APPENDIX

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APPENDIX A

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12052
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AMAURY RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:09-cr-20608-KMM-1

Before ROSENBAUM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Amaury Rodriguez appeals his 24-month imprisonment sentence followed by a life term of supervised release imposed upon revocation of his supervised release. He argues that the district court violated his right to confrontation by relying on hearsay evidence and failing to properly conduct the balancing inquiry prescribed by our decision in *United States v. Frazier*, 26 F.3d 110 (11th Cir. 1994). He also argues that court otherwise clearly erred in sustaining nearly all the alleged violations. Lastly, he maintains that the imposition of a special condition restricting his computer and modem usage without prior court approval is unconstitutional as an infringement of his First Amendment rights.

I.

In 2009, Rodriguez pled guilty to distributing child pornography. The district court sentenced him to 72 months of imprisonment followed by 84 months of supervised release. He began his term of supervised release in May 2016.

Rodriguez's supervised release was subject to various conditions. He was required to notify his probation officer of any change in residence or employment, and to receive permission from the probation officer or the court before leaving the Southern District of Florida. He had to undergo mental-health and sex-offender treatment. He was ordered to comply with the federal Sex Offender Registration and Notification Act ("SORNA"), and to not commit any other crime. And he was prohibited from possessing or using any computer or modem without prior court approval.

A.

In June 2016, the probation office filed a petition alleging that Rodriguez had violated the terms of his supervised release. In

May 2018, the court approved a joint stipulation dismissing the petition and modifying the terms of his supervision.

In June 2021, Rodriguez moved to modify the terms of supervised release, arguing that the prohibition on "any online activity [was] overly restrictive." Meanwhile, the probation office petitioned the court to revoke his supervised release.

Eventually, in January 2023, the district revoked Rodriguez's supervised release based on his admission that he had violated a condition of supervision. The court sentenced him to time served and imposed a new five-year term of supervised release, subject to the same conditions as previously imposed.

B.

In May 2023, just a few months after Rodriguez was sentenced upon revocation, the probation office again petitioned for revocation of Rodriguez's supervised release. A superseding petition alleged ten violations, including that Rodriguez: (a) traveled to Arkansas from Florida and changed his residence without notifying his probation officer (Violations 5, 6); (b) failed to register as a sex offender under Florida, Arkansas, and federal law (Violations 1, 2, 3, 10); (c) violated Arkansas law by obstructing governmental operations (Violation 4); (d) failed to participate in mental health and sex offender treatment programs (Violations 7, 8); and (e) possessed or used a computer containing a modem (Violation 9). A magistrate judge held an evidentiary hearing on the alleged violations in November 2023.

The probation officer testified that Rodriguez was not at home during an unannounced visit on May 4, 2023, and that neither his family members nor his treatment providers knew his whereabouts. In the days that followed, the probation officer learned from Rodriguez's father that he had found Rodriguez's cell phone in the recycle bin. The probation officer also received notice from Rodriguez's sex-offender-treatment provider that Rodriguez missed an appointment on or around May 8. Rodriguez did not request permission from the probation officer to leave the Southern District of Florida.

Then, in June 2023, the probation officer received notice via a law-enforcement system that Rodriguez was being looked up by a police department in Elm Springs, Arkansas. The probation officer spoke with the chief of police, who advised that a person named Amaury Rodriguez was in his jurisdiction and using the alias "Roay Ramirez." The police chief also forwarded two emails that had been sent from the same email address, "roay.ramirez@gmail.com," on June 6 and June 7, to a rabbi in Arkansas. In the June 6 email, the sender identified his "real name" as "Amaury Luis Rodriguez." Rodriguez was arrested in Arkansas on June 15, 2023.

In addition, the probation officer identified Rodriguez as the speaker on a recorded jail phone call to his mother. On the call, Rodriguez said he was "here in Arkansas now" because he "didn't want to be home, and because [he] didn't want probation." He told his mother to look him up on various social media platforms under the name, "Roay Ramirez."

Finally, the government presented evidence that Rodriguez failed to comply with sex-offender registration requirements under Arkansas, Florida, and federal law. As part of its showing, the government offered affidavits from records custodians in each state, who certified that they had conducted a diligent search and could not locate relevant records. The government also offered a set of certified documents from the Florida records custodian containing Florida registration forms filled out by Rodriguez.

Rodriguez objected to the admission of hearsay under *Frazier*, which requires courts in revocation proceedings to "balance the defendant's right to confront adverse witnesses against the grounds asserted by the government for denying confrontation." 26 F.3d at 114. He asserted that he had a right to cross-examine the records custodians and that the government had not offered a reason to deny confrontation. The government responded that the documents were facially reliable and fell under recognized hearsay exceptions, and that having the custodians appear for testimony was too costly to justify. Rodriguez lodged a similar objection about hearsay in the probation officer's testimony about Rodriguez's failure to participate in required treatment.

C.

After the hearing, the magistrate judge issued a report and recommendation ("R&R"). With regard to Rodriguez's confrontation arguments, the magistrate judge found that, on balance, the interests of justice did not require the appearance of either the records custodians or Rodriguez's treatment providers. The magistrate judge otherwise recommended that Rodriguez be found guilty of every violation alleged in the superseding petition except for Violation 4 (obstruction of governmental operations under Arkansas law). The district court entered an order overruling Rodriguez's timely objections, adopting the R&R, and finding Rodriguez guilty of every alleged violation except for Violation 4.

Then, at a later hearing, the district court revoked Rodriguez's term of supervised release and imposed a 24-month imprisonment sentence followed by a life term of supervised release, subject to "all previous conditions." Rodriguez objected to the computer-use special conditions in light of *Packingham v. North Carolina*, 582 U.S. 98, 108 (2017), as well as the substantive reasonableness of his sentence. Rodriguez now timely appeals.

II.

We generally review a district court's decision to revoke supervised release for abuse of discretion. *Frazier*, 26 F.3d at 112. Likewise, we review preserved challenges to evidentiary rulings, as well as those to the substantive or procedural reasonableness of a sentence, for an abuse of discretion. *See United States v. Diamond*, 102 F.4th 1347, 1353 (11th Cir. 2024); *United States v. Mazarky*, 499 F.3d 1246, 1248 (11th Cir. 2007).

We are bound by a district court's findings of fact unless they are clearly erroneous. *United States v. Almand*, 992 F.2d 316, 318 (11th Cir. 1993). A factual finding is clearly erroneous when, upon review of the evidence, we are left with a definite and firm conviction that a mistake has been made. *United States v. Rodriguez*, 75 F.4th 1231, 1241 (11th Cir. 2023).

A district court may revoke a term of supervised release "upon a finding by a preponderance of the evidence that the defendant violated a condition of his supervised release." *United States v. Cunningham*, 607 F.3d 1264, 1266 (11th Cir. 2010) (quotation marks omitted). A preponderance of the evidence is evidence which is more convincing than the evidence offered in opposition to it. *United States v. Watkins*, 10 F.4th 1179, 1184 (11th Cir. 2021) (*en banc*). Even if a defendant's hypothesis is "supported by some modicum of evidence," the fact-finder is "free to choose between or among the reasonable conclusions to be drawn from the evidence presented." *United States v. Williams*, 865 F.3d 1328, 1345–46 (11th Cir. 2017) (quotation marks omitted).

A. Violations 1, 2, 3 & 10 (Failure to Register)

Violations 1, 2, 3, and 10 all relate to Rodriguez's failure to register as a sex offender. Rodriguez maintains that the district court violated his due-process rights by failing to engage in the proper *Frazier* balancing test and by admitting hearsay evidence from the records custodians, and that the government failed to prove he met the residency requirements under the various sex-offender registration laws. We address each issue in turn.

1. Due Process

Revocation proceedings are "conducted without the evidentiary formalities that characterize a criminal trial." *United States v.*

Penn, 721 F.2d 762, 764 (11th Cir. 1983); *see United States v. Reese*, 775 F.3d 1327, 1329 (11th Cir. 2015) ("[T]he Sixth Amendment does not apply in hearings for the revocation of supervised release, probation, or parole."). The Federal Rules of Evidence do not apply in supervised-release revocation proceedings, so hearsay evidence is not prohibited. *Frazier*, 26 F.3d at 114; *see* Fed. R. Crim. P. 32.1.

Even so, revocation defendants are entitled to certain "minimal due process requirements." *Frazier*, 26 F.3d at 114. So when deciding whether to admit hearsay evidence against a defendant in a revocation proceeding, "the court must balance the defendant's right to confront adverse witnesses against the grounds asserted by the government for denying confrontation." *Id.* The hearsay also "must be reliable." *Id.* Thus, a district court "may consider hearsay evidence as long as the defendant has an opportunity to refute it and the evidence bears a minimal indicia of reliability." *United States v. Hall*, 965 F.3d 1281, 1294 (11th Cir. 2020) (cleaned up).

In *United States v. Penn*, we explained that the "difficulty and expense of procuring live witnesses" for a revocation proceeding may justify use of "conventional substitutes for hearsay: affidavits, depositions and documentary evidence," which tend to bear sufficient "indicia of reliability." 721 F.2d 762, 765 (11th Cir. 1983). In *Penn*, the defendant asserted the right to confront the individuals who performed laboratory urinalysis testing. But the defendant did "not deny, and did not controvert in any way, the charge that he had had illegal drugs in his body on the specific occasions alleged." *Id.* at 766. We held that, "[i]n the absence of any evidence tending to contradict Penn's drug usage or the accuracy of the lab tests, his confrontation rights were not infringed by the admission of the [hearsay] testimony or the exhibits," given their "reliability." *Id.*

Even if the district court improperly denies confrontation, the defendant is not automatically entitled to relief. Rather, "the defendant bears the burden of showing" two things: "(1) that the challenged evidence is materially false or unreliable, and (2) that it actually served as the basis for the sentence." *United States v. Taylor*, 931 F.2d 842, 847 (11th Cir. 1991); *see United States v. Reme*, 738 F.2d 1156, 1167 (11th Cir. 1984) ("The hearsay evidence relied on at sentencing must bear minimal indicia of reliability if the defendant's right to due process is to be preserved.").

Here, Rodriguez has not shown that the district court reversibly erred. For starters, we are not persuaded that the court failed to conduct the requisite balancing inquiry or weighed the interests unreasonably. The court properly considered the reliability of the hearsay evidence when balancing Rodriguez's interest in confronting the records custodians against the burden and expense of presenting the witnesses. *See Penn*, 721 F.2d at 765. The court explained that each affiant described with adequate specificity "their use of a database to search electronic data, as well as conducting a manual search of records," and that Rodriguez failed to make any showing that the searches were improper or that potential cross-examination would "undermine the evidentiary value of the affidavits."

But even assuming without deciding Rodriguez is correct that the district court failed to properly conduct the balancing inquiry, he bears the burden on appeal to show "that the challenged evidence is materially false or unreliable." *Taylor*, 931 F.2d at 847. And he does not even attempt to do so.

Instead, Rodriguez argues that *Frazier* places the burden of proving harmlessness on the government. But as he notes, "*Taylor* was issued before *Frazier*," so *Taylor* would control over *Frazier* to the extent of any conflict between the two decisions. *See United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) ("Under the prior precedent rule, we are bound to follow a prior binding precedent unless and until it is overruled by this court *en banc* or by the Supreme Court.") (quotation marks omitted). And to be clear, we do not think the decisions are in conflict.

For these reasons, Rodriguez has not shown that the district court reversibly erred by admitting hearsay from the state records custodians. *See Taylor*, 931 F.2d at 848; *Penn*, 721 F.2d at 765–66.

2. Merits

Florida law requires a sex offender to notify appropriate authorities at least 48 hours before he intends to leave Florida "to establish a permanent, temporary, or transient residence in another state or jurisdiction," Fla. Stat. § 943.0435(7), and makes failure to comply a third-degree felony, *id.* § 943.0435(9)(a). A "transient residence" is where a person "lives, remains, or is located for a period of three or more days." Fla. Stat. § 775.21(*o*). Arkansas law requires a sex offender to register as such with appropriate authorities within five days after moving to Arkansas, Ark. Code § 12-12-906(a)(2)(A)(i), and makes failure to comply a class C felony, *id.* § 12-12-904(a)(1)(A)(i). Finally, SORNA requires a sex offender to register in each jurisdiction where the offender resides and keep all registrations current, and to notify a jurisdiction involved within three days of any change of residence, 34 U.S.C. § 20913(a), (c), and makes failure to comply a felony, 18 U.S.C. § 2250(a).[1]

The district court did not clearly err in finding that Rodriguez failed to comply with Arkansas, Florida, and federal sex-offender registration laws. The probation officer testified that Rodriguez left his home in Florida on or before May 4, 2023, that he did not return, and that he was later arrested in Arkansas on June 15, 2023. The record also supports findings that Rodriguez sent two emails to a rabbi in Arkansas on June 6 and 7, 2023, and that he told his mother on a jail phone call that he was "here in Arkansas now" because he "didn't want to be home, and because [he] didn't want probation." The court reasonably inferred from this evidence that Rodriguez left Florida with the intent to reside out of state, and

[1] As Rodriguez notes, Violation 10 of the superseding petition alleged that he violated the conditions of his release by failing to abide by SORNA, which it identified as under "42 U.S.C. § 1690, *et seq.*" That citation is wrong for two reasons. First, SORNA previously started at 42 U.S.C. § 1690<u>1</u>. And second, SORNA has been reclassified under Title 34. *See* 34 U.S.C. §§ 20901–20916. Despite that error, Rodriguez does not suggest he lacked adequate notice of the alleged violation or an opportunity to put on a defense, and he does not otherwise identify a basis for dismissal of Violation 10.

that he was present in Arkansas for more than five days and intended to reside there. *See Williams*, 865 F.3d at 1345–46.

Thus, the district court properly found that Rodriguez's conduct triggered his reporting obligations under the respective sex-offender registration statutes. *See* Fla. Stat. § 943.0435(7); Ark. Code Ann. § 12-12-906(a)(2)(A)(i); 34 U.S.C. § 20913. And evidence from the state records custodians showed that Rodriguez failed to submit any registration forms reflecting that change in residence. The district court properly sustained Violations 1, 2, 3, and 10.

B. Violation 5 (Failure to Notify Probation)

The district court did not clearly err in finding that Rodriguez violated the conditions of his supervision by failing to notify his probation officer of his change in residence. As we just explained, Rodriguez's conduct and statements support a reasonable inference that he left Florida and intended to reside in Arkansas.

C. Violations 7 & 8 (Failure to Participate in Treatment)

We agree with Rodriguez that the district court clearly erred in finding that he violated the conditions of his supervised release by failing to participate in required treatment.

The probation officer testified that he spoke with Rodriguez's mental-health and sex-offender-treatment providers in attempting to locate Rodriguez, and that Rodriguez was not present at either treatment center. The probation officer also received information from a treatment provider that Rodriguez missed an appointment for sex-offender treatment on May 8, as alleged in Violation 8. As the government concedes, however, there was no competent evidence that Rodriguez missed an appointment for mental-health treatment on May 5, as alleged in Violation 7.

Because the district court's finding on Violation 7 lacks the support of reliable and specific evidence in the record, it is clearly erroneous. *See United States v. Washington*, 714 F.3d 1358, 1361 (11th Cir. 2013) (the government "has the burden of introducing 'sufficient and reliable' evidence to prove the necessary facts by a preponderance of the evidence"). The same is true for the court's finding on Violation 8, although for slightly different reasons.

Violation 8 was supported by hearsay statements from Rodriguez's sex-offender-treatment provider, who told the probation officer that Rodriguez missed an appointment on May 8. Yet in response to Rodriguez's objections under *Frazier*, the district court found that the treatment provider was not required to appear because Violation 8 "relied on [the probation officer's] own conduct, rather than the hearsay testimony." In other words, the reason the district court denied confrontation was that Violation 8 was supported by non-hearsay evidence. Similarly, the government argues that the provider statements merely helped explain the probation officer's investigation, so they were *not* offered for the truth of the matter asserted. *See, e.g.*, *United States v. Rivera*, 780 F.3d 1084, 1092 (11th Cir. 2015) ("Hearsay is a statement, other than one made by a declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted.").

But the problem is that Violation 8 cannot be sustained on this record unless the provider statements were admitted at least in part for hearsay purposes. If the provider statements were not admitted for their truth—that is, that Rodriguez in fact failed to attend a treatment appointment on May 8—then no competent evidence supports a finding that Rodriguez failed to attend required sex-offender treatment. The mere fact that Rodriguez spoke with the treatment providers and could not locate Rodriguez is not enough, as the government concedes with respect to Violation 7. We therefore vacate the district court's findings that Rodriguez committed Violations 7 and 8.

D. Violation 9 (Use of a Computer/Modem)

Finally, the district court reasonably concluded that Rodriguez violated the conditions of his supervision by using a computer and modem. The government presented evidence that Rodriguez, after leaving supervision in Florida, sent two emails on June 6 and 7, and that he told his mother to look up his social media activity on various platforms. It's reasonable to conclude from this evidence that Rodriguez personally sent the emails and otherwise used an internet-connected computer. That the evidence may support other possibilities is not enough to show that the district court clearly erred. *See Williams*, 865 F.3d at 1345–46.

III.

Finally, Rodriguez argues that two special conditions of his supervised release broadly prohibiting his use of a computer or modem are unconstitutional in light of his life term and the Supreme Court's decision in *Packingham*.

We generally review the imposition of special conditions of supervised release for abuse of discretion. *United States v. Coglianese*, 34 F.4th 1002, 1007 (11th Cir. 2022).

When a defendant is convicted of a sex offense involving a computer, the Sentencing Guidelines recommend the imposition of a special condition limiting the defendant's usage of computers. U.S.S.G. § 5D1.3(b)(3)(G)(ii). We have "uniformly" upheld this restriction so long as the defendant can seek permission to use a computer or access the internet for specific purposes. *Coglianese*, 34 F.4th at 1010. We have affirmed a 30-year term of supervised release with a computer restriction on abuse-of-discretion review when it contained a prior-authorization clause. *Id.* at 1010–1011. We have also affirmed a life term of supervised release with a computer restriction on plain-error review when it contained such a clause. *United States v. Bobal*, 981 F.3d 971, 975–77 (11th Cir. 2020).

In *Packingham v. North Carolina*, the Supreme Court declared unconstitutional a North Carolina law that prohibited a registered sex offender from "access[ing] a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages." 582 U.S. 98, 101 (2017).

We have found that *Packingham* did not affect the routine computer restriction imposed as a condition of federal supervised release. *Bobal*, 981 F.3d at 977. We distinguished the North Carolina law from the special conditions, observing that the former restricted sex offenders even after they had completed their sentences, applied uniformly to all sex offenders regardless of the method of their underlying offense, and contained no exception for prior approval from the state. *Id.* We thus concluded that broad computer restrictions survive *Packingham* as special conditions of federal supervised release so long as they have prior approval procedures. *Id.*; *Coglianese*, 34 F.4th at 1010.

Rodriguez acknowledges that "his argument is foreclosed by circuit precedent," and he seeks to preserve the issue for further review. Accordingly, we affirm the imposition of these conditions without further discussion.

IV.

In sum, we affirm the district court's findings that Rodriguez violated the terms of his supervised release by changing residence without notifying either his probation officer or complying with sex-offender registration requirements (Violation 1, 2, 3, 5, & 10), and by using an internet-connected computer (Violation 9). Rodriguez also does not dispute that he left the district without informing his probation officer (Violation 6). We vacate the court's findings that Rodriguez failed to participate in mental-health and sex-offender treatment (Violations 7 & 8).

Accordingly, we vacate Rodriguez's sentence and remand for resentencing without consideration of Violations 7 & 8. *See United States v. Fowler*, 749 F.3d 1010, 1015 (11th Cir. 2014) (stating that, "when a conviction on one or more of the component counts is vacated for good, the district court should be free to reconstruct the sentencing package . . . to ensure that the overall sentence remains consistent with the guidelines [and] the § 3553(a) factors").

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:09-cr-20608-KMM

UNITED STATES OF AMERICA,

v.

AMAURY RODRIGUEZ,

Defendant.
_______________________________________/

ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon a Superseding Petition for Offender Under Supervision filed against Defendant Amaury Rodriguez. ("Pet.") (ECF No. 192). The Court referred the matter to the Honorable Lauren F. Louis, United States Magistrate Judge, to take all necessary and proper action with respect to any and all violations of supervised release. (ECF No. 199). On March 29, 2024, Magistrate Judge Louis issued a Report and Recommendation, ("R&R") (ECF No. 214), recommending that the Superseding Petition be GRANTED IN PART, and that the Court find probable cause to believe that Defendant committed Violation Nos. 1–3 and 5–10 alleged in the Superseding Petition. Defendant objected to the R&R. ("Objs.") (ECF No. 218). The matter is now ripe for review. As set forth below, the Court ADOPTS the R&R.

I. BACKGROUND

Defendant was originally sentenced to a term of imprisonment of 72 months, followed by a term of supervised release of 84 months. R&R at 1; (ECF Nos. 29, 36). Defendant began his term of supervised release on May 17, 2016. R&R at 1. Since then, his supervised release has been revoked or modified for noncompliance repeatedly, the first time within a month of beginning his term of supervised release. *See* R&R at 1–2; (ECF Nos. 37, 125). Defendant has also undergone competency evaluation and restoration proceedings. R&R at 1–2. In January 2023, the Court sentenced Defendant to a term of time served and a five-year term of supervised release, which Defendant started serving on January 26, 2023. *Id.* at 2; (ECF No. 192).

On June 20, 2023, the United States Probation Office filed the instant Superseding Petition for Offender Under Supervision alleging the following ten violations:

1. Violation of Mandatory Condition, by failing to refrain from violation of the law. On or about May 4, 2023, in Miami-Dade County, Florida, the defendant did commit the offense of Violation of Sex Offender Registration, contrary to Florida Statute 943.0435.

2. Violation of Mandatory Condition, by failing to refrain from violation of the law. On or about June 13, 2023, in Washington County, Arkansas, the defendant did commit the offense of Failure to Register, in violation of Arkansas Code Ann. § 12-12-904.

3. Violation of Mandatory Condition, by failing to refrain from violation of the law. On or about June 8, 2023, the defendant did commit the offense of Failure to Register, in violation of 18 U.S.C. §2250.

4. Violation of Mandatory Condition, by failing to refrain from violation of the law. On or about June 15, 2023, in Fayetteville, Arkansas, the defendant did commit the offense of Obstructing Governmental Operations, in violation of Arkansas Code Ann. § 5-54-102.

5. Violation of Standard Condition, by failing to notify the probation office of any change in residence. On or about May 5, 2023, the defendant moved from his approved residence of 16050 Southwest 173rd Avenue, Miami, Florida 33187, and his whereabouts is unknown.

6. Violation of Standard Condition, by leaving the judicial district without first securing permission of the probation officer. On or about June 15, 2023, the defendant traveled to Arkansas, without securing the permission of the probation officer or the court, as evidenced by his arrest by the Springdale, Arkansas for Failure to Register, in violation of Arkansas Code Ann. § 12-12-904.

7. Violation of Special Condition, by failing to participate in an approved mental health treatment program. Since on or about May 5, 2023, the defendant has failed to attend his scheduled appointments with Community Health of South Florida, Inc., and to date, has not satisfactorily participated in treatment as directed by the Court and monitored by the U.S. Probation Officer.

8. Violation of Special Condition, by failing to participate in a sex offender treatment program to include psychological testing and polygraph examination. On or about May 8, 2023, the defendant failed to participate in a sex offender treatment program Anaga as evidenced by communication from the treatment provider.

9. Violation of Special Condition, by possessing or using a computer that contains an internal, external, or wireless modem. On or about June 6 and June 7 of 2023, the defendant sent electronic correspondence via the use of a device that contained an internal, external, or wireless modem without prior approval from the Court.

10. Violation of Special Condition, by failing to abide by the requirements of the Sex Offender Registration and Notification Act (42 USC §1690, et. seq.). On or about May 5, 2023, the defendant moved from his approved residence and on or about June 15, 2023, was arrested in the State of Arkansas without reporting any intended departure or termination of residence in Miami-Dade County, Florida.

Pet. at 3–5.

On November 6, 2023, Magistrate Judge Louis held an evidentiary hearing, where the Government presented the testimony of one live witness, United States Probation Officer Raymond Gravie, and admitted exhibits in support of the alleged violations. R&R at 2; (ECF Nos. 206, 211).

On May 4, 2023, Officer Gravie, who began supervising Defendant in 2021, attempted to visit Defendant at his home and did not find his car at the residence. *Id.* Officer Gravie then took several actions to ascertain Defendant's whereabouts, including calling and texting Defendant, leaving a note at the house asking Defendant to call him the next day, and continued contact with Defendant's parents. *Id.* Officer Gravie also called certain vendors treating Defendant and eventually went to the Community Health Institute ("CHI"), a treatment program where Defendant was scheduled for treatment, where he was also unsuccessful in finding Defendant. *Id.* Officer Gravie testified that Defendant's father reported to him that he had found Defendant's phone in the recycling bin. *Id.* Officer Gravie also testified that he was contacted by a representative of Anaga, the sex offender treatment center, who notified Officer Gravie that Defendant had failed to attend his weekly treatment, a condition of Defendant's supervised release. *Id.* Officer Gravie testified that he received an alert from the National Crime Information Center that someone was looking up Defendant. *Id.* Officer Gravie contacted a police chief in Arkansas, who explained that he had an individual in his custody as of June 15, 2023 that used an alias at the time of arrest but who had since been identified as Defendant. *Id.*

While incarcerated in Arkansas, Defendant called his mother, a recording of which was introduced into evidence at the hearing. *Id.* at 5. Officer Gravie testified that he recognized Defendant as one of the speakers on the call and is familiar with his voice from years of supervising him. *Id.* In the call, Defendant asks, "How are you, my mother?" and she responds "Amaury." *Id.* He informs her that he is now in Arkansas and he did not want to be home or on probation, stating: "I'm here in Arkansas now . . . . Here because I left; I didn't want to be home, and because I didn't want probation." *Id.* Defendant notes that he had been preaching online and encourages his mother to read his social media posts in the name "Roay Ramirez." *Id.*

At the evidentiary hearing, the Government also introduced two emails sent to a rabbi located in Arkansas by "roay.ramirez@gmail.com" on June 6 and 7, 2023 that appear to quote bible scripture and are largely religious in content. *Id.* One of the emails states that the author is Defendant: "Before I continue I want to tell you my real name it is Amaury Rodriguez." *Id*. No witnesses were presented by Defendant at the evidentiary hearing.

II. LEGAL STANDARD

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). The Court "must consider *de novo* any objection to the magistrate judge's recommendation." Fed. R. Crim. P. 59(b)(3). A *de novo* review is therefore required if a party files "a proper, specific objection" to a factual finding contained in the report. *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). "It is critical that the objection be sufficiently specific and not a general objection to the report" to warrant de novo review. *Id.*

III. DISCUSSION

In the R&R, Magistrate Judge Louis recommends that the Court grant the Superseding Petition in part and that the Court find probable cause to believe that Defendant committed Violation Nos. 1–3 and 5–10 alleged in the Superseding Petition. *See* R&R at 11. Defendant raises eight objections to Magistrate Judge Louis's conclusions as to Violations 1–3, 5, and 7–10. *See generally* Objs. The Court responds to each of these objections in turn.

A. Violations 1–3: Failing to Register as a Sexual Offender in Violation of Florida, Arkansas, and Federal Law

Magistrate Judge Louis finds, by preponderance of the evidence, that Defendant committed Violation Nos. 1–3, which allege violations of law in failing to register as a sexual offender under Florida Statute § 943.0435, Arkansas Code Ann. § 12-12904, and 18 U.S.C. § 2250. *See* R&R at 6–8. Florida law requires that a sex offender report within 48 hours of his intent to move from his residence. *See* R&R at 6; Fla. Stat. § 943.0435. This is also a requirement of Defendant's supervised release, as acknowledged by Defendant by signing the Florida Department of Law Enforcement Sexual Predator/ Offender Registration Forms. *See* R&R at 6. Arkansas state law requires a sex offender to register with the state within five days of moving to Arkansas. *See* Ark. Code. Ann. § 12-12-906. Defendant raises Objections One, Two and Three to these violations related to (a) the admissibility of certain hearsay testimony, and (b) the sufficiency of evidence related to Defendant's relocation to Arkansas.

1. Hearsay Testimony

First, Defendant challenges the admissibility of certain affidavits executed by records custodians with the Florida Department of Law Enforcement and the Arkansas State Sex Offender Registry on Confrontation Clause grounds. *See* Objs. at 3. The affidavits were brought into evidence to demonstrate that custodians could not locate any record of Defendant as a sexual offender in Florida and Arkansas's respective registries. *See* R&R at 6.

The Court begins by noting that Magistrate Judge Louis considered the relevant hearsay testimony conditionally during the hearing over Defendant's objection, which she later admitted through the R&R. *See* R&R at 7. In balancing Defendant's right to challenge the witnesses' degree of diligence in searching available records, against the burden and expense of presenting the witnesses to further describe their searches, Magistrate Judge Louis found that Defendant's "desire to further explore how the searches were conducted lacked any proffer that the searches undertaken were in some way inadequate." *Id.* The R&R provides that the affidavits describe with adequate specificity the searches undertaken by each affiant and each of the affiants describe their use of a database to search electronic data and conduct manual search of records. *See id.* Magistrate Judge Louis concluded that the interests of justice do not require appearance by these affiants and accordingly admitted the hearsay testimony. *See id.*

Defendant objects and argues that the Government's proffered reason for denying confrontation — the burden and expense of flying the record custodians to testify — is insufficient to outweigh Defendant's right to confront the custodian. *See* Objs. at 3. Defendant asserts that the Government did not provide any details regarding the cost of flying the custodians to attend the hearings, and notes that the witnesses could have appeared by zoom. *See id.* Defendant further contends that the Federal Rules of Evidence do not apply, despite the Government's argument (noted by Magistrate Judge Louis) that the affidavits would be admissible under Federal Rule of Evidence 803(7). *See id.* at 4; R&R at 7. Moreover, Defendant avers that even if they were admissible under Federal Rule of Evidence 803(7), the affidavits do not state that the records are "regularly kept for a matter of that kind." Objs. at 4. Defendant argues that statements made by affiants affirming that they conducted diligent electronic searches of the relevant data system are "personal" statements, which warrant cross-examination. *Id.*

The Federal Rules of Evidence do not apply in supervised release revocation proceedings. *See United States v. Frazier*, 26 F.3d 110, 114 (11th Cir. 1994). In weighing whether to admit hearsay testimony in a supervised release revocation proceeding, courts must "balance the defendant's right to confront adverse witnesses against the grounds asserted by the government for denying confrontation." *Id.* (citing *United States v. Penn*, 721 F.2d 762, 764 (11th Cir. 1983)). Moreover, the Sixth Amendment does not apply to revocation hearings. *See United States v. Reese*, 775 F.3d 1327, 1329 (11th Cir. 2015) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) ("We begin with the proposition that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.")). Rule 32.1 of the Federal Rules of Criminal Procedure requires that certain minimum due process protections be afforded to the supervisee, including the right to confront and cross-examine adverse witnesses. *Frazier*, 26 F.3d at 114.

Here, the Court agrees with Magistrate Judge Louis's conclusion that Defendant's desire to further examine the affiants here lacks any insight as to how the searches were in some way inadequate. *See* R&R at 7. Defendant's objections to the admissibility of the affidavits deviate little from the arguments presented during the hearing before Magistrate Judge Louis. Each of the affiants provided descriptions of how they use their database to locate whether an individual has properly registered as a sexual offender, in addition to their manual searches that they conduct. *See id.* Any additional details regarding the burden and expense of flying the record custodians from around the state and country to attend the hearing would have little impact on their limited purpose of describing the search procedures used in their respective registration data systems. *See id.* Moreover, Magistrate Judge Louis's findings in no way rely on the Government's argument that the affidavits would be admissible under Federal Rule of Evidence 803(7). *See* R&R at 5 (noting that the Federal Rules of Evidence do not apply in supervised release revocation proceedings). Accordingly, the Court overrules Defendant's objections with respect to the admissibility of the affidavits.

2. Defendant's Relocation to Arkansas

Second, Defendant makes several arguments that the Government did not prove by preponderance of the evidence that each element of the state and federal statutes was satisfied, specifically with respect to Defendant's intent to reside in Arkansas and the number of days Defendant was present in Arkansas at the time he was arrested. *See generally* Objs. at 1–7. The Court takes each of Defendant's objections and the relevant statutes in turn.

Under Florida Statute 943.0435, the Government must prove the Defendant's intent to establish a "permanent, temporary, or transient residence." Fla. Stat. § 943.0435. "Transient residence" is defined as where a person "lives, remains, or is located for a period of **three or more days**." *Id.* § 775.21(o) (emphasis added). Under Arkansas Code Ann. § 12-12-904, the Government must prove that a sex offender fails or refuses to provide information necessary to update their registration file under § 12-12-906. *See* Ark. Code Ann. § 12-12-904. Section 12-12-906 requires that a sex offender who moves to Arkansas registers in Arkansas "**within five days**."

Id. § 12-12-906 (emphasis added).[1] Under 18 U.S.C. § 2250, Defendant is required to appear in person in at least one jurisdiction where that offender resides to inform that jurisdiction of all changes in the information required, no later than **three business days** after each change of residence.[2]

In the R&R, Magistrate Judge Louis finds that there is sufficient evidence that Defendant intended to reside in Arkansas, in satisfaction of the above referenced statutes. *See* R&R at 8. In support, Magistrate Judge Louis points to statements Defendant made to his mother in a recorded phone call, which demonstrated he intended to leave his residence and Florida and stay in Arkansas: "I'm here in Arkansas now . . . . Here because I left; I didn't want to be home because I didn't want probation." *Id.* Defendant argues that these statements only evince that he was physically located in Arkansas and do not provide evidence that he intended to reside in Arkansas for the number of days required under each of the statutes. *See* Objs. at 2. Defendant further avers that Magistrate Judge Louis only mentioned that Defendant was "found and arrested in Arkansas, but did not register in accordance with that state's law" absent any reference to the number of days that Defendant was present in Arkansas as to satisfy each statute. *Id.* at 6.

In probation revocation hearings, a court must only find a defendant violated a condition of supervised release by a preponderance of the evidence, rather than beyond a reasonable doubt.

[1] With respect to Defendant's objections related to the Arkansas statute, Defendant indicates that the Petition and the R&R cite Arkansas Code Ann. § 12-12-904, while subchapter § 12-12-906 contains the relevant registration requirements. *See* Objs. at 5. Defendant states that § 12-12-906 is the proper subchapter that "was referenced and discussed at the hearing." *Id.* After a review of the record, § 12-12-906 was not referenced at the hearing, nor was any discussion of the requirement that Defendant be present in Arkansas for five days in order to violate the statute. *See generally* (ECF No. 211).

[2] For the elements of an offense under 18 U.S.C. § 2250, the Government relied upon the court's instructions to the jury in *United States v. McGee*, Case No. 22-CR-20543 (S.D. Fla.), ECF No. 47.

18 U.S.C. § 3583(e)(3); *see also Johnson v. United States*, 529 U.S. 694, 700 (2000) (noting that, even though such violations can lead to imprisonment, the violation need not be criminal). Here, while the R&R does not indicate the number of days Defendant was present in Arkansas, the Court finds that there is sufficient evidence in the record to conclude that Defendant intended to reside in Arkansas and was physically there for the requisite days. As noted above, the Government introduced two emails at the evidentiary hearing that were sent to a rabbi on June 6, 2023 and June 7, 2023 by "roay.ramirez@gmail.com," one of which states that the author of the emails is unquestionably Defendant: "Before I continue I want to tell you my real name it is Amaury Rodriguez." R&R at 5. The Government further established that the emails were sent to a rabbi in Elm Spring, Arkansas, which is in Washington County, the County where Defendant was arrested on or about June, 15, 2023. *See* (ECF No. 211) at 105. While Defendant was incarcerated in Arkansas, Defendant made the relevant statements to his mother, as mentioned in the R&R: "I'm here in Arkansas now . . . . Here because I left; I didn't want to be home because I didn't want probation." R&R at 8. The Government avers that based on the dates of the emails and arrest, along with the location of the rabbi and Defendant at the time of the arrest, there is, by preponderance of the evidence, proof that Defendant "was in Arkansas from June 6th through his arrest on June 15th," a sufficient period of time in the state to satisfy each of the statutes. (ECF No. 211) at 105.

The Court agrees. After a review of the record, the Court finds no basis to disturb Magistrate Judge Louis's determinations. Accordingly, the Court ADOPTS Magistrate Judge Louis's findings that Defendant committed Violation Nos. 1, 2 and 3 as alleged in the Superseding Petition.

B. Violation 4: Obstructing government operations in violation of Arkansas Code Ann. § 5-54-102

Magistrate Judge Louis does not recommend that the Court find that Defendant committed Violation No. 4, which alleges the offense of obstructing governmental operations in violation of Arkansas Code Ann. § 5-54-102. *See* R&R at 9. Specifically, the R&R states that the Government only provided Officer Gravie's testimony that he learned from a police report that Defendant was arrested in Arkansas for providing an alias. *Id.* at 9. Magistrate Judge Louis concludes that such testimony does not establish that Defendant committed the alleged violation, but "only that it was the basis of his arrest." *Id.* Neither Party objects to this finding. This Court agrees and accordingly ADOPTS Magistrate Judge Louis's finding that Defendant did not commit Violation No. 4.

C. Violations 5 and 6: Notice and Permission with respect to the United States Probation Office

Violation No. 5 alleges that Defendant violated a standard condition of his supervised release by failing to notify the United States Probation Office of a change in residence on May 5, 2023. *See* R&R at 9. Violation No. 6 alleges that Defendant violated a standard condition of his supervised release by leaving the judicial district without first securing permission from his probation officer on June 15, 2023 in traveling to Arkansas. *See id.* In the R&R., Magistrate Judge Louis finds that these violations are proven, by preponderance of the evidence, by Officer Gravie's "unimpeached testimony that Defendant did not seek his permission to leave his residence or the District and the evidence that he found in Arkansas." *Id.*

Defendant objects to the R&R's findings with respect to Violation No. 5. Defendant argues that Officer's Gravie's testimony does not establish that Defendant moved from his residence in Miami, noting that there is a distinction between traveling from one place to another, and changing one's residence. *See* Objs. at 7. Yet, even absent any direct testimony from Officer Gravie on

Defendant's move, Magistrate Judge Louis has already provided authority from the hearing to suggest that Defendant moved and intended to move his residence to Arkansas based on Defendant's own words: "I'm here in Arkansas now . . . . Here because I left; I didn't want to be home because I didn't want probation." R&R at 5. Accordingly, the Court ADOPTS Magistrate Judge Louis's finding that Defendant committed Violation No. 5. As to Violation No. 6, neither party objects to the R&R's findings and the Court finds no clear error with the Magistrate Judge's conclusions.

D. Violations 7 and 8: Violations Regarding Participation in Treatment Programs

Violation No. 7 alleges that Defendant violated a special condition of his supervised release by failing to participate in an approved mental health treatment program since May 5, 2023. *See* R&R at 9. Violation No. 8 alleges that Defendant violated a special condition of his supervised release by failing to participate in a sex offender treatment program to include psychological testing and polygraph examination on May 8, 2023. *See id.* During the hearing, Defendant objected to the hearsay evidence predicating both violations, which includes the statements of witnesses who told Officer Gravie that Defendant failed to appear for his treatment programs and were not presented at the hearing. *See id.* In the R&R, Magistrate Judge Louis considered this testimony over Defendant's objection to the Government's failure to present these witnesses. *See id.* Magistrate Judge Louis found that justice did not require their appearance to establish that Defendant failed to participate in the required mental health and sex offender treatment programs, given Officer Gravie's testimony focused on his personal continued search for Defendant. *See id.*

Defendant's objections, again, deviate little from the arguments presented during the hearing before Magistrate Judge Louis. Regarding Violation No. 7, Defendant argues that Officer Gravie's testimony that he spoke with Defendant's treating physician, does not establish that

Defendant failed to attend his scheduled appointments, nor was there any testimony as to when or how often Defendant was scheduled to attend such treatment. *See* Objs. at 8. Regarding Violation 8, Defendant argues that the Government provided no reason why they could not produce Defendant's sex offender treatment provider and failed to conduct the required balancing test under *Frazier* to demonstrate good cause for not producing the provider. *See id.*

As stated above, in weighing whether to admit hearsay testimony in a supervised release revocation proceeding, courts must "balance the defendant's right to confront adverse witnesses against the grounds asserted by the government for denying confrontation." *Frazier*, 26 F.3d at 114 (citing *United States v. Penn*, 721 F.2d 762, 764 (11th Cir. 1983)). Here, Magistrate Judge Louis's review of the evidence largely relies not on the hearsay evidence, but rather the specific steps Officer Gravie took to find Defendant after he failed to find him at home check, as recounted in his testimony. *See* R&R at 9. Such testimony includes his contact with the treatment providers who had regular scheduled treatment, along with his inquiry into whether Defendant attended his treatments as scheduled. *See id.* Magistrate Judge Louis's findings relied on Officer Gravie's own conduct, rather than the hearsay testimony. This Court agrees that justice did not require their appearance and ADOPTS Magistrate Judge Louis's findings that Defendant committed Violations 7 and 8.

E. Violation 9: Use of a Computer with Internal, External, or Wireless Modem

Violation No. 9 alleges that Defendant violated a special condition of his supervised release by possessing or using a computer that contains an internal, external, or wireless modem on June 6 and 7, 2023. *See* R&R at 5. In the R&R, Magistrate Judge Louis accepted Officer Gravie's testimony that he is familiar with Defendant's history of religiousness (as provided in his emails), and Officer Gravie's identification of Defendant as the likely author of the emails. *See* R&R at

10. Defendant objects, stating that even if he was the "likely author," it does not prove that he used or possessed a computer, nor was their evidence he had a cell phone or computer on his person. Objs. at 9.

After a review of the record, the Court agrees with Magistrate Judge Louis's findings. In addition to the testimony from Officer Gravie that Defendant was the likely author of the emails, the Government noted during the hearing that in Defendant's phone call to his mother, he indicates that he has been preaching on different social media accounts, all of which require the use of a computer. *See* (ECF No. 211) at 102. Accordingly, the Court ADOPTS Magistrate Judge Louis's findings that Defendant committed Violations 7 and 8.

F. Violation 10: Sex Offender Registration and Notification Act Requirements

Lastly, Violation No. 10 alleges that Defendant violated a special condition of his supervised release by failing to abide by the requirements of the Sex Offender Registration and Notification Act ("SONRA") by not reporting any intended departure or termination of residence in Miami Dade County, Florida on May 5, 2023 and June 15, 2023. *See* R&R at 5. The Superseding Petition and R&R cite to 42 USC §1690, *et. seq.*, a statute, which Defendant avers at the hearing and in his objection "no longer exists." Objs. at 10. In the R&R, Magistrate Judge Louis explains that Violation No. 10 does not allege a failure to refrain from violating the law, but rather concerns a special condition of release, which is set forth in the Florida Department of Law Enforcement Sexual Predator/ Offender Registration Forms, signed by Defendant. *See* R&R at 11.

Defendant objects to this finding, and argues that the aforementioned registration form does not appear in Violation 10, nor does Magistrate Judge Louis "explain how Mr. Rodriguez violated a registration form." Objs. at 10. However, Magistrate Judge Louis provides, and this

Court agrees, that it is a condition of SORNA to report any intended departure or termination of residence in Miami-Dad, Florida. *See* R&R at 11. The registration form evidences that special condition, which Defendant signed and agreed to. *See id.* This Court also agrees with Magistrate Judge Louis's findings that Defendant's departure from his Florida residence without registering his intent to depart, together with his relocation to Arkansas, were demonstrated in satisfaction of Violations 1–3. As such, this court ADOPTS Magistrate Judge Louis's finding that Defendant committed Violation No. 10.

IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Superseding Petition, the R&R, the Objection, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Magistrate Judge Louis's R&R (ECF No. 214) is ADOPTED. Defendant's Objections (ECF No. 218) are OVERRULED. The Court finds that Defendant committed the alleged Violations Nos. 1–3 and 5–10. A Final Revocation Hearing will be set by separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of May 2024.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-CR-20608-MOORE

UNITED STATES OF AMERICA,

vs.

AMAURY RODRIGUEZ,

Defendant.
_______________________________/

JUDGMENT FOR REVOCATION

THIS CAUSE came before the Court for a hearing on June 6, 2024, on Ten (10) violations of supervised release.

The Court has carefully considered the statements of all parties and the information contained in the violation report. The Court finds that the defendant has violated the terms and conditions of supervised release and hereby REVOKES the period of supervised release. It is

ORDERED AND ADJUDGED that the defendant is committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Twenty-four (24) months. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of Life.

While on supervised release, the defendant shall not commit any Federal, State, or local crime and shall be prohibited from possessing a firearm or other dangerous device and shall not possess a controlled substance. In addition, the defendant shall comply with the standard conditions of supervised release that have been adopted by this Court.

All previous conditions remain in full force and effect with the added special condition the defendant shall: 1) participate in the Location Monitoring Program for a period not to exceed 180 days. During this time, the defendant shall remain at his/her place of residence, except for employment and other activities approved in advance, and provide the U.S. Probation officer with requested documentation. The defendant shall maintain a telephone at his/her place of residence without “call forwarding”, “call waiting”, a modem, “caller ID”, or “call back/call block” services for the above period. The defendant shall wear a location monitoring device and follow the location monitoring procedures as instructed by the U.S. Probation Officer. The defendant shall pay for the location monitoring equipment at the prevailing rate, or in accordance with his/her ability to pay.

The Court recommends the defendant be designated to a facility in south Fla. or as close as possible. Defendant was advised of his rights of appeal.

DONE AND ORDERED in Chambers, at Miami, Florida, this 6th day of June 2024.

K. M. Moore

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

APPENDIX D

United States District Court
Southern District of Florida
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

AMAURY RODRIGUEZ

JUDGMENT IN A CRIMINAL CASE

Case Number - 1:09-20608-CR-JORDAN-

USM Number: 82621-004

Counsel For Defendant: Joel DeFabio, Esq.
Counsel For The United States: Brent Tantillo, AUSA
Court Reporter: Francine Salopek

The defendant pleaded guilty to Count(s) One of the Information.
The defendant is adjudicated guilty of the following offense(s):

TITLE/SECTION NUMBER	**NATURE OF OFFENSE**	**OFFENSE ENDED**	**COUNT**
18 U.S.C., Section 2252(a)(2)	Distribution of child pornography	May 11, 2006	One

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

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 any material changes in economic circumstances.

Date of Imposition of Sentence:
1/15/2010

Adalberto Jordan

ADALBERTO JORDAN
United States District Judge

January 19, 2010

DEFENDANT: AMAURY RODRIGUEZ
CASE NUMBER: 1:09-20608-CR-JORDAN-

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **72 months.**

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

The Court recommends that the defendant serve both sentences in a federal institution so he can receive sex offender treatment.

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

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 U.S. Marshal

DEFENDANT: AMAURY RODRIGUEZ
CASE NUMBER: 1:09-20608-CR-JORDAN-

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **84 months.**

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

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

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

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: AMAURY RODRIGUEZ
CASE NUMBER: 1:09-20608-CR-JORDAN-

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Adam Walsh Act Search Condition - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Computer Activity Recordkeeping Requirement - The defendant shall maintain a daily log of all addresses or sites accessed via any personal computer (or other computer used by the defendant), other than for authorized employment, and make this log available to the U.S. Probation Officer.

Computer Modem Restriction - The defendant shall not possess or use a computer that contains an internal, external or wireless modem without the prior approval of the Court.

Computer Possession Restriction - The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

Employer Computer Restriction Disclosure - The defendant shall permit third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon the defendant.

Employment Requirement - The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

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

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors - The defendant shall have no personal, mail, telephone, or computer contact with children/minors except for relatives with adult supervision, under the age of 18 or with the victim.

No Contact with Minors in Employment - The defendant shall not be employed in a job requiring contact with children under the age of 18 or with the victim.

No Involvement in Youth Organizations - The defendant shall not be involved in any children's or youth organization.

Permissible Computer Examination - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced examinations of the defendant's computer(s) equipment which may include retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Restricted from Possession of Sexual Materials - The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Sex Offender Treatment - The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Sex Offender Registration: The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C., § 1690, et seq.) As directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she reside, works, is a student, or was convicted of a qualifying offence.

DEFENDANT: AMAURY RODRIGUEZ
CASE NUMBER: 1:09-20608-CR-JORDAN-

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment	Total Fine	Total Restitution
$100.00	$	$

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

DEFENDANT: AMAURY RODRIGUEZ
CASE NUMBER: 1:09-20608-CR-JORDAN-

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of **$100.00** due immediately, balance due

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

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

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

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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

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