

PETITION APPENDIX

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APPENDIX A

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10825
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GAVIN MICHAEL HAROLD,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:23-cr-00054-TPB-KCD-1

No. 24-12506
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

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Opinion of the Court

24-10825

versus

GAVIN MICHAEL HAROLD,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:23-cr-00054-TPB-KCD-1

Before JORDAN, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

Gavin Harold appeals the \$37,000 restitution award imposed against him in connection with his sentence of 78 months' imprisonment for his conviction of possession of prepubescent child pornography under 18 U.S.C. § 2252(a)(4)(B) and (b)(2). Harold argues that the district court violated his Fifth and Sixth Amendment rights under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), by imposing mandatory minimum restitution awards based on judicial factfinding. He also argues that the district court erred by awarding \$3,000 in restitution to one of the victims ("the MotherFull victim") because the Government failed to meet its burden under 18 U.S.C. § 2259 of

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showing that he proximately caused losses suffered by the victim. After review,¹ we affirm.

I. DISCUSSION

A. *Judicial Factfinding*

Harold first argues that the district court violated his Fifth and Sixth Amendment rights under *Apprendi* and *Alleyne* by imposing a mandatory minimum restitution award based on judicial factfinding. Specifically, he asserts that under *Alleyne* the factfinding necessary to support a mandatory minimum restitution award under § 2259 must be conducted by a jury rather than a judge.

This argument is foreclosed by binding precedent. In *United States v. Kluge*, we rejected an identical argument and held that *Alleyne* did not govern mandatory minimum restitution awards under § 2259. No. 23-10697, --- F.4th ---, manuscript op. at *16-19 (11th Cir. July 31, 2025) (citing *Dohrmann v. United States*, 442 F.3d 1279 (11th Cir. 2006)). Accordingly, the district court did not err on this ground.

B. *MotherFull Victim*

Harold also argues that the district court erred by awarding \$3,000 in restitution to the MotherFull victim because the

¹ “We review *de novo* the legality of a restitution order, but review for clear error the factual findings underlying that order.” *United States v. Rothenberg*, 923 F.3d 1309, 1327 (11th Cir. 2019).

Government failed to meet its burden in showing that he proximately caused losses suffered by the victim.

As an initial matter, we disagree with the Government that we should review this issue for plain error. *See United States v. Straub*, 508 F.3d 1003, 1008 (11th Cir. 2007) (“When the defendant does not preserve an argument for appeal, we review for plain error.”). Harold argued before the district court that the MotherFull victim was not entitled to a restitution award because her restitution request did not quantify any losses that she claimed to have suffered. Even though there are differences between that argument and the one he now raises, an appellant may raise alternative arguments on appeal as to a preserved issue. *See United States v. Horn*, 129 F.4th 1275, 1297-98 (11th Cir. 2025) (“Precedent is clear that while an issue can be waived, alternative arguments on an issue cannot.”); *United States v. Brown*, 934 F.3d 1278, 1306-07 (11th Cir. 2019) (“[O]nce a party has preserved an issue, it may ‘make any argument in support of that claim; parties are not limited to the precise arguments they made below.’” (quoting *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534 (1992))). Harold’s argument on appeal is based on the same issue he raised in the district court—whether the MotherFull victim was entitled to restitution based on her non-specific restitution request—so Harold has preserved this issue for appellate review.

As to the merits of the appeal, we conclude that the district court did not err by awarding \$3,000 in restitution, the mandatory minimum award under § 2259, to the MotherFull victim.

Pursuant to § 2259, district courts must award restitution to victims of a defendant convicted of “trafficking in child pornography,” which includes possession of child pornography under § 2252. 18 U.S.C. § 2259(b)(1)-(2), (c)(3). The statute defines “victim” as any “individual harmed as a result of a commission of a crime under this chapter.” *Id.* § 2259(c)(4); *United States v. McDaniel*, 631 F.3d 1204, 1208 (11th Cir. 2011) (concluding that an individual was a victim for purposes of § 2259(c)(4) where the defendant possessed images of her sexual abuse as a minor).

Once a court concludes that an individual is a “victim” for purposes of § 2259, it must order restitution through the following procedures: First, the court must “determine the full amount of the victim’s losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.” 18 U.S.C. § 2259(b)(2)(A). Then, the court must “order restitution in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000.”² *Id.* § 2259(b)(2)(B). The statute defines “the full amount of the victim’s losses” to include “any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim,” such as costs for psychiatric care, lost

² A district court must also ensure that “[a] victim’s total aggregate recovery . . . shall not exceed the full amount of the victim’s demonstrated losses.” 18 U.S.C. § 2259(b)(2)(C). Whether the district court complied with this requirement is not at issue in this appeal.

income, and “any other relevant losses.” *Id.* § 2259(c)(2). It is the Government’s burden to establish a victim’s entitlement to restitution by the preponderance of the evidence. *See id.* § 3664(e) (“The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government.”); *id.* § 2259(b)(3) (“An order of restitution under this section shall be issued and enforced in accordance with section 3664. . . .”); *United States v. Osman*, 853 F.3d 1184, 1189 (11th Cir. 2017).

The Supreme Court has explained that a defendant’s offense conduct must proximately cause a victim’s losses for the victim to be entitled to restitution under § 2259, such that, “if the defendant’s offense conduct did not cause harm to an individual, that individual is by definition not a ‘victim’ entitled to restitution under § 2259.”³ *Paroline v. United States*, 572 U.S. 434, 445-48 (2014). Specifically, the Court explained,

[W]here it can be shown both that a defendant possessed a victim’s images and that a victim has outstanding losses caused by the continuing traffic in those images but where it is impossible to trace a particular amount of those losses to the individual

³ Congress amended § 2259 after the Supreme Court decided *Paroline*, and, although the amendment moved certain language around, it did not abrogate that case. *See United States v. Sotelo*, 130 F.4th 1229, 1250-51 (11th Cir. 2025) (“Far from displacing *Paroline*, the [law amending § 2259] recognized the approach outlined in *Paroline* as the proper one in § 2259 cases, and Congress explicitly mentioned *Paroline* in its findings.”).

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defendant by recourse to a more traditional causal inquiry, a court applying § 2259 should order restitution in an amount that comports with the defendant's relative role in the causal process that underlies the victim's general losses.

Id. at 458. The Court outlined certain factors that courts should consider in conducting this analysis but rejected a “precise mathematical inquiry” and instead recognized district courts’ “discretion and sound judgment” in making this determination. *Id.* at 459.

Harold argues that the Government failed to meet its burden under § 2259 as to the MotherFull victim because the sole evidence of that victim's loss, a letter written by the victim's parents, did not quantify the amount of loss suffered by the victim and did not contain sufficient information for the district court to determine whether he proximately caused any losses suffered by the victim for purposes of § 2259. Therefore, he reasons that the district court erred by concluding that the MotherFull victim was entitled to the mandatory minimum restitution award.

Harold is correct that the relevant letter, which is the only evidence that the Government submitted as to the MotherFull victim's losses, does not contain any specific quantification of those losses. The letter states that the MotherFull victim “has suffered greatly as a result of” her sexual exploitation. It adds that she “suffers severe anxiety attacks and has been diagnosed with anxiety, depression, [and] visual and auditory hallucinations as a result of the crimes committed against her,” and that she “is in therapy weekly and is on several prescription medications to help her deal

with the ongoing effects of this abuse.” The letter notes that “most” of the victim’s expenses are covered through Medicaid, but she and her family nevertheless suffer “financial impacts,” including that her father is unable to work a full-time job because he needs to constantly take her to doctors’ appointments and counseling sessions, which undermines their ability to save for the victim’s future. The letter does not contain a request for a specific amount of restitution, but the Government requested the mandatory minimum on the victim’s behalf.

This letter, while scant of important details, is sufficient to satisfy the Government’s burden as to the \$3,000 mandatory minimum restitution award under § 2259, in conjunction with the unobjected-to facts in the presentence investigation report (“PSI”) detailing that Harold possessed depictions of the MotherFull victim’s sexual abuse. *See United States v. Thomas*, 32 F.4th 1073, 1077 (11th Cir. 2022) (“[U]nobjected-to factual allegations in the [PSI] are admitted for sentencing purposes.”). The letter is sufficient to show that the MotherFull victim suffered at least some financial losses as a result of her sexual exploitation, and that Harold’s possession of the image and video depicting her proximately caused at least some of those losses. *See McDaniel*, 631 F.3d at 1209 (holding that the defendant’s possession of images depicting the victim proximately caused her losses relating to her trauma and emotional issues).

Although the letter does not contain any specific quantification of the losses suffered by the MotherFull victim, the district court was permitted to “accept a reasonable estimate of the loss

based on the evidence presented.” *Osman*, 853 F.3d at 1189 (quotation marks omitted). Therefore, the district court could use the letter to accept the Government’s position that the MotherFull victim suffered at least some loss such that she was entitled to some amount of restitution under § 2259. See *United States v. Rothenberg*, 923 F.3d 1309, 1337 (11th Cir. 2019) (rejecting an argument that the Government failed to satisfy its burden under § 2259 where the victims did not submit “psychological or economic reports detailing their losses” but relied solely on a declaration written by their counsel describing their losses); *United States v. Sotelo*, 130 F.4th 1229, 1252 (11th Cir. 2025) (same).

Once the district court determined that the MotherFull victim was entitled to some amount of restitution under § 2259, it was required at the very least to award her \$3,000. See 18 U.S.C. § 2259(b)(2)(B), (4)(A). For that reason, the district court did not err by awarding the mandatory minimum restitution amount to the MotherFull victim.⁴

II. CONCLUSION

The district court did not violate Harold’s Fifth and Sixth Amendment rights by imposing a mandatory minimum restitution award through judicial factfinding. The district court also did not

⁴ It appears that the district court did not technically comply with all of § 2259’s procedures because it did not determine the full amount of the MotherFull victim’s losses or conduct the *Paroline* causation analysis. See 18 U.S.C. § 2259(b)(2)(A); *Paroline*, 572 U.S. at 458-59. However, Harold did not raise this issue in his appellate brief, so it is not properly before us.

err by awarding the MotherFull victim the mandatory minimum restitution amount under § 2259. Accordingly, we affirm the restitution award.

AFFIRMED.

APPENDIX B

| | | |
|------------|-----|---|
| 06/18/2024 | 101 | ENDORSED ORDER: Defendant's motion (Doc. 99) is denied to the extent that the Court declines to empanel a jury to determine the amount of restitution. The Court will consider Defendant's objections at the restitution hearing. Signed by Judge Thomas P. Barber on 6/18/2024. (ANL) (Entered: 06/18/2024) |
|------------|-----|---|

APPENDIX C

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

UNITED STATES OF AMERICA

v.

Case Number: 2:23-cr-54-TPB-KCD

GAVIN MICHAEL HAROLD

USM Number: 57905-510

Date of Original Judgment: March 11, 2024

**James Lappan, AFPD
2075 West First Street
Suite 300
Ft Myers, FL 33901**

AMENDED¹ JUDGMENT IN A CRIMINAL CASE

Defendant pleaded guilty to Count One of the Indictment. Defendant is adjudicated guilty of this offense:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|--|--|-----------------------------------|----------------------------|
| 18 U.S.C. § 2252(a)(4)(B), 18 U.S.C. § 2252(b)(2) | Possession of Prepubescent Child Pornography | March 20, 2023 | One |

Defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that 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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Judgment:

March 1, 2024



THOMAS P. BARBER
UNITED STATES DISTRICT JUDGE

July 30, 2024

1: Amended pursuant to restitution hearing held on July 19, 2024.

Gavin Michael Harold
2:23-cr-54-60-KCD

IMPRISONMENT

Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **78 months**.

The Court makes the following recommendations to the Bureau of Prisons:

Incarceration at FCI Miami or FCI Coleman.

Defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Gavin Michael Harold
2:23-cr-54-60-KCD

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **life**.

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.
4. Defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
5. Defendant 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.

The defendant shall comply with the standard conditions that have been adopted by this court as well as any other conditions on the attached page.

Gavin Michael Harold
2:23-cr-54-60-KCD

STANDARD CONDITIONS OF SUPERVISION

As part of Defendant's supervised release, Defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for Defendant's 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 Defendant's conduct and condition.

1. Defendant must report to the probation office in the federal judicial district where Defendant is authorized to reside within 72 hours of Defendant's release from imprisonment, unless the probation officer instructs Defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, Defendant will receive instructions from the court or the probation officer about how and when Defendant must report to the probation officer, and Defendant must report to the probation officer as instructed.
3. Defendant must not knowingly leave the federal judicial district where Defendant is authorized to reside without first getting permission from the court or the probation officer.
4. Defendant must answer truthfully the questions asked by Defendant's probation officer.
5. Defendant must live at a place approved by the probation officer. If Defendant plans to change where Defendant lives or anything about Defendant's living arrangements (such as the people Defendant lives with), Defendant 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, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. Defendant must allow the probation officer to visit Defendant at any time at Defendant's home or elsewhere, and Defendant must permit the probation officer to take any items prohibited by the conditions of Defendant's supervision that the probation officer observes in plain view.
7. Defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses Defendant from doing so. If Defendant does not have full-time employment Defendant must try to find full-time employment, unless the probation officer excuses Defendant from doing so. If Defendant plans to change where Defendant works or anything about Defendant's work (such as Defendant's position or Defendant's job responsibilities), Defendant 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, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. Defendant must not communicate or interact with anyone Defendant knows is engaged in criminal activity. If Defendant knows someone has been convicted of a felony, Defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If Defendant is arrested or questioned by a law enforcement officer, Defendant must notify the probation officer within 72 hours.
10. Defendant 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. Defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that Defendant poses a risk to another person (including an organization), the probation officer may require Defendant to notify the person about the risk and Defendant must comply with that instruction. The probation officer may contact the person and confirm that Defendant has notified the person about the risk.
13. Defendant 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: _____

Gavin Michael Harold
2:23-cr-54-60-KCD

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
2. Defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. Defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the Probation Officer base on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.
3. Defendant shall register with the state sexual offender registration agency(s) in any state where you reside, visit, are employed, carry on a vocation, or are a student, as directed by Defendant's probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct Defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
4. Defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.
5. Defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.
6. Defendant shall not possess or use a computer with access to any online service at any location (including employment) without written approval from the probation officer. This includes access through any Internet service provider, bulletin board system, or any public or private computer network system. Defendant shall permit routine inspection of Defendant's computer system, hard drives, and other medial storage materials, to confirm adherence to this condition. This inspection shall be no more intrusive than is necessary to ensure compliance with this condition. Defendant shall inform Defendant's employer, or other third party who may be impacted by this condition, of this computer-related restriction and the computer inspection provision of the condition.
7. Defendant shall submit to a search of Defendant's person, residence, place of business, any storage units under Defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. Defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.
8. Defendant shall submit to random drug testing not to exceed 104 tests per year.
9. Defendant shall cooperate in the collection of DNA, as directed by the Probation Officer.

Gavin Michael Harold
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CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

| | <u>Assessment</u> | <u>Restitution</u> | <u>Fine</u> | <u>AVAA Assessment¹</u> | <u>JVTA Assessment²</u> |
|---------------|-------------------|--------------------|---------------|--|------------------------------------|
| TOTALS | \$100.00 | \$37,000.00 | WAIVED | \$0.00 | \$0.00 |

Defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If 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 in full prior to the United States receiving payment.

| <u>Name of Payee</u> | <u>Restitution Ordered</u> |
|---|----------------------------|
| 2crazygurls series Restore the Child, PLLC (2crazygurls) 2522 N. Proctor St., Suite 85 Tacoma, WA 98406-5338 Payable to: Restore the Child in Trust for Chelsea | \$5,000 |
| aprilblonde series Restore the Child, PLLC (aprilblonde) 2522 N. Proctor St., Suite 85 Tacoma, WA 98406-5338 Payable to: Restore the Child in Trust for April | \$5,000 |
| BluesPink1 series Marsh Law Firm PLLC ATTN: Fiona P.O. Box 4668 #65135 New York, NY 10163-4668 Payable to: Marsh Law Firm PLLC in trust for Fiona | \$3,500 |

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of trafficking Act of 2015, Pub. L. No. 114-22.

Gavin Michael Harold
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CinderblockBlue series \$5,000

Marsh Law Firm PLLC

ATTN: Jane

P.O. Box 4668 #65135

New York, NY 10163-4668

Payable to: Marsh Law Firm PLLC in
trust for Jane

Jan_Socks1 series \$3,000

Kendra M. Oyen, LLC

503 N. Main Street, Suite 202

Pueblo, CO 81003

Payable to: Kendra M. Oyen, LLC
COLTAF for Jan Socks1

Motherfull 20121 series \$3,000

In care of the parent for the victim

Address to be provided by United
States Attorney's Office to Clerk of
Courts.

Sweet Purple Sugar series \$5,000

Deborah A. Bianco, P.S.

P.O. Box 6503

Bellevue, WA 98008

Payable to: Deborah A. Bianco, in
trust for Ava

Sweet White Sugar series \$7,500

Deborah A. Bianco, P.S.

P.O. Box 6503

Bellevue, WA 98008

Payable to: Deborah A. Bianco, in
trust for Pia

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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 A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Order of Forfeiture (**ECF No. 72**), that are subject to forfeiture.