

APPENDICES

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FOR PUBLICATION

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

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

PAUL ENGSTROM,

Defendant - Appellee.

No. 24-1878

D.C. No.
2:21-cr-00190-
ART-EJY-1

OPINION

Appeal from the United States District Court
for the District of Nevada
Anne R. Traum, District Judge, Presiding

Argued and Submitted September 17, 2025
San Francisco, California

Filed February 5, 2026

Before: David F. Hamilton, Ryan D. Nelson, and Patrick J.
Bumatay, Circuit Judges.*

Opinion by Judge R. Nelson

* The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, 7th Circuit, sitting by designation.

SUMMARY**

Criminal Law

The panel reversed the district court's decision that Paul Engstrom was eligible for safety valve relief under 18 U.S.C. § 3553(f), vacated the sentence imposed below the statutory minimum, and remanded for resentencing in a case in which Engstrom pleaded guilty to drug-related crimes.

The district court imposed the below-minimum sentence after holding a resentencing hearing under Fed. R. Crim. P. 35. Rejecting Engstrom's argument that this court could not review the district court's decision to hold the Rule 35 resentencing hearing, the panel reviewed that decision for plain error, and held that because the district court identified a clear error of a "technical" kind in the original sentencing hearing, the district court's choice to conduct the Rule 35 hearing was not plain error.

The panel held that Engstrom is not eligible for safety valve relief for two reasons.

First, Engstrom failed to provide a complete debrief to the government before sentencing, as required by 18 U.S.C. § 3553(f)(5). The panel rejected the district court's approach which proceeded as if virtually any truthful statement given upon arrest, a truthful guilty plea allocution, or additional statements may be enough. Engstrom did not provide a complete disclosure. The district court never asked him whether he had given all the information about

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

the crime to the government, nor did the record support the existence of such disclosure. Engstrom never claimed that such disclosure occurred. Given these circumstances, Engstrom could not qualify for safety valve relief.

Second, *Pulsifer v. United States*, 601 U.S. 124 (2024), forecloses safety valve relief. In *Pulsifer*, which was issued during this appeal, the Supreme Court adopted a disjunctive reading of 18 U.S.C. § 3553(f)(1), holding that if a defendant has even one of the three listed offenses, then that defendant becomes ineligible for safety valve relief. Because Engstrom had a prior 3-point offense for conspiracy to distribute a controlled substance, Engstrom is categorically ineligible. The panel rejected Engstrom's arguments (1) that it violates his due process right to fair notice to apply *Pulsifer* on direct appeal akin to an impermissible ex post facto law; and (2) that even if *Pulsifer* applies on direct appeal, the government cannot satisfy the third and fourth prongs of plain error review.

COUNSEL

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OPINION

R. NELSON, Circuit Judge:

The government appeals the district court's order sentencing Paul Engstrom to 46 months' imprisonment for drug-related crimes. The district court sentenced him below the statutory minimum, granting him safety valve relief under 18 U.S.C. § 3553(f). But Engstrom was ineligible for safety valve relief since he failed to provide a complete debrief to the government before sentencing. He is also ineligible under *Pulsifer v. United States*, 601 U.S. 124 (2024), which applies to cases pending on direct appeal. We therefore reverse and remand to the district court for resentencing.

I

Paul Engstrom pleaded guilty to two criminal counts—Conspiracy to Distribute a Controlled Substance and Money Laundering Conspiracy. Under the plea agreement, Engstrom specified that he and his coconspirators agreed to distribute 500 grams or more of cocaine, triggering a five-year mandatory-minimum sentence under 21 U.S.C. §§ 846, 841(a)(1), and (b)(1)(B)(ii). Engstrom agreed that he did not qualify for safety valve relief under 18 U.S.C. § 3553(f) and would not request such relief to avoid the mandatory minimum.

In 2024, the district court held a sentencing hearing. It calculated that under the sentencing guidelines, Engstrom fell within Criminal History Category III and that his total offense level was 33. The parties had agreed to recommend a combined six-level downward variance, which brought

Engstrom's offense level to 27, with a recommended sentence range of 87 to 108 months.

The government recommended that the district court apply the requested variance and sentence Engstrom at the bottom of that reduced range. Engstrom urged the court to sentence him to the mandatory minimum of 60 months. The district court then asked Engstrom's probation officer why Engstrom was not eligible for safety valve relief. The officer explained that Engstrom could not receive safety valve relief as he had not met the statutory requirement under § 3553(f)(5) for debriefing the government.

The district court imposed a sentence of 70 months of detention, granting Engstrom a variance beyond the government's recommendation. The court granted this lower sentence considering the difficult pre-trial detention Engstrom faced during the COVID-19 pandemic and mitigating evidence. The district court explained that it had given two coconspirators a two-level downward variance. In so doing, the district court attempted to give those defendants relief akin to the safety valve despite their being ineligible for such relief. The district court justified Engstrom's additional downward variance by sentencing him similarly to his coconspirators, stating that it intended to give him the benefit of the safety valve.

Soon after, the district court scheduled a hearing under Federal Rule of Criminal Procedure 35, which provides that a district court may, "[w]ithin 14 days after sentencing . . . correct a sentence that resulted from arithmetical, technical, or other clear error." At the Rule 35 resentencing hearing, the district court explained that in the original hearing, it deducted two points under the § 3553(a) factors to give Engstrom the benefit of the safety valve; but the district court

gave Engstrom a sentence above the mandatory minimum along with a supervised release term set at the mandatory minimum.

The district court once again asked the probation officer why Engstrom was not eligible for safety valve relief. The probation officer again explained that Engstrom had not met the statutory debrief requirement and had stipulated in his plea agreement that he was ineligible. The district court asked Engstrom whether he had met with the government. Engstrom responded that he had not; he understood the plea agreement to mean he was not to seek safety valve relief.

The district court asked the government what was required to satisfy the statutory debrief requirement. The government responded that a defendant typically meets a prosecutor and shares information about the case.

The district court explained that while the plea agreement bound Engstrom and the government, the court was not so bound; it needed to make an independent assessment whether Engstrom was safety valve eligible. In the district court's view, the statute "does not specify a form, place, or manner of disclosure," so a statement upon arrest or allocution could be enough if the defendant provided "truthful and complete information in good faith." The district court concluded that Engstrom was eligible for the safety valve since he truthfully "said the most in open court" about the conspiracy among his codefendants. The government objected to the safety valve relief.

The district court revisited "the other aspects" of Engstrom's sentence (by considering the § 3553 factors afresh) and recalculated it under § 3553(a). Engstrom's recalculated offense level was 25. The government requested a sentence of 70 months' imprisonment, the low

end of the sentencing guideline range. The district court imposed a 46-month sentence, followed by two years of supervised release to run on concurrent counts. The district court noted that this sentence was a variance below the mandatory minimum as permitted by the applicable safety valve provision.

The government moved for reconsideration, arguing that the district court had erred in applying the safety valve because Engstrom had not met the debrief requirement. While that motion was pending, the permissible time to correct the resentencing error lapsed. *See* FED. R. CRIM. P. 35. The Supreme Court also decided *Pulsifer v. United States*, which held that to be eligible for safety valve relief under § 3553(f)(1), a defendant must satisfy all three statutory criminal history requirements. 601 U.S. 124, 153 (2024). In other words, a defendant could not have more than four criminal history points, or a prior three-point offense, or a prior two-point violent offense. *Id.* This decision abrogated our decision in *United States v. Lopez*, which held that a defendant was eligible for safety valve relief unless all three of the criminal history requirements applied to that defendant, rather than just one. 998 F.3d 431, 444 (9th Cir. 2021); *see also United States v. Lopez*, 58 F.4th 1108 (9th Cir. 2023) (R. Nelson, J., statement regarding denial of rehearing en banc). The government also argued that under *Pulsifer*, Engstrom's prior undisputed three-point conviction for conspiracy to distribute controlled substances in 2017 disqualified him for safety valve relief. The government appealed.

II

The district court had jurisdiction under 18 U.S.C. § 3231. We have appellate jurisdiction under 18 U.S.C.

§ 3742 and 28 U.S.C. § 1291. Engstrom’s motion for judicial notice (Dkt. No. 64) stating that he was housed at a residential reentry center with a release date of December 20, 2025, is granted. Engstrom’s release from incarceration does not moot this case for two reasons. First, Engstrom remains on supervised release, meaning a live case or controversy continues despite any release. *United States v. Verdin*, 243 F.3d 1174, 1178 (9th Cir. 2001). Second, our decision to vacate and remand could (and here will) result in Engstrom being resentenced and sent back to prison, ensuring a live case or controversy. *See Eagles v. United States ex rel. Samuels*, 329 U.S. 304, 307–08 (1946); *see Garcia v. Lawn*, 805 F.2d 1400, 1402 (9th Cir. 1986); *United States v. Lira–Barraza*, 941 F.2d 745, 746 n.1 (9th Cir. 1991) (en banc).

The parties dispute whether we can review the district court’s order holding a Rule 35 resentencing hearing. The government argues that it only forfeited its argument by not objecting. Thus, it asserts we should review for plain error. *United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). But Engstrom argues that the government waived this challenge by not objecting, thus precluding our review.

No waiver occurred. “[F]orfeiture is the failure to make a timely assertion of a right, whereas waiver is the intentional relinquishment or abandonment of a known right.” *United States v. Perez*, 116 F.3d 840, 845 (9th Cir. 1997) (cleaned up). “Forfeited rights are reviewable for plain error, while waived rights are not.” *Id.* If a party “invite[s] the error, and relinquishe[s] a known right, then the error is waived and therefore unreviewable.” *Id.*

The government did not object to the district court’s Rule 35 hearing. But failing to object to a district court’s sentencing decision—or even affirmatively endorsing it—is not waiver. *United States v. Depue*, 912 F.3d 1227, 1233 (9th Cir. 2019). Waiver occurs only if “there [is] evidence indicating the [parties] knew of their rights and chose to relinquish them anyway.” *Id.*; see also *Perez*, 116 F.3d at 845 (collecting cases showing knowing relinquishment of right).

The district court called the Rule 35 hearing to correct “a possible clear error” in its sentencing. The district court did not permit the government a reasonable chance to object to the Rule 35 hearing and just asked the government whether Engstrom was safety valve eligible.

Engstrom characterizes these events as the government tactically choosing not to object to the Rule 35 hearing. But nothing suggests that the government knowingly chose not to object. See *Depue*, 912 F.3d at 1233. Rather, the district court quickly turned to the safety valve issue without discussing the appropriateness of resentencing. While the government ideally should have interrupted to object, forfeiture rather than waiver occurred, and plain error review applies. See *United States v. Grant*, 727 F.3d 928, 933 (9th Cir. 2013); *Perez*, 116 F.3d at 845.

We review the district court’s statutory interpretation of the safety valve provision de novo and its factual determination that the defendant is eligible for relief for clear error. *United States v. Mejia-Pimental*, 477 F.3d 1100, 1103 (9th Cir. 2007). This standard of review applies both to the statutory debrief requirement issue and the *Pulsifer* issue.

III

The district court's choice to hold a Rule 35 resentencing hearing is not plain error. Plain error requires: "(1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected [appellant's] substantial rights, which in the ordinary case means it affected the outcome of the district-court proceedings; and (4) the error seriously affected the fairness, integrity or public reputation of judicial proceedings." *United States v. Walter-Eze*, 869 F.3d 891, 911 (9th Cir. 2017) (cleaned up).

The government's argument falls at the threshold prong. A district court "may not modify a term of imprisonment once it has been imposed" except in several enumerated circumstances. 18 U.S.C. § 3582(c). Among them, a district court "may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure." *Id.* § 3582(c)(1)(B). Rule 35 states that "[w]ithin 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error." FED. R. CRIM. P. 35(a).

The district court did not err when it concluded that it needed to resentence Engstrom. Under the safety valve provision, "a court is to sentence a defendant without regard to any statutory minimum if it finds that" the five statutory criteria in § 3553(f) are met. *Pulsifer*, 601 U.S. at 128 (cleaned up). The district court has an independent duty to determine whether the safety valve applies and, if so, it then sentences the defendant without regard to the statutory minimum for a particular offense. *Id.*

When the district court originally sentenced Engstrom, it stated that two of his codefendants fully benefited from the

safety valve, and the court wanted to “give that benefit to [Engstrom] as well.” The district court then applied a downward variance on the calculated guidelines range to sentence Engstrom to 70 months of imprisonment rather than 87 (the low end of the guidelines range). A sentence of 70 months, however, exceeded the applicable mandatory minimum of 60 months. *See* 21 U.S.C. § 841(b)(1)(B).

The district court’s actions were clear error of a “technical” kind under Rule 35(a). *See Technical*, OXFORD ENGLISH DICTIONARY (online ed. 2009) (sense 2.d) (involving “strict legal interpretation”); *United States v. M. M.*, 23 F.4th 216, 221 (3d Cir. 2021) (“arithmetical and technical errors” are “easily identifiable and readily ascertained from the sentencing proceeding and judgment,” akin to misapplying “mandatory” sentencing conditions). The district court thought that it erred by considering the mandatory minimum once it made clear that it was giving Engstrom the benefit of the safety valve. *See United States v. Mejia-Pimental*, 477 F.3d 1100, 1109 (9th Cir. 2007).

In such a situation, a district court has the latitude to conduct a Rule 35 rehearing to correct the technical error. If the district court wanted to “give [the benefit of the safety valve] to Engstrom,” then it needed to sentence him without regard to the mandatory minimum. Whether the district court was correct that Engstrom should have received the benefit of the safety valve (it was not), it had the latitude under Rule 35 to correct its perceived technical error of considering a mandatory minimum sentence for a defendant it thought should benefit from safety valve relief. Since the district court identified a clear error in the original sentencing hearing, conducting a Rule 35 rehearing was not error. The government’s argument thus fails on the first step of plain error review. *See Walter-Eze*, 869 F.3d at 911

(reversal for plain error is appropriate where “(1) there is an error”).

IV

Engstrom is not eligible for safety valve relief for two reasons. First, Engstrom did not satisfy the statutory debrief requirement in § 3553(f)(5). Second, *Pulsifer* also precludes Engstrom from safety valve relief.

A

1

The district court failed to abide by the three “basic rules of statutory interpretation”: “(1) Read the statute; (2) read the statute; (3) read the statute!” JUSTICE AMY CONEY BARRETT, LISTENING TO THE LAW: REFLECTIONS ON THE COURT AND CONSTITUTION 212 (2025) (quoting HENRY J. FRIENDLY, *Mr. Justice Frankfurter and the Reading of Statutes*, in BENCHMARKS 196, 202 (1967)). Under the statute, a defendant is eligible for safety valve relief only if “not later than the time of the sentencing hearing, the defendant has truthfully provided to the government *all* information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.” § 3553(f)(5) (emphasis added). But “the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.” *Id.*

To satisfy the debrief requirement, Engstrom therefore should have provided “*all* the information available to him, regardless of whether it was useful or already known to the government.” *United States v. Real-Hernandez*, 90 F.3d 356,

361 (9th Cir. 1996). A defendant seeking safety valve relief need not provide such information to every prosecutor who interacted with him. Providing such information to any prosecutor attributes the information to the government. *Id.* But the debrief requirement mandates that a defendant affirmatively discloses everything he knows about the relevant crimes to a prosecutor or law enforcement officer “not later than the time of the sentencing hearing.” *Id.*; § 3553(f)(5).

And this must be a complete, rather than a partial, debrief. The district court concluded that, under *United States v. Schreiber*, 191 F.3d 103 (2d Cir. 1999), disclosure directed towards the court or partial disclosure of relevant information to the government suffices. In *Schreiber*, the Second Circuit held that the “safety valve statute does not specify the form, place, or manner of disclosure[,]” and that a “defendant may comply with the safety valve without ever submitting to a debriefing.” *Id.* at 108. According to the district court, *Mejia-Pimental*, 477 F.3d 1100, adopted this principle. There, we held that “as long as a defendant’s ultimate proffer is truthful and complete, he has satisfied the fifth safety valve criterion, regardless of timing or motivations.” *Id.* at 1106.

The district court extended *Mejia-Pimental*, which requires a complete proffer, too far. There, *Mejia-Pimental* had three sentencing hearings due to intervening factors in the lead case. *Id.* at 1102. On his third sentencing hearing, he contacted the government to provide a safety valve proffer. *Id.* at 1103. The government refused, and instead *Mejia-Pimental* wrote and mailed the government a comprehensive letter detailing all his involvement, and his knowledge of others in the charged offense. *Id.* We held that this satisfied § 3553(f)(5) as the defendant “fully disclos[ed]

his knowledge of the charged offense conduct.” *Id.* at 1106. Critical to this analysis, however, was that Mejia-Pimental affirmatively reached out to prosecutors by letter to provide this information, and the information was neither “false [nor] incomplete.” *Id.* at 1103. Accordingly, *Mejia-Pimental* shows only that a defendant can affirmatively meet the requirement—at least when the government refuses a meeting—without a formal debrief.

But the statute still requires a defendant to affirmatively provide “*all* information and evidence the defendant has concerning the offense” to the government not later than the time of the sentencing hearing. § 3553(f)(5) (emphasis added). The district court read this requirement out of the statute, characterizing it as “no requirement at all,” proceeding as if virtually any truthful statement “given upon arrest,” a truthful “guilty plea allocution,” or “[a]dditional statements” may be enough.

We reject this approach. The statute requires that, “not later than the time of the sentencing hearing, the defendant has [to] truthfully provide[] to the Government all information and evidence the defendant has concerning the offense or offenses.” § 3553(f)(5). And a district court must meaningfully check that a defendant “provides truthful, complete information before sentencing” to the government when determining safety valve eligibility. *Mejia-Pimental*, 477 F.3d at 1105. The statutory disclosure required is a “tell all you can tell requirement.” *United States v. Shrestha*, 86 F.3d 935, 939 (9th Cir. 1996) (cleaned up). At minimum, “this information includes details concerning other parties to the crime, such as the source who provided defendant with the drugs and other persons in the chain of distribution, if known.” *Id.* If “the defendant does not possess such information,” he must still “communicate that fact to the

government in order to qualify for the reduction.” *Id.* (cleaned up).

2

Engstrom thus did not meet the safety valve requirement. He did not provide a complete disclosure. The district court never asked him whether he had given all the information about the crime to the government, nor did the record support the existence of such disclosure. Engstrom never claimed that such disclosure occurred. Given these circumstances, Engstrom could not qualify for safety valve relief.

B

Engstrom cannot benefit from the safety valve for an additional reason. The Supreme Court’s decision in *Pulsifer v. United States*, 601 U.S. 124 (2024), forecloses such relief.

1

The Supreme Court decided *Pulsifer* in March 2024, shortly after Engstrom’s resentencing hearing, to resolve a long-standing circuit split interpreting § 3553(f)(1). Under this provision, a defendant can only be eligible for safety valve relief if

- (1) the defendant does not have—
 - (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
 - (B) a prior 3-point offense, as determined under the sentencing guidelines; *and*

(C) a prior 2-point violent offense, as determined under the sentencing guidelines.

§ 3553(f)(1) (emphasis added).

Pulsifer addressed whether courts should read the word “and” in this provision conjunctively or disjunctively. 601 U.S. at 127. If read conjunctively, a defendant would be safety valve ineligible only if he had all three listed types of offenses in §§ 3553(f)(1)(A), (B), and (C). If read disjunctively, a defendant would be safety valve ineligible if he had any one of the three listed types of offenses.

In *Pulsifer*, the Supreme Court adopted the disjunctive view, holding that if a defendant has even one of the three offenses listed in § 3553(f)(1) then that defendant becomes ineligible for safety valve relief. 601 U.S. at 153. *Pulsifer* abrogated the Ninth Circuit’s prior decision in *Lopez*, 998 F.3d 431, in which we had adopted the conjunctive reading. See *United States v. Hernandez*, 105 F.4th 1234, 1237 n.1 (9th Cir. 2024); *Salas v. United States*, 116 F.4th 830, 843 (9th Cir. 2024) (both stating that *Pulsifer* abrogated *Lopez*).

While § 3553(f)(1) did not disqualify Engstrom from safety valve relief under *Lopez*, it does under *Pulsifer*. Engstrom had a prior 3-point offense for conspiracy to distribute a controlled substance (but neither of the other two disqualifying offenses). Therefore, under *Pulsifer*, Engstrom is categorically ineligible for safety valve relief.

The district court rendered its sentence before the Supreme Court issued *Pulsifer*. But ordinarily “an error is plain if it is contrary to the law *at the time of appeal*.” *United States v. Macias*, 789 F.3d 1011, 1019 n.4 (9th Cir. 2015) (emphasis added); see *Henderson v. United States*, 568 U.S.

266, 269 (2013) (“as long as the error was plain as of that later time—the time of appellate review—the error is ‘plain’ within the meaning of the Rule”). Because *Pulsifer* was issued during this appeal, it applies and means that the district court’s conclusion that Engstrom qualified for safety valve relief is plain error.

2

Engstrom argues that *Pulsifer* should not apply. First, he contends that it violates his due process right to fair notice to apply *Pulsifer* on direct appeal akin to an impermissible ex post facto law. Second, he argues that even if *Pulsifer* applies on direct appeal, the district court did not plainly err since the government cannot satisfy the third and fourth prongs. Both arguments fail.

a

The due process right to fair notice, while housed within the Due Process Clause, bears close relation to the Constitution’s prohibition on ex post facto laws. The Constitution states that “No Bill of Attainder or ex post facto Law shall be passed.” U.S. Const. art. I, § 9, cl. 3; *see also* U.S. Const. art. I, § 10, cl. 1. “As the text of the Clause makes clear, it is a limitation upon the powers of the Legislature and does not of its own force apply to the Judicial Branch of the government.” *Rogers v. Tennessee*, 532 U.S. 451, 456 (2001) (cleaned up; applying parallel limit on state ex post facto laws). Even so, “limitations on *ex post facto* judicial decisionmaking are inherent in the notion of due process.” *Id.* Unpacking the historical origins of this principle illustrates why Engstrom’s argument proves unavailing. The due process right to fair notice evolved from the constitution’s more general prohibition on ex post facto laws. And that history supports applying *Pulsifer*.

The impetus for both the Constitution’s *ex post facto* prohibition, and the Constitution’s prohibitions on Bills of Attainder stems from English practices during the reign of the Stuart monarchs. *See* U.S. Const. art. I, § 9, cl. 3; U.S. Const. art. I, § 10, cl. 1. During this era, Parliament regularly criminalized previously legal behavior retroactively. The most prominent example arose during the prelude to the English Civil War—the impeachment trial of Thomas Wentworth, the 1st Earl of Strafford in 1641. *See* PETER ACKROYD, *REBELLION: THE HISTORY OF ENGLAND FROM JAMES I TO THE GLORIOUS REVOLUTION* 209 (2015). English Parliament tried to impeach Strafford on flimsy charges to remove one of King Charles I’s primary allies from office. *Id.* When it was clear the impeachment charges would fail, Parliament instead passed a Bill of Attainder declaring Strafford’s actions retroactively illegal and sentenced him to death. *Id.* at 210–14. Strafford was executed. *Id.* at 213–14.

The events surrounding the English Civil War greatly influenced the Founders in constitutional drafting. For example, Alexander Hamilton, writing as Publius, explained that “[t]he creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny.” *THE FEDERALIST* NO. 84 (Alexander Hamilton). Quoting Sir William Blackstone, Hamilton explained that retroactively punishing previously licit behavior is “a more dangerous engine of arbitrary government” than any other “notorious an act of despotism.” *Id.* (cleaned up) (citation omitted). Certain types of retroactive action by the government are thus anathema to the Constitution. *Id.*

But the Constitution does not deal with this problem by circumscribing all retroactive action by the government. The Constitution's restricts retroactive legislative and executive action but treats judicial action differently. Ordinarily, the legislative power is "the power to adopt generally applicable rules of conduct governing future actions by private persons—the power to prescribe the rules by which the duties and rights of every citizen are to be regulated, or the power to prescribe general rules for the government of society." *Gundy v. United States*, 588 U.S. 128, 153 (2019) (Gorsuch, J., dissenting) (cleaned up). So the legislative power is ordinarily prospective. *Id.* And the executive power is "essentially a grant of the power to execute the laws," meaning it too is ordinarily prospective since it bootstraps itself to the legislative power. *Buckley v. Valeo*, 424 U.S. 1, 135 (1976). By contrast, the judicial power is the power "to say what the law is," meaning it is ordinarily retroactive as it only interprets statutory or Constitutional text as it exists rather than creating new law. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803).

When analyzing retroactivity, courts must thus carefully consider which clause of the constitution that protects against retroactive effects is implicated, and what type of action—legislative, executive, or judicial—is creating such a retroactive effect. This analysis requires considering the history of the clauses of the Constitution that protect against retroactivity.

The most obvious source of constitutional protection against retroactivity is the Ex Post Facto Clause. *See* U.S. Const. art I., § 9, cl. 3. During the Constitutional Convention, the Framers debated the scope of that clause (i.e., whether it would apply to government action outside of retroactive criminal laws passed by Congress). *See* Daniel

Troy, *Ex Post Facto*, in THE HERITAGE GUIDE TO THE CONSTITUTION 204 (2d ed. 2014).

The Supreme Court clarified the scope of the Ex Post Facto Clause in one of its earliest cases—*Calder v. Bull*, 3 U.S. 386, 390 (1798).¹ Justice Samuel Chase, writing for the Court, explained that the clause covered only four scenarios: First, “Every law that makes an action, done before the passing of the law and which was innocent when done, criminal; and punishes such action.” *Id.* Second, “Every law that aggravates a crime, or makes it greater than it was, when committed.” *Id.* Third, “Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.” *Id.* Fourth, “Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of commission of the offence, in order to convict the offender.” *Id.* So the Ex Post Facto Clause does not protect against government action that is not a law (i.e., a judicial decision), nor does it protect against Congress enacting retroactive civil laws, or even retroactive criminal laws outside *Calder*’s four enumerated categories. *Id.* at 390–91.

¹ Justice Thomas has questioned whether *Calder* was rightly decided. See *E. Enters. v. Apfel*, 524 U.S. 498, 538–39 (1998) (Thomas, J., concurring). He has also argued that cases subsequent to *Calder* have misinterpreted it. See *Ellingburg v. United States*, No. 24-482, 2026 WL 135982, at *4 (U.S. Jan. 20, 2026) (Thomas, J., concurring). Under Justice Thomas’s proposed approach, the Ex Post Facto Clause is implicated under *Calder* anytime a law or agency action involves a “public wrong” (i.e. creates an injury against the sovereign as opposed to individuals in their private capacity) whether the law was criminal or civil. *Id.* at 8–12. But as a lower court, we faithfully apply *Calder* and its progeny, see *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023), and even under Justice Thomas’s views, the clause would extend only to laws passed by Congress and agency action, not judicial action.

But the Founders also realized that our legal system needed to protect against retroactivity when the Ex Post Facto Clause was not implicated to protect behavior vast swathes of society had understood as legal, relied upon, and had no notice prior to retroactive state action. For example, Thomas Jefferson explained that the Ex Post Facto Clause bars retroactive application “in criminal cases only” even though ex post facto laws “are equally unjust in civil as in criminal cases and the omission of a caution which would have been right, does not justify the doing [of] what is wrong.” Thomas Jefferson, *Thomas Jefferson to Isaac McPherson*, FOUNDERS ONLINE (Aug. 13, 1813), <https://founders.archives.gov/documents/Jefferson/03-06-02-0322>.

Courts have heeded Jefferson’s warning and crafted constitutional doctrines to protect against retroactivity outside the formal protection of the Ex Post Facto Clause through the due process clauses of the Fifth and Fourteenth Amendments. *Rogers*, 532 U.S. at 456–57; U.S. Const. amend. V; U.S. Const. amend. XIV, § 1. And that protects against retroactivity in two ways. First, when Congress passes laws, or the executive enacts executive orders, “prospectivity remains the appropriate default rule.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 272 (1994). And even when that default rule cannot be applied, the “Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation,” executive orders, or even judicial action. *Id.* at 266. “[A] justification sufficient to validate . . . prospective application under the Clause may not suffice to warrant [] retroactive application.” *Id.* (cleaned up). But “[t]he Constitution’s restrictions, of course, are of limited scope[,]” meaning “[a]bsent a violation of [the due process right to fair notice], the potential unfairness of retroactive [government action] is

not a sufficient reason for a court to fail” to apply changes in precedent in cases on direct appeal. *Id.* at 267 (cleaned up).

At its core, the due process right to fair notice addresses “the unfairness of imposing new burdens on persons after the fact.” *Id.* at 270. It ensures that the government is not “free to change the law retroactively based on shifting political winds, [because] it could use that power to punish politically disfavored groups or individuals for conduct they can no longer alter.” *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1146 (10th Cir. 2016) (Opinion of Gorsuch, J.). But absent any such concerns—as in this case—a federal court has an unflagging obligation to exercise the judicial power in its normal mode (i.e., retroactively). *Cf. Marbury*, 5 U.S. at 177 (the judiciary is required “to say what the law is[,]” implying it doesn’t ordinarily create new law moving forward); *see also* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 996 (2018) (explaining how judicial decisionmaking is, by its nature, retroactive).

Engstrom’s case falls far outside the ambit of protection under first principles that led federal courts to cognize a due process right to fair notice. And our precedent confirms that.

b

Applying *Pulsifer* here does not violate Engstrom’s due process right. The application of subsequent judicial decisions on direct appeal does not violate a defendant’s due process when, as here, *Pulsifer*’s interpretation of § 3553(f)(1) was foreseeable. Engstrom argues that under *Bouie v. City of Columbia*, 378 U.S. 347 (1964), and its progeny, applying *Pulsifer* would violate his due process right. Engstrom is wrong.

Bouie reviewed the South Carolina Supreme Court’s decision to retroactively apply its state’s criminal trespass statute to its petitioners. *Id.* at 348–50. That trespass statute prohibited “entry upon the lands of another . . . after notice from the owner or tenant prohibiting such entry.” *Id.* at 349.

The South Carolina Supreme Court had construed the statute to extend to patrons of a drug store who had been given no notice barring them from entering the store but refused to leave when asked.² *Id.* at 349–50. Prior to *Bouie*, “cases construing the statute had uniformly held that conviction under the statute required proof of notice before entry.” *Rogers*, 532 U.S. at 457 (discussing *Bouie*). No case before *Bouie* gave “the slightest indication that [the statute’s] requirement could be satisfied by proof of the different act of remaining on the land after being told to leave.” 378 U.S. at 357.

The Supreme Court held that “the South Carolina Supreme Court, in applying its new construction of the statute . . . deprived petitioners of rights guaranteed to them by the Due Process Clause.” *Id.* at 362. The Court explained that “an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law” and thus violates a petitioner’s due process right to fair notice. *Id.* at 353.

Bouie does not apply here. It applies only when subsequent judicial interpretations of a statute are truly unforeseeable by the parties. No court had reached or applied the statutory construction the South Carolina

² *Bouie* arose out of a sit-in demonstration where the store’s restaurant was segregated and the trespass statute was used against African Americans denied service. 378 U.S. at 361.

Supreme Court did, and that result was truly unexpected. *See id.* at 357. “[D]ue process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.” *United States v. Lanier*, 520 U.S. 259, 266 (1997). And where other “jurisdictions had already reasonably construed identical statutory language to apply [to a defendant’s act],” those decisions gave a defendant fair notice that his behavior would be criminalized under the statute. *Rose v. Locke*, 423 U.S. 48, 53 (1975).

When Engstrom was sentenced, and *Pulsifer* decided soon after, the Ninth Circuit’s abrogated position in *Lopez* was already a minority position. *See Lopez*, 58 F.4th 1108. This is a far cry from *Bouie* where no court had ever adopted the novel statutory construction (and had in fact rejected it in every case before *Bouie*). 378 U.S. at 357. Here the Fifth, Sixth, Seventh and Eighth Circuits all rendered opinions that gave Engstrom notice that the disjunctive construction of the provision may have been correct two years prior to his sentencing hearing. *See United States v. Pulsifer*, 39 F.4th 1018 (8th Cir. 2022); *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022); *United States v. Haynes*, 55 F.4th 1075 (6th Cir. 2022); *United States v. Pace*, 48 F.4th 741 (7th Cir. 2022). Thus, applying *Pulsifer* does not defy *Bouie*. *See United States v. Newman*, 203 F.3d 700, 702–03 (9th Cir. 2000) (explaining that a circuit split renders the alternate interpretation “reasonably foreseeable”).

Further, *Bouie* does not apply to cases that do not enlarge the scope of criminal liability. Where “the judicial decision at issue” (i.e., *Pulsifer*) “does not enlarge the scope of criminal liability[,]” but rather “interprets a federal statute concerning the calculation of the length of a term of

imprisonment without reference to the issue of the defendant's criminal liability[.]" "the due process concerns raised by *Bouie* are inapplicable." *Newman*, 203 F.3d at 702–03; *see also United States v. Ruiz*, 935 F.2d 1033, 1035–36 (9th Cir. 1991); *United States v. Ricardo*, 78 F.3d 1411, 1417 (9th Cir. 1996).

We thus properly consider *Pulsifer* when reviewing the district court's order. *See Macias*, 789 F.3d at 1019 n.4; *Henderson*, 568 U.S. at 269. And under *Pulsifer*, Engstrom is ineligible for safety valve relief. 601 U.S. at 153.

c

Finally, Engstrom argues that even if *Pulsifer* applies, the government cannot satisfy its burden to show that this error warrants reversal under the third and fourth prongs of plain error review. These arguments lack merit.

Plain error review does not solely protect the substantial rights of a criminal defendant, it also protects the government. "The government's substantial rights may be affected when a defendant receives an inappropriate sentence," and all the government must show is "a reasonable probability that [the defendant] would have received a different sentence but for the district court's error." *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 741 (9th Cir. 2009).

The government meets that test. But for the error created by not applying *Pulsifer* to this case, Engstrom would not have been safety valve eligible. He would have received a sentence at or above the statutory mandatory minimum of 60 months. Instead, Engstrom only received a sentence of 46 months—well below the mandatory minimum. Thus, the government satisfies the third prong of plain error review.

The government also satisfies the fourth prong. It has shown that “the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *Walter-Eze*, 869 F.3d at 911. The type of sentencing disparity seen here automatically satisfies this prong.

When a “district judge would have given a different sentence but for [his] error,” such a situation intrinsically “undermine[s] the fairness and integrity of judicial proceedings.” *Gonzalez-Zotelo*, 556 F.3d at 741. In those cases, the third and fourth prongs of plain error review collapse into one. If the government meets its burden under the third prong, it simultaneously demonstrates that the sentencing error undermines “the fairness and integrity of [the] judicial proceedings.” *Id.* Thus, the government has met its burden under plain error review.

V

The district court erred by concluding that Engstrom was eligible for safety valve relief under § 3553(f). The “appropriate remedy for a sentence imposed in excess of the sentencing court’s authority is to vacate the entire sentence and remand for resentencing.” *United States v. Blue Mountain Bottling Co. of Walla Walla*, 929 F.2d 526, 529 (9th Cir. 1991). Thus, we reverse the district court, vacate Engstrom’s sentence, and remand to the district court for resentencing consistent with this opinion.

REVERSED, VACATED, AND REMANDED.

Founders Online: Thomas Jefferson to Isaac McPherson, 13 August 1813

To Isaac McPherson

Monticello August 13. 13.

Sir

[Your letter of Aug. 3.](#) asking information on the subject of mr Oliver Evans's exclusive right to the use of what he calls his Elevators, Conveyers, and [Hopper-boys](#), has been duly recieved. my wish to see new inventions encouraged, and old ones brought again into useful notice, has made me regret the circumstances which have followed the expiration of his first patent. I did not expect the retrospection which has been given to the reviving law. for altho' the 2d Proviso seemed not so clear as it ought to have been, yet it appeared susceptible of a just construction; and the retrospective one being contrary to natural right, it was understood to be a rule of law that where the words of a statute admit of two constructions, the one just and the other unjust, the former is to be given them. the 1st Proviso takes care of those who had lawfully used Evans's improvements under the 1st patent; the 2d was meant for those who had lawfully erected and used them after that patent expired, declaring they 'should not be liable to damages therefor,' these words may indeed be restrained to uses already past; but as there is parity of reason for those to come, there should be parity of law. every man should be protected in his lawful acts, and be certain that no ex post facto law shall punish or [endamage](#) him for them, but he is endamaged, if forbidden to use a machine lawfully erected, at considerable expence, unless he will pay a new and unexpected price for it. the proviso says that he who erected and used lawfully shall not be liable to pay damages. but if the Proviso had been omitted, would not the law, construed by natural equity, have said the same thing. in truth both Provisos are useless. and shall useless provisos inserted [pro majori cautela](#) only,¹ authorise inferences against justice? the sentiment that ex post facto laws are against natural right is so strong in the United States, that few, if any, of the State constitutions have failed to proscribe them. the federal [constitution](#) indeed interdicts them in criminal cases only; but they are equally unjust in civil as in criminal cases and the omission of a caution which would have been right, does not justify the doing what is wrong. nor ought it to be presumed that the legislature meant to use a phrase in an unjustifiable sense, if by any rules of construction, it can be even strained to what is just. the law books abound with similar instances of the care the judges take of the public integrity. laws moreover abridging the natural rights of the citizen, should be restrained by rigorous constructions within their narrowest limits.

[Your letter](#) however points to a much broader question, Whether what have recieved from mr Evans the new and the proper name of Elevators are of his invention. because, if they are not, his patent gives him no right to obstruct others in the use of what they possessed before. I assume it as a Lemma that it is the invention of the machine itself which is to give a patent right, and not the application of it to any particular purpose of which it is susceptible. if one person invents a knife convenient for pointing our pens, another cannot have a patent right for the same knife to point our pencils. a Compass was invented for navigating the sea; another could not have a patent right for using it to survey land. a machine for threshing wheat has been invented in Scotland. a 2d person cannot get a patent right for the same machine to thresh oats, a 3drye, a 4thpeas, a 5thclover Etc. a string of buckets is invented & used for raising water, ore Etc can a 2d have a patent right to the same machine for raising wheat, a 3d oats, a 4th rye, a 5th peas Etc? the question then whether such a string of buckets was invented first by Oliver² Evans, is a meer question of fact in

Mathematical history. now turning to such books only as I happen to possess, I find abundant proof that this simple machinery has been in use from time immemorial. Doctr Shaw, who visited Egypt & the Barbary coast in the years 1727. 8. 9. in the margin of his map of Egypt, gives us the figure of what he calls a Persian wheel, which is a string of round cups or buckets, hanging on a pully, over which they revolve, bringing up water from a well, and delivering it into a trough above. he found this used at Cairo, in a well 264.f. deep, which the inhabitants believe to have been a work of the patriarch Joseph. Shaw's travels. 341. Oxford edition of 1738. in folio. and the Universal history I. 416. speaking of the manner of watering the higher lands in Egypt, says 'formerly they made use of Archimedes's screw, thence named the Egyptian pump; but they now generally use wheels (wallowers) which carry a rope or chain of earthen pots, holding about 7. or 8. quarts apiece, and draw the water from the canals. there are besides a vast number of wells in Egypt, from which the water is drawn in the same manner to water the gardens & fruit trees; so that it is no exaggeration to say, that there are in Egypt above 200,000. oxen daily employed in this labour.' Shaw's name of Persian wheel has been since given more particularly to a wheel with buckets, either fixed, or suspended on pins, at it's periphery. Mortimer's husbandry I. 18. Duhamel III. 11. Ferguson's Mechanics plate XIII. but his figure, and the verbal description of the Universal history prove that the string of buckets is meant under that name. his figure differs from Evans's construction in the circumstances of the buckets being round, and strung thro' their bottom on a chain. but it is the principle, to wit a string of buckets, which constitutes the invention, not the form of the buckets, round, square, or hexagon; nor the manner of attaching them, nor the material of the connecting band, whether chain, rope, or leather. Vitruvius L.X. c. 9. describes this machinery as a Windlas, on which is a chain descending to the water, with vessels of copper attached to it; the windlas being turned, the chain moving on it will raise the vessels which, in passing over the windlas, will empty the water they have brought up into a reservoir. and Perrault, in his edition of Vitruvius. Paris 1684. fol. Plates 61. 62. gives us three forms of these water elevators, in one of which the buckets are square, as mr Evans's are. Bossut Histoire des Mathematiques I. 86. says the drum wheel, the wheel with buckets & the Chapelets, are hydraulic machines which come to us from the antients. but we are ignorant of the time when they began to be put into use. the Chapelets are the revolving band of buckets which Shaw calls the Persian wheel, the moderns a Chainpump, and mr Evans Elevators. the next of my books in which I find these Elevators is Wolf's Cours de Mathematiques I. 370. & Pl. 1. Paris 1747. 8vo. here are two forms. in one of them the buckets are square, attached to two chains, passing over a cylinder or wallower at top, & under another at bottom, by which they are made to revolve. it is a nearly exact representation of Evans's elevators. but a more exact one is to be seen in Desagulier's Experiml Philosophy II. Plate. 34. in the Encyclopedie de Diderot et D'alembert 8vo edn of Lausanne, 1'st vol. of Plates, in the 4. subscribed Hydraulique. Noria, is one where round earthen pots are tied by their collars, between two endless ropes suspended on a revolving lantern or wallower. this is said to have been used for raising ore out of a mine. in a book which I do not possess, 'L'architecture Hidraulique de Belidor, the IId vol. of which is said [De la Lande's continuation of Montucla's Histoire des Mathematiques III. 711.] to contain a detail of all the pumps, antient and modern, hydraulic machines, fountains, wells Etc. I have no doubt this Persian wheel, chain-pump, Chapelets, Elevators, by whichever name you chuse to call it, will be found in various forms. the last book I have to quote for it is Prony's Architecture Hydraulique I. Avertissement vii. and §. 648. 649. 650. in the latter of which passages he observes that the 1st idea which occurs for raising water is to lift it in a bucket by hand. when the water lies too deep to be reached by hand, the bucket is suspended by a chain, and let down over a pulley or windlass. if it be desired to raise a continued stream of water, the simplest means which offers itself to the mind is to attach to an endless chain or cord a number of pots or buckets, so disposed that, the chain being suspended on a lantern or wallower above, and plunged in water below, the buckets may descend and ascend alternately, filling themselves at bottom, and emptying at a certain height above, so as to give a constant stream. some years before the date of mr Evans's patent, a mr Martin of Caroline county in this state, constructed a drill-plough, in which he used the band of buckets for elevating the grain from the box into the funnel, which let them down into the furrow. he had bands with different sets of buckets adapted to the size of peas, of turnep seed Etc. I have used this machine for

sowing Benni seed, also, and propose to have a band of buckets for drilling Indian corn, and another for wheat. is it possible that in doing this I shall infringe mr Evans's patent? that I can be debarred of any use to which I might have applied my drill, when I bought it, by a patent issued after I bought it?

These verbal descriptions, applying so exactly to mr Evans's elevators, and the drawings exhibited to the eye; flash conviction both on reason and the senses, that there is nothing new in these elevators but their being strung together on a strap of leather. if this strap of leather be an invention, entitling the inventor to a patent right, it can only extend to the strap, and the use of the string of buckets must remain free to be connected by chains, ropes, a strap of hempen girthing, or any other substance, except leather. but indeed mr Martin had before used the strap of leather.

The Screw of Archimedes is as antient, at least, as the age of that Mathematician, who died more than 2000. years ago. Diodorus Siculus speaks of it L. I. pa. 21. and L. V. pa. 217. of [Stevens's edition](#) of 1559. folio. and Vitruvius [X. 11.](#) the cutting of it's spiral worm into sections for conveying flour or grain, seems to have been an invention of mr Evans, & to be a fair subject of a patent right. but it cannot take away from others the use of Archimedes's screw, with it's perpetual spiral, for any purposes of which it is susceptible.

The Hopper-boy is an useful machine; &, as far as I know, original.³

It has been pretended by some (and in England especially) that inventors have a natural and exclusive right to their inventions; & not merely for their own lives, but inheritable to their heirs. but while it is a moot question whether the origin of any kind of property is derived from nature at all, it would be singular to admit a natural, and even an hereditary right to inventions. it is agreed by those who have seriously considered the subject, that no individual has, of natural right, a separate property in an acre of land, for instance. By an universal law indeed, whatever, whether fixed or moveable, belongs to all men equally and in common, is the property, for the moment, of him who occupies it; but when he relinquishes the occupation the property goes with it. stable ownership is the gift of social law, and is given late in the progress of society. it would be curious then if an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property. if nature has made any one thing less susceptible, than all others, of exclusive property, it is the action of the thinking power called an Idea; which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the reciever cannot dispossess himself of it. it's peculiar character too is that no one possesses the less, because every other possesses the whole of it. he who recieves an idea from me, recieves instruction himself, without lessening mine; as he who lights his taper at mine, recieves light without darkening me. that ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benvolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point; and like the air in which we breathe, move, and have our physical being, incapable of confinement, or exclusive appropriation. inventions then cannot in nature be a subject of property. society may give an exclusive right to the profits arising from them as an encouragement to men to pursue ideas which may produce utility. but this may, or may not be done, according to the will and convenience of the society, without claim or complaint from any body. accordingly it is a fact, as far as I am informed, that England was, until we copied her, the only country on earth which ever by a general law, gave a legal right to the exclusive use of an idea. in some other countries, it is sometimes done, in a great case, and by a special & personal⁴ act. but generally speaking, other nations have thought that these monopolies produce more embarrasment than advantage to society. and it may be observed that the nations which refuse monopolies of invention, are as fruitful as England in new and useful devices.

Considering the exclusive right to invention as given not of natural right, but for the benefit of society, I know well the difficulty of drawing a line between the things which are worth to the public the embarrassment of an exclusive patent, and those which are not. as a member of the Patent-board for several years, while the law authorised a board to grant or refuse patents, I saw with what slow progress a system of general rules could be matured. some however were established by that board. one of these was, that a machine, of which we were possessed, might be applied by every man to any use of which it is susceptible, and that this right ought not to be taken from him, and given to a monopolist, because he first perhaps had occasion so to apply it. thus a Screw for crushing plaister might be employed for crushing corn-cobs. and a Chain-pump for raising water might be used for raising wheat: this being merely a change of application. Another rule was that a change of material should not give⁵ title to a patent. as the making a ploughshare of cast rather than of wrought iron; a Comb of iron, instead of horn, or of ivory. or the connecting buckets by a band of leather, rather than of hemp or iron. a third was that a mere change of form should give⁶ no right to a patent. as a high quartered shoe, instead of a low one. a round hat, instead of a three square. or a square bucket instead of a round one. but for this rule, all the changes of fashion in dress would have been under the tax of patentees. these were among the rules which the uniform decisions of the board had already established; and under each of them mr Evans's patent would have been refused. 1. because it was a mere change of application of the chain pump, from raising water to raise wheat. 2. because the using a leathern, instead of a hempen band, was a mere change of material: and 3ly square buckets instead of round are only a change of form; and the antient forms too appear to have been indifferently square or round. but there were still abundance of cases which could not be brought under rule, until they should have presented themselves under all their aspects; and these investigations occupying more time of the members of the board than they could spare from higher duties, the whole was turned over to the judiciary, to be matured into a system, under which everyone might know when his⁷ actions were safe and lawful. instead of refusing a patent in the first instance, as the board was authorised to do, the patent now issues of course, subject to be declared void on such principles as should be established by the courts of law. this business however is but little analogous to their course of reading, since we might in vain turn over all the lubberly volumes of the law to find a single ray which would lighten the path of the Mechanic or Mathematician. it is more within the information of a board of Academical professors, and a previous refusal of patent would better guard our citizens against harrassment by lawsuits. but England had given it to her judges, and the usual predominancy of her examples carried it to ours.

It happened that I had myself a mill built, in the interval between mr Evans's 1st and 2d patents. I was living in Washington, and left the construction of the mill entirely to the mill wright. I did not even know he had erected elevators, conveyers, and hopper-boys, until I learnt it by an application from mr Evans's agent for the patent price. altho' I had no idea he had a right to it by law (for no judicial decision had then been given) yet I did not hesitate to remit to mr Evans the old and moderate patent price, which was what he then asked, from a wish to encourage even the useful revival of antient inventions. but I then expressed my opinion of the law in a letter either to mr Evans, or to his agent.⁸

I have thus, Sir, at your request, given you the facts & ideas which occur to me on this subject. I have done it without reserve, altho' I have not the pleasure of knowing you personally. in thus frankly committing myself to you, I trust you will feel it as a point of honor & candor, to make no use of my letter which might bring disquietude on myself.⁹ and particularly I should be unwilling to be brought into any difference with mr Evans whom however I believe too reasonable to take offence at an honest difference of opinion. I esteem him much, and sincerely wish him wealth & honor. I deem him a valuable citizen, of uncommon ingenuity & usefulness. and had I not esteemed still more the establishment of sound principles, I should now have been silent. if any of the matter I have offered can promote that object, I have no objection to it's being so used. if it offers nothing new, it will of course not be used at all. I have gone with some minuteness into the Mathematical history of the Elevator, because it belongs to a branch of science, in which, as I have before

observed, it is not incumbent on lawyers to be learned; and it is possible therefore that some of the proofs I have quoted may have escaped on their former arguments. on the law of the¹⁰ subject I should not have touched, because more familiar to those who have already discussed it; but I wished to state my own view of it merely in justification of myself; my [name and approbation](#) being subscribed to the act. with these explanations accept the assurance of my respect.

Th: Jefferson

PoC (DLC); brackets in original; at foot of first page: “Mr Isaac MPherson.” Printed in [Memorial to Congress on Evans’ Patent](#) description begins Memorial to Congress of sundry citizens of the United States, praying relief from the oppressive operation of Oliver Evans’ Patent, Baltimore, 1813 description ends , 7–16.

[hopper-boys](#) are rakes that push meal over an opening in the floor of a mill ([OED](#) description begins James A. H. Murray, J. A. Simpson, E. S. C. Weiner, and others, eds., The Oxford English Dictionary, 2d ed., 1989, 20 vols. description ends). [endamage](#): to damage, injure, or discredit ([OED](#) description begins James A. H. Murray, J. A. Simpson, E. S. C. Weiner, and others, eds., The Oxford English Dictionary, 2d ed., 1989, 20 vols. description ends). [pro majori cautela](#): as a precaution; to give additional security ([Black’s Law Dictionary](#) description begins Bryan A. Garner and others, eds., Black’s Law Dictionary, 7th ed., 1999 description ends). The United States [constitution](#) prohibits the passage of ex post facto laws by either the federal government or the states (Article 1, sections 9–10). [l.](#): liber (“book”). Vitruvius discusses the use of a windlass to raise water in book 10, chapter 4 of his work on architecture, not [x. c. 9](#) (Vitruvius on Architecture, trans. Frank Granger, Loeb Classical Library [1962], 2:302–5). [noria](#): “chain-pump.” [stevens’s edition](#): Henri Estienne’s edition of the works of Diodorus Siculus ([Sowerby](#), description begins E. Millicent Sowerby, comp., Catalogue of the Library of Thomas Jefferson, 1952–59, 5 vols. description ends no. 37). Vitruvius actually describes Archimedes’s screw in book 10, chapter 6, not [x. 11](#) (Vitruvius on Architecture, 2:307–11). From its establishment by the Patent Act of 10 Apr. 1790 until its abolition early in 1793, TJ served on the [patent board](#), a body consisting of the secretary of state, the secretary of war, and the attorney general ([PTJ](#) description begins Julian P. Boyd, Charles T. Cullen, John Catanzariti, Barbara B. Oberg, James P. McClure, and others, eds., The Papers of Thomas Jefferson, 1950– description ends , 22:361–2n, 25:398–9, 27:853–4; [U.S. Statutes at Large](#) description begins Richard Peters, ed., The Public Statutes at Large of the United States ... 1789 to March 3, 1845, 1845–67, 8 vols. description ends , 1:109–12). The [mill wright](#) who assisted in the construction and outfitting of TJ’s Shadwell Mills was James Walker ([MB](#) description begins James A. Bear Jr. and Lucia C. Stanton, eds., Jefferson’s Memorandum Books: Accounts, with Legal Records and Miscellany, 1767–1826, 1997, The Papers of Thomas Jefferson, Second Series description ends , esp. 2:1162; [Betts, Farm Book](#) description begins Edwin M. Betts, ed., Thomas Jefferson’s Farm Book, 1953 (in two separately paginated sections; unless otherwise specified, references are to the second section) description ends , 342, 353). For the application for the patent price by [evans’s agent](#), John Moody, and TJ’s response giving his [opinion of the law](#) in question, see Moody to TJ, 20 Oct. 1808 (MHi), and TJ to Evans, 6 Dec. 1808 (DLC). TJ’s [name and approbation](#) became attached to the “Act for the relief of Oliver Evans” when he signed it into law on 21 Jan. 1808 ([U.S. Statutes at Large](#) description begins Richard Peters, ed., The Public Statutes at Large of the United States ... 1789 to March 3, 1845, 1845–67, 8 vols. description ends , 6:70–1).

1. Preceding five words interlined.

2. Manuscript: “Oliliver.”

3. Memorial to Congress here keys a footnote stating that “The enlightened author was not apprised of the depositions contained in No. III. where the evidences are so conclusive against Mr. Evans on the subject of the Hopper-boy. Editor.”

4. Reworked from: “permanent.”
5. Preceding three words interlined in place of “is not a.”
6. Preceding two words added in place of “gave.”
7. Reworked from “their.”
8. Preceding eight words interlined.
9. Memorial to Congress here keys a footnote stating that “It is proper to observe, that though the author did not at the time of writing this letter, contemplate its publication, yet his permission has been obtained. Editor.” The reference is to [TJ to McPherson, 18 Sept. 1813](#).
10. TJ here canceled “case.”

Index Entries

- A Course of Experimental Philosophy (J. T. Desaguliers) [search](#)
- agriculture; books on [search](#)
- Alembert, Jean Le Rond d’; Encyclopédie [search](#)
- An Act for the relief of Oliver Evans (1808) [search](#)
- An Universal History, from the Earliest Account of Time to the Present [search](#)
- A Practical Treatise of Husbandry (Duhamel du Monceau) [search](#)
- Archimedes; screw of [search](#)
- Architecture Hydraulique (B. F. de Bélidor) [search](#)
- Bélidor, Bernard Forest de; Architecture Hydraulique [search](#)
- Bibliothecae Historicae Libri Quindecim de quadraginta (Diodorus Siculus) [search](#)
- books; on agriculture [search](#)
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- books; on mathematics [search](#)
- Bossut, Charles; Essai sur l’Histoire Générale des Mathématiques [search](#)
- Constitution, U.S.; and ex post facto legislation [search](#)
- Cours de Mathématique (Wolff; trans. J. F. de Brézillac) [search](#)
- Desaguliers, John Theophilus; A Course of Experimental Philosophy [search](#)
- Diderot, Denis; and Encyclopédie [search](#)
- Diodorus Siculus; Bibliothecae Historicae Libri Quindecim de quadraginta [search](#)
- drills (sowing implements); designed by T. C. Martin [search](#)
- Duhamel du Monceau, Henri Louis; A Practical Treatise of Husbandry [search](#)
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- Essai sur l’Histoire Générale des Mathématiques (C. Bossut) [search](#)
- Estienne, Henri (Stepani; Stephani); Bibliothecae Historicae Libri Quindecim de quadraginta [search](#)
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- Evans, Oliver; machinery of patented [search](#)
- Evans, Oliver; originality of machinery questioned [search](#)
- Ferguson, James; Lectures on Select Subjects in Mechanics, Hydrostatics, Pneumatics, and Optics [search](#)
- Great Britain; and patents [search](#)
- Histoire des Mathématiques (J. E. Montucla and Lalande) [search](#)

- Jefferson, Thomas; Opinions on; ex post facto legislation [search](#)
- Jefferson, Thomas; Opinions on; O. Evans's patent machinery [search](#)
- Jefferson, Thomas; Opinions on; patent law [search](#)
- Jefferson, Thomas; Public Service; as patent board member [search](#)
- Joseph (Old Testament patriarch) [search](#)
- Lalande, Joseph Jérôme Le Français de; Histoire des Mathématiques [search](#)
- Lectures on Select Subjects in Mechanics, Hydrostatics, Pneumatics, and Optics (J. Ferguson) [search](#)
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- McPherson, Isaac; letters to [search](#)
- Montucla, Jean Étienne; Histoire des Mathématiques [search](#)
- Moody, John; as agent for O. Evans [search](#)
- Mortimer, John; The Whole Art of Husbandry [search](#)
- Nouvelle Architecture Hydraulique (Prony) [search](#)
- patents; of O. Evans [search](#)
- Perrault, Claude; as translator of Vitruvius [search](#)
- Prony, Gaspard Clair François Marie Riche de; Nouvelle Architecture Hydraulique [search](#)
- seeds; sesame [search](#)
- sesame (benne; benni); TJ cultivates [search](#)
- Shadwell mills; O. Evans's machinery installed at [search](#)
- Shaw, Thomas; Travels, or Observations relating to Several Parts of Barbary and the Levant [search](#)
- The Whole Art of Husbandry (Mortimer) [search](#)
- Travels, or Observations relating to Several Parts of Barbary and the Levant (Shaw) [search](#)
- Vitruvius Pollio, Marcus; writings of [search](#)
- Walker, James; and mill construction [search](#)
- Wolff, Christian von; Cours de Mathématique [search](#)

cited in USA v. Engstrom
No. 24-1878 archived January 30, 2026

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

PAUL ENGSTROM

AMENDED**JUDGMENT IN A CRIMINAL CASE**

Case Number: 2:21-cr-00190-ART-EJY

USM Number: 06870-041

***Date of Original Judgment: February 27, 2024.**Paul Engstrom, Pro Se

Defendant's Attorney

Joanne L. Diamond, AFD (Standby Counsel)

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to Counts 1 and 2 of the Superseding Criminal Information filed July 21, 2023 (ECF No. 259).☐ 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>OffenseEnded</u>	<u>Count</u>
21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(B)(ii)	Conspiracy to Distribute a Controlled Substance	June 21, 2021	1
18 U.S.C. §§ 1956(a)(1)(B)(i) and (h)	Money Laundering Conspiracy	June 21, 2021	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ 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.

February 1, 2024

Date of Imposition of Judgment

Signature of Judge

Anne R. Traum, United States District Court Judge

Name and Title of Judge

February 27, 2024

Date

DEFENDANT: Paul Engstrom
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IMPRISONMENT

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

***FORTY-SIX (46) MONTHS PER COUNT TO RUN CONCURRENT. The defendant shall received credit for time served.**



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

The defendant be designated to a Federal Bureau of Prison facility within close proximity of Las Vegas, Nevada.



The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
by 12:00 p.m. on Monday, May 6, 2024.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Paul Engstrom
CASE NUMBER: 2:21-cr-00190-ART-EJY

Judgment Page 3

SUPERVISED RELEASE

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

***TWO (2) YEARS PER COUNT TO RUN CONCURRENT.**

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: Paul Engstrom
CASE NUMBER: 2:21-cr-00190-ART-EJY

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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: Paul Engstrom

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SPECIAL CONDITIONS OF SUPERVISION

1. **Access to Financial Information** – You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
2. **No Contact** – You must not communicate, or otherwise interact, with Vincent Cuomo, Abraham Elliott, and Joseph Krieger, either directly or through someone else, without first obtaining the permission of the probation office.
3. **Computer Search – Monitoring Software** – To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct periodic, unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.
4. **Search and Seizure** – You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: Paul Engstrom

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CASE NUMBER: 2:21-cr-00190-ART-EJY

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Judgment Page 7.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	NA	NA	NA	NA

☐ 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>
U.S. District Court, District of Nevada Attn: Clerk of Court - Finance Department RE: Case No. 2:21-cr-00190-ART-EJY 333 Las Vegas Blvd., South Room 1334 Las Vegas, NV 89101			

TOTALS \$ _____ \$ _____

☐ 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: Paul Engstrom
CASE NUMBER: 2:21-cr-00190-ART-EJY

Judgment Page 7

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 \$200.00 due immediately.
- 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:

See attached Amended Final Order of Forfeiture (ECF No. 331).

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL ENGSTROM,

Defendant.

2:21-CR-190-ART-EJY

Amended Final Order of Forfeiture

The United States District Court for the District of Nevada entered a Preliminary Order of Forfeiture under Fed. R. Crim. P. 32.2(b)(1) and (b)(2); 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c); 21 U.S.C. § 853(a)(1), 853(a)(2), and 853(p); 21 U.S.C. § 881(a)(4) with 28 U.S.C. § 2461(c); 21 U.S.C. § 881(a)(6) with 28 U.S.C. § 2461(c); 18 U.S.C. § 981(a)(1)(A) with 28 U.S.C. § 2461(c); 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c); and 18 U.S.C. § 982(a)(1) based upon the plea of guilty by Paul Engstrom to the criminal offenses, forfeiting the property set forth in the Plea Agreement and the Forfeiture Allegations of the Superseding Criminal Information and shown by the United States to have the requisite nexus to the offenses to which Paul Engstrom pled guilty. Superseding Criminal Information, ECF No. 259; Plea Agreement, ECF No. 260; Arraignment & Plea, ECF No. 265; Preliminary Order of Forfeiture, ECF No. 266.

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

The in personam criminal forfeiture money judgment amount of \$1,715,577 complies with *United States v. Lo*, 839 F.3d 777 (9th Cir. 2016); *Honeycutt v. United States*, 581 U.S. 443 (2017); *United States v. Thompson*, 990 F.3d 680 (9th Cir. 2021); and *United States v. Prasad*, 18 F.4th 313 (9th Cir. 2021).

1 This Court finds the United States published the notice of forfeiture in accordance
2 with the law via the official government internet forfeiture site, www.forfeiture.gov,
3 consecutively from July 27, 2023, through August 25, 2023, notifying all potential third
4 parties of their right to petition the Court. Notice of Filing Proof of Publication, ECF No.
5 284-1, p. 5.

6 This Court finds the United States notified known third parties of their right to
7 petition the Court by regular mail and certified mail return receipt requested. Notice of
8 Filing Service of Process – Mailing, ECF No. 286; Addendum to Notice of Filing Service of
9 Process – Mailing, ECF No. 290.

10 On August 24, 2023, the United States Attorney's Office served Crane M.
11 Pomerantz and Vincent Cuomo c/o Crane M. Pomerantz at Clark Hill PLC with copies of
12 the Preliminary Order of Forfeiture and the Notice through regular mail and certified mail
13 return receipt requested. Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 3,
14 7-19.

15 On August 24, 2023, the United States Attorney's Office served Lucas Gaffney and
16 Joseph Krieger c/o Lucas Gaffney at Gaffney Law with copies of the Preliminary Order of
17 Forfeiture and the Notice through regular mail and certified mail return receipt requested.
18 Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 3, 7-15, 20-22.

19 On August 24, 2023, the United States Attorney's Office served Abraham Elliott c/o
20 Kendall S. Stone at Pitaro & Fumo, Chtd. with copies of the Preliminary Order of
21 Forfeiture and the Notice through regular mail and certified mail return receipt requested.
22 Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 3, 7-15, 23-25.

23 On August 24, 2023, the United States Attorney's Office served and attempted to
24 serve Kendall S. Stone, Attorney for Abraham Elliott at Pitaro & Fumo, Chtd. with copies
25 of the Preliminary Order of Forfeiture and the Notice through regular mail and certified
26 mail return receipt requested. The regular mail was not returned. The status of the certified
27 mail is unknown as the US Postal Service has the document listed as in transit since August
28 28, 2023. Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 3, 7-15, 26-28.

1 On August 24, 2023, the United States Attorney's Office served Abraham Jay Elliott
2 at Midseason Mist Street with copies of the Preliminary Order of Forfeiture and the Notice
3 through regular mail and certified mail return receipt requested. Notice of Filing Service of
4 Process – Mailing, ECF No. 286-1, p. 3, 7-15, 29-31.

5 On August 24, 2023, the United States Attorney's Office served and attempted to
6 serve Abraham Jay Elliott at Lonesome Biker Lane with copies of the Preliminary Order of
7 Forfeiture and the Notice through regular mail and certified mail return receipt requested.
8 The regular mail was not returned. The certified mail was returned as unclaimed and unable
9 to forward. Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 3, 7-15, 32-34.

10 On August 24, 2023, the United States Attorney's Office served Virginia Engstrom at
11 Saint Augustine Lane with copies of the Preliminary Order of Forfeiture and the Notice
12 through regular mail and certified mail return receipt requested. Notice of Filing Service of
13 Process – Mailing, ECF No. 286-1, p. 7-15, 35-36; Addendum to Notice of Filing Service of
14 Process – Mailing, ECF No. 290.

15 On August 24, 2023, the United States Attorney's Office served and attempted to
16 serve Virginia Engstrom at Southern Highlands Pkwy with copies of the Preliminary Order
17 of Forfeiture and the Notice through regular mail and certified mail return receipt requested.
18 The regular mail was not returned. The certified mail was returned as unclaimed and unable
19 to forward. Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 4-15, 38-40.

20 On August 24, 2023, the United States Attorney's Office served and attempted to
21 serve Daniel Krynzal at Saint Augustine Lane with copies of the Preliminary Order of
22 Forfeiture and the Notice through regular mail and certified mail return receipt requested.
23 The regular mail was not returned. The certified mail was returned as unclaimed and unable
24 to forward. Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 4, 7-15, 41-43.

25 On August 24, 2023, the United States Attorney's Office served Daniel Krynzal at
26 Southern Highlands Pkwy with copies of the Preliminary Order of Forfeiture and the Notice
27 through regular mail and certified mail return receipt requested. Notice of Filing Service of
28 Process – Mailing, ECF No. 286-1, p. 4, 7-15, 44-46.

On August 24, 2023, the United States Attorney's Office attempted to serve Daniel Krynzel at Russell Road with copies of the Preliminary Order of Forfeiture and the Notice through regular mail and certified mail return receipt requested. The regular mail and certified mail were both returned as attempted not known and unable to forward. Notice of Filing Service of Process – Mailing, ECF No. 286-1, p. 4, 7-15, 47-49.

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

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

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all possessory rights, ownership rights, and all rights, titles, and interests in the property hereinafter described are condemned, forfeited, and vested in the United States:

1. 2020 smokey gray Harley-Davidson Touring, VIN 1HD1TEH23LB954585, bearing Nevada License plate number STINKS;
2. 2019 white Ducati Racer Motorcycle, VIN ZDMVABDS0KB007875, bearing Nevada License plate number KNZL;
3. 2019 black Ducati Cruiser Motorcycle, VIN ZDM13BKW2KB010548, bearing Nevada License plate number XDVL;
4. 2019 titanium gray and black Ducati X Diavel Motorcycle, VIN ZDM13BKW1MB000502, bearing Nevada License plate number NX191017;
5. 2021 black hole with pinstripe Harley Davidson Cruiser, VIN 1HD1TCL13MB952002, bearing Nevada License plate number 910044;
6. 2020 red Ducati Superleggera Motorcycle, VIN ZDMDAGUW1LB000138;
7. 284.742879735905 Monero Cryptocurrency

(all of which constitutes property); and

that the United States recover from Paul Engstrom the in personam criminal forfeiture money judgment of \$1,715,577, not to be held jointly and severally liable with any codefendants, the collected money judgment amount between the codefendants is not to

1 exceed \$1,715,577 to ensure the government does not collect more than the forfeitable
2 amount based on the forfeiture statutes and Ninth Circuit cases, and that the property will
3 be applied toward the payment of the money judgment under Ninth Circuit case law,
4 forfeiture statutes, and Fed. R. Crim. P. 32.2(b)(2)(A); and

5 the forfeiture of the money judgment and the property is imposed under Fed. R. Crim.
6 P. 32.2(b)(4)(A) and (b)(4)(B); Fed. R. Crim. P. 32.2(c)(2); 18 U.S.C. § 981(a)(1)(C) with 28
7 U.S.C. § 2461(c); 21 U.S.C. § 853(a)(1), 853(a)(2), and 853(p); 21 U.S.C. § 881(a)(4) with 28
8 U.S.C. § 2461(c); 21 U.S.C. § 881(a)(6) with 28 U.S.C. § 2461(c); 18 U.S.C. § 981(a)(1)(A)
9 with 28 U.S.C. § 2461(c); 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c); 18 U.S.C.
10 § 982(a)(1); and 21 U.S.C. § 853(n)(7); that the money judgment shall be collected; and that
11 the property and the collected amount shall be disposed of according to law.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that under Fed. R.
13 Crim. P. 32.2(c) and 21 U.S.C. § 853(n)(7), all possessory rights, ownership rights, and all
14 rights, titles, and interests in the property are extinguished and are not recognized for Paul
15 Engstrom, Vincent Cuomo, Joseph Krieger, Abraham Jay Elliott, Virginia Engstrom,
16 Daniel Krynzel, and all third parties.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all
18 forfeited funds, including but not limited to, currency, currency equivalents, certificates of
19 deposit, as well as any income derived as a result of the government's management of any
20 property forfeited herein, and the proceeds from the sale of any forfeited property shall be
21 disposed of according to law.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk send
23 copies of this Order to all counsel of record and three certified copies to the United States
24 Attorney's Office, Attention Asset Forfeiture Unit.

25 DATED February 7, 2024.

26 
27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 22 2026

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

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

PAUL ENGSTROM,

Defendant - Appellee.

No. 24-1878

D.C. No.

2:21-cr-00190-ART-EJY-1

District of Nevada,
Las Vegas

ORDER

Before: HAMILTON, R. NELSON, and BUMATAY, Circuit Judges.*

The panel unanimously votes to **DENY** the petition for rehearing. Judges R. Nelson and Bumatay vote to **DENY** the petition for rehearing en banc, and Judge Hamilton so recommends. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and the petition for rehearing en banc are denied.

* The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, 7th Circuit, sitting by designation.