

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

MIKEL MIMS,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI'S
APPENDIX

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[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13215

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIKEL MIMS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:14-cr-20210-MGC-1

Before JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

BRANCH, Circuit Judge:

This appeal requires us to decide, as a matter of first impression, whether a district court continues to have jurisdiction in a criminal case to order compliance with unsatisfied restitution obligations after the defendant completes her probationary sentence.

In 2014, Mikel Mims pleaded guilty to one count of conspiracy to commit wire fraud. The district court sentenced her to three years' probation and ordered her to pay \$255,620 in restitution. After Mims completed probation in 2017, she stopped paying restitution despite her remaining obligations. In 2022, the district court, within Mims's original criminal case, ordered Mims to renew her compliance with the district court's 2014 restitution order. Mims appeals the district court's 2022 order and argues that the district court no longer had jurisdiction in her original criminal case to order compliance. She also argues that, even if the district court had jurisdiction, the district court violated her right to due process when it entered the 2022 order.

District courts have the authority to enforce their own criminal sentences, and here the district court did so after giving Mims notice and opportunities to respond. Thus, after careful review, and with the benefit of oral argument, we affirm.

I. Background

In 2014, a federal grand jury in the Southern District of Florida indicted Mims on one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 371 and four counts of wire fraud

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in violation of 18 U.S.C. § 1343. Mims pleaded guilty to one count of conspiracy to commit wire fraud. The district court sentenced Mims to three years' probation and ordered Mims to pay \$255,620 in restitution. The district court ordered Mims to "pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice."

In 2017, Mims completed her term of probation and stopped paying restitution. According to the government, Mims paid only \$58,232.93, or approximately 23%, of her restitution obligation while she was on probation.

Between March and August 2021, the government mailed Mims three forms requesting financial documentation. Mims did not respond to any of the government's requests. On September 24, 2021, the government moved for a hearing regarding Mims's failure to pay restitution. The next month, the district court held a Zoom hearing on the issue. Mims did not receive notice of the Zoom hearing and did not attend. The district court acknowledged that the hearing could not proceed without Mims because of "[d]ue process, notice, [and] opportunity to defend" concerns. The district court also questioned whether it had jurisdiction in Mims's criminal case after Mims's term of probation ended.

In November 2021, Mims (represented by counsel) and the government attended a status conference about Mims's failure to pay restitution. At the conference, Mims argued that the district court lacked jurisdiction to enforce the restitution order in her criminal case because her term of probation had ended. According

to Mims, the government had to initiate separate civil proceedings to enforce the restitution order. In response, the government argued that the district court had jurisdiction to enforce the restitution order in the criminal case under 18 U.S.C. § 3613A, the default provision of the Mandatory Victims Restitution Act (“MVRA”).¹

The district court again expressed doubt as to whether it had jurisdiction in Mims’s criminal case, and it directed the government to file a written motion for an order to enforce compliance with the restitution order that set forth exactly what the government was asking the court to do and the jurisdictional basis for such action.

Following the government’s motion and a response by Mims, the district court granted the government’s motion and ordered Mims to renew her compliance with the restitution order

¹ Section 3613A states that once a defendant defaults on her restitution,

the court may, pursuant to section 3565, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, resentence a defendant pursuant to section 3614, . . . enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

18 U.S.C. § 3613A(a)(1). Section 3565 permits a court to continue, modify, or revoke a defendant’s probation when “the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation.” *Id.* § 3565(a).

(“the compliance order”).² Citing various provisions of the MVRA and the Federal Debt Collection Procedures Act of 1990 (“FDCPA”),³ the district court concluded that it had “jurisdiction to enforce restitution in the underlying criminal case.” Accordingly, the district court ordered Mims to “comply with the payment schedule listed in the Amended Judgment,” including “mak[ing] up for . . . [her] noncompliance” since 2017, and “fill out and submit the Financial Statement of Debtor form.” Mims timely appealed.

II. Discussion

On appeal, Mims contends (1) that the district court lacked jurisdiction to enter the compliance order,⁴ and (2) that even if the district court had jurisdiction, it violated Mims’s right to due

² The compliance order was signed by a different district judge “[o]n behalf of” the district judge who held the Zoom hearing and status conference.

³ The FDCPA “provides the exclusive civil procedures . . . to recover a judgment” on restitution in a criminal case. 28 U.S.C. §§ 3001(a)(1), 3002(3)(B), 3003(b)(2).

⁴ Ultimately, we conclude that the district court had ancillary jurisdiction to issue the compliance order. Thus, we do not reach the parties’ arguments about whether various provisions of the MVRA or FDCPA provided a statutory basis for the district court’s jurisdiction. And although the district court relied on some of those statutory provisions instead of its ancillary jurisdiction, we “may affirm on any ground supported by the record, regardless of whether that ground was relied upon or even considered below.” *PDVSA US Litig. Tr. v. LukOil Pan Ams. LLC*, 65 F.4th 556, 562 (11th Cir.) (quotation omitted), *cert. denied*, 144 S. Ct. 343 (2023).

process when it entered the compliance order. We take each of these issues in turn.

A. The district court had jurisdiction to enter the compliance order

“We review de novo the subject matter jurisdiction of the district court.” *United States v. Benjamin*, 958 F.3d 1124, 1133 (11th Cir. 2020). “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Thus, federal courts generally “possess only that power authorized by the Constitution and statute.” *United States v. Rivera*, 613 F.3d 1046, 1049 (11th Cir. 2010) (alteration adopted) (quoting *Kokkonen*, 511 U.S. at 377). The Constitution provides, in relevant part, that “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States” U.S. Const. art. III, § 2, cl. 1. And as authorized by Congress, federal district courts “have original jurisdiction . . . of all offenses against the laws of the United States.” 18 U.S.C. § 3231. For certain offenses, once a defendant is convicted, the district court must order “that the defendant make restitution to the victim of the offense.” *Id.* § 3663A(a)(1). Thus, as Mims concedes, the district court had jurisdiction over her underlying criminal offense and lawfully ordered her to pay restitution in the restitution order.

A federal court may also assert “ancillary jurisdiction.” *Kokkonen*, 511 U.S. at 378. The ancillary-jurisdiction doctrine “recognizes federal courts’ jurisdiction over some matters (otherwise beyond their competence) that are incidental to other

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matters properly before them.” *Id.* This doctrine “enable[s] a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.” *Id.* at 379–80; *see also United States v. Batmasian*, 66 F.4th 1278, 1281 (11th Cir. 2023) (discussing ancillary jurisdiction). Indeed, “[w]ithout jurisdiction to enforce a judgment entered by a federal court, the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.” *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) (quotation omitted). Accordingly, we have historically recognized that district courts have “inherent power to enforce compliance with their lawful orders through civil contempt.” *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991).⁵

⁵ We have also held that a “district court has no inherent authority to modify a sentence; it may do so only when authorized by a statute or rule.” *United States v. Puentes*, 803 F.3d 597, 606 (11th Cir. 2015). But no such modification occurred here. Mims argues that the compliance order improperly modified the restitution order by adding “arrears that have accrued since 2017,” but she is wrong. Although the compliance order states that Mims must “make up for the past five years of noncompliance with the” restitution order, the district court did not order any further monetary penalties or “alter[] the amount of restitution [Mims] is required to pay.” *Puentes*, 803 F.3d at 605. Thus, the compliance order did not “modify” Mims’s restitution obligations; it merely ordered Mims to continue abiding by the original restitution order.

But in any event, the Federal Rules of Criminal Procedure expressly authorize district courts to enforce their restitution orders via

any order reasonably necessary to ensure compliance with a restitution order or a notice order after disposition of an appeal, including: (A) a restraining order; (B) an injunction; (C) an

Though in *Kokkonen* the Supreme Court ultimately found a lack of ancillary jurisdiction when a district court tried to enforce a settlement agreement after it dismissed the underlying lawsuit, the Court stated in dicta that the “situation would be quite different if the parties’ obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal.” 511 U.S. at 381. In that circumstance, the Court explained that “a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist.” *Id.*

Here, the district court lawfully entered the restitution order as part of Mims’s criminal judgment. *See* 18 U.S.C. § 3663A(a)(1). Mims does not contest the lawfulness of the restitution order. Nevertheless, according to the government, Mims has not made her required monthly payments towards her restitution obligations since 2017. Mims concedes that she was not in compliance with the restitution order when the district court issued the compliance order. By failing to make her required payments under the restitution order, Mims violated her criminal sentence. And as we have explained, district courts have ancillary jurisdiction to enforce their own judgments. *See Kokkonen*, 511 U.S. at 380–81; *see also* Fed. R. Crim. P. 38(e)(2). Accordingly, we conclude that the district

order requiring the defendant to deposit all or part of any monetary restitution into the district court’s registry; or (D) an order requiring the defendant to post a bond.

Fed. R. Crim. P. 38(e)(2) (emphasis added). Thus, we have no trouble concluding that the compliance order was “authorized by a . . . rule.” *Puentes*, 803 F.3d at 606.

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court had ancillary jurisdiction to enforce the restitution order it had included in Mims’s criminal sentence via the compliance order.

Our conclusion comports with other analogous cases. For example, we have held that district courts can exercise equitable jurisdiction over defendants’ postjudgment civil motions for the return of property seized by the government in criminal cases. *See United States v. Potes Ramirez*, 260 F.3d 1310, 1314–15 (11th Cir. 2001); *United States v. Martinez*, 241 F.3d 1329, 1330 (11th Cir. 2001). In both *Potes Ramirez* and *Martinez*, the defendants moved under Federal Rule of Criminal Procedure 41(e), within their underlying criminal cases, years after the district courts entered final judgments. *See Potes Ramirez*, 260 F.3d at 1312; *Martinez*, 241 F.3d at 1329. We did not require either district court to open a new civil docket to entertain the defendants’ motions even though we deemed the motions “civil proceeding[s].” *Potes Ramirez*, 260 F.3d at 1313–14 & n.5. Instead, these cases illustrate district courts’ power to entertain certain motions, including “civil” motions, within an existing criminal docket after criminal proceedings end.

Mims resists our conclusion, arguing that the district court’s previous closure of her criminal case had some jurisdictional effect. But closing a case “has no effect other than to remove a case from the court’s active docket and permit the transfer of records associated with the case to an appropriate storage repository.”⁶ *Fla.*

⁶ We note, however, that Rule 41 voluntary dismissals granted without conditions raise separate issues that we need not address here because Mims’s

Ass’n for Retarded Citizens, Inc. v. Bush, 246 F.3d 1296, 1298 (11th Cir. 2001) (quotation omitted). “Designating a case ‘closed’ does not prevent the court from reactivating a case either of its own accord or at the request of the parties.” *Id.* Accordingly, the district court did not divest itself of jurisdiction by closing Mims’s criminal case.

B. The district court did not violate Mims’s right to due process

Next, Mims argues that even if the district court had jurisdiction to enter the compliance order, the district court “violat[ed] . . . Ms. Mims’s right to due process and an opportunity to be heard” when it entered the compliance order. In particular, Mims argues that she was not offered an opportunity to explain her opposition to the renewal of her restitution payments plus “arrear[s] that have accrued since 2017.”⁷

Because Mims did not object to lack of due process below, we review for plain error.⁸ See *United States v. Moore*, 22 F.4th 1258, 1270 (11th Cir. 2022); *United States v. McNair*, 605 F.3d 1152, 1222

restitution terms were incorporated into her criminal sentence. See *Absolute Activist Value Master Fund Ltd. v. Devine*, 998 F.3d 1258, 1265 (11th Cir. 2021).

⁷ As we explained previously, the district court did not modify the restitution order. Therefore, to the extent that Mims’s due process argument hinges on the alleged modification of the restitution order, it necessarily fails.

⁸ On appeal, Mims also argues that to the extent the government sought any remedies under the FDCPA below, the government and district court did not comply with the FDCPA’s procedural requirements. We do not reach this argument because we conclude, as discussed, that the district court was proceeding under its inherent authority with ancillary jurisdiction, not proceeding under the FDCPA.

(11th Cir. 2010). Plain error occurs when there is “(1) error, (2) that is plain, and (3) that affects substantial rights.” *McNair*, 605 F.3d at 1222 (quotation omitted). If, but only if, these three requirements are met, then “we may exercise discretion to correct a forfeited error . . . if (4) the error seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quotation omitted).

The district court did not commit plain error by issuing the compliance order. “Before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions.” *United States v. Smith*, 30 F.4th 1334, 1338 (11th Cir. 2022) (alteration adopted) (quoting *Day v. McDonough*, 547 U.S. 198, 210 (2006)). Mims had notice that the government sought her compliance with the restitution order, and she received numerous opportunities to argue that she could not financially afford to resume the required monthly installments and pay the arrears for the past five years. For instance, before her hearings, the government sent Mims three forms in which she could have informed the government of changed financial circumstances that affected her ability to repay the debt.⁹ The district court held a

⁹ Mims asserts that the government’s three requests for financial information are “irrelevant” because they are “extrajudicial correspondence solely from one party to another.” But the requests do not solely implicate the parties. Mims had an obligation to notify the government *and* the court of any material change in her financial circumstances, and she still has the opportunity to do so (*i.e.*, be heard) if she cannot comply with the original payment schedule. Section 3664(k) of Title 18 of the United States Code outlines this process:

status conference concerning Mims's noncompliance with the restitution order to afford Mims "[d]ue process, notice, [and an] opportunity to defend." Mims and her counsel attended the status conference wherein the district court agreed with the government that Mims was failing to comply with the restitution order. And the district court requested a written motion from the government that detailed what remedy the government sought as well as the authority for said remedy and allowed Mims an opportunity to respond.

Each time, Mims rejected her opportunity to be heard on her compliance with the restitution order or her ability to repay the debt: she either did not respond (as with the government's three requests for financial information) or used her opportunity merely to contest the district court's jurisdiction (as with the hearing and written briefing). Moreover, the district court gave Mims another opportunity to notify the court of any changed financial

A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

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circumstances by ordering her to submit a financial statement. Accordingly, Mims received “fair notice and an opportunity to present [her] position[].” *Smith*, 30 F.4th at 1338 (quotation omitted).

In opposition to this conclusion, Mims contends that she did not have a meaningful opportunity to justify her noncompliance with the restitution order because the government failed to establish jurisdiction; thus, any argument on the merits would have been “futile.” We disagree. Although the district court was concerned that it did not have jurisdiction, the district court signaled that it agreed with the government on the merits of Mims’s noncompliance, and it gave Mims an opportunity to respond in writing to the government’s motion on the merits. Mims did not address her noncompliance at the status conference. The government’s motion addressed the merits of Mims’s noncompliance; Mims’s response did not. Thus, because Mims was afforded several opportunities to be heard, we find no plain error. *See United States v. Pacheco-Romero*, 995 F.3d 948, 958 (11th Cir. 2021) (rejecting a due process argument where the “appellants received sufficient notice and several opportunities to be heard” before the district court entered judgment).

III. Conclusion

Mims has not complied with the district court’s restitution order in her criminal case since 2017. For the above reasons, we conclude that the district court had inherent authority to reorder Mims’s compliance with its restitution order even though she had

completed her term of probation. And the district court offered Mims opportunities to be heard before it reordered compliance, which satisfied due process. Accordingly, we affirm.

AFFIRMED.

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FOR PUBLICATION

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versus

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Appeal from the United States District Court
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D.C. Docket No. 1:14-cr-20210-MGC-1

Before JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

BRANCH, Circuit Judge:

Upon reconsideration, we GRANT the petition for panel rehearing filed by Mikel Mims. We VACATE our prior opinion in this case and substitute the following in its place.

* * *

This appeal requires us to decide, as a matter of first impression, whether a district court continues to have jurisdiction in a criminal case to order compliance with unsatisfied restitution obligations after the defendant completes her probationary sentence.

In 2014, Mikel Mims pleaded guilty to one count of conspiracy to commit wire fraud. The district court sentenced her to three years' probation and ordered her to pay \$255,620 in restitution. After Mims completed probation in 2017, she stopped paying restitution despite her remaining obligations. In 2022, the district court, within Mims's original criminal case, ordered Mims to renew her compliance with the district court's 2014 restitution order. Mims appeals the district court's 2022 order and argues that the district court no longer had jurisdiction in her original criminal case to order compliance. She also argues that, even if the district court had jurisdiction, the district court violated her right to due process when it entered the 2022 order.

District courts have the authority to enforce their own criminal sentences, and here the district court did so after giving Mims notice and opportunities to respond. Thus, after careful review, and with the benefit of oral argument, we affirm.

I. Background

In 2014, a federal grand jury in the Southern District of Florida indicted Mims on one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 371 and four counts of wire fraud

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The district court again expressed doubt as to whether it had jurisdiction in Mims’s criminal case, and it directed the government to file a written motion for an order to enforce compliance with the restitution order that set forth exactly what the government was asking the court to do and the jurisdictional basis for such action.

Following the government’s motion and a response by Mims, the district court granted the government’s motion and ordered Mims to renew her compliance with the restitution order

¹ Section 3613A states that once a defendant defaults on her restitution,

the court may, pursuant to section 3565, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, resentence a defendant pursuant to section 3614, . . . enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

18 U.S.C. § 3613A(a)(1). Section 3565 permits a court to continue, modify, or revoke a defendant’s probation when “the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation.” *Id.* § 3565(a).

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(“the compliance order”).² Citing various provisions of the MVRA and the Federal Debt Collection Procedures Act of 1990 (“FDCPA”),³ the district court concluded that it had “jurisdiction to enforce restitution in the underlying criminal case.” Accordingly, the district court ordered Mims to “comply with the payment schedule listed in the Amended Judgment,” including “mak[ing] up for . . . [her] noncompliance” since 2017, and “fill out and submit the Financial Statement of Debtor form.” Mims timely appealed.

II. Discussion

On appeal, Mims contends (1) that the district court lacked jurisdiction to enter the compliance order,⁴ and (2) that even if the

² The compliance order was signed by a different district judge “[o]n behalf of” the district judge who held the Zoom hearing and status conference.

³ The FDCPA “provides the exclusive civil procedures . . . to recover a judgment” on restitution in a criminal case. 28 U.S.C. §§ 3001(a)(1), 3002(3)(B), 3003(b)(2).

⁴ After we released our opinion in this case, Mims petitioned for panel rehearing and rehearing *en banc*. We then requested supplemental briefing from the parties to address whether the district court had inherent authority or ancillary jurisdiction to enforce the restitution order, and whether the government forfeited either argument because it did not raise them in its initial briefs. The government concedes that it did not raise either argument but asks that we apply an exception to our argument forfeiture rule. *See United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (“[F]ailure to raise an issue in an initial brief on direct appeal should be treated as a forfeiture of the issue, and therefore the issue may be raised by the court *sua sponte* in extraordinary circumstances after finding that one of [the] *Access Now* forfeiture exceptions applies.”); *see also Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1332 (11th

district court had jurisdiction, it violated Mims's right to due process when it entered the compliance order. We take each of these issues in turn.

Cir. 2004) (listing five instances when an issue can be raised for the first time on appeal, including “pure question[s] of law” that “refusal to consider . . . would result in a miscarriage of justice,” “where the interest of substantial justice is at stake,” or where the “issue presents significant questions of general impact or of great public concern” (quotation omitted)); *but see United States v. Holland*, 117 F.4th 1352, 1361 (11th Cir. 2024) (“[W]hen an issue or claim is properly before us, we retain the independent power to identify and apply the proper construction of governing law and are not limited to the particular legal theories advanced by the parties.” (alterations adopted) (quotations omitted)). While we rarely determine an exception applies, that determination is within the Court’s discretion. *See, e.g., Ramirez v. Sec’y, U.S. Dep’t of Transp.*, 686 F.3d 1239, 1250 (11th Cir. 2012). In this case, reviewing the district court’s authority to enforce its judgments presents a significant question of general impact, thus falling within the exception’s ambit. Furthermore, the parties have now had the opportunity to fully brief both the inherent authority and ancillary jurisdiction arguments. Thus, with the benefit of supplemental briefing, we consider whether the district court had inherent authority or ancillary jurisdiction to enforce its restitution order.

Ultimately, we conclude that the district court had ancillary jurisdiction to issue the compliance order. We therefore do not reach the parties’ arguments about whether various provisions of the MVRA or FDCPA provided a statutory basis for the district court’s jurisdiction. And while not necessary to our decision, we note that the Supreme Court recently determined that restitution under the MVRA is criminal punishment for purposes of the Ex Post Facto clause. *Ellingburg v. United States*, No. 24-482, -- S. Ct. ---, 2026 WL 135982, at *2 (Jan. 20, 2026).

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A. The district court had jurisdiction to enter the compliance order

“We review de novo the subject matter jurisdiction of the district court.” *United States v. Benjamin*, 958 F.3d 1124, 1133 (11th Cir. 2020). “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Thus, federal courts generally “possess only that power authorized by the Constitution and statute.” *United States v. Rivera*, 613 F.3d 1046, 1049 (11th Cir. 2010) (alteration adopted) (quoting *Kokkonen*, 511 U.S. at 377). The Constitution provides, in relevant part, that “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States” U.S. Const. art. III, § 2, cl. 1. And as authorized by Congress, federal district courts “have original jurisdiction . . . of all offenses against the laws of the United States.” 18 U.S.C. § 3231. For certain offenses, once a defendant is convicted, the district court must order “that the defendant make restitution to the victim of the offense.” *Id.* § 3663A(a)(1). Thus, as Mims concedes, the district court had jurisdiction over her underlying criminal offense and lawfully ordered her to pay restitution in the restitution order.

A federal court may also assert “ancillary jurisdiction.” *Kokkonen*, 511 U.S. at 378. The ancillary-jurisdiction doctrine “recognizes federal courts’ jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them.” *Id.* This doctrine “enable[s] a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.” *Id.* at 379–80; see

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But in any event, the Federal Rules of Criminal Procedure expressly authorize district courts to enforce their restitution orders via

any order reasonably necessary to ensure compliance with a restitution order or a notice order after disposition of an appeal, including: (A) a restraining order; (B) an injunction; (C) an order requiring the defendant to deposit all or part of any monetary restitution into the district court’s registry; or (D) an order requiring the defendant to post a bond.

Though in *Kokkonen* the Supreme Court ultimately found a lack of ancillary jurisdiction when a district court tried to enforce a settlement agreement after it dismissed the underlying lawsuit, the Court stated in dicta that the “situation would be quite different if the parties’ obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal.” 511 U.S. at 381. In that circumstance, the Court explained that “a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist.” *Id.*

Here, the district court lawfully entered the restitution order as part of Mims’s criminal judgment. *See* 18 U.S.C. § 3663A(a)(1). Mims does not contest the lawfulness of the restitution order. Nevertheless, according to the government, Mims has not made her required monthly payments towards her restitution obligations since 2017. Mims concedes that she was not in compliance with the restitution order when the district court issued the compliance order. By failing to make her required payments under the restitution order, Mims violated her criminal sentence. And as we have explained, district courts have ancillary jurisdiction to enforce their own judgments. *See Kokkonen*, 511 U.S. at 380–81; *see also* Fed. R. Crim. P. 38(e)(2). Accordingly, we conclude that the district court had ancillary jurisdiction to enforce the restitution order it had included in Mims’s criminal sentence via the compliance order.

Fed. R. Crim. P. 38(e)(2) (emphasis added). Thus, we have no trouble concluding that the compliance order was “authorized by a . . . rule.” *Puentes*, 803 F.3d at 606.

Our conclusion comports with other analogous cases. For example, we have held that district courts can exercise equitable jurisdiction over defendants’ postjudgment civil motions for the return of property seized by the government in criminal cases. See *United States v. Potes Ramirez*, 260 F.3d 1310, 1314–15 (11th Cir. 2001); *United States v. Martinez*, 241 F.3d 1329, 1330 (11th Cir. 2001). In both *Potes Ramirez* and *Martinez*, the defendants moved under Federal Rule of Criminal Procedure 41(e), within their underlying criminal cases, years after the district courts entered final judgments. See *Potes Ramirez*, 260 F.3d at 1312; *Martinez*, 241 F.3d at 1329. We did not require either district court to open a new civil docket to entertain the defendants’ motions even though we deemed the motions “civil proceeding[s].” *Potes Ramirez*, 260 F.3d at 1313–14 & n.5. Instead, these cases illustrate district courts’ power to entertain certain motions, including “civil” motions, within an existing criminal docket after criminal proceedings end.

Mims resists our conclusion, arguing that the district court’s previous closure of her criminal case had some jurisdictional effect. But closing a case “has no effect other than to remove a case from the court’s active docket and permit the transfer of records associated with the case to an appropriate storage repository.”⁶ *Fla. Ass’n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296, 1298 (11th Cir.

⁶ We note, however, that Rule 41 voluntary dismissals granted without conditions raise separate issues that we need not address here because Mims’s restitution terms were incorporated into her criminal sentence. See *Absolute Activist Value Master Fund Ltd. v. Devine*, 998 F.3d 1258, 1265 (11th Cir. 2021).

2001) (quotation omitted). “Designating a case ‘closed’ does not prevent the court from reactivating a case either of its own accord or at the request of the parties.” *Id.* Accordingly, the district court did not divest itself of jurisdiction by closing Mims’s criminal case.

B. The district court did not violate Mims’s right to due process

Next, Mims argues that even if the district court had jurisdiction to enter the compliance order, the district court “violat[ed] . . . Ms. Mims’s right to due process and an opportunity to be heard” when it entered the compliance order. In particular, Mims argues that she was not offered an opportunity to explain her opposition to the renewal of her restitution payments plus “arrears that have accrued since 2017.”⁷

Because Mims did not object to lack of due process below, we review for plain error.⁸ See *United States v. Moore*, 22 F.4th 1258, 1270 (11th Cir. 2022); *United States v. McNair*, 605 F.3d 1152, 1222 (11th Cir. 2010). Plain error occurs when there is “(1) error, (2) that is plain, and (3) that affects substantial rights.” *McNair*, 605 F.3d at 1222 (quotation omitted). If, but only if, these three requirements

⁷ As we explained previously, the district court did not modify the restitution order. Therefore, to the extent that Mims’s due process argument hinges on the alleged modification of the restitution order, it necessarily fails.

⁸ On appeal, Mims also argues that to the extent the government sought any remedies under the FDCPA below, the government and district court did not comply with the FDCPA’s procedural requirements. We do not reach this argument because we conclude, as discussed, that the district court was proceeding under its inherent authority with ancillary jurisdiction, not proceeding under the FDCPA.

are met, then “we may exercise discretion to correct a forfeited error . . . if (4) the error seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quotation omitted).

The district court did not commit plain error by issuing the compliance order. “Before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions.” *United States v. Smith*, 30 F.4th 1334, 1338 (11th Cir. 2022) (alteration adopted) (quoting *Day v. McDonough*, 547 U.S. 198, 210 (2006)). Mims had notice that the government sought her compliance with the restitution order, and she received numerous opportunities to argue that she could not financially afford to resume the required monthly installments and pay the arrears for the past five years. For instance, before her hearings, the government sent Mims three forms in which she could have informed the government of changed financial circumstances that affected her ability to repay the debt.⁹ The district court held a

⁹ Mims asserts that the government’s three requests for financial information are “irrelevant” because they are “extrajudicial correspondence solely from one party to another.” But the requests do not solely implicate the parties. Mims had an obligation to notify the government *and* the court of any material change in her financial circumstances, and she still has the opportunity to do so (*i.e.*, be heard) if she cannot comply with the original payment schedule. Section 3664(k) of Title 18 of the United States Code outlines this process:

A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay restitution. The court may also

status conference concerning Mims's noncompliance with the restitution order to afford Mims "[d]ue process, notice, [and an] opportunity to defend." Mims and her counsel attended the status conference wherein the district court agreed with the government that Mims was failing to comply with the restitution order. And the district court requested a written motion from the government that detailed what remedy the government sought as well as the authority for said remedy and allowed Mims an opportunity to respond.

Each time, Mims rejected her opportunity to be heard on her compliance with the restitution order or her ability to repay the debt: she either did not respond (as with the government's three requests for financial information) or used her opportunity merely to contest the district court's jurisdiction (as with the hearing and written briefing). Moreover, the district court gave Mims another opportunity to notify the court of any changed financial circumstances by ordering her to submit a financial statement. Accordingly, Mims received "fair notice and an opportunity to

accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

present [her] position[.]” *Smith*, 30 F.4th at 1338 (quotation omitted).

In opposition to this conclusion, Mims contends that she did not have a meaningful opportunity to justify her noncompliance with the restitution order because the government failed to establish jurisdiction; thus, any argument on the merits would have been “futile.” We disagree. Although the district court was concerned that it did not have jurisdiction, the district court signaled that it agreed with the government on the merits of Mims’s noncompliance, and it gave Mims an opportunity to respond in writing to the government’s motion on the merits. Mims did not address her noncompliance at the status conference. The government’s motion addressed the merits of Mims’s noncompliance; Mims’s response did not. Thus, because Mims was afforded several opportunities to be heard, we find no plain error. *See United States v. Pacheco-Romero*, 995 F.3d 948, 958 (11th Cir. 2021) (rejecting a due process argument where the “appellants received sufficient notice and several opportunities to be heard” before the district court entered judgment).

III. Conclusion

Mims has not complied with the district court’s restitution order in her criminal case since 2017. For the above reasons, we conclude that the district court had inherent authority to reorder Mims’s compliance with its restitution order even though she had completed her term of probation. And the district court offered

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Mims opportunities to be heard before it reordered compliance, which satisfied due process. Accordingly, we affirm.

AFFIRMED.

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UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
MIKEL MIMS

(AMENDED JUDGMENT)
JUDGMENT IN A CRIMINAL CASE

Case Number: **14-20210-CR-COOKE-1**
USM Number: **05098-104**

Counsel For Defendant: **Roderick Vereen, Esq.**
Counsel For The United States: **H. Ron Davidson,**
AUSA
Court Reporter: **Diane Miller**

Date of Original Judgment: July 30, 2014

Reason for Amendment:

✓ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)

The defendant pleaded guilty to count one of the Indictment.

The defendant is adjudicated guilty of these offenses:

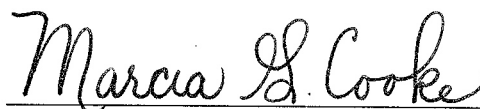
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18, U.S.C. 371	Conspiracy to commit wire fraud.	03/01/2013	1

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

All remaining counts are dismissed on the motion of the government.

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.

Date of Imposition of Sentence: 8/18/2014 *nunc pro tunc* to 7/30/2014



MARCIA G. COOKE
United States District Judge

August 18, 2014

DEFENDANT: **MIKEL MIMS**
CASE NUMBER: **14-20210-CR-COOKE-1**

PROBATION

The defendant is hereby sentenced to probation for a term of **3 years**.

The defendant shall not commit another federal, state or local crime.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **MIKEL MIMS**

CASE NUMBER: **14-20210-CR-COOKE-1**

SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Home Detention with Electronic Monitoring - The defendant shall participate in the Home Detention Electronic Monitoring Program for a period of 9 months. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance, and provide the U.S. Probation Officer with requested documentation. The defendant shall maintain a telephone at his place of residence without 'call forwarding', 'call waiting', a modem, 'caller ID', or 'call back/call block' services for the above period. The defendant shall wear an electronic monitoring device and follow the electronic monitoring procedures as instructed by the U.S. Probation Officer. The defendant shall pay for the electronic monitoring equipment at the prevailing rate or in accordance with ability to pay.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

DEFENDANT: MIKEL MIMS**CASE NUMBER: 14-20210-CR-COOKE-1****CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$255,620.00

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.

The defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

Restitution amount ordered pursuant to plea agreement \$0.00

* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **MIKEL MIMS**
CASE NUMBER: **14-20210-CR-COOKE-1**

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100.00 due immediately.

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 the clerk of the court.

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Forfeiture as noted in the Preliminary Order and Judgment of Forfeiture (ECF No.52) previously entered by the Court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-20210-CR-COOKE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIKEL MIMS,

Defendant.

ORDER

THIS CAUSE came before the Court on the Government's Motion for an Order Directing the Defendant to Comply with the Payment Schedule Imposed by this Court [ECF No. 110], filed on November 5, 2021. Defendant, Mikel Mims, filed her Response [ECF No. 111], to which the Government filed a Reply [ECF No. 112]. After carefully considering the parties' arguments, the Motion is granted.

Background. On May 14, 2014, Defendant pleaded guilty to one count of wire fraud under 18 U.S.C. section 371. (*See* Min. Entry [ECF No. 40]). The Court sentenced Defendant to three years of probation and imposed restitution in the amount of \$255,620.00. (*See* Am. J. [ECF No. 65] 2, 4). In assessing restitution, the Court imposed a payment schedule wherein Defendant had to "pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice." (*Id.* 4).

Defendant paid \$58,232.93 toward her criminal restitution until her probation ended in 2017. (*See* Mot. 1–2). She has not indicated why she stopped paying restitution other than a now-stricken letter indicating that she unilaterally forgave her own debts. (*See* June 20, 2018 Letter [ECF No. 97]; *see also* July 5, 2018 Order [ECF No. 99]).

After two hearings (*see* [ECF Nos. 104, 109]) regarding Defendant's failure to pay restitution, the Government filed the present motion seeking an order from the Court compelling Defendant to continue making restitution payments. (*See generally* Mot.).

Legal Standard. "A federal district court has 'no inherent authority to order restitution, and may do so only as explicitly empowered by statute.'" *United States v. Dickerson*, 370 F.3d 1330, 1335 (11th Cir. 2004) (quoting *United States v. Hensley*, 91 F.3d 274, 276 (1st Cir. 1996)). The Mandatory Victims Restitution Act of 1996 ("MVRA"), Pub. L. No. 104-132, 110 Stat. 1227, codified at 18 U.S.C. [section] 3663A, empowers courts with the authority to order restitution in certain cases, including wire fraud. *See* 18 U.S.C. § 3663A(c)(1). After assessing an amount of restitution, "the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid[.]" 18 U.S.C. § 3664(f)(2) (alteration added).

Analysis. The parties dispute whether the Court has subject matter jurisdiction to enforce its restitution order. The Government argues that jurisdiction exists because the "criminal restitution judgment has not expired." (Mot. 3). Defendant, in contrast, insists that the Court lacks jurisdiction because her criminal case, including her "term of probation[,] has ended." (Resp. 1 (alteration added)). The Government has the better argument.

In evaluating the Court's jurisdiction, the first place to look is the text of the statute. *See In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1042 (11th Cir. 2008). Under section 3613(b), "[t]he liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution." 18 U.S.C. § 3613(b) (alteration added). The Government relies on section

3613(b) to argue that Defendant's liability remains intact because the 20-year liability period has not elapsed. (*See* Mot. 3, 5).

Defendant responds that section 3613 provides civil remedies that can only be enforced in a separate civil action. (*See* Resp. 2 (citing 18 U.S.C. § 3613)). But Defendant cites no authority for her position, and virtually every decision addressing this argument has squarely rejected it. *See, e.g., United States v. Kollintzas*, 501 F.3d 796, 800 (7th Cir. 2007) (“[D]istrict courts may entertain civil garnishment and other collection proceedings as postjudgment remedies within an underlying criminal case; nothing precludes the government from initiating a collection proceeding under an existing criminal docket number in order to collect a fine or restitution ordered as part of the criminal sentence.” (collecting cases; alteration added)); *United States v. Mays*, 430 F.3d 963, 966 (9th Cir. 2005) (same); *United States v. Robles*, No. 06-20286, 2013 WL 3778629, at *2 (S.D. Fla. July 18, 2013) (same).

Defendant's argument also fails to consider the statutory regime for pursuing restitution. The Federal Debt Collection Procedures Act of 1990 (“FDCPA”) provides “exclusive civil procedures for the United States . . . to recover a judgment on . . . an amount that is owing to the United States on account of . . . restitution.” 28 U.S.C. §§ 3001(a)(1), 3002(3)(B). Despite being a criminal statute, the MVRA preserves the Government's ability to enforce restitution through other means, such as through the FDCPA. *See* 18 U.S.C. § 3613(a) (“The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under *Federal law* or State law. Notwithstanding any other Federal law . . . , a judgment imposing a fine may be enforced against all property or rights to property of the person fined[.]” (alterations and emphasis added)); *see also Mays*, 430 F.3d at 965–66. And the FDCPA simultaneously recognizes the Government's right “to collect any fine,

penalty, assessment, restitution, or forfeiture arising *in a criminal case*[.]” 28 U.S.C. § 3003(b)(2) (alteration and emphasis added); *see also United States v. Scarboro*, 352 F. Supp. 2d 714, 717–18 (E.D. Va. 2005). Rather than divest the Court of jurisdiction to enforce restitution in the underlying criminal case, the MVRA and FDCPA appear to sanction it and leave the mode of enforcement to the Government. *See Robles*, 2013 WL 3778629, at *2 (“To enforce a restitution order, the Government may file a motion in the defendant's criminal case.” (citations omitted)).

Undeterred, Defendant attempts to outmaneuver the weight of authority and the statutory regime by arguing that no court “has ordered a defendant to comply with a payment schedule imposed as a term of probation, following completion of the defendant’s term of probation.” (Resp. 3–4).¹ Nor could it, according to Defendant, because forcing her to comply with a payment schedule is “akin to asking the Court to order [her] to comply with any other condition of probation[.]” (Resp. 2 (alterations added)). To support this argument, Defendant points to language in the Amended Judgment that states, “[i]f this judgment imposes a fine or restitution, it is a condition of supervised release, that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.” (*Id.* (alteration added; emphasis omitted; quoting Am. J. 2)).

Defendant conflates the impetuses for restitution and probation, respectively, and ignores the independent nature of the Court’s restitution penalty. The Amended Judgment conditions probation on complying with the payment schedule, but that does not mean that the payment schedule becomes obsolete once supervision ends. *See Carter*, 742 F.3d at 445. After all, “[t]he primary function of supervised release is to provide post-imprisonment supervision over the

¹ This argument is demonstrably wrong. *See, e.g., Mays*, 430 F.3d at 967 (“The existence or non-existence of supervised release has no bearing on the district court’s jurisdiction to enter a postjudgment garnishment order.”); *United States v. Carter*, 742 F.3d 440, 445 (9th Cir. 2014) (“The district court retained the power to enforce the order of restitution, even if it did not condition supervised release on complying with a particular payment schedule.” (citations omitted)).

defendant's rehabilitation." *United States v. English*, 589 F.3d 1373, 1377 (11th Cir. 2009) (citation omitted). "Restitution, in contrast, is intended to ensure that victims are made whole for their losses and is not designed to punish the defendant." *United States v. Bane*, 948 F.3d 1290, 1301 (11th Cir. 2020) (Martin, J., concurring) (alterations adopted; citations and quotation marks omitted).

The distinction becomes more acute upon evaluating the remedies. "When a defendant violates a condition of supervised release, the court may revoke the supervised release term and impose a prison term." *United States v. Everhart*, 562 F. App'x 937, 940 (11th Cir. 2014) (citing 18 U.S.C. § 3583(e)(3)).² Whereas, as discussed, if a defendant fails to comply with a payment schedule after supervision has elapsed, the Government may enforce the order through a separate civil action or the underlying criminal action. *See Mays*, 430 F.3d at 966.

Here, the Government does not suggest that Defendant violated her probation, such that she should be sanctioned. (*See generally* Mot.). Rather, the Government merely seeks to enforce "the restitution judgment for the benefit of the victims[.]" (Reply 4 (alteration added)). Not only is the Government well within its right to enforce restitution, but the Court has jurisdiction to adjudicate such enforcement. *See, e.g., Carter*, 742 F.3d at 445 ("The district court retained the power to enforce the order of restitution, even if it did not condition supervised release on complying with a particular payment schedule." (citations omitted)).

At a more basic level, Defendant misreads the Amended Judgment. (*See* Resp. 1–2). While the Amended Judgment may condition supervision on complying with the restitution payment schedule, restitution does not derive from the probationary component of Defendant's sentence. Indeed, the heading above the restitution amount states "Criminal Monetary

² The same goes for probation. *See United States v. Thomas*, 571 F. App'x 820, 822 (11th Cir. 2014) ("When a defendant violates a condition of probation, the court may revoke the sentence of probation and resentence the defendant." (citing 18 U.S.C. § 3565(a)(2))).

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Penalties[,]” and instructs Defendant to “pay the total criminal monetary penalties under the schedule of payments on Sheet 6.” (Am. J. 4 (alteration added; emphasis omitted). Nowhere in that section does the Court limit the effect of the payment schedule to the probationary period.

Nor does such a limitation exist in the Probation section. (*See* Am. J. 2). The Probation section of the Amended Judgment simply conditions supervision on Defendant complying with the payment schedule (*see id.*); a condition that enables the Court to revoke Defendant’s supervision if she failed to comply with the payment schedule.

In sum, Defendant’s remarkable, yet unfounded, attempt to wriggle her way out of the payment schedule lacks support in law and fact. She must renew the restitution payments to her victims and make up for the past five years of noncompliance with the Amended Judgment.

Being fully advised, it is

ORDERED AND ADJUDGED that United States’ Motion for an Order Directing the Defendant to Comply with the Payment Schedule Imposed by this Court [ECF No. 110] is **GRANTED**. Defendant must comply with the payment schedule listed in the Amended Judgment [ECF No. 65]. Because Defendant’s last payment occurred in 2017, she must also fill out and submit the Financial Statement of Debtor form by **September 16, 2022**.

DONE AND ORDERED in Miami, Florida, this 18th day of August, 2022.



CECILIA M. ALTONAGA

CHIEF UNITED STATES DISTRICT JUDGE

On behalf of Marcia G. Cooke, United States District Judge

cc: counsel of record