No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Harold Bennie Kaeding,

Petitioner,

v.

United States of America,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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United States Court of Appeals
For the Eighth Circuit

No. 24-3462

United States of America

Plaintiff - Appellee

v.

Harold Bennie Kaeding

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota

Submitted: October 21, 2025
Filed: March 27, 2025

Before SMITH, KELLY, and GRASZ, Circuit Judges.

SMITH, Circuit Judge.

Harold Kaeding appeals his conviction and 87-month sentence arising from his COVID-19 related loan fraud. Kaeding challenges the district court's[1] denial of his motion to suppress, the waiver of his right to counsel, whether he received a fair trial, and a sentencing enhancement for obstruction of justice. We affirm.

[1]The Honorable Eric C. Tostrud, United States District Judge for the District of Minnesota.

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I. *Background*

A. *Pre-Detention*

In response to COVID-19, Congress passed the Coronavirus Aid, Relief, and Economic Safety Act, which included a Paycheck Protection Program (PPP) administered by the Small Business Administration (SBA). The PPP allowed businesses to borrow funds from banks for use with short-term payroll obligations. In addition, the SBA would repay the loans for the business. Loan terms required the borrowers to make multiple sworn representations about themselves and their businesses under the penalty of perjury. Similarly, the SBA provided and repaid Economic Injury Disaster Loans (EIDL) connected to COVID-19.

Between March and June 2020, Kaeding, along with his wife and son, applied for eight PPP loans and four EIDL. Kaeding provided false information for companies that were inactive or otherwise did not comply with the loan requirements. He supported the applications with forged tax and bank documents. Based on these misleading submissions, lenders approved and provided $504,090 in PPP funds. Lenders disapproved or rejected five additional PPP loan applications, totaling $1,362,435. Similarly, Kaeding submitted four EIDL applications with similar false information. Only one company seeking an EIDL generated revenue, but less than claimed in the application. Banks provided an additional $154,400 to Kaeding based on EIDL applications.

The scheme unraveled when a lender reviewing one of Kaeding's PPP applications suspected that it contained false information and notified law enforcement. Law enforcement then reviewed the applications and noticed that all the applications originated from Kaeding's address, despite listing separate applicants. Those applicants included Kaeding, his wife, and his son.

On January 13, 2021, around 6:00 a.m., a team of approximately 17 law enforcement officers conducted a warrant-authorized search of Kaeding's residence. Law enforcement arrived at the residence, knocked on the door, and displayed their credentials. Kaeding's wife refused to open the door and retreated into the house.

The officers' concern for their safety and potential evidence destruction heightened. The officers then forced the door open and entered with their guns drawn while securing the house.

As the home search proceeded, two FBI personnel—a special agent and a forensic accountant—asked Kaeding to speak with them. After Kaeding put his hearing aids in, the officers informed him that he was not under arrest and that he was free to leave. The agent, however, added the caveat "unless we discover some other crime that's already occurred." R. Doc. 123, at 48. The officers told Kaeding that he did not have to talk, but that if he did answer a question, he must speak truthfully or risk criminal charges. *See* 18 U.S.C. § 1001. Kaeding signed a form confirming his awareness of the consequences of false statements to officers.

Kaeding ultimately spoke with the agents. He answered some questions but declined to answer others. Kaeding was not handcuffed or otherwise physically restrained, and the FBI personnels' firearms remained holstered. At the end of the interview, Kaeding took some medicine, went to his recliner, asked for and received a pillow and blanket, and fell asleep. At no point was Kaeding placed under arrest or restricted in his movement around the house. During the search, the officers reviewed bank account statements. The statements revealed proceeds from the fraud scheme.

After the house search, Kaeding obtained legal counsel, began plea negotiations with the government, and submitted a proffer. The proffer stated that Kaeding was responsible for the loan application submissions, that the submissions included false information, and that neither his son nor wife were aware of the applications submitted in their names. The proffer, however, did not lead to a plea agreement.

In April 2021, days after rejecting a plea offer, Kaeding flew to Colombia alone. Law enforcement, Kaeding's prior defense counsel, and Kaeding's family urged Kaeding to return to the United States voluntarily. He did not. Law

enforcement obtained Colombian assistance to find, apprehend, and eventually extradite Kaeding.

Colombian immigration officials eventually located and visited Kaeding in November 2021. During this visit, Kaeding agreed to meet them at the immigration office, but he failed to appear. He was later apprehended and returned to the United States after a contested extradition. Due to his Colombian abscondment, the magistrate judge ordered Kaeding detained pending further proceedings.

In March 2022, while Kaeding was in custody, the grand jury subpoenaed his daughter to produce items such as documents and devices that she held for her father. The government took possession of, but did not examine, the electronic devices and agreed not to do so without a search warrant.

B. *Motions Practice and Pretrial Hearings*

Shortly after his first appearance in Minnesota, Kaeding filed multiple motions. Through counsel, Lee Johnson and Karen Mohrlant, Kaeding requested and was granted five continuances to file pretrial motions and hold a pretrial motion hearing. Then, on October 3, 2022, Kaeding sent a letter to the district court and the government, stating, "I am firing Lee Johnson as my attorney effective October 6, 2023. At this time it is not my intension [sic] or am I ready to proceed with this trial." R. Doc. 62, at 1. At the motions hearing, Kaeding's second counsel, Mohrlant, explained that Kaeding wanted his letter to be construed as a motion to substitute counsel. On October 14, 2022, Kaeding, through Mohrlant, filed pretrial motions, including three motions to suppress. Relevant to this appeal, Kaeding requested to suppress his statements made during the interview at his house during the execution of the search warrant. The motion alleged that law enforcement violated his Fourth Amendment rights by not reading him his *Miranda*[2] rights before questioning him in custody.

[2]*Miranda v. Arizona*, 384 U.S. 436 (1966).

On November 4, 2022, Kaeding's counsel filed a motion for reconsideration of detention due to medical concerns. On February 28, 2023, the magistrate judge denied this request but ordered his transfer from an out-of-state facility to the Federal Medical Center in Rochester, Minnesota.

On April 28, 2023, the court held a hearing, which among other things, addressed the status of Kaeding's representation. The magistrate judge declined to replace Johnson as one of Kaeding's attorneys. Over the next few months Kaeding continued to express displeasure with Johnson's representation.

The magistrate judge recommended that the district court deny the motions to suppress based on its conclusion that Kaeding was not in custody when interviewed in his home. Consequently, no *Miranda* warning was required and thus the questioning did not violate Kaeding's constitutional rights. It further found that Kaeding made voluntary statements to the interviewers. It then found that the search warrant was not based on stale information. The magistrate judge also declined to suppress the property seized from Kaeding's daughter's possession. The district court accepted the magistrate judge's report and recommendation and denied the three motions to suppress.

C. *Motions to Withdraw and* Faretta[3] *Hearings*

The pretrial process took a consequential turn on August 2, 2023. On that date, Kaeding directed his counsel to file a motion to withdraw and allow Kaeding to represent himself. The magistrate judge held a *Faretta* hearing on August 14, 2023. At the hearing, Mohrlant explained that Kaeding wanted hybrid counsel that would enable him to file his own pleadings with standby counsel following his directions. Mohrlant found this type of arrangement "fraught with danger." R. Doc. 156, at 6.

The magistrate judge addressed Kaeding's understanding of standby counsel's role and thoroughly outlined the pitfalls of self-representation:

[3]*Faretta v. California*, 422 U.S. 806 (1975).

> If you are going to represent yourself, you are going to represent yourself, and that means that you will do your own research, your own writing, make your own strategic decisions, and question witnesses and make arguments to the Court and to the jury.
>
> Standby counsel would be in the courtroom and would be available for consultation, but you are not—you are describing a situation that looks like a client who wants to have more control than they have right now, and that's understandable but that's also a matter to be discussed with your lawyers and not—I mean, I don't see you actually asking to represent yourself as the way I understand, at least, self-representation.

Id. at 14–15. Kaeding responded:

> I definitely want to represent myself. I have been working with these lawyers for the past year and a half and we're not making any progress. So, like I say, I have a very, very thorough understanding of what the issues are so I can work through the other difficulties. But, yes, I definitely want to represent myself.

Id. at 15. Further discussion within the *Faretta* hearing subsequently continued:

> THE COURT: All right. Mr. Kaeding, I will be expecting you to write whatever is submitted by the defense to the Court. Certainly Ms. —I will order, you know, if the motion is granted, part of it would be directing Ms. Mohrlant, Mr. Johnson to do supporting legal research, but you would have to provide them with the framework that they could then do the research on. I would not want standby counsel to be asking questions of witnesses at trial. That's on you.
>
> With those expectations, Mr. Kaeding, do you still wish to represent yourself?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Mr. Kaeding, I must tell you I think this is a terrible idea. I think that a trained lawyer, trained and experienced lawyer, will do a far better job of defending this case than you can do

yourself. I think it is unwise of you to try to represent yourself. You are not familiar with the law. You are not familiar with the rules. You are not familiar with court procedure. You have never tried a case before. I strongly urge you to reconsider this idea.

. . .

THE COURT: So, Mr. Kaeding, having heard everything that's been discussed here today, and in light of the serious penalties that you might suffer if you are found guilty of even some of the alleged crimes in the Superseding Indictment, and in light of all the difficulties of representing yourself, do you still want to give up your constitutional right to be represented by a lawyer and to go forward representing yourself?

THE DEFENDANT: One factor I guess I would like the Court to be aware of is that any sentence is likely to be a life sentence for me. So I can say that the issue is the sentencing isn't such a big concern because, like I say, any sentence would probably be a life sentence. But, yes, I still want to represent myself.

THE COURT: Has anyone threatened you to make you give up your right to counsel? I want to make sure this is voluntary.

THE DEFENDANT: I don't understand the question.

. . .

THE COURT: All right. Let me ask the question again. Has anyone threatened you or made promises to you to get you to give up your right to counsel?

THE DEFENDANT: No.

THE COURT: Is there any reason I ought to be concerned about your ability to make an important decision like this one?

THE DEFENDANT: No.

THE COURT: Is your decision entirely voluntary?

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THE DEFENDANT: Yes.

THE COURT: All right. All right, Mr. Kaeding, I find that you have knowingly and voluntarily waived your constitutional right to be represented by a lawyer. I will permit you to represent yourself. I will appoint Ms. Mohrlant as standby counsel. Ms. Mohrlant will accept drafts of things that you are wanting to file with the Court. She is not obligated to give legal input on whether these filings are wise or unwise, but she will do research in order that the points you are making are supported by the law, if in fact they are. Ms. Mohrlant, however, will not sign these pleadings and will not be responsible for their content.

Id. at 21–26. After indicating it would grant the motion for self-representation, the court directed that court-appointed counsel remain on stand-by and assist with certain ministerial tasks, including filing documents and performing requested legal research.

Kaeding then filed a motion to reconsider his pretrial detention, seek accommodations for trial, and obtain internet access for filing and serving documents. The magistrate judge rejected the request for an indefinite stay of the proceedings. With respect to internet access, the magistrate judge specifically held that "access to a computer with specific applications for several hours a day is not required for Mr. Kaeding to prepare for trial. Mr. Kaeding may review trial materials without a computer." R. Doc. 175, at 23.

In response to the order, the government recopied all disclosures under Federal Rule of Civil Procedure 16 that it previously provided to defense counsel and had those materials delivered to Kaeding on February 9, 2024.

On March 8, 2024, the district court held a pretrial hearing and further inquired of Kaeding under *Faretta*:

Q. Okay. Do you understand, Mr. Kaeding, that you have the right to be represented by an attorney in this case, either a lawyer who you hire

or, if you cannot afford to hire a lawyer, then by one appointed to represent you at no cost to you?

Do you understand that?

A. Yes.

Q. And in this case do you understand that Judge Docherty, had you not made this decision, has appointed two lawyers to represent you at no cost to you?

Do you understand that?

A. Yes.

Q. Okay. Let me sort of walk through a series of questions that I think implicate or try to demonstrate, Mr. Kaeding, to you the challenges that a pro se defendant in a criminal case faces.

The law can be difficult. You know, several sets of rules govern a criminal trial. There are Rules of Criminal Procedure, there are Rules of Evidence, and statutes and so forth. Attorneys are trained and have experience in these areas.

Do you understand that?

A. Yes.

Q. Okay. And as I understand it, Mr. Kaeding, you do not have training in these areas, is that correct?

A. Correct.

Q. Okay. Presenting a persuasive argument can be difficult. It requires one to synthesize a case's facts and the law and account for the jurors' perspectives to advance a client's position most effectively. Again, lawyers have training in that area and non-lawyers don't.

Do you understand that?

A. Yes.

Q. Okay. And knowing how to respond to objections or arguments the Government makes can be difficult.

In trial or a hearing, for example, a lawyer has the education, training and experience to think on her feet and respond in the moment. We don't have the time particularly in a trial, at least ordinarily, to recess and come back and give someone the time to think through how they might best respond to an argument or a question or an issue. Again, that kind of thinking on one's feet is something that lawyers are trained to do and they have experience doing it and that experience is unique to them.

Do you understand that?

A. Yes.

Q. Okay. So do you understand, I guess, Mr. Kaeding that the right to representation by counsel is a valuable right?

A. Yes, I do. My concern is that this case is unique and only I know the unique aspects of many of the things that we're going to talk about.

Q. All right. But you understand that in general, the right to counsel is a valuable right that is really cherished in our criminal justice system?

A. In general, yes.

. . .

Q. Do you understand, sir, that it's possible at trial that you might not think to make an argument or you might miss an argument that you should have made, or that a lawyer might have very well have made if a lawyer had represented you?

A. Again, this is where my familiarity with the case is more important. A lawyer wouldn't know all the details facing with this PPP process, so I would be better able to catch an argument or make an argument than an attorney would because they haven't studied this and don't know the details as well as I do.

Q. Do you mean the facts, or do you mean the law, or do you mean both?

A. No, I mean the facts relevant to the case.

Q. All right. Do you understand, sir, that it's very possible that you might miss an argument the law gives you the ability to make?

A. I understand that.

Q. Okay. So—well, let me ask the sort of flip side of the coin. Do you understand that there's a risk here that if you say something or present an argument that a lawyer would think unwise, you may do something disadvantageous to yourself?

(Pause)

A. I understand that.

Q. So the bottom line, then, Mr. Kaeding, at least on this topic that we are talking about here, is that while you have the constitutional right to self-representation, you understand that it's very possible here that that might lead to a worse outcome or result than you might have obtained had you been represented by counsel?

Do you understand that?

A. I understand that.

. . .

Q. And you know that I—you probably can tell from the tone of or the nature of the questions that I'm asking you that I think that this is a bad idea.

A. Yes. I've been told that by a magistrate as well.

Q. And you are nonetheless insistent on exercising your constitutional right, which you have, to represent yourself in this case?

A. Yes, Your Honor.

Q. Okay.

R. Doc. 201, at 8–19. Based on this discussion, the district court found that Kaeding knowingly, voluntarily, and intelligently waived his right to counsel.

Also, during this hearing, the court addressed Kaeding's discovery concerns, including his request for a continuance to complete discovery. Kaeding claimed that certain discovery information was lost in transport and he was unable to access evidence seized from his daughter. In reply, the district court encouraged Kaeding to work with the government to obtain that information. The district court then granted Kaeding a 30-day continuance to July 22, 2024. The district court also ordered an independent medical examination for Kaeding.

D. *Trial and Sentencing*

Trial began on July 22, 2024, with the district court addressing the government's motion to substitute the transcription services with a headset to obviate transcription. Based on evidence of Kaeding's prison phone calls, the court granted the government's motion and provided Kaeding a headset rather than live transcription for the remainder of the trial.

The government called seven witnesses. These included the interviewing officer during the search of Kaeding's home. The officer played clips from the interview with Kaeding. During a break in cross-examination of the government's final witness, Kaeding requested that one of his standby counsels be reappointed, and the district court granted that request and reappointed both standby counsel.

On July 30, 2024, standby counsel filed a motion asserting Kaeding's Fifth and Sixth Amendment rights had been violated. The district court denied this motion for failing to describe the specific relief sought and because the motion's factual assertions were not credible. After being reappointed, Kaeding's counsel moved for

a mistrial, which the court denied. After the government rested, Kaeding took the stand. Following the close of trial, the jury found Kaeding guilty on all charges.

The probation office's presentence report (PSR) suggested an enhancement under U.S.S.G. § 3C1.1 for obstruction of justice. The PSR concluded that Kaeding's travel to, and continued stay in, Colombia constituted willful and deliberate conduct attempting to "obstruct or impede, the administration of justice with respect to the . . . prosecution . . . of the instant offense of conviction." U.S.S.G. 3C1.1. Kaeding objected to this enhancement. The court overruled the objection.

At sentencing, the district court imposed a total sentence of 87 months' imprisonment. This sentence included concurrent sentences of 63 months' imprisonment for wire fraud and money laundering and an additional 24 months' imprisonment for the aggravated identity theft convictions.

II. *Discussion*

On appeal, Kaeding brings a series of challenges. First, Kaeding challenges the district court's denial of the motion to suppress in relation to his interview with federal agents during the initial search. Second, Kaeding challenges the waiver of his right to counsel and whether it was voluntary. Third, Kaeding challenges his right to a fair trial, specifically regarding the district court's denial of his continuance request, and the denial of certain services leading up to trial and during trial. Fourth, Kaeding challenges the district court's application of the obstruction-of-justice sentencing enhancement.

A. *Motion to Suppress*

In reviewing a motion to suppress a statement, we review "any factual findings for clear error but consider de novo whether [a defendant's] right to counsel had attached." *United States v. Duggar*, 76 F.4th 788, 792 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 2685 (2024). *Miranda* requires law enforcement to notify arrestees of certain rights prior to taking them into custody and interrogating them. 384 U.S. at 478–79. An individual is in custody for *Miranda* purposes only when "there is a

formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *United States v. Czichray*, 378 F.3d 822, 826 (8th Cir. 2004) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). To determine whether one is in custody we "consider the totality of the circumstances that confronted the defendant at the time of questioning, and inquire whether a reasonable person would have felt that he or she was free to terminate the interview and leave." *United States v. Williams*, 760 F.3d 811, 814 (2014).

We have identified six factors consistently considered in determining whether a defendant was in custody:

> (1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning.

United States v. Griffin, 922 F.2d 1343, 1349 (8th Cir. 1990). "The first three indicia are mitigating factors which, if present, mitigate against the existence of custody at the time of questioning. Conversely, the last three indicia are aggravating factors which, if present, aggravate the existence of custody." *United States v. Axsom*, 289 F.3d 496, 500–01 (8th Cir. 2002).

Kaeding asserts that police presence dominated the interview. He notes that they required him to have a police escort to use the restroom. Kaeding also highlights two law enforcement statements during the search. First, agents told Kaeding that he may be arrested if they developed evidence of another crime during the search. Second, they told Kaeding that he would be committing a crime if he did speak not truthfully. The government acknowledges that the police-dominated-environment

factor may favor custody, but it avers that all other factors weigh against custody. The magistrate judge viewed the record similarly, finding that Kaeding was not in custody at the time of the interview.

Upon review, we conclude that Kaeding was not in custody at the time of the interview in his home. The facts resemble two of our prior cases in which we held that the defendants were not in custody. *United States v. Sandell*, 27 F.4th 625 (8th Cir. 2022); *United States v. Ricker*, 983 F.3d 987 (8th Cir. 2020). In those cases, the defendants were told that they were free to end the conversation, were not being arrested, and were not physically restrained. *Sandell*, 27 F.4th at 629–30 (holding all six factors weighed against custody where there were four officers present and defendant was never handcuffed or restrained, even though officers followed him while moving around the house); *Ricker*, 983 F.3d at 993 (holding defendant was not in custody where only two officers had meaningful interaction with defendant and that defendant was free to end the conversation at any time, even though defendant was not allowed to move freely throughout the home). A police-dominated setting is not dispositive when other factors weigh substantially against a finding of custody for interrogation purposes.

B. *Waiver of Right to Counsel*

"Whether a defendant waived his Sixth Amendment right to counsel involves a mixed question of law and fact, which we review *de novo*." *United States v. Lemicy*, 122 F.4th 298, 305 (8th Cir. 2024). We will affirm the grant of a defendant's motion to represent himself at trial "if the record shows either that the court adequately warned him or that, under all the circumstances, he knew and understood the dangers and disadvantages of self representation." *United States v. Patterson*, 140 F.3d 767, 774–75 (8th Cir. 1998).

The Sixth Amendment's right to counsel "necessarily implies the right of self-representation." *Faretta*, 422 U.S. at 832. Through self-representation, the defendant "relinquishes . . . many of the traditional benefits associated with the right to counsel." *Id*. at 835. Thus, "to represent himself, the accused must knowingly and

intelligently forgo those relinquished benefits." *Id*. (citation modified). And while "a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation," the court should still make the defendant "aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Id*. (quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279 (1942)).

Kaeding contends that the poor performance of his appointed counsel necessitated his decision to represent himself. He chose to do so only after the district court denied his motion for substitute counsel. He thus claims his "decision to represent himself was not truly voluntary, but rather the product of the Hobson's choice of being represented by an attorney he did not like or trust or proceeding *pro se*." Appellant's Br. 44. Kaeding does not contend that his appointed counsel was unprepared, only that he was frustrated with their performance. The record shows that Kaeding and counsel did have disagreements. It does not, however, show that counsel was either unprepared, uncooperative, or ineffective.

The government points to our caselaw describing the "Hobson's choice" between adequate representation and self-representation as not constitutionally difficult. *See United States v. Ladoucer*, 573 F.3d 628, 634 (8th Cir. 2009). *Ladoucer* recognizes that unprepared counsel is cause for concern, but Kaeding did not show that his counsel was unprepared. Being "represented by an attorney he did not like or trust" does not rise to the level of having unprepared counsel, particularly where facts do not support the dislike and distrust, nor did they show a negative impact upon the representation provided. The magistrate judge observed that Johnson did good work for Kaeding. Kaeding's displeasure that Johnson did not do all he requested, without more, is not inadequate representation.

Further, both the magistrate judge and the district court judge conducted in-depth *Faretta* inquiries, consistently warning Kaeding that representing himself was a "bad idea" and that he would face challenges trying to prepare while being

imprisoned. However, Kaeding adamantly maintained that he wanted to represent himself, despite recognizing both judges believed it was unwise.

We conclude that the district court's decision allowing defendant to represent himself following a thorough *Faretta* inquiry should be upheld. *See United States v. Woods*, 137 F.4th 900, 906–07 (8th Cir. 2025) (holding that a *Faretta* inquiry was sufficient where the district court advised defendant against proceeding pro se, notified him of certain limitations on discovery, and did not notify defendant of the limits of standby counsel). Additionally, there is no evidence that Johnson was either unprepared or ineffective in his role as counsel. Thus, there was no constitutional violation in allowing him to remain as counsel.

C. *Right to a Fair Trial*

Kaeding argues that the district court's denial of his motion for a continuance and motions for change of custody amounted to constitutional violations because the denial prevented him from receiving a fair trial. He also argues that the denial of the transcription services prejudiced him and furthered his unfair trial.[4]

1. *Denied Continuance*

We will not overturn a trial court's continuance denial unless it has abused its discretion. *United States v. Weisman*, 858 F.2d 389, 391 (8th Cir. 1988) (citing *United States v. Wolf*, 645 F.2d 665, 667 (8th Cir. 1981)). "Continuances are not favored and should be granted only when a compelling reason has been shown." *Id.*

[4]The government raises concern that Kaeding did not move for a new trial prior to his notice of appeal. It argues that the remedy for failure to grant a continuance or a particular trial accommodation would be a retrial, but that by failing to seek a new trial, the defendant forfeited those arguments. As a result, the government argues that we should review the district court's failure to grant sua sponte a new trial for plain error. *See United States v. Ruzicka*, 988 F.3d 997, 1007 (8th Cir. 2021) (citing *United States v. Calhoun*, 721 F.3d 596, 600 (8th Cir. 2013)). Kaeding does not address this in his reply. Because we find that the district court did not abuse its discretion in denying Kaeding's request, we decline to address whether the district court should have granted a new trial on these issues.

When determining whether to grant a continuance, district courts "must balance the asserted need for the continuance against the hardship of the resulting delay, and should also consider the complexity of the case, the diligence of the party requesting a continuance, and the conduct of the opposing party." *United States v. Farlee*, 757 F.3d 810, 821 (8th Cir. 2014).

This case had already been continued, at Kaeding's request, on multiple occasions. *See United States v. Gantne*r, 3 F.4th 1002, 1006 (8th Cir. 2021) (upholding the denial of a continuance where the case had had already faced delays by numerous defense motions); *Weisman*, 858 F.2d at 391 (upholding the denial of a continuance where a pro se defendant decided to represent himself weeks before the trial, had ample time to prepare, had been granted three continuances and did not show that he was "unable to do anything at trial that he would have been able to do with additional preparation"). Nearly a year had passed between the August 2, 2023 motion when Kaeding directed his counsel to withdraw and the July 22, 2024 trial. This gave significantly more time than the "weeks" in *Weisman* in which we upheld a denial of a continuance.

Kaeding argues that his lack of access to discovery hampered his self-representation. He specifically references his lack of access to the materials on his daughter's computers that were subpoenaed by the government. However, as the government points out, these materials were never searched and therefore the contents were not a part of discovery. Nor did Kaeding provide any evidence of a personal ownership interest in his daughter's records to justify him accessing or reviewing the materials.

Further, the government did provide, on more than one occasion, the relevant Rule 16 materials in both paper form and by computer disc to Kaeding's standby counsel. Kaeding had access to the discovery materials, and he has not shown that the discovery materials should include the materials obtained from his daughter. Nor was there any motion to compel such discovery. He also has not tried to demonstrate how his trial preparation would have been different with such materials. During trial,

he referred to worksheets that were on his daughter's computer which, he claims, justified the information within the loans. However, Kaeding never provided such explanation to the court for consideration, but only to the jury for determination of guilt.

Ultimately, based on the discretion afforded to district courts and Kaeding's ample time to prepare for trial, we discern no abuse of discretion in denying the continuance requested on the eve of trial.

2. *Denied Services in Prison and Trial*

Kaeding further argues that he did not receive a fair trial because he did not have access to certain services while imprisoned and during trial. Kaeding complains that his health-related prison transfers curtailed his access to communications, the law library, and discovery. To remedy these deficiencies, Kaeding sought multiple reconsiderations of detainment in which he sought to be released from custody. These motions were denied. However, the magistrate judge, in denying Kaeding's motions, took great care that Kaeding still had multiple accommodations. In denying Kaeding's motions for reconsideration of detainment, the magistrate judge instead transferred Kaeding to ensure that he had better access to healthcare. And to address the concerns regarding access to law-related resources, the magistrate judge ensured that standby counsel would assist with research and provide materials to Kaeding as needed.

Further, Kaeding complains that during the trial, he was prejudiced by the lack of real-time transcription services. While we have not faced the issue, other courts have. As those courts did, we will review the denial of particular trial accommodations for abuse of discretion. *See, e.g.*, *United States v. Johnson*, 248 F.3d 655, 661 (7th Cir. 2001); *United States v. Edouard*, 485 F.3d 1324 (11th Cir. 2007). While Kaeding had been diagnosed as having "profound sensorineural hearing loss and a poor word recognition score," the government moved to remove his transcript services. As support, the government played clips from Kaeding's phone calls while in custody. These calls showed Kaeding participating in phone

calls without any transcript or similar service. In light of this, the district court, the day before trial, removed the transcription service and replaced it with an amplification device.

Kaeding argues that the lack of transcription services prejudiced him because, as he was self-represented, it was critical that he heard every word. Kaeding then points to multiple comments on the record where he verbalized that the microphone or headset was not working or that he could not hear the individual speaker. However, Kaeding failed to point to any specific instance of prejudice from having to ask people to repeat themselves. In fact, these instances indicate that Kaeding was comfortable stopping the record to express that he was having issues with the device and cure such issues. On this record, we conclude that the district court did not abuse its discretion in denying these services and replacing them with an amplification device.

D. *Obstruction of Justice*

We review a district court's application of the Sentencing Guidelines by first determining whether the district court properly calculated the Guidelines range, reviewing factual findings for clear error and application of the Guidelines de novo. *United States v. Belfrey*, 928 F.3d 746, 750 (8th Cir. 2019). As relevant here, § 3C1.1 of the United States Sentencing Guidelines provides for a two-level increase in offense level if the defendant "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction." The Application Notes contain examples of conduct to which the adjustment does and does not apply. They indicate that the enhancement does not generally apply to "avoiding or fleeing from arrest," U.S.S.G. § 3C1.1, n.5(D), but does apply to "willfully failing to appear, as ordered, for a judicial proceeding," *id.* at n.4(E). Further, "[t]he district court has broad discretion to apply section 3C1.1 to a wide range of conduct." *United States v. Collins*, 754 F.3d 626, 629 (8th Cir. 2014) (quoting *United States v. Billingsley*, 160 F.3d 502, 506 (8th Cir. 1998)).

The PSR suggested adding the § 3C1.1 enhancement based on Kaeding fleeing to Colombia and his conduct while in Colombia, such as evasion of local authorities and false statements regarding his physical condition and wife's alleged presence with him. Kaeding claims that he was not obstructing justice because he asked his counsel at the time and that counsel verified that he was not subject to travel restrictions, and he maintained contact while abroad. He claims that, through counsel, he expressed a desire to return to Minnesota around May 2021 but was prevented by the COVID-19 pandemic. However, his claim was uncorroborated. Rather, the record suggests that Kaeding willfully remained in Colombia until November 2021 and refused to return until forced by the government and Colombian immigration action.

We have held that "a district court can find that a defendant consciously acts with the purpose of obstructing justice—that is, acts willfully—when his misconduct occurs with knowledge of an investigation, or at least with a correct belief that an investigation is probably underway." *United States v. Chavez*, 833 F.3d 887, 889 (8th Cir. 2016) (citation modified). When Kaeding left for Colombia, and chose to stay in Colombia, he knew that there was an ongoing investigation and he would likely be needed. Kaeding, nonetheless, attempted to evade law enforcement by staying in Colombia for an extended period and long after any claimed concerns of COVID-19. Thus, the district court properly applied the § 3C1.1 enhancement.

III. *Conclusion*

For the foregoing reasons, we affirm the district court's decision.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

Harold Bennie Kaeding,

Defendant.

File No. 21-cr-169 (ECT/JFD)

ORDER ACCEPTING REPORT AND RECOMMENDATION

Magistrate Judge John F. Docherty issued a Report and Recommendation on December 11, 2023. ECF No. 171. No party has timely objected to that Report and Recommendation, and it is therefore reviewed for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam).[1]

Finding no clear error, and based on all the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT**:

1. The Report and Recommendation [ECF No. 171] is **ACCEPTED**; and

2. Defendant's Amended Motion to Suppress Statements [ECF No. 77] is **DENIED**;

[1] Defendant Harold Bennie Kaeding requested and obtained one extension of time to file objections to the Report and Recommendation. *See* ECF Nos. 173, 174. He filed a second extension request that was denied. *See* ECF Nos. 177–178, 180. But Mr. Kaeding did not timely object to the Report and Recommendation. It is true that Mr. Kaeding filed an untimely objection. ECF No. 182. Because these objections were untimely, they will not be considered. Regardless, if Mr. Kaeding's objections were considered, they give no reason to think that the Report and Recommendation might be flawed or would not withstand *de novo* review.

3. Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure [ECF No. 78] is **DENIED**; and

4. Defendant's Motion to Suppress Evidence Obtained by Grand Jury Subpoena Duces Tecum [ECF No. 74] is **DENIED**.

Dated: February 14, 2024

s/ Eric C. Tostrud
Eric C. Tostrud
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAROLD BENNIE KAEDING,

Defendant.

Case No. 21-CR-169 (ECT/JFD)

REPORT AND RECOMMENDATION

Under the authority of a search warrant issued by this Court, FBI Agents searched the home of Harold Bennie Kaeding, the Defendant. The search was part of a law enforcement investigation into allegations that Mr. Kaeding defrauded federal relief programs meant to ameliorate the economic harm caused by the COVID-19 pandemic. While the search was underway, an FBI Agent and an FBI forensic accountant interviewed Mr. Kaeding for about an hour and five minutes[1] without first giving him a *Miranda*

[1] In a pro se memorandum in support of his motions to suppress, Mr. Kaeding asserts that for half an hour before the FBI Agent turned on a recorder, he was subjected to "accusations," "interrogation," and "threats" by that agent. (Pro Se Mem. Supp. 4, Dkt. No. 161.) ("Mr. Burnham['s] accusations and interrogation continued for about 30 minutes before he started recording in the dining room at about 6:37 in the morning.") No evidence of the recorder being turned on late was introduced at the motions hearing in this case. Also, Mr. Kaeding's pro se statement contradicts the Motion to Suppress Statements filed by Mr. Kaeding's former counsel, which states that "[a]t 6:37 a.m., just moments after he put in his hearing aids, two of the agents *introduced themselves to Mr. Kaeding and began interrogating* him. . . ." (Am. Mot. Suppress Statements 2, Dkt. No. 77.) (emphasis added)

The Court notes generally that Mr. Kaeding alleges numerous facts in his pro se memorandum that were never put into the record of this case. These events were not described by a witness testifying under oath, whose testimony was then tested by cross examination. Therefore, none of these unsworn facts have influenced the Court's decision on these three suppression motions.

warning. Although Mr. Kaeding was not arrested on the day of the search, he was arrested later. After Mr. Kaeding was arrested, his adult daughter came into possession of some of his documents and electronic devices. The prosecution obtained those documents and devices by serving Mr. Kaeding's daughter with a grand jury subpoena *duces tecum*, with which she complied. The parties disagree about how Mr. Kaeding's daughter got these items. (Tr. of Mot. Hr'g ("Tr.") 35:5–37:2, Dkt. No. 123.)

Mr. Kaeding now asks this Court to suppress the statements he gave while the search warrant was being carried out, noting the absence of a *Miranda* warning and also asserting that the statement was generally involuntary. Mr. Kaeding also asks the Court to suppress the evidence obtained through the warranted search of his home, saying that the information presented to the issuing magistrate judge was stale, that is, so much time elapsed between the events described in the affidavit supporting the search warrant application and the presentation of that application to a magistrate judge that it was not reasonable to conclude that the things the FBI was looking for would still be at Mr. Kaeding's house. Finally, Mr. Kaeding asks for suppression of the documents and devices that were subpoenaed from his daughter.

The United States responds that, as to Mr. Kaeding's statements, no *Miranda* warning was required because Mr. Kaeding, who was questioned in his own home, was not in custody, and the Supreme Court has held that a *Miranda* warning only needs to precede custodial questioning. The United States also argues that Mr. Kaeding's statement was voluntary. As to the search warrant, the United States asserts that the nature of the information being sought by the search warrant—financial documents and computers—

was a type of evidence that courts have recognized goes stale slowly. When it comes to the grand jury subpoena to Mr. Kaeding's daughter, the United States claims that Mr. Kaeding voluntarily conveyed the documents and devices to his daughter and that when he did so he assumed the risk that she would disclose that evidence to the authorities. As of the motions hearing, the United States had not examined the electronic devices obtained by grand jury subpoena and had undertaken not to do so without a search warrant, although it had read the documents. (Tr. 36:6–10; 39:9–39:16.) The case has been referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1. The Court held a hearing on the motions on April 28, 2023. (Hr'g Mins., Dkt .No. 117.) Assistant United States Attorneys Jordan Sing and Robert Lewis represented the United States and Karen Mohrlant, Esq. and Lee Johnson, Esq. represented Mr. Kaeding. (*Id.*) Before post-hearing briefing was complete, Mr. Kaeding elected to represent himself and submitted his briefing pro se. (Order 1–2, Dkt. No. 147.) The undersigned recommends that the motions be denied in all respects.

I. PROCEDURAL BACKGROUND AND FACTS[2]

Mr. Kaeding is accused in a superseding indictment (Dkt. No. 105) of three counts of wire fraud, three counts of aggravated identity theft, and one count of money laundering.

[2]About two months ago this Court wrote a fairly long, detailed description of the history of this case, *see* Order Denying Motion for Reconsideration of Detention (Dkt. No. 154). Only those additional facts and procedural events necessary to understanding these three suppression motions are set out here. This Report and Recommendation contains everything needed to understand the rulings on Mr. Kaeding's three suppression motions,

Mr. Kaeding is alleged to have submitted false applications for loans guaranteed by the Small Business Administration that were meant to provide relief to businesses that suffered economic harm because of the COVID-19 pandemic. (Superseding Indictment ¶¶ 1, 8.) The total amount of the loans for which Mr. Kaeding applied was just over $2.18 million, and the grand jury alleged he actually obtained $658,490. (*Id.* ¶¶ 18–23.) Another $984,100 was disbursed but recalled before it reached Mr. Kaeding, and $378,255, although applied for, was never disbursed at all. (*Id.*)

Shortly after six o'clock on the morning of January 13, 2021, seventeen law enforcement personnel went to Mr. Kaeding's Eden Prairie home with a search warrant issued by a magistrate judge of this Court. (Tr. 50:6–12.) Both the United States and Mr. Kaeding agree that law enforcement made a forcible entry into the home. Mr. Kaeding's former counsel claims that "17 law enforcement officers broke down the door of Mr. Kaeding's home and stormed into his residence." (Am. Mot. to Suppress Statements 1.) The lead FBI Agent on the case, Special Agent Burnham, testified at the motions hearing that the door was forced open, but not by all 17 agents, and was done only after Mr. Kaeding's spouse refused to open the door for them, and ran from the front door further into the house, causing apprehension that she might be going to destroy evidence or retrieve a weapon. (Tr. 43:12–45:7; 51:16–52:21.) Law enforcement broke down the door with a ram and an undetermined number of law enforcement officers entered the home with their guns drawn. Once the home was secured and all persons were accounted for, the law

but if further context is desired, the reader is respectfully directed to the Order Denying Motion for Reconsideration. (Dkt. No. 154.).

enforcement officers holstered their weapons. (Tr. 52:25–53:16.) They did not draw their weapons again during the search. (*Id.*)

Mr. Kaeding asserts that he did not have his hearing aids in when he went to see what was going on and so he could not understand what the agents were saying. (Pro Se Mem. in Supp. of Mots. 1.)[3] However, he adds that he understood (apparently after inserting the hearing aids) that the lead FBI agent was offering to leave his wife and son alone if Mr. Kaeding would take responsibility for the alleged fraud. (Pro Se Mem. Supp. 4.) The lead FBI Agent was not questioned about this accusation at the motions hearing. The prosecution states that Mr. Kaeding was told he was not under arrest, that he was in fact free to leave and that he was not going to be arrested unless evidence of an additional crime was turned up during the search. (Tr. 59:1–60:12.) It is undisputed that Mr. Kaeding was not advised of his rights under *Miranda v. Arizona*. (Tr. 73:21–22.) Mr. Kaeding spoke to the lead FBI Agent and a forensic accountant in a room of his home for about one hour

[3] In his Pro Se Memorandum, Mr. Kaeding makes extensive, detailed factual claims for which there is no support in the record. For example, he says two agents came through the back door, that he was handcuffed, marched through the house at gunpoint, and "forced" into a recliner. (Pro Se Mem. Supp. 4.) At the motions hearing, there was testimony only about the front door and none about the back door. (Tr. 51:21–52:21; 68:23–70:9.) Although the lead agent testified that he did not recall one way or the other whether Mr. Kaeding was handcuffed (*Id.* at 73:19–20), he unequivocally testified that during the interview, Mr. Kaeding was not in handcuffs (*Id*. at 63:3–13.) There is no mention anywhere in the record of Mr. Kaeding being marched anywhere (much less at gunpoint), and the hearing testimony was that once the questioning of Mr. Kaeding concluded, he got into a recliner and, after being given a pillow and a blanket, fell asleep. (*Id*. at 64:1–20.)

If there were facts Mr. Kaeding wished to make use of, it was his responsibility to put those facts into the record, either by eliciting them from cross-examination of the prosecution's witnesses, or by calling a witness of his own. The Court will not consider unsupported factual allegations in Mr. Kaeding's post-hearing briefing.

and five minutes. (Pl.'s Ex. 1, described in Exhibit List, Dkt. No. 119.). Mr. Kaeding chose to answer some questions and declined to answer others. (Tr. 60:18–61:22.) The FBI did not pressure Mr. Kaeding to answer any questions to which he chose not to respond. *Id*.

About fourteen months later, in March of 2022, after Mr. Kaeding was in custody, the grand jury issued a subpoena *duces tecum* to Mr. Kaeding's adult daughter for documents and tangible things that she was holding for safekeeping after his arrest. (Mot. to Suppress Evid. Obtained by Grand Jury Subpoena Duces Tecum 1, Dkt. No. 74.) Mr. Kaeding describes the subpoenaed items as "a 'box of documents,' computers, cell phones, and other items." (*Id.* at 2.) The United States avers that it has not examined any of the electronic devices turned over pursuant to the grand jury's subpoena and will not do so unless it first obtains a search warrant. (Resp. of the U.S. to Def.'s Pretrial Mots. 9–10; Tr. 36:6–10.)

II. ANALYSIS

Mr. Kaeding seeks suppression of evidence on three grounds. First, he challenges the use of his statements against him because he did not receive a *Miranda* warning before talking to law enforcement and because his statement was not voluntary. Second, he argues that the warrant to search his home was invalid because it relied on stale information. Third, he asks that the documents provided by his daughter be supressed because law enforcement never received a warrant to seize the property. The Court will address each argument in turn.

A. No *Miranda* Warning Was Necessary and Mr. Kaeding's Statements Were Voluntary.

i. Because Mr. Kaeding Was Not in Custody When Law Enforcement Questioned Him, No Miranda Warning Was Needed.

Recognizing the potential that "the interplay of interrogation *and custody* would 'subjugate the individual to the will of his examiner' and thereby undermine the privilege against compulsory self-incrimination," *Rhode Island v. Innis*, 446 U.S. 291, 299 (1980), the Supreme Court held in *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from *custodial* interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." (Emphasis added)

As these two quotes explain, the requirement to administer the well-known *Miranda* warning arises only when a suspect is questioned while in custody. Mr. Kaeding was certainly questioned, but whether he was in custody when speaking to law enforcement in his own home requires further analysis. A suspect is "in custody" and a *Miranda* warning is required before questioning if the suspect has been formally arrested or "*under any other circumstances* where the suspect is deprived of his freedom of action in *any* significant way." *United States v. Griffin*, 922 F.2d 1343, 1347 (8th Cir. 1990). If a reasonable person in the suspect's position would believe his freedom of action had been curtailed to a "degree associated with a formal arrest," and that belief, analyzed under the totality of the circumstances, is reasonable from an objective viewpoint, then the suspect is in custody, no matter where he or she is. *Id.* at 1347. The defendant in *Griffin*, like Mr. Kaeding, was

questioned by two agents in his own home. *Id.* at 1346 (citing *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984)). In *Griffin*, the Eighth Circuit found the following factors useful in deciding whether a suspect is in custody when being questioned:

> **Freedom of Action.** Was the suspect free to leave? The *Griffin* court reiterated that the suspect's freedom of movement and action continued to be a "critical factor" in the custody analysis, while the remaining factors had "inconclusive, independent relevance" in the inquiry. *Id.* at 1348.
>
> **The Purpose of the Interrogation.** What was law enforcement's purpose for the questioning? Was it to obtain incriminating information from the target of their investigation? The *Griffin* court found this relevant only in the sense that it "contributes to the suspect's sense of custody," and noted that the factor did not "weigh heavily" in the analysis. *Id.*
>
> **The Location of the Interrogation.** Was the suspect questioned at a police station or at a place of employment, a public place, or the suspect's own home? *Id.*
>
> **The Length of the Interrogation.** While the *Griffin* court labeled this factor "length," its discussion of this factor shows it actually was concerned not with the length of the interrogation alone but with whether law enforcement gave the detainee the message "that questioning will continue until he provides his interrogators the answers they seek." *Id*. at 1348 (quoting *Berkemer*, 468 U.S. at 439).

> **Indicia of Custody.** This factor breaks down into the non-exhaustive sub-factors of (1) whether the suspect was told that the questioning was voluntary, that they were free to leave or request that the officers leave, or that they were not under arrest; (2) whether the suspect's freedom of motion was unrestrained during the questioning; (3) whether the suspect contacted law enforcement or voluntarily agreed to their request for information; (4) whether officers used "strong arm tactics or deceptive stratagems" during the questioning; (5) whether the atmosphere of the questioning was "police-dominated"; and (6) whether the suspect was arrested after questioning. *Id.* at 1349.

Application of the *Griffin* factors to Mr. Kaeding's situation on the morning of January 13, 2021 shows that Mr. Kaeding was not in custody and that a *Miranda* warning was therefore not required. While the purpose factor weighs very slightly in favor of a finding of custody, freedom of movement, location, length, and indicia of custody factors all suggest that Mr. Kaeding was not in custody. Law enforcement was therefore not required to read Mr. Kaeding a *Miranda* warning before questioning him. To start, Mr. Kaeding was the subject of an ongoing investigation, but one without a clear target because the FBI was investigating potentially fraudulent loans in the name of Mr. Kaeding, his wife, and his son. (Tr. 47:10–48:23.) All the loans traced back to the same address. (*Id.* at 47:14–23.) Officers were seeking information from Mr. Kaeding, who was one of multiple suspects in the case. (Tr. 73:4–7.) However, officers did not restrict his freedom of

movement during questioning.[4] He was not handcuffed, no weapons were brandished, and after the interview Mr. Kaeding was helped to a recliner, where he fell asleep after being given a blanket and pillow. (Tr. 59:21; 63:6–7.) Mr. Kaeding was questioned in his own home, and there is no evidence law enforcement tried to intimidate him by stating that he would be questioned until he said the things law enforcement wanted to hear.

Turning to the indicia of custody, Mr. Kaeding was told he did not have to answer questions, but with the warning that if he chose to answer questions, his answers had to be truthful: "S.A. Burnham: It's a crime if you decided that you didn't want to tell me the truth. Mr. Kaeding: No, but if I don't talk to you? S.A. Burnham: No, there's no problem with that at all. It's totally up to you. Mr. Kaeding: Okay." (Pro Se Mem. Supp. at 5 (quoting transcript of recorded statement)).In his pro se memorandum, Mr. Kaeding complains that this information was conveyed to him in the form of five questions to which he was not given a chance to respond, relying on the following passage from the interview transcript to support his claim:

> So like I said, you're not under arrest, you're free to take off and leave the house until we're done with the search warrant if you wanted to, okay? And you're not going to be arrested today, okay? Unless we discover some other crime that's already occurred. So we have to say that is a crime, like something would necessitate being a crime, right? Okay? So in essence, this is our 1001 statement. So if you could just sign that for me. All that says is that I told you you can't make false statements to me. Fair enough?

[4] On cross-examination, the lead investigator did note that if Mr. Kaeding went to the bathroom during the questioning, he would have needed to have been accompanied by law enforcement, for officer safety. (Tr. 78:12–20.)

(Tr. 77:5–11 (quoting transcript).) Mr. Kaeding responded "Gotcha." (*Id.*) Mr. Kaeding's criticism of the form in which this information was conveyed to him—a series of rhetorical questions—does not undercut the Court's conclusion that Mr. Kaeding was advised that he was free not to talk to law enforcement. If one removes the words "okay," "right," and "fair enough" these questions become statements, to which no response is required. Mr. Kaeding was told he was not under arrest, that he was free to leave, that it was fine if he chose not to speak to agents, but if he did decide to speak with agents, he could not lie. Mr. Kaeding does not claim he did not understand what he was being told.[5]

Mr. Kaeding's former counsel argues that the FBI Agent undercut these assurances by telling Mr. Kaeding he would not be arrested that day "unless we discover some other crime that's already occurred" and that the assurances were further undercut when the agent asked Mr. Kaeding to sign a written advisory about the consequences, under 18 U.S.C. § 1001, of lying to a federal agent about a material fact. Neither former counsel nor Mr. Kaeding argue that either the FBI Agent's remark about the possibility of arrest if a crime other than the one under investigation was discovered, or the text of the advisory that Mr.

[5] Mr. Kaeding *does* claim that embedded within the literal words spoken by Special Agent Burnham was an offer from Special Agent Burnham to Mr. Kaeding that if Mr. Kaeding would take responsibility for the crimes under investigation, Mr. Kaeding's wife and son would not be further investigated. This claim is analyzed fully in the section of this Report & Recommendation devoted to Mr. Kaeding's claim that his statement was involuntary, but suffice it to say at this juncture that this claim is not supported by any evidence in the hearing record. At this point, the Court limits itself to finding that no such offer can be found in the words spoken by Special Agent Burnham, but later, the Court will find that no such offer can be inferred from the context within which those words were spoken.

Kaeding signed, was legally incorrect. The Court finds that neither the agent's oral statements, nor the written advisory, contained any misstatements of law.

Nor has this Court's review of the record revealed any evidence that the agent's statements or the written advisory had any effect on Mr. Kaeding's decision to speak with law enforcement. To the contrary, by the time the agent made these statements and Mr. Kaeding signed the advisory, his hearing aids were in place, his response to the agent was "gotcha," and he neither asked questions nor expressed apprehensions about anything he had heard or read.

While Mr. Kaeding did not initiate contact with law enforcement, he did respond to law enforcement's questions after being told, as quoted above, that speaking to law enforcement was voluntary. Mr. Kaeding's contrary claim, that his decision to speak with law enforcement was not voluntary, is unpersuasive. This claim of Mr. Kaeding's goes both to the *Griffin* factor and to the general voluntariness of his statement and it has two components. The first is a claim that law enforcement used inappropriately heightened levels of force in executing a white-collar search warrant for documents; seventeen agents and officers participated in the search, they gained entry to the house with a battering ram, and at least during the initial entry into the home they carried their firearms in their hands. The second component, advanced only by Mr. Kaeding in his pro se memorandum and going only to general voluntariness and not to the *Griffin* factor, is a claim that he spoke to law enforcement because they promised him that if he did so, law enforcement would concentrate their investigation on Mr. Kaeding and leave his wife and son alone. This second component of Mr. Kaeding's involuntariness argument is analyzed further below.

Mr. Kaeding's claim that his decision to speak to law enforcement was involuntary because of the manner of law enforcement's entry fails. Special Agent Burnham testified at the motions hearing that each of the measures taken at the beginning of the search was justified by the situation confronting law enforcement when they arrived at Mr. Kaeding's house, and the agent disavowed using any of these measures in the hope of frightening Mr. Kaeding. Seventeen people were needed to search "a very large house" for the records of "multiple businesses," especially when there were multiple people living in the house, all of whom needed to be interviewed and at least one of whom apparently could not communicate except with the assistance of an interpreter. (Tr. 51:1–15.) Forcible entry was necessary because when Special Agent Burnham showed his credentials through the glass of the front door to Mr. Kaeding's wife, instead of opening the door, she turned and ran, raising concerns that she might be fetching a weapon or attempting to destroy evidence. (*Id*. at 52:14–15.) This is also the reason the agents first entered the home with their firearms drawn, although those were put back in their holsters once the agents knew the house was secure. (*Id*. at 53:13–16.) While these events were no doubt stressful and upsetting, by the time the interview of Mr. Kaeding began, the house had been secured for approximately five minutes, law enforcement had put away their guns, everyone in the house had been gathered in the living room where they received an explanation of why law enforcement was in the house, and Special Agent Burnham had explained to Mr. Kaeding

that he was free to decline to answer questions. Any stress caused by the manner of law enforcement's entry had been dissipated by these measures.[6]

While the Eighth Circuit has not considered the question of whether a forced entry by armed police officers renders a subsequent statement involuntary, the Ninth Circuit has, and this Court finds its reasoning persuasive. In *United States v. Banks*, 282 F.3d 699, 706 (9th Cir. 2002) the defendant, Mr. Banks, was in the shower and so did not hear officers at his front door, with a search warrant, knocking and announcing their purpose. Moments later, Mr. Banks, "naked, wet, and soapy," was confronted by armed SWAT team officers who had just forced their way into his apartment. Mr. Banks, who also claimed to have been under the influence of drugs and alcohol, moved to suppress the statements he made to law enforcement, saying "he was terrorized by the entry of the police into his home, intimidated by officers employing the 'good-cop versus bad-cop' routine, and in fear of being paraded naked around the neighborhood." 282 F.3d at 705–06. The Ninth Circuit, although it reversed Mr. Banks' conviction because it held that the police had not waited

[6] It may be objected that the subjective intentions of law enforcement are irrelevant to deciding whether a statement was voluntary and that therefore the fact that law enforcement forcibly entered the house because of concern about weapons or destruction of evidence is of no importance. While it is true that the objective conditions under which an interrogation is conducted control a voluntariness inquiry, and not the subjective perceptions of either law enforcement or the person being questioned, law enforcement's subjective intentions and perceptions can be relevant to an analysis of voluntariness if they are conveyed to the subject. *Stansbury v. California*, 511 U.S. 318, 325 (1994). Here, not only did the objective circumstances of the interview vitiate any lingering stress from the forced entry, but if Mr. Kaeding did perceive anything about law enforcement's reasons for forced entry, he would have perceived that the forced entry was made for reasons other than attempting to intimidate him.

long enough to force entry,[7] gave short shrift to Mr. Banks' claims that his statements were involuntary. The court noted that Mr. Banks was calm and able to reason, that he (like Mr. Kaeding) answered some questions but would not answer others and understood his circumstances.

Mr. Kaeding, like Mr. Banks, understood his circumstances. Mr. Kaeding has not come forward with any evidence of raised voices, slaps on the table, threats of violence, or any other threats or promises (with the exception of the allegation discussed below) that would have overborne Mr. Kaeding's free will. Any shock he may have experienced due to the forced entry appears, on the evidence, to have dissipated.

As to the final two *Griffin* factors, the atmosphere was not police-dominated. Although 17 members of law enforcement were in the house, Mr. Kaeding was interviewed in a room occupied only by him, an agent, and an accountant. (Tr. 58:6–16.) Finally, Mr. Kaeding was not arrested when the search concluded.

In sum, the *Griffin* factors tend to show that Mr. Kaeding was not in custody for *Miranda* purposes when Special Agent Burnham interviewed him. The Court finds that Mr. Kaeding was not in custody and that no *Miranda* warning was required before questioning.

ii. Mr. Kaeding's Statement Was Voluntary.

Over and above his *Miranda* claim, Mr. Kaeding makes a claim that his statement was generally involuntary. The Court disagrees.

[7] The Supreme Court later reversed the Ninth Circuit and held the police had in fact waited long enough before forcing entry. *United States v. Banks*, 540 U.S. 31 (2003).

A suspect's statement to law enforcement is involuntary if it is "extracted by threats, violence, or express or implied promises sufficient to overbear the defendant's will and critically impair his capacity for self-determination." *United States v. LeBrun*, 363 F.3d 715, 724 (8th Cir. 2004) (quoting *Simmons v. Bowersox*, 235 F.3d 1124, 1132 (8th Cir. 2001)). Involuntary statements cannot be introduced into evidence against a criminal defendant at trial. *Vega v. Tekoh*, 597 U.S. 134, 141 (2022). A statement cannot be found involuntary without some coercive police tactics. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). Put differently, no matter how fragile a suspect is, due to their mental health, substance use, lack of sleep, or other characteristics, a statement can never be found involuntary purely on the basis of the suspect's attributes; law enforcement's actions must always be part of the calculus. (*Id.* at 164.)

Mr. Kaeding relies upon two alternative aspects of police behavior to support his assertion that his statement to Special Agent Burnham was involuntary. First, he claims that law enforcement's forced entry into his home, the large number of law enforcement personnel involved in the search, and their drawn firearms were a threat. This claim is in both the motion filed by Mr. Kaeding's former counsel and in Mr. Kaeding's pro se memorandum, it has been analyzed above in this Report and Recommendation, and it is not necessary to belabor the point again here.

The second claim, found only in Mr. Kaeding's pro se memorandum, is premised upon the existence of a supposed bargain between Mr. Kaeding and Special Agent Burnham in which Mr. Kaeding would speak to Agent Burnham and in return, the focus of Agent Burnham's investigative efforts would move away from Mr. Kaeding's wife and

son. If true, such a promise could be the sort of promise that would overbear a suspect's will under *LeBrun*. In support, Mr. Kaeding cites page 65 of the motions hearing transcript for the statement that "Mr. Burnham said if Mr. Kaeding took responsibility they would leave his wife and son alone. Mr. Kaeding agreed." (Pro Se Mem. Supp. 4.) But nowhere at all in the transcript of the motions hearing is there testimony about such a bargain. Finally, if the agreement described by Mr. Kaeding really existed, Mr. Kaeding did not honor it, because throughout the interview Mr. Kaeding, as was his prerogative, declined to answer some questions and in his responses to those questions he did answer, he denied responsibility for any financial misconduct related to his applications for COVID-19 relief. In sum, this claim of Mr. Kaeding's has no evidentiary support and because of that the Court specifically finds there was no promise that if Mr. Kaeding talked to law enforcement, law enforcement would leave Mr. Kaeding's family alone.

B. The Warrant to Search Mr. Kaeding's Home Did Not Rely on Stale Information.

Mr. Kaeding moves to suppress the evidence recovered from his home on the grounds that the search warrant was stale, that is, that the search warrant was executed too long after the events described in the affidavit for it to be concluded that the items to be searched for would still be in Mr. Kaeding's house. As the United States correctly points out in its memorandum in opposition to this motion, numerous courts have held that persons involved in fraud hang on to documentary and electronic evidence of that fraud for multiple reasons, including the ongoing usefulness of the documents.

When Mr. Kaeding's residence was searched in January of 2021, law enforcement was looking for information pertaining to a fraud scheme that may have had at its center fraudulent loan applications made in April and May of 2020 (eight or nine months before the residence was searched), but which also included the alleged payment of fraud proceeds to prevent a home foreclosure only three months before the search warrant was sought. The type of crime under investigation is important in a staleness analysis. *United States v. Horn*, 187 F.3d 781, 786 (8th Cir. 1999) (citing *United States v. Koelling*, 992 F.2d 817, 822 (8th Cir. 1993)) ("The timeliness of the information supplied in an affidavit depends on . . . the nature of the crime under investigation; the lapse of time is least important when the suspected criminal activity is continuing in nature and when the property is not likely to be destroyed or dissipated."). Because the crime being investigated here was fraud, this warrant was not stale. *See United States v. Miller*, No. 20-CR-232 (JRT/BRT), 2022 WL 4127546 (D. Minn. May 31, 2022) (upholding search warrant in fraud case supported by four to six-month old information); *United States v. Jokhoo*, No. 12-CR-309 (DSD/JJK), 2013 WL 3479416 (D. Minn. July 11, 2013) (upholding search warrant issued in fraud case notwithstanding staleness argument, but noting that older information had been refreshed); *United States v. Perry*, No. 4:11-CR-106 (AGF/FRB), 2011 WL 7277563 *10 (E.D. Mo. Oct. 26, 2011) (upholding a search warrant in a fraud case against a staleness challenge, noting that "[t]he evidence here showed that the defendant had participated in an ongoing scheme to defraud"); *United States v. Nealy*, No. 4:04-CR-274-02 (JLH), 2009 WL 481735 at *7 (E.D. Ark., Feb. 25, 2009) ("Information pertaining to loans and mortgages generally is maintained for years, so the fact that the affidavit indicated that it had been some sixteen

months . . . did not show that the information was too stale to support probable cause.").The Court recommends that Mr. Kaeding's motion to suppress evidence found in a warranted search be denied.

C. Materials Obtained by Grand Jury Subpoena Should Not Be Suppressed.

Mr. Kaeding's final motion seeks suppression of some materials, including documents and computers, that the United States obtained by grand jury subpoena served on Mr. Kaeding's adult daughter. Because Mr. Kaeding has not demonstrated that he had a reasonable expectation of privacy in these materials, the Court recommends that this motion be denied.

There is no evidence as to how the documents and computers wound up with Mr. Kaeding's daughter. The argument of the United States is that because Mr. Kaeding voluntarily conveyed the materials to his daughter, Mr. Kaeding assumed the risk that his daughter would disclose the materials to the authorities. However, the United States makes this argument without the benefit of evidence showing that Mr. Kaeding in fact gave the materials to his daughter of his own free will. Mr. Kaeding, though, does no better. He states that his family members went through his things after he had been arrested and detained and that they then carried various items off for safekeeping. There is no more evidence of that than there is of the prosecution's opposing theory. Given the absence of facts, the motion must be resolved procedurally—by analyzing which party has the burden of proof—rather than on the factual merits.

At the motions hearing, the question of the burden of proof was raised, though without labeling it explicitly as such:

[AUSA] Sing:	Your Honor, I do remain confused about how we're going to brief the subpoena issue if there's no testimony unless the defense is not planning on calling anyone for the factual dispute.
The Court:	I think that the defense, who goes first [in briefing], needs to explain that even in the absence of testimony this motion should be granted. Is that correct, Mr. Johnson [defense attorney]?
Mr. Johnson:	That's correct, Your Honor.
AUSA Sing:	Thank you, Your Honor.

(Tr. 85:16–85.) Unfortunately, despite stating that he understood he would have to explain why his suppression motion should be granted "even in the absence of testimony," when the defense brief was filed, there was no discussion of how the suppression motion could be granted in the absence of a factual showing of a constitutional violation.

"As a general rule, the burden of proof is on the defendant who seeks to suppress evidence, but on the government to justify a warrantless search." *Carter v. United States*, 729 F.2d 935, 940 (8th Cir. 1984) (internal citations omitted). The issue thus becomes whether serving a subpoena on Mr. Kaeding's daughter was a warrantless search[8]—if it was, the United States has the burden of proof and if it was not, Mr. Kaeding has the burden of proof. Whichever party has the burden of proof will lose this motion because neither party put in any evidence on how Mr. Kaeding's belongings got to his daughter

[8] Similarly, a subpoena to appear before a grand jury is not a Fourth Amendment seizure. *United States v. Dionisio*, 410 U.S. 1, 10 (1973). When a third party is subpoenaed for documents in a criminal case, that generally does not trigger Fourth Amendment protection for the defendant because one does not have a constitutionally protected right to privacy in what one shares with a third party. *United States v. Miller*, 425 U.S. 435, 441–43 (1976).

Obtaining materials by subpoena is not a search, *United States v. Gratkowski*, 964 F.3d 307, 310–313 (5th Cir. 2020), unless the subpoenaed information provides law enforcement with "an all-encompassing record of the holder's whereabouts" and "provides an intimate window into a person's life, revealing not only [an individual's] particular movements, but through them [their] familial, political, professional, religious, and sexual associations." *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (internal quotation marks and citation omitted). A subsequent search of the materials obtained by subpoena is a search, but the United States avers that it has not searched the things it got from Mr. Kaeding's daughter and that it will not do so without a warrant.

The Court cannot conceive how examining a box containing electronics and some documents of unspecified nature can be as invasive as mining the historical cell-site location information at issue in *Carpenter*. It was the defense's burden (and opportunity) to explain the analogy, but it declined to do so. In the absence of any explanation, the Court finds that there was no search of the material, let alone a warrantless search. If no search occurred, there is nothing for the government to justify and Mr. Kaeding has failed to meet his burden of proof on his motion to suppress. The Court recommends that the motion to suppress materials received via subpoena from Mr. Kaeding's daughter be denied.

III. RECOMMENDATION

Accordingly, based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. Mr. Kaeding's Amended Motion to Suppress Statements (Dkt. No. 77) be **DENIED**;

2. Mr. Kaeding's Motion to Suppress Evidence Obtained as a Result of Search and Seizure (Dkt. No. 78) be **DENIED**; and

3. Mr. Kaeding's Motion to Suppress Evidence Obtained by Grand Jury Subpoena Duces Tecum (Dkt. No. 74) be **DENIED**.

Date: December 11, 2023

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation.

A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-3462

United States of America

Appellee

v.

Harold Bennie Kaeding

Appellant

Appeal from U.S. District Court for the District of Minnesota
(0:21-cr-00169-ECT-1)

ORDER

The petition for rehearing by the panel is denied.

June 04, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Appellate Case: 24-3462 Page: 1 Date Filed: 06/04/2026 Entry ID: 5647712

UNITED STATES DISTRICT COURT

District of Minnesota

UNITED STATES OF AMERICA

v.

HAROLD BENNIE KAEDING

JUDGMENT IN A CRIMINAL CASE

Case Number: **0:21-CR-00169-ECT-JFD(1)**
USM Number: **02568-506**

Karen E. Mohrlant and Lee R. Johnson
Defendant's Attorneys

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court

☒ was found guilty on counts 1, 2, 3, 4, 5, 6 and 7 after a plea of not guilty of the Superseding Indictment.

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:1343 WIRE FRAUD	05/21/2020	1s
18:1343 WIRE FRAUD	05/21/2020	2s
18:1343 WIRE FRAUD	05/21/2020	3
18:1028A(a)(1) AGGRAVATED IDENTITY THEFT	05/21/2020	4
18:1028A(a)(1) AGGRAVATED IDENTITY THEFT	05/21/2020	5
18:1028A(a)(1) AGGRAVATED IDENTITY THEFT	05/21/2020	6
18:1957 MONEY LAUNDERING	05/21/2020	7

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.

November 15, 2024
Date of Imposition of Judgment

s/ Eric C. Tostrud
Signature of Judge

ERIC C. TOSTRUD
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

November 18, 2024
Date

DEFENDANT: HAROLD BENNIE KAEDING
CASE NUMBER: 0:21-CR-00169-ECT-JFD(1)

IMPRISONMENT

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

63 months as to Count 1, 63 months as to Count 2, 63 months as to Count 3, and 63 months as to Count 7, said terms to run concurrent. 24 months as to Count 4, 24 months as to Count 5, and 24 months as to Count 6, said terms to run concurrent to each other and consecutive to the term imposed in Counts 1, 2, 3, and 7.

☒ The court makes the following recommendations to the Bureau of Prisons:
- That the defendant be designated to FMC Rochester for his healthcare needs and to be close to family.

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

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

☐ at on

☐ as notified by the United States Marshal.

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

☐ before on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HAROLD BENNIE KAEDING
CASE NUMBER: 0:21-CR-00169-ECT-JFD(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years, which consists of 3 years on Counts 1, 2, 3, and 7, and 1 year on Counts 4, 5, and 6, to be served concurrently.**

MANDATORY CONDITIONS

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

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

DEFENDANT: HAROLD BENNIE KAEDING
CASE NUMBER: 0:21-CR-00169-ECT-JFD(1)

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 _____

Probation Officer's Signature _____ Date _____

DEFENDANT: HAROLD BENNIE KAEDING
CASE NUMBER: 0:21-CR-00169-ECT-JFD(1)

SPECIAL CONDITIONS OF SUPERVISION

a. You shall participate in a mental health evaluation. If treatment is recommended, you shall participate in an approved treatment program and abide by all supplemental conditions of treatment to include medication as prescribed. Participation may include inpatient/outpatient treatment.
b. You shall submit your person, residence, office, vehicle, or an area under your control to a search conducted by a United States Probation Officer or supervised designee, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a supervision violation. You shall warn any other residents or third parties that the premises and areas under your control may be subject to searches pursuant to this condition.
c. You shall provide the probation officer access to any requested financial information, including credit reports, credit card bills, bank statements, and telephone bills.
d. You shall be prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.
e. You shall not hold employment with fiduciary responsibilities without prior approval from the probation officer.
f. You shall be prohibited from possessing or having access to sensitive personal identifiers, including, but not limited to, credit card information; social security numbers; or business or personal account information or routing numbers, without prior approval from the probation officer.

DEFENDANT: HAROLD BENNIE KAEDING
CASE NUMBER: 0:21-CR-00169-ECT-JFD(1)

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$700.00	$658,490.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution of $658,490.00 to:

SMALL BUSINESS ADMINISTRATION
PAYMENTSERVICES@SBA.GOV
(303) 844-7998
IPAC
DENVER, CO 80201

Payments are to be made to the Clerk, U.S. District Court, for disbursement to the victim.

☐ 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 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: HAROLD BENNIE KAEDING
CASE NUMBER: 0:21-CR-00169-ECT-JFD(1)

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payments of $ 658,490.00 due immediately, balance due
☐ not later than , or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal 20 *(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:

If the defendant cannot satisfy restitution immediately, over the period of incarceration, the defendant shall make payments of either quarterly installments of a minimum of $25 if working non-UNICOR or a minimum of 50 percent of monthly earnings if working UNICOR. It is recommended the defendant participate in the Inmate Financial Responsibility Program while incarcerated. Upon release from custody and while on supervised release, payments of not less than $100 per month are to be made over a period of 3 years.

The defendant's obligation to pay the full amount of restitution continues even after the term of supervision has ended, pursuant to federal law. See 18 U.S.C. § 3613. If the defendant is unable to pay the full amount of restitution at the time supervision ends, the defendant may work with the U.S. Attorney's Office Financial Litigation Unit to arrange a restitution payment plan.

It is ordered that the Defendant shall pay to the United States a special assessment of $700.00 for Counts 1, 2, 3, 4, 5, 6 and 7, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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.

☐ 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:
The property listed in the Preliminary Order of Forfeiture [ECF No. 314] is forfeited.

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) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.