No. ________________________

IN THE

SUPREME COURT OF THE UNITED STATES

JOSHUA CHARTER— PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

EIGHTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Keith E. Uhl
Counsel of Record
Uhl Law Firm
3103 Elmwood Drive
Des Moines, Iowa 50312
515-255-8082

QUESTION PRESENTED

Whether the Eighth Circuit, which has narrowly interpreted the exclusion under §2K2.1(b)(6)(B) of the "Explosives or Firearms Possession of Trafficking Offense" and therefore brings within its application Petitioner's conduct, should adopt a broader interpretation used by other circuits which requires the secondary felony offense to "in facilitation of" the felony offense under §2K2.1(b)(6)(B).

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

United States Court of Appeals Opinions

United States Federal Statutes

Iowa State Code

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix________to the petition and is

[ ] reported at______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix________to the petition and is

[ ] reported at______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the______________________________court appears at Appendix_________to the petition and is

[ ] reported at______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 28, 2017.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 17, 2017 and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including__________________________(date) on__________________________(date) in Application No.______A__________.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Sentencing Guidelines §2K2.1(b)(6)(B)

United States Sentencing Guidelines §2K2.1(b)(6)(B) states:

(6) If the Appellant --

> (B) Used or possessed any fire arm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by 4 levels.

Iowa Code 724.4(1)

Iowa Code Section 724.4(1) states:

Except as otherwise provided in this section, a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.

STATEMENT OF THE CASE

Petitioner appealed his 100-month sentence before the United State Court of Appeals for the Eighth Circuit, No. 16-3676. The Eighth Circuit affirmed the lower court's decision on September 28, 2017. Petitioner timely filed his Petition for Rehearing En Banc on October 18, 2017, but that Petition was denied on November 17, 2017.

Joshua David Charter (Charter) was charged in an eleven-count indictment on July 25, 2015. On March 25, 2016, Charter pled guilty to Count Four: Felon in Possession of Firearms in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2) on or about June 9, 2014. (2012); (2012). On April 19, 2016, the District Court in the Southern District of Iowa accepted his plea and adjudicated him guilty. On August 31, 2016, Petitioner was sentenced to 100 months in prison pursuant to U.S.S.G. § 2K2.1(b)(6)(B) in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2).

Appellant Joshua David Charter was indicted and entered into a plea agreement with the United States government, pleading guilty to Count Four: Felon in Possession of Firearms in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2) on or about June 9, 2016. Charter was initially charged with eleven count but in pursuit of a plea agreement, he pled guilty to Count Four and the government dropped Counts One through Three and Five through Eleven.

The final Presentence Investigation Report was prepared and it included a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B). Petitioner objected to this enhancement in Objection Four stating: "[T]he Appellant objects to the four-level adjustment, claiming he did not possess any fire arm or ammunition in connection with another felony offense."

Petitioner Charter contends that the District Court erred in finding that he possessed a firearm in connection with the Iowa felony offense of carrying weapons and, therefore, applying the U.S.S.G. § 2K2.1(b)(6)(B) four-level enhancement.

The issue contained in this petition regarding Petitioner's sentence were raised on appeal.

REASONS FOR GRANTING THE PETITION

The Federal Sentencing Guidelines have approved a four-level enhancement in § 2K2.1(b)(6)(B) :

> (6) If the Appellant--
>
> (B) Used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,
>
> increase by 4 levels.

In Comment 14 of § 2K2.1(b)(6)(B), "another firearms offense" is defined as "any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained." U.S.S.G. § 2K2.1 cmt. n.14(C). Congress narrowed the reach of § 2k1.1(b)(6)(B) in 2011 by excluding "the explosive or firearms possession or trafficking offense" from the four-level enhancement. *United States v. Walker*, 771 F.3d 449, 451–52 (8th Cir. 2014).

Charter's four-level increase is connected with three instances of carrying a weapon in a public location: on December 23, 2013, July 16, 2014, and July 21, 2014, which is covered by the Iowa Code Carrying Weapons statute. PSR at 48.

Iowa Code Section 724.4(1) states:

> Except as otherwise provided in this section, a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the

> limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.
>
> (2016).

Charter argues that application of the enhancement constitutes is impermissible because the federal firearms offenses are inextricably entwined with the state weapon offense. See U.S.S.G. § 2K2.1 cmt. n.14(C) (defining "another felony offense" to mean an offense "other than the explosive or firearms possession or trafficking offense"). Petitioner's argument should not be foreclosed by the decision in *United States v. Walker*, 771 F.3d 449, 452-53 (8th Cir. 2014), in which the Eighth Circuit claimed that a violation of Iowa Code § 724.4(1) supports the application of U.S.S.G. § 2K2.1(b)(6)(B) because a defendant does not "automatically commit the [Iowa] felony when he violate[s] 18 U.S.C. § 922(g) by possessing a firearm as a [prohibited person]." Petitioner maintains that *Walker* was wrongly decided. It should not remain binding precedent in the Eighth Circuit. *But see United States v. Thigpen*, 848 F.3d 841, 846 (8th Cir. 2017).

There is no suggestion in the evidence Charter used the weapon "in connection with" another felony, both because no felony occurred and because the gun was not used nor did he intend to use it. *See United States v. Boots*, 816 F.3d 971 (8th Cir. 2016) (Melloy, J., concurring) (stating Section 724.14 does not qualify as "another felony offense"). Because possessing the gun in a convenience store restroom does not facilitate a separate firearm trafficking offense, this broader definition prohibits the United States from applying a four-level enhancement. Rather, the two acts are sufficiently closely intertwined to both satisfy the broader definition and the Eighth Circuit's current, narrower interpretation of § 2K2.1(b)(6)(B).

The Eighth Circuit should adopt a broader interpretation used by other circuits, which requires the secondary felony offense to be "in facilitation of", the felony offense under § 2K2.1(b)(6)(B) and find applying the four-level enhancement under § 2K2.1(b)(6)(B) is impermissible double-counting.

Several Circuits have interpreted § 2K2.1(b)(6)(B) more broadly, putting emphasis on the requirement in § 2K2.1(b)(6)(B) that the possession of a firearm must be used in connection with another felony, interpreting "in connection with" to mean "in facilitation of." *See, e.g.*, *United States v. West*, 643 F.3d 102, 114 (3d Cir. 2011); *United States v. Jeffries*, 587 F.3d 690, 692–93 (5th Cir. 2009) (under Application Note 14, a four-level enhancement is permitted for non-trafficking drug offenses only if a firearm facilitates or has the potential to facilitate the offense). "In 2006, the Guidelines were amended to provide a definition of 'in connection with.' According to that definition, a firearm is possessed 'in connection with' another felony 'if the firearm . . . facilitated, or had the potential of facilitating, another felony offense or another offense, respectively.'" *United States v. Pimpton*, 558 Fed. App'x 335, 337 (4th Cir. 2013) (quoting U.S.S.G. § 2K2.1(b)(6) cmt. n.14.)

"The § 2K2.1(b)(6)(B) enhancement applies to Appellants who '[u]sed or possessed any firearm or ammunition in connection with another felony offense.'" U.S.S.G. §

2K2.1(b)(6)(B). The application notes to § 2K2.1 specify that the four- point firearm enhancement should apply "if the firearm . . . facilitated, or had the potential of facilitating, another felony offense." U.S.S.G. § 2K2.1 application note 14(A). *See United States v. Jenkins*, 566 F.3d 160 (4th Cir. 2009) (observing "the general rule of Application Note 14(A) governs, and therefore the district court must evaluate whether the firearm 'facilitated, or had the potential of facilitating' the other offense to determine whether Section 2K2.1(b)(6) applies."). "The enhancement is not warranted if possession of the firearm 'is merely coincidental to the underlying felony offense.'" *United States v. Seymour*, 739 F.3d 923, 929 (6th Cir. 2014) (citing *United States v. Angel*, 576 F.3d 318, 321 (6th Cir. 2009)) (quotation marks omitted). The enhancement is designed "to punish more severely a Appellant who commits a separate felony offense that is rendered more dangerous by the presence of a firearm." *United States v. Posey*, 644 Fed. App'x 253, 255 (4^{th} Cir. 2016) (quoting *Jenkins*, 566 F.3d at 164 (internal quotations omitted) (finding the enhancement was appropriately applied when the Appellant used a gun in facilitating the offense of promoting prostitution and making the offense significantly more dangerous).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Keith E. Uhl

Date: February 14, 2018

APPENDIX A

Opinion of the United States Court of Appeals, Eighth Circuit No. 16-3676

September 28, 2017

United States Court of Appeals
For the Eighth Circuit

No. 16-3676

United States of America

Plaintiff - Appellee

v.

Joshua David Charter

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: September 18, 2017
Filed: September 28, 2017
[Unpublished]

Before LOKEN, BEAM, and SHEPHERD, Circuit Judges.

PER CURIAM.

Joshua David Charter appeals, challenging the sentence imposed by the district court[1] following his guilty plea to one count of being a felon in possession of a

[1]The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa.

firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Charter argues the court erred in applying a four-level enhancement at sentencing pursuant to United States Sentencing Guidelines (U.S.S.G.) § 2K2.1(b)(6)(B) for possessing a firearm in connection with another felony offense.[2] He also claims the government's investigation in this matter continued for an unnecessarily lengthy period, which Charter claims resulted in sentencing manipulation.[3]

This court "review[s] de novo the district court's interpretation and application of the Guidelines." United States v. Jackson, 633 F.3d 703, 705 (8th Cir. 2011). "The district court's determination that the defendant possessed the firearm[] in connection with another felony is a factual finding that we review for clear error." United States v. Bates, 561 F.3d 754, 758 (8th Cir. 2009) (alteration in original) (quoting United States v. Smith, 535 F.3d 883, 885 (8th Cir. 2008)).

The application of the sentencing enhancement in this case was not error. The other felony offense supporting the enhancement is Iowa Code § 724.4(1), a firearm offense and an aggravated misdemeanor that qualifies as "another felony offense" because it is punishable by imprisonment for up to two years. United States v.

[2]U.S.S.G. § 2K2.1(b)(6)(B) prescribes a four-level enhancement to the advisory Guidelines offense level if the defendant "used or possessed [the] firearm . . . in connection with another felony offense." "Another felony offense" is defined as "any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained." U.S.S.G. § 2K2.1 cmt. n.14(C).

[3]Charter additionally filed two motions pro se–a motion to subpoena and reserve for error, and a motion to vacate, set aside, or correct the sentence due to ineffective assistance of counsel. These claims should be presented (if at all) in collateral proceedings, as the record has not been sufficiently developed for the court to pass on the merits, and thus we deny without prejudice Charter's motions. United States v. Ramirez-Hernandez, 449 F.3d 824, 827 (8th Cir. 2006).

Walker, 771 F.3d 449, 451 (8th Cir. 2014). Charter claims that the government based the four-level increase on three instances where his conduct violated the Iowa law and that these three actions were "not sufficiently separate to apply the enhancement but rather they were inextricably intertwined to require applying [the § 2K2.1(b)(6)(B)] exclusion and refraining from imposing the four-level enhancement." He additionally argues that use of the enhancement on these facts resulted in impermissible "double-dipping." Both arguments are without merit and are expressly foreclosed by Walker. 771 F.3d at 452-53 ("[Iowa Code] § 724.4(1) does not fall within the narrow Note 14(C) exclusion for '*the* . . . firearms possession . . . offense' (emphasis added), and applying the four-level enhancement in U.S.S.G. § 2K2.1(b)(6) does not implicate the 'double counting' concerns underlying our decision in [United States v. Lindquist, 421 F.3d 751, 756 (8th Cir. 2005)]."); but see United States v. Sanford, 813 F.3d 708, 715-18 (8th Cir.) (Bye, J., concurring) (questioning this court's precedent on this issue and encouraging the court en banc to revisit the matter), cert. denied, 137 S. Ct. 260 (2016); United States v. Boots, 816 F.3d 971, 975-76 (8th Cir.) (Melloy, J., concurring) (same), cert. denied, 137 S. Ct. 209 (2016). "A panel of this Court is bound by a prior Eighth Circuit decision unless that case is overruled by the Court sitting en banc." United States v. Manning, 786 F.3d 684, 686 (8th Cir.) (quoting United States v. Wright, 22 F.3d 787, 788 (8th Cir. 1994)), cert. denied, 136 S. Ct. 278 (2015).

Charter additionally claims that the district court erred in failing to grant a downward departure and that the resulting sentence was substantively unreasonable, an alleged error we review for an abuse of discretion. United States v. Munz, 780 F.3d 1199, 1200 (8th Cir. 2015). Charter claims that because the government could have arrested him much earlier, yet "lured [him] into making ten additional sales of firearms to the same undercover agent," it unnecessarily manipulated his sentence and the court should have recognized this fallacy by granting a downward departure.

Even assuming Charter preserved this claim properly before the district court,[4] this argument likewise fails. It was not an abuse of discretion for the district court to reject any suggestion of sentencing manipulation. United States v. Moran, 612 F.3d 684, 692 (8th Cir. 2010) (rejecting a claim of sentencing manipulation when law enforcement had legitimate investigative reasons for increasing buys, including an attempt to identify the source and/or scale of supply and trafficking). On the § 3553(a) factors, alone, the district court likewise did not err, as the sentencing colloquy reveals the court's careful consideration of the factors.

For the reasons stated herein, we affirm.

____

[4]At sentencing, Charter conceded that he could not, as a legal matter, succeed on a claim of sentencing manipulation on these facts.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

September 28, 2017

Mr. Keith Edward Uhl
3103 Elmwood Drive
Des Moines, IA 50312-0000

RE: 16-3676 United States v. Joshua Charter

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

JMM

Enclosure(s)

cc: Mr. Joshua David Charter
Mr. John S. Courter
Mr. Clifford D. Wendel

District Court/Agency Case Number(s): 4:15-cr-00091-JEG-1

APPENDIX B

Eighth Circuit Decision Denying Request for Rehearing En Banc

November 17, 2017

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 16-3676

United States of America

Appellee

v.

Joshua David Charter

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:15-cr-00091-JEG-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

November 17, 2017

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C

Judgment of the United States District Court

August 31, 2016

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
Joshua David Charter

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:15-cr-00091-001

USM Number: 15502-030

Keith E. Uhl
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) Four of the Indictment filed on July 28, 2015.

☐ 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. §§ 922(g)(1), 924(a)(2)	Felon in Possession of Firearms	06/09/2014	Four

☐ See additional count(s) on page 2

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

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

☑ Count(s) 1 through 3 and 5 through 11 ☐ 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.

August 31, 2016
Date of Imposition of Judgment

Signature of Judge

James E. Gritzner, Senior U.S. District Judge
Name of Judge Title of Judge

August 31, 2016
Date

DEFENDANT: Joshua David Charter
CASE NUMBER: 4:15-cr-00091-001

IMPRISONMENT

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

100 months as to Count Four of the Indictment filed on July 28, 2015.

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

The defendant be placed at medical facility if necessary to address his medical conditions.

☑ 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 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 ____________

a ____________ , with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ____________
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Joshua David Charter
CASE NUMBER: 4:15-cr-00091-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
Three years as to Count Four of the Indictment filed on July 28, 2015.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation office;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Joshua David Charter
CASE NUMBER: 4:15-cr-00091-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, the defendant shall receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. The defendant shall not use alcohol and/or other intoxicants during the course of supervision.

The defendant shall not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

The defendant shall submit to a mental health evaluation. If treatment is recommended, the defendant shall participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

The defendant shall participate in an approved treatment program for anger control/domestic violence. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

The defendant shall participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

The defendant shall comply with the terms and conditions ordered by the State of Iowa, requiring payments for the support and maintenance of the children and the custodial parent and/or guardian with whom the children are living, in Iowa Child Support Recovery case numbers 507975, 581589, 538357.

If not completed with the Bureau of Prisons, the defendant shall reside, participate, and follow the rules of the residential reentry program, as directed by the U.S. Probation Officer, for up to 120 days. The residential reentry program is authorized to allow up to six hours of pass time per week for good conduct when the defendant becomes eligible in accordance with the residential reentry program standards.

The defendant shall submit to a search of his person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Joshua David Charter
CASE NUMBER: 4:15-cr-00091-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ 0.00

☐ 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.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$0.00	$0.00	

☐ 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:

* 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: Joshua David Charter
CASE NUMBER: 4:15-cr-00091-001

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 $ 100.00 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 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:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All crimnal 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

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and 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:

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

APPENDIX D

United States Sentencing Guidelines 2K2.1(b)(6)(B)

§2K2.1. <u>**Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition**</u>

. . .

(b) Specific Offense Characteristics

***

(6) If the defendant—

***

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by **4** levels.