APPENDIX

Petition for Writ of Certiorari
Cody Ballinger v. United States
No. __________

Opinion and Judgment of the Court of Appeals
United States v. Ballinger, 155 F.4th 671 (6th Cir. Sept. 16, 2025)

Order of the Court of Appeals Denying Petition for En Banc Rehearing
United States v. Ballinger, No. 23-5579 (6th Cir. Dec. 16, 2025)

Judgment of the District Court
United States v. Ballinger, 1:22-CR-00025 (E.D. Tenn. June 21, 2023)

2025 WL 2715334
Only the Westlaw citation is currently available.
United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Cody BALLINGER, Defendant-Appellant.

No. 23-5579
|
Decided and Filed: September 16, 2025. *

* This decision was originally filed as an unpublished opinion on September 16, 2025. The court has now designated the opinion for publication.

Synopsis
Background: Defendant pled guilty in the United States District Court for the Eastern District of Tennessee, Curtis L. Collier, Senior District Judge, to being felon in possession of firearm, and he appealed.

The Court of Appeals, Bush, Circuit Judge, held that district court's error failing to submit to jury question of whether defendant's prior burglary convictions were committed on occasions different from one another was harmless.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

Appeal from the United States District Court for the Eastern District of Tennessee at Chattanooga. No. 1:22-cr-00025-1—Curtis L. Collier, District Judge.

Attorneys and Law Firms

ON BRIEF: Jennifer Niles Coffin, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Knoxville, Tennessee, for Appellant. Luke A. McLaurin, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee.

Before: COLE, GIBBONS, and BUSH, Circuit Judges.

OPINION

BUSH, Circuit Judge.

***1** Defendant-Appellant Cody Ballinger pleaded guilty to a single count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court sentenced Ballinger to 180 months' imprisonment based on an enhancement under the mandatory minimum of the Armed Career Criminal Act (ACCA). Ballinger now appeals his sentence. We **AFFIRM**.

I.

Cody Ballinger cooperated when detectives arrived at his girlfriend's home in July 2021. After speaking with the detectives, Ballinger led them to the woods near the house. There they found a black duffel bag with a pistol inside. On the pistol were Ballinger's fingerprints. Given his past felonies, the government planned to charge Ballinger as a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

In February 2022, a federal grand jury indicted Ballinger of that single count. Close to a year later, Ballinger pleaded guilty to the charged offense. During the change-of-plea hearing, the Government informed Ballinger that he could face a higher sentence if he was found to be an Armed Career Criminal at sentencing. Ballinger did not object and acknowledged the possible consequences of his guilty plea.

After the guilty plea, the probation office filed a Presentence Report and a Revised Presentence Report (PSR). In the PSR, the probation office listed Ballinger's twenty-two prior felony convictions, eleven of which were for various forms of burglary. Each of Ballinger's burglaries took place in Bradley County, Tennessee, with nine separate victims noted. The dates of these burglaries bear on this appeal, so we recount them in full:

1. Burglary—Other than Habitation: November 22, 2010, convicted on February 28, 2011;

2. Burglary: January 4, 2016, convicted on November 14, 2018;

3. Aggravated Burglary: July 1, 2016, convicted on November 14, 2018;

4. Burglary: July 1, 2016, convicted on November 14, 2018;

5. Burglary: July 1, 2016, convicted on November 14, 2018;

6. Burglary: July 4, 2016, convicted on November 14, 2018;

7. Aggravated Burglary: July 6, 2016, convicted on November 14, 2018;

8. Aggravated Burglary: October 14, 2016, convicted on November 14, 2018;

9. Burglary: October 15, 2016, convicted on November 14, 2018;

10. Burglary: October 15, 2016, convicted on November 14, 2018;

11. Burglary: October 17, 2016, convicted on November 14, 2018.

Ballinger objected to the PSR in May 2023, but he did not dispute or object to the characterization of his criminal history. At sentencing, the district court found that the dates listed in the PSR accurately reflect the facts of Ballinger's convictions. Once again, Ballinger did not object or point to any inaccuracy in the PSR's recitation. Because this sentencing took place before the Supreme Court decided *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024), the district court made the determination from the PSR that Ballinger qualified as an Armed Career Criminal under the ACCA and imposed a mandatory minimum sentence of 180 months' imprisonment.

II.

The ACCA imposes an enhanced mandatory minimum sentence for felons found in possession of a firearm who have "three previous convictions" for a "violent felony or a serious drug offense, or both," that were "committed on occasions different from one another[.]" 18 U.S.C. § 924(e)(1). The ACCA defines violent felonies as those crimes punishable by more than one year's imprisonment that involve the use, attempted use, or threat to use "physical force against the person of another; or ... [are] *burglary*, arson, or extortion[.]" *Id.* § 924(e)(2)(B) (emphasis added). Ballinger does not dispute that his previous burglary convictions constitute violent felonies under the ACCA. He instead focuses on the different-occasions element of the ACCA enhancement.

***2** In 2022, at the time of Ballinger's sentencing, our precedent allowed district judges to determine whether predicate offenses were committed on different occasions. *See United States v. Williams*, 39 F.4th 342, 351 (6th Cir. 2022). *Erlinger* abrogated this rule. 602 U.S. at 833, 144 S.Ct. 1840. There, the Supreme Court held that the question of whether predicate violent felonies were committed on different occasions "must be submitted to a jury and found unanimously and beyond a reasonable doubt." *Id.* at 833–34, 144 S.Ct. 1840 (quotation omitted).

In this appeal, Ballinger asserts two errors based on *Erlinger*. *First*, Ballinger claims that applying the ACCA enhancement to his sentence amounts to structural error because the government failed to charge the ACCA enhancement in the indictment and failed to obtain a guilty plea where Ballinger knowingly "admits all the elements of the enhanced offense[.]" Appellant Br. 11. *Second*, Ballinger claims that even if harmless error review applies, the error here was not harmless.

We find neither argument persuasive.

A.

We have already decided that *Erlinger* errors are not structural. *United States v. Campbell*, 122 F.4th 624, 630–31 (6th Cir. 2024); *see also United States v. Thomas*, 142 F.4th 412, 417 (6th Cir. 2025). *Campbell* considered whether the failure to submit the different-occasions question to the jury amounted to a structural error—and concluded that it did not. 122 F.4th at 630–31. Following *Campbell*, the *Erlinger* error here was not structural.

B.

Because Ballinger's first claim of error fails, we turn to the second question: whether the error was harmless. Errors are harmless only "if the court can conclude beyond a reasonable doubt that the jury would have found the defendant's offenses occurred on different occasions." *United States v.*

Durham, No. 23-5162/5173, ––– F.4th ––––, ––––, 2025 WL 2355998, at *2 (6th Cir. Aug. 14, 2025) (per curiam). Given Ballinger's criminal history, we have no difficulty reaching that conclusion here.

Ballinger makes two arguments to support his cause: (1) the prior convictions could not have been presented through admissible evidence because *Erlinger* prohibited the use of *Shepard* documents to determine facts about prior offenses, and (2) some juries have acquitted defendants of ACCA offenses by finding that a long lapse in time was a single occasion. We reject both arguments.

Ballinger claims that *Erlinger* "expressly recogniz[ed] that *Shepard* documents are inherently unreliable" in this context. Appellant Br. 20. Once again, our precedent forecloses this argument. *Shepard* documents may still be relied on to conduct a harmless error review in the different-occasions context. *Thomas*, 142 F.4th at 418–19. This includes information contained in a PSR. *Id.* at 419. *Erlinger* only clarifies that courts should take caution with *Shepard* documents if a court has reason to "question the reliability of the PSR's findings." *Id.* But absent the defendant providing reason to doubt the information provided in the PSR, courts can still rely on the PSR when conducting a harmless-error inquiry. *Id.*; *see United States v. Geerken*, 506 F.3d 461, 467 (6th Cir. 2007) ("When a defendant fails to produce any evidence to contradict the facts set forth in the PSR, a district court is entitled to rely on those facts when sentencing the defendant.").

Now we apply this to Ballinger. Ballinger has provided no reason to doubt the dates and locations of his previous offenses laid out in the PSR. He makes the same critique of the PSR that *Erlinger* discussed for all *Shepard* documents. He does not provide a specific critique of the reliability of this PSR. Because Ballinger did not provide a basis for doubt, the district court was entitled to rely on the PSR to inform itself of the basic facts relating to his predicate crimes. *Thomas*, 142 F.4th at 419.

***3** We also reject Ballinger's second argument that this could not be harmless error because some juries have held that large gaps in time still constitute a single occasion. That argument misapprehends the nature of the analysis. When courts ask what a reasonable jury would have done, they are not asking empirically what past juries have done, but whether the evidence "could rationally lead to a contrary finding with respect to the omitted element." *Neder v. United States*, 527 U.S. 1, 19, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). The question is an objective one, and we have already rejected the use of actual jury decisions to inform the analysis. *See Campbell*, 122 F.4th at 633 ("After all, if only a theoretical possibility of acquittal were sufficient to defeat demonstrated harmless error, harmless error could not exist."); *Thomas*, 142 F.4th at 419.

Consider this issue in a different context: a manifest-weight-of-the-evidence challenge to a jury verdict. When a party challenges a jury verdict as being against the manifest weight of the evidence, we ask whether a "reasonable juror could reach the challenged verdict[.]" *Debity v. Monroe Cnty. Bd. Of Educ.*, 134 F.4th 389, 404 (6th Cir. 2025) (quoting *Barnes v. Owens-Corning Fiberglas Corp.*, 201 F.3d 815, 821 (6th Cir. 2000)). We conduct this review after the jury already reached the disputed verdict. But when undertaking this review, we have never concluded that because a jury, in fact, reached the challenged verdict, a reasonable jury must be able to reach the same verdict. Looking to real world juries would defeat the entire inquiry. Ballinger's argument to the contrary results in a circularity that no case requires. Instead, as with manifest-weight-of-the-evidence challenges, we examine the harmless error question through the objective lens of a reasonable jury. *See United States v. Cogdill*, 130 F.4th 523, 528–29 (6th Cir. 2025). This inquiry does not turn on the empirics of what a specific jury did in another case, but on what a *reasonable* jury would have done here. *See United States v. Kerley*, 838 F.2d 932, 938 (7th Cir. 1988).

III.

Ballinger does not raise the argument that his burglaries were committed on a single occasion. And, applying the factors laid out by the Supreme Court for a different-occasions inquiry, it is easy to understand why. *See United States v. Kimbrough*, 138 F.4th 473, 476 (6th Cir. 2025) (citing *Wooden v. United States*, 595 U.S. 360, 369, 142 S.Ct. 1063, 212 L.Ed.2d 187 (2022)). *Wooden* made clear that what constitutes an "occasion" is a multi-factored analysis that requires courts to look at timing, proximity of location, and the character and relationship of the offenses. 595 U.S. at 369, 142 S.Ct. 1063. The first two factors—timing and location—will often prove dispositive.[1] *Durham*, ––– F.4th at ––––, 2025 WL 2355998, at *2 (citing *Wooden*, 595 U.S. at 369–70, 142 S.Ct. 1063). And "[i]n many cases, a single factor—especially of time or place—can decisively differentiate occasions." *Wooden*, 595 U.S. at 369–70, 142 S.Ct. 1063.

3a

1 Ballinger analogized the different occasions question to cases analyzing whether someone had a common scheme or plan. While a common scheme can be relevant to the character and relationship of offenses, this only accounts for a single factor in the analysis, and not one that carries the same weight as time and distance. *Campbell*, 122 F.4th at 629.

Even with the Supreme Court's statement that courts "have nearly always treated offenses as occurring on separate occasions if a person committed them a day or more apart," the different-occasions question has proven harder to apply in practice. *Wooden*, 595 U.S. at 370, 142 S.Ct. 1063. This Court has published several recent decisions considering harmless error in the *Erlinger* context. *See Durham,* ––– F.4th at ––––, 2025 WL 2355998, at *3 (collecting cases). For those instances where we held the *Erlinger* error to be harmful, the decisions turned, at least in part, on the uncertainty in the record as to the timing of the predicate offenses. *Id.* (citing *Cogdill*, 130 F.4th at 529; *Kimbrough*, 138 F.4th at 478).

***4** Ballinger points to no uncertainty in the record. Based on his own description of the PSR, Ballinger had prior convictions for one count of burglary in Bradley County in 2010, for which he was sentenced in 2011; a burglary in Bradley County on January 4, 2016; a series of five burglaries in July 2016; and a series of five burglaries in October 2016, with the last one taking place on October 17. We now must answer whether a reasonable jury could have reasonable doubt that the three burglaries furthest from each other (2010, January 4, 2016, and October 17, 2016) took place on "occasions different from one another."[2] 18 U.S.C. § 924(e)(1). We hold here that no reasonable jury could conclude that any two of these burglaries took place on the same occasion.

2 Ballinger does not appear to dispute that the 2010 burglary was a separate occasion from the later burglaries, and we agree.

In *Durham*, the "time and space" separating two burglaries "clearly establishe[d] the offenses occurred on different occasions." ––– F.4th at ––––, 2025 WL 2355998, at *4. The burglaries there were separated by a little over three months and more than fifteen miles. *Id.* Unlike *Kimbrough*, where at most nine days separated the two predicate offenses, the months-long gap in *Durham* was close to dispositive on its own. *Id.*; *Kimbrough*, 138 F.4th at 478.

Ballinger's case is easier. His first predicate crime took place in 2010, followed by a conviction in Bradley County Criminal Court. His next predicate crime took place a little over five years later in January 2016. These events were followed by additional burglaries of various victims, and then a final burglary in October 2016—more than nine months after his January 2016 burglary. Ballinger cites no court decisions finding a harmful error when the timing of the predicate crimes showed a gap of more than nine months.[3] And we have not found any such precedent.

3 Ballinger instead points to past jury verdicts, but these are unpersuasive for the reasons already stated.

Ballinger instead argues that the series of burglaries from January 2016 to October 2016, could be thought of as a single occasion. But even Ballinger's recounting of the facts shows why this fails. He describes the 2016 crimes in groups, with one committed in January, five committed in July, and five in October, "with the five burglaries within each group spanning just a few days apart." Reply Br. 8. This explanation provides the only reasonable way of viewing these crimes—as three (or more) separate occasions. *Durham* also explains why the January and October burglaries are separate occasions despite the other crimes in between. That case offers the example of an opening day baseball game as a separate occasion from "a September series finale[.]" ––– F.4th at –––– n.5, 2025 WL 2355998, at *4 n.5. No reasonable jury would conclude that opening day was the same "occasion" as the September game, just because similar events took place regularly during the season. *Id.*

Ballinger's reading would instead turn the occasions clause into a haven for repeat offenders. A burglar's decades-long spree could be a single occasion if the burglar committed his crimes at regular intervals without getting caught. But a burglar who commits his fewer crimes more sporadically would face a stiffer punishment as a career criminal despite committing fewer violent crimes. It cannot be the case that more criminality becomes a shield against armed career criminal status. This reading undermines the ACCA's purpose of targeting "those who have repeatedly committed violent crimes." *Wooden*, 595 U.S. at 375, 142 S.Ct. 1063.

Other circuits have been close to uniform in finding an *Erlinger* error harmless if months pass between predicate crimes. *See United States v. Brown*, 136 F.4th 87, 98–99 (4th Cir. 2025); *United States v. Robinson*, No. 23-14202, 2025

WL 1576122, at *2 (11th Cir. June 4, 2025); *United States v. Xavior-Smith*, 136 F.4th 1136, 1137 (8th Cir. 2025); *United States v. Saunders*, No. 23-6735-cr, 2024 WL 4533359, at *3 (2d Cir. Oct. 21, 2024); *United States v. Butler*, 122 F.4th 584, 590 (5th Cir. 2024). The only exception to this uniformity comes from *Cogdill*, 130 F.4th at 529. But the gap in *Cogdill* was from June to September, only around three months, and this represents the largest gap where a court has found harmful error. *Id.* The gap between Ballinger's predicate crimes spans over three times as long as that in *Cogdill*. Ballinger's predicate crimes were separated by ten months, which strongly (almost dispositively) suggests harmless error.

***5** Though the timing of the offenses would likely be sufficient to find harmless error here, nothing about the character of the offenses suggests a single occasion either. Take for example a case from the Fourth Circuit. In *United States v. Browning*, the defendant committed predicate crimes ranging "anywhere between four weeks and seven years apart, and had no apparent connection with one another." No. 23-4038, 2025 WL 1823952, at *2 (4th Cir. July 2, 2025), *pet. for cert. filed sub nom. Browning v. United States* (No. 25-5344). To determine that the offenses were not connected, the court looked at the names of the victims listed in the PSR. *Id.* Combining the gap in time with the lack of repeat victims, the Fourth Circuit had no trouble finding harmless error. *Id.*; *see Thomas*, 142 F.4th at 418 (noting that different victims weighs toward a finding of different occasions).

The same result holds here. As shown in the PSR, Ballinger burglarized nine different people who have no apparent connection to one another. That fact, combined with a large gap in time between offenses, provides a sufficient basis to conclude that the government has satisfied its burden to show that the *Erlinger* error was harmless. [4]

4 Because we find that the *Erlinger* error was harmless, we do not address Ballinger's arguments about the proper remedy for the error.

IV.

Ballinger raises one last point on appeal. He claims (for the first time) that his ACCA enhanced sentence violates the Double Jeopardy clause. Because Ballinger did not make this argument before the district court, we apply plain error review. [5] *Campbell*, 122 F.4th at 634. Under plain error review, Ballinger must show "(1) error, (2) that was obvious or clear, (3) that affected his substantial rights, and (4) affected the fairness, integrity, or public reputation of his judicial proceedings." *Id.* (citing *United States v. Johns*, 65 F.4th 891, 893 (6th Cir. 2023)). Ballinger cannot show plain error.

5 Ballinger contends that he did make the argument in general terms and so plain error review should not apply. But he did not make the argument with enough specificity "to give the district court an opportunity to correct the alleged error." *United States v. Day*, 737 F. App'x 728, 730 (6th Cir. 2018) (quotation omitted). Unlike in *United States v. Ehle*, Ballinger did not make "arguments that support a double jeopardy claim[.]" 640 F.3d 689, 694 (6th Cir. 2011). Ballinger's arguments related only to the different occasions analysis and "the Court's authority to apply ACCA absent a jury trial." R. 59, Sentencing Tr., PageID 609.

Ballinger claims that *United States v. Bell* requires reversal. There, we decided that once a court accepts a guilty plea, the government cannot proceed to trial on any remaining uncharged counts because this would raise double jeopardy concerns. *United States v. Bell*, 37 F.4th 1190, 1194, 1198 (6th Cir. 2022). We need not engage in a lengthy analysis under *Bell* because, as we stated in *Thomas*, *Bell* concerned a "unique factual circumstance" that does not apply in the context of harmless error review for an *Erlinger* error. 142 F.4th at 422. The double jeopardy challenge in *Thomas*, almost identical to the one presented here, did not undermine the conclusion that the *Erlinger* error was harmless. *Id.* at 423.

While *Thomas* did not decide the double jeopardy issue for cases that present a harmful error, it went far enough to show that any error was not plain and obvious. Without a plain and obvious error, Ballinger's argument fails.

V.

Because the *Erlinger* error in Ballinger's case was harmless and he did not show that his double jeopardy argument constituted plain error, we **AFFIRM** his enhanced sentence under the ACCA.

All Citations

--- F.4th ----, 2025 WL 2715334

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-5579

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CODY BALLINGER,

Defendant - Appellant.

FILED
September 16, 2025
KELLY L. STEPHENS, Clerk

Before: COLE, GIBBONS, and BUSH, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

No. 23-5579

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Dec 16, 2025
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CODY BALLINGER, Defendant-Appellant.	)	O R D E R

BEFORE: COLE, GIBBONS, and BUSH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION

UNITED STATES OF AMERICA

v.

CODY BALLINGER

USM#88547-509

JUDGMENT IN A CRIMINAL CASE

Case Number: **1:22-CR-00025-CLC-SKL(1)**

J. Damon Burk
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s): One of the Indictment.

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

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

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	Date Violation Concluded	Count
18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e)(1) Felon in Possession of a Firearm (Armed Career Criminal)	07/29/2021	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553.

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

☐ All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall 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 the United States attorney of any material change in the defendant's economic circumstances.

June 14, 2023
Date of Imposition of Judgment

/s/
Signature of Judicial Officer

Curtis L. Collier, United States District Judge
Name & Title of Judicial Officer

June 21, 2023
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

180 months. The sentence shall run concurrently with any anticipated sentences in Bradley County, Tennessee, Criminal Court, Docket Number: Docket Number 22-CR-009A, Count Three. The sentence shall run consecutively with the parole revocation in Bradley County, Tennessee, Criminal Court; Docket Number 16-CR-337, Count One.

☒ The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program. The Court further recommends that the defendant receive a mental health evaluation and any necessary treatment while in the Bureau of Prisons. Lastly, the Court recommends that the defendant participate in vocational training while in the custody of the Bureau of Prisons.

☒ 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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) 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 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 sentencing of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special 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 ____________________

SPECIAL CONDITIONS OF SUPERVISION

1) The defendant must participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

2) The defendant must participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

3) The defendant must waive all rights to confidentiality regarding mental health and substance abuse treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the treatment providers.

4) The defendant must submit his property, house, residence, vehicle, papers, computers, or office, to a search conducted by a United States Probation Officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when a reasonable suspicion exists that the defendant has violated a condition of his supervision, and the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment **
TOTALS	$100.00	$.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* 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.

☐ 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 under the Schedule of Payments sheet of this judgment 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.

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 $ 100.00 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ 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) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.