

APPENDIX

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23-6799-cr
United States v. Barreto

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of May, two thousand twenty-five.

PRESENT: DENNIS JACOBS
DENNY CHIN,
STEVEN MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

No. 23-6799-cr

MICHAEL BARRETO,

Defendant-Appellant.

FOR APPELLEE:

BRANDON D. HARPER, Assistant United States Attorney (Jacob R. Fiddelman, Assistant United States Attorney, *on the brief*), for Danielle R. Sassoon, United States Attorney for the Southern District of New York, New York, New York.

FOR DEFENDANT-APPELLANT:

MICHAEL P. ROBOTTI (Hannah L. Welsh, *on the brief*), Ballard Spahr, LLP, New York, New York, and Philadelphia, Pennsylvania.

Appeal from the United States District Court for the Southern District of New York (Failla, J.).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the June 27, 2023 judgment of the district court is **AFFIRMED**.

Defendant-Appellant Michael Barreto appeals from a June 27, 2023 judgment of the United States District Court for the Southern District of New York (Failla, J.) convicting him, following a guilty plea, of three counts of enticement of a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b), and three counts of receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(B) and (b)(1). The district court sentenced Barreto principally to 240 months' imprisonment. On appeal, Barreto argues that there was reasonable cause to believe that he was incompetent to plead guilty and be sentenced, and that the district court abused its discretion by not ordering *sua sponte* a mental competency hearing. In addition, Barreto argues that the district court committed plain error by misstating the maximum term of supervised release at his plea hearing and ordering a \$9,000 victim restitution award without any evidence of financial loss to the victims. We assume the parties' familiarity

with the underlying facts, procedural history, and issues on appeal, which we reference only as necessary to explain our decision to affirm.

I. Barreto's Competency

Barreto first argues that the district court erred by not *sua sponte* ordering a competency hearing before accepting his guilty plea or sentencing him. We review a district court's decision on whether to hold a competency hearing for abuse of discretion. *See United States v. Quintieri*, 306 F.3d 1217, 1232-33 (2d Cir. 2002).

The Due Process Clause "prohibits the criminal prosecution of a defendant who is not competent to stand trial." *Medina v. California*, 505 U.S. 437, 439 (1992). "[T]his constitutional right spans the duration of a criminal proceeding." *United States v. Arenburg*, 605 F.3d 164, 168-69 (2d Cir. 2010) (per curiam). "To protect this right, 18 U.S.C. § 4241(a) requires the district court to order a hearing *sua sponte* . . . 'if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.'" *Quintieri*, 306 F.3d at 1232 (quoting 18 U.S.C. § 4241(a)).

In deciding whether there is reasonable cause warranting a competency hearing, the court may rely on many factors, including but not limited to "psychiatrists' reports indicating competency," *United States v. Nichols*, 56 F.3d 403, 412 (2d Cir. 1995), "its own observations of the defendant," *id.*, and defense counsel's judgment, *Quintieri*,

306 F.3d at 1222-33. Where the court has reason to believe that the defendant may be incompetent at a critical stage of the proceedings, it must conduct a "minimal inquiry" into the defendant's competency or provide "[its] reasons on the record" for "declining to do so." *Musaid v. Kirkpatrick*, 114 F.4th 90, 111 (2d Cir. 2024).¹

Here, the district court did not abuse its discretion in not *sua sponte* ordering a competency hearing prior to Barreto's plea or sentencing. The court appointed Dr. Paradis, a psychologist, to conduct a psychological examination of Barreto. Dr. Paradis's report found that although Barreto had "significantly lower than average intellectual functioning," he "demonstrated a simplistic but adequate understanding of the roles of most court personnel and court processes," "the information his attorneys provided," the nature of the charges, and "the strength of [the] . . . evidence" against him. Confidential App'x at 15, 16, 20, 22-23, 25; see *Nichols*, 56 F.3d at 412 ("It is well-established that some degree of mental illness cannot be equated with incompetence to stand trial." (quoting *United States v. Vamos*, 797 F.2d 1146, 1150 (2d Cir. 1986)). "[W]here a defendant has been found competent following a court-ordered evaluation, a district court generally is 'not required to hold a competency hearing before accepting a plea.'" *United States v. Kerr*, 752 F.3d 206, 216 (2d Cir. 2014) (quoting

¹ These concerns are most acute when, unlike here, "a criminal defendant elects to proceed *pro se*," *Arenburg*, 605 F.3d at 169, and the district court therefore lacks guidance from defense counsel.

Wojtowicz v. United States, 550 F.2d 786, 791 (2d Cir. 1977)). The district court was "entitled to rely on [this] forensic report that found him competent to understand the proceedings and capable of working with his attorney." *Id.*

Moreover, the record shows that the district court was acutely aware of Barreto's cognitive limitations and explicitly inquired into these issues at Barreto's plea and sentencing. Indeed, the district court repeatedly confirmed Barreto's competency throughout these proceedings. At the plea hearing, in response to the court's inquiries, Barreto and his counsel consistently assured the district court that he understood the proceedings and was competent to move forward. Nor did defense counsel voice concern with respect to Barreto's competency at sentencing. "[A] failure by trial counsel to indicate that the defendant had any difficulty assisting in preparation or in comprehending the nature of the proceedings provides substantial evidence of the defendant's competence." *Quintieri*, 306 F.3d at 1233 (internal quotation marks and citation omitted); *see United States v. Valle*, No. 23-7024, 2024 WL 4798915, at *2 (2d Cir. Nov. 15, 2024) (district court did not abuse its discretion by not ordering a competency hearing *sua sponte* when defense counsel "confirmed that his client was able to discuss the case and could assist in preparation of his case").

Barreto's conduct at the plea and sentencing further demonstrates that he understood the nature of the proceedings against him. During the Rule 11 colloquy and plea allocution, Barreto responded to each of the judge's questions and described his

offense conduct in his own words in a rational and coherent manner. *See Kerr*, 752 F.3d at 216 (district court did not abuse its discretion by not ordering a competency hearing *sua sponte* when it "had the benefit of observing [the defendant] during the . . . pretrial conference and the . . . trial"); *Saddler v. United States*, 531 F.2d 83, 86 (2d Cir. 1976) (*per curiam*) (district court is not required to question a defendant's competency when his "answers to the court's Rule 11 inquiries, his demeanor and his testimony . . . all appeared to be rational and coherent"). Barreto continued to be cogent at sentencing. For example, he expressed remorse for his conduct and asked the court for leniency, citing his desire to spend time with his aging parents as well as his nieces and nephews. When it appeared that he did not understand a question, the district court permitted Barreto to speak with his counsel for clarification. Under these circumstances, the district court did not abuse its discretion by not ordering a competency hearing *sua sponte*.

In urging otherwise, Barreto argues that the parties' joint request for a psychological examination put the district court on notice that there was reasonable cause to question his competence. In their joint letter to the court, however, the parties expressly requested only an "examination," not a competency hearing. Confidential App'x at 1-2. And although the district court ordered the examination, it was not required to thereafter order a competency hearing unless there was reasonable cause to question Barreto's competency following the examination -- and no such cause was

presented. *See Kerr*, 752 F.3d at 216 (no abuse of discretion where court declined to order competency hearing after a court-ordered competency examination pursuant to 18 U.S.C. § 4244(b) found the defendant to be competent).

Barreto separately contends that his sentencing submissions, including a June 11, 2023 report from a licensed social worker (the "Mercer Report"), suggested that his competency had declined between his plea colloquy and his sentencing. But the observations made in Barreto's sentencing submissions, including the Mercer Report, were largely consistent with Dr. Paradis's conclusions, and therefore did not cast doubt on the reliability or continued relevance of Dr. Paradis's findings. Without any further basis to question Barreto's competency, the district court did not abuse its discretion in not ordering a hearing *sua sponte*.

II. Rule 11 Error

Barreto next argues that the district court erred by misstating the maximum term of supervised release at his change of plea hearing. Rule 11 of the Federal Rules of Criminal Procedure requires that, "[b]efore the court accepts a plea of guilty . . . the court must inform the defendant of, and determine that the defendant understands . . . any maximum possible penalty, including imprisonment, fine, and term of supervised release." Fed. R. Crim. P. 11(b), 11(b)(1)(H).

The district court mistakenly advised Barreto that the maximum term of supervised release was five years when in fact it was life. Barreto, however, failed to

object to the Rule 11 violation. Therefore, we "review it for plain error under Fed. R. Crim. P. 52(b)." *United States v. Vaval*, 404 F.3d 144, 151 (2d Cir. 2005). "Appellant bears the burden of establishing such an error" by demonstrating that there is "a reasonable probability that, but for the error, he would not have entered the plea." *Id.* (citation omitted). Barreto has not made the required showing.

"In assessing the likely effect of a Rule 11 error, we are to examine the entire record." *Id.* "Where a defendant, before sentencing, learns of information erroneously omitted in violation of Rule 11 but fails to attempt to withdraw his plea based on that violation, there can be no 'reasonable probability that, but for the Rule 11 violation, he would not have entered the plea, and the plain error standard is not met.'" *Vaval*, 404 F.3d at 152 (quoting *Dominguez Benitez*, 542 U.S. at 103) (alterations adopted).

Here, there is no question that Barreto and his counsel learned of the district court's misstatement prior to sentencing. The Pre-Sentence Report stated the correct maximum term of supervised release. At sentencing, Barreto and his counsel affirmed that they had reviewed the PSR. Defense counsel also noted the correct term of supervised release in its sentencing memorandum and urged the court to impose up to a lifetime of supervised release in lieu of a longer prison term. Yet Barreto never moved to withdraw his plea, nor did he object at sentencing or any time after sentencing. Accordingly, Barreto has not established a reasonable probability that the

court's Rule 11 violation affected his decision to plead guilty, and he has failed to meet his burden under plain error review.

III. Restitution Award

Lastly, Barreto argues that the district court erred in issuing a \$9,000 victim restitution award even though the government produced no evidence of the victims' losses. Barreto pleaded guilty to three offenses that qualify as "trafficking in child pornography." 18 U.S.C. § 2259. Restitution for these offenses is "mandatory" and is to reflect the "defendant's relative role in the causal process that underlies the victim's losses, but which is no less than \$3,000." *Id.* Before ordering restitution, however, the district court must first determine that the victims suffered financial losses caused by the existence of child pornography in which they are depicted and that has not been fully compensated through other means. *Id.*; *id.* § 3664. There is no dispute that the government did not present evidence of financial losses resulting from Barreto's offenses, and the district court did not make any findings of the same. The district court therefore erred when it ordered Barreto to pay \$9,000 in restitution without making the necessary findings regarding financial loss.

As with his Rule 11 challenge, however, Barreto failed to object to the restitution order below. While we have "discretion to correct errors that were forfeited because [they were] not timely raised in the district court, . . . no such discretion applies when there has been true *waiver*." *United States v. Spruill*, 808 F.3d 585, 596 (2d Cir. 2015)

(emphases in original). True waiver occurs when the defendant makes an "intentional decision not to assert a right," *id.* at 597, or a "deliberate choice to relinquish the protection th[e] right[] afford[s]," *Berghuis v. Thompson*, 560 U.S. 370, 385 (2010).

We find that Barreto has waived any challenge to the \$9,000 victim restitution award. At sentencing, the district court solicited arguments from both parties regarding the appropriate amount of restitution. The government requested a \$9,000 victim restitution award, consisting of \$3,000 per count on Counts Three, Five, and Six. Defense counsel agreed, stating "[i]n terms of restitution, your Honor, I believe that the Court should impose the minimum restitution required, the \$9,000 for Counts Three, Five, and Six." App'x at 218. Thus, counsel not only failed to object to the \$9,000 restitution award but affirmatively urged the court to impose the award. *See Spruill*, 808 F.3d at 599 (finding waiver where a party "actively engaged in the matter and agreed to [the] action taken by the district court"); *United States v. Rainford*, 110 F.4th 455, 472 (2d Cir. 2024) (finding waiver when the defendant's response "was intentional and affirmative").

Defense counsel also received a clear "tactical benefit" by agreeing to this award. *See Spruill*, 808 F.3d at 599 (Although a "tactical benefit" is not a "prerequisite to identifying waiver," it provides additional "evidence that the relinquishment of a right was intentional."). Had the court determined that the victims suffered concrete financial losses, the court would have been obligated to impose a mandatory minimum

of at least \$3,000 on each count, and very well could have gone above that amount. By agreeing to the \$9,000 award, Barreto secured the lowest restitution award possible in the circumstances. Upon this record, we conclude that Barreto's challenge to the restitution award is waived.

* * *

We have considered Barreto's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

MICHAEL BARRETO

JUDGMENT IN A CRIMINAL CASE

Case Number: S2 19-cr-00909-KPF-1

USM Number: 76352-054

Ariel C. Werner, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One, Two, Three, Four, Five, and Six

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2422(b)	Enticement of a Minor	7/31/2019	One
18 U.S.C. § 2422(b)	Enticement of a Minor	9/30/2008	Two

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☒ Count(s) ALL OPEN COUNTS ☐ 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.

6/27/2023

Date of Imposition of Judgment

Katherine Polk Failla

Signature of Judge

Katherine Polk Failla, U.S. District Judge

Name and Title of Judge

7/10/2023

Date

DEFENDANT: MICHAEL BARRETO
CASE NUMBER: S2 19-cr-00909-KPF-1

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2252A(a)(2) (B) and (b)(1)	Receipt of Child Pornography	9/30/2019	Three
18 U.S.C. § 2422(b)	Enticement of a Minor	2/28/2019	Four
18 U.S.C. § 2252A(a)(2) (B) and (b)(1)	Receipt of Child Pornography	1/31/2019	Five
18 U.S.C. § 2522A(a)(2) (B) and (b)(1)	Receipt of Child Pornography	12/31/2018	Six

DEFENDANT: MICHAEL BARRETO
CASE NUMBER: S2 19-cr-00909-KPF-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Two-hundred (240) months to run concurrently on Counts One, Two, Three, Four, Five, and Six

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that Defendant be designated to a Federal Medical Center in the first instance, and, as an alternative, to a facility of the appropriate security level in the New York City metropolitan area. Mr. Barreto needs intensive mental health treatment.
- ☒ 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: MICHAEL BARRETO
CASE NUMBER: S2 19-cr-00909-KPF-1

SUPERVISED RELEASE

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

Ten (10) years to run concurrently on Counts One, Two, Three, Four, Five, and Six.

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 the location where 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 other conditions on the attached page.

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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. 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 _____

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SPECIAL CONDITIONS OF SUPERVISION

1. You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

2. You will participate in an outpatient treatment program approved by the United States Probation Office, which program may include testing to determine whether you have reverted to using drugs or alcohol. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available drug treatment evaluations and reports, including the presentence investigation report, to the substance use disorder treatment provider.

3. You must participate in an outpatient mental health treatment program approved by the United States Probation Office. You must continue to take any prescribed medications unless otherwise instructed by the health care provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the health care provider.

4. You shall undergo a sex-offense-specific evaluation and participate in an outpatient sex offender treatment and/or outpatient mental health treatment program approved by the U.S. Probation Office. You shall abide by all rules, requirements, and conditions of the sex offender treatment program(s), including submission to polygraph testing and refraining from accessing websites, chatrooms, instant messaging, or social networking sites to the extent that the sex offender treatment and/or mental health treatment program determines that such access would be detrimental to your ongoing treatment. You will not view, access, possess, and/or download any pornography involving adults unless approved by the sex-offender specific treatment provider. You must waive your right of confidentiality in any records for mental health assessment and treatment imposed as a consequence of this judgment to allow the U.S. Probation Office to review the course of treatment and progress with the treatment provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the sex offender treatment provider and/or mental health treatment provider.

5. You shall permit the U.S. Probation Office to install any application or software that allows it to survey and/or monitor all activity on any computer(s), automated service(s), or connected devices that you will use during the term of supervision and that can access the internet (collectively, the "Devices"), and the U.S. Probation Office is authorized to install such applications or software. Tampering with or circumventing the U.S. Probation Office's monitoring capabilities is prohibited. To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced examinations of any Device(s) that are subject to monitoring. You must notify any other people who use the Device(s) that it is subject to examination pursuant to this condition. You must provide the U.S. Probation Office advance notification of planned use of any Device(s), and will not use any Device(s) without approval until compatibility (i.e., software, operating system, email, web-browser) is determined and installation is completed. Applications for your Device(s) shall be approved by the U.S. Probation Office once the Probation Office ensures compatibility with the surveillance/monitoring application or software. Websites, chatrooms, messaging, and social networking sites shall be accessed via the Device(s) web browser unless otherwise authorized. You will not create or access any internet service provider account or other online service using someone else's account, name, designation or alias. You will not utilize any peer-to-peer and/or file sharing applications without the prior approval of your probation officer. The use of any Device(s) in the course of employment will be subject to monitoring or restriction as permitted by the employer.

6. You are restricted from viewing, accessing, possessing, and/or downloading any sexually explicit material involving minors, including those created via the method of morphing or other image creation format. You will not view or possess any "visual depiction" (as defined in 18 USC 2256), including any photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" by a minor under the age of 18.

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SPECIAL CONDITIONS OF SUPERVISION

7. You must not have deliberate contact with any child under 18 years of age, unless approved by the U.S. Probation Office. You must not loiter within 100 feet of places regularly frequented by children under the age of 18, such as schoolyards, playgrounds, and arcades. You must not view and/or access any web profile of users under the age of 18. This includes, but is not limited to, social networking websites, community portals, chat rooms or other online environment (audio/visual/messaging), etc. which allows for real time interaction with other users, without prior approval from your probation officer.
8. You must not have contact with the victim(s) in this case. This includes any physical, visual, written, or telephonic contact with such persons. Additionally, you must not directly cause or encourage anyone else to have such contact with the victim(s).
9. You will not access any websites, chatrooms, instant messaging, or social networking sites where your criminal history-including this conviction-would render such access in violation of the terms of service of that website, chatroom, instant messaging, or social networking site.
10. You must provide the probation officer with access to any requested financial information.
11. It is recommended that you be supervised by the district of residence.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 600.00	\$ 9,000.00	\$	\$ 300.00	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ 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:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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: MICHAEL BARRETO
CASE NUMBER: S2 19-cr-00909-KPF-1

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 900.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
While serving the term of imprisonment, you shall make installment payments toward your restitution obligation and may do so through the Bureau of Prisons' (BOP) Inmate Financial Responsibility Plan (IFRP). Pursuant to BOP policy, the BOP may establish a payment plan by evaluating your six-month deposit history and subtracting an amount determined by the BOP to be used to maintain contact with family and friends. The remaining balance may be used to determine a repayment schedule. BOP staff shall help you develop a financial plan and shall monitor the inmate's progress in meeting your restitution obligation. You shall commence monthly installment payments of at least 15% of your gross income, payable on the 1st of each month, upon release from prison.

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 clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MICHAEL BARRETO,

Defendant.

ORDER

S1 19 Cr. 909 (KPF)

It is hereby ORDERED, pursuant to Title 18, United States Code, Sections 4241(a), 4241(b), and 4247(b), that Cheryl Paradis, Psy.D., a forensic psychiatrist, is appointed to conduct a psychiatric examination of defendant Michael Barreto in order to determine whether Mr. Barreto is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

It is further ORDERED, pursuant to Title 18, United States Code, Section 4247(b), that Dr. Paradis complete the examination of Mr. Barreto within forty-five (45) days from the entry of this Order.

It is further ORDERED that parties provide all relevant materials to Dr. Paradis, and to facilitate Dr. Paradis's examination of Mr. Barreto, in order to ensure that Dr. Paradis can complete her examination of Mr. Barreto as quickly as possible.

It is further ORDERED, pursuant to Title 18, United States Code, Section 4247(c), that within a reasonable period of time following the conclusion of the examination, Dr. Paradis file a psychiatric or psychological report containing the findings of her examination with the Court, with copies provided to defense counsel Jennifer L. Brown, Christopher A. Flood, Neil P. Kelly, Ariel Werner, 52 Duane Street, New York, New York 10007, and to the United States, by its attorney Audrey Strauss, United States Attorney for the Southern District of New York, Kedar S. Bhatia, Assistant United States Attorney, Of Counsel, One Saint Andrew's Plaza, New York, New York 10007.

It is further ORDERED, that the Clerk of the Court serve a copy of this Order upon the United States Marshals Service for the Southern District of New York and the Bureau of Prisons.

SO ORDERED.

Dated: New York, New York
April 15, 2021



THE HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

June 23, 2021

BY EMAIL

The Hon. Katherine Polk Failla
United States District Court for the
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Michael Barreto*, S1 19 Cr. 909 (KPF)

Dear Judge Failla:

The Government respectfully writes to provide the Court with the expert report prepared by Dr. Cheryl Paradis regarding defendant Michael Barreto's competency to (Exh. A) (the "Expert Report"); *see* Dkt. No. 34 (appointing Dr. Paradis to conduct a competency examination). As set forth in the Expert Report, Dr. Paradis concluded that, "to a reasonable degree of psychological certainty, Mr. Barreto is not suffering with a mental disease/defect which renders him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or assist in his defense." *Id.* at 2.

The Government requests to have until June 30, 2021, to review the Expert Report in detail, confer with defense counsel regarding next steps in this matter, and submit a letter to the Court proposing next steps. Defense counsel consents to this schedule.

Because the Expert Report discusses details of the defendant's mental and physical health, the Government seeks to file the Expert Report until seal.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

by: /s/ Brandon D. Harper
Kedar S. Bhatia
Brandon D. Harper
Assistant United States Attorney
(212) 637-2465 / 2209

Cc: Christopher A. Flood, Esq. (by email)
Neil P. Kelly, Esq. (by email)

United States District Court
Southern District of New York

-----:
:
United States of America, :

-against- :

Michael Barreto, :

Defendant. :

S2 19 Cr. 909 (KPF)

-----:
MICHAEL BARRETO'S SENTENCING MEMORANDUM

Federal Defenders of New York
52 Duane Street - 10th Floor
New York, New York 10007
Tel.: (212) 417-8700

To: Damian Williams, Esq.
United States Attorney
Southern District Of New York
One St. Andrew's Plaza
New York, New York 10007
Attn: Kedar Bhatia, Esq.
Assistant United States Attorney

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

June 13, 2023

By Email and ECF

Honorable Katherine Polk Failla
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Michael Barreto*, S2 19 Cr. 909 (KPF)

Dear Judge Failla:

[REDACTED]

It is a simple truth, captured here in the words of Michael Barreto's brother, mother, and sister, and understood by everyone in his life, everyone who comes to know him. *See* Letters of Oscar Barretto, Jr. (Ex. E), Brenda Barretto (Ex. B), and Jessica Barretto Diaz (Ex. C).

[REDACTED]

The facts of Michael's case, and the conduct for which he will be sentenced on June 27, 2023, are undeniably upsetting, involving online and real-world sexual contact with teenagers. He has pleaded guilty to three counts of enticing a minor to engage in illegal sexual activity and three counts of receiving child pornography. As a result, he faces a mandatory minimum sentence of ten years' imprisonment, up to lifetime supervised release, and mandatory (likely lifelong) sex offender registration.

Ten years in prison, followed by community-based treatment and supervision, is the appropriate sentence for Michael Barreto. Given his unique history and characteristics, any longer period of incarceration would be excessive. Significantly, the Government agreed—after an extensive deliberative process and consideration of [REDACTED]—to dismiss charges that would have subjected him to a fifteen-year mandatory minimum. In so doing, the Government tacitly agreed that ten years is a sufficient prison sentence for Michael. They are right.

Respectfully, I urge the Court to exercise the discretion afforded it by the Government's plea-bargaining decision. The difficult and distressing facts of Michael's case cannot be divorced from the difficult and distressing facts of Michael's life. In consideration of both, a sentence of 120 months coupled with a lengthy period of supervised released would be "sufficient but not greater than necessary." 18 U.S.C. § 3553(a).

I. Background

[REDACTED]

Michael's conduct—indisputably serious and disturbing—must be examined against the backdrop of [REDACTED]

[REDACTED]

nd he dropped out, totally unequipped for life as an independent adult. Not long after, he was left alone in an apartment in the Bronx—his parents 40 miles away, his siblings pursuing careers and families of their own—with no job, no skills, no purpose, and no understanding of how to be a person in the world.

Erik Mercer, a licensed clinical social worker and mitigation specialist, interviewed Michael on five occasions at the Metropolitan Detention Center (MDC) and traveled to meet with Michael's parents, siblings, niece, and nephew. He reviewed hundreds of pages of Michael's educational and [REDACTED], including [REDACTED].

[REDACTED] In his report, attached as Exhibit A, Mercer observes that [REDACTED] and that his life "has been defined by a cascade of risk factors with minimal protective factors to mitigate their toxic impact." Ex. A at 1.

A. Michael's "very sad" childhood

Born in the Bronx in 1988, Michael is the youngest of five children born to Brenda, a volunteer pastor, and Oscar Barretto, a machinist and security guard. Presentence Report (PSR) ¶ 110.¹ Extreme Pentecostal religious beliefs, rigid discipline, and cruelty defined Michael's experience of childhood in the Barretto household. *Id.* ¶ 113. It is no surprise that when Erik Mercer asked Michael to describe his upbringing, he said simply, "It was very sad." Ex. A at 3.

Michael's parents physically disciplined him for transgressions as minor as playing with Pokèmon cards ("demons," they said) and Power Ranger action figures, or participating in Halloween ("anti-Christian," they believed). *Id.*; Ex. A at 2, 4. They told Michael he was "possessed." They told him that "he was responsible for every bad thing that happened in the family." *Id.* They hit him with hands, extension cords, belts, and shoes. PSR ¶ 113. Michael's nephew Eli (who is less than ten years younger than Michael) recalls watching his grandmother, Michael's mother, "beat the devil out of him" just for listening to the "wrong" music or playing the "wrong" game. Ex. A at 4. And the abuse came from multiple fronts: In addition to beating Michael themselves, Brenda and Oscar stood idly by when Michael's older brother Jason tormented and attacked him. *Id.* Michael recalls that for five or six years, ranging from age seven to age thirteen, Jason would grab him, call him stupid, throw him against the wall, lock him in bathrooms and closets, make him kneel with his head against the wall, and hit his buttocks with objects. *Id.* at 5; PSR ¶ 113. Michael's brother Danny remembers Jason "punching Michael all over his body." Ex. A at 5.

[REDACTED]

¹ Although Michael's parents and siblings spell their last name "Barretto," with two Ts, they filled out his birth certificate with only one T, "Barreto." PSR at 23 n.2.

[REDACTED]

[REDACTED]

Michael was not safe at home. He was not safe in his neighborhood either. During his childhood, the South Bronx was one of the most dangerous sections of one of the most dangerous cities in the country. Ex. A at 4. Michael recalls being kicked off swings at the local park by gang members who held court at the area playgrounds. PSR ¶ 112. He recalls being assaulted multiple times, just walking or riding his bike near home. Ex. A at 3. PSR ¶ 112. He was afraid to go outside. *Id.*

All in all, he was a child with no safe spaces.

[REDACTED]

The horrors of Michael's childhood are especially troubling against the backdrop [REDACTED].

Following a comprehensive records review, numerous family interviews, and five substantive meetings with Michael, Erik Mercer concluded [REDACTED]

[REDACTED]

² [REDACTED]

[REDACTED]

[REDACTED]

When he was ten, a major car accident [REDACTED]
[REDACTED] *Id.* ¶ 123; Ex. A at 4-5; Ex. B at 1. The family was moving Michael's sister to Massachusetts when their van—carrying Michael, his mother, and his baby niece and nephew—was involved in a high-speed, multi-vehicle crash on the highway near Hartford, Connecticut. *Id.* It flipped upside down, went over a barrier, and rolled for 80 feet. *Id.* Baby Crystal flew out of her car seat, but Michael saved her life by holding onto her while the car skidded down the highway. He sustained severe cuts on his arm and hit the left side of his head. Immediately after, he was unable to speak for several hours. Exs. B, C, E.

[REDACTED]

[REDACTED]

³ [REDACTED]

[REDACTED]

[REDACTED]

In 2002, Michael moved to Oxford, Massachusetts to live with his sister Jessica. There too, according to school records, [REDACTED]

[REDACTED]

Michael left school completely unprepared for adulthood. He never completed the transition planning that [REDACTED] are required to provide [REDACTED]

[REDACTED] A at 11. Not long after, his parents moved from the family apartment in the Bronx to Rahway, New Jersey. Ex. A at 6. Although Michael's older brother Danny stayed in New York and initially lived with Michael part-time, he worked and had a life of his own. Michael had little or no support as he attempted to "navigate the adult world." *Id.*

⁴ [REDACTED]

He worked briefly at a McDonald's near his home but was fired for "overcleaning." *Id.* at 6; PSR ¶ 140. He began abusing marijuana and other drugs. *Id.* ¶¶ 131-32. [REDACTED]

[REDACTED] He spent most of his time on the Internet or playing video games. A 2014 knifepoint-mugging left him terrified to leave his apartment. He had panic attacks. He was afraid to take the train by himself and therefore did not visit his parents in New Jersey, even for birthdays and special occasions. His mother sometimes visited and took him shopping for groceries or clothes that fit. Otherwise, his world was confined largely to his computer screen.

[REDACTED]

II. Offense Conduct

Each of the counts to which Michael has pleaded guilty involves inappropriate sexual contact with teenagers while Michael was between 19 and 31 years old. He met all but one of the teenagers online, where he at least initially misrepresented his age, and they often did the same. PSR ¶¶ 15-33.

Bored and alone in his apartment, Michael was prolific in these exchanges on social media applications like Facebook. Many of his messages were mundane and

[REDACTED]

childish: He sent “stickers” or images of kittens and cartoon characters like SpongeBob SquarePants; he talked about playing video games, smoking marijuana, and eating snacks. But he also exchanged sexually explicit messages and photographs and, with several of the teenagers he met, had real world sexual contact. Even with his [REDACTED], Michael knew that it was wrong to receive pornographic images from minors and engage in sex acts with people under the legal age of consent. And while he might quibble with certain allegations contained in the PSR, those disputes do not affect the stipulated Guidelines range or the overall abhorrent nature of the conduct.

At the same time, certain aspects of Michael’s conduct bear mention and distinguish this case from other enticement cases. It is notable, for example, that every victim was a teenager rather than a young child. [REDACTED]

Michael’s case is also distinguishable from the typical child pornography case. It is noteworthy that he never solicited sexual images of minors for the purpose of redistribution, never participated in file sharing, and never redistributed images or videos of any kind. His receipt of child pornography was limited to his own private viewing of these images and videos for his own gratification in the moment. Essentially, he participated in sexual chats and, in the course of those exchanges, received images, none of which involved sexual abuse or hands-on contact by someone other than the victim. Finally, Michael’s online interactions with teenagers were not one-sided; many of his chats were initiated or re-initiated by the teenagers with whom he was messaging.

This is Michael’s first significant experience of being criminally prosecuted for sexual misconduct. Although he pleaded in this case to conduct dating back to 2008 and had other law enforcement contacts in his twenties, it was not until 2016 that he had any sustained or memorable contact with the legal system. That 2016 case, which involved an indecent exposure charge, [REDACTED] s a result, he has never had the opportunity to receive court-ordered counseling or treatment. He has never previously been incarcerated or supervised in the community.

Naturally, he is petrified of his statutory exposure in this case: ten years to life.⁶ He is even more alarmed by his Stipulated Guidelines range, which layers

⁶ It is worth noting that if Michael had been prosecuted by the State of New York for the state law offenses underlying the enticement counts in this case, he would have faced radically different penalties. New York Penal Law § 130.55, sexual abuse in the third degree, the state law offense at

enhancement on enhancement to reach the outlandish suggestion that he should be sentenced to die in prison.

III. Michael's hellish experience of prison

Michael has been detained at the Metropolitan Correctional Center (MCC) and Metropolitan Detention Center (MDC) since October 1, 2019. PSR ¶ 12. No doubt, this Court has read numerous accounts of horrific conditions at those facilities over the last four years, and Michael's experience indeed has been horrifying. He has endured an unbroken chain of terrors and indignities. He witnessed the worst of the MCC's filth and overcrowding. He suffered through the February 2020 gun lockdown and the outbreak of the COVID-19 pandemic. [REDACTED]

[REDACTED]. Most of his pretrial detention has been on some form of lockdown.

[REDACTED]

[REDACTED]

Even apart from [REDACTED] conditions at the MCC were dreadful. Since shuttered by the Department of Justice, the MCC reached its most nightmarish form while Michael was held there. Journalists investigating the facility documented "filth, rodents, overflowing sewage, deeply substandard medical

issue in Counts One, Two, and Five of the S2 Information, is a class B misdemeanor, punishable by at most 90 days' imprisonment.

care, wrenching isolation, and often indifferent—and at times, cruel—staff.”⁷ During a legal visit in October 2019, Michael described his rat-infested room, the violent threats he was fielding from his bunkie, and the staff’s absolute disregard for his well-being. His head in his hands, he wept, “I’m a human being!” A month later, he said that [REDACTED]

[REDACTED]. Neither he nor his legal team could have predicted how much worse his situation was about to become.

At the end of February 2020 came the now-notorious gun lockdown, when the MCC was on high alert for at least eight days while correctional officers, along with outside guards and U.S. marshals, tossed the facility in search of a smuggled, loaded firearm.⁸ Although prisoners were cut off from all contact with their attorneys, friends, and families during the lockdown, they later shared reports of extraordinary neglect and mistreatment. They were deprived of hot food, showers, clean drinking water, and medical care; they were forced to lie on their stomachs while guards confiscated or destroyed their personal belongings and legal papers; they were paraded through the facility in their underwear because they had no clean clothing. Water bugs and mice scurried through living spaces after guards unblocked holes in walls and vents that prisoners had plugged with cloth to keep pests at bay. As soon as Michael was granted phone privileges again, he called our office and described—through tears—how strange guards with unfamiliar uniforms had stormed his unit with guns, flashes, and smoke bombs and pressed his face and body onto the filthy floor. [REDACTED] PSR ¶ 12. Even by the abysmal standards of the MCC, it was a brutal period of incarceration.

The MCC was still gradually reopening from the gun lockdown when COVID-19 descended on New York City. The facility was primed for the virus’s rapid spread. *See Class Action Petition, Fernandez-Rodriguez et. al v. Marti Licon-Vitale*, No. 20 Civ. 3315 (ER), ECF No. 1 (S.D.N.Y. April 28, 2020). Designed to hold 474 inmates, it housed approximately 750 people when the pandemic began. *Id.* Inmates were housed with bunkies in tiny cells originally designed for single occupancy or in large open dormitories with 26 to 30 inmates. *Id.* Social distancing was not possible. *Id.* Tests, masks, and hand sanitizer were initially unavailable. *Id.* Soap and other cleaning supplies were in short supply. *Id.* The MCC, like other

⁷ Jeanne Theoharis, *I Tried to Tell the World About Epstein’s Jail. No One Wanted to Listen*, *The Atlantic* (Aug. 16, 2019), at <https://www.theatlantic.com/ideas/archive/2019/08/real-scandal-mcc/596257/>; *see also Prisoners Endure a Nightmare ‘Gulag’ in Lower Manhattan, Hidden in Plain Sight*, *Gothamist* (June 19, 2018), at <https://gothamist.com/news/prisoners-endure-a-nightmare-gulag-in-lower-manhattan-hidden-in-plain-sight>.

⁸ Stephen Rex Brown, *Strip Searches, Frozen Bologna Sandwiches and Wrecked Cells: MCC Inmates Detail Lockdown Due to Smuggled Gun*, *The Daily News* (Mar. 6, 2020), at <https://www.nydailynews.com/new-york/nv-mcc-lockdown-accounts-20200306-aws7qoa7eicozai3i64hms73qi-story.html>.

prisons and jails, was a “petri dish[] for contagious respiratory illnesses.”⁹ As both fear and disease crept through its tiers, the jail was locked down. No social visits; no legal visits; 23 hours or more each day on lockdown. Already isolated, Michael was now totally alone.

Although intended to curb the spread of disease, the COVID-19 lockdown conditions put in place for many months at the MCC were the functional equivalent of solitary confinement. *See, e.g., United States v. Daniel Gonzalez*, No. 18 Cr. 669 (S.D.N.Y. April 16, 2021) (Oetken, J.), Sent’g Tr., ECF No. 250 at 17:17-22 (describing conditions of confinement during the early pandemic as “extraordinarily harsh,” with “lockdown conditions 23 hours a day, basically like solitary confinement”). It is now widely accepted that solitary confinement in prisons and jails causes severe harm to the physical and mental health of those subjected to it. *See Peoples v. Annucci*, 180 F. Supp. 3d 294, 299 (S.D.N.Y. 2016) (Scheidlin, J.) (“The consequences of long-term solitary confinement are so well-known that numerous medical associations ... have all issued formal policy statements opposing the practice—especially with regard to mentally ill inmates, on whom the effects of solitary confinement are particularly pronounced.”); *United States v. Lawrence*, 254 F. Supp. 3d 441, 452 (E.D.N.Y. 2017) (Weinstein, J.) (“[T]ime served in solitary confinement can lead to serious mental illness in healthy individuals. It significantly exacerbates the condition of those already suffering from emotional instabilities.”); Alex Kozinski, *Worse than Death*, 125 Yale L.J.F. 230 (2016).

When the worst of the pandemic restrictions were lifted, Michael’s prison experience remained hellish. [REDACTED]

[REDACTED] Again, he was repeatedly forced into isolation, due to the MDC’s frequent whole-facility lockdowns—during which prisoners were confined to their cells nearly round the clock, without access to showers, phones, computers, discovery, commissary, or recreation—[REDACTED]

⁹ *Letters to the Editor: A prison doctor’s stark warning on coronavirus, jails and prisons*, Los Angeles Times (Mar. 20, 2020), at <https://www.latimes.com/california/story/2020-03-20/prison-doctors-stark-warning-on-coronavirus-and-incarceration>.

[REDACTED]

Even as the Bureau of Prisons (BOP) has justified Michael's [REDACTED] its medical and legal departments have exhibited callous disregard for his well-being when he has asked for help. Like so many MDC prisoners, Michael has received impossibly slow and substandard medical care, when he has received medical care at all. A broken finger was left untreated for weeks even as counsel repeatedly contacted the legal department seeking medical attention on his behalf. [REDACTED]

[REDACTED]

Finally, Michael has sustained multiple losses during his time in custody thus far. In November 2021, his maternal grandmother, with whom he was extremely close, passed away, and the family buried her in Puerto Rico in a ceremony Michael could not attend. Just a few months ago, his brother-in-law Edwin, who along with Michael's sister had welcomed Michael into his home in Massachusetts and treated him like a son, died without warning. Michael's family relied on his legal team to inform him of both these losses. One of Michael's greatest fears when he was detained pretrial was that he would miss out on life and spending time with the people he loved. With the passing of his grandmother and brother-in-law, while he was incarcerated and unable to grieve with the rest of his family, his worst fears came to life.

IV. The Only Appropriate Sentence: 120 months and supervised release with intensive treatment

Michael Barreto is a [REDACTED]
[REDACTED]
[REDACTED] Although his offense conduct took place between ages 19 and 31.
[REDACTED] His actions were reprehensible.
[REDACTED]

By allowing Michael to plead to enticement, in violation of 18 U.S.C. § 2422(b), and dismissing charges of child pornography production under § 2251(a) that it likely could have established on the same set of facts, the Government reduced Michael's mandatory-minimum exposure from fifteen years to ten years. His plea agreement with the Government resulted from a lengthy deliberative process. In both a written submission and a formal appeal presentation, we asked

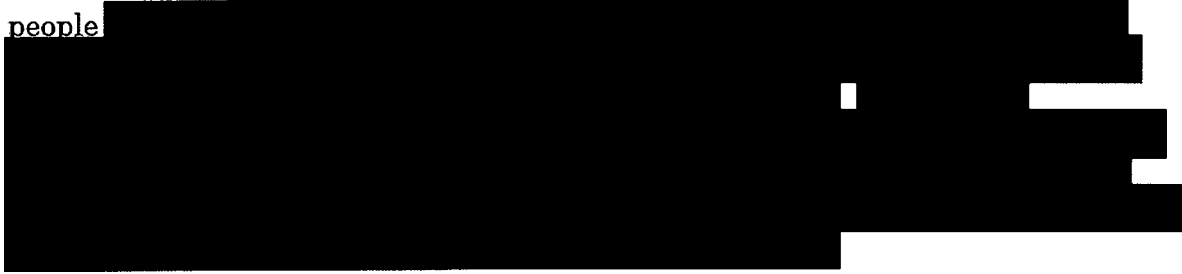
the Government to consider [REDACTED], among other factors, and allow him to plead to an offense with only a five-year mandatory minimum sentence. After considering our request for several months, the Government denied it but extended an offer with a ten-year mandatory minimum. As a result of those plea negotiations, the Court has discretion to impose a sentence of 120 months. The parsimony clause of 18 U.S.C. § 3553(a) requires that it do so.


A sentence at that ten-year minimum, coupled with extensive supervised release and community-based treatment and monitoring, is the only appropriate sentence for Michael Barreto. Ten years is a significant term of incarceration by any measure. It is even more significant for someone [REDACTED] who has never been incarcerated, and who spent four of those years under horrific conditions of confinement. Following his prison term, Michael can be effectively monitored through a lengthy or even lifetime period of supervised release. Given the centrality of the Internet to his criminal conduct and the circumstances under which it took place—when Michael was living alone and unsupervised [REDACTED]s—there is a significant likelihood that he can be deterred and incapacitated from committing future crimes via supervision and monitoring.

A. Michael's unduly harsh period of confinement thus far necessitates a significant downward variance.

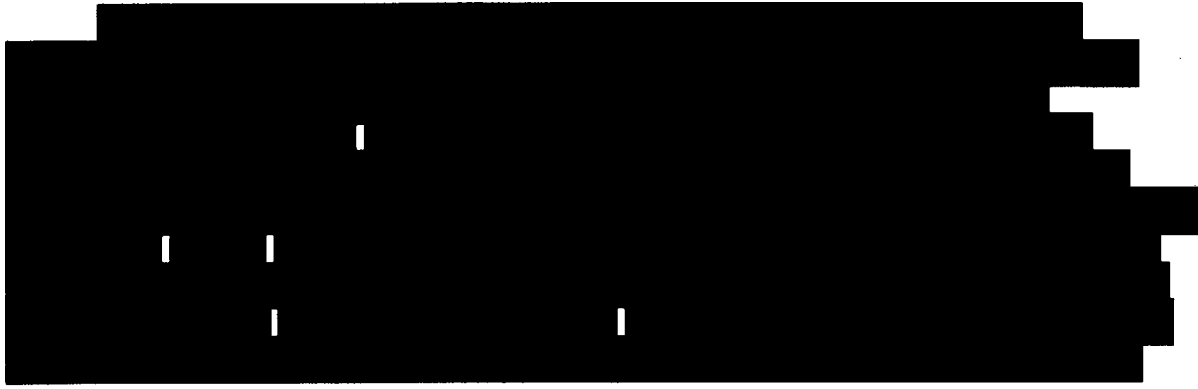
Courts in this district routinely grant downward variances based on substandard and unjustifiably punitive conditions at the MCC and MDC—their baseline horrendous conditions as well as their especially appalling conditions during the February 2020 gun lockdown and the COVID-19 pandemic. *See, e.g., United States v. Saldana*, No. 17 Cr. 512, ECF No. 535 at 16–17 (S.D.N.Y. Sept. 10, 2019) (Wood, J.) (“I am aware the conditions at the MCC are very dreadful, and it is my intention to give every defendant who has suffered in that way a break because of that.”); *United States v. Juan Carlos Aracena De Jesus*, 20 Cr. 19. (S.D.N.Y. July 1, 2020) (Engelmayer, J.) (“I’m mindful that your experience in prison as a result of the pandemic, the preceding lockdown, the ensuing lockdown, and your own illness was frightful. ... [Y]our time in the MCC was way harder than anyone intended,” and “[a]ny mature system of justice, any thoughtful judge in imposing the reasonable sentence here would have to recognize the unexpected and regrettable ardors that you experienced since your arrest”); *United States v. Hector Rivera*, No. 16 Cr. 66, (S.D.N.Y. May 11, 2020) (Torres, J.) (stating that the Court “would be remiss if it failed to consider that being detained at the MCC ... in ordinary times is very different from being detained ... during the COVID-19 pandemic.”). Regarding the pandemic in particular, Judge Oetken has observed that time served under the unduly harsh conditions it inspired is “essentially the equivalent of either time and a half or two times what would ordinarily be served.” *Gonzalez*, No. 18 Cr. 669, ECF No. 250 at 17:22-25.

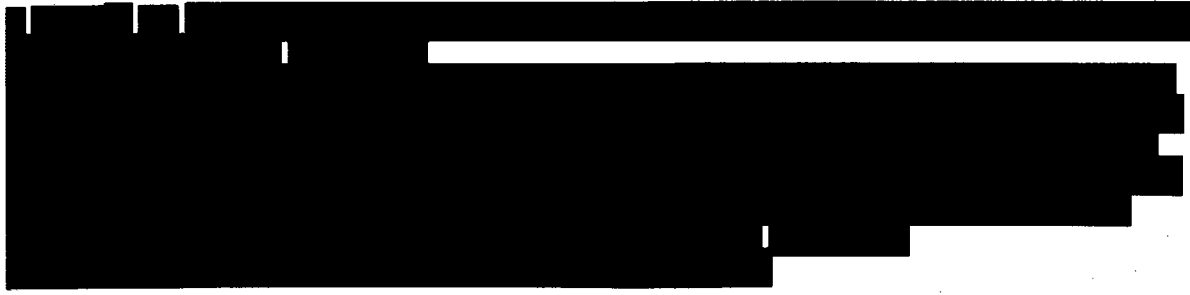
Courts have also recognized that a prison sentence has greater significance and is therefore a greater punishment and deterrent for those who have served little or no prison time in the past. *See, e.g., United States v. Mishoe*, 241 F. 3d 214, 220 (2d Cir. 2001). This is Michael's first experience of incarceration, and—as described above—it has been awful. Prison time is also especially punishing for people



B. The 3553(a) factors—and 
support the sentence we request.

In determining a just and appropriate sentence, this Court takes as its “lodestar the parsimony clause of 18 U.S.C. § 3553(a).” *United States v. Douglas*, 713 F.3d 694, 700 (2d Cir. 2013). That provision directs sentencing courts to “impose a sentence sufficient, but not greater than necessary, to comply with’ the factors set out in 18 U.S.C. § 3553(a)(2),” i.e., “proportionality, deterrence, incapacitation, and rehabilitation.” *Id.* In Michael’s case, the § 3553(a) factors support a substantial downward variance from the draconian Stipulated Guidelines range and would be served by the sentence we request: 10 years’ imprisonment followed by a long period of supervised release.





[REDACTED] imilarly, the Court should not rely on a term of incarceration to specifically deter Michael from future criminal conduct. Instead, the Court should focus on practical ways to rehabilitate him and to deter and incapacitate him from future criminal conduct. That goal can be achieved through supervised release.

Most or all of Michael's criminal conduct took place under specific circumstances. He messaged with teenagers online and on a few occasions met them in person at his family's apartment in the Bronx. At that time, he lived either alone or part-time with his brother, who had not taken on the responsibility of monitoring his communications or actions. Michael was not working, attending school, or engaged in any kind of programming outside of the home. He had never participated in substance abuse or sex offender treatment.

All these circumstances can be changed and controlled through supervised release, in service of rehabilitation, specific deterrence, and incapacitation. Michael's Internet access can be strictly monitored and limited. He can be mandated to attend substance abuse treatment and sex offender treatment. That treatment [REDACTED]

[REDACTED]. Locally, Shiloh consulting, New York Forensics, and the New York Mental Health Group offer group and individual sex offender treatment [REDACTED]. Michael can also receive assistance from the Probation department in connecting with [REDACTED].

Additionally, after witnessing the tragic results of Michael's independent living, his parents and siblings have committed to supporting him and bringing him to live in one of their homes after his release from incarceration. See Ex. D; Ex. E; Letter of Oscar Barretto (Ex. F) at 1. They see now that he needs significantly more support than he was receiving before his arrest. And although Michael has had a complex and painful relationship with his parents, their bond has grown closer through their support for him during the pendency of this case. Michael recalls his father's first visit to the MCC, in January 2020, as the first time his father had hugged him in many years.

After his release from prison, Michael will also be required to register as a sex offender in any state where he lives. If he returns to New York, according to an experienced New York Sex Offender Registration Act (SORA) practitioner familiar with details of this case, he almost certainly will be adjudicated a Level 3 – High Risk sex offender under state law given the facts of his case, the number of victims

and their ages, and his own personal history. This will entail lifetime registration on the New York Sex Offender Registry, with no opportunity to petition for removal. He will have to re-register annually, but also personally appear every 90 days at the NYPD's Sex Offender Monitoring Unit to be photographed. His name, aliases, photographs, home, school, and work addresses, and vehicle make and model, will all be publicly available on the Internet, along with the details of his crimes. He will be the subject of law enforcement notifications if he travels, both domestically and internationally. *See generally* N.Y. Corr. Law 168-a et seq. These sex offender registration policies and requirements, layered on top of the mandatory and special conditions of supervised release, will help ensure that Michael poses no threat going forward.

At bottom, it is not necessary or appropriate to lock up Michael Barreto and throw away the key. Following a punishing ten-year term of imprisonment, much of it served under deplorable conditions, Michael can be rehabilitated, deterred, and incapacitated in the community through a lengthy and onerous period of supervised release.

V. Conclusion

For the foregoing reasons, this Court should impose a sentence of 120 months, followed by a lengthy period of supervised release with conditions including substance abuse and sex offender treatment.

Respectfully submitted,

/s/ Ariel Werner

Ariel Werner

Neil Kelly

Assistant Federal Defenders

917-751-2050

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cc: Kedar Bhatia, Assistant United States Attorney

EXHIBIT A

ERIK MERCER, L.C.S.W.

[REDACTED]

June 11, 2023

Ariel Werner
Assistant Federal Defender
Federal Defenders of New York
52 Duane Street, 10th Floor
New York, New York 10007

RE: Unites States v. Michael Barreto, 1:19-cr-00909-KPF

This report is respectfully submitted on behalf of Michael Barreto¹ in advance of his June 27, 2023 sentencing before The Honorable Katherine Polk Failla. This submission provides detailed information about Mr. Barreto's developmental and psychosocial history. In the preparation of this report, five interviews were conducted with Michael Barreto at MDC Brooklyn. Interviews were also conducted with members of Michael's immediate and extended family. Medical, academic, employment, institutional and court records were reviewed and consultations were held with Mr. Barreto's legal team.

INTRODUCTION

Michael's life has been defined by a cascade of risk factors with minimal protective factors to mitigate their toxic impact. [REDACTED]

[REDACTED]

[REDACTED]

¹ Michael's name was misspelled on his birth certificate. The rest of the Barretto family spells their name with two Ts, while Michael spells his name with one T.

43a

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PERSONAL BACKGROUND

Early childhood

Michael was born on [REDACTED] 1988 in Bronx, New York. The youngest of five children born to the union of Brenda and Oscar Barretto, Michael was raised on Gerard Avenue in the South Bronx. Mr. Barretto was a machine operator and his mother was a pastor. When asked to describe his childhood, Michael simply says, "It was very sad." Michael grew up in a neighborhood defined by chaos and instability. Drug and gang activity were rampant in the streets around Michael's home, and he describes being terrified to go outside. When he did venture outside, Michael experienced frequent harassment and abuse. Michael was assaulted by strangers on multiple occasions while walking or riding his bike in the neighborhood.

Michael's apartment was located in the Bronx's 44th precinct. The year before Michael was born, the 44th precinct recorded the second highest murder rate of all New York City precincts (Purdum, 1987). Last year, the New York Post described the 44th precinct as the deadliest in the Bronx, citing NYPD violent crime statistics for 2022 (Balsamini, 2022). The 44th precinct is bracketed by two precincts that have also been considered among the most

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[REDACTED]

dangerous neighborhoods in the city. In 1991, when Michael was three years old, the homicide rate in the Bronx's 40th precinct, immediately to the south of the 44th, was 108.79 per 100,000 residents compared to national homicide rate of 9 per 100,00 that same year (Vickers, 2019). With fourteen low-income housing developments in a small geographical area, the 40th precinct has one of the highest densities of New York City Housing Authority projects in the city (NYCHA, 2015). The heavy concentration of public housing resulted in sharp escalations in gang violence and drug related violent crime in the area surrounding Michael's apartment. The 46th precinct, to the north of the 44th, was referred to by Time Magazine as "the most dangerous square mile in the United States when Michael was a child (Sciutto, 2021). According to a 2016 New York Times profile, a Bronx precinct detective carried an average of 58 violent felonies compared with 27 in Manhattan, 25 on Staten Island and 38 in Brooklyn during that year – statistics that have remained steady for over a decade. (Mueller and Baker, 2016) (Vickers, 2019).

The chaos and instability endemic to Michael's South Bronx community was mirrored within the walls of his home. Mr. and Ms. Barretto were heavily involved in a Pentecostal church and lived according to a rigid, conservative set of theological beliefs. Adherence to Mr. and Ms. Barretto's belief system was expected within the home and they exacted harsh punishments for perceived disloyalty. Michael and his siblings all describe a lack of consistency to their parents' expectations and recall that it was difficult to reliably predict what behavior would trigger their eruptive anger. Michael recalls, for example, being confused when his mother became rageful after she discovered Pokemon and Power Ranger figures in his room. Michael remembers that Ms. Barretto severely beat him for possessing them because she believed them to be demonic.

While Michael and his siblings were all subjected to abusive treatment by their parents, Michael's nephew and niece, Eli and Crystal Diaz, remember that Michael was a particular target of his parents' rage. Eli recalls that Mr. and Ms. Barretto regularly "beat the devil out of him" when he listened to the wrong music or played the wrong game. [REDACTED]

[REDACTED].
[REDACTED]
[REDACTED]. Michael's late uncle, Edwin Diaz, described Mr. and Ms. Barretto's [REDACTED]

[REDACTED] Michael's cousin, Crystal, remembers that Michael's parents frequently told him that he was responsible for every bad thing that happened in the family.

[REDACTED]
[REDACTED] The Barretto's were driving to Massachusetts when their minivan

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[REDACTED]

was struck by a car traveling at a high rate of speed, causing their vehicle to flip over multiple times. The accident was an early inflection point in Michael's life. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Against the backdrop of neighborhood and parental instability, Michael had to contend with another obstacle as he moved into late childhood; Michael's older brother, Jason, was an angry young man prone to violent outbursts who targeted Michael with his aggressive and cruel behavior. Michael recalls, "Jason tormented me daily" and describes being beaten, thrown against walls and locked in bathrooms and closets. Michael's parents were present for much of the abuse and did not intervene. Michael's brother, Danny, recalls Jason punching Michael all over his body. Danny says,

Jason was very alpha. He was abusive to all of us, but Michael got the worst. Jason didn't understand the damage the accident did [to Michael] and he got mad at things Michael couldn't control.

The accumulating maltreatment that Michael experienced [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

When Jason left home in 1999, Michael was eleven years old. Jason's departure removed one immediate threat from Michael's life, but others remained. Mr. and Ms. Barretto's abusive treatment continued and Michael did not experience a respite from the maltreatment in his school or community. The lack of consistent parental supervision and attention also made Michael vulnerable to the predatory behavior of some people in his immediate environment.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

When Michael was seventeen years old, his sister, Jessica, invited him to move to her home in Auburn, MA to escape the toxicity in his family and community environments. Michael accepted the offer and stayed in Massachusetts for seven months. He enrolled in school and tried to build a community, but he ultimately felt unable to connect and returned to the Bronx. Michael lived in the Bronx with his parents until they relocated to Rahway, New Jersey when he was twenty years old. After Mr. and Ms. Barretto's departure, Michael and his brother, Danny, remained in their Bronx apartment. Danny lived in the apartment part-time and Michael—who [REDACTED] ninth grade—was primarily left to navigate the adult world without the structure and guidance he needed. Without a support structure, Michael began smoking a lot of marijuana. He briefly held a job at McDonald's but states that he was fired for "overcleaning." Records from Montefiore Medical Center show that Michael presented multiple times while he was living alone in the Bronx (May 26, 2010; August 8, 2011; March 1, 2012; August 13, 2015; September 13, 2015; July 20, 2016; September 18, 2017; December 19, 2017) complaining of [REDACTED] reporting heavy marijuana use.

In 2017, when Michael was twenty-eight, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

MITIGATING CIRCUMSTANCES

The CDC-Kaiser ACE study, an ongoing collaboration between Kaiser Permanente's Health Appraisal Center and the United States Center for Disease Control and Prevention (CDC), identifies a series of Adverse Childhood Events (ACEs) and examines the links between poor outcomes and the presence of these ACE factors. The nine total categories used in the ACE Study include: (1) recurrent physical abuse; (2) recurrent emotional abuse; (3) contact sexual abuse; (4) an alcohol or drug abuser in the household; (5) an incarcerated household member; (6) someone who is chronically depressed, mentally ill, institutionalized or suicidal; (7) mother treated violently; (8) one or no parents; (9) emotional abuse or physical neglect (Burke et al, 2007). The ACE Study finds that the greater the number of ACE factors, the higher the risk of negative

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outcomes (CDC, 2020). Michael grew up with at least seven of the nine ACE factors. These risk factors were coupled with a breakdown in community and family support, resulting in a catastrophic accumulation of risk with inadequate protective factors to mitigate the negative impact.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] of

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Abuse

The chronic verbal and physical abuse that Michael endured within his family was an environmental factor that further heightened his vulnerability to negative outcomes. Trauma expert Dr. Martin Teicher says, "Our brains are sculpted by our early experiences. Maltreatment is a chisel that shapes a brain to contend with strife, but at the cost of deep, enduring wounds (Teicher, 2000)." Research about the impact of child abuse on neurological development consistently shows that chronic exposure to frightening and stressful situations changes the architecture of the brain (Debellis, et al., 1999). Michael was exposed to unrelenting abuse throughout his childhood and adolescence and his descriptions of maltreatment are corroborated by numerous people in his family. The disruptions Michael experienced in his early caregiving relationships are highly correlated with a host of emotional and psychological problems in adolescence and adulthood that are well documented in the scientific literature.

Under stress, abused and neglected children's analytical capacities tend to disintegrate, leaving them disorganized cognitively, emotionally, and behaviorally and prone to react with extreme helplessness, confusion, withdrawal or rage. (Teicher et al., 2002)

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[REDACTED]

For children who live in a constant state of threat, regions of the brain related to anxiety and fear are overdeveloped and other regions of the brain are under-developed. (Shore, 1997).

When frightening or threatening situations occur too frequently, stress becomes chronic and disrupts the brain's and body's responses. The body can over or underproduce necessary hormones, and the body's physiology can fail to return to normal. (Shonkoff et al. 2012).

The effects of trauma induced neurological changes are starkly evident in a 2016 summary of research into academic outcomes of children exposed to three or more frightening or life-threatening events (Jiminez et al. 2016). Study findings include:

The share of children who displayed attention problems in the classroom was over 200 percent greater for those who had been exposed to frightening or threatening life experiences than for those who were otherwise similar but with no such experiences.

The share of children who were aggressive and broke rules at school was nearly 140 percent greater for those who had been exposed to frightening or threatening life experiences than for those who were otherwise similar but with no such experiences.

The share of children who could not read a simple book was nearly 50 percent greater for those who had been exposed to frightening or threatening life experiences than for those who were otherwise similar but with no such experiences.

[REDACTED]

Systemic failure

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

The consistent failure of the school system to address Michael's needs may be a reflection of the stark disparity in resources between schools in wealthy and poor New York neighborhoods. Jonathan Kozol profiled public schools in the South Bronx neighborhood where Michael grew up in *Savage Inequalities*, his 1991 publication about racial and economic injustice in America's public schools. The book paints a stunning picture of the New York City Department of Education's (DOE) willful negligence toward poor, Black and Hispanic children during the years Michael was in public school. The disparity in per pupil spending between wealthy suburban districts and New York City was stark when Michael was a student. According to the New York State Board of Education, New York City spent \$7,299 per pupil during the 1989-1990 academic year (the year before Michael entered school) compared to \$15,594 per pupil in Great Neck on Long Island. In school district 10, which encompasses some of the poorest sections of the South Bronx and the wealthy, majority white community of Riverdale even more glaring disparities were noted.

The contrast between public schools in each of these two neighborhoods is obvious to any visitor. At Public School 24, in Riverdale, the principal speaks enthusiastically of his teaching staff. At Public School 79, serving the poorer children to the south, the principal

[REDACTED]

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[REDACTED]

says that he is forced to take the “tenth best” teachers. “I thank God they’re still breathing” he remarks of those from whom he must select his teachers. (Kozol, 2012)

Funding disparities extend beyond District 10. According to a report published by The Community Service Society (CSS) of New York, the year Michael was born, the poorest districts in New York City received approximately 90 cents per pupil compared to 14 dollars per pupil in wealthier districts.

The DOE’s disorganization and poor follow-through that is evident in Michael’s school records is reflective of the funding inequity in the New York City public school system. Michael presented [REDACTED] in a school that was not given the resources to adequately address them.

CONCLUSION

Michael is a young man with [REDACTED] who grew up in a home defined by physical, verbal and emotional abuse. His parents’ hyper-religiosity resulted in draconian rules and an atmosphere of intolerance. Michael experienced a complete breakdown of his caregiving system as his authentic expressions of self were demonized and punished by his parents. Michael’s sense of self was decimated by family violence, [REDACTED]

[REDACTED] The nexus of Michael’s toxic caregiving environment and [REDACTED] led to distorted relationship patterns as Michael became an adult. Michael’s cognitive impairments drew him to children and adolescents younger than him because the relationships felt familiar and safe.

[REDACTED]

Michael has never had the opportunity to live in the community as an adult with intensive monitoring. At the completion of his sentence for this offense, Michael will return to live with his parents or siblings, both of whom have agreed to house and support him. Michael would be subject to conditions of both supervised release and the sex offender registry. He would have no computer or internet access and would be living with structure and support which would adequately address future risk.

ERIK MERCER, L.C.S.W.

[REDACTED]

Thank you for your consideration of this report.

Sincerely,

Erik Mercer, LCSW

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EXHIBIT B

June 1, 2023

Dear Judge Katherine Polk Failla,

By this means, I want to give testimony of my son Michael Barreto. I am Brenda Barretto, the mom of Michael Barreto. I am 70 years old, and I live in New Jersey with my husband. As a mother seeing my child in these circumstances, I have suffered a great deal.

As a child Michael was very affectionate, smiling always, and a good child with his little pranks. He was active always and very sweet. He loved to help people. His dad used to take him to the park. We spent most of the time together at home and going to different places together.

At the age of 10 on October 10, 1998, our son suffered a terrible, traumatic automobile accident where his quality of life changed forever. He was never again the same child who loved life and wanted to achieve more. It was a huge multi car pile-up accident. It was even scarier than any accident in the movies. We were going to Massachusetts and were near Hartford on a four-lane highway. I was driving the car and had Michael and his sister's two children with me. After the crash we kept going for 80 feet and were upside-down. When the crash happened, my granddaughter flew and Michael caught her, saving the life of a two-month-old baby, his sister's daughter. His arm went through the window real bad and was dragged along the ground. Glass shattered and was everywhere on the road. It's hard for me to think about. I still get some flashbacks.

[REDACTED]
[REDACTED]
[REDACTED]. Throughout this process, us as his parents tried our best to help Michael through different means.

[REDACTED]
[REDACTED] I was scared for him because of all the things happening. I would pray all the time. Sometimes I ask where things went wrong and who is to blame. Us as parents tried our best to keep him within the reach of the best and instructed him in spiritual values of love to God Jehovah and neighbor.

[REDACTED]

[REDACTED]

[REDACTED]

We lived together as family for a long time, but then my husband and I needed to move to New Jersey and leave the city. When we moved out of the apartment Michael and his brother Daniel didn't want to come. Michael was already over 18 so I told him okay, he can stay, but he has to learn how to take care of himself a little. He started to learn little things like how to cook rice and beans so he could eat. It was a big deal that he learned those things.

[REDACTED]

While living with Daniel in his 20s, he got really into computer and video games. I would visit him every two or three weeks at this time and we'd talk on the phone all the time. He wasn't the kind of the person to have many friends. He had some friends but some of them moved away with time. One friend he knew since he was a baby went to Florida and he was so upset. He was always scared to leave the house, so visiting someone so far away felt totally impossible to him. Even when he needed to get new cat food or litter, he would call me asking if I could go to the store because he didn't want to go outside.

Today it really hurts to see our son facing criminal charges of this kind, deeply knowing that Michael loves and cares for others. He always liked to care for homeless, for the needs of others. He used to bring homeless people home and say, "Mommy they need food and a home." I would make them a plate of food and say, "Michael they cannot stay here, you need to take them to a shelter." He would bring people over so we could go to church together and

we would pray for them. He brought in injured birds from the outside too. He is sensitive and knows he wants to help but doesn't always know the best way to help. He didn't understand that we cannot give a home to everyone or fix every bird.

With Michael in jail, it is hard on me in the family. We haven't seen him as much as we want in the three years since COVID happened. It's very hard to send money and make sure he is okay. He doesn't get all our letters and we don't get his. Before the pandemic we would go see him as often as we could but even then sometimes we'd be turned away after making the trip from New Jersey because of lockdowns or other reasons we have no control over.

Now I am already 70, my husband going on 70, and our health is only getting worse. I am hard of hearing and use hearing aids, and I suffer from asthma and have a high risk of heart stroke. I take medication. It's also hard for me to walk because of the inflammation in my knees. My husband's health is worse than mine. He has heart issues and it is hard for him to work because he gets dizzy. He has had two operations for his glaucoma. We miss Michael. I want to spend time together while we are still okay. We know we can support Michael when he comes home – we just know we are not getting any healthier. My 97-year-old mother, who I was taking care of for the past several years, passed away too and her passing reminded me how short and fragile our life is. It really hurts to see our son in this situation, and we want Michael home as soon as possible before he loses more years of our life together.

These past few months especially have been difficult for Michael and for us. We recently lost our son-in-law, Edwin, the husband of Michael's sister Jessica. He passed very suddenly and it hit Michael very hard. Edwin and Michael were very close, and they spent a lot of time together especially after Michael's accident. Edwin used to counsel Michael a lot and they always got along well. Jessica is very depressed right now, she can't work and is struggling to take care of her three kids. We all need to support each other as a family, and it is hard for Michael being alone.

We beg the court to give him no more than 10 years. I know my boy is not perfect, and that he has hurt people. But with all my heart, [REDACTED]
[REDACTED] py. Michael does have problems he needs help fixing, but he is my son and I want to help him through them.

Sincerely,
Brenda Barretto

EXHIBIT C

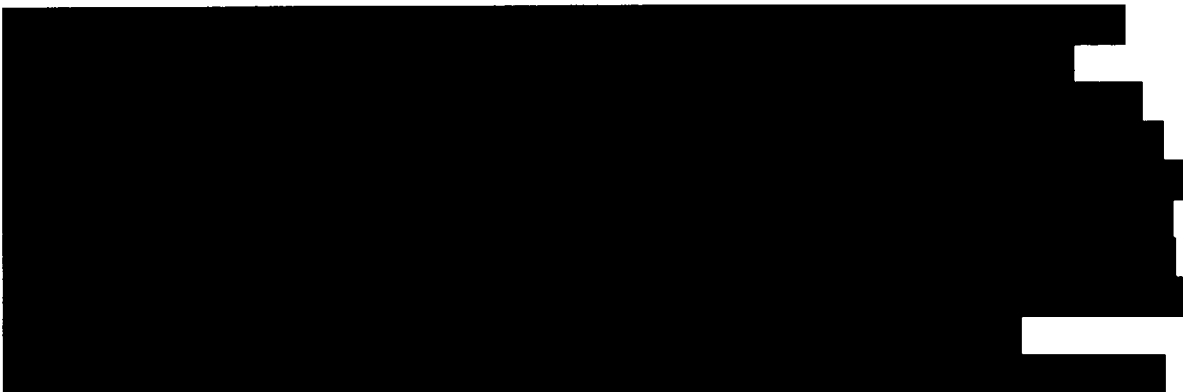
06/08/2023

Dear Judge Katherine Polk Failla:

My name is Jessica Barretto Diaz. I am the oldest of 5 children's. Michael Barreto is the youngest of all. I have known Michael since birth. I cared for him until the day I got married and move out. Michael was playful, loved to help out and did his share of mess around the house. He loved to bug all his older brother's just like all normal kids do.

Michael has done so many wonderful things for my family and I. It would take me a long time to tell all testimony. I cant stop thanking God for the way Michael cares and loves my family and I. To me, Michael saving my daughter's life is my main focus. It is one of the biggest deals that's ever happened in our family. On October 1998 Michael along with my two oldest children's was in a terrible car accident in which Michael saved my daughter's life. He took her in his arms risking his own life and body. I love him and forever will be thankful.

We were driving in three separate cars to move me to Massachusetts. My mom wanted to spend a few days helping me get settled and Michael didn't want to get left behind. I was in the car in front of Michael's with my husband. I was looking behind me for them to make sure they were still following and didn't get lost. I saw the other car come up so fast and hit my mom's car that Michael was in with my kids. Their car flew up in the air and turned completely upside down landing with the hood on the ground. I was screaming so loud and my husband was trying to calm me down as we turned around and drove against traffic to go back. At first I thought he was dead because of how bad it looked. I thank God that there were nurses and doctors on their way to work who stopped to help and jumped into action. Michael's elbow was bad because it came through the window as he held onto my daughter and dragged along the pavement of the highway as the car skidded upside down. My brother looked in such a state of shock. He didn't look normal like he wasn't there. He was little when it happened only 10 years old.



[REDACTED]

I have always stayed in contact with Michael from calling him, texting him and even visiting him when I would come to New York. Some people took advantage of him because they know how he is. People in his building would be harassing him and causing trouble. [REDACTED]

[REDACTED] They followed him from the building and beat on him on the corner. It was the afternoon in daylight. Michael don't know how to handle it so he just isolate himself. He was scared to go to the grocery store, I had to tell him he needs to go get food. He was always living in fear. It's hard for him to tell me about bad stuff. He knows I'm delicate with my brothers. I don't want bad things to happen to them especially when I'm not there.

Another thing about Michael is that he is so neat and clean. He freaks out if things are out of order and is always organizing and cleaning with chemicals. When you come to visit him he makes you put all your stuff in one corner so that he just has to clean that one spot after you leave. He needs fresh air in the house always so keeps windows open too.

Life has been hard lately. My daughter Michael saved is now 25 years old. Recently she's been opening up and sharing about her struggle. She has [REDACTED] [REDACTED] and was afraid of getting into cars. She always struggled with learning too. On March 21, 2023, my husband suddenly passed away. He was sick for several years and I was taking care of him. He had 2 brain surgeries, in 2018 and 2019, for his hemorrhages. They were both AVM removals. He did suffer from memory loss but he was doing okay. The doctors didn't find anything wrong with him at any of his physicals. Then suddenly he died from internal bleeding. It doesn't make any sense, I still don't understand why he died. I'm struggling, I'm frozen in time. Edwin's death caught me and my whole family by surprise and I'm still trying to process. My kids are not doing well. I work 3 jobs to catch up on the time I took off, and it's difficult. I don't think I could take any more bad news.

Michael being in jail makes all of this harder. He has been very very supportive of me in this time but I know he is hurting too. Michael really loved Edwin and he wanted to be there at his wake and burial. With everything Michael is going through in jail, I want to help him and protect him but I don't know how from here. He has already been locked up for almost 4 years. It makes even wishing him a happy birthday difficult. When I send cards, they get returned. I live in Massachusetts so I could never really visit him that much and COVID has made it impossible. I really want to visit him, but it's so far and the visiting is unreliable. My other family gets turned away for lockdowns or other things after traveling to get there. I really want Michael to get out so I can be in his life and support him as much as possible. When he gets out, I'll be there to visit and to call him as often as I can. I know my children,

who are teenagers now, always tell me they miss Michael and are looking forward to him coming home too.

Michael has a big heart and cares for many people around him. I remember many times that he has help my family out and even one time when I came to visit him he took me out to a salon to get my hair cut and colored without me asking him. He said it was because I was his big sister and he looks up to me. I love that Michael and want to help him.

From,

Jessica Barretto Diaz

EXHIBIT D

June 8, 2023

Dear Honorable Judge Katherine Polk Failla:


My name is Daniel Barretto. I am one of 4 siblings of Michael A. Barreto and am four years older than him. I am born to the Christian religion and have high faith in the Lord Jesus Christ. I live in Pennsylvania with my fiancé and son who is going on a year now. I currently work at the post office. I am writing this letter because I love my brother and miss him in my life. I beg the court to please sentence him with mercy.

I have known Michael since the day he was born. We both share the same mother and father, in which we both was raised by them as well. He is the youngest member of the family. Michael and myself lived together in the Bronx until 2018 when I got married and moved out. My parents moved out years before, in 2010 maybe. When Michael and I were living together, I was working full-time at Home Depot while going to school at Hostos Community College. Michael got money from SSI and family members and would help me out financially if I was short on rent or needed help. He worked at a fast-food place for a little while too, doing temporary work. He would get extra food at the grocery store to make sure I ate. When I moved out he helped me pack everything up, even getting up early to help. If you know Michael, you know he doesn't like to get up early. But he insisted on helping, carried everything to the car, and helped everything go smoothly. Michael and myself always stayed in contact with each other as much as possible from the time that I moved out. I would visit him and he would visit myself and my family at my apartment.

[REDACTED]

[REDACTED]

[REDACTED]



Right now, I live in Pennsylvania, so it is hard to visit Michael because of the distance and because of Covid restrictions. I haven't seen him since the pandemic has started. But I try to talk to him as much as possible. Whenever he can get on the phone, Michael always calls me. Sometimes I go weeks without talking to him because of lockdowns, and it is hard to send him mail because he doesn't get the letters we send. But I think about Michael every day. Sometimes I don't eat because I start thinking about his whole situation and I get to wondering how my brother is doing. I know for my parents, there's not even one day they don't think about him.

Michael has really been struggling mentally and emotionally. He has claustrophobia. Being in small spaces really makes him start to lose his mind and get stressed. I know he needs money in there, too. It's hard as it is for us to survive out here, but we try our best. Recently with Edwin's passing, Michael was really upset because he couldn't talk to our sister Jessi on the phone so he didn't know what was going on. He wanted to comfort her and tell her he was there for her even if he wasn't physically. It's hard for him to be so isolated from us. I try to keep my hope. I want him home.

Michael is very loving. He struggles to open up about things but is always there to help whoever is in need. Michael loves his cat Marshmallow, cooking and spending time with friends and family. He wanted one day to be a chef and cook for everyone. I am excited for my brother to come home and to just sit down and have dinner together. I want him to have a relationship with my kid. I know my nephews and nieces miss and love him too. They miss getting his advice on things.

When Michael comes home, I'm going to be there for him and help him as much as possible. Help him get back on his feet, get him enrolled into programs. We're a really supportive family. Most likely Michael will come home and live with my parents. I know my dad really wants that because he's getting older and Michael would be a big help to them. But if anything happens, Michael is always welcome to come live with me here in Pennsylvania. I will do anything and everything I can do to help my brother.

From,

Daniel Barretto

EXHIBIT E

June 8, 2023

Dear Honorable Judge Katherine Polk Failla:

My name is Oscar, the second oldest of my brother Michael's siblings. I work as a security guard in private sector business. I have a family of seven including my spouse. I am a Veteran of the U.S. Armed Forces. I have served my nation proudly and honorably.

My relationship with my brother Michael started Thirty-Four years ago. He was brought to this world and changed my life for the best. My memory of Michael has in many ways been of happiness. He was always happy as a young child and loved to play pranks, like hiding my book bag behind family furniture. At times it drove me crazy. He was always smiling and making me laugh and the entire family as well, when we were all together at the dinner table. I can honestly say Michael thru my eyes was always happy back then.

When I signed up to enlist into the Military, he was about 8 years old and I promised him that I will be back. Three months later, my parents traveled to Boot Camp to visit me during graduation, which then Michael and I was able to have a great family time. As time grew and I spent more and more time away, my communication with my brother Michael also grew apart. Not because of spite but because I was away and started my own family. I've lived in California for almost 20 years now. Many times I would visit my parents I ask if Mikey wanted to stay with my family and he would say no. Maybe because he was still in school at that time but also because he always loved the city.

There was a significant time when I thought I lost my brother Michael. It was after a major accident when he was about 10 years old. It was a day when we were moving my older sister Jess from New York to Mass. I was in the U-Haul truck out in front with my dad when it happened, and I had to turn back to see how bad it was. [REDACTED]

Over the next years I would have conversations with Mikey. He was always either visiting the [REDACTED] or playing video games. I would have conversations over the phone with him, I was not there for maybe $\frac{3}{4}$ of mikey's life because I left at 18 and started my own life. But most of the time we spoke over the phone he was positive no matter what. [REDACTED]

[REDACTED] think this also drives him to do attention grabbing things. He wants to express himself and be his true self but he doesn't always know how.

[REDACTED]

He is kind and loving person and will give anything to help out. We were raised in a Christian home with morals and values. Michael and I share those same values today. People in our neighborhood know who he is and how he is. Everywhere we went people were like, "what's up Mike". He is a person with a smile and loves to make me laugh. My wife loves Mikey and it was always a pleasure spending time with him. I feel sometimes people take advantage of Mikey's generosity. He wanted to be liked and have friends so he always gave people money and would treat people to food and things. When he couldn't do that his friends would go away. He would call me sad saying that no one was answering his messages. He's not a loner but was often alone. To me, Mikey is Big Bear with a soft heart. I can say one of my main concerns is him not having money or being able to care for himself because of the neighborhood in which he was living was not so good. I was raised in that neighborhood where he lived at. He was hanging around people I would never hang around because he wanted friends and to make people laugh. It's not always a bad thing though. At my wedding in 2008 he was acting like he was drunk even though he only had apple cider the whole night. It made everyone laugh.

I worry about Michael all the time, [REDACTED]

[REDACTED] All his resources are taken away and I don't know what kind of specialized treatment the prison can give him. I worry he'll get out years and years from now with less skills of how to live normal life than he does now. In prison there is so much aggression and fighting. I don't want him to pick up on those things or be victim to them.

Since the detention of Michael, it's been hard being in contact with him, first because of Covid and even after with all the restrictions. The last time I spoke to him was a month ago, that was after Edwin passed. Michael called me again after that, and we had a short conversation, but my time with him isn't as much as I would have enjoyed it to be. I wish I could be there and hear more about his real true feelings. It is hard to be so far away and dealing with all of this.

It's really hard knowing that Michael will be in prison for many more years. But I ask the judge to give Mike the lowest possible sentence because I want him back home. Please consider Michael

as a person and the way that he is. He doesn't do things to deliberately hurt others. [REDACTED]
[REDACTED] Right now, he has a loving family and people who do support him. Once he is out, it will take him a while to get used to being in society again and he will need support and rehabilitation. But if he gets so many years, our mom and dad are going to be passed. He's not going to have nothing. Please, Your Honor, consider the time that he has served, and the long term negative effect if he were to get much more time.

Michael has always been there for my kids. He's that kind of uncle, my kids love him. When he gets out, my kids may still be teenagers. I want them to have that relationship still. When Mike comes home, I will do my best to help him financially so that he can get the best mental health services. I don't want money to be a factor in the help he can get. I will also come visit him and of course, whenever he comes to visit California, I will be here for him. [REDACTED]
[REDACTED] . Michael needs help. I always want my brother to be the best despite his struggles. I still believe in him and love him.

Sincerely,
Oscar Barretto

EXHIBIT F

June 8, 2023

Honorable Judge Katherine Polk Failla,

My name is Oscar Barretto and I am Michael Barreto's father. I live in New Jersey with my wife Brenda and I have been working as a machinist in Fair Lawn, New Jersey for the last 22 years. Before that, I also worked in the Bronx and Yonkers as a machinist for 25 years. I am a devoted Christian.

Michael is my youngest child, eleven years younger than my oldest, his sister Jessica. The two of them were close and she tried to help him. She would give Michael baths and cook and dress the kids from when they were young. She always protected Michael from bullies. As a kid, Michael was very active. I worked a lot, so it was mainly my wife at home taking care of the five kids while I was at work. I used to take him to the park on weekends and when I got back from work so he could run the track. I taught him how to play baseball and he loved it. He seemed like a happy child. He played with friends, and his cousins used to live in the same building in the Bronx, so they would come over and play games. I took him to church with me on the weekends.

As a teenager, he started changing. Most of the changes took place after the accident he was in when he was ten years old. [REDACTED]

[REDACTED] He also started getting picked on by kids in school. He told my wife about it, and she would go and try to fix the situation. I really don't know why people were bullying him because he wasn't small or anything. But it was hard on him. During his teenage years, I worked two jobs as a machinist and part time in security, and I began working weekends sometimes as well to make ends meet. I couldn't spend as much time with him as I would have liked but we did sit and talk sometimes.

When Michael turned 21, I bought a house and decided to move to New Jersey. The neighborhood was loud and started getting more dangerous and I wanted to move to a quieter place. I told Michael to come with his us, his parents, but he wanted to stay and live with his brother Daniel. Daniel is the sibling right above him, and he has always looked out for Michael. So my wife and I moved to New Jersey, and Michael lived with Daniel in the same apartment in the Bronx that we had lived in for over thirty years.

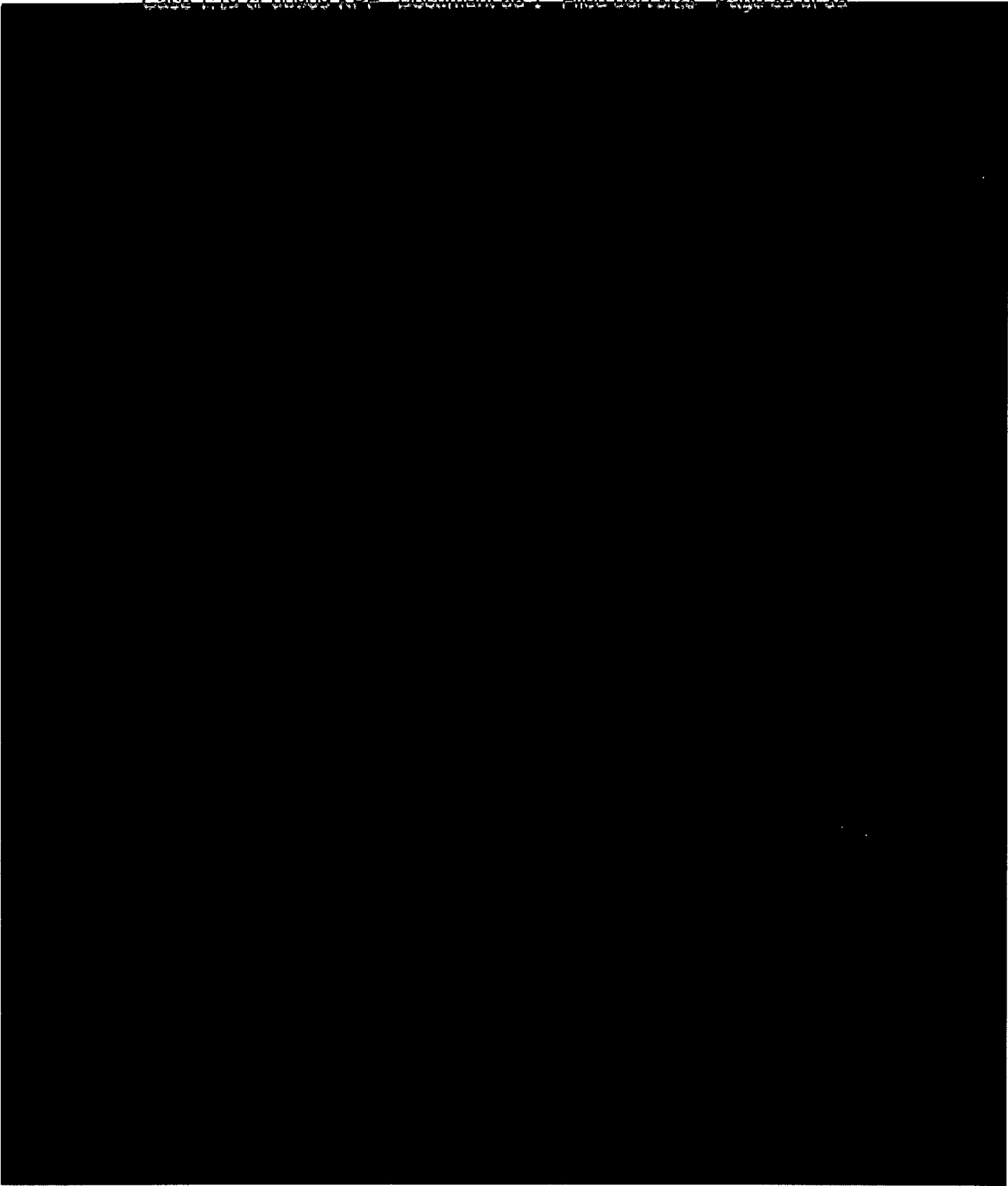
I know my children will support Michael when he comes back out, but I hope my wife and I are still around too. The last time we saw him was already three months ago, but he calls us every chance he gets. He is scared in jail. Michael is really just a kid. I worry about him a lot. I think about it and I start crying. I cry because I miss him. Jail isn't doing anything for him. What he needs is his family's support. I turn 70 in September, and I have high blood pressure and glaucoma. I had a laser operation done on my eyes, and I'm doing better, but I'm worried for Michael if he comes out after years in prison and my wife and I are sick or have passed on.

I will support Michael and help him get on his feet when he comes home. I have a spare room in my house, and I want Mikey to come live with us. He's my son, and we will never abandon him. He is a good kid and I want to be there for him. Please have compassion on him and give him less years. He has already been in jail for several years, and he is not in the best mental condition. Please be compassionate on our family.

Sincerely,

Oscar Barretto

EXHIBIT G



APPENDIX F
[FILED UNDER SEAL]

APPENDIX G
[FILED UNDER SEAL]

APPENDIX H
[FILED UNDER SEAL]

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES

No. 25-

-----X

Michael Barreto,

Petitioner,

v.

United States of America,

Respondent.

-----X

STATE OF NEW YORK)

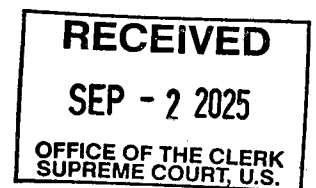
COUNTY OF NEW YORK)

I, Noel Reyes, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Petitioner*.

That on the 28th day of August 2025, I served the within Redacted *Petition for a Writ of Certiorari* and *Petitioner's Motion for Leave to Proceed in Forma Pauperis* in the above-captioned matter upon:

D. John Sauer
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 479-3011
SupremeCtBriefs@usdoj.gov
Attorney for Respondent



by sending three copies of same, addressed to each individual respectively, through FedEx Overnight Mail.

That on the same date as above, I sent to this Court eleven copies of the within Redacted *Petition for a Writ of Certiorari* and *Petitioner's Motion for Leave to Proceed in Forma Pauperis* through the Overnight Next Day Federal Express, postage prepaid.

All parties required to be served have been served.

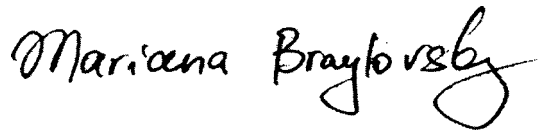
I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of August 2025.



Noel Reyes

Sworn to and subscribed before me this 28th day of August 2025.



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

