

## APPENDIX A

CLD-044

November 9, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 17-2618

UNITED STATES OF AMERICA

VS.

FITZGERALD HORTON, Appellant

(E.D. Pa. Crim. No. 2-12-cr-00228-001)

Present: CHAGARES, GREENAWAY, JR. and GREENBERG, Circuit Judges

Submitted by the Clerk is the within appeal for possible summary action under 3d Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures

in the above-captioned case.

Respectfully,

Clerk

MMW/JDM/sfh/sb

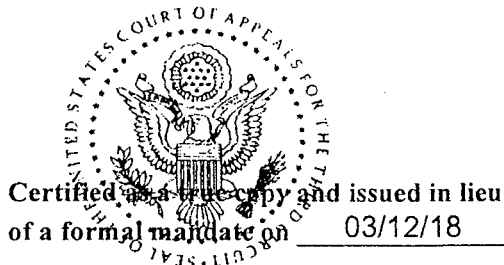
ORDER

We summarily affirm the District Court's order denying Appellant's motion to remand his case to the Pennsylvania Superior Court. Appellant's motion to remand was without merit, and this appeal does not raise a substantial question. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. As explained by the District Court, that Court properly exercised jurisdiction over Appellant's case. See, e.g., United States v. Gallo, 239 F.3d 572, 573, 575 (3d Cir. 2001).

By the Court,

s/Michael A. Chagares  
Circuit Judge

Dated: January 19, 2018  
sb/cc: Fitzgerald Horton  
Michelle Rotella, Esq.



## APPENDIX B

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL ACTION

v.

No. 12-228

FITZGERALD HORTON

ORDER

AND NOW, this 1st day of June, 2017, it is ORDERED Defendant Fitzgerald Horton's pro se Motion to Remand (Document 148) is DENIED.<sup>1</sup>

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<sup>1</sup> In May 2012, Defendant Fitzgerald Horton was charged, first by criminal complaint and then by indictment, with numerous federal child pornography-related offenses. A superseding indictment was returned in June 2013, charging Horton with additional federal child pornography-related offenses. Horton proceeded to trial in August 2013 and was convicted of eleven of the thirteen counts: ten counts of using or inducing a child to pose for child pornography images, in violation of 18 U.S.C. § 2251(a), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). In July 2014, Horton was sentenced to a total of 276 months of imprisonment. Horton thereafter filed a direct appeal, but his conviction and sentence were affirmed in January 2016.

Horton now seeks an order remanding this case to the Superior Court of Pennsylvania, from which he claims the case "was improperly and improvidently removed." Mot. to Remand 1. Horton argues the alleged removal was improper because this Court lacks subject matter jurisdiction over the offenses in question. Specifically, Horton asserts his crimes were not crimes against the United States because they were not committed on lands over which the United States had accepted jurisdiction. He also notes diversity jurisdiction is lacking in this case. These arguments are meritless. As an initial matter, Horton's assertion that this case was removed to federal court from the Pennsylvania Superior Court is incorrect. This case was instead commenced by the filing of a criminal complaint charging Horton with federal child pornography offenses on May 7, 2012, which was superseded by an indictment returned two days later on May 9, 2012. There is thus no basis on which to remand the case to state court. Horton's jurisdictional argument is also unavailing, as subject matter jurisdiction over the federal offenses charged does not depend on the offense conduct having occurred on federal land. See *United States v. Galo*, 239 F.3d 572, 573, 575 (3d Cir. 2001) (holding "Congress validly exercised its authority under the Commerce Clause in enacting §§ 2251(a) and 2252(a)(4)(B)," both of which contain the same jurisdictional element, requiring the government to prove that at least "one of the materials used to create the pornography has traveled in interstate commerce"). Finally, Horton's discussion of diversity jurisdiction is inapposite, as this is a criminal case. See 28 U.S.C. § 1332(a) ("The district courts shall have original jurisdiction of all *civil actions* where the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is

BY THE COURT:

/s/ Juan R. Sánchez  
Juan R. Sánchez, J.

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between . . . citizens of different States.” (emphasis added)). Accordingly, Horton’s Motion to Remand is denied.

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**Additional material  
from this filing is  
available in the  
Clerk's Office.**