

No. 24-

In the
Supreme Court of the United States

THOMAS FRANK ANDREWS, SR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether the petitioner was denied due process of law in violation of the Fifth Amendment to the United States Constitution as a result of the withdrawal of the multiple objections to the draft presentence report filed by his initial counsel by his successive counsel without his agreement and without the trial court asking him whether he agreed to the withdrawal?
- II. If this constitutes a denial of his due process rights, is petitioner barred from having the appellate court review the denial as a result of the appeal waiver contained in his plea agreement filed prior to the constitutional deprivation?

PARTIES TO THE PROCEEDINGS

The petitioner (petitioner-appellant below) is Thomas Frank Andrews, Jr. The respondent (the respondent-appellee below) is United States of America.

RELATED PROCEEDINGS

Criminal judgment and direct appeal

Criminal Court for Eastern District of North Carolina:

United States of America v. Thomas Frank Andrews, Jr., No. 7:22-CR-112-M-RN, United States District Court for the Eastern District of North Carolina, Southern Division, judgment entered February 15, 2024

Fourth Circuit Court of Appeals:

United States of America v. Thomas Frank Andrews, Jr., No. 24-4126, judgment entered March 18, 2025

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Thomas Frank Andrews, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's order, Pet. App. 1a, is unpublished. The judgment in a criminal case of the United States District Court for the Eastern District of North Carolina, Pet. App. 4a, is not published.

JURISDICTION

The Fourth Circuit entered judgment on March 18, 2025. Pet. App. 1a. No petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fifth Amendment to the Constitution of the United States provides in relevant part:

No person...shall be deprived of life, liberty, or property, without due process of law.

INTRODUCTION

This case presents an important Fifth Amendment question: What does the Constitution require a subsequent criminal defense attorney to secure the agreement of his client in order to be permitted to withdraw objections filed by his predecessor defense counsel at the outset of a sentencing proceeding?

In 2004, petitioner Thomas Frank Andrews, Jr., appeared at a sentencing hearing in the United States district court pursuant to a plea agreement in which he agreed to plead guilty to production of child pornography and was sentenced to 360 months incarceration.

He was represented in those proceedings by a federal public defender who filed a plea agreement in his behalf on April 25, 2023. Thereafter, a draft presentence report was filed on July 17, 2023. Said counsel filed objections to the draft presentence report on October 20, 2023. Thereafter, on December 5, 2023, said counsel moved to withdraw as counsel for the petitioner, which was allowed on December 12, 2023. On December 14, 2023, petitioner's successive counsel filed his notice of appearance. Petitioner's sentencing hearing was conducted on February 15, 2024, in which petitioner is represented by his successive counsel.

At the sentencing hearing the trial judge inquired of his successive counsel as to the objections filed by his initial counsel. As to the bulk of those objections, his successive counsel advised the trial court that those objections would be waived and petitioner did not desire to be heard on them. There were six objections, and five were waived. Petitioner had not requested his counsel to waive the objections. Moreover, petitioner was not asked by the trial court as to his position on those waivers or withdrawals and remained silent even though he was in the courtroom and before the court.

This Court's review is necessary to clarify the responsibility of defense counsel in securing his client's permission to withdraw objections to the presentence report which had been filed by his predecessor defense counsel and what responsibility, if any, a trial judge has to secure a criminal defendant's permission prior to allowing previously filed objections to the presentence report to be withdrawn by his successive counsel.

STATEMENT

I. Factual background.

Petitioner filed his opening brief before the Fourth Circuit containing in excess of 20 pages of facts. Suffice it to say that the facts describe a series of events beginning in February 2020 that more than adequately justify his plea to Count One of the 12 count bill of indictment which charged him with knowingly persuade and induce a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct.

II. Eastern District of North Carolina Proceedings.

A 12 count bill of indictment was returned by a grand jury for the Eastern District of North Carolina which charged petitioner in Count One with knowingly persuading and inducing a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct in violation of Title 18 United States Code Sections 2251(a) and (e). The other counts of the bill of indictment were dismissed as part of the plea arrangement, and following a sentencing hearing the defendant was sentenced to 360 months incarceration. At the sentencing hearing which was conducted in February 2024, the defendant was represented by a successive defense lawyer who waived nearly all of the objections to the presentence report which had been filed by petition's initial counsel without the consent of the petitioner and without the trial court inquiring of the petitioner as to whether or not he agreed with the withdrawal of those objections. It is this act of the petitioner's successive counsel in withdrawing those objections without petitioner's agreement and the failure of the trial judge to inquire of the petitioner as to his agreement

which, in part, gave rise to his appeal to the Fourth Circuit and to this petition. The petitioner's plea agreement filed in the district court contained an appeal waiver.

III. Fourth Circuit Court of Appeals proceedings below.

Petitioner appealed his conviction to the Fourth Circuit Court of Appeals. In his appeal he raised, *inter alia*, the issues of the failure of his successive counsel to secure his agreement for the withdrawal of nearly all the objections to the presentence report which had been filed by his initial defense counsel and the failure of the trial court to inquire as to petitioner's agreement to this withdrawal. Petitioner filed his opening brief along with a two volume joint appendix in the Fourth Circuit. Thereafter, the United States filed a motion to dismiss the appeal, in part, and contemporaneously filed a motion for summary disposition. The Fourth Circuit suspended the briefing pending the resolution of those motions. The petitioner filed his response in opposition to those motions. On March 18, 2025, the Fourth Circuit entered an order which is included as Appendix A which granted the respondent's motion to dismiss the appeal in part and granted the respondent's motion for summary disposition. That order concluded that the issues raised in the appeal were raised in that appeal were barred by the appeal waiver in petitioner's plea agreement. Moreover, the court of appeals noted that the petitioner had not contested the validity of this appeal waiver. Accordingly, the Fourth Circuit granted the motion to dismiss the appeal, in part, and further granted the respondent's motion for summary affirmance of the remainder of petitioner's sentence. It is this order of the Fourth Circuit which gives rise to this petition.

REASONS FOR GRANTING PETITION

This case readily merits the Court's review. The question presented is plainly important, and this case provides an ideal vehicle for the Court to address it. Moreover, the order of the Fourth Circuit which forms the basis of this petition is wrong and should be righted to protect petitioner's rights under the Fifth Amendment. The petition should be granted.

I. The question presented is important, and this case is an excellent vehicle for resolving it.

The question presented here is exceptionally important, and this case provides an excellent vehicle for the Court's review.

A. Petitioner is entitled to have a decision making role as to whether to withdraw or waive previously filed objections to his presentence report.

In this case petitioner was initially represented by an attorney from the Federal Public Defender's Office. In petitioner's behalf, his counsel met with him, reviewed the draft presentence report, and filed a number of objections to the report. These objections were important to his sentencing, and any withdrawal or waiver should be with his informed consent. Not only should his successive counsel discuss the proposed withdrawal or waiver of previously filed objections before withdrawal or waiving them at his sentencing hearing, said counsel should have secured his consent. It is the respectful contention of petitioner that this is required not only by the Sixth Amendment to the Constitution, but equally important is required by the Due Process Clause of the Fifth Amendment to the United States Constitution. This was not done, and petitioner's successive counsel, without discussing the very important decision to withdraw or waive these objections to the

presentence report and more importantly to actually withdraw or waive these objections without securing the approval of petitioner for whose benefit these objections were filed and whose sentence likely would be affected by the decision.

B. Petitioner is entitled to have the trial judge inquire of him as to his agreement to the withdrawal or waiver of the objections to the presentence report filed by his initial counsel.

It is the contention of the petitioner herein that the trial judge should have inquired of him as to whether he agreed with the decision of his successive counsel to withdraw or waive the objections filed to the presentence report in his behalf by his initial counsel. Just as the trial judge is required to determine whether petitioner knowingly agreed to his plea agreement and whether he knowingly entered his plea of guilty, the trial judge should have inquired of him on the record as to whether or not he knowingly agreed to withdraw or waive his previously filed objections to the presentence report. The ruling on the objections, if made, substantially affected his sentencing; and the trial judge should have determined independently that petitioner knowingly agreed to withdraw or waive those objections. The law required his counsel to review the presentence report with him and file objections to it if needed. Petitioner contends that the trial judge is obligated under the Due Process Clause of the Fifth Amendment to the United States Constitution to make such inquiries of the petitioner and be satisfied that petitioner knowingly agreed to the withdrawal or waiver of those objections before allowing the withdrawal or waiver of them. This is particularly true in this case based on the transcript of what transpired at his sentencing hearing. At the outset of the hearing the court addressed petitioner inquiring as to whether he had discussed his presentence report with his attorney. At that point,

petitioner's successive counsel sought permission to confer with the defendant. After the off-the-record conference, petitioner responded "No." Thereafter, his successive counsel stated "At this point in time, we would not care to be heard on those specific objections." Petitioner was not asked for his opinion in that regard. The court noted that there were seven objections filed by petitioner's initial counsel. His successive counsel advised the court that "the only objection that we would like to be heard on has to do with the two point enhancement for obstruction of justice." Further, said counsel asserted that as to objections 1-5 "we'll waive those." "We don't care to be heard on those." The court stated "I'll deem those withdrawn." Inexplicably, while the presentence report indicates there were seven unresolved objections to the presentence report the record indicates that only one objection no. six would be considered. Yet his successive counsel indicated that exceptions one through five would be withdrawn. Therefore, the five objections to be waived and only one to be considered six, while there were seven unresolved objections. Nonetheless, petitioner was not asked his position on the withdrawals or waivers and remained silent.

C. Petitioner's valuable constitutional rights should not be violated without the possibility of subsequent appellate review based on appeal waivers in his plea agreement.

In this case, petitioner entered into a plea agreement with the United States which contained a provision waiving his right to appeal. While such provisions in plea agreements have been generally accepted and enforced by the courts, it seems unfair that a contractual provision in his plea agreement that petitioner is deprived of his right to secure a valuable constitutional right. At the time that he entered into his plea agreement, petitioner had no way of knowing or predicting that much later he would be the subject of deprivation of his

Due Process rights. While the courts have ruled that such provisions in plea agreements cannot bar appeals based on ineffective assistance of counsel or prosecutorial misconduct, other significant constitutional violations should not be shielded from appellate review by these provisions. While the rulings protect him from being barred from appellate review based on violations of his Sixth Amendment rights, they should also protect him against unknown and unforeseeable violation of his rights under the Due Process Clause of the Fifth Amendment should be of equal footing to the protection of Sixth Amendment violations.

II. The Fourth Circuit's decision is wrong.

While it is true that despite the appeal waiver in the plea agreement petitioner has the right to file an 18 U.S.C. Section 2255 motion to remedy his denial of effective assistance of counsel under the Sixth Amendment to the United States Constitution, the order of the Fourth Circuit (Pet. App. 1a) forecloses all remedies that petitioner has to protect his rights under the Due Process Clause of the Fifth Amendment. This is an important constitutional provision, and petitioner should not be powerless to seek remedy for its violation simply by virtue of a blanket appeal waiver in his plea agreement which he signed with his initial counsel before the constitutional violation occurred with his successive counsel and before he had any expectation or belief that it might occur in the future. Constitutional provisions are of a far greater import than contractual provisions in plea agreements even though the plea agreement has been the subject of judicial review following a review by the court with the petitioner. As stated by Judge McMillan in *Poe v. Charlotte Memorial Hospital*, 374

F.Supp. 1302 (WDNC 1974): “Due process, in simple terms, means fair procedure.” Fair procedure is all petitioner is seeking in this petition.

Petitioner contends that since the waiver of appeal provision in a plea agreement is nonjurisdictional, the Court of Appeals may consider the matter in the interest of justice. In the case of *Arakas v. Social Security Admin.*, 983 F.3d 83 (4th Cir. 2020), The Fourth Circuit stated that “(t)he fact that [a party] has waived review of this issue does not end [the Court’s] analysis. *Arakas*, 983 F.3d at 103. This Court in *Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985) held that “because the rule [that a failure to file timely objection to the magistrate judge’s report constitutes a waiver of appellate review] is a nonjurisdictional waiver provision, the Court of Appeals may excuse the default *in the interest of justice*.” (Emphasis added.) The Fourth Circuit has heretofore recognized that the failure to object waiver rule “is not absolute.” *Wright v. Collins*, 766 F.2d, 841, 845 (4th Cir. 1985). The Fourth Circuit in *Arakas* concluded that the Fourth Circuit may also excuse the default in the interest of justice. *Arakas*, 983 F.3d at 104.

In deciding whether to exercise our discretion in this regard, we have considered factors such as (1) whether both parties had ample opportunity to develop facts pertaining to the issue; (2) whether the issue is primarily a question of law; (3) whether the issue was briefed and argued on appeal; (4) whether the proper outcome is beyond doubt rendering a remand pointless; and (5) whether a discretionary remand to the district court for consideration of the waived issue in the first issue would produce injustice for a party. (citations deleted)

Arakas, 983 F.3d at 105. A similar safety valve for the interest of justice should be provided for a waiver of appeal provision in a plea agreement.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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FILED: March 18, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4126
(7:22-cr-00112-M-RN-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS FRANK ANDREWS, JR.,

Defendant - Appellant.

O R D E R

Thomas Frank Andrews, Jr., pled guilty, pursuant to a plea agreement, to production of child pornography, in violation of [18 U.S.C. § 2251\(a\)](#). The district court sentenced Andrews to the statutory maximum of 360 months' imprisonment. *See* [18 U.S.C. § 2251\(e\)](#). On appeal, Andrews challenges his sentence, arguing that: the district court violated his Fifth Amendment due process rights by allowing counsel to withdraw the objections to the presentence report (PSR) without ensuring that Andrews consented to the withdrawal (Issue 1); counsel rendered ineffective assistance by withdrawing the objections to the PSR without obtaining Andrews's

consent to do so (Issue 2); and the district court violated his Fifth Amendment due process rights by imposing a special condition of supervised release that requires him to submit to polygraph examinations (Issue 3).

The Government has moved to dismiss the appeal in part, arguing that Issues 1 and 3 are barred by the appeal waiver in Andrews's plea agreement. Andrews does not contest the validity of his appeal waiver. And we conclude that Issues 1 and 3 fall within the scope of the waiver. *See United States v. Cornette*, [932 F.3d 204, 209](#) (4th Cir. 2019) (identifying sentencing claims that are not waived despite valid waiver). Accordingly, we grant the Government's motion to dismiss the appeal in part.

The Government has also moved for summary affirmance of the remainder of Andrews's sentence, arguing that the ineffective assistance of counsel claim in Issue 2 is not cognizable on direct appeal. "[W]e typically review ineffective assistance of counsel claims on collateral review" but will consider "such claims on direct review where the ineffectiveness of counsel conclusively appears in the trial record itself." *United States v. Freeman*, [24 F.4th 320, 331](#) (4th Cir. 2022) (en banc) (internal quotation marks omitted). To succeed on an ineffective assistance of counsel claim, the defendant must show that counsel's performance was constitutionally deficient and that the deficient performance was prejudicial. *Strickland v. Washington*, [466 U.S. 668, 687-88, 691-92](#) (1984). We conclude that

Andrews has not met this heavy burden on the present record and that this claim “should be raised, if at all, in a [28 U.S.C. § 2255](#) motion.” *United States v. Faulls*, [821 F.3d 502, 508](#) (4th Cir. 2016). Accordingly, we grant the Government’s motion for summary affirmance of the remainder of Andrews’s sentence.

Entered at the direction of the panel: Judge Niemeyer, Judge Thacker, and Judge Rushing.

For the Court

/s/ Nwamaka Anowi, Clerk

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

THOMAS FRANK ANDREWS, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:22-CR-112

USM Number: 29758-510

Joel Merritt Wagoner

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2251(a), 18 U.S.C. § 2251(e)	Production of Child Pornography	10/21/2020	1

The defendant is sentenced as provided in pages 2 through 7 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) 2,3,4,5,6,7,8,9,10,11,12 ☐ is ☒ are dismissed on the motion of the United States.

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

2/15/2024

Date of Imposition of Judgment

Richard E. Myers II

Signature of Judge

Richard E. Myers II, Chief United States District Judge

Name and Title of Judge

2/29/2024

Date

DEFENDANT: THOMAS FRANK ANDREWS, JR.
CASE NUMBER: 7:22-CR-112

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

360 months - this sentence shall run concurrent to any state sentence that may be imposed for the related charges that remain pending in Vance County, North Carolina, under docket number 20CRS52163, and in Pender County, North Carolina, in docket numbers 20CR51803, 20CR51804, 20CR51887, 20CR51888, 20CR51889, 20CR51890, 20CR51891, 20CR51892,

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends: Most intensive substance abuse treatment, Vocational training/educational opportunities, Mental health assessment and treatment, Physical health evaluation and treatment, Placement at FCI Bennettsville.

☒ 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 _____ ☐ a.m. ☐ p.m. 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 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: THOMAS FRANK ANDREWS, JR.
CASE NUMBER: 7:22-CR-112

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

10 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ 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. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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.

DEFENDANT: THOMAS FRANK ANDREWS, JR.
CASE NUMBER: 7:22-CR-112

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 your 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 your 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 _____

DEFENDANT: THOMAS FRANK ANDREWS, JR.
CASE NUMBER: 7:22-CR-112

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects upon reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.

The defendant shall submit to a psycho-sexual evaluation by a qualified mental health professional who is experienced in evaluating sexual offenders and who is approved by the U.S. Probation Officer.

The defendant shall participate in a sex offender treatment program as directed by the U.S. Probation Officer, and the defendant shall comply with and abide by all the rules, requirements, and conditions of the treatment program until discharged. The defendant shall take medication as prescribed by the treatment provider.

At the direction of the U.S. Probation Officer, the defendant shall submit to physiological testing, which may include, but is not limited to, polygraph examinations or other tests to monitor the defendant's compliance with probation or supervised release and treatment conditions.

The defendant's residence and employment shall be approved by the U.S. Probation Officer. Any proposed change in residence or employment must be provided to the U.S. Probation Officer at least 10 days prior to the change and pre-approved before the change may take place.

The defendant shall not possess any materials depicting and/or describing 'child pornography' and/or 'simulated child pornography' as defined in 18 U.S.C. § 2256, nor shall the defendant enter any location where viewing or obtaining such materials is a reason for its existence.

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.

The defendant shall not associate or have verbal, written, telephonic, or electronic communications with any person under the age of eighteen (18), except: (1) in the presence of the parent or legal guardian of said minor; (2) on the condition that the defendant notifies the parent or legal guardian of the defendant's conviction or prior history; and (3) with specific, written approval from the U.S. Probation Officer. This provision does not encompass persons under the age of eighteen with whom the defendant must deal with in order to obtain ordinary and usual commercial services (e.g., waiters, cashiers, ticket vendors, etc.).

To ensure compliance with supervision, the defendant shall submit to unannounced searches of any computer or computer equipment (including mobile phones) which, in the discretion of the U.S. Probation Officer, may include the use of computer monitoring technology, computer search or analysis software, and copying of all data from the device and external peripherals. Such examination may require the removal of devices from your possession for the purpose of conducting a thorough inspection.

At the direction of the U.S. Probation Officer, the defendant shall consent to the installation of systems or software that will allow the probation officer or designee to monitor computer use on any computer that the defendant owns or is authorized to use. The defendant shall pay the cost of this monitoring.

The defendant shall not use, possess, or control any computer-based counter forensic tools. The defendant shall not use or have installed any programs specifically and solely designed to encrypt data, files, folders, or volumes of any media. The defendant shall, upon request, immediately provide the U.S. Probation Officer with any and all passwords or biometric materials required to access data compressed or encrypted for storage by any software.

The defendant shall not be employed in any position or participate as a volunteer in any activity that involves direct or indirect contact with children under the age of eighteen (18) without written permission from the U.S. Probation Officer. Under no circumstances may the defendant be engaged in a position that involves being in a position of trust or authority over any person under the age of eighteen.

The defendant shall not possess any legal or illegal pornographic material, nor shall the defendant enter any location where principal reason for its existence is the accessing, obtaining or viewing such materials including pictures, photographs, books, writings, drawings, videos, or video games.

The defendant shall support his dependent(s).

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

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall have no contact, direct or indirect, with victims M.W. and A.C. No contact absent permission from the probation officer.

DEFENDANT: THOMAS FRANK ANDREWS, JR.

CASE NUMBER: 7:22-CR-112

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ 36,000.00	\$	\$	\$

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

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Suzanne Walton, in trust for M.W.	\$10,000.00	\$10,000.00	1st
Abigail Clark	\$10,000.00	\$10,000.00	1st
Mary Andrews, in trust for S.A.	\$10,000.00	\$10,000.00	1st
Carol L. Hepburn, in trust for Maria	\$3,000.00	\$3,000.00	2nd
Carol L. Hepburn, in trust for Cara	\$3,000.00	\$3,000.00	2nd

TOTALS	\$	36,000.00	\$	36,000.00
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☐ 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:

* 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.

DEFENDANT: THOMAS FRANK ANDREWS, JR.
CASE NUMBER: 7:22-CR-112

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 with ☐ 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 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:
The special assessment in the amount of \$ 100.00 shall be due in full immediately. Payment of restitution shall be due and payable in full immediately. However, if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program (IFRP). The court orders that the defendant pay a minimum payment of \$25 per quarter through the IFRP, if available. The court, having considered the defendant's financial resources and ability to pay, orders that any balance still owed at the time of release shall be paid in installments of \$100 per month to begin 60 days after the defendant's release from prison. At the time of the defendant's release, the probation officer shall take into consideration the defendant's ability to pay the restitution ordered and shall notify the court of any needed modification of the payment schedule.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

☐ 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 defendant shall forfeit to the United States the defendant's interest in the property specified in the Preliminary Order of Forfeiture entered on 4/25/2023.

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.