

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

ANTHONY WASHINGTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

HECTOR A. DOPICO
Federal Public Defender
Bernardo Lopez
Assistant Federal Public Defender
Counsel of Record for Petitioner
1 E. Broward Boulevard, Suite 1100
Ft. Lauderdale, Florida 33301
Telephone No. (954) 356-7436

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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12759

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY WASHINGTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cr-20583-PCH-1

Before JILL PRYOR, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

Anthony Washington appeals his conviction for possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. § 922(g)(1). He argues that the district court abused its discretion when it refused to give one of his requested jury instructions. He also challenges the constitutionality of § 922(g)(1)'s prohibition on felons possessing firearms and ammunition. After careful consideration, we affirm.

I.

While on patrol late one night, Miami-Dade police officers Jonathan Marcano and Estuardo Gonzalez observed a Ford Fusion drive into the lane for oncoming traffic. The officers stopped the vehicle, which parked in a nearby driveway.

Marcano approached the driver's side of the vehicle while Gonzalez approached the passenger's side. Marcano tapped the driver's side window and asked the driver to lower it. The driver did not respond. Both officers knocked on the windows several times and repeatedly instructed the occupants to lower the windows. Eventually, the vehicle's doors unlocked. Marcano opened the door on the driver's side of the vehicle. He then asked the driver for identification, but the driver did not respond. Marcano observed that the driver was leaning forward in his seat as if he were trying to hide something. Marcano asked the driver to step out of

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the vehicle. As the driver exited the vehicle, Marcano saw a firearm tucked between the driver's seat and the center console.

After seeing the firearm, Marcano asked whether there were any firearms in the vehicle, and the driver gave no response. Eventually, the driver provided identification. Marcano ran a background check and learned that the driver, Washington, was a convicted felon.

While Marcano was speaking with Washington, Gonzalez focused on the passenger, Latoya Benjamin. Benjamin told Gonzalez that she and Washington had been drinking and were "highly intoxicated." Doc. 58 at 135.¹ When Gonzalez asked whether there were any firearms in the vehicle, Benjamin responded that there was a firearm, which was registered to her, in the glove box. Gonzalez ran a check on the vehicle, which showed that it was registered to both Benjamin and Washington.

Because Washington was a convicted felon who had a firearm tucked next to him, Marcano placed him under arrest. When officers recovered the firearm from the vehicle, they found that it was loaded with one bullet. Officers later discovered that Benjamin had purchased the firearm.

Washington was charged with one count of knowingly possessing a firearm and ammunition as a convicted felon. *See* 18 U.S.C. § 922(g)(1). He pleaded not guilty.

¹ "Doc." numbers refer to the district court's docket entries.

The case went to trial. Marcano and Gonzalez testified about the traffic stop.² The government also called officer Jose Sardina. He testified about an incident that occurred a few months after Washington's arrest. While on patrol, Sardina saw a Ford Fusion with an expired registration sticker. He stopped the vehicle and found that Washington was driving. Washington was alone in the vehicle. Because there was an outstanding warrant for his arrest, Sardina arrested him.

Washington called Benjamin to testify in his defense. She testified that she and Washington had been in an on-again-off-again relationship for several years and had children together. She explained that she co-owned the Ford Fusion with Washington and that she was its main driver.

Benjamin also testified about the firearm found in the vehicle when the officers stopped it. She explained that she had purchased the weapon to protect herself because she lived in a dangerous neighborhood. She told the jury that every time she left the house, she took the gun with her. Usually, she stored the gun in her car's glove compartment. But when she was driving at night, she kept the gun next to her.

Benjamin described the events leading up to the officers' discovery of the gun in the Ford Fusion. That evening, she drove the

² The parties stipulated that Washington had previously been convicted of a felony, he knew of his felony conviction, and the firearm and ammunition at issue had moved in interstate or foreign commerce.

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vehicle to visit Washington at his sister's house. During this drive, she moved the gun from the glove compartment to the area between the driver's seat and center console because Washington's sister lived in a dangerous area. At the sister's house, Benjamin and Washington chatted and drank alcohol. When they ran out of liquor, they went to a liquor store. Washington told Benjamin that she was drunk and insisted on driving to the liquor store. The two then drove around town while drinking and listening to music.

Benjamin described what happened when officers stopped the car. She testified that when an officer asked if there was a gun in the car, she responded that her gun was in the glove compartment. She identified the gun found next to the driver's seat as her weapon. She testified that during that evening, she and Washington had not talked about the gun. She told the jury that she did not believe Washington knew the gun was between the driver's seat and center console because it was dark and they were both drunk.

At the trial's conclusion, the district court instructed the jury that to convict Washington, it had to find beyond a reasonable doubt that he "knowingly possessed a firearm or ammunition." Doc. 59 at 37. The court explained that the law recognized several kinds of possession including actual, constructive, sole, and joint possession. The court instructed that a person has "actual possession" of a thing if he "knowingly has direct physical control of it" and "constructive possession" of a thing if he "doesn't have actual possession of it[] but has both the power and intention to take control over it later." *Id.* at 38. And the court explained that a person

has “sole possession” of a thing if he “is the only person to possess it” and “joint possession” if he is among “two or more people [who] share possession of it.” *Id.*

The court also instructed the jury about the requirement that the defendant act “knowingly.” It instructed that “knowingly” referred to an act “done voluntarily and intentionally and not because of a mistake or by accident.” *Id.* at 39.

Washington asked the court to give the following additional instruction regarding mere presence:

Mere presence does not alone establish possession. Indeed, mere proximity to the firearm or ammunition or awareness of its location is not, without more, sufficient to establish possession.

Similarly, mere presence in the property where the firearm or ammunition is located, or mere association with the person who owns or controls the firearm or ammunition, is not, without more, sufficient to establish possession.

Doc. 23 at 20. The court refused to give the instruction, explaining that its instructions already covered mere possession.

During deliberations, the jury asked the court to clarify the meaning of the phrase “take control of” for purposes of “constructive possession.” Doc. 32 at 1. The court instructed the jurors to use their common understanding of the phrase.

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The jury ultimately found Washington guilty of possessing a firearm as a convicted felon. The court sentenced him to 46 months' imprisonment.

II.

We “review a district court’s refusal to give a defendant’s requested theory-of-the-defense instruction for an abuse of discretion.” *United States v. Woodard*, 531 F.3d 1352, 1364 (11th Cir. 2008).

Although we generally review *de novo* the constitutionality of a statute, we review for plain error when a defendant raises his constitutional challenge for the first time on appeal. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). To show plain error, a defendant must establish (1) there was error, (2) that was plain, (3) that affected the defendant’s substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* An error is plain only if it is contrary to a federal statute or on-point precedent from this Court or the United States Supreme Court. *United States v. Hoffman*, 710 F.3d 1228, 1232 (11th Cir. 2013).

III.

Washington raises two issues on appeal. First, he argues that the district court erred when it refused to give his proposed jury instruction. Second, he argues that the federal prohibition on felons possessing firearms is facially unconstitutional. We address each issue in turn.

A.

Washington argues that the district court abused its discretion when it refused to give his proposed instruction regarding mere presence. A district court abuses its discretion when it refuses to give a requested instruction if (1) “the requested instruction was a correct statement of the law,” (2) “its subject matter was not substantially covered by the charge actually given,” and (3) “its subject matter dealt with an issue in the trial court that was so important that the failure to give it seriously impaired the defendant’s ability to defend himself.” *Woodard*, 531 F.3d at 1364 (internal quotation marks omitted). A theory-of-defense charge is unwarranted if “the charge given adequately covers the substance of the requested instruction.” *United States v. Ndiaye*, 434 F.3d 1270, 1293 (11th Cir. 2006).

Here, the district court did not abuse its discretion when it refused to give Washington’s proposed instruction because the court’s other instructions adequately covered the substance of the proposed instruction. The court instructed the jury that it needed to find that Washington “knowingly” possessed the gun and defined “knowingly” as “an act . . . done voluntarily and intentionally and not because of a mistake or by accident.” Doc. 59 at 39. Having received these instructions, the jury could not have attributed possession to Washington based on his mere presence in the vehicle where a gun was found because mere presence would not establish voluntary and intentional possession. *See Woodard*, 531 F.3d at 1365.

The fact that the jury asked a question during deliberations about the meaning of the phrase “take control of” does not change our analysis. The court instructed the jury that to convict Washington, it had to find that he “knowingly” possessed the gun, and the court’s definition of “knowingly” made clear that he could not be convicted based on his mere presence. We thus conclude that the district court did not abuse its discretion in refusing to give Washington’s proposed instruction.

B.

We now turn to Washington’s challenge to the constitutionality of 18 U.S.C. § 922(g)(1), which generally prohibits individuals with felony convictions from possessing firearms or ammunition. According to Washington, this prohibition runs afoul of the Second Amendment, which states that: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. Because Washington raises his constitutional challenge for the first time on appeal, we review for plain error only.³ We conclude that he has not shown plain error.

³ Washington argues that even though he did not raise a Second Amendment challenge below, we should review this issue *de novo* because he is raising a jurisdictional issue. But he cites no authority, and we have found none holding that the question whether a statutory prohibition on a person’s possession of a firearm or ammunition violates the Second Amendment implicates jurisdiction. Because we conclude that Washington’s constitutional challenge does not raise a jurisdictional issue, plain error is the appropriate standard of review.

To assess the constitutionality of the prohibition on felons possessing firearms, we begin with the Supreme Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Court considered a Second Amendment challenge to a District of Columbia law that barred the private possession of handguns in homes. *Id.* at 635. After considering both the text and history of the Second Amendment, the Court concluded that it conferred on an individual a right to keep and bear arms. *Id.* at 595. The Court held that the ban on handgun possession in the home violated the Second Amendment. *Id.* at 635. But the Court acknowledged that the Second Amendment right to keep and bear arms was “not unlimited,” emphasizing that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Id.* at 626. Indeed, the Court labeled such restrictions as “presumptively lawful.” *Id.* at 627 n.26.

After *Heller*, we considered a constitutional challenge to § 922(g)(1)’s prohibition on felons’ possession of firearms. See *United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010). We held that “statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment.” *Id.* at 771.

Several years later, the Supreme Court considered a Second Amendment challenge to New York’s gun-licensing regime that

See *United States v. Alfonso*, 104 F.4th 815, 828–29 & n.18 (11th Cir. 2024) (explaining that plain error review applies to a “garden variety constitutional attack” that the defendant failed to raise in the district court).

limited when a law-abiding citizen could obtain a license to carry a firearm outside the home. *See N.Y. State Rifle & Pistol Ass’n v. Bruen* 597 U.S. 1, 11 (2022). The Court recognized that “the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *Id.* at 10. The Court explained that to determine whether a restriction on firearms was constitutional, courts must begin by asking whether the firearm regulation at issue governs conduct that falls within the plain text of the Second Amendment. *Id.* at 17. If the regulation does cover such conduct, the court may uphold it only if the government “affirmatively prove[s] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 19. *Bruen* emphasized that *Heller* established the correct test for determining the constitutionality of gun restrictions. *See id.* at 39. And, like *Heller*, *Bruen* described Second Amendment rights as extending only to “law-abiding, responsible citizens.” *Id.* at 26 (internal quotation marks omitted).

Based on *Bruen*, Washington challenges § 922(g)(1)’s prohibition on felons possessing firearms. He argues that the prohibition is unconstitutional because there is no “‘tradition’ of felon disarmament dating to the Founding.” Appellant’s Br. 11.

Washington cannot demonstrate plain error because he has not identified any on-point precedent from this Court or the United States Supreme Court holding that § 922(g)(1)’s prohibition on felons possessing firearms is unconstitutional. To the contrary, his constitutional argument is foreclosed by precedent. After *Bruen*, we

considered another Second Amendment challenge to § 922(g)(1). See *United States v. Dubois*, 94 F.4th 1284, 1289 (11th Cir. 2024). We held that the challenge was foreclosed by *Rozier*, which “interpreted *Heller* as limiting the [Second Amendment] right to law-abiding and qualified individuals and as clearly excluding felons from those categories by referring to felon-in-possession bans as presumptively lawful.” *Id.* at 1293 (internal quotation marks omitted). Although the defendant argued that *Bruen* abrogated our decision in *Rozier*, we observed that even in *Bruen* the Supreme Court continued to describe the right to bear arms as extending only to “law-abiding, responsible citizens.” *Id.* (internal quotation marks omitted). We thus concluded that *Bruen* did not abrogate *Rozier*. Because *Rozier* foreclosed a Second Amendment challenge to § 922(g)(1), we affirmed the defendant’s conviction. *Id.*

The Supreme Court’s recent decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), does not change our analysis. In *Rahimi*, the Court considered a Second Amendment challenge to the federal statute that prohibits an individual who is subject to a domestic violence restraining order from possessing a firearm when the order includes a finding that he represents a credible threat to the safety of an intimate partner or a child of that partner or individual. See *id.* at 1898 (citing 18 U.S.C. § 922(g)(8)). It held that this firearm restriction was constitutional. And it once again declared that the prohibition on “the possession of firearms by ‘felons’ . . . [is] ‘presumptively lawful.’” *Id.* at 1902 (quoting *Heller*, 554 U.S. at 626, 627 n.26).

AFFIRMED.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

ANTHONY WASHINGTON

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **1:21-CR-20583-HUCK(1)**

§ USM Number: **02718-506**

§

§ Counsel for Defendant: **Ian McDonald**

§ Counsel for United States: **Michael Augustin**

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty after a plea of not guilty on Count	One of the Indictment

The defendant is adjudicated guilty of this offense:

Title & Section / Nature of Offense

18 U.S.C 922(g)(1) - Possession of a Firearm and Ammunition by a Convicted Felon

Offense Ended

09/24/2021

Count

1

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.

August 10, 2022

Date of Imposition of Judgment



Signature of Judge

PAUL C. HUCK
SENIOR UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 10, 2022

Date

DEFENDANT: ANTHONY WASHINGTON
CASE NUMBER: 1:21-CR-20583-HUCK(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:

46 months.

- The court makes the following recommendations to the Bureau of Prisons:
 1. Participation in a specialized psychiatric care during incarceration.
 2. Designation as near as possible to South Florida to be near family.
 3. Participation in the 500- hour RDAP program.

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

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

at a.m. p.m. on

as notified by the United States Marshal.

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

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ANTHONY WASHINGTON
CASE NUMBER: 1:21-CR-20583-HUCK(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years.**

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)*

You 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: ANTHONY WASHINGTON
CASE NUMBER: 1:21-CR-20583-HUCK(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. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ANTHONY WASHINGTON
CASE NUMBER: 1:21-CR-20583-HUCK(1)

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction: The defendant is prohibited from associating with known gang members while on probation/supervised release.

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

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

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

Home Detention with Electronic Monitoring - The defendant shall participate in the Home Detention Electronic Monitoring Program for the first **Ten (10) months** of supervision. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance and provide the U.S. Probation Officer with requested documentation. The defendant shall maintain a telephone at his place of residence without 'call forwarding', 'call waiting', a modem, 'caller ID', or 'call back/call block' services for the above period. The defendant shall wear an electronic monitoring device and follow the electronic monitoring procedures as instructed by the U.S. Probation Officer. The defendant shall pay for the electronic monitoring equipment at the prevailing rate or in accordance with ability to pay. After 5 months, if the Defendant is in full compliance, he can *apply* for early termination of the Home Detention condition.

DEFENDANT: ANTHONY WASHINGTON
CASE NUMBER: 1:21-CR-20583-HUCK(1)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	0	\$.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 amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page 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:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **0**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney’s Office shall monitor the payment of restitution and report to the court any material change in the defendant’s ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** 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: ANTHONY WASHINGTON
CASE NUMBER: 1:21-CR-20583-HUCK(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 \$100.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

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

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

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall forfeit the defendant's interest in the following property to the United States:

FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.