

APPENDIX

United States v. Jovan Rivera Rodriguez, 160 F.4th 1193 (11th Cir. 2025)

FOR PUBLICATION
In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12336

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

KAREN ALTAGRACIA PEREZ,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cr-00204-RBD-DCI-2

No. 23-12977

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

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JOVAN RIVERA RODRIGUEZ,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cr-00204-RBD-DCI-3

Before WILLIAM PRYOR, Chief Judge, and BRANCH and ABUDU, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether a district court, on a motion to depart from a statutory minimum sentence for substantial assistance, *see* 18 U.S.C. § 3553(e), may depart further from the statutory minimum based on the general sentencing factors, *id.* § 3553(a). Karen Perez and Jovan Rivera Rodriguez were convicted of conspiracy to possess with intent to distribute vast quantities of fentanyl. Because of the quantity involved, they each faced mandatory sentences of ten years in prison. The government moved to reduce their sentences based on the substantial assistance they offered, but it opposed any reduction based on other factors. In both cases, the district court granted the substantial-assistance motion, and it reduced each sentence further based on the factors in section 3553(a). The government appealed both sentences. Because the text of section 3553(e) and our precedents make clear that departures for substantial assistance may be based only on the assistance factors, we vacate the sentences and remand to the district court to resentence Perez and Rivera Rodriguez.

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I. BACKGROUND

A federal grand jury indicted Karen Perez and Jovan Rivera Rodriguez for their role in a conspiracy to distribute fentanyl throughout the Orlando area. Perez and Rivera Rodriguez, along with their co-conspirators, distributed counterfeit pharmaceutical pills containing small amounts of fentanyl. Rivera Rodriguez picked up packages containing fentanyl and delivered them to his co-conspirators. Perez assisted her partner in unpacking the fentanyl pills at their house and sending them out to distributors. Both Rivera Rodriguez and Perez played minor roles in the conspiracy. But the quantity of drugs they distributed was not minor: both were responsible for possession or distribution of multiple kilograms of fentanyl.

Perez and Rivera Rodriguez pleaded guilty. Possession with intent to distribute more than 400 grams of fentanyl carries a minimum sentence of ten years. 21 U.S.C. § 841(b)(1)(A)(vi). The same minimum applies to drug conspiracies. *See id.* § 846. Because the amounts of fentanyl Perez and Rivera Rodriguez individually trafficked exceeded 400 grams, they each faced a minimum ten-year sentence.

Soon after she pleaded guilty, Perez and the prosecution began to dispute the appropriate sentence. Perez submitted a memorandum to the district court requesting two years of home confinement followed by supervised release, without reference to the statutory minimum. She relied on both sections 3553(a) and (e) as independent bases for a below-minimum sentence.

The prosecution filed a substantial-assistance motion under both section 5K1.1 of the Sentencing Guidelines and section 3553(e). The motion requested a two-level reduction in Perez's calculated offense level. It also argued that the district court could not depart further below the statutory minimum based on the general sentencing factors in section 3553(a).

The district court granted the prosecution's substantial-assistance motion and calculated a guideline range of 97 to 121 months. The district court asked the prosecutor what his position was on "the constraint on the Court of the minimum mandatory in light of the Government's 5K motion." The prosecutor reiterated the position taken in the motion: that the district court could not "vary below [the reduced sentence] based on noncooperation factors." After stating that it believed "the law is unsettled on that point," the district court asked defense counsel his opinion. Perez's counsel responded that, when the government files a substantial-assistance motion, "that resolves the minimum mandatory." The district court agreed with Perez and stated that "until the Eleventh Circuit tells me otherwise," it would "take into account all of the 3553 factors in fashioning a sentence," regardless of the mandatory minimum. It then sentenced Perez to 66 months in prison based on the factors in section 3553(a).

At Rivera Rodriguez's sentencing, the prosecution filed another substantial-assistance motion and again requested a two-point reduction in Rivera Rodriguez's offense level. The prosecution again objected to reducing the statutory minimum sentence

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further based on section 3553(a). Rivera Rodriguez’s sentencing memorandum stated in a footnote only that he “expects that [the minimum] will not apply in this case.” The district court told the parties at the hearing that when “the Government files a 5K motion, in my view I then have discretion to impose any sentence that I think is warranted.” After considering the section 3553(a) factors, the district court imposed a 60-month prison sentence.

II. STANDARD OF REVIEW

“We review *de novo* the legality of a sentence.” *United States v. Hall*, 64 F.4th 1200, 1202 (11th Cir. 2023).

III. DISCUSSION

Federal courts may reward defendants for substantial assistance to the prosecution in three ways. First, section 5K1.1 of the Sentencing Guidelines allows the government to move to reduce a defendant’s guideline range based on substantial assistance. *United States Sentencing Guidelines Manual* § 5K1.1 (Nov. 2024). That section lists five non-exhaustive factors a district court might consider in determining the extent of the reduction, each assistance-related. *See id.* Second, Federal Rule of Criminal Procedure 35(b) allows the government to move to reduce a criminal sentence to reward a defendant’s post-conviction assistance. FED. R. CRIM. P. 35(b). This rule allows the sentencing court to “reduce the sentence to a level below the minimum sentence established by statute.” *Id.* R. 35(b)(4). Third, section 3553(e)—titled “Limited Authority to Impose a Sentence Below a Statutory Minimum”—allows the sentencing court, “[u]pon motion of the Government,” to

sentence below a statutory minimum. 18 U.S.C. § 3553(e). This departure is “to reflect a defendant’s substantial assistance” in investigating or prosecuting another defendant. *Id.*

The district court erred. Section 3553(e) does not grant district courts authority to sentence a defendant below a statutory minimum based on non-assistance factors. That conclusion follows directly from the text and structure of section 3553(e), as made clear in several of our precedents.

We begin with the text. Subsection (e) neither obviates the statutory minimum nor allows a departure based on non-assistance factors. First, the subsection allows district courts to “impose a sentence below [the] level established by statute,” not to impose any sentence they desire. *Id.* And it tells us why departures from the statutory minimum are allowed: “so as to reflect a defendant’s substantial assistance.” *Id.* This clause establishes that the purpose of the reduction is to “‘reflect’ a defendant’s assistance.” *United States v. Winebarger*, 664 F.3d 388, 392 (3d Cir. 2011). Any further reduction based on non-assistance factors would not reflect a defendant’s substantial assistance and would “exceed[] the limited authority granted by [section] 3553(e).” *United States v. Williams*, 474 F.3d 1130, 1132 (8th Cir. 2007).

If the correct answer is not apparent from the text of subsection (e), the context leaves no doubt. Subsection (e) is paired with subsection (f) as the “only two circumstances in which a court can depart downward” from a minimum sentence in section 3553. *United States v. Simpson*, 228 F.3d 1294, 1304 (11th Cir. 2000). Where

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Congress includes language in one section and omits it elsewhere, “it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation and internal quotation marks omitted). Unlike subsection (e), subsection (f) expressly allows a district court to sentence a defendant “without regard to any statutory minimum sentence.” 18 U.S.C. § 3553(f). It allows the district court to sentence as it pleases and to consider all the subsection (a) factors. In contrast, subsection (e) “retains the mandatory minimum.” *United States v. Ahlers*, 305 F.3d 54, 59 (1st Cir. 2002). Comparison with subsection (f) underscores what is clear from the text of subsection (e): a substantial-assistance motion does not eliminate the mandatory minimum. Instead, it allows “for a specific, carefully circumscribed type of departure.” *Id.*

If the whole text of the statute failed to settle the issue, this Court has left no doubt. Our precedents recognize each premise in this chain and its inevitable conclusion. In *United States v. Williams*, we held that section 3553(e), unlike subsection (f), leaves the statutory minimum in place. 549 F.3d 1337, 1341 (11th Cir. 2008). In *United States v. Castaing-Sosa*, we held that section 3553(a) provides no authority to vary below a statutory minimum. 530 F.3d 1358, 1361 (11th Cir. 2008). And in *United States v. Mangaroo*, we instructed a district court to “consider *only* substantial assistance factors” in determining the extent of the departure from the statutory minimum. 504 F.3d 1350, 1356 (11th Cir. 2007) (emphasis added). In so doing, we reaffirmed our decision in *United States v. Aponte* that a motion under section 3553(e) could “accord[] [the defendant]

full credit *only* for the ‘substantial assistance’ he had rendered.” 36 F.3d 1050, 1052 (11th Cir. 1994) (emphasis added). These precedents settle that section 3553(e) grants no authority to depart from a statutory minimum except based on assistance factors and that a district court cannot vary further downward based on the factors in section 3553(a).

All our numbered sister circuits agree. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits have each held that a departure under section 3553(e) must be based on assistance factors alone. See *Ahlers*, 305 F.3d at 55; *United States v. Richardson*, 521 F.3d 149, 159 (2d Cir. 2008); *Winebarger*, 664 F.3d at 392–93; *United States v. Spinks*, 770 F.3d 285, 287 (4th Cir. 2014); *United States v. Desselle*, 450 F.3d 179, 182 (5th Cir. 2006); *United States v. Williams*, 687 F.3d 283, 286 (6th Cir. 2012); *United States v. Johnson*, 580 F.3d 666, 672 (7th Cir. 2009); *Williams*, 474 F.3d at 1131–32; *United States v. Lee*, 725 F.3d 1159, 1168 (9th Cir. 2013); *United States v. A.B.*, 529 F.3d 1275, 1285 (10th Cir. 2008). That unanimous consensus confirms our interpretation.

Perez and Rivera Rodriguez argue that the “mandatory principles” of “just sentencing” embedded in section 3553(a) must govern sentences under subsection (e). But this argument is foreclosed by *Castaing-Sosa*. Subsection (a) “merely lists the factors the district court must consider in determining an appropriate sentence.” *Castaing-Sosa*, 530 F.3d at 1361. A sentencing judge may still consider the section 3553(a) factors in deciding whether to grant a departure from the statutory minimum. This limited discretion does

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not override Congress's determination that a particular minimum sentence is warranted. Perez and Rivera Rodriguez also fail to discuss the limiting clause of subsection (e) or the stark differences in how statutory minimums are treated in subsections (e) and (f). And they cannot deny the unanimous weight of circuit authority.

Perez and Rivera Rodriguez suggest that the government relies on dicta from inapposite cases, but we disagree. The holdings of *Williams*, *Mangaroo*, and *Castaing-Sosa* alone dictate our decision. Neither Perez nor Rivera Rodriguez address *Aponte*. Although they argue that *Mangaroo* confronted a narrower issue, they ignore that we instructed the district court to “consider only substantial assistance factors” in determining the defendant’s sentence pursuant to a section 3553(e) motion. 504 F.3d at 1356. “Specific instructions to a trial court, which limit what it may consider or hold on remand, are not dicta.” *Morales v. Zenith Ins. Co.*, 714 F.3d 1220, 1225 n.9 (11th Cir. 2013).

The extent of any departure from a statutory minimum under section 3553(e) must be based only on substantial-assistance factors. District courts may not vary downward based on section 3553(a). If this Court has not yet squarely held it, we do so now.

IV. CONCLUSION

We **VACATE** the sentences and **REMAND** with instructions to resentence Perez and Rivera Rodriguez in accordance with this opinion.

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ABUDU, J., Concurring

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ABUDU, Circuit Judge, Concurring:

I join the Court’s opinion in full as the text and our precedent make clear that a district court cannot invoke the general sentencing factors in 18 U.S.C. § 3553(a) to reduce a sentence below a statutory mandatory minimum once that minimum applies. Section 3553(e) permits departures only “to reflect a defendant’s substantial assistance” in investigating or prosecuting another offender, and nothing more. As the district court here relied on Section 3553(a) factors to go further below the statutory minimum, vacatur and remand are required. I write separately to highlight broader concerns about how this framework operates in practice.

Our Court has long held that statutory mandatory minimums remain binding absent a narrow statutory exception. Our decision today reinforces what this Court and every other numbered sister circuit has repeatedly said: a statutory minimum cannot be displaced by reference to the general Section 3553(a) factors. In *United States v. Castaing-Sosa*, 530 F.3d 1358, 1361 (11th Cir. 2008), we explained that Section 3553(a) provides no authority to vary below that minimum. In *United States v. Mangaroo*, 504 F.3d 1350, 1356 (11th Cir. 2007), we instructed the district court to “consider only substantial assistance factors” when departing under Section 3553(e), reaffirming what we said in *United States v. Aponte*, 36 F.3d 1050, 1052 (11th Cir. 1994): a defendant is entitled to credit for assistance rendered, but not to a broader reconsideration of all Section 3553(a) factors.

Taken together, these precedents create a one-directional sentencing regime. A district court may always look upward, guided by Section 3553(a), to impose a harsher sentence than the Sentencing Guidelines recommend. However, when a statutory minimum applies, a district court cannot look downward—except to the extent permitted under Section 3553(e) for substantial assistance, or under Section 3553(f) when the safety-valve provision applies.

This asymmetry warrants reflection.¹ Under the Guidelines, Section 1B1.1 itself directs that the Section 3553(a) factors are always to be considered last in calculating a sentence. District courts use these factors to vary above and below guideline sentences based on a range of factors, including the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence to afford adequate deterrence to criminal conduct and provide just punishment. Yet when a statutory minimum applies, the district court cannot use the Section 3553(a) factors to vary downward. Instead, the factors give way, and in the context of a Section 3553(e) motion, any departure must be solely based on the defendant’s “substantial assistance.” Notably, a judge may still increase a sentence to reflect the seriousness of an offense or the need for deterrence, but she cannot decrease it to reflect a

¹ The Supreme Court in *United States v. Booker*, 543 U.S. 220, 245 (2005), emphasized that the Guidelines should be “effectively advisory,” designed both to promote national uniformity and to preserve individualized sentencing. In *United States v. Henry*, 1 F.4th 1315, 1323–24 (11th Cir. 2021), we confirmed that courts err when they treat any Guidelines provision as binding.

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ABUDU, J., Concurring

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defendant's minor role, personal history, or other Section 3553(a) considerations once the floor is re-set.

This restriction means that defendants with markedly different levels of culpability, personal histories, or prospects for rehabilitation may nonetheless receive identical sentences, or the defendant who played a greater role may receive a lower sentence, based entirely on the assistance rendered, the prosecutor's willingness to bring a motion, and how the district court measures such assistance.² See, e.g., *United States v. Crisp*, 454 F.3d 1285, 1292 (11th Cir. 2006) (holding that, when granting a U.S.S.G § 5K1.1 substantial-assistance departure, a district court may base the extent of the reduction only on assistance-related factors and may not consider other Section 3553(a) factors such as restitution, underscoring that cooperation—not culpability or personal circumstances—drives the reduction); *United States v. Livesay*, 525 F.3d 1081, 1092–93 (11th Cir. 2008) (explaining that a district court's Section 5K1.1 departure must be based solely on the defendant's assistance, and may not consider other factors such as culpability or personal history,

² See Sonja B. Starr & M. Marit Rehani, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker*, 123 YALE L.J. 2, 6–7 (2013) (finding that prosecutorial charging decisions interact with mandatory minimums in ways that heighten disparity, even in the post-*Booker* era); see also Shana Knizhnik, *Failed Snitches and Sentencing Stitches: Substantial Assistance and the Cooperator's Dilemma*, 90 N.Y.U. L. REV. 1722, 1755 n.205 (2015) (“It is for this reason that under the current sentencing regime, prosecutors must specifically make motions . . . in order for a judge to sentence below a mandatory minimum, rather than motions pursuant to § 5K1.1 of the Sentencing Guidelines.”).

meaning that defendants with differing roles or histories could receive similar sentences if their cooperation is assessed similarly).

The present case illustrates the consequences. Ms. Perez and Mr. Rivera Rodriguez were minor participants in a conspiracy involving large quantities of fentanyl. The district court found both had provided assistance, and it sought to impose sentences that accounted not only for that cooperation but also for their limited culpability and other statutory factors. In many other sentencing circumstances, we trust district courts with that discretion. However, in the current framework, that is not allowed under Section 3553(e). See *Castaing-Sosa*, 530 F.3d at 1361; *Mangaroo*, 504 F.3d at 1356. Restricting the district court’s discretion here heightens the risk of unwarranted disparities among defendants whose circumstances are materially different. As a matter of public policy, and perhaps due process,³ a sentencing framework that allows wide discretion to increase one’s sentence while barring comparable discretion for downward departures warrants reevaluation.

³ Cf. *United States v. Kikumura*, 918 F.2d 1084, 1119 (3rd Cir. 1990) (Rosenn, J., concurring) (reasoning that a defendant's due process rights may be violated by sentencing system that “replace[s] judicial discretion over sentencing with prosecutorial discretion”).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 6:22-cr-204-RBD-DCI

JOVAN RIVERA RODRIGUEZ

USM Number: 40640-510

Fritz J. Scheller, Retained
200 E Robinson St., Ste. 1150
Orlando, FL 32801

JUDGMENT IN A CRIMINAL CASE

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

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
21 U.S.C. §§ 846 and 841(b)(1)(A)	Conspiracy to Distribute and Possess with Intent to Distribute 400 Grams or More of a Mixture and Substance Containing a Detectible Amount of Fentanyl	December 14, 2022	One

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

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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

August 8, 2023



ROY B. DALTON, JR.
UNITED STATES DISTRICT JUDGE

August 9, 2023

Jovan Rivera Rodriguez
6:22-cr-204-RBD-DCI

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **SIXTY (60) MONTHS**.

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

1. Defendant be placed at USP Coleman, for familial proximity.
2. Defendant participate in RDAP (Residential Drug Abuse Program).

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

The defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Jovan Rivera Rodriguez
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SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **THREE (3) YEARS**.

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 placement on supervision and at least two periodic drug tests thereafter as directed by the probation officer. You must submit to random drug testing not to exceed 104 tests per year.
4. You must cooperate in the collection of DNA as directed by the probation officer.

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

The defendant shall also comply with the additional conditions as follows.

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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. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within **72 hours**.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature: _____

Date: _____

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ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.
2. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, 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. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.
3. The defendant shall cooperate in the collection of DNA, as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must 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	None.	Waived.	N/A	N/A

SCHEDULE OF PAYMENTS

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, U.S. District Court, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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.

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FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Plea Agreement (Doc. 86) and Preliminary Order of Forfeiture (Doc. 204), that are subject to forfeiture.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

18 U.S.C. § 3553

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to [section 994\(a\)\(1\) of title 28, United States Code](#), subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and

(ii) that, except as provided in [section 3742\(g\)](#), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to [section 994\(a\)\(3\) of title 28, United States Code](#), taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#));

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to [section 994\(a\)\(2\) of title 28, United States Code](#), subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and

(B) that, except as provided in [section 3742\(g\)](#), is in effect on the date the defendant is sentenced.¹

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of guidelines in imposing a sentence.--

(1) In general.--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.--

(A)² **Sentencing.--**In sentencing a defendant convicted of an offense under [section 1201](#) involving a minor victim, an offense under [section 1591](#), or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless--

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that--

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under [section 994\(a\) of title 28](#), taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) Statement of reasons for imposing a sentence.--The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under [section 994\(w\)\(1\)\(B\) of title 28](#), except to the extent that the court relies upon statements received in camera in accordance with [Federal Rule of Criminal Procedure 32](#). In the event that the court relies upon statements received in camera in accordance with [Federal Rule of Criminal Procedure 32](#) the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the

order of judgment and commitment, to the Probation System and to the Sentencing Commission,,³ and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice.--Prior to imposing an order of notice pursuant to [section 3555](#), the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall--

- (1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
- (2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
- (3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited authority to impose a sentence below a statutory minimum.--Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to [section 994 of title 28, United States Code](#).

(f) Limitation on applicability of statutory minimums in certain cases.--Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act ([21 U.S.C. 841, 844, 846](#)), section 1010 or 1013 of the Controlled Substances Import and Export Act ([21 U.S.C. 960, 963](#)), or [section 70503 or 70506 of title 46](#), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under [section 994 of title 28](#) without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

- (1) the defendant does not have--
 - (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
 - (B) a prior 3-point offense, as determined under the sentencing guidelines; and
 - (C) a prior 2-point violent offense, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

(g) Definition of violent offense.--As used in this section, the term “violent offense” means a crime of violence, as defined in [section 16](#), that is punishable by imprisonment.