

No. _____

In The
Supreme Court of the United States

SOMORIE MOSES, AKA SUGAR BEAR,
AKA SOMORIE BARFIELD, AKA BEAR,
AKA DADDY,

Petitioner,

v.

UNITED STATES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Amendment 591 to the United States Sentencing Guidelines violates the Due Process Clause by *requiring* the application of Guidelines sections to factual situations (and crimes) inconsistent with the cross-referenced Guideline? Doing so violates the Due Process Clause of the Fifth Amendment by inserting an arbitrary and non-discretionary (i.e., required) element into the calculation of the “starting point” under the Guidelines, which is inconsistent with this Court’s Opinions in Johnson v. United States, 576 U.S. 591 (2015), and Beckles v. United States, 580 U.S. 256, 263 (2017), even in an otherwise discretionary sentencing scheme.

PARTIES TO THE PROCEEDING

Petitioner Somorie Moses was the Defendant-Appellant in the courts below.

Respondent United States of America was Appellee in the courts below.

DIRECTLY RELATED PROCEEDINGS

This petition is directly related to the following:

- United States v. Moses, Docket No. 22 Cr. 232 (CBA), U.S. District Court for the Eastern District of New York. Sentencing hearing dated April 5, 2024.
- United States v. Moses, Docket No. 22 Cr. 232 (CBA), U.S. District Court for the Eastern District of New York. Judgment entered May 8, 2024.
- United States v. Moses, Docket No. 24-1341-cr, U.S. Court of Appeals for the Second Circuit. Opinion entered January 22, 2026.
- United States v. Moses, Docket No. 24-1341-cr, U.S. Court of Appeals for the Second Circuit. Order entered April 9, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Somorie Moses respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Second Circuit in United States v. Moses, Summary Order, Docket Nos. 24-1341-cr (2d Cir. January 22, 2026), is available in an unpublished opinion at 2026 WL 179734 (2d Cir. January 22, 2026), and at Pet.App.1-Pet.App.9; the decision denying Petitioner's motion for rehearing is available in an unpublished order, dated, April 9, 2026, at Pet.App.21; the transcript excerpt of the District Court's oral ruling during Petitioner's sentencing hearing, dated, April 5, 2024, is available at Pet.App.18-Pet.App.20, and the Judgment of the United States District Court for the Eastern District of New York, dated, May 8, 2024, is available at Pet.App.10-Pet.App.17.

BASIS FOR JURISDICTION

The judgment of the Court of Appeals was entered on January 22, 2026, and an order denying Petitioner's motion for rehearing and/or rehearing *en banc* was denied on April 9, 2026.

This Court has jurisdiction to review the judgment below on a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

APPLICABLE PROVISIONS

The Due Process Clause of the Fifth Amendment to the United States Constitution:

No person shall be ... deprived of life, liberty, or property, without due process of law[.]

United States Sentencing Guidelines, Supp. to App. C, Amend. 591 (Nov. 1, 2000), in relevant part:

Amendment: Section 1B1.1 is amended by striking subsection (a) in its entirety and inserting:

“(a) Determine, pursuant to §1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. See §1B1.2.”.

Section 1B1.2(a) is amended by striking “most” each place it appears; by striking "Provided, however" and inserting “However”; and by adding at the end the following:

“Refer to the Statutory Index (Appendix A) to determine the Chapter Two offense guideline, referenced in the Statutory Index for the offense of conviction. If the offense involved a conspiracy, attempt, or solicitation, refer to §2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index for the substantive offense. For statutory provisions not listed in the Statutory Index, use the most analogous guideline. See §2X5.1 (Other Offenses). The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. See §1B1.9 (Class B or C Misdemeanors and Infractions).”.

X X X

Reason for Amendment: ... "The amendment modifies §§1B1.1(a), 1B1.2(a), and the Statutory Index's

introductory commentary to clarify the inter-relationship among these provisions. The clarification is intended to emphasize that the sentencing court must apply the offense guideline referenced in the Statutory Index for the statute of conviction unless the case falls within the limited “stipulation” exception set forth in §1B1.2(a).

Appendix A (Statutory Index), United States Sentencing Guidelines, in relevant part:

18 U.S.C. § 2245

2A1.1

Title 18, United States Code, Section 2245 (Offenses resulting in death):

(a)¹ In general.--A person who, in the course of an offense under this chapter, or section 1591, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, murders an individual, shall be punished by death or imprisoned for any term of years or for life.

Title 18, United States Code, Section 1111(a) (Murder):

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

Section 2A1.1 (First Degree Murder), United States Sentencing Guidelines:

(a) Base Offense Level: 43

¹ “So in original. No subsec. (b) was enacted.” 18 U.S.C. § 2245 n.1.

Section 2A1.2 (Second Degree Murder), United States Sentencing Guidelines:

(a) Base Offense Level: 38

STATEMENT

This case presents an issue of exceptional importance. Whether Amendment 591 to the United States Sentencing Guidelines violates the Fifth Amendment Due Process Clause by creating an arbitrary, yet mandatory, requirement within the otherwise discretionary United States Sentencing Guidelines, which, as in the case at bar, thereby requires the District Court to begin its sentencing analysis at a higher “starting point” than the underlying facts (or offense) of the case would otherwise justify?

Petitioner Somorie Moses (hereinafter, “Petitioner”) pleaded guilty to one count of murder in the course of sex trafficking in violation of 18 U.S.C. § 2245, seven counts of sex trafficking in violation of 18 U.S.C. §§ 1591(a)(1), 1591(b)(1), and two counts of sex trafficking of a minor in violation of 18 U.S.C. §§ 1591(a)(1), 1591(b)(1), 1591(b)(2). We acknowledge at the outset that the underlying facts of this case are disturbing. Petitioner was a street-level “pimp” who beat one of his sex workers to death. There was no dispute, however, that her death was unintentional. The assault was intentional, but her death was not. Additionally, it was also undisputed that each of the sex trafficking victims were not trafficked in the common sense, in that none was kidnapped or physically forced into prostitution; these were individuals who were already sex workers prior to having met Petitioner, or individuals with whom

Petitioner convinced to do sex work after entering into romantic relationships with them.

Petitioner's crimes were horrendous, but he accepted full responsibility, pleading guilty to all counts of the Indictment without a plea agreement. As such, he pleaded guilty without any negotiated benefit, knowing that the only factor standing between a life sentence and a potential sentence of less than life was the sentencing court's interpretation of the recommended sentencing range under the United States Sentencing Guidelines. To that end, it was also undisputed that the facts underlying the murder count supported no more than Second-Degree Murder under 18 U.S.C. § 1111(a), not First-Degree Murder.

Under the United States Sentencing Guidelines, the Base Offense Level for a defendant convicted of Second-Degree Murder under 18 U.S.C. § 1111(a) is 38, if, as here, the defendant's Criminal History Category is I. See U.S.S.G. § 2A1.2(a). This results in a recommended sentence of 235-293 months before application of any adjustments based upon acceptance of responsibility, role in the offense, or specific offense characteristics. On the other hand, the Base Offense Level for a defendant convicted of First-Degree Murder under 18 U.S.C. § 1111(a) is 43, if, as here, the defendant's Criminal History Category is I. See U.S.S.G. § 2A1.1(a). This results in a recommended sentence of life imprisonment before any adjustments are applied based on acceptance of responsibility, role in the offense, or specific offense characteristics.

Here, after application of all relevant adjustments, Petitioner's Total Adjusted Offense Level would have been 42, resulting in a recommended sentencing range of 360 months to life, if he had been sentenced consistent with his underlying conduct (i.e., Second-Degree Murder). However, because the sentencing court believed it was required by Amendment 591 to the United States Sentencing Guidelines to follow the Statutory Index contained in Appendix A to those Guidelines, the sentencing court believed it lacked discretion to apply the Guidelines section applicable to the underlying offense conduct. Instead, the sentencing court believed it could only apply the Guideline section listed in the Statutory Index, which, for 18 U.S.C. § 2245, arbitrarily lists only the Guidelines section applicable to First-Degree Murder and omits the Guideline applicable to Second-Degree Murder. As a result, the sentencing court believed it was required to calculate Petitioner's Total Adjusted Offense Level as 43, resulting in a recommended sentence of life imprisonment.

Such arbitrariness exists for any defendant convicted under 18 U.S.C. § 2245, since the Statutory Index listed in Appendix A to the United States Sentencing Guidelines includes only the Guidelines section applicable to First-Degree Murder, U.S.S.G. § 2A1.1, even though a defendant can be convicted of violating 18 U.S.C. § 2245 either through First-Degree Murder, or, as occurred here, Second-Degree Murder.

For reasons that will be discussed below, such arbitrariness at sentencing conflicts with the prior relevant decisions of this Court. As a result, the Second Circuit Court of Appeals is in conflict with this Court on an important Federal

question, and Petitioner seeks certiorari so that this Court may address this issue head on.

REASONS FOR GRANTING THE PETITION

The proceeding involved a question of exceptional importance: Whether Amendment 591 to the United States Sentencing Guidelines violates the Due Process Clause of the Fifth Amendment by inserting an arbitrary, yet nonetheless *mandatory*, element into a Federal court's exercise of sentencing discretion?

In Johnson v. United States, 576 U.S. 591 (2015), this Court held that imposing an increased sentence under the residual clause of the Armed Career Criminal Act (“ACCA”) violates the Constitution’s guarantee of Due Process at sentencing by concluding that the “prohibition of vagueness in criminal statutes ... appl[ies] not only to statutes defining elements of crimes, but also to statutes fixing sentences.” Johnson, 576 U.S. at 596-97, citing, United States v. Batchelder, 442 U.S. 114, 123 (1979). Thereafter, in Beckles v. United States, 580 U.S. 256, 263 (2017), this Court distinguished statutes from guidelines, holding that the United States Sentencing Guidelines were not subject to a void for vagueness challenge under the Fifth Amendment Due Process Clause because “they merely guide the exercise of a court’s discretion in choosing an appropriate sentencing within the statutory range,” but “do not fix the permissible range of sentences.”

In doing so, however, this Court explained that “no party to th[e] case suggests that a system of *purely discretionary sentencing* could be subject to a vagueness challenge.” Beckles, 580 U.S. at 264 (emphasis added). This is because although “a sentencing court may no longer rely exclusively on the Guidelines range ... the court

‘must make an individualized assessment based on the facts presented’ and other statutory factors,” Beckles, 580 U.S. at 265, quoting, Gall v. United States, 552 U.S. 38, 50 (2007). The Court further explained that “[t]he Guidelines ... continue to guide district courts in exercising their discretion by serving as ‘the framework for sentencing,’ *but they ‘do no constrain that discretion,’*” Beckles, 580 U.S. at 265 (brackets omitted and emphasis added), quoting, Peugh v. United States, 569 U.S. 530, 542 (2013), Peugh, 569 U.S. at 552 (Thomas, J., dissenting)

By that very logic, however, Amendment 591 violates Due Process – and therefore both Johnson and Beckles – by *requiring* the application of Guidelines sections to factual situations (and crimes) inconsistent with the intended Guideline. Doing so inserts a non-discretionary (*i.e.*, required) element into the calculations of the “starting point” under the Guidelines, which is inconsistent with Beckles and Due Process even in an otherwise discretionary sentencing scheme. This is because requiring the sentencing court – in this instance, to calculate Petitioner’s sentence as if it were murder in the first degree when the facts and all parties agree the offense-conduct only supported murder in the second degree – arbitrarily increased the *required* “starting point” before any discretion flows, thereby instructing the sentencing court that the starting point upon which any variance *must* be measured is higher than it would be had the sentencing court had the discretion to select a starting point calculated absent the application of Amendment 591. Following Amendment 591 in this instance, therefore, had the effect of transforming the United

States Sentencing Guidelines from a wholly advisory sentencing scheme to a mandatory one in violation of Petitioner's Fifth Amendment right to Due Process.

Application Note 1 to U.S.S.G. § 1B1.2 explains, "In the case of a particular statute that proscribes only a single type of criminal conduct, the offense of conviction and the conduct proscribed by the statute will coincide, and the Statutory Index [U.S.S.G. App. A] will specify only one offense guideline for that offense of conviction. In the case of a particular statute that proscribes a variety of conduct that might constitute the subject of different offense guidelines, the Statutory Index may specify more than one offense guideline for that particular statute, and the court will determine which of the referenced guideline sections is most appropriate for the offense conduct charged in the count of which the defendant was convicted." 18 U.S.C. § 2245 creates the latter, "a particular statute that proscribes a variety of conduct."

Under 18 U.S.C. § 2245, "A person who, in the course of an offense under this chapter, or section 1591, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, murders an individual, shall be punished by death or imprisoned for any term of years or for life." The term "murder" relates to the Federal definition of murder under 18 U.S.C. § 1111(a), which itself constitutes two separate offenses: first-degree murder and second-degree murder. The Guideline for first-degree murder provides for a Base Offense Level of 43, see U.S.S.G. § 2A1.1, whereas the Guideline for second-degree murder provides for a Base Offense Level of 38, see U.S.S.G. § 2A1.2. Yet the Statutory Index lists – and thereby requires pursuant to Amendment 591 – only the

application of U.S.S.G. § 2A1.1 for a violation of 18 U.S.C. § 2245, even though § 2245 provides for a “variety of conduct” and indeed even a variety of underlying offenses within that conduct.

In Beckles, this Court explained that in the context presented to the Court, “The advisory Guidelines ... do not implicate the twin concerns underlying vagueness doctrine—providing notice and preventing arbitrary enforcement.” Beckles, 580 U.S. at 265, thus distinguishing the Guidelines from the Court’s earlier examination of the ACCA in Johnson. Such distinguishment cannot be relied here when one applies Amendment 591 to an offense which defines a “variety of conduct” but only one applicable – and thus mandatory – Guideline, because doing so fails to provide the defendant with adequate notice of how *second*-degree murder in the course of a § 1591 offense would be sentenced, and creates an arbitrary – and mandatory – sentencing scheme in which a *second*-degree murder offender is sentenced under the Guideline applicable to *first*-degree murder. (The same would be true for each of the other underlying offenses enumerated in 18 U.S.C. § 2245, namely, Sections 2251, 2251A, 2260, 2421, 2422, 2423, 2425, none of which, other than Section 1951, were charged against Petitioner.)

The Government conceded below that Amendment 591 “amended the Guidelines to make clear that the Statutory Index [U.S.S.G. App. A] is not advisory but, rather, mandatory.” Brief of the United States, dated, September 12, 2025 (Doc. No. 42.1, 2d Cir. Docket No. 24-1341-cr) (hereinafter cited as, “Gov’t Br.”), at 59. Amendment 591 thereby requires courts to rely upon the Statutory Index to select

the base offense level under the Guidelines *even when* the Statutory Index leads to an arbitrary selection of a base-offense level applicable to a different course of conduct (i.e., different underlying offense) than the one at issue in the case at bar.

As the Government argued:

Prior to Amendment 591, a court could consider actual (i.e., relevant) conduct when selecting the applicable offense guideline section. Amendment 591, effective November 1, 2000, requires that the initial selection of the offense guideline be based only on the statute (or offense) of conviction rather than on judicial findings of actual conduct ... that will never be made by the jury. The Amendment was intended to “emphasize that the sentencing court must apply the offense guideline referenced in the Statutory Index at the back of the Sentencing Guidelines Manual for the statute of conviction.”

Gov’t Br. at 59, quoting, United States v. Rivera, 293 F.3d 584, 585 (2d Cir. 2002) (quoting, U.S.S.G. app. C, amend. 591), United States v. Mungin, 470 Fed.App’x 49, 50 (2d Cir. 2012). “In other words, Amendment 591 ‘reflects a change from the permissive to the mandatory. The sentencing court no longer uses the Statutory Index (Appendix A) as an aid in finding the most applicable guideline among several possibilities; the Statutory Index (Appendix A) now conclusively points the court to the one guideline applicable in a given case.’” Gov’t Br. at 59-60, quoting, United States v. Diaz, 245 F.3d 294, 302 (2d Cir. 2001).

As a result, unlike the Guidelines as a whole, the Statutory Index, as applied here to 18 U.S.C. § 2245, does indeed violate the “twin concerns underlying vagueness doctrine—providing notice and preventing arbitrary enforcement.” Beckles, 580 U.S. at 265; see also Johnson, 576 U.S. at 595 (“The Fifth Amendment provides that ‘no

person shall ... be deprived of life, liberty, or property, without due process of law.’ Our cases establish that the Government violates this guarantee by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, *or so standardless that it invites arbitrary enforcement.*”) (brackets omitted and emphasis added), citing, Kolender v. Lawson, 461 U.S. 352, 357-58 (1983).

Here, the Statutory Index “fails to give ordinary people fair notice of the conduct it punishes” and “invites arbitrary enforcement,” Johnson, 576 U.S. at 595, by only listing one Guideline for use in relation to Petitioner’s offense of conviction (18 U.S.C. § 2245), the Guideline for first-degree murder (U.S.S.G. § 2A1.1), even though 18 U.S.C. § 2245 can be proven through facts establishing second-degree murder, as was the case here. As such, the mandatory requirement to apply the first-degree murder Guideline (U.S.S.G. § 2A1.1), rather than the second-degree murder Guideline (U.S.S.G. § 2A1.2), arbitrarily deprived the sentencing court of the discretion to select the Guideline applicable to the offense conduct charged in the case at hand. Doing so in this manner deprived the court of its discretion, arbitrarily and without explanation, in violation of Beckles and Johnson and therefore in violation of Petitioner’s Fifth Amendment rights.

The fact that 18 U.S.C. § 3553(a) provides the court a basis to *vary* from the recommended Guidelines range is not dispositive. The calculation of the Guidelines remains the “‘starting point and the initial benchmark’ for sentencing,” and District Courts are *required* to “remain cognizant of them through the sentencing process.”

United States v. Cavera, 550 F.3d 180, 189 (2d Cir. 2008), quoting, Gall, 552 U.S. at 49 & 50 n.6; see also Peugh, 569 U.S. at 541-42 (holding, inter alia, that “sentencing decisions are anchored by the Guidelines,” which “remain[s] the starting point for every sentencing calculation”); United States v. Molina-Martinez, 578 U.S. 189, 200 (2016) (stating that “the Guidelines are not only the starting point for most federal sentencing proceedings but also the lodestar”).

Indeed, as the Second Circuit acknowledged below, “the district court is required to ‘begin all sentencing proceedings by *correctly* calculating the applicable advisory Guidelines range.” Slip. Op. at 8-9 (Pet.App.8 - Pet.App.9) (brackets omitted and emphasis in original), quoting, Gall, 552 U.S. at 49. As such, if the “starting point” is *incorrectly* calculated due to the application of an arbitrary – and nonetheless *mandatory* – provision of the Guidelines, then the ability to vary under § 3553(a) cannot negate the error in the miscalculation of the starting point, nor render that error harmless.

For these reasons, Petitioner submits that the mandatory application of the Statutory Index, as required by Amendment 591 and as applied to 18 U.S.C. § 2245, violates the Fifth Amendment right to Due Process at sentencing and conflicts with this Court’s prior decisions in, for example, Johnson, 576 U.S. at 595-97, and Beckles, 580 U.S. at 263-65.

Certiorari should be granted so that this Court may address this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York
July 1, 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MBR', with a long, sweeping horizontal line extending to the right.

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APPENDIX

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Pet.App.1

24-1341-cr
United States v. Moses

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

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of January, two thousand twenty-six.

Present:

AMALYA L. KEARSE,
JOHN M. WALKER, JR.,
WILLIAM J. NARDINI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

24-1341-cr

SOMORIE MOSES, AKA SUGAR BEAR,
AKA SOMORIE BARFIELD, AKA BEAR,
AKA DADDY

Defendant-Appellant.

For Appellee:

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Bachrach, New York, NY; Michael O. Hueston,
Michael Hueston, Brooklyn, NY

Pet.App.2

Appeal from a judgment of the United States District Court for the Eastern District of New York (Carol B. Amon, *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-Appellant Somorie Moses appeals from a judgment of the United States District Court for the Eastern District of New York entered on May 10, 2024, following a guilty plea.

Moses was a pimp who sex trafficked both adults and minors, including a woman named Leondra Foster. On the night of January 12, 2017, and into the early morning hours thereafter, Moses and Foster had a heated argument, culminating in Moses assaulting Foster. The seriousness of the injuries Foster suffered at the hands of Moses is disputed, as are the events that transpired after the assault. What is not disputed is that Foster died in the hours immediately following the assault. Moses dismembered and disposed of most of Foster's body, but kept in his freezer her head, hands, and feet—including one foot with his name tattooed on it. Shortly after Foster's death, authorities located part of her corpse and traced it back to Moses. After a jury trial in New York state trial court, Moses was convicted of criminally negligent homicide and concealment of a human corpse, and he was sentenced to 2 to 4 years of imprisonment on each count, to run concurrently.

While serving his state sentence, federal authorities obtained additional evidence of Moses's guilt, including statements he had made to witnesses admitting that he killed Foster because he believed that she had given him HIV. On September 15, 2023, Moses pled guilty to all ten counts in a new federal indictment, including nine counts of sex trafficking different victims (including Foster) in violation of 18 U.S.C. § 1591(a)(1), and one count of murdering Foster in the

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course of sex trafficking in violation of 18 U.S.C. § 2245. The district court sentenced Moses to concurrent terms of life imprisonment on all ten counts.

On appeal, Moses raises three arguments: (1) that his guilty plea to Count Ten (the murder of Leondra Foster) was not entered knowingly and voluntarily; (2) that the record at the time of his guilty plea was insufficient to support the district court's determination that there was a sufficient factual basis to support his plea to Count Ten; and (3) that his sentence was procedurally unreasonable because the district court used the wrong provision of the Sentencing Guidelines to calculate his base offense level. We assume the parties' familiarity with the case.

I. The Validity of Moses's Guilty Plea

Under Federal Rule of Criminal Procedure 11, a guilty plea must be made knowingly and voluntarily, and there must be a factual basis for the plea. Fed. R. Crim. P. 11(b). Rule 11 also provides that any "variance from the[se] requirements . . . is harmless error if it does not affect substantial rights." Fed. R. Crim. P. 11(h). Moreover, because Moses did not raise any concerns regarding his guilty plea before the district court, we review his challenges to the plea only for plain error. *See United States v. Robinson*, 799 F.3d 196, 200 (2d Cir. 2015).¹

A. Knowing and Voluntary

Rule 11(b)(1)(G) requires the district court to "inform the defendant of, and determine that the defendant understands . . . the nature of each charge to which the defendant is pleading." Moses first asserts that his guilty plea was not made knowingly or voluntarily because the district court did not properly explain the elements of murder in the course of sex trafficking, pursuant to 18

¹ Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

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U.S.C. § 2245. We disagree, based on both his and his counsel’s statements at the change of plea hearing.

Rule 11 “does not tell [district courts] precisely how to perform this important task [of informing a defendant of the elements of the charged offense] in the great variety of cases that come before them.” *United States v. Maher*, 108 F.3d 1513, 1520-21 (2d Cir. 1997). As the Supreme Court has said, “we have never held that the judge must himself explain the elements of each charge to the defendant on the record. Rather, the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel.” *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005). The district court is permitted to rely on competent counsel’s assurances that “the defendant has been properly informed of the nature and elements of the charge to which he is pleading guilty.” *Id.*

The record clearly supports the conclusion that the district court did not commit any error, plain or otherwise, in finding that Moses was acting knowingly and voluntarily, with a full understanding of the elements of Count Ten, when he pleaded guilty. Moses confirmed that he read the indictment, which included all of the elements of 18 U.S.C. § 2245. He also confirmed that his attorneys had explained all of the elements of the crime to him. Moses’s defense counsel corroborated this. The court then proceeded to go through all the elements of 18 U.S.C. § 2245 on the record. The court stated: “Now, there is a tenth count. And this is a violation of 18 U.S.C. Section 2245. That count charges murder. They would have to prove that you murdered the individual that is listed in that count,” and “murder is defined in the statute as the unlawful killing of a human being with malice aforethought.” App’x at 296-97. Defense counsel responded that “the parties agree that an unintentional murder would also qualify as murder under the statute, as

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long as it's committed with reckless disregard for human life.” *Id.* at 297. After this exchange between the court and his counsel, Moses again confirmed that he understood the elements of § 2245 as they had just been explained. Not only did both Moses and his counsel confirm that he had been properly informed of the nature and elements of murder in the course of sex trafficking multiple times, but the court also explicitly listed the elements of the offense on the record. This was more than a sufficient basis to find that Moses’s plea was knowing and voluntary in the sense that he understood the nature of the crime with which he was charged, including its essential elements.

Nevertheless, Moses contends that his guilty plea was not made knowingly or voluntarily because the district court did not canvas him about a possible heat of passion defense at his change of plea hearing. However, this Court has repeatedly held that a district court “has no duty under Rule 11[] to anticipate or detect, and then rule out, defenses” *United States v. Smith*, 160 F.3d 117, 123 (2d Cir. 1998). In other words, a guilty plea is not invalid simply because a district court does not “provide the defendant and his counsel with a tutorial on every conceivable defense and then secure a waiver for each one.” *Id.* at 123 n.4. Further, even if, hypothetically, the court’s failure to raise such a defense with Moses at the plea hearing were deemed to constitute an error, Moses would have needed to show, in order to qualify for relief under the third prong of plain-error analysis, that the error affected his substantial rights; more specifically, he would have to demonstrate there was “a reasonable probability that, but for the error, he would not have entered the plea” of guilty, *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004). Any such probability, however, is belied by Moses’s sentencing memorandum, in which he explicitly stated that in order to obtain the sentencing benefits of accepting responsibility, he would not pursue any argument or defense that the facts of his case would support a charge of voluntary manslaughter

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instead of murder. *See* Dist. Ct. Dkt. No. 115, at 32 n.18 (“Because . . . Somorie Moses decided to accept full responsibility and plead guilty to the Indictment, this Court need not determine whether such a defense applies . . .”).

B. Sufficient Factual Basis

Moses’s next challenge is to the district court’s determination that there was a sufficient factual basis for his guilty plea. Specifically, Moses contends that the record before the district court at the time of his guilty plea did not support the conclusion that he had acted with malice aforethought. Instead, he argues, the record shows at most that he acted “upon a sudden quarrel or heat of passion,” making his crime more comparable to voluntary manslaughter than first- or second-degree murder. Appellant’s Br. 28. In response, the Government states that Moses has waived this argument, or in the alternative, fails to establish plain error.

When a defendant “as a tactical matter” chooses not to raise an objection to a purported error, “such inaction constitutes a true waiver which will negate even plain error review.” *United States v. Quinones*, 511 F.3d 289, 321 (2d Cir. 2007). A true waiver “applies with even more force when . . . defendants not only failed to object to what they now describe as error,” but also “actively solicited it” to obtain some benefit. *Id.* This “doctrine seeks to avoid rewarding mistakes stemming from a defendant’s own intelligent, deliberate course of conduct in pursuing his defense.” *United States v. Bastian*, 770 F.3d 212, 218 (2d Cir. 2014).

Based on Moses’s representations at the change of plea hearing, we conclude that Moses waived any challenge to the adequacy of the factual basis supporting his guilty plea. At the outset of the plea hearing, defense counsel explained to the court that “[t]he parties have worked together, with Mr. Moses’s input, on an allocution that we both believe satisfies all of the elements of the offenses . . .” App’x at 276-77. As the hearing proceeded, defense counsel represented that the

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defendant's guilty plea would "be waiving factual disputes as to his guilt." *Id.* at 277. And as the parties discussed the elements of the offenses with the district court, defense counsel reiterated the point: "Your Honor, I don't know if it would be helpful. It is complicated, these particular statutes. As I stated, we have drafted an allocution together." *Id.* at 283. When the court inquired whether defense counsel "had gone over this allocution with Mr. Moses and every fact in that allocution he says is true," counsel responded, "Yes, Your Honor." *Id.* at 284. Counsel emphasized that the allocution had been crafted "with Mr. Moses's input," and that "[w]e have explained it all to him in great detail." *Id.* When the district court expressed concern as to whether it might need to ask the defendant supplemental questions to clarify the factual basis for the plea, defense counsel assured the court that an allocution that simply tracked the statutory language of the offense would be adequate under this Court's case law. *Id.* at 290-91.

After the court received both parties' assurances that the jointly crafted allocution would provide a sufficient factual basis for Moses's guilty plea, Moses acknowledged as follows with respect to Count Ten: "[D]uring and as a consequence of my commission of the sex trafficking offense in Count Nine, I intentionally inflicted serious physical injury on Leondra Foster which proximately caused her death. In doing so, I acted unlawfully and recklessly with extreme indifference to her life." *Id.* at 330. By offering the shortest allocution possible, and assuring the district court of its adequacy, Moses made a tactical choice that would leave himself room at sentencing to minimize his culpability with respect to Foster's murder—to suggest, for example, that her death ultimately occurred because she slipped in the bathroom after Moses beat her, not because the blunt-force trauma of his blows directly killed her. Moses's strategy did not succeed, and the district court imposed concurrent life sentences on all ten counts. But as we have previously held, when a defendant "is attempting to evade the consequences of an unsuccessful

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tactical decision . . . we have no difficulty concluding that [he] has waived appellate review.” *United States v. Coonan*, 938 F.2d 1553, 1561 (2d Cir. 1991). Accordingly, we hold that Moses waived any challenge to the adequacy of the factual basis of his plea.

II. Procedural Reasonableness of Moses’s Sentence

Moses’s final argument is that the district court erred when it calculated his advisory Sentencing Guidelines range. The district court set Moses’s base offense level by reference to the first-degree murder guideline in U.S.S.G. § 2A1.1, which is cross-referenced for convictions under 18 U.S.C. § 2245 in the Statutory Index in Appendix A to the Guidelines Manual. According to Moses, the district court should have treated the Statutory Index cross-reference to § 2A1.1 as merely advisory, and instead applied the lower base offense level provided by the second-degree murder guideline in U.S.S.G. § 2A1.2, which he argues more closely fits his offense conduct. In support of his argument that the Statutory Index is merely advisory, Moses directs our attention to cases such as *United States v. Aragbaye*, 234 F.3d 1101, 1104 (9th Cir. 2000). But *Aragbaye* relied on a version of the Guidelines Manual that has since been superseded. *See* U.S.S.G. § 1B1.2 cmt. 1 (1997) (“When a particular statute proscribes a variety of conduct that might constitute the subject of different offense guidelines, the court will determine which guideline section applies based upon the nature of the offense conduct charged in the count of which the defendant was convicted.”). Guideline Amendment 591, adopted in 2000, made the Statutory Index mandatory, and required sentencing courts to “apply the offense guideline referenced in the Statutory Index . . . for the statute of conviction.” *United States v. Rivera*, 293 F.3d 584, 585 (2d Cir. 2002). Thereafter, the Supreme Court ruled that the Guidelines themselves are not mandatory. *See United States v. Booker*, 543 U.S. 220, 264 (2005). However, the district court is required to “begin all sentencing proceedings by *correctly* calculating the applicable

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[advisory] Guidelines range.” *Gall v. United States*, 552 U.S. 38, 49 (2007) (emphasis added). Here, the Statutory Index requires courts to apply U.S.S.G. § 2A1.1, the first-degree murder guideline, for convictions under 18 U.S.C. § 2245. The district court therefore did not err in applying that guideline when setting Moses’s base offense level.

In any event, even if there had been any error, it would have been harmless. The sentencing judge explicitly stated that regardless of what Moses’s guideline range was, it would not “affect the sentence that the Court intends to impose because [it] intend[ed] to impose under all of the facts and circumstances of this case a lifetime sentence.” App’x at 440. As we have previously held, “[a] procedural sentencing error is harmless if the record indicates clearly that the district court would have imposed the same sentence in any event.” *United States v. Runner*, 143 F.4th 146, 162 (2d Cir. 2025).

* * *

We have considered Moses’s remaining arguments and find them unpersuasive. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk

 

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

Somorie Moses

JUDGMENT IN A CRIMINAL CASE

Case Number: CR22-00232(CBA)

USM Number: 84009-053

Michael O. Hueston, Esq. (AUSA Jonathan Siegel)

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One(1),Two(2),Three(3),Four(4),Five(5),Six(6),Seven(7),Eight(8),Nine(9),Ten(10) of Indictment.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1591(a)(1), 18:1591 (b)(1)	Sex Trafficking- Jane Doe #1 (Class A Felony)	September 1, 2003- December 7, 2003	1
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #2 (Class A Felony).	December 19, 2003- April 30, 2006	2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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

4/5/2024

Date of Imposition of Judgment

s/Carol Bagley Amon

Signature of Judge

Carol Bagley Amon, U.S.D.J.

Name and Title of Judge

Date

May 8, 2024

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)**ADDITIONAL COUNTS OF CONVICTION**

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #3 (Class A Felony).	<u>January 2005- January 2006</u>	3
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #4 (Class A Felony).	<u>June 1, 2006- July 26, 2006</u>	4
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #5 (Class A Felony).	<u>July 27, 2006- November 30, 2006</u>	5
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #6 (Class A Felony).	<u>July 15, 2010</u>	6
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #7 (Class A Felony).	<u>2011</u>	7
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #8 (Class A Felony).	<u>August 1, 2011- January 11, 2012.</u>	8
(b)(1)			
18:1591(a)(1), 18:1591	Sex Trafficking- Jane Doe #9 (Class A Felony).	<u>March 1, 2016- January 13, 2017</u>	9
(b)(1)			
18:2245	Murder of Leondra Foster in the Course of Sex		10
	Trafficking (Class A Felony).	<u>January 12, 2017 and January 13, 2017</u>	

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)**IMPRISONMENT**

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

Life on each count to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed in a facility in the Southeast region if deemed appropriate USP Coleman II.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 3 — Supervised Release

Judgment—Page 4 of 8

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Five (5) years on each count to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)**STANDARD CONDITIONS OF SUPERVISION**

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)

SPECIAL CONDITIONS OF SUPERVISION

The defendant Somorie Moses shall comply with the special conditions:

- 1). The defendant shall comply with any applicable state and/or federal sex offender registration requirements, as instructed by the probation officer, the Bureau of Prisons, or any state offender registration agency in the state where he resides, works, or is a student.
- 2). The defendant shall participate in a mental health treatment program, which may include participation in a treatment program for sexual disorders, as approved by the U.S. Probation Department. The defendant shall contribute to the cost of such services rendered and/or any psychotropic medications prescribed to the degree he is reasonably able, and shall cooperate in securing any applicable third-party payment. The defendant shall disclose all financial information and documents to the Probation Department to assess his ability to pay. As part of the treatment program for sexual disorders, the defendant shall participate in polygraph examinations and/or visual response testing to obtain information necessary for risk management and correctional treatment.
- 3). The defendant shall not associate with or have any contact with convicted sex offenders unless in a therapeutic setting and with the permission of the U.S. Probation Department.
- 4). The defendant shall not associate with children under the age of 18, unless a responsible adult is present, and he has prior approval from the Probation Department. Prior approval does not apply to contacts which are not known in advance by the defendant where children are accompanied by a parent or guardian or for incidental contacts in a public setting. Any such non-pre-approved contacts with children must be reported to the Probation Department as soon as practicable, but no later than 12 hours. Upon commencing supervision, the defendant shall provide to the Probation Department the identity and contact information regarding any family members or friends with children under the age of 18, whom the defendant expects to have routine contact with, so that the parents or guardians of these children may be contacted and the Probation Department can approve routine family and social interactions such as holidays and other family gatherings where such children are present and supervised by parents or guardians without individual approval of each event.
- 5). If the defendant cohabitates with an individual who has minor children, the defendant will inform that other party of his prior criminal history concerning his sex offense. Moreover, he will notify the party of his prohibition of associating with any child(ren) under the age of 18, unless a responsible adult is present.
- 6). The defendant shall submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
- 7). The defendant shall report to the U.S. Probation Office any and all electronic communications service accounts (as defined in 18 USC 2510(15)) used for user communications, dissemination and/or storage of digital media files (i.e., audio, video, images). This includes, but is not limited to, email accounts, social media accounts, and cloud storage accounts. The defendant shall provide each account identifier and password, and shall report the creation of new accounts, changes in identifiers and/or passwords, transfer, suspension and/or deletion of any account within 5 days of such action. Failure to provide accurate account information may be grounds for revocation of release. The defendant shall permit the U.S. Probation Office to access and search any account(s) using the defendant's credentials pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the account(s) to be searched contains evidence of this violation. Failure to submit to such a search may be grounds for revocation of release. The defendant shall allow the U.S. Probation Office to periodically access the accounts to ensure the integrity of the current usernames and passwords.
- 8). The defendant shall not have contact of any kind with any of the victims of the instant offense or their families.

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 1,000.00	\$	\$	\$	\$

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

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

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

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

DEFENDANT: Somorie Moses
CASE NUMBER: CR22-00232(CBA)

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 1,000.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

- ☐ Joint and Several

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA, 22-CR-232 (CBA)
4 Plaintiff, United States Courthouse
5 -against- April 5, 2024
6 SOMORIE MOSES, 10 o'clock a.m.
7 Defendant.

-----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
10 BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES SENIOR DISTRICT JUDGE

11 APPEARANCES

12 For the Government: UNITED STATES ATTORNEY'S OFFICE
13 Eastern District of New York
271 Cadman Plaza East
14 Brooklyn, New York 11201
BY: TANYA HAJJAR
15 JONATHAN SIEGEL
Assistants United States Attorney

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25 Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 AFTERNOON SESSION

2 2:15 p.m.

3 THE COURTROOM DEPUTY: Good afternoon. This is the
4 continuation of 22-CR-232, USA v. Somorie Moses, sentencing.
5 Thank you.

6 THE COURT: Everyone can be seated.

7 Let me just begin by saying that I have read through
8 all of the sentencing materials, the presentence report; I've
9 considered the statements that the victims made in court this
10 morning, I've considered the very extensive arguments made by
11 counsel on behalf of their client, their exceedingly thorough
12 presentation. I've considered as well the Government's
13 equally thorough presentation. This is obviously a very
14 difficult case.

15 Procedurally, I am required to find the guideline.
16 Here, I find, as we've discussed thoroughly this morning, that
17 the guideline in this case is life. I referred to a case this
18 morning, *Díaz*, which talks about the application of Amendment
19 591.

20 The Second Circuit case that refers to that is
21 *United States v. Rivera*, 293 F.3d 584. That directs the Court
22 to the statutory index. The statutory index for the last
23 count in the indictment takes you -- that count is a violation
24 of 2245. That takes you to 2A1.1, which is a guideline of
25 life.

1 Defendants make arguments about why they think that
2 that is incorrect. They can address that, obviously, to a
3 higher court who can evaluate that argument.

4 But I recognize, of course, that I am not bound to
5 select a sentence within that guideline range. And I can say
6 now that whether the guideline range of life is appropriate or
7 whether, in fact, as counsel suggests, the guideline range
8 would be 360 to life, it doesn't affect the sentence that the
9 Court intends to impose because I intend to impose under all
10 of the facts and circumstances of this case a lifetime
11 sentence.

12 I recognize that this sentence is unusual for
13 someone who's pled guilty to the extent that that's being made
14 as a disparity argument, but, in my view, this is an unusual
15 case. The conduct, which the Defendant does not dispute, is
16 so abhorrent, in my view, as to require the sentence of life
17 imprisonment.

18 As to each victim listed in the counts of the
19 indictment, he inflicted horrific mental, emotional, and
20 physical abuse; in some cases, you could say that it even
21 rises to the level of a form of torture, as the Government
22 pointed out today, cutting a victim and pouring lemon juice
23 into the wounds. So, in my view, this is an extraordinarily
24 serious case.

25 I also take into account a factor that's been raised

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of April, two thousand twenty-six.

United States of America,

Appellee,

v.

Somorie Moses, AKA Sugar Bear, AKA Somorie
Barfield, AKA Bear, AKA Daddy,

Defendant - Appellant.

ORDER

Docket No: 24-1341

Appellant, Somorie Moses, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

