No. ____

In the Supreme Court of the United States

CAROLYN JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Carolyn Jackson fully completed her sentence of 40 months' incarceration plus supervised release. More than four and a half years after being released from prison, and a year after completing her sentence in full, she was resentenced to an additional 100 months of incarceration.

The question presented is:

May the government, consistent with the Double Jeopardy Clause and Due Process Clause, enlarge a criminal defendant's sentence and recall her to prison after her initially imposed sentence has been fully served and she has returned to society?

RELATED PROCEEDINGS

United States District Court of New Jersey (D.N.J.):

- Dkt. 527, *United States v. Carolyn Jackson*, 2:13-cr-00290-SDW (Oct. 31, 2023) (third amended sentence)
- Dkt. 500, *United States v. Carolyn Jackson*, 2:13-cr-00290-SDW (Aug. 7, 2023) (denying motion to bar resentencing under the Double Jeopardy Clause and Due Process Clause)
- Dkt. 476, *United States v. Carolyn Jackson*, 2:13-cr-00290- SDW (Oct. 14, 2021) (second amended sentence)
- Dkt. 439, *United States v. Carolyn Jackson*, 2:13-cr-00290-SDW (Apr. 16, 2018) (first amended sentence)
- Dkt. 409, *United States v. Carolyn Jackson*, 2:13-cr-00290-SDW (Dec. 23, 2015) (initial sentence)

United States Court of Appeals for the Third Circuit (3d Cir.):

- Dkt. 130-1, *United States v. Carolyn Jackson*, No. 23-2992 (Mar. 21, 2025) (affirming order denying motion to bar resentencing under the Double Jeopardy Clause and Due Process Clause)
- Dkt. 79, *United States v. Carolyn Jackson*, No. 21-3122 (Apr. 3, 2023) (vacating and remanding second amended sentence)
- Dkt. 117, *United States v. Carolyn Jackson*, No. 18-2137, (June 26, 2020) (vacating and remanding first amended sentence)
- Dkt. 003112667068, *United States v. Carolyn Jackson*, No. 16-1200 (July 6, 2017) (vacating and remanding initial sentence)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

Constitutional Provisions and Statutes

Procedural Rules

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Carolyn Jackson respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App.1a) is reported at 132 F.4th 266. The district court's opinion (App.20a) is available at 2023 WL 5013677 (D.N.J. Aug. 7, 2023).

JURISDICTION

The Third Circuit entered judgment on March 21, 2025. On June 6, 2025, Justice Alito extended the time to petition for a writ of certiorari to July 19, 2025. No. 24A1197. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment provides that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

STATEMENT

This case presents an incredibly important question of constitutional law now that the Third Circuit's decision below has divided the lower courts: when does jeopardy attach to the imposition of a punishment, so that the Double Jeopardy Clause prohibits subsequent punishment for the same offense? Prior to *United States v. DiFrancesco*, the answer to this question was simple because it had "long been established that once a prisoner commences service of [a] sentence, the Clause prevents a court from vacating the sentence

and then imposing a greater one." 449 U.S. 117, 153–54 (1980) (Stevens, J., dissenting); *see id.* at 134 (Blackmun, J., majority opinion) (describing this as "the established practice in the federal courts"). In *DiFrancesco*, however, a narrowly divided 5-4 Court abrogated that bright-line test—for defendants who had *not completed* their sentences—and replaced it with one that more ambiguously looks to when a defendant forms an "expectation of finality in his sentence." *Id.* at 136. In response to *DiFrancesco*, lower courts also evaluate the resentencing of defendants who have *not completed* their sentences under the Due Process Clause.

Until the Third Circuit's decision below, however, a firm bright-line rule remained under the Double Jeopardy Clause for defendants who, like Jackson, had *completed* their sentences: criminal defendants could not be resentenced to additional punishment if they had completed a previously imposed sentence for the same offense. As the Third Circuit acknowledged below, "*DiFrancesco* 'did not address the application of double jeopardy principles to a defendant whose sentence has been fully served.'" App.8a (quoting *United States v. Arrellano-Rios*, 799 F.2d 520, 523 (9th Cir. 1986)). Nevertheless, the Third Circuit applied *DiFrancesco*'s "expectation of finality" test—despite Jackson having *completed* her sentence—and concluded that she could have no expectation in the finality of her sentence because she knew the government had appealed her sentence.

The Third Circuit's double jeopardy decision is irreconcilable with this Court's precedents and conflicts with decisions from the First, Seventh, Eighth, and Ninth Circuits, and the highest state courts of Alabama, Connecticut, Kansas, Massachusetts, New Jersey, New Mexico, New York, Ohio, and Tennessee.

Each of these courts has held that the Double Jeopardy Clause prevents defendants who have completed their sentences from being resentenced to additional punishment for the same offense. Full stop. Some of the cases cited by Jackson involved the government's appeal of sentences too and—in each case cited by Jackson—the defendant was on notice that the government could seek resentencing through some legal means. Thus, there is no doubt that the result here would be different if this case arose in any of those jurisdictions.

Summary reversal is warranted to bring the Third Circuit's decision in line with this Court's precedents, as understood by every other circuit and state high court to address the double jeopardy issue. The Third Circuit's outlier decision to the contrary poses a manifest threat to the rights the Double Jeopardy Clause was designed to protect. A host of legal mechanisms may permit a defendant's resentencing, including the ability in 42 states to correct an unlawful sentence "at any time." Thus, if mere notice that resentencing is possible can prevent jeopardy from attaching to even a fully completed sentence, then the government can prevent jeopardy from ever attaching to a sentence and nullify the Double Jeopardy Clause's protection against multiple punishments.

Jackson's case exemplifies this problem and is an ideal vehicle to correct a gross legal error. The government repeatedly appealed Jackson's sentence without ever seeking a stay of that sentence, so Jackson was required to begin serving her prison sentence shortly after her conviction in 2015. Ultimately, she served 40 months in prison and completed one year of supervised release, fully satisfying the punishment imposed. But appeals by the government dragged the case out for more than eight years. Following three reversals for procedural error, Jackson was sentenced a fourth time

in 2023—at which point an additional 100 months in prison were imposed. App.37a.

By then, Jackson had been rehabilitated and returned to society to begin her life anew. Before her final resentencing, Jackson had been released from prison for four and a half years. More than a year had passed since she fully completed her sentence, and the State of Florida had restored her voting rights eight months earlier. Returning Jackson to prison years after her release to serve a second sentence for the same offense is patently unfair. Yet she was reincarcerated—and will remain in prison—without this Court's assistance. The Court should rectify the split in authority and correct this injustice.

The First, Second, Fourth, Sixth, and Eleventh Circuits also would have ruled in Jackson's favor on her due process claim. Those courts recognize the importance of providing defendants with a light at the end of the tunnel as to when their sentences will end. Due process prohibits disturbing that expectation through a resentencing that comes *too close* to the expected end date of a sentence. A *fortiori*, due process necessarily is violated when a defendant, like Jackson, is resentenced more than a year *after* completing her previously imposed sentence.

Nevertheless, the Third Circuit rejected Jackson's due process claim for the same reason it rejected her double jeopardy claim, by finding that the government's appeal put her on notice that she could be resentenced. But that analysis improperly conflates her double jeopardy and due process claims and creates a split from all other circuits that have addressed the due process issue. Jackson was led to believe her sentence was over by the time she was released from prison, completed her supervised release, was told by Probation her sentence was over, and had her voting

rights restored. Being told she would have to endure additional punishment—more than a year *after* she completed the sentence previously imposed—denied her due process.

A. Statutory and Historical Background

1. 18 U.S.C. § 3742(b) allows the government to appeal "an otherwise final sentence" imposed by the district court. When a sentence is not stayed pending appeal, constitutional issues may arise because a defendant may fully complete the sentence already imposed before the appellate process can run its course and a new sentence may be ordered. That occurred here.

2. This is a relatively recent problem. Historically, "appeals by the Government in criminal cases [have been] something unusual, exceptional, not favored." *Carroll v. United States*, 354 U.S. 394, 400 (1957). The government had no general right to appeal in criminal cases at all until enactment of the Criminal Appeals Act of 1970—and even that statute "did not permit the United States to appeal from a sentence, in part because of concern that such an appeal would violate the double jeopardy clause of the fifth amendment." *United States v. Gomez*, 24 F.3d 924, 928 (7th Cir. 1994). That 1970 statute allows government appeals of issues that would *impact* sentencing, such as a finding that a defendant did not have a prior conviction. To avoid any double jeopardy problem, however, at the government's request, sentencing courts are required to "postpone sentenc[ing] to allow an appeal from that determination." 21 U.S.C. § 851(d)(2).

DiFrancesco considered a similarly narrow right to appeal created by the Organized Crime Control Act of 1970, 18 U.S.C. § 3576 (now repealed). The govern-

ment's right to appeal a sentence applied only to a narrow category of "dangerous special offenders," who could be subject to increased penalties. The statute had strict timeliness requirements for this review, which the *DiFrancesco* Court emphasized required that the appeal "be taken promptly." 449 U.S. at 136. The Court recognized that "the appeal may prolong the period of any anxiety that may exist, but it does so only for the finite period provided by the statute." *Id.*

"The statutory restrictions on Government appeals long made it unnecessary for this Court to consider the constitutional limitations on the appeal rights of the prosecution except in unusual circumstances." *United States v. Wilson*, 420 U.S. 332, 339 (1975); *see also United States v. Martin Linen Supply Co.*, 430 U.S. 564, 568 (1977) ("Consideration of the reach of the constitutional limitations inhibiting governmental appeals was largely unnecessary during the prior regime of statutory restrictions."). Indeed, Congress did not give the government a general right to appeal a criminal sentence until more than 200 years after the Nation's founding, in the Sentencing Reform Act of 1984, codified at 18 U.S.C. § 3742(b). With this expansion of the government's right to appeal criminal sentences, however, resentencing is now more common, and the need to set constitutional limits against double punishment has become more acute.

B. Factual Background

Jackson was sentenced four times over the course of nearly a decade during which the government repeatedly appealed Jackson's sentence but never sought to stay the execution of her sentence pending those appeals. Jackson was convicted of conspiracy and eleven counts of endangering the welfare of a child under New Jersey law, which were charged federally under the

Assimilative Crimes Act, 18 U.S.C. § 13, because part of those offenses took place on a U.S. military installation. *See* App.62a–64a; N.J. Stat. Ann. § 2C:5-2; N.J. Stat. Ann. § 2C:24-4(a).

On December 15, 2015, Jackson was sentenced to 24 months' imprisonment and three years of supervised release by the U.S. District Court of New Jersey. App.65a. Upon appeal by the government, a divided panel of the Third Circuit vacated the sentence solely for procedural error. *United States v. Jackson*, 862 F.3d 365 (3d Cir. 2017) (*Jackson I*). Jackson remained in custody during the appeal period until she completed the full custodial portion of that sentence.

On April 12, 2018, Jackson was sentenced a second time, this time to 40 months' imprisonment and three years of supervised release. App.57a–58a. Still unsatisfied, the government again appealed her sentence. On March 19, 2019, while that appeal was pending, Jackson completed the custodial part of this sentence. The April 2018 sentence was again vacated solely for procedural error. *United States v. Jackson*, 819 F. App'x 97 (3d Cir. 2020) (*Jackson II*). When the case was remanded a second time, Jackson was serving a three-year period of supervised release in Florida.

On October 6, 2021, Jackson was sentenced a third time, this time to time served (the 40 months she already served) plus one year of supervised release. App.48a–49a. The government appealed her sentence yet again. While that appeal was pending, Jackson completed her supervised release and received written confirmation from Probation that her sentence was complete. On February 17, 2023, Jackson's voting rights were restored by the State of Florida.

Despite completing her sentence in full, on April 3, 2023, the Third Circuit again vacated Jackson's sentence solely for procedural error and directed that Jackson be resentenced a fourth time, by a different district court judge. *United States v. Jackson*, 2023 WL 2755578 (3d Cir. Apr. 3, 2023) (*Jackson III*).

Prior to her fourth sentencing, Jackson filed a motion to bar further resentencing. She argued that because she had completed her sentence, it would violate her double jeopardy and due process rights under the Fifth Amendment to be punished a second time through the imposition of a new, additional sentence. That motion was denied in an unpublished opinion on August 7, 2023. App.20a. The court found that the government timely appealed Jackson's latest sentence under 18 U.S.C. § 3742(b), and a defendant has "no expectation of finality in [her] sentence"—the point at which a defendant's double jeopardy and due process rights would bar resentencing—"until the appeal is concluded or the time to appeal has expired." App.27a–28a (citing *DiFrancesco*, 449 U.S. at 136).

On October 31, 2023, the district court sentenced Jackson to imprisonment for 140 months—an additional 100 months on top of the 40 months Jackson already served. App.40a. Jackson appealed her October 31, 2023 sentence to the Third Circuit, which affirmed on March 21, 2025. App.1a. The Third Circuit agreed with the lower court's extension of *DiFrancesco* and held that "a defendant has no legitimate expectation of finality in their sentence while that sentence is under appeal." App.10a. However, the Third Circuit also recognized that "this is a matter of first impression," and that *DiFrancesco* "did not address the application of double jeopardy principles to a defendant whose sen-

tence has been fully served." App.8a. Jackson was re-incarcerated on February 13, 2024, and remains imprisoned.

REASONS FOR GRANTING THE PETITION

The Third Circuit's double jeopardy decision cannot be reconciled with several precedents from this Court, and directly conflicts with decisions from the First, Seventh, Eighth, and Ninth Circuits, as well as the highest state courts of Alabama, Connecticut, Kansas, Massachusetts, New Jersey, New Mexico, New York, Ohio, and Tennessee. This Court should grant certiorari to resolve this conflict and bring the Third Circuit in line with this Court's precedents and every other circuit and state high court to consider the issue. Additionally, the First, Second, Fourth, Sixth, and Eleventh Circuits would find that Jackson's resentencing violated the Due Process Clause. Thus, the outcome of Jackson's case would have been different had she been resentenced almost anywhere but in the Third Circuit. Summary reversal is warranted. *See, e.g.*, *Martinez v. Illinois*, 572 U.S. 833, 843 (2014) (summarily reversing a decision that "runs directly counter to our precedents and to the protection conferred by the Double Jeopardy Clause," even where the lower court's decision was "understandable, given the significant consequence of the State's mistake").

I. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENTS

1. This Court has consistently held that the Double Jeopardy Clause fundamentally prevents defendants who have completed their sentences from being punished a second time for the same offense. Early on, this Court recognized: "It is the punishment that would legally follow the second conviction which is the

real danger guarded against by the Constitution." *Ex parte Lange*, 85 U.S. 163, 173 (1873); *see also North Carolina v. Pearce*, 395 U.S. 711, 717 (1969) (explaining the Clause "protects against multiple punishments for the same offense").

Beginning with *Ex parte Lange*, this Court found that double jeopardy principles prevent a defendant who "had fully performed, completed, and endured" his sentence from being resentenced because the district court's "power to punish for that offence was at an end. . . . [T]he authority of the court to punish the prisoner was gone. The power was exhausted; its further exercise was prohibited. It was error" to resentence the defendant "because the power to render any further judgment did not exist." 85 U.S. at 176; *see also In re Bradley*, 318 U.S. 50, 52 (1943) (reversing a resentencing on double jeopardy grounds because the defendant made "full satisfaction" of his prior sentence and, thus, "the power of the court was at an end"). The Court rhetorically asked: "if, after judgment has been rendered on the conviction, and the sentence on that judgment executed on the criminal, he can be again sentenced on that conviction to another and different punishment, or to endure the same punishment a second time, is the constitutional restriction of any value?" 85 U.S. at 173. Answering that question, the Court explained that it "seems to us irresistible . . . that the Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it." *Id.* A unanimous Court in *United States v. Benz* later clarified that a district court "may amend a sentence so as to *mitigate* the punishment, but not so as to *increase* it" because "to increase the penalty is to subject the defend-

ant to double punishment for the same offense in violation of the Fifth Amendment to the Constitution." 282 U.S. 304, 307 (1931) (emphasis added).

As Justice Scalia put it, he was "sure" that, after a defendant had served her sentence, a judge could not add more time to that sentence because "the Double Jeopardy Clause is a statute of repose for sentences as well as for proceedings. Done is done." *Jones v. Thomas*, 491 U.S. 376, 392 (1989) (dissenting, joined by Justices Stevens, Brennan, and Marshall). No member of this Court quarreled with Justice Scalia's conclusion that "[d]one is done." Rather, the majority dismissed Justice Scalia's hypothetical, noting that "this case does not present the situation posited by the dissent." *Id.* at 385.

Subsequently, Justice Kennedy, who wrote the majority opinion in *Jones*, endorsed Justice Scalia's view when authoring the majority opinion in *CTS Corporation v. Waldburger*, explaining that "the Double Jeopardy Clause has been described as 'a statute of repose' because it in part embodies the idea that at some point a defendant should be able to put past events behind him." 573 U.S. 1, 9 (2014) (quoting *Jones,* 491 U.S. at 392 (Scalia, J., dissenting)).

2. In the Ex Post Facto Clause context, when examining statutes of repose, the Court similarly distinguishes laws that seek to extend "unexpired statutes of limitations," which are permissible, from "situations where limitations periods have expired." *Stogner v. California*, 539 U.S. 607, 618 (2003) (invalidating a statute that revived expired causes of action against child molesters). Both a sentence and a statute of limitations can be modified while they are in effect, but resentencing after a sentence has been completed, like reviving an expired cause of action, is prohibited because it creates a new punishment.

3. Although this Court was clear in *Ex parte Lange*, *Bradley*, and *Benz*, that resentencing defendants who have completed one sentence is barred by the Double Jeopardy Clause, the Third Circuit's decision makes no mention of those cases. Instead, the Third Circuit cited *Bozza v. United States*, 330 U.S. 160 (1947), as upholding a resentencing that replaced an unlawful sentence with a lawful one. App.8a. But *Bozza* does not undermine Jackson's double jeopardy claim.

The defendant in *Bozza* was subject to a mandatory minimum fine *and* imprisonment, but the court initially sentenced the defendant only to imprisonment. A few hours later, before the defendant had even left the courthouse to begin his prison sentence, the court corrected the sentence and imposed a fine as well. 330 U.S. at 165–66. Before *DiFrancesco* held that a sentence can be modified while a defendant is serving his sentence, *Bozza* was understood to allow only for a sentence to be modified before a defendant begins serving it. *DiFrancesco*, 449 U.S. at 134–35 (Blackmun, J., majority opinion); *id.* at 153–54 (Stevens, J., dissenting). *Bozza* certainly does not stand for the proposition that a defendant who has completed her sentence can be sentenced a second time consistent with the Double Jeopardy Clause.

II. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH DECISIONS FROM FOUR OTHER FEDERAL COURTS OF APPEALS

1. Until the Third Circuit's decision in this case, the courts of appeals uniformly agreed that a defendant who has completed her sentence cannot be resentenced again for the same crime. In *Arrellano-Rios*, the Ninth Circuit explained: "We need not decide at what point, in the service of a defendant's legal sentence, a reasonable expectation of finality arises. We are certain,

however, that the expectation has arisen, and jeopardy has attached, upon its completion." 799 F.2d at 524. The Ninth Circuit explained that its "conclusion is supported by the fact that we find no cases holding that finality is not accorded to a fully served legal sentence." *Id.*; *see also United States v. Radmall*, 340 F.3d 798, 800 (9th Cir. 2003) ("Completion of a sentence ordinarily creates . . . a legitimate expectation of finality."); *United States v. Foumai*, 910 F.2d 617, 620 (9th Cir. 1990) (A "sentence becomes final and irrevocable no later than the date it is fully served.").

The Fourth, Seventh, and Eighth Circuits agree with the Ninth Circuit. *See United States v. Silvers*, 90 F.3d 95, 101 (4th Cir. 1996) ("[O]nce a defendant fully serves a sentence for a particular crime, the Double Jeopardy Clause's bar on multiple punishments prevents any attempt to increase thereafter a sentence for that crime."); *United States v. Daddino*, 5 F.3d 262, 265 (7th Cir. 1993) ("When the district court amended his sentence, Daddino had completed service of his incarceration and paid all fines and restitution; only a portion of his probation and supervised release remained. As a consequence, Daddino acquired a legitimate expectation of finality in both the length of his incarceration and the amount of his fines and restitution. Therefore, the district court could not disturb these aspects of his sentence."); *Oksanen v. United States*, 362 F.2d 74, 80 (8th Cir. 1966) ("[W]ith the termination of probation order of June 6, 1958, appellant had completely served his sentence. Therefore, when, on July 29, 1965, appellant was sentenced to three more years['] probation, he was being punished a second time for the commission of a single offense."). Even the government conceded before the Fourth Circuit that a defendant cannot be resentenced after a prior sentence has been completed. *See Silvers*, 90

F.3d at 101 ("[T]he government concedes, reimposition of sentence on counts upon which Silvers had fully satisfied his sentence violated the Double Jeopardy Clause."); Brief for the United States, *Silvers*, 1995 WL 17054102, at *21 (4th Cir. Dec. 22, 1995) ("[A]lthough the district court was allowed substantial leeway in resentencing the defendant, it did not have the authority or the power to revisit the various counts in which Silvers had fully satisfied the sentences. . . . [H]e had fully served the five-year sentences imposed in counts eleven, thirteen and nineteen, hence the Double Jeopardy Clause prevented the district court from resentencing on these counts.") (citing *Arrellano-Rios*, 799 F.2d at 523).

2. The Third Circuit erred in trying to find various ways to distinguish these contrary decisions. Each of those other circuits held unequivocally that a fully served sentence completes the punishment for the offense, such that any subsequent additional punishment places a defendant in jeopardy a second time. That is how other courts interpret these cases. *See, e.g.*, *State v. Van Lehman*, 427 P.3d 840, 844–45 (Kan. 2018) ("Since *DiFrancesco*, multiple federal courts have held that after a defendant has completed a sentence, a legitimate expectation in the finality of the sentence arises and double jeopardy principles prevent reformation of the original completed sentence.") (discussing *Silvers*, *Daddino*, and *Okasnen*).

The Third Circuit plainly misread those cases. For starters, it believed *Silvers* supported its position by citing to a holding within the case allowing a resentencing to take place on certain counts. App.9a n.9. But the Third Circuit ignored that the Fourth Circuit found error in resentencing the defendant on counts where he already had served his sentence—which the government agreed was error. *See Silvers*, 90 F.3d at

101. And while that resentencing followed a grant of the defendant's habeas petition, rather than a direct appeal by the government, that distinction should make no difference for double jeopardy purposes. Done is done.

The significance of *Arrellano-Rios* also was lost on the Third Circuit, which described the case as "inapposite" because it held that "a defendant's completed sentence on two counts cannot be adjusted after conviction on a third count was reversed." App.9a. The reason for that holding, however, applies equally here: the defendant's "completed sentence" prevented his resentencing on those counts under the Double Jeopardy Clause. *Arrellano-Rios*, 799 F.2d at 524.

The Third Circuit's effort to distinguish *Daddino* is equally unconvincing. In *Daddino*, the Seventh Circuit found error when a district court amended the defendant's sentence to require him to pay the cost of his incarceration and supervision after the defendant had completed his sentence. 5 F.3d at 265. The Third Circuit found *Daddino* distinguishable because the time to appeal had passed. App.9a. That is true—but, again, the Seventh Circuit's holding rested on the fact that "Daddino had completed serving the incarceration component of his sentence and had paid all of the fines and restitution." 5 F.3d at 265.

The Third Circuit did not address *Oksanen*, where the district court granted a writ of coram nobis vacating defendant's sentence because he was not represented by counsel at sentencing and the defendant sought to withdraw his guilty plea. The district court denied the motion to withdraw, and that decision was affirmed. In resentencing the defendant, the district court added punishment after the defendant had completed his sentence, which the Eight Circuit reversed on double jeopardy grounds. 362 F.2d at 80. Again,

the controlling fact was that the defendant had completed his sentence, meaning additional punishment could not be imposed.

III. THE THIRD CIRCUIT DECISION CONFLICTS WITH THE AUTHORATATIVE HIGH COURT DECISIONS OF NINE STATES

1. The highest state courts in nine states have considered the issue and agree that defendants who have completed their sentences cannot be resentenced to additional punishment for the same offense: Alabama,[1] Connecticut,[2] Kansas,[3] New Jersey,[4] Massachusetts,[5]

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[1] *See Lanier v. State*, 270 So.3d 304, 310 (Ala. Crim. App. 2018) ("[A] trial court's correcting an illegal sentence after the expiration of that sentence violates principles of double jeopardy.").

[2] *See State v. Heyward*, 207 A.2d 730, 731 (Conn. 1965) ("[T]he defendant, having satisfied the sentence of the law for his crime, then was entitled to be enlarged, a free man. To subject him, instead, to another, and more severe, judgment for the same offense was a denial of due process and placed him again in jeopardy for the crime for which he had already paid the penalty.").

[3] *See Van Lehman*, 427 P.3d at 844–45.

[4] *See State v. Shubert*, 53 A.3d 1210, 1220 (N.J. 2012); *State v. Laird*, 135 A.2d 859, 867 (N.J. 1957).

[5] *See Commonwealth v. Parrillo*, 14 N.E.3d 919, 921 (Mass. 2014) ("The judge may not resentence the defendant on the two convictions for which the defendant has already served his sentence, because any such resentencing would result in an increase in punishment

New Mexico,[6] New York,[7] Ohio,[8] and Tennessee.[9] *See also Commonwealth v. Hind*, 304 A.3d 413, 422 (Pa. Super. Ct. 2023) (holding that, because the state appealed the defendant's sentence without seeking a stay and the defendant completed his sentence, "even if the Commonwealth had the statutory right to appeal, we conclude that a new sentence would violate the constitutional protections guaranteed to Appellees against double jeopardy under the United States Constitution

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in violation of double jeopardy principles."); *see also Commonwealth v. Scott*, 22 N.E.3d 171, 175 (Mass. App. Ct. 2015) (same).

[6] *See March v. State*, 782 P.2d 82, 83 (N.M. 1989) (holding a New Mexico procedure that allows for enhancing sentences of habitual offenders violated double jeopardy when applied to a defendant who had completed his unenhanced sentence).

[7] *See People v. Williams*, 925 N.E.2d 878, 889 (N.Y. 2010).

[8] *See State v. Brasher*, 218 N.E.3d 899, 905 (Ohio 2022) ("Once an offender has completed his or her sentence, the trial court loses jurisdiction to modify it."); *State v. Holdcroft*, 1 N.E.3d 382, 389 (Ohio 2013) (Under the Double Jeopardy Clause, "when the entirety of a prison sanction has been served, the defendant's expectation in finality in his sentence becomes paramount, and his sentence for that crime may no longer be modified.").

[9] *See State v. Brown*, 479 S.W.3d 200, 211 (Tenn. 2015) (holding rule allowing correction of an illegal sentence at any time could not be used to resentence a defendant who completed his sentence).

and the Pennsylvania Constitution"); *accord Commonwealth v. Sholar*, 335 A.3d 345, at *5 (Pa. Super. Ct. 2025) (table) (same).

2. The Third Circuit did not address many of these state-court cases directly[10] but mistakenly declared, "all" the cases Jackson cited "support the proposition that a defendant has no legitimate expectation of finality in their sentence while that sentence is under appeal." App.10a. What is without precedent is the Third Circuit's decision to allow resentencing when a prior sentence has already been served. *See, e.g.*, *Arrellano-Rios*, 799 F.2d at 524 ("we find no cases holding that finality is not accorded to a fully served legal sentence"); *Shubert*, 53 A.3d at 1220 ("The State has not cited to us any published case from any jurisdiction that has permitted a defendant's sentence to be increased after the sentence has been completed."). Some of the state cases explicitly imposed a double jeopardy bar, even where the government had timely filed an appeal challenging a sentence. *See Sholar*, 335 A.3d 345, at *5; *Hind*, 304 A.3d at 422; *Heyward*, 207 A.2d at 730-31. In 42 states, an unlawful sentence may be corrected "at any time,"[11] and many of the state cases cited by Jackson arose in that context.

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[10] The Third Circuit cited only to Alabama, Kansas, and New York cases, without addressing the Connecticut, Massachusetts, New Jersey, New Mexico, Ohio, and Tennessee cases. App.10a n.14.

[11] *See* Alaska R. Crim. P 35(b); *People v. Codinha*, 309 Cal. Rptr. 3d 842, 853 (Cal. Ct. App. 2003); Colo. R. Crim. P. 35(a); Conn. Gen. Stat. § 43-22; Del. Super. Ct. R. Crim. P. 35(a); Fla. R. Crim. P. 3.800(a)(1); *Polanco v. State*, 872 S.E.2d 268, 271 (Ga. 2022); Haw. R.

Penal P. 35(a); Idaho Crim. R. 35; Ill. Sup. Ct. R. 472(a)(1); Ind. Code Ann. § 35-38-1-15; Iowa R. Crim. P. 2.24(5)(a); Kan. Code Crim. P. § 22-3504; *Commonwealth v. Moore*, 664 S.W.3d 582, 590 (Ky. 2023); La. C. Cr. P. Art. 882(A); Md. R. 4-345(a); Mich. R. Crim. P. 6.429(A); Minn. R. Crim. P. 27.03(9); *Cozart v. State*, 226 So. 3d 574, 580 (Miss. 2017); Mo. Sup. Ct. R. 24.035(j); Mont. Code Ann. § 46-18-116(3); *State v. Rolling*, 307 N.W.2d 123, 125 (Neb. 1981); Nev. Rev. Stat. Ann. § 176.555; *State v. Van Winkle*, 1 A.3d 592, 595 (N.H. 2010); N.J. Ct. R. 7:10-2(b)(1); N.M. Crim. P. R. 57.1(a); N.Y. Crim. Proc. Law § 440.20; *State v. Bonds*, 262 S.E.2d 340, 342 (N.C. Ct. App. 1980); N.D. R. Crim. P. Rule 35(a)(1); *Tracy v. State,* 216 P. 941, 943 (Okla. Crim. App. 1923); *Commonwealth v. Walters*, 814 A.2d 253, 256 (Pa. Super 2002); R.I. Super. Ct. R. Crim. P. 35(a); *State v. Plumer*, 887 S.E.2d 134, 137 (S.C. 2023); S.D. Codified Laws § 23A-31-1; *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978); *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003); Utah R. Crim. P. 22; Vt. R. Cr. P. Rule 35(a); *Dargan v. Commonwealth*, 500 S.E.2d 228, 229 (Va. Ct. App. 1998); W. Va. R. Cr. P. Rule 35(a); Wis. Stat. § 974.06; Wyo. R. Crim. P. 35(a).

Additionally, in federal court and 30 states, a clerical error in a sentence can be corrected "at any time." *See* Fed. R. Crim. P. 36; Ala. R. Crim. P. 29; Alaska R. Crim. P. 36; Ariz. R. Crim. P. 24.4; Colo. R. Crim. P. 36; Del. Super. Ct. R. Crim. P. 36; Fla. R. Crim. P. 3.800(a)(1); Ga. Code Ann. § 9-11-60(g); Haw. R. Penal P. 36; Ill. Sup. Ct. R. 472(a)(4); Iowa R. Crim. P. 2.23(i); Kan. Stat. Ann. § 22-3504(b); Ky. R. Crim. P. 10.10; Me. R. Unified Crim. P. 50; Mass. R. Crim. P. 42; Mich. R. Crim. P. 6.435(a); Minn. R. Crim. P. 27.03(10); Miss.

3. In *Williams*, for example, the New York Court of Appeals considered multiple appeals where sentencing courts had failed to impose a mandatory requirement of post-release supervision (PRS). 925 N.E.2d at 899. Each of the defendants had fully completed their original sentences before resentencing was sought. *Id.* The court explained that it "has long recognized that courts have the inherent authority to correct illegal sentences" and "there is no dispute that defendants' original sentences that omitted the imposition of terms of PRS were illegal." *Id.* Although defendants "are presumed to be aware that a determinate prison sentence without a term of PRS is illegal and, thus, may be corrected by the sentencing court at some point in the future," the court held that, "after release from prison, a legitimate expectation in the finality of a sentence arises and the Double Jeopardy Clause prevents reformation to attach a PRS component to the original completed sentence." *Id.* at 217. Other courts have followed this analysis in finding a double jeopardy bar to resentencing defendants who have completed their sentences, even when the sentence imposed was un-

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R. Crim. P. 25.4; Mo. Sup. Ct. R. 29.12(c); Nev. Rev. Stat. Ann. § 176.565; N.M. R. Crim. P. Dist. Ct. 5-113(b); N.D. R. Crim. P. 36; Ohio R. Crim. P. 36; Or. Rev. Stat. Ann. § 137.172; R.I. Dist. Ct. R. Crim. P. 36; S.D. Codified Laws § 23A-31-2; Tenn. R. Crim. P. 36; Utah R. Crim. P. 30(b); Wash. Super. Ct. R. Crim. P. 7.8(a); W.V. R. Crim. P. 36; Wy. R. Crim. P. 36. Clerical error corrections that increase punishment after a prior sentence has been served produce Fifth Amendment issues as well. *See, e.g.*, *United States v. Mayes*, 162 F.3d 1162, at *5 (6th Cir. Aug. 19, 1998) (unpublished) (finding a due process violation).

lawful and state law allowed such sentences to be corrected "at any time." *See, e.g.*, *Lanier*, 270 So.3d at 308 (Alabama law allowing an illegal sentence to be corrected "at any time" meant that "an illegal sentence may be corrected after the defendant has begun serving the sentence without double-jeopardy implications," but finding a double jeopardy violation because "resentencing a defendant after the expiration of a sentence, even to correct an illegal sentence, results in multiple punishments for the same offense"); *Van Lehman*, 427 P.3d at 843 (Kansas law); *Brown*, 479 S.W.3d at 211 (Tennessee law); *Holdcroft*, 1 N.E.3d at 386–87 (Ohio law); *Shubert*, 53 A.3d at 1218 (New Jersey law); *March*, 782 P.2d at 84 (New Mexico law). Under the Third Circuit's analysis, defendants on notice of such "at any time" laws will *never* have certainty that they will not be resentenced. In theory, they could be resentenced to prison decades after they completed a prior sentence.

4. Heaping injustice upon injustice here, if Jackson's violation of New Jersey laws had been prosecuted in New Jersey state court, none of this would have happened. The New Jersey Supreme Court has been clear that any resentencing after Jackson completed her sentence would violate the Double Jeopardy Clause. *See Shubert*, 53 A.3d at 1220 ("The State has not cited to us any published case from any jurisdiction that has permitted a defendant's sentence to be increased after the sentence has been completed. In our judgment, the reason for the omission is clear: to permit such an action is a violation of a defendant's fundamental rights under the Double Jeopardy Clauses of the United States and New Jersey Constitutions."); *Laird*, 135 A.2d at 867 ("Once the sentence has been executed, it would seem that on the plainest principles of justice

the jurisdiction of the court to increase the punishment is at an end. . . ."). Additionally, when the State is permitted to appeal a sentence under New Jersey law, "Rule 2:9-3(c) provides that the 'execution of sentence shall be stayed pending appeal by the State.'" *State v. Thomas*, 211 A.3d 1241, 1245 (N.J. Super. App. Div. 2019). The New Jersey court explained: "The State must ensure the stay of the execution of the sentence is in effect in order to ensure double jeopardy will not apply." *Id.* While all jurisdictions permit discretionary stays of sentences pending appeal by the government, fifteen other states and the District of Columbia impose such stays automatically as New Jersey does to prevent double jeopardy.[12]

IV. THE THIRD CIRCUIT'S DUE PROCESS RULING CONFLICTS WITH DECISIONS FROM THE FIRST, SECOND, FOURTH, SIXTH, AND ELEVENTH CIRCUITS

1. In response to *DiFrancesco*'s elimination of double jeopardy protection for defendants who are still serving their sentences, the lower courts have consistently

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[12] In 17 jurisdictions, a defendant's sentence is automatically stayed pending an appeal by the government, at least where the defendant was not detained before trial. *See* Ala. R. App. P. 8(d)(2); Alaska R. App. P. 206(a)(1); Colo. R. App. P. 8.1(a)(2); Conn. Super. Ct. R. Crim. P. 43-31; D.C. Super. Ct. R. Crim. P. 38(b)(1); Ga. Code Ann. § 5-6-45(a); Iowa R. Crim. P. 2.26(2)(a); Ky. R. App. P. 48(C); Me. R. Unified Crim. P 38(a); Miss. Code Ann. § 99-39-25(2); Mont. Code Ann. § 46-20-204(2); Nev. Rev. Stat. Ann. § 177.105; N.M. Stat. Ann. § 31-11-1(A); N.J. Ct. R. 2:9-3(d); N.D. R. Crim. P. 38(a)(2); R.I. Super. Ct. R. Crim. P. 38(a)(1); S.D. Codified Laws § 23A-33-2.

found that resentencing those defendants may still violate the Due Process Clause. *See, e.g.*, *United States v. Davis*, 329 F.3d 1250, 1255 (11th Cir. 2003); *United States v. Mayes*, 162 F.3d 1162, at *5 (6th Cir. Aug. 19, 1998) (unpublished); *United States v. Davis*, 112 F.3d 118, 123 (3d Cir. 1997); *DeWitt v. Ventetoulo,* 6 F.3d 32, 36 (1st Cir. 1993); *United States v. Rico*, 902 F.2d 1065, 1068 (2d Cir. 1990); *United States v. Lundien*, 769 F.2d 981, 987 (4th Cir. 1985). As the First Circuit explained, "the power of a sentencing court to correct even a statutorily invalid sentence must be subject to some temporal limit." *Breest v. Helgemoe,* 579 F.2d 95, 101 (1st Cir. 1978).

At the outset of serving a sentence, when the release date is far off, release may be too distant to provide an inmate with much hope. "As the months and years pass, however, the date of that prospect must assume a real and psychologically critical importance," which may help the inmate in "enduring his confinement and coping with the prison regime." *Id.* At that point, it may "be fundamentally unfair, and thus violative of due process[,] for a court to alter even an illegal sentence in a way which frustrates a prisoner's expectations by postponing his parole eligibility or release date far beyond that originally set." *Id.*; *see also Mayes*, 162 F.3d at *5 (holding a five-year delay in correcting a clerical error in a judgment that would require the defendant to be confined to a halfway house violated due process); *DeWitt,* 6 F.3d at 36 (finding a due process violation where a defendant's life sentence had been unlawfully suspended and was reimposed six years after he was released from custody); *Rico*, 902 F.2d at 1068 ("The expectation of finality comes from the prospect of release as defendant nears the end of his or her prison term."). Thus, "due process may also

be denied when a sentence is enhanced after the defendant has served so much of his sentence that his expectations as to its finality have crystallized and it would be fundamentally unfair to defeat them." *Lundien*, 769 F.2d at 987; *see also Davis*, 329 F.3d at 1255 (same); *Davis*, 112 F.3d at 123 (same).

2. Although all cases, like Jackson's, involving resentencing following the completion of a previously imposed sentence have been decided in the defendant's favor under the Double Jeopardy Clause, such resentencing violates the Due Process Clause as well. If resentencing too close in time to when a defendant expects her sentence to end violates due process, resentencing necessarily violates due process if it comes *after* the defendant already has completely served her sentence.

3. In finding that Jackson's knowledge that the government had appealed her sentence defeated both her double jeopardy claim and due process claim, the Third Circuit improperly conflated the two claims' tests. While the Double Jeopardy Clause looks to whether a defendant has been punished once already, such that a second punishment is prohibited, the Due Process Clause requires a defendant be given a reasonable expectation as to when her sentence will end. A rule requiring a defendant to fully serve one sentence before learning whether her punishment is complete or whether more punishment will be imposed does not provide that certainty until it is too late. There is no other context in which the government's violation of due process is excused by giving notice that the government may violate someone's rights, and the same should be true here.

4. The Third Circuit's rationale for its holding appears to rest more on a policy concern with not "rewarding" Jackson with the "windfall" of an erroneous

sentence, rather than precedent. App.12a. But the Third Circuit never found the sentence that Jackson actually served was substantively erroneous; it merely questioned the procedures through which the sentence was reached. The solution to this problem rested in the government's hands, not Jackson's.

The government could have prevented Jackson from completing her sentence before she was resentenced in a multitude of ways. It could have requested that her sentence be stayed pending appeal[13]—something that occurs automatically in 16 states and the District of Columbia precisely to prevent this sort of double jeopardy problem. *See supra* n.12. It also could have asked the lower courts to expedite their decisions to avoid this result or sought to push back the date Jackson reported to prison. It did none of those things, and Jackson had no choice but to serve the sentence she was ordered to serve.

Jackson received no windfall in serving the 40-month sentence that she was required to serve, plus the additional year of supervised release. Returning her to prison four and a half years after she was released and more than a year after her sentence was completed in full, after she was advised by Probation that her sentence was complete, and after she had begun her life anew—with even her voting rights restored—was no windfall either. It is the sort of result that anyone asked on the street would say is patently unfair. In short, it is a result that this Court should deem a due process violation.

CONCLUSION

The petition should be granted.

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[13] *See* 18 U.S.C. §§ 3141(b), 3143(c).

Respectfully submitted.

July 18, 2025

/s/ *Christopher D. Man*

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APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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Nos. 23-2492, 23-3016, 23-2992, 23-2508

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UNITED STATES OF AMERICA,

v.

CAROLYN JACKSON
Appellant in 23-2492, 23-2992

&

JOHN E. JACKSON
Appellant in 23-3016, 23-2508

———

On Appeal from the United States District Court
for the District of New Jersey
(District Court Nos. 2:13-cr-00290-001,
2:13-cr-00290-002)
District Judge: Honorable Susan D. Wigenton

———

Submitted Under Third Circuit L.A.R. 34.1(a) on
December 10, 2024

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Before: BIBAS, CHUNG, and ROTH,
Circuit Judges

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(Filed: March 21, 2025)

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OPINION OF THE COURT

CHUNG, *Circuit Judge*.

Carolyn Jackson and her husband, John Jackson, were convicted of horrific child abuse after a thirty-nine-day jury trial. The original trial judge sentenced the Jacksons three times—twice after remand from this Court. On each appeal, we found the sentencing judge did not sentence the Jacksons in a manner

supported by the jury's verdict and federal sentencing law. The Jacksons' sentences were vacated upon a third appeal and were remanded for resentencing with instructions that their cases be reassigned to a different judge. The Jacksons now bring this appeal, challenging the sentences imposed by the new judge. We will affirm.

I. BACKGROUND

Because the facts have been reviewed at length in prior cases, we do not revisit them here.[1] Suffice it to say, this case concerns serious child abuse inflicted by the Jacksons on three adopted children, Joshua, "C," and "J," all below the age of four at the time of their abuse. The Jacksons were charged in a fifteen-count superseding indictment with conspiracy under N.J.S.A. § 2C:5-2 and several counts of endangering the welfare of a child under N.J.S.A. § 2C:24-4a.[2] At a jury trial overseen by Judge Katharine Hayden, John was found guilty of Counts 1, 3-9, and 11-12, and Carolyn was found guilty of Counts 1-12. Counts 2, 4, 7, 8, and 11, termed the "omission counts," charged the Jacksons' with withholding food, water, and/or medical care from the children. The other counts,

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[1] For a full discussion of the facts, see *United States v. Jackson*, 862 F.3d 365, 368-370 (3d Cir. 2017). This was the first appeal, and we refer to it herein as "*Jackson I*." The second appeal was *United States v. Jackson*, 819 F. App'x 97, 99 (3d Cir. 2020) ("*Jackson II*"), and the third appeal was *United States v. Jackson*, 2023 WL 2755578 (3d Cir. Apr. 3, 2023) ("*Jackson III*").

[2] Although these were state law violations, the Jackson were charged federally because these offenses occurred "on a military installation under the special jurisdiction of the federal government." *Jackson I* at 387. New Jersey law was accordingly "'assimilated' into federal law pursuant to the Assimilative Crimes Act ('ACA')." *Id.* at 368, 387.

known as the "commission counts," charged the Jacksons with forcing the children to ingest substances such as hot sauce and red pepper flakes, and physically assaulting them with various objects.

While *Jackson III* was pending, Carolyn Jackson completed serving her most recently imposed sentence.[3]

In *Jackson III*, we vacated the Jacksons' sentences and remanded for resentencing. The case was reassigned to Judge Susan Wigenton, who ordered that presentence reports (PSRs) be prepared for each Appellant.[4] After consideration of the entire trial record, the PSRs, the sentencing submissions, and the parties' presentations at a sentencing hearing, Judge Wigenton sentenced Carolyn Jackson to a term of imprisonment of 140 months and John Jackson to a term of imprisonment of 108 months.

The Jacksons timely appealed.

II. JURISDICTION AND STANDARD OF REVIEW

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3742. We review findings of fact for clear error. *United States v. Grier*, 475 F.3d 556, 561 (3d Cir. 2007). We

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[3] John Jackson does not explicitly concede that he had not finished serving his third sentence before it was vacated. In his opening brief, however, he indicates that he continued to serve his third sentence through the same date that the Third Circuit issued judgment in *Jackson III*. John Opening Br. at 65-66. Whether or not he completed his sentence does not affect the outcome of his appeal.

[4] Judge Hayden had directed the U.S. Probation Office not to prepare offense level calculations for the Jacksons' second and third resentencings.

review questions of law, including whether the law of the case doctrine applies, de novo. *Monasky v. Taglieri*, 589 U.S. 68, 83 (2020) (questions of law); *PDX N., Inc. v. Comm'r New Jersey Dep't of Lab. & Workforce Dev.*, 978 F.3d 871, 881 n.10 (3d Cir. 2020) (law of the case). We review the procedural and substantive reasonableness of a sentence for abuse of discretion. *United States v. Tomko*, 562 F.3d 558, 567 (3d Cir. 2009). However, when a party did not object to an alleged error at sentencing, we review only for plain error. *United States v. Flores-Mejia*, 759 F.3d 253, 255 (3d Cir. 2014).

III. DISCUSSION

John and Carolyn Jackson raise the following issues on appeal.[5] They argue that Judge Wigenton (1) violated their Fifth and Sixth Amendment rights when she found facts at sentencing by a preponderance of the evidence, (2) violated their Fifth and Sixth Amendment rights by resentencing them after they had finished serving their previously imposed sentences, (3) violated the law of the case doctrine, (4) imposed procedurally unreasonable sentences, and (5) imposed substantively unreasonable sentences. We will affirm.

A. Findings of Fact at Sentencing

Facts pertinent to sentencing need only be submitted to a jury when such facts raise the applicable statutory maximum or mandatory minimum sentence. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (statutory maximums); *Alleyne v. United*

[5] Carolyn Jackson asserted all issues. John Jackson joins the first two issues and appears to also join the third. John Opening Br. at 3, 65-67. John and Carolyn each bring their own procedural and substantive unreasonableness arguments.

States, 570 U.S. 99, 103 (2013) (mandatory minimum sentences). The Jacksons argue nonetheless that their Sixth Amendment rights to trial by jury and their Fifth Amendment rights to due process were violated when the District Court found, by a preponderance of the evidence, that the Jacksons' offenses caused "serious bodily injury" or involved a "dangerous weapon." Carolyn[6] Opening Br. at 8. These factual findings supported the District Court's application of the aggravated assault Guideline and resulted in higher Guidelines range terms of imprisonment. The Jacksons argue that the District Court's application of the aggravated assault Guideline makes them liable for committing aggravated assault, a crime for which the jury did not convict them. They also argue that the "'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Carolyn Opening Br. at 14-15 (quoting *Blakely v. Washington*, 542 U.S. 296, 303 (2004) (emphasis omitted)). Therefore, they contend, the Sixth Amendment and the Due Process Clause require these facts to have been found by a jury rather than the sentencing judge. *Id*. at 11 (quoting *Apprendi*, 530 U.S. at 496).

We have repeatedly rejected these arguments and held that judicial findings of fact that increase the defendant's Guidelines range, but not the statutory maximum, do not violate the Constitution. *See, e.g., United States v. Gonzalez*, 905 F.3d 165, 205-06 (3d Cir. 2018); *United States v. Fisher*, 502 F.3d 293, 305, 306 (3d Cir. 2007). Here, the District Court

[6] To avoid confusion, we will sometimes refer to Carolyn and John Jackson by their first names.

sentenced both Jacksons to terms of imprisonment within the statutory maximum term of imprisonment of ten years and the Court's factual findings did not increase that range.[7] Consistent with our precedent, we conclude that the District Court did not violate the Jacksons' Fifth and Sixth Amendment rights by relying upon its own factfinding in applying the aggravated assault Guideline.

B. Finality of Sentence

1. Fifth Amendment Right Against Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. In the sentencing context, the double jeopardy right attaches when a defendant has "a reasonable expectation of finality" in his sentence. *See Wilmer v. Johnson*, 30 F.3d 451, 458 (3d Cir. 1994). A defendant whose sentence is under appeal "has no expectation of finality in his sentence until the appeal is concluded or the time for appeal has expired." *Id.* at 457 (quoting *United States v. DiFrancesco*, 449 U.S. 117, 136 (1980)); *United States v. McMillen*, 917 F.2d 773, 777 n.5 (3d Cir. 1990) ("*DiFrancesco* teaches that the defendant can have no expectation of finality of sentence until the government's statutory period for appeal has expired."). Therefore, no Double Jeopardy concern is

[7] For instance, Carolyn received a total sentence of 140 months, comprised of 120 months at Count One followed by 20 months on Counts Two through Twelve. Each crime of conviction carried a maximum term of imprisonment of ten years. *Jackson I* at 389; N.J.S.A. 2C:43-6a(2). None of Judge Wigenton's findings of fact raised those statutory maximums.

implicated when a defendant is resentenced after his sentence was vacated on appeal. *DiFrancesco*, 449 U.S. at 136; *see also Bozza v. United States*, 330 U.S. 160, 167 (1947) (lawful resentencing after vacatur "did not twice put petitioner in [double] jeopardy" because "[t]he sentence as corrected, imposes a valid punishment for an offense instead of an invalid punishment for that offense"); *United States v. Busic*, 639 F.2d 940, 948 (3d Cir. 1981) (dictum) ("Nothing in the history or policy of the [Double Jeopardy Clause] suggests that its purposes included protecting the finality of a sentence and thereby barring resentencing to correct a sentence entered illegally or erroneously."); *United States v. Guevremont*, 829 F.2d 423, 427 (3d Cir. 1987).

The Jacksons argue, though, that once a defendant completes the sentence originally imposed, though under appeal, he has a legitimate expectation of finality.[8] Like the District Court, we recognize that this is a matter of first impression. *See United States v. Jackson*, 2023 WL 5994640, at *5 n.6 (D.N.J. Sept. 15, 2023). The Supreme Court's seminal decision in *DiFrancesco* "did not address the application of double jeopardy principles to a defendant whose sentence has been fully served." *See United States v. Arrellanos-Rios*, 799 F.2d 520, 523 (9th Cir. 1986) (citing 449 U.S. 117 (1980)). Our Court's decision in *United States v. McMillen* also expressly left open the possibility that "a defendant who has completely satisfied his sentence may have a reasonable expectation of finality as to the completed sentence."

[8] As noted above, John Jackson's continued to serve his sentence through the day *Jackson III* was issued. Whether or not he completed his sentence while his appeal was pending is irrelevant to the outcome of this appeal.

917 F.2d 773, 777 n.5 (3d Cir. 1990) (citing *United States v. Rico*, 902 F.2d 1065, 1068–69 (2d Cir. 1990)). Today's decision forecloses it.

To support their argument, the Jacksons cite cases that they either misconstrue or that are readily distinguishable from their situation. For instance, some cited cases confirm that a district court judge can impose a new sentence without violating the Double Jeopardy Clause.[9] Other cited cases are inapposite because they explain that a defendant's completed sentence on two counts cannot be adjusted after conviction on a third count was reversed[10] or that a prior sentence cannot be amended *after* the time for appeal has passed[11] or where the government never appealed the sentence.[12] And many of these cases state that a legitimate expectation of finality requires that the time for appeal has passed, or the

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[9] *See Busic*, 639 F.2d at 947-48 ("There is nothing in the history or the policies of the Double Jeopardy Clause that justifies the denial of resentencing when the sentence has been spread erroneously over counts that have been declared invalid."); *United States v. Silvers*, 90 F.3d 95, 99 (4th Cir. 1996) (finding that resentencing on reinstated conviction did not violate Double Jeopardy because the defendant was simply placed in the position he would have been in had there been no error).

[10] *United States v. Arrellano-Rios*, 799 F.2d 520, 524 (9th Cir. 1986).

[11] *United States v. Daddino*, 5 F.3d 262, 265 (7th Cir. 1993).

[12] *Smith v. State*, 334 So. 3d 377, 378, 379 n.4 (Fla. Dist. Ct. App. 2022); *State v. Houston*, 2010 Iowa App. LEXIS 1546, *5 (Iowa Ct. App. Dec. 8, 2010) (comparing the facts before it to a case where "the State sought review of the defendant's discharges from probation by timely writs of certiorari to the supreme court" and noting that "[h]ere, the State never timely challenged the order discharging [the defendant] from probation").

appeal is completed,[13] even when the defendant has served his sentence.[14]

Despite the vast number of cases the Jacksons cite, all support the proposition that a defendant has no legitimate expectation of finality in their sentence while that sentence is under appeal.[15] We decline to

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[13] *United States v. Rico*, 902 F.2d 1065, 1068 (2d Cir. 1990) ("So long as a sentence can be increased on appeal, defendant has no expectation of its finality" (citing *DiFrancesco*, 449 U.S. at 134-136, 139)); *McMillen*, 917 F.2d at 777 ("McMillen 'is charged with knowledge of the statute and its appeal provisions, and has no expectation of finality in his sentence until the appeal is concluded or the time to appeal has expired'" (quoting *DiFrancesco*, 449 U.S. at 136)).

[14] *State v. Lehman*, 308 Kan. 1089, 1097 (2018) ("[T]he view that the district court cannot correct an illegal sentence after the sentence expires and the direct appeal has been completed (or the time to appeal has lapsed) is more in keeping with the purpose of double jeopardy protection, allowing a person to move on with his or her life after having paid the debt to society without wondering whether the government will come back to extract further punishment."); *People v. Williams*, 14 N.Y.3d 198, 217 (2010) ("Even where a defendant's sentence is illegal, there is a legitimate expectation of finality once the initial sentence has been served and the direct appeal has been completed (or the time to appeal has expired)."); *State v. Schubert*, 212 N.J. 295, 312 (2012) (same); *Lanier v. State*, 270 So. 3d 304, 310 (Ala. Crim. App. 2018) ("[W]e hold that a trial court loses jurisdiction to correct an illegal sentence once that sentence expires and the direct appeal has been completed or the time to appeal has lapsed and that a trial court's correcting an illegal sentence after the expiration of that sentence violates principles of double jeopardy."); *People v. Velez*, 19 N.Y.3d 642, 649 (2012) ("[W]e [have] held that, where a sentence is no longer subject to appeal, the Double Jeopardy Clause of the Federal Constitution forbids a resentencing . . . after the original sentence is completed." (quoting *Williams*, 14 N.Y.3d at 217 (2010)).

[15] *See, e.g., United States v. Radmall*, 340 F.3d 798, 801 (9th Cir. 2003) (when defendant's sentence for multiple counts

break from this precedent. To do otherwise would allow the Jacksons to avoid legal sentences and "provide [them an] unjustified windfall[,]" simply because they received such erroneously short sentences. *Jones*, 491 U.S. at 387 ("[N]either the Double Jeopardy Clause nor any other constitutional provision exists to provide unjustified windfalls."). Because the Jacksons' sentences were under appeal, they had no reasonable expectation of finality in their sentences, completed or not, and their double jeopardy rights did not attach.

2. Fifth Amendment Right to Due Process

The Jacksons also argue that, even if their resentencings did not violate double jeopardy, their general Fifth Amendment due process rights were violated because they had a legitimate expectation of finality upon completion of their sentences while Jackson III was pending. Quoting from *United States v. Davis*, they argue that "[a] defendant's due process rights may be violated 'when a sentence is enhanced after the defendant has served so much of his sentence that his expectations as to its finality have crystallized.'" 112 F.3d 118, 123 (3d Cir. 1997) (quoting *United States v. Lundien*, 769 F.2d 981, 987 (4th Cir. 1985)). But *Davis* clarified that "[a] defendant

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reflects "his overall offense conduct rather than separate and independent sentences on each count," the defendant cannot have an expectation of finality on one part of his sentence when another part of the sentence is appealed); *United States v. Foumai*, 910 F.2d 617, 621 (9th Cir. 1990) (defendant had "a legitimate expectation of finality in his reversed conviction" because time for appeal had passed); *Jones v. Thomas*, 491 U.S. 376, 387 (1989) (concluding after appeal, that "[t]he Missouri court's alteration of respondent's sentence to a single term for felony murder with credit for time served provided suitable protection of his double jeopardy rights.").

. . . does not automatically acquire a vested interest in a shorter, but incorrect sentence." *Id.* (citing *DeWitt v. Ventetoulo*, 6 F.3d 32, 35 (1st Cir. 1993), *cert. denied*, 511 U.S. 1032 (1994)). *Davis* also does not apply here because it addresses a defendant's legitimate expectation of finality in a sentence when a *habeas* proceeding is pending, *Davis*, 112 F.3d at 123, and had no impact on *DiFrancesco*'s holding that a defendant has no reasonable expectation of finality in his sentence until the time for appeal has passed or the appeal is completed.

The Jacksons assert two other reasons their resentencings were fundamentally unfair and violated due process. First, they rely upon cases that are easily distinguished and do not support concluding a due process violation occurred here.[16] Second, the Jacksons argue that the fragmented manner in which they have been sentenced means that due process would be violated if they were resentenced. We have now made clear, however, that there is no reasonable expectation of finality while an appeal is pending. We decline to impose a different rule when serial appeals are involved. While the fragmented nature of the proceedings here may be undesirable, it does not violate due process and certainly does not weigh in favor of rewarding the Jacksons the windfall of serving sentences that this Court has found to be erroneous.

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[16] *See United States v. Ray*, 578 F.3d 184, 199, 202 (2d Cir. 2009) (concluding that a fifteen-year delay between remand and sentencing violated due process); *DeWitt v. Ventetoulo*, 6 F.3d 32, 34 (1st Cir. 1993) (holding that reinstatement of a defendant's life sentence violated due process where the state had reopened a "final unappealed decision").

C. Law of the Case

The law of the case is a prudential rule that "holds that a rule of law announced in a case should later be applied to the same issues in subsequent stages in the litigation. Law of the case may counsel against, but does not prevent, a district court from reconsidering its prior rulings." *Saint-Jean v. Palisades Interstate Park Comm'n*, 49 F.4th 830, 836 (3d Cir. 2022) (internal quotations and citations omitted). Carolyn Jackson argues that three of Judge Wigenton's sentencing decisions[17] impermissibly contradicted Judge Hayden's earlier, law-of-the-case decisions.

The law of the case doctrine does not apply here. We vacated the October 15, 2021, sentencing order of Judge Hayden and remanded for sentencing. *Jackson III*, at *3, 5. When a sentence is vacated, the defendant is rendered unsentenced. *United States v. Mitchell*, 38 F.4th 382, 388 (3d Cir. 2022). Judge Wigenton thus had a clean slate on which there was no law of the case for sentencing. *See Pepper v. United States*, 562 U.S. 476, 507-08 (2011). This applies equally to the dangerous weapons enhancement, even in light of this Court's *Jackson II* ruling that Judge Hayden had not clearly erred when finding that various objects used by the Jacksons were not "'dangerous weapons[.]'" *Jackson II* at 101 n.10. That ruling neither concluded that Judge Hayden's finding was affirmatively correct, nor bound the resentencing court to find the same.

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[17] These are: Judge Wigenton's decision to calculate the Jacksons' sentence using eleven groupings, to use the assault and aggravated assault Guideline for the omission counts, and to apply the dangerous weapon sentencing enhancement.

D. Procedural and Substantive Unreasonableness

District courts follow a three-step process to sentence a defendant. *United States v. Wright*, 642 F.3d 148, 152 (3d Cir. 2011). "At step one, the court calculates the applicable Guidelines range which includes the application of any sentencing enhancements. At step two, the court considers any motions for departure and, if granted, states how the departure affects the Guidelines calculation. At step three, the court considers the recommended Guidelines range together with the statutory factors listed in 18 U.S.C. § 3553(a) and determines the appropriate sentence, which may vary upward or downward from the range suggested by the Guidelines." *Id.* (internal citations omitted). The Jacksons argue that their sentences were procedurally and substantively unreasonable. As noted above, we review the procedural and substantive reasonableness of a sentence under an abuse of discretion standard. *Tomko*, 562 F.3d at 567. When a party appeals an error to which they did not object at sentencing, we review only for plain error. *Flores-Mejia*, 759 F.3d at 255.

1. Carolyn Jackson's Procedural Unreasonableness Arguments

"When a defendant alleges procedural error, we must ensure that the district court did not fail to calculate (or miscalculate) the Guidelines range; treat the Guidelines as mandatory; gloss over the Section 3553(a) factors; choose a sentence based on a clearly erroneous fact; or inadequately explain the chosen sentence." *United States v. Jumper*, 74 F.4th 107, 114 (3d Cir. 2023) (internal quotation marks omitted).

Carolyn did not object to the alleged errors at sentencing, so we review only for plain error. *Flores-Mejia*, 759 F.3d at 255.[18] Carolyn urges us to find that the sentencing judge abused her discretion by relying on inaccurate information, preventing the judge from giving "rational and meaningful consideration" to the Section 3553(a) factors. *Grier*, 475 F.3d at 571. Specifically, she argues that the sentencing court failed to recognize that: Carolyn expressed remorse; used corporal punishment to punish all of her children, not just her adopted children; and "C" and Joshua had injuries the defendants did not cause. She further argues that the sentencing court erroneously blamed Carolyn for Joshua's death, called the corporal punishment torture, and did not consider Carolyn's positive post-sentence conduct. Carolyn Opening Br. at 50-58. We cannot conclude that the District Court plainly erred.

First, Judge Wigenton did recognize Carolyn's expression of remorse and found a marginal acceptance of responsibility. She was not required to agree with Judge Hayden's finding that Carolyn Jackson fully accepted responsibility. Similarly, Judge Wigenton recognized that Carolyn abused all of her children, and accurately noted that she abused her adopted children more severely. Furthermore, Judge Wigenton stated she did not impose the sentence as means to punish the Jacksons for Joshua's death, did not depart upward based on her view that the children suffered torture, and explained why she found the children's various injuries were caused by the defend-

[18] Although Carolyn characterizes this as a substantive unreasonableness argument, it is better analyzed for procedural unreasonableness because she challenges the judge's factual findings as erroneous.

ant's abuse.[19] Finally, there is no basis to conclude that, when Judge Wigenton stated that she hopes Carolyn will do things differently, she did not consider Carolyn's post-sentence conduct. Those statements were made in the context of analyzing the Section 3553(a) factors (e.g., the nature of the offense and the need for the sentence imposed to reflect the seriousness of the offense) and recognizing the lifelong harm inflicted upon the children. We perceive no plain error.

2. John Jackson's Procedural Unreasonableness Argument

John Jackson argues that Judge Wigenton's application of the assault Guideline to the omission counts was procedural error.[20] We need not decide whether the District Court erred because to the extent there was any error, such error was harmless in light of the District Court's imposition of a valid alternative sentence.

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[19] This is consistent with *Jackson I* in which we stated, "It defies common sense to believe that the jury found that Defendants physically assaulted their adopted children, withheld sufficient nourishment and water from them, and forced them to ingest hot sauce, red pepper flakes, and raw onion—but that such conduct did not cause the marks and bruises, the malnourishment, the hypernatremia, and the children's other injuries and medical issues." *Jackson I* at 397.

[20] Because no Guideline has been expressly promulgated for the state offenses of conviction, the sentencing court applies the "most analogous" offense Guideline pursuant to U.S.S.G. § 2X5.1. *Jackson I* at 371. In *Jackson I*, we held that the elements-based test applies to determine which Guideline, if any, is most analogous to the convicted offense. *Id*. at 376. John argues that the District Court failed to apply an elements-based test when determining that the assault Guideline applied to the omission counts.

Procedural errors at sentencing, which include miscalculations of the Guidelines, are subject to harmless error review. *United States v. Raia*, 993 F.3d 185, 195 (3d Cir. 2021). "In the context of a Guidelines calculation error, harmless error means that the record must demonstrate that there is a high probability that the sentencing judge would have imposed the same sentence under a correct Guidelines range, that is, that the sentencing Guidelines range did not affect the sentence actually imposed." *Id.* (internal quotations omitted). The sentencing judge can demonstrate the requisite high probability by "explicitly stat[ing] that [she] would have imposed the same sentence even under the correct Guidelines range." *Id.* "However, even an explicit statement that the same sentence would be imposed under a different Guidelines range is insufficient if that alternative sentence is not also a product of the entire three-step sentencing process." *Id.* at 196.

John Jackson argues that any error was not harmless because the District Court only made a general statement that it would impose the same sentence without "reveal[ing] any consideration of the omission counts as untethered to the guidelines." John Opening Br. at 43-44. He argues, essentially, that if the District Court had declined to apply the assault Guidelines to the omission counts, it would have found that there was no applicable Guidelines section[21] and that the appropriate sentence for these counts would have been determined solely by the Sec-

[21] As noted above, because no Guideline has been expressly promulgated for the state offenses of conviction, the sentencing court applies the "most analogous" offense Guideline. If none are sufficiently analogous, the sentencing court relies upon the Section 3553(a) factors in imposing a sentence.

tion 3553(a) factors. Thus, the argument goes, although Judge Wigenton addressed the Section 3553(a) factors, the alleged error is not harmless because she did not explicitly state that this analysis applied in the absence of a Guidelines range.

We disagree. We conclude that the District Court issued a valid alternative sentence that was a product of the three-step sentencing process. *Raia*, 993 F.3d at 196. The District Court explained she would accept the arguments of defense counsel, that is, a Guidelines range of seventy-to-eighty-seven months predicated on the conclusion that there was no Guidelines section applicable to the omission counts. She then explained that she would vary upwards to reach the sentence of 108 months based upon the facts, the history, and the circumstances of the charged offenses. Those facts and that history were already greatly detailed in her consideration of the Section 3553(a) factors. Having explicitly referenced them, the District Court need not have restated her analysis. In sum, the District Court's process satisfies us "that there is a high probability that [Judge Wigenton] would have imposed the same sentence under a correct Guidelines range." *Raia*, 993 F.3d at 195 (internal quotations omitted). Any procedural error is therefore harmless.

3. Substantive Unreasonableness Arguments

Carolyn and John Jackson also argue that their sentences are substantively unreasonable. "[D]efendants bear a heavy burden to show that a sentence within the applicable Guidelines range was substantively unreasonable." *United States v. Seibert*, 971 F.3d 396, 402 (3d Cir. 2020) (cleaned up). If a sentence is procedurally sound, we assume that it is reasonable and "affirm unless we believe that no rea-

sonable court would have imposed that sentence for the reasons provided." *Jumper*, 74 F.4th at 114 (internal quotations omitted). "As long as a sentence falls within the broad range of possible sentences that can be considered reasonable in light of the § 3553(a) factors, we must affirm." *United States v. Wise*, 515 F.3d 207, 218 (3d Cir. 2008).

John Jackson argues that his sentence is substantively unreasonable because Judge Wigenton did not adequately consider John's history of abuse and military service as a mitigating factor. However, "a district court's failure to give mitigating factors the weight a defendant contends they deserve does not make a sentence substantively unreasonable." *Seibert*, 971 F.3d at 402 (internal quotations omitted).

Carolyn and John Jackson's sentences are substantively reasonable. "[T]he record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)." *Id.* at 399-400. We cannot conclude that no reasonable court would have imposed the sentences in light of the egregious conduct here.

IV. CONCLUSION

For the reasons presented above, we will affirm.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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CHAMBERS OF SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE
MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

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August 7, 2023

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LETTER OPINION FILED WITH
THE CLERK OF THE COURT

Re: *United States v. Carolyn Jackson, et al.*
Criminal Action No. 13-290 (SDW)

Counsel:

Before this Court is Defendants Carolyn Jackson ("Carolyn") and John E. Jackson's ("John," together with Carolyn, "Defendants") motion to bar the imposition of further sentences (D.E. 493, 495 ("Motion")). This Court having considered the parties' submissions, and for the reasons discussed below, denies Defendants' Motion.

DISCUSSION

A.

The facts of this case have been extensively covered—in a 39-day trial, in multiple sentencing proceedings, and in three separate opinions by the Third Circuit. Accordingly, this Court's recitation of the facts includes only those pertinent to resolving the instant Motion.

John, a former major in the United States Army, and Carolyn, his wife, "inflicted devastating abuse on their three young foster children—Joshua, J, and C—over the course of five years, causing serious and lasting harm." (D.E. 487-1 at 3.) The abuse occurred, at least in part, on Picatinny Arsenal Installation in Morris County, New Jersey.[1]

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[1] As the Third Circuit explained, "the offenses at issue here—because they occurred on a military installation under the special jurisdiction of the federal government—were assimilated under the [Assimilative Crimes Act ("ACA")]." (D.E. 420-1 at 47.) The ACA "is designed to borrow state laws in order to fill

Defendants were first indicted in federal court on April 29, 2013. (D.E. 1.) Trial began in October 2014. (D.E. 116 at 2). On November 14, 2014—the fifteenth day of the first trial—the presiding judge, the Hon. Katharine S. Hayden, U.S.D.J., granted Defendants' motion for a mistrial. (*See generally* D.E. 151, 157.) On January 15, 2015, in a 15-count superseding indictment, the Government again charged Defendants. (D.E. 175.)

On July 8, 2015, following a 39-day jury trial, Defendants were found guilty of the following: conspiring from August 2005 to April 2010 to engage in acts that endangered their three foster children (Count 1); physically assaulting all three children with various objects and their hands (Counts 3, 6, and 12); withholding adequate water from J and C and prohibiting these children from drinking water (Counts 4 and 8); forcing J to ingest hot sauce, red pepper flakes, and raw onion, and forcing C to ingest hot sauce and red pepper flakes (Counts 5 and 9); and withholding prompt and proper medical care for C's dehydration and elevated sodium levels (Count 11). (*See generally* D.E. 353, 354.) In addition, the jury found Carolyn—but not John—guilty of withholding sufficient nourishment and food from Joshua (Count 2), and "[c]ausing [C] to ingest excessive sodium and a sodium-laden substance while restricting [C's] fluid intake, causing [C] to suffer hypernatremia and dehydration, a life[-]threatening condition," (Count 10). (D.E. 487-1 at 4; *see also* D.E. 353 at 1, 3.)

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gaps that exist in federal criminal laws with respect to criminal offenses that are committed on federal enclaves." (*Id.* at 8.)

Sentencing History

Since the jury pronounced its verdict, Defendants have been thrice sentenced, and each time, the Third Circuit has vacated those erroneous sentences. Defendants' first sentencing occurred on December 15, 2015. (D.E. 407, 408.) Prior to that sentencing, the Probation Office calculated the United States Sentencing Commission Guidelines ("Guidelines") range of 210 to 262 months for each Defendant. (D.E. 487-1 at 4.) The Government similarly calculated a Guidelines range of 292 to 365 months but only sought sentences of 235 months for Carolyn and 188 months for John. (D.E. 420-1 at 6.) Following a 10 1/2-hour hearing, Carolyn was sentenced to a term of 24 months' imprisonment followed by three years of supervised release, and John received a three-year term of probation accompanied by 400 hours of community service and a $15,000 fine. (D.E. 407–11.) On January 21, 2016, the Government appealed. (D.E. 413, 414.)

On July 6, 2017, the Third Circuit vacated Defendants' sentences. (*See generally* D.E. 419, 420-1). In a lengthy opinion, Circuit Judge Cowen thoroughly analyzed "a number of rather unusual sentencing issues" implicated in this case, (D.E. 420-1 at 8), and ultimately held that the Sentencing Court (i) committed reversible error and (ii) imposed substantively unreasonable sentences, (*see generally id.*). The Third Circuit then remanded the case for resentencing. (*See generally id.*)

Defendants' first resentencing occurred over the course of two days—April 11 to April 12, 2018. (D.E. 437, 438.) At the conclusion of that hearing, Carolyn was sentenced to a term of 40 months' imprisonment followed by three years of supervised release, and

John received a three-year term of probation accompanied by 400 hours of community service. (*See generally* D.E. 439, 440.) On May 21, 2018, the Government again appealed,[2] (D.E. 443, 444), and on June 26, 2020, the Third Circuit again vacated Defendants' sentences and remanded the case for resentencing, (*see generally* D.E. 451, 452-2).

The second resentencing was held on October 6, 2021. (D.E. 476, 477.) At that time, the Government calculated a Guidelines range of 108 to 135 months for each Defendant, Defendants calculated their Guidelines range as 57 to 71 months, and the Sentencing Court calculated a Guidelines range of 70 to 87 months for each Defendant. (*See generally* D.E. 482.) The Sentencing Court "varied significantly downward from those ranges," however: Carolyn was sentenced to a term of 40 months' imprisonment (which the Sentencing Court deemed time-served) plus one additional year of supervised release, and John was sentenced to an 18-month term of home confinement. (D.E. 487-1 at 5–6; *see also* D.E. 482 at 151–55.) On November 15, 2021, the Government once again appealed. (D.E. 478, 479.)

In October 2022—while the Government's most-recent appeals were still pending before the Third Circuit—Carolyn completed her term of supervised release.[3] (*See id.* at 6.) Just two months later, in

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[2] John contends that his three-year term of probation ended on September 19, 2019, while the Government's appeals of the April 2018 sentences were pending before the Third Circuit. (D.E. 498 at 1.)

[3] On October 11, 2022, the Probation Office for the Middle District of Florida advised Carolyn that her "supervision officially terminated," and that she "ha[d] no further obligation

December 2022, the parties participated in oral argument before the Third Circuit. (D.E. 487 at 2; D.E. 494 at 3.)

On April 3, 2023, the Third Circuit again vacated Defendants' sentences. (*See generally* D.E. 487.) In remanding the case, the Third Circuit instructed that this case be assigned to a different judge, (D.E. 487-1 at 11–12), and on April 19, 2023, Chief Judge Renee M. Bumb assigned it to this Court, (D.E. 485). Resentencing has been set for October 11, 2023. (D.E. 490.)

B.

Carolyn filed the instant Motion on May 18, 2023.[4] (D.E. 493.) The Government filed its opposition on May 24, 2023. (D.E. 494.) One week later, Carolyn filed a reply, (D.E. 497), which John joined and supplemented on June 23, 2023, (D.E. 498). At bottom, Defendants argue that the imposition of any further sentence would violate their rights under both the Double Jeopardy and Due Process Clauses of the Constitution.

C.

Defendants' arguments contradict precedent and practical application, and therefore the Motion must be denied.

The Double Jeopardy Clause

The Double Jeopardy Clause of the Fifth Amendment provides that "[n]o person shall . . . be subject for the same offense to be twice put in jeopardy of life

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to th[at] office." (D.E. 493-2 at 6.) In February 2023, the State of Florida restored Carolyn's voting rights. (*Id.* at 8.)

[4] On May 30, 2023, John "join[ed] Carolyn Jackson's letters and motions filed to date." (D.E. 495.)

or limb." U.S. CONST. amend. V. This constitutional guarantee "affords three protections to the criminal defendant." *Jones v. Thomas*, 491 U.S. 376, 380–81 (1989). "The first two[] . . . protect against a second prosecution for the same offense, and against a second prosecution for the same offense after conviction." *Id.* at 381 (citing *Ohio v. Johnson*, 467 U.S. 493, 498 (1984)). The third such protection safeguards criminal defendants "against 'multiple punishments for the same offense' imposed in a single proceeding." *Id.* (quoting *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969)).

The Supreme Court has identified "two vitally important interests" embodied by the Double Jeopardy Clause:

> The first is the "deeply ingrained" principle that "the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." The second interest is the preservation of "the finality of judgments."

Yeager v. United States, 557 U.S. 110, 117–18 (2009) (internal citations omitted). Because of these vital interests, "[a]n acquittal is accorded special weight" under the Double Jeopardy Clause. *United States v. DiFrancesco*, 449 U.S. 117, 129 (1980). Indeed, "'[t]he constitutional protection against double jeopardy unequivocally prohibits a second trial following an acquittal,' for the 'public interest in the finality of

criminal judgments is so strong that an acquitted defendant may not be retried even though "the acquittal was based upon an egregiously erroneous foundation."'" *Id.* (quoting *Fong Foo v. United States*, 369 U.S. 141, 143 (1962)).

The foregoing interests do not apply with equal force in the context of an appealed noncapital sentence.[5] *Id.* at 730. As the Supreme Court explained in *United States v. DiFrancesco*:

> The double jeopardy considerations that bar reprosecution after an acquittal do not prohibit review of a sentence. We have noted . . . the basic design of the double jeopardy provision, that is, as a bar against repeated attempts to convict, with consequent subjection of the defendant to embarrassment, expense, anxiety, and insecurity, and the possibility that he may be found guilty even though innocent. These considerations, however, have no significant application to the prosecution's statutorily granted right to review a sentence.

DiFrancesco, 449 U.S. at 136. Therefore, the Supreme Court stated, when the government exercises a statutorily granted right to appeal a sentence, a defendant has "no expectation of finality in his sen-

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[5] In *Bullington v. Missouri*, the Supreme Court held that the Double Jeopardy Clause applies to capital-sentencing proceedings where such proceedings "have the hallmarks of [a] trial on guilt or innocence." 451 U.S. 430, 439 (1981). The Supreme Court expressly "confined" *Bullington's* rationale "to the unique circumstances of capital sentencing," and reiterated "that the Double Jeopardy Clause does not preclude retrial on a prior conviction allegation in the noncapital sentencing context." *Monge v. California*, 524 U.S. 721, 734 (1998).

tence until the appeal is concluded or the time to appeal has expired." *Id.* The Third Circuit does not deviate from that principle. *See United States v. Norwood*, 49 F.4th 189, 211 (3d Cir. 2022) ("A defendant may not have a legitimate expectation in the finality of his sentence where the law explicitly provides for the possibility that a sentence may be later increased . . . ." (citing *DiFrancesco*, 449 U.S. at 137)).

Here, the Government had a right under 18 U.S.C. § 3742(b) to appeal Defendants' sentences and, in fact, timely appealed. Defendants, then, "ha[d] no expectation of finality in [their] sentence[s] until the appeal [was] concluded" in their favor. *DiFrancesco*, 449 U.S. at 136. In other words, once the Government filed its timely appeals, it eviscerated any expectation of finality the Defendants may have had in their sentences. *See id.* at 139 ("Although it might be argued that the defendant perceives the length of his sentence as finally determined when he begins to serve it, . . . that argument has no force where . . . Congress has specifically provided that the sentence is subject to appeal. Under such circumstances there can be no expectation of finality in the original sentence." (internal citations omitted)).

Defendants insist that *DiFrancesco*'s rationale does not control here. (D.E. 493-1 at 8–16.) Instead, Defendants cull together dicta from non-binding and inapposite cases to support an "I-finished-my-sentence" exception to *DiFrancesco*'s unambiguous holding. (*Id.*) That exception is unfounded. Neither

the Supreme Court nor the Third Circuit [6] has adopted it, and this Court declines to do so now.

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[6] Although Defendants assert that the Third Circuit's decision in *United States v. McMillen* left open the possibility that "a defendant who has completely satisfied his sentence may have a reasonable expectation of finality as to the completed sentence," the *McMillen* Court expressly declined to rule on the issue. 917 F.2d 773, 777 n.5 (3d Cir. 1990). Defendants cannot reverse engineer that dictum into a bright-line, "I-finished-my-sentence" exception. To be sure, such an exception in the double-jeopardy context would defy precedent and fundamental considerations. As the Supreme Court has unequivocally stated,

> This Court has rejected the "doctrine that a prisoner, whose guilt is established by a regular verdict, is to escape punishment altogether because the court committed an error in passing the sentence." The Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner. In this case the court "only set aside what it had no authority to do, and substitute[d] directions required by the law to be done upon the conviction of the offender." It did not twice put petitioner in jeopardy for the same offense. The sentence, as corrected, imposes a valid punishment for an offense instead of an invalid punishment for that offense.

Bozza v. United States, 330 U.S. 160, 166–67 (1947) (internal citations omitted); *see also United States v. Busic*, 639 F.2d 940, 946 (3d Cir. 1981) ("Nothing in the history or policy of the [Double Jeopardy] clause suggests that its purposes included protecting the finality of a sentence and thereby barring resentencing to correct a sentence entered illegally or erroneously."). Put differently, "neither the Double Jeopardy Clause nor any other constitutional provisions exist to provide unjustified windfalls." *Jones*, 491 U.S. at 387. Defendants' suggested exception, however, would undoubtedly do so—that is, erroneously low sentences that expire before the appellate court has a chance to rule would become infallible.

The Due Process Clause

Defendants' arguments under the Due Process Clause are equally strained. The Due Process Clause of the Fifth Amendment states that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. The Due Process Clause applies to "the sentencing process," *Gardner v. Florida*, 430 U.S. 349, 358 (1977), and it has developed "both substantive and procedural components," *Evans v. Sec'y Pa. Dep't of Corr.*, 645 F.3d 650, 658 (3d Cir. 2011) (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)). On the one hand, "[t]he substantive component of the Due Process Clause limits what government may do regardless of the fairness of the procedures that it employs." *Id.* at 659 (quoting *Boyanowski v. Cap. Area Intermediate Unit*, 215 F.3d 396, 399 (3d Cir. 2000)). On the other hand, "[p]rocedural due process governs the manner in which the government may infringe upon an individual's life, liberty, or property." *Id.* at 662. "The Clause 'centrally concerns the fundamental fairness of governmental activity.'" *N.C. Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Fam. Tr.*, 139 S.Ct. 2213, 2219 (2019) (quoting *Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992)).

In *United States v. Davis*, the Third Circuit noted that the principles of fundamental fairness underlying the Due Process Clause may bar a district court from imposing a "later upward revision of a sentence." 112 F.3d 118, 123 (3d Cir. 1997) (citing *DeWitt v. Ventetoulo*, 6 F.3d 32, 35 (1st Cir. 1993), *cert. denied*, 511 U.S. 1032 (1994)). Specifically, the Third Circuit remarked:

> A defendant's due process rights may be violated "when a sentence is enhanced after

> the defendant has served so much of his sentence that his expectations as to its finality have crystallized and it would be fundamentally unfair to defeat them." A defendant, however, does not automatically acquire a vested interest in a shorter, but incorrect sentence. It is only in an extreme case that a later upward revision of a sentence is so unfair that it is inconsistent with the fundamental notions of fairness found in the due process clause.

Id. (internal citations omitted). "[T]o determine whether the defendant lacked a legitimate expectation of finality," the Third Circuit looked to three factors: (1) "whether the defendant himself challenged the sentence," (2) "whether the defendant has completed his prison term," and (3) "whether the resentencing gives the defendant a lower overall sentence." *United States v. Grasso*, 197 F. App'x 200, 205 (3d Cir. 2006) (citing *Davis*, 112 F.3d at 123–24).

Defendants argue that *Davis* controls and prohibits this Court from resentencing them. (D.E. 493-1 at 17.) Defendants' reliance on *Davis* is misplaced. The posture of *Davis*—a resentencing in a habeas proceeding long after the time to file direct appeals had expired—is wholly different from the case at bar, and thus *Davis* does not apply here.[7] A recent decision in this District further supports that conclusion.

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[7] To be sure, the *Davis* factors are plainly incompatible in this case—indeed, their application in this context would yield absurd results. For instance, in cases where the government exercises its statutorily granted right to appeal an erroneous sentence, two of the three *Davis* factors—whether the defendant challenged the sentence and whether resentencing would give him a lower overall sentence—would automatically favor a

In *Locane v. McGill*, the petitioner, Amy *Locane*, was subjected to several resentencing hearings in state court following erroneous sentencing decisions by trial judges. Civ. No. 21-8888, 2022 WL 17625976, at *1–3 (D.N.J. Dec. 13, 2022). *Locane* claimed that the final resentencing violated her due process rights because it was imposed after she had served "both her original prison sentence and supervised release term." *Id.* at *8. In rejecting Locane's argument, Judge Shipp held:

> The context of [*Davis*'] holding—a resentencing in a habeas proceeding long after direct appeals had ended—is substantially different from the one presented in this matter. [*Locane*] at no point had a true expectation of finality in her sentence as the State appealed each of the first three sentences within days of their issuance and well within the statutory time period, unlike a petitioner who is resentenced long after any direct appeal concluded and following collateral proceedings.

Id. This Court is persuaded by the logic set forth in *Locane*,[8] and similarly finds that *Davis* is inapplicable to the case at bar.

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defendant. And, in the case of an erroneously low sentence that lapses before the appellate court has time to address its validity, all three factors would instantly weigh in the defendant's favor. Such a rule would "provide unjustified windfalls" to criminal defendants, *Jones*, 491 U.S. at 387, by allowing them to "escape punishment simply because the court committed error in passing sentence," *Evans*, 645 F.3d at 662.

[8] Notably, after Judge Shipp denied Locane's motion, Locane filed with the Third Circuit a request for a certificate of appealability. In denying Locane's request, the Third Circuit stated,

In this Court's view, criminal defendants can have no true expectation of finality in cases where, as here, the government timely exercises its statutorily granted right to file a direct appeal of an erroneous sentence. *See, e.g.*, *United States v. Arrellano-Rios*, 799 F.2d 520, 524 (9th Cir. 1986) ("There can be no expectation of finality in sentences that are illegal and that were under challenge by the government from the moment the district court judges suggested the sentences they proposed to impose." (citation omitted)). This matter presents no exception to that rule.

Even if, as Defendants suggest, the fundamental fairness inquiry is "necessarily . . . fact-sensitive," the facts of this case do not weigh in their favor. (D.E. 497 at 13.) Carolyn claims that she had an expectation in the finality of her sentence on October 5, 2022—the day her one-year term of supervised release concluded. (D.E. 493-1 at 8.) By that time, however, the Government had already filed its appeal to the Third Circuit, and the parties had fully briefed it. Furthermore, in December 2022—just two months after Carolyn purportedly believed that her sentence was final—her attorneys were arguing the appeal before the Third Circuit. Carolyn, represented by able counsel, undoubtedly knew that the Government's direct appeal challenging the validity of her sentence was still pending. She plainly did not have a crystallized expectation in the finality of her sentence. For

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"Essentially for the reasons given by the District Court, Locane has not shown that jurists of reason would debate the District Court's decision to deny her Double Jeopardy and Due Process claims." *Locane v. McGill*, No. 23-1072, 2023 WL 4491755, at *1 (3d Cir. May 17, 2023) (citing *Monge*, 524 U.S. at 724–30 and *DiFrancesco*, 449 U.S. at 139).

similar reasons, John had no true expectation of finality in his erroneous sentence of probation that expired during the pendency of the Government's second appeal.[9]

In sum, Defendants, both represented by able counsel, were fully aware that the Government had timely filed direct appeals challenging the Sentencing Court's sentencing decisions. Under such circumstances, Defendants could have no crystallized expectation of finality in their sentences. Therefore, neither the Double Jeopardy Clause nor the principles of fundamental fairness underlying the Due Process Clause bar this Court from imposing a further sentence [10] and Defendants' Motion must be denied.

* * *

In conducting Defendants' second resentencing—i.e., the third sentencing—Judge Hayden aptly noted the "tortured procedural history" of this case:

> Carolyn Jackson has served 40 months [in prison]. She served it in two separate sen-

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[9] John contends that, because his term of probation ended before the Third Circuit issued its 2020 opinion, his due-process rights were violated at the second resentencing in October 2021. (D.E. 498 at 2.) As an initial matter, it is unclear whether John waived this argument. In any event, John has offered no facts to show that he had a legitimate expectation of finality in his sentence, and therefore, this Court holds that John—like Carolyn—did not have a crystallized expectation of finality in his sentence while it was on direct appeal to the Third Circuit.

[10] Here, Defendants again rely on several out-of-circuit cases in an effort to create a bright-line, "I-finished-my-sentence" rule under the Due Process Clause. (D.E. 493-1 at 18–21.) Defendants' arguments are, once again, unpersuasive. The cases cited by Defendants do not bind this Court and, in any event, are distinguishable from the case at bar.

> tences. Twice she has surrendered. Twice she has served her sentence. Twice she has been mustered out. Twice she has been put on supervised release . . . .
>
> John Jackson . . . . has been given two terms of probation. He has served them. He is finished. One very important point . . . is that Mr. Jackson wound up with a better sentence the second time than the first time . . . .

(D.E. 482 at 139, 143.) Since that hearing, Defendants' already-protracted sentencing history has been further prolonged. Judicial error is largely to blame. And while the Constitution demands that, upon resentencing, this Court "fully credit" the "punishment already exacted" on Defendants, *McMillen*, 917 F.2d at 777 (quoting *Pearce*, 395 U.S. at 718–19), it does not require that Defendants "escape punishment simply because the court committed error in passing sentence," *Evans*, 645 F.3d at 662 (citing *Busic*, 639 F.2d at 946).

CONCLUSION

For the foregoing reasons, Defendants' Motion is **DENIED**.[11] An appropriate order follows.

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[11] On May 10, 2023, counsel for Carolyn requested that this Court limit the scope of the Probation Office's Pre-Sentence Report ("PSR"). (D.E. 491.) John joined this request on May 30, 2023. (D.E. 495.) Defendants contend "that the Probation Department is simply in no position to determine the 'circumstances of the offense' in this case," and that "the inclusion of the Probation Department's determination as to the 'circumstances of the offense' may add an unwarranted, and prejudicial, imprimatur of reliability to the government's narrative." (D.E. 491 at 2.) Defendants further assert that, "[s]ince

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Parties

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the Guidelines calculation depends upon the underlying factual findings, such a calculation cannot be made" by the Probation Office. (*Id.*) This Court disagrees and finds no compelling reason to limit the preparation of the PSR. Defendants are free to dispute the content and scope of the PSR at the time of resentencing. This Court will fairly consider the arguments of all parties. Accordingly, Defendants' request to limit the scope of the PSR is denied.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Case Number 2:13-CR-00290-SDW-1

UNITED STATES OF AMERICA

v.

CAROLYN JACKSON

Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After
November 1, 1987)

Date of Original Judgment: 10/14/2021
Reason for Amendment: Correction of Sentence on Remand (18 U.S.C. §§ 3742(f)(1) and (2))

The defendant, CAROLYN JACKSON, was represented by RUBIN SININS, ESQ. (CJA) and HERBERT I. WALDMAN, ESQ. (CJA).

The defendant has been found not guilty on count(s) 13s of the SUPERSEDING INDICTMENT and is discharged as to such count(s).

The defendant was found guilty on count(s) 1s - 12s by a jury verdict on 7/8/2015 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18:13 AND N.J.S.A. 2C:5-2.	CONSPIRACY TO ENDANGER THE WELFARE OF A CHILD	8/2005-4/23/2010	1s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	3/2006-5/8/2008	2s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	10/2007-5/8/2008	3s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/16/2010	4s-5s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/16/2010	6s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	7s-9s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	12s

18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	4/10/2010-4/15/2010	10s-11s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	12s

As pronounced on October 30, 2023, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of $1,200.00 for count(s) 1s - 12s, which shall be due immediately **(Paid in Full)**. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further 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 any material change in economic circumstances.

Signed this 31st day of October 2023.

/s/ Susan D. Wigenton
Susan D. Wigenton
U.S. District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months, on Count 1, and a term of 20 months on each of Counts 2 through 12 to be served concurrently to each other and consecutively to the term imposed on Count 1, to the extent necessary to produce **a total term of 140 months.**

The defendant will surrender for service of sentence at the institution designated by the Bureau of Prisons.

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 Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years. This term consists of term of 3 years on each of Counts 1 through 12, all such terms to run concurrently.

The defendant shall be given custodial credit for any term of incarceration previously served

on this case and for all time spent during any previously imposed term of supervised release.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

Based on information presented, you are excused from the mandatory drug testing provision, however, you may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release

You must comply with the following special conditions:

MENTAL HEALTH TREATMENT

> You must undergo treatment in a mental health program approved by the U.S. Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic vio-

lence and/or anger management, or sex offense-specific treatment, as approved by the U.S. Probation Office, until discharged by the Court. The U.S. Probation Office will supervise your compliance with this condition.

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You must cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you must provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

VICTIM (NO CONTACT)

You must not communicate, or otherwise interact with J.J., J.J., and C.J. either directly or indirectly, without first obtaining the permission of the U.S. Probation Office. This includes, but is not limited to, contact through a third person, personal visits, letters, communication devices, audio or visual devices, or social networking sites.

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 es-

tablish 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 fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e. anything that was designed, or was modified for, the specific purpose of

causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed)_____
Defendant Date

_____
U.S. Probation Officer/Designated Witness Date

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Case Number 2:13-CR-00290-KSH-1

UNITED STATES OF AMERICA

v.

CAROLYN JACKSON

Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After
November 1, 1987)

Date of Original Judgment: 4/11/2018
Reason for Amendment: Correction of Sentence on Remand (18 U.S.C. §§ 3742(f)(1) and (2))

The defendant, CAROLYN JACKSON, was represented by HERBERT I. WALDMAN, RUBIN SININS.

The defendant was found guilty on count(s) 1s-12s by a jury verdict on 7/8/2015 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18:13 AND N.J.S.A. 2C:5-2.	CONSPIRACY TO ENDANGER THE WELFARE OF A CHILD	8/2005-4/23/2010	1s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	3/2006-5/8/2008	2s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	10/2007-5/8/2008	3s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/16/2010	4s-5s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/16/2010	6s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	7s-9s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	12s

18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	4/10/2010-4/15/2010	10s-11s

As pronounced on October 06, 2021, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of $1,200.00 for count(s) 1s-12s, which shall be due immediately (**paid in full**) Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further 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 any material change in economic circumstances.

Signed this 14th day of October, 2021.

s/ Katharine S. Hayden
Katharine S. Hayden
Senior U.S. District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **TIME SERVED** on each of Counts,1-12, all such terms to be served concurrently.

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 Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 1 year on each of Counts 1-12, all such terms to run concurrently. The newly imposed term is in addition to the previously set term and shall begin immediately.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

Based on information presented, you are excused from the mandatory drug testing provision, however,

you may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

> You must cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you must provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

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 son 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 fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e.. anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed)_____
Defendant Date

_____
U.S. Probation Officer/Designated Witness Date

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Case Number 2:13-CR-00290-KSH-1

UNITED STATES OF AMERICA

v.

CAROLYN JACKSON

Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After
November 1, 1987)

Date of Original Judgment: 12/23/2015
Reason for Amendment: Correction of Sentence on Remand (18 U.S.C. §§ 3742(f)(1) and (2))

The defendant. CAROLYN JACKSON, was represented by RUBIN SININS and HERBERT I. WALDMAN.

The defendant was found guilty on count(s) 1s-12s by a jury verdict on 7/8/2015 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18:13 AND N.J.S.A. 2C:5-2.	CONSPIRACY TO ENDANGER THE WELFARE OF A CHILD	8/2005-4/23/2010	1s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	3/2006-5/8/2008	2s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	10/2007-5/8/2008	3s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/16/2010	4s-5s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/16/2010	6s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	7s-9s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	6/18/2008-4/15/2010	12s

18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	4/10/2010-4/15/2010	10s-11s
18:13 AND 2, AND N.J.S.A. 2C:24-4A	ENDANGERING THE WELFARE OF A CHILD	JUNE 18 THROUGH APRIL 15, 2010	12s

As pronounced on April 12, 2018, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of $1,200.00 for count(s) 1s-12s, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further 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 any material change in economic circumstances.

Signed this 16th day of April 2018.

/s/ Katharine S. Hayden
Katharine S. Hayden
Senior U.S. District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 40 months on counts 1 through 12, to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons: The Defendant shall be granted credit for time served. Defendant shall be designated to FCC Coleman.

The defendant will surrender for service of sentence at the institution, on the date and time, designated by the Bureau of Prisons.

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 Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years. This term consists of terms of 3 years imposed on each of Counts 1 through 12, to be served concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

Based on information presented, you are excused from the mandatory drug testing provision, however, you may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

MENTAL HEALTH TREATMENT

You must undergo treatment in a mental health program approved by the U.S. Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the U.S. Probation Office, until discharged by the Court. The U.S. Probation Office will supervise your compliance with this condition.

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 fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer

within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e. anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

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Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed)_____
Defendant Date

_____
U.S. Probation Officer/Designated Witness Date

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Case Number 2:2013cr290-01

UNITED STATES OF AMERICA

v.

CAROLYN JACKSON,

Defendant

JUDGEMENT IN CRIMINAL CASE
(For Offenses Committed On or After
November 1, 1987)

The defendant, CAROLYN JACKSON, was represented by Rubin Sinins, Esq. and Herbert Waldman, Esq.

The defendant has been found not guilty on count(s) 13 of the superseding indictment and is discharged as to such count(s).

The defendant was found guilty on count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 of the superseding indictment by a jury verdict on 07/08/2015 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Numbers
N.J.S.A. 2C:5-2	Conspiracy to endanger the welfare of a child	08/2005 through 04/23/2010	1
N.J.S.A. 2C:24-4a	Endangering the welfare of a child	03/2006 through 04/23/2010	2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

As pronounced on 12/15/2015, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $1,200, for count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

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

Signed this the 23rd day of December, 2015.

/s/ Katharine S. Hayden
KATHARINE S. HAYDEN
Senior United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 Months on each Counts One through Twelve, to be served concurrently.

It is recommended that the Bureau of Prisons designate the defendant to a facility as close to Northern New Jersey as possible.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons after 03/01/2016.

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 Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years. This term consists of terms of 3 years on each of Counts One through Twelve, all such terms to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

> Based on information presented, the defendant is excused from the mandatory drug testing provision, however, may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

While on supervised release, the defendant shall not commit another federal, state, or local crime, shall be prohibited from possessing a firearm or other dangerous device, shall not possess an illegal controlled substance and shall comply with the other standard conditions that have been adopted by this Court. Based on information presented, the defendant is excused from the mandatory drug testing provision; however, the defendant may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

In addition, the defendant shall comply with the following special conditions:

MENTAL HEALTH TREATMENT

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Officer shall supervise your compliance with this condition.

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not commit another federal, state, or local crime during the term of supervision.

2) The defendant shall not illegally possess a controlled substance.

3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.

4) The defendant shall not leave the judicial district without the permission of the court or probation officer.

5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.

6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

7) The defendant shall support his or her dependents and meet other family responsibilities.

8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

12) 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.

13) The defendant shall permit a probation officer to visit him or her at anytime at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

15) 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.

16) 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.

(17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);

(18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in

the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

(19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision:

(20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____

Defendant Date

_____

U.S. Probation Officer/Designated Witness Date