

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANATOLE MBE,
Petitioner,

v.

UNITED STATES,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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INDEX TO APPENDIX

<u>Document</u>	<u>Description</u>	<u>Page #</u>
Appendix A:	Ninth Circuit Dismissal Order, filed on February 20, 2025	1
Appendix B:	Ninth Circuit Denial of Petition for Panel Rehearing and Petition for Rehearing En Banc, filed on July 3, 2025	2
Appendix C:	Sentencing Judgment and Commitment Order, filed on February 22, 2024	3-7
Appendix D:	Reporter's Transcript of Restitution Hearing on February 22, 2024	8-17
Appendix E:	Minutes of Restitution Hearing on February 22, 2024	18
Appendix F:	Appointment of Counsel on March 27, 2024	19

INDEX TO APPENDIX

<u>Document</u>	<u>Description</u>	<u>Page #</u>
Appendix A:	Ninth Circuit Dismissal Order, filed on February 20, 2025	1
Appendix B:	Ninth Circuit Denial of Petition for Panel Rehearing and Petition for Rehearing En Banc, filed on July 3, 2025	2
Appendix C:	Sentencing Judgment and Commitment Order, filed on February 22, 2024	3-7
Appendix D:	Reporter's Transcript of Restitution Hearing on February 22, 2024	8-17
Appendix E:	Minutes of Restitution Hearing on February 22, 2024	18
Appendix F:	Appointment of Counsel on March 27, 2024	19

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 20 2025

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANATOLE MBE,

Defendant - Appellant.

No. 24-1056

D.C. No.

2:19-cr-00281-GW-1

Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, WARDLAW, and DESAI, Circuit Judges.

The motion (Docket Entry No. 22) to dismiss this appeal in light of the valid appeal waiver is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Contrary to appellant’s contention, his plea agreement provided a “reasonably accurate estimate of the amount of the restitution order to which he [was] exposed.” *United States v. Tsosie*, 639 F.3d 1213, 1217 (9th Cir. 2011). Moreover, appellant’s sentence is not rendered “illegal” by the district court’s alleged errors in calculating the restitution sum. *See United States v. Wells*, 29 F.4th 580, 584-87 (9th Cir. 2022) (explaining the “very limited and precise meaning” of the illegal sentence exception to the enforcement of an appeal waiver).

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 3 2025

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANATOLE MBE,

Defendant - Appellant.

No. 24-1056

D.C. No.

2:19-cr-00281-GW-1

Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, WARDLAW, and DESAI, Circuit Judges.

The petition (Docket Entry No. 27) for panel rehearing and rehearing en banc is treated as a motion for reconsideration and reconsideration en banc. So treated, the motion is denied. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

**United States District Court
Central District of California**

[AMENDED]

UNITED STATES OF AMERICA vs.

Docket No.

CR 19-281-GWJS 3Defendant ANATOLE MBESocial Security No. N O N E

akas: _____

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
02	22	2024

COUNSELAdithya Mani, DFPD

(Name of Counsel)

PLEA**GUILTY**, and the court being satisfied that there is a factual basis for the plea.**NOLO
CONTENDERE****NOT
GUILTY****FINDING**There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:**18 U.S.C. § 1028A(a),(1) AGGRAVATED IDENTITY THEFT as charged in Count 4 of the Indictment.****JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **TWENTY-FOUR (24) MONTHS.**

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline Section 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

Defendant shall pay restitution in the total amount of \$39,903.36 to victims as set forth in a separate victim list prepared by the probation office which this Court adopts and which reflects the Court's determination of the amount of restitution due to each victim. The victim list, which shall be forwarded to the fiscal section of the clerk's office, shall remain confidential to protect the privacy interests of the victims.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Anatole Mbe, is hereby committed on Count 4 of the Indictment to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-four (24) months.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of one (1) year under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.
2. The defendant shall not commit any violation of local, state or federal law or ordinance;
3. The defendant shall participate in outpatient substance abuse treatment counseling program that includes urinalysis, saliva and/or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using illicit drugs, alcohol, and abusing prescription medications during the period of supervision;

USA vs. **ANATOLE MBE**Docket No.: **CR 19-281-GW**

4. During the period of community supervision the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment;
5. The defendant shall submit the defendant's person, property, house, residence, vehicle, papers, or other areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.
6. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name; nor shall the defendant use, for any purpose or in any manner, any name other than his true legal name or names without the prior written approval of the Probation Officer; and
7. The defendant shall cooperate in the collection of a DNA sample from the defendant.

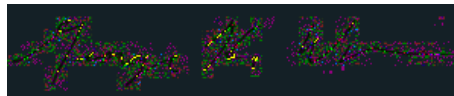
The Court advises defendant of his rights to an appeal. The Court recommends, but does not order, that defendant serve his term at the federal facility in Terminal Island or McFarland, California.

The Government's request to dismiss remaining counts of the Indictment is granted.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

February 22, 2024

Date



HON. GEORGE H. WU, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

February 22, 2024

Filed Date

By /s/ Javier Gonzalez

Deputy Clerk

USA vs. **ANATOLE MBE**Docket No.: **CR 19-281-GW**

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. **ANATOLE MBE**Docket No.: **CR 19-281-GW**

The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant must maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds must be deposited into this account, which must be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, must be disclosed to the Probation Officer upon request.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
 Defendant noted on appeal on _____
 Defendant released on _____
 Mandate issued on _____
 Defendant's appeal determined on _____
 Defendant delivered on _____ to _____
 at _____
 the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

 Date

 Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

 Filed Date

 Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
 Defendant

 Date

 U. S. Probation Officer/Designated Witness

 Date

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION
HONORABLE GEORGE H. WU, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,
Plaintiff,
vs. Case No. CR 19-281
ANATOLE MBE,
Defendants.

/

REPORTER'S TRANSCRIPT OF
RESTITUTION HEARING
Thursday, February 22, 2024
8:00 a.m.
LOS ANGELES, CALIFORNIA

TERRI A. HOURIGAN, CSR NO. 3838, CCRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST FIRST STREET, ROOM 4311
LOS ANGELES, CALIFORNIA 90012
(213) 894-2849

APPEARANCES OF COUNSEL:**FOR THE PLAINTIFF:**

UNITED STATES ATTORNEY'S OFFICE
United States Attorney
BY: SKYLER CHO
Assistant United States Attorney
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

FOR THE DEFENDANT:

FEDERAL PUBLIC DEFENDER'S OFFICE
BY: ADITHYA MANI
Deputy Federal Public Defender
Central District of California
321 East Second Street
Los Angeles, California 90012

1 **LOS ANGELES, CALIFORNIA; THURSDAY, FEBRUARY 22, 2024**

2 **8:00 A.M.**

3 **--oOo--**

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7 THE COURT: Do we have Mr. Mbe? Let me call the
8 matter of *United States versus Mbe*.

9 THE COURTROOM DEPUTY: He's in custody and they will
10 bring him out.

11 THE COURT: All right. Let me call the matter of
12 *United States versus Mbe*.

13 MR. CHO: Good morning, Your Honor. Skyler Cho on
14 behalf of the United States.

15 THE COURT: All right.

16 MR. MANI: Good morning, Your Honor. Adithya Mani
17 from the Federal Public Defenders Office appearing on behalf of
18 Mr. Mbe, who is present and in custody.

19 THE COURT: We are here on a continuation of the
20 restitution hearing.

21 The government has filed a supplemental filing in
22 regards to the restitution amount.

23 Let me ask the defense counsel, I presume you have seen
24 it?

25 MR. MANI: I have, Your Honor.

1 THE COURT: What is your response to the
2 government's supplemental filing?

3 MR. MANI: Aside from what we have noted in our
4 original papers with respect to the filing from yesterday, we
5 acknowledge they have underlying documents now, but I do think
6 that they still have not met their burden.

7 As one example they, I think -- well, let's see on
8 page 5 of their filing --

9 THE COURT: Which one -- the original or the
10 supplemental?

11 MR. MANI: The supplemental from yesterday.

12 They are requesting 26,000 -- approximately 26,500 for
13 the BMW, but in their footnote, they also say at least
14 20,914.50, so that was the point we made with respect to both
15 the motorcycle and that BMW in our original papers. The
16 amounts -- there are different amounts in different places, so
17 we think that further shows they have not met their burden with
18 respect to that e-mail. There is not a set amount that they
19 have proven and is kind of arbitrary.

20 THE COURT: From his plea there is no doubt he
21 committed crime. There is no doubt that restitution is
22 required, so it's just a question of figuring out the dollar
23 amount.

24 As the government points out, this type of procedure,
25 the rules of evidence are not applied strictly, so, it's not

1 unusual to have this type of submission from the government
2 insofar as the restitution is concerned.

3 But let me ask the government, you know, why isn't the
4 defense right insofar as you are kind of using a couple of
5 different figures?

6 MR. CHO: Yes, Your Honor. The government's
7 position is that the higher figure is the appropriate figure
8 and meets the preponderance of the evidence standard.

9 But the government does acknowledge, Your Honor, that
10 the Court has the discretion to determine whether or not the
11 evidence presented by the government meets a preponderance
12 standard.

13 So as a backstop, the government just noted originally
14 in that footnote that there was an alternative number of
15 20,914.50, which, you know, at a bear minimum, definitely meets
16 the preponderance standard.

17 But the government's position is still that 26,328.81 is
18 appropriate based on Exhibit E, and the corroboration of the
19 corresponding exhibits.

20 THE COURT: Let me just ask this: Originally the
21 government was proceeding on the fact that there were actually
22 -- there were actually two vehicles and two motorcycles.

23 And the government seems to have dropped off one of the
24 vehicles at this point?

25 MR. CHO: Yes, Your Honor. That reflects the fact

1 the discovery reflects that one of the vehicles was recovered,
2 so the recovery counts against the restitution amount, and
3 there wasn't sufficient evidence to establish an incremental
4 restitution due to that.

5 THE COURT: All right. So, at this point in time
6 what we're talking about is -- it is as to the -- is it as to
7 the 2014 BMW 328, right?

8 MR. CHO: Additionally, two Yamaha motorcycles.

9 THE COURT: At this point, I'm address addressing
10 the vehicle first.

11 The government is position is it should be 26, but the
12 government is willing to argue or accept a ruling that it
13 should be actually 20,000.

14 MR. CHO: Your Honor, the government believes it
15 should be 26.

16 The government just added that 20,000 figure to bolster
17 the \$26,000 figure and add a backstop.

18 Again, the government's position is that 26 is
19 appropriate based on the preponderance of evidence.

20 THE COURT: Okay. If I use the 20,000 figure, what
21 is it?

22 MR. CHO: \$20,914.50.

23 THE COURT: Then as to the motorcycles, the total
24 figure is what?

25 MR. CHO: As to the motorcycles the total figure is

1 \$18,988.86.

2 THE COURT: Sorry, 19,000?

3 MR. CHO: \$18,988.86.

4 THE COURT: Okay. All right. Anything else from
5 defense?

6 MR. MANI: With respect to the BMW versus the
7 motorcycles, there is one additional point I wanted to make is
8 we pointed out in our original papers that general invoices, at
9 least, in the Eighth Circuit published case that we cited are
10 usually not enough to meet the burden for restitution.

11 Since the last hearing, the government, we acknowledge,
12 did provide additional documents for the motorcycles, but they
13 didn't provide anything for the BMW, so the request for BMW is
14 based on general invoices, people saying I think what it is,
15 whereas for the motorcycles, we do acknowledge they did provide
16 underlying documents since the last hearing.

17 THE COURT: I will award restitution \$20,914.50 as
18 to the BMW and as to the two motorcycles \$18,988.86.

19 Anything else I need to do at this point?

20 MR. CHO: Thank you, Your Honor.

21 To my understanding there is no victims present, but to
22 the extent they are, they may be need an opportunity to be
23 heard.

24 I see people sitting here, so I just wanted to make sure
25 that there is anyone here.

1 THE COURT: Let me ask, is there anyone who feels
2 they are a victim as to this -- have been a victim of this
3 particular defendant? Nobody?

4 MR. CHO: Finally, Your Honor, the government notes
5 any right to appeal this restitution amount is as limited by
6 the plea agreement.

7 THE COURT: Well, the plea agreement says what it
8 says.

9 MR. CHO: Thank you, Your Honor.

10 THE COURT: Yes. Anything else?

11 THE COURTROOM DEPUTY: The amount is again?

12 THE COURT: The first total, again, is for the BMW
13 is \$20,914.50.

14 Anything else?

15 Thank you. Have a nice day.

16 THE DEFENDANT: Your Honor?

17 THE COURT: Yes?

18 THE DEFENDANT: I would like to file a motion, it
19 doesn't concern this case.

20 THE COURT: Sorry?

21 THE DEFENDANT: I want to file a motion, it's not
22 concerning my case, it is something else.

23 THE COURT: Well, let me ask, is it involving your
24 criminal case in this Court?

25 THE DEFENDANT: Yeah.

1 THE COURT: What do you want to file?

2 THE DEFENDANT: A motion.

3 THE COURT: To do what?

4 THE DEFENDANT: It says about the reductions.

5 THE COURT: Let me ask the defense counsel, do you
6 know what he's talking about?

7 MR. MANI: I do, Your Honor. If I may have a
8 moment?

9 THE COURT: Sure.

10 (Defense counsel conferring with defendant off the record.)

11 MR. MANI: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 (The proceedings concluded at 8:36 a.m.)

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TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR
Federal Court Reporter

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	CR 19-281-GW	Date	February 22, 2024
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Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE
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Interpreter	NONE
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Javier Gonzalez	Terri A. Hourigan	Skyler Cho
<i>Deputy Clerk</i>	<i>Court Reporter/Recorder, Tape No.</i>	<i>Assistant U.S. Attorney</i>

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
Anatole Mbe	✓	✓		Adithya Mani, DFPD	✓	✓	

PROCEEDINGS: RESTITUTION HEARING

Court hears oral argument. The Court orders restitution in the amounts of \$18,988.86 and \$20,914.50 for a total restitution amount of \$39,903.36. Refer to separate amended Judgment Order.

_____ : _____ 08

Initials of Deputy Clerk JG

CA NO. 24-1056
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANATOLE MBE,

Defendant-Appellant.

D.C. No. 2:19-cr-00281-GW-1

Central District of California,
Los Angeles

**NOTICE RE: APPOINTMENT
OF COUNSEL**

NOTICE RE: APPOINTMENT OF COUNSEL

Pursuant to the order at Docket Entry 7, our office has located the following attorney to represent the defendant-appellant in the case listed above:

Brad K. Kaiserman (SBN 266220)
The Law Office of Brad K. Kaiserman
5870 Melrose Avenue, Suite 3396
Los Angeles, CA 90038-3760
Tel: (310) 367-7632 | Fax: (310) 870-1384
Email: bradkaiserman@gmail.com

/s/ Margaret A. Farrand
MARGARET A. FARRAND
Deputy Federal Public Defender, Chief, Writs and Appeals
CJA Appellate Panel Administrator
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Margaret_Farrand@fd.org
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