

No.

In The Supreme Court Of The United States

James Patrick Burns,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

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Appendix A

United States v. James Patrick Burns,

No. 24-4599, Dkt. No. 48.1 (9th Cir. October 29, 2025)

Memorandum

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2025

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES PATRICK BURNS,

Defendant - Appellant.

No. 24-4599

D.C. No.

3:21-cr-046-MMD-CSD

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

Miranda M. Du, District Judge, Presiding

Argued and Submitted October 10, 2025
Las Vegas, Nevada

Before: BENNETT, SANCHEZ, and H.A. THOMAS, Circuit Judges.

James Patrick Burns was convicted of sexually exploiting eight minor victims. Evidence linked Burns to the exploitation of many other unidentifiable minor victims. Burns now appeals his conviction on 21 counts under 18 U.S.C. §§ 2251(a), (d)(1)(A), and (e); 18 U.S.C. § 2242(b); and 18 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

§§ 2252A(a)(2), (a)(5)(B), (b)(1), and (b)(2). He also appeals his 65-year sentence and supervised release conditions. We affirm.

1. We review the district court’s evidentiary rulings, denial of a Federal Rule of Criminal Procedure 17(c) subpoena request, and denial of a trial continuance motion for abuse of discretion. *See United States v. Jackson*, 845 F.2d 880, 884 (9th Cir. 1988); *United States v. MacKey*, 647 F.2d 898, 901 (9th Cir. 1981) (per curiam); *United States v. de Cruz*, 82 F.3d 856, 860 (9th Cir. 1996). We review de novo the asserted violation of a defendant’s Sixth Amendment rights to compulsory process and to present a defense. *United States v. Bahamonde*, 445 F.3d 1225, 1228 n.2 (9th Cir. 2006).

We conclude that the district court did not abuse its discretion by excluding errant Snapchat records as “not [] relevant” and prejudicial under Federal Rules of Criminal Procedure 401 and 403. The district court’s ruling did not rest on the authenticity of the records, but rather on whether Snapchat’s initial production, which Snapchat later determined to have been made in error, would confuse or mislead the jury. The court reasonably determined that the erroneous records would be “too confusing to the jury,” and were no longer “relevant based on [Snapchat’s] amended response.”

2. We find no abuse of discretion with the district court’s denials of Burns’s subpoena and trial continuance requests. The district court thoroughly

considered the evidence raised by Burns on multiple occasions and reasonably concluded that his subpoena requests lacked the requisite specificity. Rule 17(c) is “not intended” to function “as a discovery device,” *United States v. Reed*, 726 F.2d 570, 577 (9th Cir. 1984), “or to allow a blind fishing expedition seeking unknown evidence,” *MacKey*, 647 F.2d at 901.

Likewise, the court did not abuse its discretion when it found that the *Flynt* factors weighed against granting a trial continuance. *See United States v. Flynt*, 756 F.2d 1352, 1359 (9th Cir. 1985)). The district court reasonably determined that a trial continuance was unlikely to be useful given the lack of factual support for Burns’s Norway theory, the minor victims’ potential to suffer further hardship, and Burns’s lack of prejudice since he was unable to successfully subpoena one of the minor victim’s devices even after repeated attempts. Burns does not explain how he would have further tailored his subpoena request to satisfy Rule 17(c)’s requirements, and his inability to obtain the subpoena before trial did not prejudice him as he had over two years to attempt to uncover “traces” of involvement by another person.

3. Burns was not denied his Sixth Amendment rights to compulsory process and to present a complete defense when the district court excluded the errant Snapchat records and denied his requests for a subpoena and a trial continuance. Burns was not denied a defense. The district court permitted Burns

to call and question Snapchat's custodian of records at trial, but he declined to do so. Burns was able to advance his alternate perpetrator argument through other evidence, cross-examination of government witnesses, and closing statements. Because there was no underlying error and Burns advanced his defense with other evidence, Burns cannot satisfy the threshold for showing constitutional injury. *See Cudjo v. Ayers*, 698 F.3d 752, 763 (9th Cir. 2012).

4. Burns contends that the district court abused its discretion when it did not replace jurors who became emotional during trial testimony. *See United States v. Alexander*, 48 F.3d 1477, 1485 (9th Cir. 1995). We disagree. The district court credited a juror's statement that she would be able to follow the testimony and evidence and could continue to serve as a fair and impartial juror. Burns identifies no evidence in the record that suggests any juror could not be impartial.

5. We find no merit to Burns's assertion of other trial errors committed by the district court. Because Burns has no expectation of privacy in the third-party subscriber information he voluntarily provided to TikTok, and this information provided the basis to search his home, the district court did not err in declining to suppress search warrant evidence. *United States v. Rosenow*, 50 F.4th 715, 738 (9th Cir. 2022).

The district court reasonably determined that Detective Harris had the qualifications to be a forensics expert in light of his specialized training and the

verification procedures he employs. Harris testified to the multiple certificates he holds in operating investigative tools, the industry-standard certification he holds in forensic examinations, and the methods he employs to verify the results of each tool. Ample evidence thus supported Detective Harris's qualifications.

We review Burns's contention of prosecutorial misconduct in closing argument for plain error. *See United States v. Toro-Barboza*, 673 F.3d 1136, 1152 (9th Cir. 2012). Relying on testimony from Burns's ex-wife that she had never known Burns to be interested in fishing, the prosecutor speculated in closing about the meaning of Burns's computer password, "Fishing007." We find no plain error in the district court allowing this argument. *See United States v. Sayetsitty*, 107 F.3d 1405, 1409 (9th Cir. 1997) ("[T]he prosecution is allowed to argue reasonable inferences based on the evidence").

6. As for cumulative error and sufficiency of the evidence, Burns has not shown any error and thus is not entitled to relief. Ample evidence at trial supported Burns's conviction for his offenses. The government presented extensive evidence recovered from Burns's computers; testimony from forensic analysts who examined Burns's devices; and testimony from six of the minor victims. Trial evidence showed that Burns's password-protected devices had child sexual abuse material, that Burns's IP address was connected to the perpetrator's TikTok account during the relevant periods of abuse, and that the user of Burns's

devices edited and uploaded videos received from the minor victims. The government is not required “to rebut all reasonable interpretations of the evidence that would establish the defendant’s innocence, or ‘rule out every hypothesis except that of guilt beyond a reasonable doubt.’” *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (quoting *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)). We find that the jury had more than enough evidence to convict Burns.

7. Finally, Burns challenges his sentence and supervised release conditions. We review Burns’s sentence for abuse of discretion, *Gall v. United States*, 552 U.S. 38, 56 (2007), and the constitutionality of supervised release conditions de novo, *United States v. Watson*, 582 F.3d 974, 981 (9th Cir. 2009). We conclude the district court did not err when it imposed a below-guidelines sentence of 65 years and computer monitoring supervised release conditions.

Burns’s below-guidelines sentence is presumptively substantively reasonable. *Gall*, 552 U.S. 38 at 51. The comparator cases cited by Burns are distinguishable because those defendants either had no criminal history, showed contrition, were far younger than Burns, or cooperated with the government. The district court described Burns’s case as “an outlier case,” and sentenced Burns accordingly.

Burns’s sentence was also procedurally reasonable. The district court’s “duty to explain,” *United States v. Emmett*, 749 F.3d 817, 820 (9th Cir. 2014), and duty to address “nonfrivolous argument[s],” *United States v. Carty*, 520 F.3d 984, 992–93 (9th Cir. 2008) (en banc), were discharged when it explained its reasons for Burns’s sentence.

Finally, we find no merit to Burns’s challenge to his supervised release conditions. Unlike the conditions in *United States v. Wells*, 29 F.4th 580 (9th Cir. 2022), Burns’s conditions pertain only to devices on which a probation officer can install computer monitoring software, thereby limiting their reach. *See id.* at 588–89. Accordingly, Burns’s supervised release conditions are not vague and were lawfully imposed.

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
 - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

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Appendix B

United States v. James Patrick Burns,

No. 3:21-cr-00046, Dkt. No. 49 (D. Nev. September 6, 2022)

Motion to Suppress Hearing Transcript

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF NEVADA
 3 BEFORE THE HONORABLE MIRANDA M. DU, CHIEF DISTRICT JUDGE
 ---o0o---

4 UNITED STATES OF : No. 3:21-cr-046-MMD-CSD
 5 AMERICA, :
 6 :
 7 Plaintiff, : September 6, 2022
 8 :
 9 -vs- : United States District Court
 : 400 S. Virginia Street
 JAMES PATRICK BURNS, : Reno, Nevada 89501
 :
 Defendant. :
 _____ :

10 **R E D A C T E D T R A N S C R I P T**

11 **TRANSCRIPT OF**
 12 **MOTION TO SUPPRESS**

13 A P P E A R A N C E S:

14 FOR THE GOVERNMENT: ANDOLYN JOHNSON
 15 CHRISTOPHER BURTON
 16 Assist. United States Attorney

17
 18 FOR THE DEFENDANT: CHRISTOPHER FREY
 19 KATE BERRY
 20 Assist. Federal Public Defender

21 Proceedings recorded by mechanical stenography produced
 22 by computer-aided transcript

23 Reported by: KATHRYN M. FRENCH, RPR, CCR
 24 NEVADA LICENSE NO. 392
 25 CALIFORNIA LICENSE NO. 8536

1 Reno, Nevada, Tuesday, September 6, 2022, 1:30 p.m.

2 ---OoO---

3

4 THE CLERK: 3:21-cr-046-MMD-CSD, United
5 States of America versus James Patrick Burns.

6 Defendant is present in custody.

7 Present for the government is Christopher
8 Burton and Andolyn Johnson.

9 Present for the defendant is Christopher
10 Frey and Kate Berry.

11 THE COURT: All right. Good afternoon,
12 everyone.

13 This hearing is on the Motion to Suppress
14 Evidence, which is ECF number 36. For the record,
15 I have reviewed the Response, as well as the Reply,
16 ECF numbers 42 and 45.

17 I'll hear arguments from counsel.

18 MR. FREY: Good afternoon, Your Honor.

19 THE COURT: Good afternoon, Mr. Frey.

20 So one of the questions I have is it
21 appears to me the motion is now moot with respect to
22 the June 7th search warrant, given the footnote in the
23 Reply at Footnote 5, I believe.

24 MR. FREY: That appears to be correct,
25 Your Honor. Obviously, we're reserving the right to

1 renew those arguments in the event that evidence does
2 flow from that search warrant, and the intent of the
3 government is to admit it during the course of the
4 trial.

5 THE COURT: I'm sorry. It's the -- I
6 forget. I think it's Footnote 4. It's at page 5, I
7 believe.

8 MR. FREY: It is, Your Honor.

9 THE COURT: Thank you.

10 Correct. I assume the footnote is in
11 response to the government's representation.

12 MR. FREY: That's right.

13 THE COURT: All right.

14 MR. FREY: Well, Your Honor, I wanted to
15 focus on the search warrant that issued on March 1st,
16 2021. As you know, this case has somewhat of a
17 convoluted history in terms of its investigation. At
18 one point there were parallel investigations. The
19 March 1st, 2021, search warrant, though, was a search
20 warrant that really is at the, kind of the beginning
21 edge of the investigation. Everything flows from the
22 fruits of this warrant; primarily the IP address that
23 was a part of the return with respect to this warrant,
24 and then following the recovery of the IP address, there
25 was a subsequent search warrant issued to Charter

1 Communications, and a connection was made, in law
2 enforcement's eyes, between the IP address and the
3 residence of Mr. Burns, which was searched and turned
4 up evidence that, obviously, the government, will plan
5 on using in this case.

6 When we think about what is the core
7 piece of legal process in the case, it really is the
8 March 1st, 2021 search warrant. We maintain on several
9 different grounds in the moving papers, Your Honor,
10 that that search warrant was defective and the execution
11 of that search warrant was defective. Primarily, Your
12 Honor, this search warrant was drafted in terms that
13 were overbroad, in particular, and was constructed
14 in such a way as to permit a general rummaging through
15 Mr. Burns' purported digital data that was associated
16 with his IP address.

17 THE COURT: But with respect to A.B., the
18 information that's produced is limited, isn't it, that
19 Tiktok actually offered?

20 MR. FREY: It appears that Tiktok produced,
21 despite the breadth of the search warrant, Your Honor,
22 it appeared to have produced the IP address as well as
23 subscriber information. Assuming that that is the
24 universe of information that was produced in response
25 to the search warrant, it doesn't cure the defect in

1 the search warrant's drafting.

2 THE COURT: But there's nothing to suppress
3 if that's all they produced. I mean I know you're still
4 trying to produce that information, and I don't have any
5 reason to doubt the government's representation as to
6 what was actually produced to them by Tiktok.

7 MR. FREY: Right. We have discovery, and
8 we're confining our analysis to the four corners of
9 discovery. I do not know if there's other information
10 that's out there that was produced, that may be produced
11 in the future. To the extent it will be, then there is
12 still a live controversy, a live question here that must
13 be decided.

14 But what is really notable here, Your Honor,
15 in terms of the defect in the warrant is the place to
16 be searched, the entity to be searched. The March 1st,
17 2021 search warrant honed in on Tiktok California,
18 Tiktok USA. We've come to learn that Tiktok USA is not
19 synonymous with Tiktok International, Tiktok Singapore,
20 et cetera. There are different data servers in
21 different locations throughout the world, all of which
22 house data that pertain to Tiktok users. Those users
23 are worldwide.

24 The issue in this particular warrant,
25 Your Honor, is that Tiktok USA was requested to produce

1 information with respect to an account that was
2 registered in Korea. We know that Tiktok USA has
3 servers that do not house that data. The data that
4 pertains to that account is housed abroad. It is housed
5 through the servers associated with Tiktok Singapore.

6 The curiosity here, Your Honor, in reading
7 through the discovery -- and as Your Honor may have
8 identified in the statement of facts in our briefing
9 and the government's -- is that there is something of
10 a disconnect. You're left scratching your head as to
11 how Tiktok Singapore, if it wasn't the target of the
12 warrant, could produce data responsive to the search
13 warrant, had it not been for some sort of a government
14 encouragement, government endorsement, government
15 participation in asking Tiktok USA to reach beyond
16 its jurisdiction, so to speak, and pluck data from an
17 offshore server in response to the warrant. We maintain
18 that that is the curiosity that should merit an
19 evidentiary hearing in this case, Your Honor, because
20 we simply do not know, nor can the government represent,
21 that it knows how Tiktok Singapore could be producing
22 information in response to a warrant targeted only
23 Tiktok USA.

24 So in effect, Your Honor, if, indeed, Tiktok
25 Singapore located that information on its servers

1 abroad, then this was a search that exceeded the four
2 corners of the search warrant, which was confined only
3 to the data servers associated with Tiktok USA.

4 THE COURT: But with respect to the
5 Motion to Suppress, I'm looking at evidence I'm
6 suppressing as part of this case, and so even if
7 that -- even if there is some curiosity as to how
8 Tiktok operates, and whether they were encouraged or
9 not to do certain things, what you're seeking to
10 suppress is limited.

11 MR. FREY: What we're seeking to suppress
12 is a --

13 THE COURT: And you have no standing
14 to challenge anything else related to any other
15 individuals. Your client doesn't have standing.

16 MR. FREY: Those are -- no, I understand
17 that.

18 You've made two points, Your Honor. I'm
19 going to respond to the first. We're seeking to
20 suppress everything on a derivative basis because
21 everything -- meaning everything that was recovered
22 from the digital devices that were seized incident to
23 the search warrant on Mr. Burns' home, flows from the
24 revelation of an IP address, and then the subsequent
25 confirmation that the IP address was associated with

1 this residential address. So suppression, as a
2 derivative matter, traces all the way back to the IP
3 address, which was the product of the March 1st, 2021,
4 warrant.

5 THE COURT: But the Ninth Circuit case law
6 is clear that there's no reasonable expectation of
7 privacy in the IP address itself.

8 MR. FREY: And we acknowledge the difficulty
9 of the Rosenow decision and what that presents in terms
10 of our argument. In our response --

11 THE COURT: It's not difficult for me. I
12 have to apply Ninth Circuit case law.

13 MR. FREY: No. Absolutely. What's
14 difficult for us, because when we drafted that initial
15 motion, that case wasn't decided, so we are adjusting
16 to that decision.

17 I can offer to the Court that I think
18 that that decision stands for a broad proposition that
19 may factor into the Court's analysis, but it does not
20 foreclose the argument that we're making today.

21 The Rosenow decision actually cited heavily
22 the Forrester decision, which intimated that this may be
23 the rule of -- Rosenow firmed up that perhaps it is the
24 rule in this circuit, even though we reserve the right
25 to challenge it on appeal. But in the Forrester

1 decision, Your Honor, it's notable that that court
2 actually left open the possibility of a case like
3 this, a case in which there is an illegality in terms of
4 how the search warrant was executed and drafted, but
5 involving information that was returned that, one,
6 otherwise wouldn't have a reasonable expectation of
7 privacy, in such that they would have standing to
8 challenge.

9 So the, kind of, issue for the Court is if
10 the Court agrees that there is an illegality as to the
11 execution of the warrant; meaning, that the terms of
12 the warrant were disregarded when Tiktok USA reached
13 beyond its jurisdiction and accessed data on offshore
14 servers, if the Court agrees that that was an
15 illegality, then basic rules of suppression, and
16 just a fundamental understanding of the exclusionary
17 rule mandates that there is also a remedy; meaning,
18 if we concede that there's an illegality, then we
19 have to concede, also, that there must be a remedy.

20 The general framing of the rule, Your
21 Honor, going all the way back to Wong Sun (phonetic),
22 is that the government cannot come at evidence by way
23 of an illegality and then take advantage of its own
24 illegality.

25 So if we concede that there's an illegality

1 with respect to whether or not the terms of the search
2 warrant were honored, then we cannot look the other way
3 as to a remedy. Mr. Burns does have standing to
4 continue to insist on a remedy.

5 There are many bits of information out
6 there in the world, Your Honor, in which courts would
7 not be prepared to recognize a reasonable expectation
8 of privacy. For example, phone numbers, identity,
9 et cetera. But, if a government investigation hinges
10 upon one of those pieces of data, and the government
11 comes upon that data by way of an illegality, it's
12 beside the point whether or not there's a reasonable
13 expectation of privacy in one's facial features,
14 one's phone number, because the only way the
15 government uncovered that information was by virtue
16 of transgressing the Constitution.

17 So, I believe that there is a remedy that's
18 still available to Mr. Burns because this is that unique
19 case referenced in the Forrester decision -- and I'm
20 going to reference the language in just a moment here,
21 Your Honor. In Forrester, the Court addressed whether
22 or not a reasonable expectation of privacy existed in
23 e-mail addresses in e-mail addresses, and, indeed, IP
24 addresses. But then it explained, quote, that even
25 though there is, arguably, no reasonable expectation of

1 privacy in that class of information, quote, this does
2 not imply that more intrusive techniques, or techniques
3 that reveal more content information, are nevertheless
4 still Constitutional.

5 So if the Court views this technique or the
6 execution of this search warrant as transgressing the
7 Constitution, then the Court has to consider providing
8 a remedy. The Fourth Amendment does not allow for the
9 Constitution to be transgressed with impunity. There
10 is always a remedy that flows from governmental conduct
11 that exceeds the Constitutional line. We're maintaining
12 that this was conduct that exceeded the Constitutional
13 line.

14 Also, the cases in Rosenow, Your Honor, all
15 relied upon -- that Rosenow cited, and Rosenow also
16 relied on this doctrine, this case law all did hinge
17 upon an application of the Third Party Doctrine. And
18 this is a doctrine that's being consistently revisited
19 and may be revisited in the future. But what's notable
20 is that in those cases, the subject of the search
21 warrant, the target of the search warrant, the place to
22 be searched, was an internet service provider.

23 Here, the place to be searched was Tiktok.
24 But the actual place at which the search was conducted
25 was not the target of the search but, rather, it was

1 this offshore extension. It was a different set of
2 data servers. It was a different entity entirely. It
3 was Tiktok Singapore.

4 So, this case is factually dissimilar to
5 Rosenow and Forrester and the decision cited within
6 Rosenow itself, so that factual dissimilarity calls
7 for a different sort of analysis, Your Honor.

8 In none of those cases, also I should say,
9 Your Honor, did -- was there an issue about the flagrant
10 disregard of the terms of the warrant. So those cases
11 didn't have to grapple with the question of whether or
12 not law enforcement did something wrong in searching
13 the place that it searched. It just assumed that the
14 place that it searched corresponded to the target of
15 the search of warrant, and there was -- you know, that
16 was proper.

17 Here, the Court has to grapple with the
18 question of, well, was there a flagrant disregard of
19 the terms of the warrant, and what sort of remedy does
20 the Court fashion?

21 We believe under traditional notions of
22 the exclusionary rule, that the remedy still remains
23 the same; that suppression is in order. Again, this
24 is a suppression request that derives from the initial
25 illegality, and it incapsulates everything that flows

1 from it. I can represent to the Court that it appears
2 that the government would not have been able to link
3 Mr. Burns to this address, and Mr. Burns to the devices
4 inside of the home, had it not been able to uncover
5 the IP address because it disregarded the terms of the
6 warrant.

7 So, but for the illegal search of the
8 servers of Tiktok Singapore, they never would have
9 recovered the IP address that would have led them to
10 Mr. Burns.

11 Unless the Court has any other questions --

12 THE COURT: I do not.

13 MR. FREY: -- I'd submit it.

14 Thank you.

15 Or, I'd reserve time for a reply, if I
16 could, Your Honor.

17 THE COURT: Sure.

18 MR. FREY: Thank you.

19 MR. BURTON: Good afternoon.

20 THE COURT: And, counsel, perhaps you could
21 respond to Mr. Frey's, really, the main point that he
22 raised with respect to the issue with execution and the
23 scope of the March search warrant.

24 MR. BURTON: Certainly, Your Honor. In
25 reference to Tiktok California and Tiktok Singapore?

1 Yes, Your Honor.

2 So, Your Honor, I think that what Mr. Frey
3 is referencing relies on two principles that are just
4 incorrect. Number one, it relies on an incorrect
5 understanding of the chronology of events here, where
6 he seems to suggest that the government had notice at
7 the time that it issued or requested a warrant for that
8 Tiktok IP address information, that it was supposed
9 to go to Tiktok Singapore, but chose to go to Tiktok
10 California. That is not the case.

11 So, the March 1st warrant was the first
12 real investigative step taken in this case. But the
13 return, the response that we got, the government got
14 from Tiktok California, referencing that the service
15 provider -- I don't know that they said that the records
16 or the logs were in Singapore, but that the service
17 provider was in Singapore, was not until June 9th in
18 response to a subpoena. By then, the search warrant
19 had been executed, and the return had been provided to
20 the government on June 2nd.

21 So the first time that law enforcement
22 learned about Tiktok Singapore at all in this case was
23 after it had already received the IP information from
24 Tiktok California.

25 THE COURT: Actually, I'm looking at the

1 timeline again in my notes. In response to the
2 March 1st, 2021, search warrant, Tiktok produced only --
3 according to the government, IP addresses and subscriber
4 information for -- and the handle was @XXXonomegle
5 account, is that correct?

6 MR. BURTON: That is correct as to that
7 account. It also provided some content and some IP
8 address account information for two other accounts over
9 which the defendant has no standing; those being the
10 Obvi, o-b-v-i, account as -- well, sorry. The March 1st
11 was for the Obvi account, and then there was a
12 subsequent search warrant for the other account, the
13 "2Short," number 2, "short", common spelling, account.
14 So, that was on March 1st when the first search warrant
15 was executed.

16 THE COURT: And that was the IP account that
17 was linked to Mr. Burns' residence in Sparks?

18 MR. BURTON: Correct, Your Honor. And that
19 return was provided on June 2nd of 2021.

20 Now, while that return was still
21 outstanding, on May 5th of 2021, that's when law
22 enforcement, separate -- the federal law enforcement of
23 this collateral investigation submitted a subpoena, an
24 administrative subpoena, to Tiktok California. And they
25 received a response to that administrative subpoena on

1 June 9th, seven days after receiving the IP address
2 information. And it is that return to which Mr. Frey
3 is referencing, stating that the service provider,
4 because the account was registered in Korea, it was
5 Tiktok California's belief that the service provider
6 was Tiktok Singapore.

7 So, that's the first misunderstanding that
8 forms the basis of this argument. The second --

9 THE COURT: And that was the response to the
10 subpoena that was issued on May 5th of 2021?

11 MR. BURTON: Correct, Your Honor.

12 And the second misunderstanding is that
13 Tiktok has no ability, on its own, to choose whether
14 or not it's going to comply with the California process
15 in this case. It seems to be the defense's proposition
16 that the only way that Tiktok California would have
17 complied with a March 1st search warrant was if they
18 had some kind of compulsion from the government. And
19 that's simply not the case.

20 Now, I think Your Honor it hits the nail
21 right on the head that there might be some curiosity
22 here, but it's not really relevant to us as it relates
23 to this investigation because there is no reasonable
24 expectation of privacy in IP address information. But,
25 I think Your Honor does have an example of a, clearly,

1 foreign entity that has, of its own accord, chosen to
2 accept United States process, and it's in this case.
3 MegaNZ, which is a Cloud database that was used to
4 store videos that the victim in this case made under
5 the direction of the defendant, is housed and located
6 in Australia. They do not have to comply with U.S.
7 process. However, they have a company policy that
8 states that if the investigation involves sexual
9 exploitation, they, of their own accord, have chosen
10 to accept U.S. process. So even if though they don't
11 have to comply with subpoenas or search warrants or
12 2703(d) orders, if you reach out and communicate to
13 them, they will do that if it's in a sexual exploitation
14 charge.

15 And so when we look at the search warrant
16 here -- and I don't know whether Tiktok Singapore chose
17 to comply with the search warrant because of this or
18 not. I'm simply saying that it does not impugn to
19 the government's discredit when a search warrant, that
20 we had in good faith submitted, and it has provided a
21 responsive return, that it means that we have somehow
22 compelled, and that we knew all along that this was not
23 the appropriate entity to subpoena.

24 Your Honor, really, at base here, there are
25 two bedrock principles that this case -- that drives the

1 analysis in this case. And the first is one that Your
2 Honor hit right on the head; and that is, whether there
3 is a reasonable expectation of privacy. And the Ninth
4 Circuit has, resoundingly, said, no, there is not. It
5 said so in Rosenow, just two days after the defendant
6 filed his motion. They also said so in Forrester, more
7 than ten years ago, reading from that case -- and this
8 is at 512 F.3d 500. The PIN cite is 510. This was
9 actually cited as "but see" citation in the defendant's
10 motion. I'm reading now from that decision:

11 "We conclude that the surveillance
12 techniques the government employed here are
13 constitutionally indistinguishable from the use of
14 a PIN register that the Court approved in Smith. First,
15 e-mail and internet users, like the telephone users in
16 Smith, rely on third party equipment in order to engage
17 in communication. Analogously, e-mail and internet
18 users have no expectation of privacy in the 'to', 'from'
19 addresses of their messages, or the IP addresses of the
20 websites they visit because they should know that this
21 information is provided to and used by internet service
22 providers for the specific purpose of directing the
23 routing of information."

24 Now, Mr. Frey read from a different section
25 of this exact same opinion, and what that section talked

1 about is the distinction that the Court has consistently
2 made between content and noncontent. So, here, when
3 we're talking about subscriber information or IP
4 addresses, that is noncontent. And the Ninth Circuit,
5 just like all of the other circuits that have looked
6 at IP addresses, both before and after the Supreme Court
7 decision in Carpenter, have decided no search warrant
8 necessary because no reasonable expectation of privacy.

9 When we're dealing with content -- which
10 the government did not receive from the defendant's
11 account -- that is when a search warrant is required.
12 And if you don't have a reasonable expectation of
13 privacy, the Fourth Amendment simply does not apply.
14 You have no standing. So, that's what drives the
15 analysis here.

16 The second part that drives it, as Your
17 Honor, again, pointed out, when we deal with a motion
18 to suppress, we are looking at specific items of
19 evidence. Here, there is no content from the
20 defendant's Tiktok account, and he has no standing
21 to challenge the Tiktok accounts that belonged to
22 A.B. So, he has no -- there's no remedy for Your Honor
23 to provide for anything that relates to those items.
24 He has nothing that can actually be suppressed here,
25 where he's talking about overbreadth arguments, for

1 example; or, where he's talking about, you know, state
2 versus a private actor. All of that stems from is there
3 a reasonable expectation of privacy, and is there actual
4 evidence that can be suppressed?

5 And here, the only evidence that can
6 actually be pointed to as something the defendant is
7 seeking to suppress is something that he has absolutely
8 no reasonable expectation of privacy in; that is, his
9 IP address that was provided to Tiktok.

10 THE COURT: So I want to -- I have a
11 question about the residential search warrant. It
12 appears to me that the communication with the victim
13 here occurred -- I thought it was sometime in -- is it
14 January? But the scope of the warrant actually began
15 in February. The scope of the warrant is for, I think,
16 the timeframe of November to the end of February. So,
17 what's the basis for that date range, November 1st, 2020
18 to February 28th of 2021?

19 MR. BURTON: That's the date range
20 that's laid out in the Tiktok search warrants. So on
21 March 1st, that date range is in the Tiktok search
22 warrant. That was based on information provided by
23 the victim's mother after speaking with the victim.

24 And Your Honor is partially correct. The
25 Tiktok conversations, according to the victim in a

1 subsequent interview, happened in February, but she
2 was speaking with the defendant on various social media
3 platforms all the way back to August of 2020.

4 Now, on March 1st of 2021 -- excuse me.
5 Yeah, March 1st, 2021, when the first search warrant
6 is drafted with the date range November 1st of 2020 to
7 February 28th, 2021, that date range is based on what
8 the mother reported the victim stated as the time that
9 she was in contact with the defendant. So that is the
10 entire range of the communication that the victim and
11 the defendant had, and that's why that specific date
12 range was chosen as it relates to the Tiktok search
13 warrant.

14 And unless Your Honor has any further
15 questions, I'll submit it.

16 THE COURT: I do not.

17 MR. FREY: Your Honor, just a brief point
18 about chronology. There is no misunderstanding about
19 chronology. In fact, it's important to keep in mind
20 that the impropriety that we're alleging here was with
21 respect to how the California investigators pursued
22 the initial warrant. The chronology is as follows:

23 There's a March 1st, 2021 search warrant
24 issued. The return flowed sometime thereafter;

25 A Certificate of Authenticity was provided

1 verifying the contents of the return on June 2nd.

2 So, government's counsel is correct that
3 on June 2nd there was a Certificate of Authenticity
4 provided with respect to the information received in
5 response to the March 2021 search warrant.

6 What's notable is that the next day, on
7 June 3rd, the FBI issues an administrative subpoena
8 to Charter, as I understand it, which includes the IP
9 address that was discovered as a result of the March 1st
10 search warrant. So it appears as if this information,
11 as there are two parallel investigations unfolding,
12 the information that was developed from the March 1st,
13 2021 search warrant, which was a state search warrant,
14 somehow made its way into the hands of federal
15 investigators 24 hours after the June 2nd Certificate
16 of Authenticity was issued.

17 So there, again, Your Honor, the key piece
18 of information here is the IP address. When was it
19 discovered pursuant to what process? And was there an
20 impropriety in the way in which it was discovered?

21 The fact that the FBI is now issuing
22 administrative subpoenas with an IP address that was
23 discovered as a result of a defective search warrant
24 process initiated by California state investigators,
25 means at some point, inferentially, Your Honor, there

1 must be some sort of collaboration between the two
2 entities. I don't know what. But, the IP address
3 wasn't known to the government, as I understand the
4 facts, until June 3rd, but we don't know the mechanism
5 by which that information was transmitted to the
6 government. I can only surmise it was the state
7 investigators sharing the IP address with them, so
8 they could ask for the same material by way of a
9 different mechanism, which would be the administrative
10 subpoena.

11 Your Honor, why --

12 THE COURT: I'm sorry.

13 MR. FREY: Yes.

14 THE COURT: So the IP address for -- and
15 the subscriber information -- the correct IP address
16 and subscriber information was provided in response to
17 the March 1st subpoena.

18 MR. FREY: Yes, that's how I understand the
19 facts. That was in fact --

20 THE COURT: And what is improper about
21 that?

22 MR. FREY: That's the thrust of the
23 argument, Your Honor, is that they retrieved that
24 information --

25 THE COURT: I'm trying to understand what --

1 why -- the basis of the argument is that's improper for
2 Tiktok to -- in other words, you're trying to suppress
3 that information obtained from Tiktok in response to
4 the March 1st subpoena.

5 MR. FREY: That's correct. And, everything
6 that flows from that information.

7 And as I reiterated during my initial
8 argument, Your Honor, the impropriety would be that
9 there's a disregard of the terms of the warrant because
10 Tiktok USA was the target of the warrant. The warrant
11 asked Tiktok USA to produce certain information, but
12 Tiktok USA was not the custodian of the data that
13 was requested. Tiktok Singapore was. There is some
14 references to, procedurally, how that could have
15 occurred, how Tiktok Singapore could have produced that
16 information, but the government itself conceded it
17 didn't know of whether or not it was pursuant to a
18 voluntary process or because somebody was encouraged
19 or somehow asked to conduct a search beyond the four
20 corners of the warrant.

21 We don't know. We don't know. What is
22 curious, Your Honor, is the California investigators
23 knew exactly who to direct their request to at Tiktok
24 USA, a Patrick Nommensen. He is the custodian of
25 records listed on the face of the Tiktok USA warrant. I

1 do not know how the California investigators knew to
2 ask a Mr. Nommensen to produce this information, but it
3 appears as if Mr. Nommensen would have been the person
4 who would have reached out to Tiktok Singapore and
5 either requested that information, or perhaps improperly
6 accessed those servers to comply with the terms of the
7 warrant. I just do know, Your Honor but that would be
8 the subject of an evidentiary hearing if the Court were
9 to grant one. Patrick Nommensen appears to be the person
10 that has information that we can speculate about, but
11 we can only confirm if he was sworn and subjected to
12 examination, Your Honor.

13 We do know, Your Honor, that there is a
14 procedure to perfect U.S. process abroad, and that's
15 through the MLAT process. It's a cumbersome process.
16 It's a process that we would presume would be followed
17 here. It wasn't followed. I do not know why, Your
18 Honor. Again, I can assume that it wasn't followed
19 because it is, indeed, cumbersome. It would take too
20 long, et cetera. But, nevertheless, it is a required
21 component of an investigation such as this, when there's
22 a request -- proper or not -- for data that is housed on
23 servers abroad.

24 So I do not know if that was somehow driving
25 the decision to ask Mr. Nommensen to maybe do them a

1 favor and reach out to Singapore and access that data,
2 even though the lower court judge in California said
3 that the request could only be directed to Tiktok USA.
4 I have no idea, Your Honor. But, I am curious enough
5 that I am requesting an evidentiary hearing on that
6 basis.

7 It is still relevant, Your Honor, and the
8 standing issue, I think, is not determinative here
9 because this is a case unlike any of the cases cited
10 in Rosenow, and unlike Rosenow itself, because we have a
11 disregard of the terms of the warrant. In those cases
12 there was no question about the propriety of the face
13 of the warrant and execution of the warrant. Here, we
14 have improprieties with respect to the face of the
15 warrant, and execution of the warrant. And those are
16 improprieties that the Court cannot let go unaddressed.
17 If we concede that there's been an illegality
18 procedurally, then we have to entertain a remedy.

19 Thank you.

20 THE COURT: All right. Thank you.

21 I'm going to give you an oral ruling on
22 the motion, and I'll explain why I'm going to deny
23 the Motion to Suppress, which is, as I noted earlier,
24 ECF number 36.

25 So following the briefing and based on the

1 parties' representation, really, the only remaining
2 issues are the March 1st, 2021 search warrant, and the
3 July 20th, 2021 residential warrant. Based on the
4 government's representation, there is really no evidence
5 to suppress from the June 7th, 2021 search warrant,
6 and the government -- I'm also making my ruling based
7 on the government's representation that they received
8 no content evidence for the @XXXonomegle account from
9 Tiktok, and they're not planning to use any other
10 evidence from the March 2021 search warrant, except
11 for the IP address and subscriber information.

12 In gist, I agree with the government's
13 response to the Motion to Suppress. With respect to
14 the March 2021 search warrant, as I noted, Tiktok
15 produced the IP addresses and subscriber information.

16 It's clear under Ninth Circuit case law
17 that individuals do not have a legitimate expectation
18 of privacy in their IP address and basic subscriber
19 information that are turned over to third parties
20 like Tiktok. This is clear from -- it's supported in
21 United States versus Forrester, F-o-r-r-e-s-t-e-r. The
22 cite is 512 F.3d 500 at 510. It's a Ninth Circuit, 2008
23 decision. And, United States versus Rosenow, 33
24 F.4th 529, at 547 to 548. It's a Ninth Circuit 2022
25 decision.

1 The Ninth Circuit, in both cases, found
2 that IP addresses are akin to, and I quote, information
3 people put on the outside of mail, which the Supreme
4 Court has found -- and that's end quote, outside of
5 the mail -- which the Supreme Court has found may be
6 searched without a warrant. The PIN cite for this at
7 Forrester is 512 F.3d at 511; and for Rosenow, it's
8 33 F.4th at 547.

9 Because Mr. Burns does not have a legitimate
10 expectation of privacy in the IP address and subscriber
11 information, that information may be obtained without
12 a warrant. He does not have a claim under the Fourth
13 Amendment for those components.

14 As to the requested content information
15 from the account @XXXonomegle in the March search
16 warrant, the government has already confirmed that
17 Tiktok only produced noncontent IP addresses and
18 subscriber information. Therefore, even if there was
19 a deficiency in the warrant or in its execution, there's
20 no evidence to suppress.

21 Turning, next, to the residential search
22 warrant. In the briefs, Mr. Burns argues that this
23 search warrant independently lacked probable cause,
24 even without excising the evidence from the March and
25 the June search warrants because, one, the declaration

1 failed to corroborate the victim's claims, since
2 there were no videos, images, and communications that
3 supported the victim and her mother's tip, and because
4 most of the IP addresses provided by Tiktok tracked to
5 locations in Korea.

6 I disagree. After carefully reviewing
7 the residential search warrant and the supporting
8 declaration, I find that probable cause exists under
9 the totality of the circumstances, and that the issuing
10 judge did not clearly err in finding probable cause
11 existed.

12 As to Mr. Burns' first argument, the
13 inclusion of explicit images is not required to
14 establish probable cause. Factual descriptions are
15 enough. See United States versus Battershell,
16 B-a-t-t-e-r-s-h-e-l-l, 457 F.3d 1048 at 1052. It's
17 a Ninth Circuit 2006 decision.

18 There are detailed descriptions in the
19 declaration of the videos and images that Mr. Burns
20 allegedly forced A.B. to send him, which corroborates
21 A.B.'s claims. There are also references -- and
22 this is at ECF 36-9 at page 31 to 33 -- there are also
23 references to screen shots of messages between A.B.
24 and the suspect, as well as A.B. and her friend, that
25 she was sexually exploited and harassed. This is at

1 ECF 36-9 at 29 and 33.

2 As to Mr. Burns' second argument, the fact
3 that most of the IP addresses traced to Korea, does
4 not undermine that two of the IP addresses traced to a
5 U.S. location, specifically Mr. Burns' residence in
6 Sparks. The declaration clearly states that an IP
7 address from Tiktok traced to the U.S. was registered
8 with Charter Communications and geo-locates to Sparks.
9 Charter Communications later revealed that the IP
10 address was subscribed to Mr. Burns at his residence
11 in Sparks during the relevant timeframe.

12 I, therefore, find that there was probable
13 cause to support the residential search warrant. And
14 for those reasons, the Motion to Suppress is denied.

15 I cannot recall when this case is set for
16 trial. I think -- did I continue the trial until
17 October?

18 THE CLERK: No, Your Honor. It's continued
19 to --

20 THE COURT: Counsel, do you know?

21 THE CLERK: It's set for January 10th, 2023,
22 for a stack calendar.

23 THE COURT: All right. So you do have
24 some time.

25 I think that's the only outstanding item in

1 this case that I set a hearing on.

2 All right. Thank you, counsel.

3 MR. FREY: Thank you, Your Honor.

4 MR. BURTON: Thank you, Your Honor.

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6 (Court Adjourned.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

\s\ Kathryn M. French

September 9, 2024

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE

Appendix C

United States v. James Patrick Burns, No. 24-4599,

Dkt. No. 52.1 (9th Cir. February 18, 2026)

Order Denying Rehearing

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 18 2026

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES PATRICK BURNS,

Defendant - Appellant.

No. 24-4599

D.C. No.

3:21-cr-00046-MMD-CSD-1

District of Nevada,

Reno

ORDER

Before: BENNETT, SANCHEZ, and H.A. THOMAS, Circuit Judges.

The panel has voted to deny Appellant's petition for panel rehearing and for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40. The petition for panel rehearing or rehearing en banc (Dkt. 51) is DENIED.

Appendix D

United States v. James Patrick Burns,

No. 3:21-cr-00046, Dkt. No. 293 (D. Nev. July 25, 2024)

Judgment of Conviction

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

JAMES PATRICK BURNS

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:21-cr-046-MMD-CSD

USM Number: 72498-509

Joanne Diamond, AFD

Defendant's Attorney

THE DEFENDANT:☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☒ was found guilty on count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 in the Fourth
after a plea of not guilty. Superseding Indictment (ECF No. 136) filed on January 25, 2024.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
18 U.S.C. § 2251(a), (e)	Sexual Exploitation of Children	7/27/2021	1, 2, 3, 4, 5, 6, 7 and 8
18 U.S.C. § 2251(d)(1) (A), (e)	Advertising Child Pornography	7/27/2021	9

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/19/2024

Date of Imposition of Judgment

Signature of Judge

Miranda M. Du, Chief U.S. District Judge

Name and Title of Judge

July 25, 2024

Date

DEFENDANT: JAMES PATRICK BURNS
CASE NUMBER: 3:21-cr-046-MMD-CSD

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2422(b)	Coercion and Enticement of a Minor	7/27/2021	10, 11, 12, 13, 14, 15, 16 and 17
18 U.S.C. § 2252A(a)(2), (b)(1)	Distribution of Child Pornography	7/27/2024	18
18 U.S.C. § 2252A(a)(2), (b)(1)	Receipt of Child Pornography	7/27/2021	19
18 U.S.C. § 2252A(a)(5)(B), (b)(2)	Possession of Child Pornography	7/27/2021	20
18 U.S.C. § 2260A	Commission of a Specified Felony Sex Offender by an Individual Required to Register as a Sex Offender	7/27/2021	21

DEFENDANT: JAMES PATRICK BURNS

CASE NUMBER: 3:21-cr-046-MMD-CSD

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: COUNTS 1 through 9: 30 YEARS
COUNTS 10 through 17: 55 YEARS
COUNTS 18 through 20: 20 YEARS **Counts 1 through 20 to run concurrent.**
COUNT 21: 10 YEARS to run consecutive to Counts 1 through 20
For a total of 65 YEARS.

☒ The court makes the following recommendations to the Bureau of Prisons:

Recommendation for placement of Defendant: FCI Englewood, Colorado.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES PATRICK BURNS

CASE NUMBER: 3:21-cr-046-MMD-CSD

SUPERVISED RELEASEUpon release from imprisonment, you will be on supervised release for a term of: **LIFETIME** on all counts to run concurrently.**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, not to exceed 104 tests annually.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: JAMES PATRICK BURNS
CASE NUMBER: 3:21-cr-046-MMD-CSD**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 specific risks posed by your criminal record and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the specific risks posed by your criminal record.
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 _____

DEFENDANT: JAMES PATRICK BURNS
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SPECIAL CONDITIONS OF SUPERVISION

1. **Search and Seizure** – You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. **Access to Financial Information** – You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney’s Office.
3. **Debt Obligations** – You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.
4. **Minor Prohibition** – You must not have direct contact with any child you know or reasonably should know to be under the age of 18 without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18 without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.
5. **No Contact** – You must not communicate, or otherwise interact, with any victims and victims' family members in the instant offense, either directly or through someone else, without first obtaining the permission of the probation office.
6. **Place Restriction – Children Under 18** – You must not go to, or remain at, any place primarily used by children under the age of 18, unless you have the express prior permission of your Probation Officer. Examples of such prohibited places include parks, schools, playgrounds, and childcare facilities.
7. **No Pornography** - You must not view or possess any “visual depiction,” or any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of “sexually explicit conduct” involving children, or "actual sexually explicit conduct" involving adults. These restrictions do not apply to materials necessary to, and used for, any future appeals, or materials prepared or used for the purposes of sex-offender treatment.
“Visual depiction” (as defined in 18 U.S.C. § 2256(5)) includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format; “Sexually explicit conduct” (as defined by 18 U.S.C. § 2256(2)) involving children means actual or simulated (i) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between the same or opposite sex; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse; or (v) lascivious exhibition of the genitals or pubic area of any person.

DEFENDANT: JAMES PATRICK BURNS
CASE NUMBER: 3:21-cr-046-MMD-CSD

SPECIAL CONDITIONS OF SUPERVISION

“Actual sexually explicit conduct” (as defined by 18 U.S.C. § 2257(h)(1)) involving adults means actual, but not simulated, conduct as defined in clauses (i)-(v) above.

8. **Sex Offender Treatment** – You must participate in an outpatient sex offense-specific treatment program, and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of the program, based on your ability to pay.
9. **Polygraph Testing** – You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.
10. **Computer Monitoring** – To enable the Computer Search Condition, you must submit your computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media, to the installation of computer monitoring software by the probation officer.
11. **Computer Search – Monitoring Software** – To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct periodic, unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.

DEFENDANT: JAMES PATRICK BURNS
CASE NUMBER: 3:21-cr-046-MMD-CSD**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 2,100.00	\$82,655.92	\$N/A	\$ 21,000.00	\$ N/A
	\$100 per count - To be paid immediately	To be paid immediately		\$1,000 per count To be paid immediately	

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Clerk, U.S. District Court Attn: Financial Officer Case No. 3:21-cr-46-MMD-CSD 333 Las Vegas Boulevard, South Las Vegas, NV 89101			

See attached list

\$82,655.92

TOTALS	\$ _____	.00	\$ _____	82,655.92
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

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

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAMES PATRICK BURNS
 CASE NUMBER: 3:21-cr-046-MMD-CSD

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 \$ 105,755.92 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:

Restitution is mandatory. Any unpaid balance on the restitution and the assessment shall be paid at a monthly rate of not less than 10% of any income earned during incarceration and/or gross income while on supervision subject to any adjustment based upon Mr. Burns' ability to pay.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ 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:

See attached Final Order of Forfeiture (ECF No. 290).

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.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES PATRICK BURNS,

Defendant.

3:21-CR-046-MMD-CSD

Final Order of Forfeiture

The United States District Court for the District of Nevada entered a Preliminary Order of Forfeiture under Fed. R. Crim. P. 32.2(b)(1) and (b)(2); 18 U.S.C. §§ 2253(a)(1), 2253(a)(3), and 2428(a)(1); and 18 U.S.C. § 2428(b)(1)(A) with 28 U.S.C. § 2461(c), based upon the jury verdict finding James Patrick Burns guilty of the criminal offenses, forfeiting specific property set forth in the Forfeiture Allegations of the Fourth Superseding Criminal Indictment and shown by the United States to have the requisite nexus to the offenses to which James Patrick Burns was found guilty. Fourth Superseding Criminal Indictment, ECF No. 136; Minutes of Jury Trial, ECF No. 251; Jury Verdict Forms, ECF No. 252, 262; Stipulation for Entry of Order of Forfeiture as to James Patrick Burns and Order, ECF No. 263; Preliminary Order of Forfeiture, ECF No. 265.

This Court finds that on the government's motion, the Court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include subsequently located property or substitute property under Fed. R. Crim. P. 32.2(e) and 32.2(b)(2)(C).

This Court finds the United States published the notice of forfeiture in accordance with the law via the official government internet forfeiture site, www.forfeiture.gov, consecutively from March 22, 2024, through April 21, 2024, notifying all potential third

parties of their right to petition the Court. Notice of Filing Proof of Publication Exhibits, ECF No. 270-1, p. 5.

This Court finds no petition was filed herein by or on behalf of any person or entity and the time for filing such petitions and claims has expired.

This Court finds no petitions are pending regarding the property named herein and the time has expired for presenting such petitions.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all possessory rights, ownership rights, and all rights, titles, and interests in the property hereinafter described are condemned, forfeited, and vested in the United States of America under Fed. R. Crim. P. 32.2(b)(4)(A) and (b)(4)(B); Fed. R. Crim. P. 32.2(c)(2); 18 U.S.C. §§ 2253(a)(1), 2253(a)(3), and 2428(a)(1); 18 U.S.C. § 2428(b)(1)(A) with 28 U.S.C. § 2461(c); and 21 U.S.C. § 853(n)(7) and shall be disposed of according to law:

1. a Toshiba Satellite C55-B5100 laptop computer, serial number ZE257693P;
 2. an Asus Essentio computer, serial number DCPDCG0018P5;
 3. a PNY 128GB USB, serial number E094-B20F;
 4. a SanDisk USB, serial number 1DFA-E539;
 5. an SP Micro SDHC 4GB, serial number D216-BD58;
 6. a SanDisk SD 2GB, serial number G4A5-F009; and
 7. a SanDisk Extreme Pro 64GB, serial number 3039-3034
- (all of which constitutes property).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that under Fed. R. Crim. P. 32.2(c) and 21 U.S.C. § 853(n)(7), all possessory rights, ownership rights, and all rights, titles, and interests in the property are extinguished and are not recognized for James Patrick Burns and all third parties.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the forfeited property shall be disposed of according to law.

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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk send
2 copies of this Order to all counsel of record.

3 DATED: July 18, 2024.

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MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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