advance the purposes of subsection (a)(1) or reduce the amount of child pornography in circulation and was not a proper basis upon which to forfeit Sanders's legally possessed file[s].

Yet, Sanders overlooks that the criminal forfeiture of *matters containing* child pornography does not simply serve the function of removing the visual depictions of child pornography themselves. That is covered by the first portion of § 2253(a)(1) (providing for the forfeiture of all visual depictions). Rather, the purpose of the entire forfeiture provision is also to serve as punishment and deterrence. *See Kaley v. United States*, 571 U.S. 320, 323 (2014).

Sanders does, however, raise a legitimate policy argument based on the fact that today computers and cellphones regularly store large quantities of personal information, even though they may also contain contraband. And this argument has gained traction in the context of Fourth Amendment searches and seizures. *See Riley v. California*, 573 U.S. 373, 396–97 (2014) (noting the special considerations at play with searches of cellphones under the Fourth Amendment because "[a] phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form"). But this argument fails to recognize the distinction between Fourth Amendment searches and statutory criminal forfeitures. In requiring the forfeiture of devices "containing" contraband, Congress imposed a penalty both to punish and to discourage the production, receipt, and possession of child pornography. *Kaley*, 571 U.S. at 323. Necessary to the imposition of that punishment, which comes at the end of process, is the prior adjudication of guilt with the attendant procedural protections afforded by the Constitution. *See, e.g.*, 18 U.S.C. § 2253(a) ("A

person who is convicted of an offense under this chapter . . . ."). In contrast, the Fourth Amendment provides on the front end safeguards that ensure that searches and seizures conducted to collect evidence to prosecute crimes reflect certain property and privacy interests. *See Carpenter v. United States*, 585 U.S. 296, 304 (2018). As such, Sanders's argument compares apples to oranges. Moreover, any such policy argument designed to modify the punishment of forfeiture must be addressed to Congress. *See Nickey Gregory Co., LLC v. AgriCap LLC*, 597 F.3d 591, 608 (4th Cir. 2010) ("The judiciary . . . should not insert itself in these policy matters by questioning or debating legislative judgments, as it is constituted only to comprehend, interpret, and apply what Congress has duly provided").

We hold that by the clear text, § 2253(a)(1) provides for the forfeiture of electronic devices containing child pornography.

B

As to § 2253(a)(3), the second provision placed at issue by Sanders, the text provides for the forfeiture of "any property . . . used . . . to commit" crimes involving child pornography. Again, "property" is restricted by the text to refer to property *used to commit* the offense of conviction. We conclude that "property" as used in § 2253(a)(3) is not ambiguous and includes the nine electronic devices that were concededly used to commit the crimes of which Sanders was convicted.

In this case, the forfeited electronic devices were made up of mechanisms and components such as central processing units, memories, hard drives, and other items

allowing for communication with the Internet, all of which enabled Sanders *to communicate* with the underage boys, *to produce* visual depictions of child pornography, *to receive* images of child pornography both from the boys and from the Internet, or *to store and possess* the images on his devices. While the images themselves were certainly contraband and therefore forfeitable, they were not themselves the property *used* to commit the relevant crimes. The entire devices were, and therefore they were subject to forfeiture.

Sanders acknowledges that the electronic devices are forfeitable as property used to commit the child pornography offenses but argues that the non-contraband files contained on them are not. More specifically, relying on the statutory definition of property, which includes both tangible and intangible property, *see* 18 U.S.C. § 2253(b); 21 U.S.C. § 853(b) (defining property to include "tangible and intangible property"), Sanders argues that § 2253(a)(3)'s authorization to forfeit "property" applies only to the electronic devices and does not reach non-contraband property contained within them. He reasons that while the definition of property includes two forms — tangible and intangible — the district court treated them as the same. If they were treated as separate property, he argues, the court would have been required to order the government to return the *separate* non-contraband property, as "numerous other courts have previously held," citing Fourth Amendment cases, such as *Trulock v. Freeh*, 275 F.3d 391 (4th Cir. 2001), *United States v. Williams*, 592 F.3d 511 (4th Cir. 2010), and *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159 (4th Cir. 2019). Sanders explains further that "[n]either case law nor common sense suggests any reason to distinguish a computer from an analogous file cabinet containing a large number of documents when determining whether property was improperly seized."

He argues that the same, by analogy, should apply to forfeitures of electronic devices and their contents.

Sanders's argument, however, faces several barriers that he has not hurdled. First, the cases to which he cites are Fourth Amendment cases, and not forfeiture cases. As noted, forfeiture is a punishment created by Congress that is circumscribed by the requirements of the Eighth Amendment and not by the scope of seizures regulated by the Fourth Amendment.

But more importantly, § 2253(a)(3) does not so limit the term "property" when requiring that any property used to commit a child pornography offense must be forfeited. If property referred separately to electronic devices and the files on them, as Sanders contends, such that files on the devices could be sorted into contraband and non-contraband files, then the files themselves, whether contraband or not, would have to fit the definition of property in § 2253(a)(3). Yet they do not do so. Property as used in § 2253(a)(3), is defined to be property "*used to commit*" the child pornography offense. 18 U.S.C. § 2253(a)(3) (emphasis added). But the files in the electronic devices here — whether pornographic or not — were not used to commit the offenses. They did not enable Sanders to communicate with underage boys; they did not enable Sanders to instruct the boys about how to create sexual images; they did not enable Sanders to receive images; they did not enable Sanders to store them. They were themselves the product of the electronic devices' various mechanisms and components and Sanders's use of them. Thus, property, as used in § 2253(a)(3), could not refer simply to the files to which Sanders refers.

Moreover, Sanders points to no court precedent, and we have found none, that interprets "property" in § 2253(a)(3) to refer to electronic devices as distinct from the files contained on them. Indeed, courts have rejected that "the text of § 2253(a)(3) allows for subdivision of the property" at issue. *United States v. Hull*, 606 F.3d 524, 528 (8th Cir. 2010).

Sanders's argument that computer files are "property" that can be distinguished from the device itself also fails to acknowledge the physical reality of electronic devices. Computer files representing "images" are simply data contained as electronic pulses stored on magnetic fields in hard drives and other computer memory, which can be accessed with instructions from a central processing unit, programs, and applications also functioning with electronic pulses. *See AOL, Inc. v. St. Paul Mercury Ins. Co.*, 347 F.3d 89, 94–95 (4th Cir. 2003). In physical terms, thus, the recorded electronic pulses are incorporated by magnetism into the physical mechanisms of the devices, such that they are one.

In that vein, Sanders has thus not explained how the government would give him such files as "property" and how he would receive them. Computer files are not like photographs in a box, some of which could simply be selected, removed, and physically returned. Rather, they are nothing but invisible electronic pulses stored in computer memory. As such, they can be erased or copied, but they cannot, as electronic matter, be extracted *as is* and delivered. *See AOL*, 347 F.3d at 95 ("All data, information, and instructions used in a computer are codified into a binary language, and the binary language is processed by the computer by the operation of switches that are . . . configured on or off by electricity"). Yet, even as Sanders argues that computer files are distinct property that

can be "returned" to him, he seeks relief that belies the argument. He does not seek the extraction and return of the electronic data representing non-contraband files, even if that were possible. Rather, he seeks a court order "direct[ing] the government to allow his forensic expert to segregate and *make digital copies* of non-contraband data and image files that [were] stored on the electronic devices subject to forfeiture." (Emphasis added). As such, he does not argue that the government unlawfully possesses the non-contraband files, but rather that he, as well as the government, should have access to them. Such a right to access, however, must, in the first instance, be authorized by Congress.

We conclude that in the context of § 2253(a)(3), "property" can only mean the entire device used to commit the offense, including the image files stored on it. *See United States v. Noyes*, 557 Fed. App'x 125, 127 (3d Cir. 2014) ("There is nothing in [§ 2253(a)(3)] which indicates that only a portion of the 'property' can be forfeited").

At bottom, in enacting § 2253(a)(3), Congress made clear that it requires the forfeiture of any property used to commit an offense involving child pornography, and therefore, we conclude that the district court did not err in ordering forfeiture of the nine electronic devices in their entirety as property that Sanders used in committing the offenses of conviction.

III

Sanders also contends, for the first time on appeal, that the "district court's forfeiture of non-contraband files . . . was unconstitutionally excessive under the Eighth Amendment's Excessive Fines Clause." He acknowledges that because he failed to present

the argument to the district court, it is "reviewable for plain error." *See* Fed. R. Crim. P. 52(b); *United States v. Olano*, 507 U.S. 725, 731 (1993).

Sanders argues that the forfeiture of "personal, family and business" files was "unconstitutionally excessive," because such property had "incalculable value" — some were "one-of-a-kind." Thus, their forfeiture was a "disproportional" penalty. Other than making that claim in his briefing, however, he provides no further detail or evidentiary support of the claim. Nor does he provide nor attempt to provide any monetary value of the non-contraband files stored on those devices. Indeed, he does not even purport to provide the value of the nine electronic devices forfeited. Rather, citing *Riley*'s recognition that cellphones for many Americans hold "the privacies of life," 573 U.S. at 403 (cleaned up), he claims that because the non-contraband contents of his electronic devices were important to him, their forfeiture was excessive punishment.

It is now well-established that criminal forfeiture is punishment subject to the Excessive Fines Clause of the Eighth Amendment. *See United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *United States v. Jalaram, Inc.*, 599 F.3d 347, 351 (4th Cir. 2010). And "[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. "[I]f it is *grossly disproportional* to the gravity of a defendant's offense," a criminal forfeiture violates the Eighth Amendment. *Id.* (emphasis added).

To make the determination of whether a forfeiture is "grossly disproportional," we consider four factors: "(1) the amount of the forfeiture and its relationship to the authorized

penalty; (2) the nature and extent of the criminal activity; (3) the relationship between the charged crime and other crimes; and (4) the harm caused by the charged crime." *United States v. Bennett*, 986 F.3d 389, 399 (4th Cir. 2021); *see also Jalaram*, 599 F.3d at 355–56. And the party challenging the constitutionality of the forfeiture under the Eighth Amendment must carry the burden of demonstrating gross disproportionality by addressing the relevant factors. *See United States v. Ahmad*, 213 F.3d 805, 816 (4th Cir. 2000).

In this case, Sanders has failed to satisfy, by any measure, any relevant factor. First, he has produced no evidence to value the forfeited information or even to support his bald assertion that the files he seeks — "personal photographs, personal and business records, educational records, records of theater performances, contact information and emails" — are unavailable anywhere else. This failure alone is particularly stark given that the authorized penalty for his twelve counts of conviction was $250,000 per count, plus other special assessments, for potential liability of over $3 million. *See* 18 U.S.C. § 3571(b). Moreover, he has failed even to show or claim the value of the nine forfeited electronic devices, which surely could not have exceeded even $25,000, as two of the devices were thumb drives, two were Apple iPhones, and two were Apple iPads. While he has, to be sure, asserted a genuine interest in having non-contraband files returned — or copied, as he requests — he has provided no authority that would justify evaluating non-contraband files on the basis of his subjective interest. Thus, Sanders has provided no evidence to establish that the value of the forfeited data nears, much less exceeds, the authorized fines for the conduct. *See Jalaram*, 599 F.3d at 356–57 (concluding that a $385,000 forfeiture was not grossly disproportionate in light of the offense's $350,000 maximum fine).

Sanders also fails to address the second and fourth factors relating to the nature and extent of his criminal activity and the harm that it caused — generally, the "gravity" of his criminal conduct. But the record shows that Sanders was convicted of five counts of *production* of child pornography, six counts of *receipt* of child pornography, and one count of *possession* of child pornography. It also shows that for a period of over two years, Sanders communicated with minor boys and had them record videos of themselves engaged in sexualized conduct. His offenses occurred over a period of years and caused substantial harm and indeed life-long trauma to several minors and their families. Courts have consistently recognized that child pornography offenses of this type are serious offenses that cause substantial harm. *See Hull*, 606 F.3d at 530; *see also New York v. Ferber*, 458 U.S. 747, 758 n.9 (1982) (recognizing scientific literature showing that many "sexually exploited children are unable to develop healthy affectionate relationships in later life, have sexual dysfunctions, and have a tendency to become sexual abusers as adults"). At bottom, the nature and extent of Sanders's criminal activity was extensive, and the harm that his activity caused was serious.

Finally, the third factor — the relationship between the charged crime and other crimes — also does not weigh in Sanders's favor. Though the child pornography crimes here were not necessarily "connected with other offenses," *Jalaram*, 599 F.3d at 356, Sanders clearly "fit[s] into the class of persons for whom the statute was principally designed," *Bajakajian*, 524 U.S. at 338. He has thus not been punished pursuant to a prophylactic measure without having committed the underlying *malum in se* crime, a circumstance about which the *Bajakajian* Court was concerned. 524 U.S. at 338.

Under the plain error standard, Sanders was required to show at least (1) that there was an error; (2) that the error was plain; and (3) that the error affected his substantial rights. *See Olano*, 507 U.S. at 734. In this case, however, he has not carried his burden of even showing error. The forfeiture of the nine electronic devices, with the data contained on them at the time of forfeiture, was clearly authorized by statute and was not grossly disproportional to the gravity of the offenses for which Sanders was convicted. Accordingly, we reject his Eighth Amendment argument.

* * *

The judgment of the district court is

AFFIRMED.

FILED: July 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7054
(1:20-cr-00143-TSE-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ZACKARY ELLIS SANDERS

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**Criminal Action No. 1:20-cr-143**
	)	
ZACKARY ELLIS SANDERS,	)	
Defendant.	)	

MEMORANDUM OPINION

A jury, following a seven-day trial, convicted Defendant Zackary Ellis Sanders of five counts of production of child pornography, six counts of receipt of child pornography, and one count of possession of child pornography. Now before the Court are the government's motion for a preliminary order of forfeiture (Dkt. 610) and defendant's motion for return of non-contraband seized property (Dkt. 607). The government seeks forfeiture of nine electronic devices, all of which were used in the commission of the offenses of conviction, and which were seized by FBI agents on February 12, 2020 in the course of executing a search warrant at Defendant's home. Defendant concedes that the electronic devices themselves are subject to mandatory forfeiture, but defendant nonetheless seeks the return of certain files contained on these devices, including defendant's business records and family photograph, which defendant argues are not subject to mandatory forfeiture. Defendant seeks an order directing the government to preserve and return copies of the non-contraband content on the devices. The motions have been fully briefed and a forfeiture hearing was held April 29, 2022.[1] The motions are therefore ripe for disposition.

[1] Ordinarily, a forfeiture order is entered at the time of sentencing, and sentencing in this case occurred on April 1, 2022. At the time of defendant's sentencing, however, defendant requested additional time to respond to the government's proffered preliminary forfeiture order and requested that the forfeiture hearing be continued to a later date. *See* Defendant's Reply in Support of Defendant's Motion for Return of Property, *United States v. Sanders*, 1:20-cr-00143

I.

The factual and procedural background of this case has been recounted in prior Orders and need not be fully repeated here. *See, e.g.*, Sealed Order, *United States v.* Sanders, 1:20-cr-143 (E.D. Va. Apr. 15, 2022) (Dkt. 642) (summarizing defendant's convicted offenses and the trial evidence supporting those convictions). In essence, in October 2021, following a seven-day trial, defendant was convicted by a jury of twelve counts of possession, receipt, and production of child pornography. The trial evidence established that Defendant coerced, persuaded, and enticed minor victims to record videos of themselves engaged in sexualized conduct (*e.g.* slapping their testicles) and then to send those videos to Defendant. The trial evidence also established that Defendant amassed a collection of child pornography from various websites and that Defendant stored that child pornography on various electronic devices. As a result, the government seeks forfeiture of the following nine electronic devices, all of which contain child pornography or were used in commission of the offenses of conviction:

(a) 1B1 - 4GB Sandisk Cruzer Edge thumb drive ("1B1");

(b) 1B2 - HP Elite Book 755 laptop ("1B2");

(c) 1B3 - Lexar 32GB thumb drive ("1B3");

(d) 1B5 - HP laptop S/N: 5CH1262Y5Y ("1B5");

(e) 1B6 - HP laptop S/N: CNF8255WH5 ("1B6");

(f) 1B19 - Apple iPad, S/N: DMPVGGCPHDDV ("1B19");

(E.D.Va. Mar. 31, 2022) (Dkt. 612 at 1). Defendant's motion to continue the forfeiture hearing was granted, and the forfeiture hearing was continued until Aril 29, 2022.

During defendant's sentencing, counsel for both parties agreed that Fourth Circuit precedent established that a sentencing court may retain jurisdiction to enter a forfeiture order after sentencing, provided that, as occurred here, the sentencing court makes clear at the time of sentencing that a forfeiture order would be forthcoming at a later time. *See United States v. Martin*, 662 F.3d 301, 307 (4th Cir. 2011).

(g) 1B22 - Apple iPad, S/N: DMPHM3K7DVGF ("1B22");

(h) 1B24 - Apple iPhone, FCC ID: BCG-E2430A ("1B24");[2] and

(i) 1B27 - Apple iPhone S/N; C39VJ0XDJCL6 ("1B27").

Trial testimony and admitted evidence establishes that all of these electronic devices contained child pornography and were used by Defendant in the commission of the offenses of conviction. Specifically, trial testimony included:

- Special Agent Christopher Ford testified that he imaged and examined devices 1B1, 1B2, 1B3, and 1B5, and that those devices each contained images of child pornography (relating to the possession of child pornography charges).
- Agent Ford also testified that he examined 1B19 and that, based on Agent Ford's examination, 1B19 was used to chat online with minors to produce and receive child pornography.
- Agent Ford testified that he examined 1B22 and that 1B22 was used to chat online with minors to produce and receive child pornography.
- Agent Ford testified that he examined 1B27 and that 1B27 was used to receive child pornography.

In addition to the trial testimony, the government submitted two declarations in support of forfeiture. First, Special Agent Emily Eckert submitted a declaration in support of the government's forfeiture motion in which Eckert explained that a forensic examination of the electronic devices found images and videos of child pornography on each device. *See* Declaration of Special Agent Emily T. Eckert, *United States v. Sanders*, 1:20-cr-00143 (E.D.Va. Mar. 29, 2022) (Dkt. 610-1). Second, FBI Special Agent Andrew Kochy also submitted a declaration in support of the government's forfeiture motion in which Agent Kochy described the burden the government would bear if the government were required to review the files on these electronic devices and segregate contraband from non-contraband files. *See* Declaration of

[2] The government's proposed forfeiture order incorrectly identified device 1B24 as an Apple iPad, *see* Dkt. 610, but the government corrected this error during the April 22 forfeiture hearing.

Special Agent Andrew Kochy, *United States v. Sanders*, 1:20-cr-00143 (E.D.Va. Mar. 29, 2022) (Dkt. 610-1 at 7). Specifically, Agent Kochy stated that an FBI agent would be required to "inspect every picture, text message, email, document, and file" on these devices to ensure that the files Defendant seeks contain no contraband or evidence of Defendant's crimes.[3] Dkt. 610-1 at 9. Thus, agents would be required to engage in the time-consuming effort of reviewing each file for contraband content before separating contraband content in order to separate contraband from non-contraband files.

III.

The forfeiture of property in child pornography prosecutions is governed by 18 U.S.C. § 2253. In essence, the parties dispute the proper scope of that statutory provision. Section 2253(a) provides that defendants who are convicted of child pornography offenses are required to forfeit certain property used in connection with those offenses. *See* 18 U.S.C. § 2253(a). Because Section 2253(a)'s forfeiture provisions are mandatory, district courts lack authority to deny forfeiture even in the presence of compelling circumstances or equitable considerations. In this respect, the Fourth Circuit has been clear that "[t]he plain text of the statute thus indicates that forfeiture is not a discretionary element of sentencing." *United States v. Blackman*, 746 F.3d 137, 143 (4th Cir. 2014). Indeed, in *Blackman*, the Fourth Circuit explicitly held that the district court erred in "believe[ing] that it could withhold forfeiture on the basis of equitable considerations." *Id.* Thus, equitable considerations must play no role in determining whether the electronic devices are subject to forfeiture in their entirety.

[3] As discussed in more detail below, the term "contraband" refers to all property subject to mandatory forfeiture. The term "contraband" encompasses not only images of child pornography, but also includes any electronic files used in the commission of the convicted offenses as well as any information identifying or relating to the minor victims in this case.

The government bears the burden of "establish[ing] a nexus between the property for which it is seeking forfeiture and the crime by a preponderance of the evidence." *United States v. Martin*, 662 F.3d 301, 307 (4th Cir. 2011). The government has clearly satisfied its burden in this case, as the trial evidence and the declarations of Special Agents Eckert and Kochy, *see* Dkt. 610-1, establish that all nine electronic devices at issue here contain visual depictions of child pornography and were used by defendant in the commission of his child pornography offenses.[4] Defendant does not contest that all nine electronic devices are subject to forfeiture.

Although the parties agree that the nine electronic devices are subject to mandatory forfeiture under § 2253, the parties disagree about whether § 2253 applies to non-contraband files stored on those devices. The government argues that the provisions of § 2253 unambiguously require forfeiture of the electronic devices in their entirety, and that the defendant is not entitled to the return of certain non-contraband files stored on those devices. *See* Dkts. 610, 641. Defendant, in contrast, argues that the forfeiture statute does not apply to the non-contraband files contained on those files, and that the government is required to return to defendant non-contraband files which the government can easily identify and separate from the contraband files. Specifically, the defendant seeks the return of certain allegedly non-contraband files—business records and family pictures—stored on the devices designated as 1B2, 1B19, and 1B27.

[4] Under Rule 32.2(b)(1)(B), Fed. R. Crim. P., the determination of a nexus between the property and the crime of conviction "may be based on evidence already in the records ... or information presented by the parties ... after the verdict or finding of guilty." Rule 32.2(b)(1)(B); *accord United States v. Farkas*, 474 Fed. App'x. 349, 360 (4th Cir. 2012) (holding that a district court may rely on additional evidence submitted during sentencing in determining the scope of a forfeiture order). Thus, the declarations of Special Agents Eckert and Kochy are properly considered as part of the factual record at this stage of proceedings.

Section 2253(a) specifically identifies three categories of property subject to mandatory forfeiture:

> (1) any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction [of child pornography], which was produced, transported, mailed, shipped or received in violation of this chapter;
>
> (2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
>
> (3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.
>
> 18 U.S.C. § 2253(a).

Notably, nowhere does the statute provide that only some portion of the property containing child pornography should be subject to forfeiture. Nor does the statute provide that non-contraband material on the devices should be separated from contraband materials on the devices and returned to a defendant. Instead, the statute clearly requires forfeiture of "any ... matter which contains" a visual depiction of child pornography, and thus requires the forfeiture not only of the visual depiction itself, but also the matter or device on which that visual depiction is stored. 18 U.S.C. § 2253(a)(1). Accordingly, any and all property used to commit a child pornography offense must be forfeited to the government under § 2253(a)(3).[5] The statute on its face thus requires that Defendant must forfeit the nine electronic devices in their entirety. And as

[5] This result is also consistent with the Fourth Circuit's interpretation of forfeiture provisions in other areas of criminal laws. For example, the Fourth Circuit has held that the forfeiture laws governing drug prosecutions, *see* 21 U.S.C. § 881(a), requires forfeiture of an entire property even if drug sales occurred only on a small portion of that property. *See United States v. Santoro*, 866 F.2d 1538, 1542-43 (4th Cir. 1989) (holding that the statutory text, and not the defendant's "subjective characterization of the property," must "serve as the legal basis" for determining what property is subject to forfeiture).

discussed below, none of Defendant's arguments against forfeiture are persuasive and thus Defendant's opposition to forfeiture of the entire device must fail.

Because the parties disagree on the scope of 18 U.S.C. § 2253, the question presented in this matter is a question of statutory interpretation. Thus, the analysis must "begin, as always in deciding questions of statutory interpretation, with the text of the statute." *Othi v. Holder*, 734 F.3d 259, 265 (4th Cir. 2013). Section 2253's text makes unmistakably clear that the government's position is correct; the electronic devices at issue are subject to forfeiture in their entirety under two subsections of § 2253.

First, the electronic devices are subject to forfeiture under § 2253(a)(1) because they are "any ... other matter which contains any such visual depiction" of child pornography. 18 U.S.C. § 2253(a)(1). There is no dispute that each of the nine electronic devices contain images of child pornography, and thus each electronic device falls within the scope of § 2253(a)(1). Notably, Section 2253(a)(1) makes no exception for non-contraband material contained on the electronic devices, and instead requires that any and all matter containing child pornography (*i.e.* the nine devices at issue here) are subject to forfeiture. To the contrary, § 2253(a)(1) clearly requires forfeiture of the matter containing the visual depictions—*i.e.* the electronic storage devices.

Second, the nine electronic devices are also subject to forfeiture in their entirety under § 2253(a)(3), which requires forfeiture of "any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property." 18 U.S.C. § 2253(a)(3). Here, the electronic devices the government seeks to be forfeited qualify as property used to commit the offenses, given that these electronic devices were all used by the defendant to access and store visual depictions of child pornography. Defendant also used these electronic devices (i) to direct his minor victims to produce sexually

explicit images of themselves and (ii) to receive those images from his victims. *See* Dkt. 610-1 at 4-5. Thus, these electronic devices were also used to facilitate the convicted offenses of production and receipt of child pornography. Like Section 2253(a)(1), Section 2253(a)(3) applies to *any* property used to commit a child pornography offense and does not contain an exception for non-contraband portions of property. Accordingly, many of the electronic devices are subject to forfeiture in their entirety under § 2253(a)(3).

Thus, there is no doubt that the plain and unambiguous text of 18 U.S.C. § 2253(a) requires the forfeiture of the electronic devices in their entirety if the devices contain child pornography or were used to commit child pornography offenses. As the Fourth Circuit has made clear in statutory interpretation cases, where, as here, "the text is unambiguous, [the] inquiry is complete." *Taylor v. Grubbs*, 930 F.3d 611, 616 (4th Cir. 2019) (citing *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, — U.S. —, 138 S. Ct. 617, 631 (2018)). Indeed, the Supreme Court has observed that criminal forfeiture provisions "punish wrongdoing ... [and] deter future illegality," *Kaley v. United States*, 571 U.S. 320, 323 (2014). And the plain language of § 2253(a) reflects Congress's clear purpose to deter and prevent further child pornography offenses. As discussed below, a review of persuasive caselaw confirms this result.

Although the Fourth Circuit has not ruled on this precise issue, two well-reasoned opinions of other federal courts of appeals analyzing this issue have reached the conclusion that in child pornography cases, non-contraband files stored on contraband electronic devices must be forfeited along with the devices themselves. In *United States v. Noyes*, 557 Fed. App'x. 125 (3d Cir. 2014), the Third Circuit held that electronic devices used in connection with a child pornography conviction were subject to forfeiture in their entirety, including all of the files, contraband and non-contraband, stored on those devices. As occurred here, the defendant in

Noyes requested an order requiring the government to return to defendant any non-contraband electronic files stored on those devices. The *Noyes* Court denied this request, observing that the forfeiture statute in child pornography cases required defendants to forfeit "any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property." *Noyes*, 556 Fed. App'x at 127 (citing 18 U.S.C. § 2253(a)(3)). The *Noyes* Court explained that "[t]here is nothing in the statute which indicates that only a portion of the property can be forfeited," *Noyes*, 557 Fed. App'x at 127, and accordingly the *Noyes* Court held that the child pornography forfeiture statute required forfeiture of the electronic devices as well as all files stored on those devices, including non-contraband files.

The Second Circuit reached a similar conclusion in *United States v. Wernick*, 673 Fed. App'x. 21, 25 (2d Cir. 2016). There, as here, a defendant convicted of a child pornography offense sought return of non-contraband files stored on an electronic device subject to mandatory forfeiture under 18 U.S.C. § 2253(a)(3). The Second Circuit denied defendants request, explaining that in child pornography prosecutions electronic devices containing child pornography were "still forfeitable [in their entirety] even if commingled with legitimate property." *Wernick*, 673 Fed. App'x at 25. The Second Circuit also explained that such a request would be difficult to grant even if defendant identified specific files, as "[i]t is impossible confidently to conclude that none of the data requested was used to facilitate the offenses of conviction (such as contact information for parties to the crimes or records of internet chats concerning the criminal activity)." *Id.*

In his briefs opposing forfeiture, defendant cites various out-of-circuit cases to argue that the electronic devices are not subject to forfeiture in their entirety. But this caselaw fails to persuade, as none of the cases cited by defendant involve construction of 18 U.S.C. § 2253, the

governing statute in this case. Accordingly, none of these cases are applicable and therefore these cases do not suggest, yet alone require, a conclusion different from the result reached here

Defendant argues that an opinion of the Ninth Circuit, *United States v. Gladding*, 775 F.3d 1149 (9th Cir. 2014), reached the opposite result and requires that the government return defendant's non-contraband files. This is an inaccurate reading of *Gladding*. The *Gladding* Court interpreted a district court's forfeiture order, not the text of § 2253(a). At issue in *Gladding* was whether the district court's forfeiture order which excluded "noncontraband files even though those files were intermingled with files containing child pornography," *id.* at 1153, nonetheless applied to non-contraband files. The government in *Gladding* sought forfeiture of the non-contraband files notwithstanding that those files were not included in the forfeiture order. The Ninth Circuit acknowledged that "this type of forfeiture order [issued in *Gladding*] is uncommon..." because "in the normal course, a defendant forfeits all the files on an electronic storage device when it forfeits the device itself, whether those files are contraband or not." *Id.* at 1153, n.1. But the government in *Gladding* never argued that the forfeiture order should be amended to cover all the files on the electronic devices, and there is no indication that the *Gladding* Court considered the proper interpretation of § 2253(a). To the contrary, the Ninth Circuit explicitly "d[id] not express an opinion on the validity of the district court's order requiring [defendant] to forfeit only contraband files" and further, the *Gladding* Court declined to "preclude the district court from amending its forfeiture order on remand to include the noncontraband files that [defendant] seeks in his motion to the extent permitted by law." *Id.* Thus, the *Gladding* Court expressly declined to consider the issue presented in this case, namely whether the child pornography forfeiture statute, 18 U.S.C. § 2253(a), requires forfeiture of all files housed on electronic storage devices if those devices are used to commit child pornography

offenses. Accordingly, *Gladding* does not suggest that defendant should prevail on his motion for return of non-contraband property.

Defendant also cites additional caselaw which does not involve application of § 2253(a) and is therefore inapplicable to the instant case. For example, defendant cites *United States v. Conrad*, 2013 WL 4028273, No. 3:12-cr-00134-K-34 (TEM) (M.D. Fla. May 14, 2013), which Defendant claims stands for the proposition that courts have developed a standard practice for separating contraband and non-contraband materials in forfeiture disputes. But *Conrad* involved a motion for return of property under Rule 41, Fed. R. Crim. P., and the opinion relied on by defendant does not even cite, yet alone analyze, 18 U.S.C. § 2253(a), which controls the mandatory forfeiture in this case. Defendant also cites *United States v. Reaid*, 4:10-cr-00042 (N.D. Fl., June 11, 2012) for the proposition that courts may order the return of non-contraband property. Once again, however, the *Reaid* opinion did not entail an analysis of § 2253(a); that opinion dealt instead with a motion for return of property under Rule 41. Thus, the *Reaid* opinion does not concern the proper scope of § 2253(a), which, as discussed above, compels the forfeiture of the electronic devices in their entirety even if the device contains some non-contraband material. In sum, defendant relies on inapplicable and unpersuasive cases, none of which interprets § 2253(a), the statute that undoubtedly governs this child pornography forfeiture dispute.

As discussed above, the plain text of § 2253(a) requires forfeiture of the electronic devices in their entirety, and the Fourth Circuit has held that courts imposing mandatory forfeiture under § 2253(a) may not decline to require forfeiture based on equitable considerations. *See Blackman*, 746 F.3d at 143. But even if equitable considerations were

considered, it is clear that those considerations favor a ruling requiring Defendant to forfeit the electronic devices in their entirety.

First, the government has demonstrated, through trial testimony and declarations submitted in support of the instant forfeiture motion, that compliance with defendant's request for return of some files would impose an unwarranted and substantial burden on government resources. In his declaration, FBI Special Agent Kochy advised that it would take considerable time for FBI forensic examiners to comb through the electronic devices at issue and segregate contraband from non-contraband files. *See* Dkt. 610-2. The government also notes that the task of separating contraband from non-contraband files is more complicated than merely separating pornographic images from non-pornographic ones. For example, the trial evidence in this case demonstrated that the Defendant offered employment in his businesses to several of the minor victims. Thus, some of the business files the Defendant seeks to be returned may contain information identifying defendant's minor victims, and thus such files could only be returned to the Defendant with identifying information redacted. *See* 18 U.S.C. § 3509, 3771. It would necessarily take detailed review of each file to ensure that no contraband material was inadvertently disclosed to the defendant. This review would require government personnel to devote substantial time; given the number of child pornography cases prosecuted in this District, manual review of every electronic device subject to forfeiture would be entirely unworkable given finite government resources.[6]

[6] Defendant, in his briefing on this issue, has offered to pay the government for the costs of identifying and returning to defendant the non-contraband files stored on the electronic devices. Defendant's offer to pay the government is insufficient. As the government rightly notes, however, even if defendant assisted with the cost of reviewing the files, an FBI technician would still be required to review the files and determine which were contraband and which were not contraband. This would require that FBI personnel take time away from other jobs, which cannot be compensated for by Defendant's payments.

Second, any burden to the Defendant in this case is a result of the Defendant's own wrongdoing. It is clear that the Defendant is the one who decided to commingle family photographs and business records with images of child pornography. Given that the purpose of criminal forfeiture is to punish and deter criminals, equity requires a denial of Defendant's motion. Forfeiture of the devices in their entirety also serves a significant deterrent purpose. As the Fourth Circuit has observed, "the substantive purpose of criminal forfeiture is not to provide protection for defendants but to deprive criminals of the fruits of their illegal acts and deter future crimes." *Martin*, 662 F.3d at 309. Forfeiture of the electronic devices in their entirety is a significant deterrent to those who consider trafficking in images of child pornography.

IV.

In sum, Defendant asks for the creation of an exception to a statute's mandatory statutory forfeiture requirement, based on the premise that it is unfair to deprive Defendant of family photographs and business records stored on the forfeited devices. But the exception Defendant seeks comes not from the statute's clear text, which contains no such exception for non-contraband files housed on a contraband device; instead, Defendant's proposed exception comes from reliance on equitable considerations. But the Fourth Circuit has explicitly held that sentencing courts may not deny forfeiture based on equitable consideration in cases involving forfeiture under 18 U.S.C. § 2553. *See Blackman*, 746 F.3d at 143 ("Insofar as the district court believed that it could withhold forfeiture on the basis of equitable considerations, its reasoning was in error."). Instead, the plain and unambiguous text of § 2253(a) requires that the government's motion for forfeiture be granted, the defendant's motion for the return of non-contraband property be denied, and that the electronic devices at issue be forfeited in their entirety.

An Order reflecting the issues in this Memorandum Opinion will issue separately.

The Clerk is directed to send a copy of this Memorandum Opinion to all counsel of record.

Alexandria, Virginia
August 19, 2022

/s/
T. S. Ellis, III
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**Criminal Action No. 1:20-cr-143**
	)	
ZACKARY ELLIS SANDERS,	)	
Defendant.	)	

ORDER

This matter comes before the Court on (i) the government's motion for a preliminary order of forfeiture (Dkt. 610) and (ii) Defendant's motion for return of non-contraband seized property (Dkt. 607).

For the reasons stated in the Memorandum Opinion issued this same day,

It is hereby **ORDERED** that the government's motion for a preliminary order of forfeiture (Dkt. 610) is **GRANTED.**

It is further **ORDERED** that Defendant's motion for return of non-contraband seized property (Dkt. 607) is **DENIED.**

The Clerk of the Court is directed to provide of this Order to all counsel of record.

Alexandria, VA
August 19, 2022

/s/
T. S. Ellis, III
United States District Judge

Appendix A

FILED: September 6, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7054
(1:20-cr-00143-TSE-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ZACKARY ELLIS SANDERS

Defendant - Appellant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge King, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix C

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 27, 2024

Ms. Nina Jean Ginsberg
DiMuro, Ginsberg & Lieberman
1001 N. Fairfax Street, Suite 510
Alexandria, VA 22314

Re: Zackary Ellis Sanders
v. United States
Application No. 24A518

Dear Ms. Ginsberg:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on November 27, 2024, extended the time to and including February 3, 2025.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Katie Heidrick
Case Analyst

Appendix D