

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DILESH SHARMA,

Defendant - Appellant.

No. 23-616

D.C. No.
2:17-cr-00055-
TLN-1

OPINION

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Argued and Submitted July 15, 2024
San Francisco, California

Filed October 28, 2024

Before: Milan D. Smith, Jr., Mark J. Bennett, and Anthony
D. Johnstone, Circuit Judges.

Opinion by Judge Johnstone

Appendix A

SUMMARY*

Criminal Law

The panel affirmed a sentence in a case in which the defendant brought facial due-process challenges to Congressionally directed Sentencing Guidelines enhancements for (1) using a computer to commit a child pornography offense, U.S.S.G. § 2G2.2(b)(6); and (2) the number of images involved in the offense, U.S.S.G. § 2G2.2(b)(7).

The defendant argued that even if these enhancements were rational when enacted, they have become irrational over time as changes in technology sweep typical offenders into the enhancements' reach. The panel held that the defendant did not establish that Congress acted irrationally when it directed the enhancements, nor meet his burden to show that changed circumstances have so drastically altered the application of the enhancements to make them irrational today. The panel therefore affirmed the district court's decision that neither enhancement violates the Due Process Clause.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

Roger Yang (argued), Assistant United States Attorney, Eastern District of California; Camil A. Skipper, Assistant United States Attorney, Appellate Chief; Phillip A. Talbert, United States Attorney; United States Department of Justice, Office of the United States Attorney, Sacramento, California; for Plaintiff-Appellee.

Kresta N. Daly (argued), Barth Daly LLP, Winters, California, for Defendant-Appellant.

OPINION

JOHNSTONE, Circuit Judge:

Congress delegated to the United States Sentencing Commission the power to promulgate sentencing policies and guidelines. *See* 28 U.S.C. § 994(a). But Congress retains ultimate authority to set sentencing policy for federal offenses, including by amending specific guidelines. It has repeatedly wielded this authority over sentencing enhancements for child pornography offenses.

This appeal arises from a due-process challenge to two such Congressionally directed enhancements for (1) using a computer to commit a child pornography offense and (2) the number of images involved in the offense. Commentators, courts, and the Commission itself have criticized these enhancements. They note that because so many child pornography offenses today involve the internet, what began as sentencing enhancements for only the most serious offenses now apply to almost all of them. Despite these changed circumstances, these enhancements rationally relate

level enhancement under U.S.S.G. § 2G2.2(b)(7)³ because he possessed at least 150 images.⁴ Without more, these enhancements could increase a hypothetical defendant's guideline sentence up to three years.

In Sharma's case, after applying other upward and downward adjustments not at issue here, the district court calculated a total offense level of 43. That indicates a life sentence. The district court departed downward from the guideline calculation, and sentenced Sharma to 288 months' imprisonment on the enticement count and 240 months' imprisonment on each of the child pornography counts, all to run concurrently. The court also imposed a life term of supervised release.

Sharma objected to the computer-usage and image-number enhancements on their face under the Fifth Amendment's Due Process Clause. He claimed the enhancements were arbitrary because they apply to nearly all child pornography offenders. The district court rejected

³ "(7) If the offense involved--

- (A) at least 10 images, but fewer than 150, increase by 2 levels;
- (B) at least 150 images, but fewer than 300, increase by 3 levels;
- (C) at least 300 images, but fewer than 600, increase by 4 levels; and
- (D) 600 or more images, increase by 5 levels."

§ 2G2.2(b)(7).

⁴ The court also imposed a two-level computer usage enhancement for the enticement offense under U.S.S.G. § 2G1.3(b)(3). Sharma challenges the constitutionality of § 2G1.3(b)(3) on the same due process grounds as the computer-usage enhancement in § 2G2.2(b)(6), so his challenge to § 2G1.3(b)(3) fails for the same reasons his challenge to § 2G2.2(b)(6) fails.

Sharma's objections, explaining that the enhancements were rationally related to legitimate interests. Sharma appeals. We have jurisdiction under 28 U.S.C. § 1291. "[W]e review claims that the Sentencing Guidelines are unconstitutional de novo." *United States v. Kuchinski*, 469 F.3d 853, 857 (9th Cir. 2006).

II. The sentencing enhancements each have a rational basis.

The Due Process Clause of the Fifth Amendment guarantees that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Due process of law "requires only that a sentencing scheme be rational and not based on [an] 'arbitrary distinction.'" *United States v. Garner*, 490 F.3d 739, 743 (9th Cir. 2007) (quoting *Chapman v. United States*, 500 U.S. 453, 465 (1991)). Distinctions can have a rational basis even when "based on rational speculation unsupported by evidence or empirical data." *United States v. Navarro*, 800 F.3d 1104, 1114 (9th Cir. 2015) (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993)). "The defendant[] bear[s] the burden of proving the absence of a rational relationship between [a sentencing guideline] and a legitimate governmental objective." *United States v. Alexander*, 48 F.3d 1477, 1491 (9th Cir. 1995), *as amended on denial of reh'g* (Apr. 11, 1995).

Sharma argues that even if these enhancements were rational when enacted, they have become irrational over time as changes in technology sweep typical offenders into the enhancements' reach. In rational basis review, a "court must ordinarily consider the circumstances at the time of passage." *Burlington N. R.R. Co. v. Dep't of Pub. Serv. Regul.*, 763 F.2d 1106, 1111 n.3 (9th Cir. 1985); *see also* 2

Shambie Singer, *Sutherland Statutes & Statutory Constr.* § 34:5 (8th ed.) (explaining that courts normally do not abrogate statutes merely on the ground that changed conditions have rendered them superfluous).⁵ Sharma has not established that Congress acted irrationally when it directed the enhancements, nor met his burden to show that changed circumstances “have so drastically altered” the application of the enhancements to make them irrational today. *Burlington N. R.R. Co.*, 763 F.2d at 1111; *cf. United States v. Jackson*, 84 F.3d 1154, 1161 (9th Cir. 1996) (declining to revisit sentencing law previously held to have a rational basis, “even though it differs from the Sentencing Commission’s current recommendation”).

A. The computer-usage enhancement

The Sentencing Guidelines provide a two-level enhancement for “the use of a computer or an interactive computer service” in a child pornography offense. § 2G2.2(b)(6). Nearly thirty years ago, Congress directed the

⁵ We have observed that “[t]he Supreme Court has been ambivalent on whether changed circumstances can transform a once-rational statute into an irrational law.” *Burlington N. R.R. Co.*, 763 F.2d at 1111. Earlier, in establishing modern rational basis review, the Supreme Court noted that “the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.” *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938). But courts generally do not “step in and say that what was rational in the past has been made irrational by the passage of time,” because “at what point does a court say that what once made sense no longer has any rational basis?” *United States v. Then*, 56 F.3d 464, 468 (2d Cir. 1995) (Calabresi, J., concurring); *see also* Allison Orr Larson, *Do Laws Have a Constitutional Shelf Life?*, 94 Tex. L. Rev. 59, 103 (2015) (“Finding a law to have outgrown its rationality,” when courts lack authority to “check the factual underpinnings,” “should be out of bounds.”).

The computer-usage enhancement was rational when enacted in 1995 and remains rational when applied today. Shortly after the Commission adopted the enhancement, we observed that it “punishes defendants for using a particularly insidious method of acquiring child pornography.” *United States v. Fellows*, 157 F.3d 1197, 1202 (9th Cir. 1998).⁶ As the Commission itself recognized, “the perpetual nature of the distribution of images on the Internet causes a . . . continuing harm to victims” that “is thus lifelong.” 2012 Commission Report at 311. The enhancement is rationally related to the legitimate interest in punishing offenders for perpetrating these harms. *See United States v. Vincent*, 167 F.3d 428, 432 (8th Cir. 1999) (rejecting a due process challenge to the computer-usage enhancement). Though the computer-usage enhancement covers a wide range of offense conduct, the possibility that offenders “of varying degrees of culpability might be subject to the same sentence does not mean that the penalty system . . . is unconstitutional.” *Chapman*, 500 U.S. at 467. Sharma does not show that the computer-usage enhancement violates the Due Process Clause.

B. The image-number enhancement

The Sentencing Guidelines also provide a graduated enhancement scheme based on the number of images an offender possesses. In 2003, Congress directly amended the guidelines to establish tiers ranging from a two-level enhancement for offenders who possess at least ten images

⁶ In 2004, the Sentencing Commission consolidated § 2G2.4 into § 2G2.2, retaining the computer-usage and image-number enhancements that appeared in both sections before the consolidation. U.S.S.G. App. C. amend. 664 (2004); *United States v. Henderson*, 649 F.3d 955, 962 (9th Cir. 2011).

to a maximum five-level enhancement for those who possess 600 or more images. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 401(i)(1)(B), 117 Stat. 650, 672–73 (2003). Legislators framed the “PROTECT Act” as a response to *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), which invalidated the application of the Child Pornography Prevention Act of 1996 to materials that “convey[] the impression” of or “appear[] to be” child pornography. S. Rep. No. 108-2, at 4, 6 (2003). Congress then amended the PROTECT Act to add the image-number enhancement to the Guidelines with minimal discussion. *See* H.R. Rep. No. 108-48, at 3, 11 (2003); 149 Cong. Rec. H2423 (daily ed. Mar. 27, 2003) (statement of Rep. Feeney) (explaining that the guideline amendments increase penalties “based on the amount of child pornography involved in the offense”); H.R. Conf. Rep. No. 108-66, at 59 (2003). (same).

In its 2012 Commission Report, the Commission criticized the image-number enhancement for not distinguishing between offenders based on their culpability. Again, because “technological changes have resulted in exponential increases in the volume and ready accessibility of child pornography,” typical offenders today have more than 600 images and therefore receive the maximum five-level enhancement. 2012 Commission Report at iii, 312–13, 321. Soon after the Commission published its report, the Department of Justice recommended that “in light of the technology-facilitated ease of obtaining larger child pornography collections, the numeric thresholds should be substantially increased.” Letter from U.S. Dep’t of Just. to Chair of the U.S. Sent’g Comm’n, at 4 (March 5, 2013) (“DOJ Letter”). Sharma echoes these criticisms. He also

argues that Congress arbitrarily drew the offense-level lines between the image-number ranges without relying on empirical data. As a result, Sharma argues, the image-number enhancement also is unconstitutionally irrational.

Sentencing requires drawing lines. It is common, and not irrational, to draw those lines based on the quantity of contraband that produces the harms that an offense punishes. So it does not render a sentencing scheme unconstitutional if “the vast majority of cases will . . . do exactly what the sentencing scheme was designed to do—punish more heavily those who deal in larger amounts.” *Chapman*, 500 U.S. at 466 (holding, in a due process challenge, that increasing penalties based on the quantities of drugs regardless of their purity “is a rational sentencing scheme,” *id.* at 465). As the Commission and Department of Justice acknowledge in the comments Sharma cites, sentencing guidelines should still consider the number of images involved in an offense. *See* 2012 Commission Report at 320, 323; DOJ Letter at 4. “Congress had to draw the line somewhere” to distinguish the largest collections from smaller collections. *Beach Commc’ns, Inc.*, 508 U.S. at 316. It is a legitimate interest to punish more harshly offenders who possess more child pornography. The image-number enhancement, though imperfectly calibrated, is rationally related to that interest. Sharma does not show that the image-number enhancement violates the Due Process Clause.

III. Sharma’s facial constitutional challenge fails.

Although the computer-usage and image-number sentencing enhancements in child pornography offenses may be debatable on policy grounds, those debates are not the concern of a court conducting rational basis review. We ask only if a defendant has established that the enhancements

lack a rational relationship to a legitimate government interest. We hold that Sharma fails to do so here.⁷

AFFIRMED.

⁷ Before the district court, Sharma did not argue that imposing the enhancements would result in a substantively unreasonable sentence under 18 U.S.C. § 3553(a). *See, e.g., United States v. Dorvee*, 616 F.3d 174, 188 (2d Cir. 2010) (calling § 2G2.2 “an eccentric Guideline of highly unusual provenance which, unless carefully applied, can easily generate unreasonable results”); *United States v. Grober*, 624 F.3d 592, 609 (3d Cir. 2010). Nor did Sharma question whether the district court generally could have “depart[ed] from [the Guidelines] based on reasonable policy disagreement.” *Henderson*, 649 F.3d at 960. Because Sharma brings only a facial constitutional challenge, we address neither of these issues.

UNITED STATES DISTRICT COURT

Eastern District of California

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **2:17CR00055-01****DILESH SHARMA**

Defendant's Attorney: Kresta Nora Daly, Appointed

THE DEFENDANT:

- pleaded guilty to counts 1, 2 and 3 of the Second Superseding Indictment.
- pleaded nolo contendere to count(s) , which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2422(b)	Attempted Online Enticement of a Minor for Sexual Purposes (Class A Felony)	3/31/2017	1
18 U.S.C. § 2252(a)(2)	Distribution of Child Pornography (Class C Felony)	2/16/2017	2
18 U.S.C. § 2252(a)(2)	Receipt of Child Pornography (Class C Felony)	2/16/2017	3

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

- The defendant has been found not guilty on count(s) .
- Count(s) dismissed on the motion of the United States.
- Indictment is to be dismissed by District Court on motion of the United States.
- Appeal rights given. Appeal rights waived.

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

3/30/2023

Date of Imposition of Judgment

Signature of Judicial OfficerTroy L. Nunley, United States District JudgeName & Title of Judicial Officer4/4/2023Date

Appendix B

ER-2

DEFENDANT: **DILESH SHARMA**

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 288 months on Count 1, and 240 months on each of Counts 2 and 3, to run concurrently to each other, for a Total Term 288 months.

- ☐ No TSR: Defendant shall cooperate in the collection of DNA.
- ☐ The court makes the following recommendations to the Bureau of Prisons:
The court recommends that the defendant be incarcerated at FCI Terminal Island, California, but only insofar as this recommendation accords with security classification and space availability.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district
at ____ on ____.
as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
before ____ on ____.
as notified by the United States Marshal.
as notified by the Probation or Pretrial Services Officer.
If no such institution has been designated, to the United States Marshal for this district.
- ☐ Other, Please Specify:

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

By Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
Life as to each of Counts 1, 2 and 3, to run concurrently, for a Total Term of Life.

MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

11 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.

11 You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

11 You must cooperate in the collection of DNA as directed by the probation officer.

11 You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense.

11 You must participate in an approved program for domestic violence.

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

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer in the lawful discharge of the officer's supervision functions with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
 2. The defendant shall not possess or use a computer or any device that has access to any "on-line computer service" unless approved by the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private computer network.
 3. The defendant shall have no contact with known children under the age of 18, unless approved by the probation officer in advance. The defendant is not to loiter within 100 feet of school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18. This shall include that the defendant is not to engage in any occupation, either paid or volunteer, that causes him to regularly contact known persons under the age of 18.
 4. The defendant shall consent to the probation officer and/or probation service representative conducting periodic unannounced examinations of (a) any computer, or (b) computer-related device, or (c) equipment that has an internal or external modem which is in the possession or control of the defendant. The defendant consents to retrieval and copying of all data from any such computer, computer-related device, or equipment as well as any internal or external peripherals to ensure compliance with conditions. The defendant consents to removal of such computer, computer-related device, and equipment for purposes of conducting a more thorough inspection and analysis.
- The defendant consents to having installed on any computer, computer-related device, and equipment, at the defendant's expense, any hardware or software systems to monitor the use of such computer, computer-related device, and equipment at the direction of the probation officer, and agrees not to tamper with such hardware or software and not install or use any software programs designed to hide, alter, or delete his computer activities. The defendant consents to not installing new hardware without the prior approval of the probation officer.
5. The defendant shall not possess, own, use, view, or read any material depicting and/or describing sexually explicit conduct involving children, including computer images, pictures, photographs, books, writings, drawings, videos, or video games. "Sexually explicit conduct" as defined in 18 U.S.C. § 2256(2) means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person.
- In addition, the defendant shall not possess, own, use, view, or read any material depicting and/or describing sexually explicit conduct involving adults, defined as sexually stimulating depictions of adult sexual conduct that are deemed inappropriate by the defendant's probation officer, including computer images, pictures, photographs, books, writings, drawings, videos, or video games depicting such conduct. Furthermore, the defendant shall not frequent any place whose primary purpose is to sell, rent, show, display, or give other forms of access to, material depicting and/or describing sexually explicit conduct.
6. The defendant shall consent to third-party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon him. This includes any activities in which you are acting as a technician, advisor, or consultant with or without any monetary gain or other compensation.
 7. The defendant shall provide all requested business/personal phone records to the probation officer. The defendant shall disclose to the probation officer any existing contracts with telephone line/cable service providers. The defendant shall provide the probation officer with written authorization to request a record of all outgoing or incoming phone calls from any service provider.
 8. The defendant shall attend, cooperate with, and actively participate in a sex offender treatment and therapy program [which may include, but is not limited to, risk assessment, polygraph examination, and/or Visual Reaction Treatment] as approved and directed by the probation officer and as recommended by the assigned treatment provider.
 9. The defendant's residence shall be pre-approved by the probation officer. The defendant shall not reside in direct view of places such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.
 10. The defendant shall not dispose of or otherwise dissipate any of his assets until the fine and/or restitution ordered by this Judgment is paid in full, unless the defendant obtains approval of the court or the probation officer.

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11. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to any unpaid restitution ordered by this Judgment.
12. The defendant shall provide the probation officer with access to any requested financial information.
13. The defendant shall not open additional lines of credit without the approval of the probation officer.

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The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

TOTALS

<u>Processing Fee</u>	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
	\$300.00	\$0.00	\$15,000.00	\$40,000.00	\$1,250.00

[[The determination of restitution is deferred until ____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

[[The court orders the defendant to pay restitution to the victim(s) as outline in the Restitution Attachment on Sheet 5B.

The restitution order to paid to the minor victim(s) shall be paid to the minor victim(s) legal guardian until such time as the minor victim(s) reaches the age of majority. Thereafter, restitution shall be paid directly to the victim(s).

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

[[Restitution amount ordered pursuant to plea agreement \$ ____

[[The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

[[The interest requirement is waived for the [[fine [[restitution

[[The interest requirement for the [[fine [[restitution is modified as follows:

[[If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

[[Other:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B-CAED (Rev. 09/2019) Sheet 5B - Criminal Monetary Penalties

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RESTITUTION PAYMENTS

Restitution of \$1,250.00 to:

Minor 1
\$1,250.00

SCHEDULE OF PAYMENTS

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

- A. ☐ Lump sum payment of \$ ____ due immediately, balance due
☐ Not later than ____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B. ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C. ☐ Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. ☐ Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. ☐ Payment during the term of supervised release/probation will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. ☐ Special instructions regarding the payment of criminal monetary penalties:

If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

The defendant shall make payments toward any unpaid criminal monetary penalties in this case during supervision at the rate of at least 10% of your gross monthly income. Payments are to commence no later than 60 days from placement on supervision. This payment schedule does not prohibit the United States from collecting through all available means any unpaid criminal monetary penalties at any time, as prescribed by law.

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States: The Preliminary Order of Forfeiture filed July 18, 2022, is hereby made final as to this defendant and shall be incorporated into the Judgment.

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