NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
February 1, 2021

Troy X. Kelley,

Petitioner

vs.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a contractual right to payment constitutes ownership of money, such that a defendant can properly be convicted under a federal statute criminalizing possession of stolen property for breaching a contractual obligation to pay.

2. Whether a defendant's conviction for possession of stolen property—premised on breach of a contractual obligation to pay, with no jury finding of fraudulent intent—violates the prohibition on imprisonment for debt.

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PETITION FOR A WRIT OF CERTIORARI

Troy X. Kelley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion (App. 1a–7a) is not published in the Federal Report but is reprinted at 821 Fed. App'x 765. The Ninth Circuit's order denying panel rehearing and rehearing en banc (App. 8a) is unreported. The Ninth Circuit's order staying the mandate pending resolution of this petition (App. 27a) is unreported.

JURISDICTION

The Ninth Circuit issued its decision on July 29, 2020. A timely petition for panel rehearing and rehearing en banc was denied on September 4, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The appendix contains the text of Wash. Const. Art. I § 17; 18 U.S.C. § 2315; and 28 U.S.C. § 2007 at App. 28a–29a.

INTRODUCTION

This case reflects a troubling prosecutorial effort to criminalize breaches of contract. As courts across the country have repeatedly held, the National Stolen Property Act, 18 U.S.C. §§ 2314–15, does not encompass "commercial dishonesty," *United States v. Carman*, 577 F.2d 556, 560, 565 (9th Cir. 1978), and whether property is "stolen" under the NSPA "should not be expanded at the government's will beyond the connotation[—]depriving an owner of its rights in property[—]

conventionally called to mind." *United States v. McClain*, 545 F.2d 988, 1002 (5th Cir. 1977) (emphasis added). But when Mr. Kelley successfully ran for statewide public office and his opponent publicized a series of earlier civil cases relating to whether Mr. Kelley's company failed to pay under its contracts, federal prosecutors turned the political attack into a federal criminal case. The government charged Mr. Kelley with, among other things, possession of stolen property under the NSPA; after the first jury hung, Mr. Kelley was retried and acquitted of money laundering premised on wire fraud but convicted of the stolen property count.

In affirming Mr. Kelley's stolen property conviction, the Ninth Circuit concluded that the government introduced sufficient facts—namely, Mr. Kelley's contracts and related communications—to show that he was contractually required to make certain payments and that he knew he had such obligations. It wholly bypassed the foundational legal question of ownership: whether such a contractual obligation constitutes an ownership interest of the recipient, such that breaching a contract to pay deprives an owner of a property interest. And in so doing, the Ninth Circuit upheld Mr. Kelley's imprisonment for debt, in violation of Washington State's Constitution and federal law.

This Court has recognized the importance of limiting the overreach of prosecutorial power in similar contexts. In *Kelly v. United States*, this Court recently overturned the conviction of public officials who had closed three lanes of the George Washington Bridge as "political payback," explaining: "The evidence the jury heard no doubt shows wrongdoing—deception, corruption, abuse of power. But

the federal fraud statutes at issue do not criminalize all such conduct." *Kelly v. United States*, 140 S. Ct. 1565, 1568, 1574 (2020). In 2016, this Court overturned the conviction of Virginia's former governor on similar grounds: "There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government's boundless interpretation of the federal bribery statute." *McDonnell v. United States*, 136 S. Ct. 2355, 2375 (2016). The circuit courts have similarly expressed concerns over "avoid[ing] the over-criminalization of private relationships." *United States v. Frost*, 125 F.3d 346, 368 (6th Cir. 1997); *see also United States v. Chandler*, 388 F.3d 796, 803 (11th Cir. 2004) (government conceded that "breach of contract does not support a mail fraud conviction"); *United States v. Cochran*, 109 F.3d 660, 667 (10th Cir. 1997) ("it would give us great pause if a right to honest services is violated by every breach of contract or every misstatement made in the course of dealing").

Criminalizing a private contractual relationship is exactly what the Ninth Circuit has done here, in direct conflict with federal and Washington law. The Court should grant Mr. Kelley's petition.

STATEMENT OF THE CASE

I. Mr. Kelley's Company, Post Closing Department, Performed Reconveyance Services for Escrow Customers.

Beginning in 2002, Mr. Kelley and his company Post Closing Department ("PCD") provided reconveyance services for escrow customers. In Washington State,

when a person borrows money to purchase or refinance property, repayment of the loan is secured by a deed of trust, which a trustee holds until the loan is paid off. AER 0158–59. When the borrower pays the loan in full—for example, by selling the property—the trustee transfers title back to the borrower in a process called a "reconveyance." *Id.* Reconveyances are critical components of real estate transactions, as they facilitate the clear transfer of title between parties. *Id.* Real estate title companies (through their escrow departments) generally focus on processing closings, however, and reconveyances might take weeks, months, or even years to complete. AER 0160–63. As a result, some title companies outsource reconveyance services to third parties such as PCD. *Id.*

To help ensure the reconveyance process went smoothly, PCD provided a variety of services to the title companies' escrow customers (the homeowners), including tracking reconveyances to make sure they were completed; following up with lenders and trustees to ensure they filed necessary paperwork; reviewing reconveyances for accuracy; paying trustee and recorder fees if necessary; and indemnifying title companies against potential claims. AER 0252–53. The escrow customers—and not the title companies—paid for PCD's services. AER 0422. Here, although PCD performed reconveyance services for the customers of several title companies, the government's charges relate only to PCD's work for customers of Fidelity National Title Company of Washington ("Fidelity") and Old Republic Title, Ltd. ("Old Republic"). AER 0501–02.

II. Escrow Customers Agreed to Pay PCD Fees for Reconveyance Services.

When an escrow customer met with their escrow agent to close a real estate transaction, the customer signed a contract, called the escrow instructions, directing the agent how to disburse the funds in escrow. AER 0277–89, 0332–40, 0388–90. Escrow instructions incorporate a document called a settlement statement, or "HUD-1," which details each of the payments the customer has authorized. AER 0279, 0303. For customers who used PCD to handle their reconveyance services, the fee to PCD generally appeared as a line item on the HUD-1 in amounts ranging from $100 to $140. AER 0294, 0303, 0389.

Each escrow customer signed a statement on the HUD-1 noting in part that "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction." AER 0282. Similarly, in the supplement to the closing agreement and escrow instructions, each customer agreed: "The settlement statement prepared by the closing agent is approved by me and made part of these instructions by this reference. . . . I agree to pay my costs, expenses, and other obligations itemized on that statement." AER 0287. The government's own expert testified that there was nothing in the escrow instructions to suggest that the reconveyance fees, or any portion of them, were refundable. AER 0312. The escrow instructions also made clear that "[a]ny

amendments, addition or supplement to [the] instructions shall be in writing." AER 0285.

It is undisputed that neither Mr. Kelley nor any other PCD employee ever met with any customer or made any promise to a customer that he or she might be entitled to a refund of a portion of the reconveyance fee. AER 0345, 0204 ("Q: You don't have any evidence that Mr. Kelley lied to home buyers in any way, shape, or form in connection with their closings, do you? A: No."). Representatives from both Fidelity and Old Republic testified they did not know whether all their escrow closing agents had made any such statements to customers. For example, Fidelity had no written policy or training material explaining what their closers should tell customers regarding reconveyance fees. AER 0377–78. A Fidelity employee testified she believed closers were "prepared to explain [the fee] to borrowers, especially when asked[.]" AER 0350. She conceded, however, that she did not know whether other closers in fact told customers they might receive a refund. AER 0349.

Old Republic also did not have a written policy explaining how closers should describe the fees. AER 0347. A representative from Old Republic explained that in many closings, customers did not ask about individual charges such as reconveyance fees, so closers did not discuss them. AER 0312A–13. The government's expert agreed this approach was both reasonable and consistent with his experience. *Id.* Even the lead FBI agent testified his investigation did not show customers had been told of potential refunds. AER 0181–82.

The government did not present testimony from even a single customer who claimed to have been promised a refund in connection with their reconveyance fees. Far from it, the only customer who testified at trial—a Fidelity customer who had used PCD for his reconveyance services—said he did not know at the time of his closing what a reconveyance fee was and did not recall ever having been told he might be entitled to a refund. AER 0271. Similarly, at the first trial, the government presented testimony from six customers, none of whom believed they had been promised a refund. One customer even testified that "[a]t the closing, I didn't expect there to be a refund. I expected the funds to be used to file the reconveyance." AER 0461. The government later conceded in strategy discussions with Old Republic that at the first trial "they put too many borrowers on the stand[.]" AER 0055.

III. PCD's Contracts with the Title Companies.

The government argued to the jury that Mr. Kelley stole reconveyance fees from the escrow customers. See AER 0407 ("The defendant, Troy Kelley, is on trial for stealing millions of dollars from thousands of Washington residents."). But it based this theory—as well as an alternative theory that the reconveyance fees somehow belonged to the title companies—on Mr. Kelley's breach of a different set of contracts: PCD's contracts with the title companies.

A. Mr. Kelley's Contract with Fidelity

In 2003, Mr. Kelley entered into an agreement with Fidelity to provide reconveyance services. AER 0391. The agreement described PCD's fees as including, among other things, "$15.00 post closing tracking fee per item." AER 0394. There

was a provision for a $5.00 fee for reconveyance preparation, which was crossed out by hand and marked "not at this time." AER 0394. The agreement also provided that "expenses such as trustee fees and recording fees that are associated with a file will be advanced and charged to that file." AER 0395.

The agreement stated that, "if extra funds are left over" following completion of all post-closing documentation, they were to be forwarded to the customer. *Id.* The agreement did not define "extra funds," but the government took the position at trial that PCD was required to refund to customers any amounts received over $15 unless those funds were used to pay trustee or recording fees—a purported contractual obligation that did not appear anywhere in the contract. In fact, even the lead FBI agent agreed "there is no provision in [the agreement] that says—that details when the refunds are to be made or under what conditions." AER 0195.

The government did present evidence that Mr. Kelley, outside of the written contract, promised the title companies that after the real estate transaction closed pursuant to escrow instructions, he would refund to the customers any fees that were not used for tracking or to complete the reconveyance. AER 0395A. The contours of these extra-contractual promises were contested at trial, with dueling emails over their precise terms. AER 0390A. Notably, a Fidelity representative acknowledged Mr. Kelley was authorized to charge for fees and services other than just trustee or recording fees. AER 0376, 0381.

B. Mr. Kelley's Contract with Old Republic

Mr. Kelley entered into a similar contract with Old Republic in May 2006. AER 0354–55. The contract included two references to refunds, without any explanation of when refunds might be appropriate. First, the contract, which defined the "client" as Old Republic, provided that PCD's fees included "$20.00 post closing tracking fee per item; fee includes management of funds due trustees & client refunds." *Id.* Second, the contract stated that "PCD shall provide client with monthly progress reports of reconveyance activity on each of client's files being tracked as well as an accounting on all funds received from client that have been disbursed and/or refunded to principals." *Id.*

As numerous Old Republic representatives testified, the contract did not require PCD to refund amounts that were not used for paying a trustee or related third-party fee. AER 0344 ("Q: Nowhere in this agreement does it say that if the funds paid to Mr. Kelley were not used to pay for a trustee or other recording fees, that the money would need to be refunded to customers, right? A: Right."). The lead government agent agreed. AER 0208–09. As with the Fidelity contract, however, the government presented evidence that Mr. Kelley made oral promises to Old Republic representatives that customers would be refunded unused portions of the reconveyance fees. AER 0358A–C.

IV. Fidelity Took Its Reconveyance Services In-House but Continued to Collect the Fees without Issuing any Refunds to Customers.

In March 2008, PCD's largest customer, Fidelity, terminated its contract with PCD and decided to take its reconveyance work in-house, largely because of the slowdown in the mortgage business around that time. AER 0373A–74. After PCD lost its biggest client and suffered a fire at one of its offices, Mr. Kelley shut the business down.

When Fidelity began handling its reconveyances in-house, the company charged $140 in reconveyance fees but did not issue any refunds to customers. AER 0374–75, 0383. Fidelity's practice at the time—of charging reconveyance fees and not issuing any refunds—was industry standard. For example, before hiring PCD, both Fidelity and Old Republic had been working with another third-party reconveyance services provider, RSI, that was not issuing refunds on the fees it received from either company's customers. AER 0359–64, 0400–01. In 2002, before Old Republic entered into a contract with RSI, it received information suggesting RSI was not issuing any refunds to customers but instead was keeping the reconveyance fees for itself. AER 0359–61. Without doing anything to investigate the claim, Old Republic simply entered into an agreement for RSI to provide reconveyance services to its customers. AER 0361–62.

Two years later, in 2004, an Old Republic employee again raised that RSI "was not returning funds to the customers when the funds are not needed for trustee's

fees." AER 0365–69. Old Republic did nothing to address the issue, however, and instead simply continued having RSI provide reconveyance services to its customers for several more years. *Id.* When Old Republic ultimately did terminate its relationship with RSI, it was for reasons unrelated to customer refunds. AER 0370. Similarly, Mr. Kelley had regularly provided spreadsheets to both Fidelity and Old Republic showing he was not issuing refunds in most cases, but neither title company raised any concerns at the time. AER 0347A–D, 0348A–C.

Several other local title companies followed similar practices. For example, over the relevant period, First American Title collected reconveyance fees from customers and did not issue any refunds, regardless whether it had to pay for third-party trustee or recorder fees. AER 0311A. Fidelity of Oregon also did not issue refunds. AER 0171–72 ("[N]o one in the [State of Oregon] did that in any of the offices, nor was our competition doing that. It was a service that was charged for and the fulfillment of the reconveyance."). Stewart Title also did not issue refunds, although it might "rarely" refund a portion of the fee as a "customer service issue" if a customer "felt like they shouldn't have to pay that fee." AER 0176–77. This was all consistent with testimony of defense expert Mark Schedler, a practicing commercial real estate attorney who testified that, while customers had no ownership interest in the reconveyance fees after closing, "like a lot of other fees charged by businesses in the real estate world, [reconveyance] fees are sometimes refunded for goodwill purposes." AER 0167.

V. Courts Rejected a Series of Class Action Lawsuits Seeking Refunds of Reconveyance Fees.

In 2008, class action lawsuits were filed against Fidelity, Old Republic, and virtually every other major title company, alleging the title companies were improperly charging customers reconveyance fees. In defending against the class action suits, both Fidelity and Old Republic argued the reconveyance fees—including fees paid to PCD—had been fully disclosed, and customers suffered no harm. For example, in its Motion for Summary Judgment in *Cornelius v. Fidelity*, Fidelity argued it "disclosed the fees up front" to its customers and "Plaintiffs [customers] . . . instructed [Fidelity] to disburse the fees to PCD" in the escrow instructions. AER 0322. Fidelity separately noted that, "while homeowners paid a fee to PCD, they received a service in exchange and thus were not harmed." AER 0205–06.

Old Republic made a similar argument in its Motion for Summary Judgment in the *McFerrin v. Old Republic* case, pointing out that "the parties' escrow instructions (i.e., their contracts) plainly disclosed the existence and amount of the reconveyance fee and expressly authorized Old Republic to collect it." AER 0274. Both companies' pleadings repeatedly referred to the amounts the customers paid to PCD as "fees" rather than "estimates" or "deposits." AER 0205–06, 0274.

The district courts presiding over the class action cases agreed with the title companies that the fees had been fully disclosed to customers and were not recoverable. *See McFerrin v. Old Republic Title, Ltd.*, No. C08-5309BHS, 2009 WL 2045212, at *2 (W.D. Wash. July 9, 2009) ("The HUD-1 document disclosed a $300

reduction in the amount due to Plaintiffs because of a 'reconveyance fee to [PCD].'"); *Cornelius v. Fidelity Nat. Title Co. of Wash.*, No. C08-754MJP, 2010 WL 1406333, at *2 (W.D. Wash. Apr. 1, 2010) ("Each of the Plaintiffs signed one of these documents; each HUD-1 disclosed an escrow closing fee and a separate reconveyance fee payable to PCD."). The courts dismissed each of the class action suits. *See id.*

VI. Old Republic Sued Mr. Kelley; The Parties Settled; and Old Republic Kept the Settlement Proceeds.

After prevailing in its class action suit, Fidelity took no further action to require Mr. Kelley to refund any portion of reconveyance fees paid to him by customers. On the other hand, Old Republic sued Mr. Kelley for allegedly failing to pay refunds in accordance with the parties' contract. Old Republic repeatedly explained it had brought the case to recover roughly $980,000 it claimed was due to its customers. AER 0256–57. The parties eventually settled the lawsuit while their competing motions for summary judgment were pending, with Mr. Kelley agreeing to pay Old Republic $1.15 million. AER 0325–29. As part of the settlement, the parties agreed that "all reconveyance service fees paid to [PCD] were 'earned' as that term is understood under [the Real Estate Settlement Procedures Act]." AER 0327.

While acknowledging that the fees were "earned," the settlement agreement made no mention of any allegation of theft. In fact, far from alleging theft, Old Republic agreed to indemnify Mr. Kelley for any potential claims from its customers related to refunds or incomplete reconveyances. AER 0327. Finally, the parties

agreed the settlement proceeds were to be used "for the payment of legal fees, costs, and the reimbursement of reconveyance fees in [Old Republic's] sole discretion." *Id.*

Rather than return the settlement funds to its customers, however, Old Republic deposited the overwhelming majority of the $1.15 million into its own operating account, purportedly to reimburse itself for litigation expenses paid to its attorneys. AER 0262–63. Old Republic then structured a refund program whereby it identified only a subset of the relevant customers to contact about possible refunds, and ultimately paid to its customers only about $180,000. AER 0258–63. It kept the rest of the settlement proceeds—nearly $1 million—for itself. *Id.*

VII. The Government Indicted Mr. Kelley Based on a Theory He Stole Reconveyance Fees.

In 2012, when Mr. Kelley was running to become Washington State Auditor, his political opponent sought to attack him by publicizing the allegations from the Old Republic litigation. AER 0254–55. Mr. Kelley prevailed in the race and was elected State Auditor. The government, however, picked up on the attack and began an investigation into Mr. Kelley's conduct. AER 0200–03.

Without a single customer claiming to have been the victim of theft, the agents investigating Mr. Kelley left an unusual paper trail relating to the investigation. For example, an FBI analyst noted he had "four AUSA's breathing down [his] neck" about the case and felt pressure from his superiors to move forward. AER 0184–85. Similarly, when the lead IRS agent reviewed Mr. Kelley's tax returns, he questioned in his notes whether Mr. Kelley's method of income recognition might be fully

consistent with his proffered justification. AER 0235A–B. Specifically, the agent questioned whether Mr. Kelley's "reporting of the [gross receipts was] consistent with his theory? Would hurt us if he did." AER 0235A–B, 0240A. Likely because Mr. Kelley had disclosed the funds at issue in several tax returns, the agent's notes also reflect that another "possible weakness" was that "Kelley did report tax." AER 0235, 0240. Separately, he also observed it was a "hard tax case," but that there was "pressure from US Attorney to proceed." AER 0236, 0240. When the agent was later asked about these concerns at trial, he testified simply that "I do what I'm told when I am the cooperating agent on a criminal case." AER 0233–34.

VIII. Mr. Kelley's First Trial Ended in Acquittal and a Hung Jury.

The government ultimately charged Mr. Kelley with one count of possession of stolen property under the National Stolen Property Act, 18 U.S.C. § 2315; four counts of false declarations under 18 U.S.C. § 1623(a), two of which were later dismissed; five counts of money laundering under 18 U.S.C. § 1956; one count of corrupt interference with Internal Revenue laws under 26 U.S.C. § 7212(a), which was later dismissed; five counts of filing false tax returns under 26 U.S.C. § 7206(1); and one count of a false statement to an IRS agent under 18 U.S.C. § 1001.

Mr. Kelley's first trial ended with the jury unanimously acquitting Mr. Kelley of one count and hanging on the remaining counts. AER 0443–46. Specifically, the jury acquitted Mr. Kelley of Count 16, which had charged him with making false statements to an IRS agent regarding his method of recognizing income. *Id.* After

the mistrial, a poll of the jury revealed a 10-2 split in favor of acquittal on Count One, the stolen property charge underlying the government's other allegations.

IX. Mr. Kelley's Second Trial Ended in a Mixed Verdict after the Jury Repeatedly Stated It Was Deadlocked.

The government pressed forward with a second trial against Mr. Kelley. During deliberations, the jury sent three successive notes suggesting it was deadlocked on Count One and five other counts, after which the court polled the jurors in open court and eight or nine expressed they were hopelessly deadlocked such that further deliberations would be useless. AER 0076–80, 0089, 0093, 0114–15. Over defense counsel's objection, the court sent a third written response to the jury. AER 0076–0080, 0095–98.

Later that same afternoon, the jury returned unanimous verdicts on all counts. AER 0105–08. The jury acquitted Mr. Kelley of the five money laundering charges but convicted him of possession of stolen property and the remaining false statement and tax counts. *Id.* The court sentenced Mr. Kelley to a term of imprisonment of one year and one day, AER 0004, noting that the sentence was determined by the stolen property count and that "Mr. Kelley would not have ever been sentenced to jail time for the tax evasion" and that the false statements "were not impactful in so many ways." FER 0002.

X. The Ninth Circuit Decision.

Mr. Kelley challenged his conviction on appeal, arguing that the government failed to prove that someone other than Mr. Kelley owned the fees and thus that they

could not have been stolen. The government argued that either the customers (borrowers) or the title companies owned the fees. Without stating the legal standard, the Ninth Circuit held that the United States "provided sufficient evidence that the borrowers owned the fees" based on (1) the contracts between the title companies and Mr. Kelley's company and (2) communications between Mr. Kelley and the title companies reflecting that "Mr. Kelley knew the unused fees belonged to the borrowers." App. 3a. The Ninth Circuit also held that the district court did not impermissibly coerce the jury to return a verdict; that the retrial did not violate double jeopardy principles despite the overlap between the count on which Mr. Kelley was acquitted in the first trial and the tax counts for which he was retried; and that the district court did not abuse its discretion in refusing to sever the false statement and tax counts from the stolen property count. App. 5a–6a.

The Ninth Circuit denied panel rehearing and rehearing en banc. App. 8a.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit Endorsed an Erroneous Definition of Property Ownership.

In affirming Mr. Kelley's conviction, the Ninth Circuit erroneously assumed that a contractual right to payment constitutes ownership of the money. This significant expansion of federal criminal law—to cover breach of a contractual obligation to pay money—is contrary to existing law, which requires a "felonious taking with intent to deprive the owner of the rights and benefits of ownership."

United States v. Turley, 352 U.S. 407, 408 (1957)[1]; *see also United States v. Carman*, 577 F.2d 556, 565 (9th Cir. 1978) ("the 'stealing,' 'conversion,' or 'taking' must be from one having the attributes of an owner").

The government's theory, as accepted by the Ninth Circuit, was that the PCD–title company contracts gave customers some contractual entitlement—possibly as third-party beneficiaries—to obtain a refund of a portion of the reconveyance fee in certain circumstances. The Ninth Circuit also pointed to communications between Mr. Kelley and the title companies introduced by the government to support the proposition that Mr. Kelley "knew" he had some obligation to pay some refunds. But none of this evidence addresses the foundational legal question of ownership, which the Ninth Circuit bypassed altogether.

State (or foreign) law determines the question of property ownership. *See, e.g.*, *United States v. Lequire*, 672 F.3d 724, 728–29 (9th Cir. 2012) ("Although federal law defines embezzlement, whether a person's property is held 'in trust,' or is not even that person's property at all, is a question of state law."); *United States v. Schultz*, 333 F.3d 393, 399–402 (2d Cir. 2003) (Egyptian patrimony law determined whether Egypt claimed ownership over antiquities); *United States v. Lawson*, 925 F.2d 1207, 1209–10 (9th Cir. 1991) (state law determined whether auctioneer holding auction proceeds was a bailee or debtor); *United States v. Taylor*, 867 F.2d 700, 702–03 n.2 (D.C. Cir. 1989) ("federal courts look to state property laws in defining underlying

[1] This Court's decision in *Turley* dealt specifically with 18 U.S.C. § 2312 (the National Motor Vehicle Theft Act), which was subsequently extended to other forms of stolen property through the NSPA, codified at 18 U.S.C. §§ 2314–2315. *See Dowling v. United States*, 473 U.S. 207, 218–220 (1985).

concepts of ownership for the purpose of deciding whether a defendant violated a federal criminal statute"); *United States v. Long Cove Seafood, Inc.*, 582 F.2d 159, 164–65 (2d Cir. 1978) (applying state law to determine whether New York claimed ownership over shellfish).

Under Washington law, the customers stopped owning the funds when they voluntarily paid them to PCD, even if they had a contractual right as third-party beneficiaries to a refund. "A right to payment is only a general contractual claim," and "[a]s with all nonsecured contractual debts, the debt . . . is not chargeable to any particular piece of property." *State v. Pike*, 826 P.2d 152, 157 (Wash. 1992) (emphasis added). In *Pike*, a car owner took his car from the mechanic's shop without paying his bill; the mechanic had not perfected a mechanic's lien and thus had no "superior possessory interest." *Id.* While the mechanic maintained a contractual right to payment, the contract did not confer an ownership right; it thus could not support a theft conviction. *Id.* The same reasoning was applied in *State v. Sloan*, where the defendant used deception to retrieve a boat from a repossessor without paying for the reposessor's services; the court held that the defendant "at most breached a contract to pay for the repossession services." 903 P.2d 522, 524 (Wash. App. 1995).

The principle that a contractual right to payment does not confer an ownership interest appears throughout Washington case law. *See, e.g.*, *State v. Polzin*, 85 P.2d 1057, 1059 (Wash. 1939) ("Upon the execution and delivery by [the victim] of her note, the [defendant] became indebted to her, but it was not a custodian of money belonging to her. Assuming that the [defendant] failed to make the payments as agreed, that

amounted simply to a breach of part of the contract, subjecting the [defendant] to liability in a civil action."); *State v. Carr*, 13 P.2d 497, 500 (Wash. 1932) ("[The defendant's] obligation to [the victim] became only that of a debtor as for damages, upon her failure to perform her sale contract obligation. . . . Her failure to use the advance payment [as promised] was not a misappropriation of [the victim's] money. It was her money in a legal sense. . . . Whatever the civil liability may be resting upon [the defendant] in favor of [the victim] by reason of her breach of the sale contract between them, we are of the opinion that it must be decided as a matter of law that there has not been proven any criminal liability resting upon her by reason of her violation of their sale contract."); *State v. Covert*, 45 P. 304, 305–06 (Wash. 1896) (while evidence showed that the defendant was contractually "indebted to" a laundromat for payments he had collected from customers on its behalf, the laundromat could seek "remedy in a civil action, but the criminal courts cannot be used as a medium for the collection of debts"); *State v. Lau*, 300 P.3d 838, 845 (Wash. App. 2013) (rejecting argument that "cities' right to payment establishes ownership" over taxes owed on the defendant's gross gambling receipts); *State v. Gillespie*, 705 P.2d 808, 811 (Wash. App. 1985) (because title to loan proceeds passed to defendants when they signed a note without a security agreement, their breach of an agreement to use the funds in a specified way could not constitute embezzlement). In summary, without a security instrument such as a lien, a contractual agreement to pay money, or to use money for a particular purpose, does not confer an ownership right. The

customers therefore did not, as a matter of Washington law, own the funds, regardless of what Mr. Kelley thought or was contractually obligated to do.

Since the customers did not own the funds, Mr. Kelley could not have stolen the funds by failing to pay refunds. The NSPA does not "embrace every fraudulent scheme which, however remotely, diminishes another's wealth." *Carman*, 577 F.2d at 560, 565 (overturning defendant's conviction premised on his withdrawal and transfer of funds from his failing company to keep funds from creditors—including those due refunds). This is consistent with courts' repeated refusal to broaden the NSPA to criminalize unlawful behavior beyond a taking "from one having the attributes of an owner." *Id.* at 565; *see, e.g.*, *Dowling v. United States*, 473 U.S. 207, 216–17, 228–29 (1985) (declining to extend NSPA to criminalize "wrongful appropriation of statutorily protected rights in copyright" because copyright owner was not deprived of copyright's use); *United States v. Rogers*, 786 F.2d 1000, 1003 (10th Cir. 1986) (defendant who broke into his own airplane, then under seizure by U.S. Customs, and removed equipment, did not violate NSPA because equipment did not "'belong' to the government"); *United States v. Bennett*, 665 F.2d 16, 22 (2d Cir. 1981) (defendant who believed he was participating in insurance fraud by stealing a truck with the purported owner's consent would not violate NSPA because he did not know he was interfering with the property rights of the actual owner); *United States v. Long Cove Seafood, Inc.*, 582 F.2d 159, 163–64 (2d Cir. 1978) (rejecting the "theory that stealing includes all illegal takings," noting that if undersized clams were illegally harvested with the permission of the property owner, they could not be

"stolen" under NSPA); *United States v. McClain*, 545 F.2d 988, 1002 (5th Cir. 1977) (illegal exportation of pre-Columbian antiquities could not violate NSPA before Mexico had declared national ownership over antiquities). This Court should correct the Ninth Circuit's broad expansion of the NSPA.

II. The Ninth Circuit's Decision Erroneously Violated the Washington State Constitution's Prohibition of Imprisonment for Debt.

Criminalizing breach of contract not only significantly expands federal criminal law; it also results in imprisonment for debt in violation of Washington State's Constitution and corresponding federal law.

Washington State's Constitution provides that "[t]here shall be no imprisonment for debt, except in cases of absconding debtors." Wash. Const. Art. I § 17. In federal court, "[a] person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished." 28 U.S.C. § 2007(a). Washington law has been clear that this constitutional prohibition relates to "run-of-the-mill debtor-creditor relationships arising, to some extent, out of tort claim[s], but principally, out of matters basically contractual in nature." *Decker v. Decker*, 326 P.2d 332, 333 (Wash. 1958) (emphasis added).

As this Court has explained, "[s]tatutes relieving from imprisonment for debt were not intended to take away the right to enforce criminal statutes and punish wrongful embezzlements or conversions of money. . . . Such laws are rather intended

to prevent the commitment of debtors to prison for liabilities arising upon their contracts." *Freeman v. United States*, 217 U.S. 539, 544 (1910) (emphasis added).

To avoid constitutional problems, Washington courts have required that "fraudulent intent must be made an element" of criminal statutes. *State v. Enloe*, 734 P.2d 520, 523 (Wash. App. 1987). While failure to pay a debt is in some sense intentional, it cannot be punished criminally unless the criminal statute at issue can "be construed to require a showing of fraudulent intent as an element of the crime." *Id.* at 524. And the courts may not "rewrite an unambiguous statute"—meaning that they may not read in a fraud element where it does not already exist. *State v. Jackson*, 976 P.2d 1229, 1235 (Wash. 1999) (citing *Enloe*, 734 P.2d at 523).

Mr. Kelley was convicted for possession of stolen property under the NSPA, 18 U.S.C. § 2315. The jury was instructed that it should find Mr. Kelley guilty if the government proved beyond a reasonable doubt:

> First, between approximately April 15, 2010, and approximately January 2012, the defendant possessed or concealed property, specifically, money, that had crossed a state boundary after having been stolen;
> Second, at the time defendant did so he knew that the money had been stolen; and
> Third, the total amount of money was $5,000 or more.

AER 0083. The jury was further instructed:

> Property is stolen if it is taken from one having the attributes of an owner with intent to deprive him of his rights and benefits in the property. The government need not prove who owns the stolen property, but it must prove that the property did have an owner. It must prove that the defendant did not own it, and that he knew he did not.

AER 0084. In other words, the instructions for Count One made no reference to fraudulent intent, instead requiring only knowledge that Mr. Kelley did not own the property. In contrast, Mr. Kelley was acquitted of the counts charging him with money laundering, for which the predicate offense was mail or wire fraud. AER 0106–0107, 0128–0131, 0508–0511.

The Ninth Circuit implicitly confirmed that Count One did not require fraudulent intent, holding that the evidence was sufficient to find the essential elements of the crime because "the United States provided sufficient evidence that the borrowers owned the fees," that "Mr. Kelley was contractually entitled to a flat fee of $15.00 or $20.00 per transaction," and that "Mr. Kelley knew the unused fees belonged to the borrowers." Mem. Op. at 2–3.

The government itself admitted in pretrial briefing that "because Kelley made no misrepresentations to the borrowers, the government agrees that the borrowers cannot be the targets of Kelley's theft by deception or his mail and/or wire fraud scheme, and that the scheme to defraud must be limited to Fidelity and Old Republic." AER 0466. It also explained: "[Mr. Kelley's] scheme to defraud the escrow companies is separate, as a temporal and legal matter, from his ultimate conversion (i.e., theft) of the property he received as a result of his fraudulent scheme." AER 0465; *see also* Answering Brief at 44 ("if the evidence shows Kelley knowingly took property to which he had no right, that property was stolen").

This exact issue arose in *State v. Pike*, 826 P.2d 152 (Wash. 1992). In addition to addressing whether a contractual debt could satisfy the "property of another"

element, the Washington Supreme Court held that "a conviction based solely upon a breach of a contractual obligation to pay must fail because it violates" the constitutional prohibition on imprisonment for debt. *Id.* at 157. It explained: "Although it is acceptable to imprison for fraud, one cannot be imprisoned merely for failure to pay a debt." *Id.* (citing *State v. Higgins*, 406 P.2d 784, 787 (Wash. 1965), *cert. denied*, 385 U.S. 827 (1966) (crime of "defrauding an innkeeper," which included element of "intent to defraud," did not violate constitutional prohibition on imprisonment for debt); *Enloe*, 734 P.2d 520).

The *Pike* court noted that "the State chose to pursue a theory of theft by taking, rather than theft by deception." *Pike*, 826 P.2d at 154 n.2, 157. In so doing, it not only "voluntarily took on the task of proving that the car was the property of another," but also did not attempt to prove that the defendant "obtain[ed] the property of another '[b]y color or aid of deception.'" *Id.* In contrast, a defendant who is "not imprisoned because she did not pay her debt" but "because the jury found her guilty of obtaining funds by color or aid of deception," could be imprisoned without violating Washington's constitution. *State v. Reid*, 872 P.2d 1135, 1140 (Wash. App. 1994) (emphasis added).

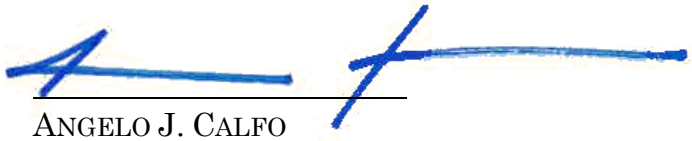
In holding that the evidence was sufficient to convict Mr. Kelley under the NSPA based on his failure to pay refunds to customers, the Ninth Circuit condemned Mr. Kelley to imprisonment for debt in contravention of Washington's constitution and 28 U.S.C. § 2007(a). This puts federal jurisprudence on the criminalization of

contract breaches in direct conflict with Washington constitutional law and the Washington Supreme Court's corresponding decisions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX

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NOT FOR PUBLICATION

FILED

JUL 29 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TROY X. KELLEY, Defendant-Appellant.	No. 18-30153 D.C. No. 3:15-cr-05198-RBL-1 MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted July 9, 2020**
Seattle, Washington

Before: FERNANDEZ and NGUYEN, Circuit Judges, and BOLTON,*** District Judge.
Concurrence by Judge FERNANDEZ

After his first trial resulted in a jury deadlocked on all but one count, a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

second jury convicted Defendant-Appellant Troy X. Kelley (Mr. Kelley) of several counts related to a mortgage fraud scheme perpetuated from 2005 to 2008, during which Mr. Kelley retained approximately $2.9 million in fees earmarked for borrowers. Mr. Kelley seeks reversal of his convictions for one count of possession of stolen property under 18 U.S.C. § 2315 (Count 1); two counts of false declarations under 18 U.S.C. § 1623(a) (Counts 2 and 5); and five counts of filing false tax returns under 26 U.S.C. § 7206(1) (Counts 12–15 and 17). We have jurisdiction under 28 U.S.C. § 1291, and affirm.

1. Mr. Kelley first argues that insufficient evidence supports his stolen property conviction. We review a legal sufficiency challenge de novo. *United States v. Phillips*, 929 F.3d 1120, 1123 (9th Cir. 2019). Evidence is legally sufficient to support a guilty verdict "if 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Carranza*, 289 F.3d 634, 641–42 (9th Cir. 2002) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Even assuming, as Mr. Kelley argues, that the United States was required to prove that somebody besides Mr. Kelley owned the unused reconveyance fees, the United States provided sufficient evidence that the borrowers owned the fees. The contracts between the title companies and Mr. Kelley's company required the title

companies to remit the total reconveyance fee to Mr. Kelley, to be divided three ways: (1) $15.00 or $20.00 to Mr. Kelley as payment for his services; (2) $85.00 to $125.00 as an "advance" to cover expenses such as trustee fees and recording fees required to complete the reconveyance; and (3) the remainder to be "forward[ed]" by Mr. Kelley to the customer. The United States introduced expert testimony that Mr. Kelley was contractually entitled to a flat fee of $15.00 or $20.00 per transaction, and that these contractual provisions were never modified. Finally, the United States introduced evidence that Mr. Kelley knew the unused fees belonged to the borrowers, including (1) emails between Mr. Kelley and the title companies; (2) a sample letter drafted by Mr. Kelley and addressed to borrowers, promising to "refund[] . . . the excess processing fee"; (3) and a doctored spreadsheet prepared at the request of Mr. Kelley concealing the unpaid refunds. This evidence is sufficient to convict under 18 U.S.C. § 2315.

2. Mr. Kelley next argues that the trial court coerced the jury into reaching a verdict after it reported a deadlock. Whether the district court impermissibly coerced the jury to return a verdict is reviewed de novo. *United States v. Williams*, 547 F.3d 1187, 1202 n.14 (9th Cir. 2008). "In determining whether to declare a mistrial because of jury deadlock, relevant factors for the district court to consider include the jury's collective opinion that it cannot agree, the length of the trial and complexity of the issues, the length of time the jury has deliberated, whether the

defendant has objected to a mistrial, and the effects of exhaustion or coercion on the jury." *United States v. Hernandez-Guardado*, 228 F.3d 1017, 1029 (9th Cir. 2000) (citing *United States v. Cawley*, 630 F.2d 1345, 1348–49 (9th Cir. 1980)).

The first two jury notes did not indicate a deadlock. After submitting the third note, the jury foreperson informed the court, "I think we are permanently deadlocked." At that point, the court did exactly what it was supposed to do: it "question[ed] the jury to determine independently whether further deliberations might overcome the deadlock." *See Hernandez-Guardado*, 228 F.3d at 1029. In response to the court's questioning, several jurors who disagreed with the foreperson's statement indicated they believed there were "opportunities that [we] think we need to discuss more." The court sent the jurors back to the jury room with instructions to discuss "whether there is the possibility that votes can be changed," and if not, to return the verdict form "as it stands," and to "not come to a decision simply because other jurors think it is right." The court's instructions did not, as Mr. Kelley suggests, "blast a verdict out of the deadlocked jury." A mistrial is unwarranted on this basis.

3. Mr. Kelley next argues that the district court erred by denying his motion for acquittal and urges us to vacate his convictions because he was placed in jeopardy for a second time when he was retried on Counts 11–15 and 17 after the first jury in acquitted on Count 16. Count 16 charged Mr. Kelley with falsely

stating that one of his companies earned $245,000 in income for reconveyance work performed in 2011 and 2012. The district court correctly denied Mr. Kelley's motion on the basis that at trial, Mr. Kelley argued both that the statement was not true *and* that the statement was never made. Since the jury's verdict could have been based on either theory, the court had no way of knowing whether the jury believed the statement false. Because the first jury did not necessarily find Mr. Kelley's statement truthful, and because ample evidence could support a finding that Mr. Kelley never made that statement at all, retrying Mr. Kelley on the remaining charges—whether they were predicated on the truthfulness of that statement or not—did not violate double jeopardy principles.

4. Mr. Kelley lastly argues that the district court erred by denying his motion to sever the false statement and tax counts from the stolen property count. The district court's denial of a motion to sever is reviewed for abuse of discretion. *United States v. Sutton*, 794 F.2d 1415, 1427 (9th Cir. 1986). "Misjoinder of charges is a question of law reviewed de novo." *United States v. Whitworth*, 856 F.2d 1268, 1277 (9th Cir. 1988).

Mr. Kelley argues that the government's "allegation of stolen property" was "baseless" and that "[w]ithout a valid allegation of stolen property, the remaining false declaration and tax counts against Mr. Kelley had no unifying theory to support their joinder." But the allegation of stolen property was not baseless: as

detailed above, it was supported by sufficient evidence. Because the allegation of stolen property was valid, and the remaining counts were related to the stolen property count, the district court did not err by refusing to sever the charges.

AFFIRMED.

U.S. v. Kelley, No. 18-30153

FERNANDEZ, Circuit Judge concurring:

I concur in the result.

Case: 18-30153, 09/04/2020, ID: 11813485, DktEntry: 66, Page 1 of 1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 4 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TROY X. KELLEY, Defendant-Appellant.	No. 18-30153 D.C. No. 3:15-cr-05198-RBL-1 Western District of Washington, Tacoma ORDER

Before: FERNANDEZ and NGUYEN, Circuit Judges, and BOLTON,* District Judge.

The panel voted to deny the petition for panel rehearing. Judge Nguyen voted to deny the petition for rehearing en banc, and Judges Fernandez and Bolton so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc is denied.

* The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

APPENDIX B

AO245C (Rev. 11/16) Amended Judgment in a Criminal Case Sheet 1 (NOTE: Identify Changes with Asterisks(*))

UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA
v.
TROY X. KELLEY

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 3:15CR05198RBL-001

USM Number: 44910-086

Angelo J. Calfo
Defendant's Attorney

Date of Original Judgment: 06/29/2018
(Or Date of Last Amended Judgment)

Reason for Amendment:

☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant
☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☒ Modification of Restitution Order (18 U.S.C. § 3664)

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) 1, 2, 5, 12 – 15 & 17 of the Superseding Indictment Jury Verdict: 12/20/2017 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. §2315	Possession and Concealment of Stolen Property	01/31/2012	1
18 U.S.C. §1623(a)	False Declaration	04/08/2011	2 & 5
26 U.S.C. §7206(1)	Filing False Income Tax Return	02/28/2014	12 – 15 & 17

The defendant is sentenced as provided in pages 2 through 11 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) 3, 4, 6 – 11, & 16 or those counts were dismissed or, in the case of count 3, consolidated with count 2

☐ Count(s) _____ ☐ 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.

Andrew C. Freidman, C. Seth Wilkinson, Arlen R. Storm
Assistant United States Attorney

September 21, 2018
Date of Imposition of Judgment

Ronald B. Leighton
Signature of Judge

Ronald B. Leighton, United States District Judge
Name and Title of Judge

September 21, 2018
Date

AO245C (Rev. 11/16) Amended Judgment in a Criminal Case
Sheet 2 — Imprisonment

(NOTE: Identify Changes with Asterisks(*))

DEFENDANT: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-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:

Twelve (12) Months and One (1) day

☒ The court makes the following recommendations to the Bureau of Prisons:
Designation to FCI Sheridan Camp

☐ 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: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

SUPERVISED RELEASE

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

One (1) Year

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 which 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 additional conditions on the attached pages.

DEFENDANT: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

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: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

SPECIAL CONDITIONS OF SUPERVISION

1. Restitution in the amount of $ 31,144 is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall not be waived.

2. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.

3. The defendant shall disclose all assets and liabilities to the probation office. The defendant shall not transfer, sell, give away, or otherwise convey any asset, without first consulting with the probation office.

4. If the defendant maintains interest in any business or enterprise, the defendant shall, upon request, surrender and/or make available, for review, any and all documents and records of said business or enterprise to the probation office.

5. The defendant shall cooperate with and furnish financial information and statements to the Internal Revenue Service to determine all taxes due and owing, including interest and penalties, and shall file any past tax returns in a timely manner. The defendant shall pay in full any outstanding tax liability once assessed, including interest and penalties, or enter into an installment payment plan with Collection Division of the Internal Revenue Service.

DEFENDANT: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 800	$ N/A	$ Waived	$ 31,144

☐ 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
See Attached List of Restitution Payees	31,144	31,144	

TOTALS	$31,144	$ 31,144

☐ 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:

☐ The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

* 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: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

SCHEDULE OF PAYMENTS

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

☒ PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to
Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.

☒ During the period of imprisonment, no less than 25% of their inmate gross monthly income or $25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

☒ During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

☐ During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

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 United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

LIST OF RESTITUTION PAYEES

Fidelity National Title Customers

Victim Last Name	Victim First Name	Amount Owed
Duty	Courtney A & Megan J.	$ 240.00
Haggard, Terry &	Smith, Esther	250.00
Hartz	Kerry & Lisa	240.00
Boisture	James W	120.00
Buck	Gay L & Edith D.	120.00
Caudebec	Jennifer L	240.00
Solberg, Christopher &	Healy, Maureen	240.00
Collins-Faucher	Suzanne C	120.00
Crooks	Robert W	240.00
Dawkins	Lois M	120.00
Douglas	Lorie & David	120.00
Drozd	Jean C. & Allan J	120.00
Effenberger	Jerrold D	120.00
Fleckenstein	Brandon A	10.00
Flynn	Brian	120.00
Gasper	Joseph S	85.00
Goodau	Kenneth G. & Lila J.	120.00
Hagen	Janet	240.00
Heidecker	Kristine R	240.00
Husa	Suzanne M	120.00
Irwin	James M	120.00
Mucklestone, Jeanie &	Kenny, Michael B	120.00
Liu	Leilani	240.00
Long	Thomas P	120.00
Longstaffe	Paul	125.00
Lynn	Jim L	240.00
Maass	Scott W. & Deann C	240.00
Maass	Walter & Joanne	240.00
Magnano	James	240.00
Michelson	Elizabeth	120.00
Nelson	Jason R	240.00
Opheim	Carol A	120.00
Paulsen	Philip A	120.00
Rubi	Juan C. & Charity J.	120.00
Schafer	Dawn	120.00
Singhal	Sandeep K	120.00
Weaver	Kenneth & Theresa	240.00
Williams	Stephanie	120.00
Woloszyn	Zela R	120.00
Johnson	Matthew H	620.00

Russell (Adair)	Jenell M	260.00
Moulton (Glass)	Stephanie	240.00
Campbell	Henry	120.00
Salisbury-Holmes	Tula	125.00
Achord	Allen D	125.00
Alfrey	Walter K	120.00
Allderidge	Daniel & Judi	360.00
Anderson	Erik D	120.00
Anderson	Michael D	120.00
Bently	Donald K	120.00
Blinn	Anthony N	240.00
Bloom	Scott A	120.00
Boczkiewicz	Steven W	125.00
Brady	Kim I.	240.00
Brookman	Bianca	125.00
Bryant	Arthur K	240.00
Caneza	Gregorio M	240.00
Capper	Desmond P	240.00
Caso	Janice E	120.00
Castle	Howard M.	120.00
Chambliss, Jr.	Samuel D	240.00
Chicoine	Nicole M	240.00
Chrisman	Richard B	170.00
Clark	Susan A.	240.00
Cobleigh	Wendy	120.00
Collins	Fern	120.00
Conley	Paul M	125.00
Connolly	Brandon T	240.00
Cope	John R	125.00
Crosetto	Norma H	120.00
Cross	Timothy V. & Roberta M.	120.00
Daubney-Lamp	Denise	240.00
Davis	Jefferson	120.00
Denham	Ian Trevor & Jillann	240.00
Derr	Amelia	120.00
Devies	Michelle	240.00
Devones, Jr	Kenneth R	260.00
Dixon	Carla S	85.00
Doyle	Holli A	240.00
Dulaney	Sharon	120.00
Duran	Stacey	85.00
Eissmann	Edward W	250.00
Eller	Riley D	250.00
Equall	Lance E	240.00
Etzkorn	Eric M	105.00
Frazier	Stacy	240.00
Froehlich	Carrie A	170.00
Gerspach	Michael and Linnea	120.00
Giancola	Marlo C	120.00

Gillette		S. Michelle	125.00
Gorun		Daniel	120.00
Gratton		Donald A. & Debra L.	120.00
Gresko		Scott F.	240.00
Grewal-Villarre		Darlene	85.00
Halter		James	120.00
Hamp		William T	360.00
Harrison		Brian D	240.00
Hayes		Robin G	120.00
Haynes		Angela D	240.00
Hazen		Karen E	260.00
Hearring		Fred & Suzanne	120.00
Herd		Roy J	120.00
Hulet		Brandon J	120.00
Huntington		Nancy L.	120.00
Hutt		Ernest T. & Lorrie R.	120.00
Ingram		Darryl	250.00
Jones		Delores A	120.00
Kim		Gil R	250.00
King		Margaret	120.00
Kinsman		Keely	250.00
Kissler		Ronald W	125.00
Lange, Jr		Michael P	170.00
Langham		Shannon	135.00
Laxson		Mack W	120.00
Lee		Michael	120.00
Magel		Suzanne M.	120.00
Makanvand		Bahram	125.00
Maldonado		Petra & Thomas	120.00
Mason		Bill R	125.00
McDowell		Roy D. & Patricia A.	140.00
McLaren		Kirk L	240.00
Mitchell		George L	120.00
Moody		Tyree & Kellie	120.00
Morgen		Jeffrey A	165.00
Morin		Donald W	125.00
Morrow		Robin E	120.00
Neace		Allen & Chong	120.00
Newman		Donald	120.00
Nighbor		Heather	240.00
Oh		Felicia	120.00
Olson		Melissa C	240.00
Oster		Randy & Jody	120.00
Parker		Carson	250.00
Patterson		Jeffrey R	120.00
Paula J Gooding	&	Alec M Carlin	650.00
Pelissier		Timothy	120.00
Perry		Richard M	120.00
Pierce		Robert A	125.00

Pitman		Thomas & Barbara	120.00
Poppell		Brian L	240.00
Precious		Andrew M	125.00
Quade		William T	20.00
Ramsay, Jr.		Michael A	120.00
Ranta		Laurence	170.00
Rave		Daryl J & Rebekah	120.00
Raycraft		John E	240.00
Reed		Daniel V	120.00
Reed		Robert T	120.00
Robinson		Timmy L	170.00
Schrum		Dawnelle L.	120.00
Scott		Justin W	240.00
Shelton		Jeffrey L	120.00
Sile M Zacharias	&	Eric D Wilson	240.00
Slater, Jr		Jerry L	120.00
Sloan		Edward T	120.00
Smit		Jason	250.00
Snope		Teresa	120.00
Soltis		Dennis J	240.00
Spalding		Robert B	120.00
Stallman		Ryan D	125.00
Stargel		Shirley K	170.00
Steiner		Eric M	240.00
Sterling		Carol J	240.00
Sullivan		Scott S	125.00
Taube		Wolfram	120.00
Tilley		Chad D	170.00
Toler		Randee	120.00
Tollefson		Lora R	120.00
Topp		Steven L	125.00
Trillo		Michael A	38.00
Van Cise		Margaret R	240.00
Van Dyke		Jacob	125.00
Walker		Hall R	120.00
Walsh		Russell D	85.00
Warren		Kenneth	120.00
Waterbury		Danny B	250.00
Weiss		Connie J	120.00
White		Richard D	251.00
Wilson		Bridgett	120.00
Winnick		Kenneth B	215.00
Wlodarczyk		Robert A	240.00
Youmans		Clark D	120.00
Zasimovich		Gary M & Dawn M.	120.00
Zimmerman		Jeanette	180.00
Zink		Shannon M	240.00
		Total $	31,144.00

AO245B (Rev. 11/16) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA
v.
TROY X. KELLEY

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:15CR05198RBL-001
USM Number: 44910-086
Angelo J. Calfo
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) 1, 2, 5, 12 – 15 & 17 of the Superseding Indictment Jury Verdict: 12/20/2017 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. §2315	Possession and Concealment of Stolen Property	01/31/2012	1
18 U.S.C. §1623(a)	False Declaration	04/08/2011	2 & 5
26 U.S.C. §7206(1)	Filing False Income Tax Return	02/28/2014	12 – 15 & 17

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) 3, 4, 6 – 11, & 16 of the Superseding Indictment

☐ Count(s) _____ ☐ 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.

ANDREW FRIEDMAN / SETH WILKINSON / ARLEN STORM
Assistant United States Attorney

June 29, 2018
Date of Imposition of Judgment

Signature of Judge

Ronald B. Leighton, United States District Judge
Name and Title of Judge

6-29-18
Date

DEFENDANT: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-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:

Twelve (12) Months and One (1) Day

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

The defendant be incarcerated at FCI - Sheridan Camp

☐ 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: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

SUPERVISED RELEASE

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

ONE (1) YEAR

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 which 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 additional conditions on the attached pages.

DEFENDANT: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

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: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

SPECIAL CONDITIONS OF SUPERVISION

1. Restitution in the amount of [to be determined] is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall not be waived. The Court will hold a restitution hearing at 10:30 am on September 21, 2018.
2. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.
3. The defendant shall disclose all assets and liabilities to the probation office. The defendant shall not transfer, sell, give away, or otherwise convey any asset, without first consulting with the probation office.
4. If the defendant maintains interest in any business or enterprise, the defendant shall, upon request, surrender and/or make available, for review, any and all documents and records of said business or enterprise to the probation office.
5. The defendant shall cooperate with and furnish financial information and statements to the Internal Revenue Service to determine all taxes due and owing, including interest and penalties, and shall file any past tax returns in a timely manner. The defendant shall pay in full any outstanding tax liability once assessed, including interest and penalties, or enter into an installment payment plan with Collection Division of the Internal Revenue Service.

DEFENDANT: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 800	$ N/A	$ Waived	$ To be determined

☒ The determination of restitution is deferred until September 21, 2018. 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:

☐ The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

* 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: **TROY X. KELLEY**
CASE NUMBER: 3:15CR05198RBL-001

SCHEDULE OF PAYMENTS

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

☒ PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.

☒ During the period of imprisonment, no less than 25% of their inmate gross monthly income or $25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

☒ During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

☐ During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

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 United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

Case: 18-30153, 09/21/2020, ID: 11830369, DktEntry: 68, Page 1 of 1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 21 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TROY X. KELLEY, Defendant-Appellant.	No. 18-30153 D.C. No. 3:15-cr-05198-RBL-1 Western District of Washington, Tacoma **ORDER**

Before: FERNANDEZ and NGUYEN, Circuit Judges, and BOLTON,* District Judge.

Appellant's motion to stay issuance of the mandate pending the filing of a petition for writ of certiorari is GRANTED. Please note the following: (1) If no timely petition for certiorari is filed, the mandate will issue immediately upon the expiration of the time to file or upon order of the Supreme Court if an untimely filing is attempted; (2) If a timely petition for certiorari is filed, the mandate will issue immediately upon notice to this court that the Supreme Court has denied the petition for certiorari unless the panel deems that extraordinary circumstances exist; and (3) If certiorari is granted, the stay of the mandate will continue until the Supreme Court's final disposition. *See* Fed. R. App. P. 41(d).

* The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

APPENDIX E

Wash. Const. Art. I § 17 provides:

Imprisonment for debt

There shall be no imprisonment for debt, except in cases of absconding debtors.

18 U.S.C. § 2315 provides:

Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken; or

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

Whoever receives in interstate or foreign commerce, or conceals, stores, barters, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof—

Shall be fined under this title or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government.

This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money. For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

APPENDIX F

28 U.S.C. § 2007 provides:

Imprisonment for debt

(a) A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States in accordance with the procedure applicable in such State.

(b) Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States in a civil action shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for discharge shall be conducted before a United States magistrate judge for the judicial district wherein the defendant is held.