

APPENDIX

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10317-D

STEVEN CORKER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Steven Corker moves for a certificate of appealability ("COA"), in order to appeal the denial of his counseled 28 U.S.C. § 2255 motion to vacate sentence. To merit a COA, Corker must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted). Because Circuit precedent forecloses Corker's claim, he has not met this standard, and his motion for a COA is DENIED.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-22873-CIV-COHN-WHITE
(CASE NO. 97-00448-CR-COHN)

STEVEN CORKER,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

THIS CAUSE is before the Court on the Report and Recommendation [DE 19] ("Report") submitted by Magistrate Judge Patrick A. White regarding Movant Steven Corker's Amended Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255. DE 13 ("Amended § 2255 Motion"). Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of the Amended § 2255 Motion, the Report, Movant's Objections [DE 20], the Government's Response [DE 21], and the record in this case, and is otherwise advised in the premises.

On November 12, 1998, a jury convicted Movant of one count of attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); one count of using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c); and one count of theft of mail, in violation of 18 U.S.C. § 1708. The Court thereafter sentenced Movant to a term of 210 months' imprisonment. The Court of Appeals for the Eleventh Circuit affirmed Movant's conviction and sentence, United States v. Corker,

252 F.3d 1359 (11th Cir. 2001) (unpublished table decision), and the Supreme Court denied certiorari, 534 U.S. 1149 (2002).

On June 20, 2016, more than fourteen years after his conviction became final, Movant filed a pro se motion under 28 U.S.C. § 2255 challenging the validity of his conviction for violating 18 U.S.C. § 924(c). DE 1. Movant cited the Supreme Court's decisions in Johnson v. United States, 135 S. Ct. 2551 (2015), which struck down the residual clause of the Armed Career Criminal Act of 1984 ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), as unconstitutionally vague, and Welch v. United States, 136 S. Ct. 1257 (2016), which held that Johnson applies retroactively in cases on collateral review. Judge White appointed counsel and received briefing from the parties, including Movant's Amended § 2255 Motion.

On October 30, 2017, Judge White concluded that Movant's Johnson claim was procedurally defaulted due to Movant's failure to challenge § 924(c) as void for vagueness either at trial or on direct appeal. DE 19 at 2-4. Judge White explained that, although the pronouncement of a new, retroactive substantive rule like Johnson ordinarily permits a § 2255 movant to overcome a procedural default, Movant could not. Id. at 4. This was so because the Eleventh Circuit held in Ovalles v. United States, 861 F.3d 1257 (11th Cir. 2017), that § 924(c)'s "use-of-force" clause, although textually similar to ACCA's residual clause, is not unconstitutionally vague in light of Johnson. DE 19 at 4. Such a procedural default ruling, Judge White determined, would not be subject to debate by reasonable jurists. Id. at 5-6. Judge White therefore recommended that the Amended § 2255 Motion be denied, and that no certificate of appealability ("COA") be issued. Id. at 6.

Movant makes two objections to the Report. First, Movant says that Judge White was wrong to rely on Ovalles. In so arguing, Movant points to the Eleventh Circuit's sua sponte stay of its mandate in that case, as well as Ovalles's pending petition for rehearing en banc. Neither fact blunts the precedential force of the Eleventh Circuit's decision. See 11th Cir. R. 36-3, IOP 2 ("Under the law of this circuit, published opinions are binding precedent. The issuance or non-issuance of the mandate does not affect this result." (citing Martin v. Singletery, 965 F.2d 944, 945 n.1 (11th Cir. 1992))). Nor does Sessions v. Dimaya, U.S. No. 15-1498, a case reargued at the Supreme Court on October 2, 2017, permit this Court to sidestep Ovalles. The issue in Dimaya is whether 18 U.S.C. § 16(b), a provision identical to § 924(c)'s "use-of-force" clause, is unconstitutionally vague under Johnson. A decision against the Government in Dimaya may abrogate Ovalles—though even that is not certain, as Dimaya is a deportation case, not a criminal case, and in deciding whether a statute is void for vagueness, the Supreme Court has long "expressed greater tolerance of enactments with civil rather than criminal penalties." Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498-99 (1982). In any event, this Court cannot sit and wait; Ovalles controls in the here and now.

Movant's second objection is also far off the mark. This Court should issue a COA, Movant says, because reasonable jurists could debate whether § 924(c)'s "use-of-force" clause is invalid after Johnson. But that conveniently ignores the other half of the COA inquiry. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable

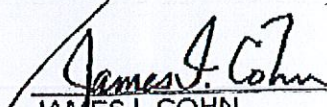
whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (emphasis added). So when a COA request concerns a procedural ruling, the required showing must include both the procedural issue and the constitutional issue. Lambrix v. Sec'y, Fla. Dep't of Corr., 851 F.3d 1158, 1169 (11th Cir. 2017). While Ovalles itself acknowledged a circuit split on the constitutionality of § 924(c)'s "use-of-force" clause, see 861 F.3d at 1263, this Court is bound by Eleventh Circuit precedent, not that of other circuits, and "reasonable jurists would follow controlling law." Lambrix, 851 F.3d at 1170. Thus, when it comes to Movant's procedural default, it would not be a matter of debate among jurists of reason that binding circuit precedent forecloses a showing of cause and prejudice necessary to excuse that default.

In sum, the Court agrees with Judge White's well-reasoned Report and the recommendations contained therein. Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Magistrate Judge White's Report [DE 19] is **ADOPTED**.
2. Movant's Amended § 2255 Motion [DE 13] is **DENIED**.
3. The Clerk of Court is directed to **CLOSE** this case and **DENY** as moot any pending motions.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,
Florida, this 1st day of December, 2017.


JAMES I. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF

A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CIV-22873-COHN
(97-CR-00448-COHN)
MAGISTRATE JUDGE P.A. WHITE

STEVEN CORKER, :
 :
 Movant, :
 :
 v. : REPORT OF
 : MAGISTRATE JUDGE
 UNITED STATES OF AMERICA, :
 :
 Respondent. :

Introduction

This matter is before this Court on the movant's motion to vacate pursuant to 28 U.S.C. §2255, attacking his conviction and sentence entered in Case No. 97-CR-00448-COHN.

This Cause has been referred to the undersigned for consideration and report pursuant to 28 U.S.C. §636(b)(1)(B) and Rules 8 and 10 of the Rules Governing Section 2255 Cases in the United States District Courts.

The Court has reviewed the motion (CV-DE#1), Movant's counseled memorandum of law in support thereof (CV-DE#12), the government's response (CV-DE#15), Movant's counseled reply (CV-DE#18), and all pertinent portions of the underlying criminal file.

Claims

Movant's sole claim in this proceeding is that his § 924(c) conviction for using and carrying a firearm during and in relation to a crime of violence is no longer lawful after the Supreme Court's decision in Johnson v. United States, 135 S.Ct. 2551 (2015).

Procedural History

Movant was convicted after a jury trial of attempt to commit Hobbs Act robbery in violation of 18 U.S.C. § 1951(a), using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c), and theft of mail in violation of 18 U.S.C. § 1708. The district judge sentenced Movant to concurrent terms of imprisonment for 210 months for the attempted Hobbs Act Robbery and the theft of mail, followed by a 70-month consecutive sentence as to the § 924(c) count. Movant appealed, and the Eleventh Circuit Court of Appeals affirmed without an opinion. Then, on June 20, 2016, Movant filed the instant motion to vacate pursuant to § 2255.¹

Procedural Bar²

The government argues that Movant's claim is procedurally barred. Specifically, the government argues that Movant failed to raise his Johnson claim either at trial or on direct appeal, and that Movant cannot satisfy either the cause-and-prejudice or the actual innocence exceptions to the procedural default rule.

As a general matter, a criminal defendant must assert an available challenge to a conviction or sentence on direct appeal or be barred from raising the challenge in a section 2255 proceeding; Greene v. United States, 880 F.2d 1299, 1305 (11th Cir. 1989). It is well-settled that a habeas petitioner can avoid the application

¹Prisoners' documents are deemed filed at the moment they are delivered to prison authorities for mailing to a court, and absent evidence to the contrary, will be presumed to be the date the document was signed. See Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001); see also Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) (setting forth the "prison mailbox rule").

²The government has not raised any defense to the instant motion based on the statute of limitations. Therefore, should any such defense exist, it is waived. See Day v. McDonough, 547 U.S. 198, 205, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006) (the AEDPA statute of limitations defense is not jurisdictional and is subject to waiver by the failure to raise it initially).

of the procedural default rule by establishing objective cause for failing to properly raise the claim and actual prejudice resulting from the alleged constitutional violation. Murray v. Carrier, 477 U.S. 478, 485-86, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) (citations omitted); Spencer v. Sec'y, Dep't of Corr., 609 F.3d 1170, 1179-80 (11th Cir. 2010). To show cause, a petitioner "must demonstrate that some objective factor external to the defense impeded the effort to raise the claim properly in state court." Wright v. Hopper, 169 F.3d 695, 703 (11th Cir. 1999). Cause for not raising a claim can be shown when a claim "is so novel that its legal basis [wa]s not reasonably available to counsel." Bousley v. United States, 523 U.S. 614, 622 (1998). To show prejudice, a petitioner must show actual prejudice resulting from the alleged constitutional violation. United States v. Frady, 456 U.S. 152, 168, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982); Wainwright v. Sykes, 433 U.S. 72, 84, 97 S. Ct. 2497, 2505, 53 L. Ed. 2d 594 (1977).

If a petitioner is unable to show cause and prejudice, yet another avenue exists for obtaining review of the merits of a procedurally defaulted claim. Under exceptional circumstances, a prisoner may obtain federal habeas review of a procedurally defaulted claim if such review is necessary to correct a fundamental miscarriage of justice, "where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray, 477 U.S. at 495-96; see also Herrera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 862, 122 L. Ed. 2d 203 (1993); Kuhlmann v. Wilson, 477 U.S. 436, 106 S. Ct. 2616, 91 L. Ed. 2d 364 (1986). The actual innocence exception is "exceedingly narrow in scope" and requires proof of actual innocence, not just legal innocence. Id. at 496; see also Bousley, 523 U.S. at 623 ("'actual innocence' means factual innocence, not mere legal insufficiency"); Sawyer v. Whitley, 505 U.S. 333, 339

(1992) ("the miscarriage of justice exception is concerned with actual as compared to legal innocence").

Where the Supreme Court explicitly overrules well-settled precedent and gives retroactive application to that new rule after a litigant's direct appeal, "[b]y definition" a claim based on that new rule cannot be said to have been reasonably available to counsel at the time of the direct appeal. Reed v. Ross, 468 U.S. 1, 17 (1984) That is precisely the circumstance here. Johnson overruled precedent, announced a new rule, and the Supreme Court gave retroactive application to that new rule. However, no actual prejudice that would result from finding a procedural default here because the Eleventh Circuit has recently held that the rule of Johnson does not apply or extend to invalidate § 924(c)'s "risk-of-force" clause. See Ovalles v. United States, 861 F.3d 1257 (11th Cir. 2017). Accordingly, Movant cannot establish cause-and-prejudice overcome the procedural bar.³

Certificate of Appealability

Rule 11(a) of the Rules Governing Section 2255 Proceedings provides that "the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and that if a certificate is issued, "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. §2253(c)(2)." Rule 11(a) further provides that "[b]efore entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue." Id. Regardless, a timely notice of appeal must still be filed,

³And assuming without deciding that the rule of McKay v. United States, 657 F.3d 1190 (11th Cir. 2011) does not extend to cases where, as here, a § 2255 Movant challenges the conviction itself that is arguably unconstitutional, Movant would not be able to establish actual innocence of his § 924(c) conviction for the same reason; that is, because the Eleventh Circuit has determined that Johnson does not extend to §924(c).

even if the court issues a certificate of appealability. Rule 11(b), Habeas Rules.

A certificate of appealability may issue only upon a "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). Where a §2255 movant's constitutional claims have been adjudicated and denied on the merits by the district court, the movant must demonstrate reasonable jurists could debate whether the issue should have been decided differently or show the issue is adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a §2255 movant's constitutional claims are dismissed on procedural grounds, a certificate of appealability will not issue unless the movant can demonstrate both "(1) 'that jurists of reason would find it debatable whether the [or motion] states a valid claim of denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.2001) (quoting Slack, 529 U.S. at 484). "Each component of the §2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." Slack, 529 U.S. at 484-85.

Having determined that Movant's claims are barred on procedural grounds, the court considers whether Movant is nonetheless entitled to a certificate of appealability with respect to one or more of the issues presented in the instant motion. After reviewing the issues presented in light of the applicable standard, the court concludes that reasonable jurists would not find debatable the correctness of the court's procedural rulings. Accordingly, a certificate of appealability is not warranted. See

AO 245B (Rev. 8/96) Sheet 1 - Judgment in a Criminal Case

United States District Court**Southern District of Florida**

UNITED STATES OF AMERICA

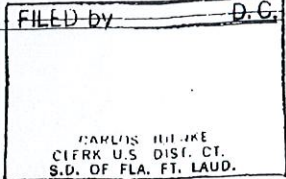
v.

STEVEN CORKER**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **1:97CR00448-001****A.U.S.A.-Prescott David P. Hodge, Esq.**

Defendant's Attorney

**THE DEFENDANT:**

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☒ was found guilty on count(s) 2,3 & 7 after a plea of not guilty.

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1951 (a)	Attempt to interfere w/commerce by thrats or violence	05/29/1997	2
18 U.S.C. § 924 (c)	Use of firearm durin a crime of violence	05/29/1997	3
18 U.S.C. § 1708	Theft of mail	05/29/1997	7

The defendant is sentenced as provided in pages 2 through 5 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) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall 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.

Defendant's Soc. Sec. No.: 266-69-0406Defendant's Date of Birth: 12/12/1966Defendant's USM No.: 52780-004

Defendant's Residence Address:

7260 N.W. 21st CourtMiami FL 33142

Defendant's Mailing Address:

7260 N.W. 21st CourtMiami FL 3314208/27/1999

Date of Imposition of Judgment

Signature of Judicial Officer

NORMAN C. ROETTGER**U.S. DISTRICT COURT JUDGE**

Name & Title of Judicial Officer

30 Sep 1999

Date

DEFENDANT: STEVEN CORKER
CASE NUMBER: 1:97CR00448-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 210 month(s).

as to Count 2, 60 months as to Count 7 to run concurrently with sentence imposed as to Count 2, 60 months as to Count 3 to run consecutive to sentences impose as to Counts 2 & 7.

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

☒ 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 U.S. Marshal

DEFENDANT: STEVEN CORKER
CASE NUMBER: 1:97CR00448-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 year(s).

The defendant shall 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 illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

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 directed by the probation officer.

☐ 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 as defined in 18 U.S.C. § 921. (Check, if applicable.) *for the rest of his life. here*

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

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 and shall submit a truthful and complete written report within the first five days of each month;
- 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 ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 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;
- 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: STEVEN CORKER
CASE NUMBER: 1:97CR00448-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 300.00	\$ 10,000.00	\$

☐ If applicable, restitution amount ordered pursuant to plea agreement \$ _____

Assessment is payable immediately to the Clerk, U.S. District Court, 301 North Miami Ave., Miami, FL 33130 Attention: Financial Section. Fine to be paid immediately to the Clerk, U.S. District Court 301 North Miami Ave., Miami, FL 33130. Attention: Financial Section.

FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$ _____

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency 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.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____, An Amended Judgment in a Criminal Case will be entered after such a determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

<u>Name of Payee</u>	<u>* Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
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Totals: \$ _____ \$ _____

* 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: STEVEN CORKER
CASE NUMBER: 1:97CR00448-001

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 32

Criminal History Category: IV

Imprisonment Range: 210 to 262 months

Supervised Release Range: 2 to 3 years

Fine Range: \$ 17,500.00 to \$ 175,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☒ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

The low end of the range is sufficient to account for the defendant's conduct.

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):