APPENDIX

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APPENDIX A

[FILED: JUNE 25, 2025]

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. NADARIUS BARNES, Defendant-Appellant.	No. 24-3062

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 2:21-CR-20027-JAR-3)

Lisa Cordara of Arnold & Porter Kaye Scholer LLP, New York, New York (Catherine Langhans of Arnold & Porter Kaye Scholer LLP, New York, New York, Andrew T. Tutt of Arnold & Porter Kaye Scholer LLP, Washington, DC, and Edward K. Fehlig, Jr. of Fehlig Law Firm, Kansas City, Missouri, with her on the briefs), for Defendant-Appellant.

Bryan C. Clark, Assistant United States Attorney, (Kate E. Brubacher, United States Attorney, and James A. Brown, Assistant United States Attorney, Chief, Appellate Division, with him on the brief), Kansas City, Kansas, for Plaintiff-Appellee.

Before **HARTZ**, **KELLY**, and **CARSON**, Circuit Judges.

KELLY, Circuit Judge.

Defendant-Appellant, Nadarius Barnes, appeals from his conviction pursuant to a guilty plea for discharging a firearm during a crime of violence, 18 U.S.C. § 924(c). Aplt. Br. at 3. He also appeals from his above-guideline sentence. *Id.* We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, and we affirm.

Background

The parties are familiar with the facts, and we need not restate them at length here.[1] Briefly, on August 3, 2020, Kansas City Kansas Police Department ("KCKPD") responded to a drive-by shooting at a home belonging to the Butler family, located on Farrow Avenue in Kansas City, Kansas. II R. 13. The Butler brothers, G'Ante and Zarion Butler, lived at the home and were associated with the "Tasha Gang." *Id.* Another Tasha Gang affiliate, Tamani Boykin, was injured during the shooting. *Id.* The suspected shooter was Isaiah Shields, who was a member of the rival "BBUx2 Gang." *Id.* Several KCKPD officers and ATF agents went to Mr. Shields's residence on North Allis Street, where they took Mr. Shields into custody before executing a search warrant on the home. *Id.* at 14. When exiting the home around 11:20 p.m., the officers were fired upon by multiple shooters from an alley west of the home. *Id.* One ATF agent was struck by a bullet in his hand and a civilian-victim, J.B., was shot and injured in both of his hands. *Id.* Also damaged in the gunfire were law enforcement vehicles and neighboring homes. *Id.*

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[1] For a more detailed account of the facts, see the decision in a companion appeal, *United States v. Butler*, No. 24-3061.

Over 100 shell casings were found in the alley west of the home. *Id.*

Officers suspected that five individuals associated with the Tasha Gang were responsible for the second shooting: Mr. Barnes, G'Ante Butler, Zarion Butler, Donnell Hall, and Chase Lewis. *Id.* at 14–17. They believed that the second shooting was carried out to retaliate against the BBUx2 Gang for the earlier shooting at the Butler family's home. *Id.* On June 7, 2021, Zarion Butler was arrested in connection with the shooting. *Id.* at 18. In a post-*Miranda* interview, he essentially confirmed what officers suspected, stating that all five individuals went to Mr. Shields's home on the night in question and carried out the shooting to retaliate against the BBUx2 Gang for the earlier shooting on the Butlers' home. *Id.*

All five individuals were charged with forcible assault of a federal officer, 18 U.S.C. §§ 111(b) and 2, and use of a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c)(1)(A)(iii). I R. 43–44. The defendants moved to dismiss count two, arguing that § 111(b) is not a crime of violence because there is no physical force element in § 111(b). *Id.* at 48–59. The district court denied the motion, holding that § 111(b) is a crime of violence under this court's decision in *United States v. Kendall*, 876 F.3d 1264 (10th Cir. 2017). *Id.* at 179–88. Mr. Barnes thereafter entered an unconditional guilty plea and proceeded to sentencing. I Supp. R. 4–8.

The Presentence Investigation Report ("PSR") calculated a guideline range of 18 to 24 months' imprisonment for count one and a statutory minimum of 120 months' imprisonment for count two, to be imposed consecutively. II R. 30–31. It also stated that an upward departure may be warranted for count one because the

applicable guideline for aggravated assault, U.S.S.G. § 2A2.2, contemplates one victim whereas there were multiple victims here. *Id.* at 35. The upward departure would yield a higher guideline range of 33 to 41 months' imprisonment for count one. *Id.*

The government objected to the PSR, arguing that an additional ground for departure was the injury to the civilian-victim, J.B., because "the Guidelines for assault on a federal officer do not adequately account for an injury to secondary victim(s)." *Id.* at 37. Mr. Barnes opposed, stating that the scope of § 2A2.2 sweeps more broadly and contemplates civilian injuries. *Id.* at 38. The government's sentencing memo argued for a ten-level upward departure for count one: five levels to account for the presence of multiple victims, and five levels to account for the injury to the civilian-victim. I R. 354–57. The government recommended 171 months' imprisonment followed by 5 years' supervised release. *Id.* at 357. Mr. Barnes requested a downward variance to account for his young age, difficult childhood, and lack of criminal history as an adult. *Id.* at 335. Mr. Barnes suggested 130 months' imprisonment. *Id.* at 337. Before sentencing, the district court filed a notice of possible departure and/or variance, stating that the court was "considering an upward departure on the bases outlined in the Government's submissions, and/or a variance under the § 3553(a) factors." *Id.* at 376.

We pause briefly to note the difference between departures and variances. Departures are "non-Guidelines sentences imposed under the framework set out in the Guidelines." *United States v. Vazquez-Garcia*, 130 F.4th 891, 899 (10th Cir. 2025) (quotations omitted). Variances, on the other hand, are "non-Guidelines sentence[s] arising from a district court's case-specific analysis of the sentencing factors in § 3553(a)." *Id.* For

departures, courts consider "whether a particular offense falls within the heartland of offenses involving similar defendants convicted of the same conduct[.]" *Id.* (quotations omitted). For variances, "a district court has independent discretion to vary based on the § 3553(a) factors even when an offense falls in the heartland of similar offenses." *Id.* (quotations omitted).

At sentencing, the district court sustained the government's objection for an upward variance because the court believed that "what happened here is outside the heartland of cases" that the offense was designed to address. III R. 50–51. According to the district court, the heartland of those cases involve "one-on-one" or "one-on-two" encounters with law enforcement. *Id.* at 51. The heartland does not include cases like this one where multiple individuals fire several rounds injuring law enforcement and civilians and subjecting the surrounding neighborhood to an "indiscriminate hail of gunfire[.] *Id.* at 51–52. Thus, the court concluded that a departure was warranted because the guidelines did not account for the severity of the underlying conduct. *Id.* at 52.

Even absent the upward departure, the district court further stated that it would vary upward. *Id.* at 53. The court assessed the § 3553(a) sentencing factors. *Id.* Regarding the nature and circumstances of the offense, the court reiterated the seriousness of the retaliatory shooting which included "indiscriminate shooting at night" and terrorized officers and the neighborhood. *Id.* at 53–54. The court also highlighted the need to promote respect where, as here, a retaliatory shooting indicates that the defendants lack respect for the law. *Id.* at 54. Regarding the history and characteristics of the defendant, the court noted that Mr. Barnes "willingly signed on to be a part of and engage in retaliation[.]" *Id.* With respect to protecting the public, the court

emphasized that "incarceration and incapacitation is critically important" to promote public safety where, as here, the defendants are willing to engage in indiscriminate shooting in a neighborhood of families, children, and elderly people. *Id.* at 55. Thus, the court concluded that the § 3553(a) factors also warranted an upward variance and noted that the sentencing outcome would be the same under both the upward departure and the upward variance. *Id.* Mr. Barnes was sentenced to 156 months' imprisonment, consisting of 36 months for count one and 120 months for count two to run consecutively. I R. 380. The court also set a term of 5 years' supervised release following Mr. Barnes's term of imprisonment. *Id.* at 381. Mr. Barnes appealed. *Id.* at 387.

Discussion

On appeal, Mr. Barnes argues that his § 924(c) conviction must be vacated because assault on a federal officer under § 111(b) is not a crime of violence. Aplt. Br. at 9. He also challenges the reasonableness of his sentence, arguing that the district court erred by imposing an upward departure because this case is within the heartland of the offense guideline. *Id.* at 26. We reject Mr. Barnes's arguments.

I. Mr. Barnes's Guilty Plea Waives His Challenge to His § 924(c) Conviction.

Mr. Barnes first asserts that we must vacate his § 924(c) conviction because § 111(b) is not a crime of violence. *Id.* at 9. Typically, "[w]e review de novo whether an offense qualifies as a crime of violence." *United States v. Kepler*, 74 F.4th 1292, 1300 (10th Cir. 2023). Recall, however, that Mr. Barnes entered an unconditional guilty plea. I Supp. R. 4–8. It is well-established that "a voluntary and unconditional guilty plea waives all non-jurisdictional defenses." *United States v. De Vaughn*, 694

F.3d 1141, 1145 (10th Cir. 2012) (quotations omitted). There are a few narrow exceptions for constitutional claims including "due process claims for vindictive prosecution and double jeopardy claims that are evident from the face of the indictment." *Id.* at 1145–46. An unconditional guilty plea also does not waive challenges asserting that the statute of conviction is unconstitutional. *United States v. Class*, 583 U.S. 174, 181–83 (2018). Mr. Barnes's challenge does not fall into any of these categories. Rather, he challenges his § 924(c) conviction by arguing that "the course of conduct confessed to in the plea is not in fact criminal" because § 111(b) is not a crime of violence, which he claims is a "purely legal argument" and therefore is not waived by his plea. Aplt. Reply Br. at 2–3. We are not persuaded.

To be sure, as Mr. Barnes notes, we previously recognized that a guilty plea does not waive challenges to a conviction arguing that the admitted conduct was not actually a crime. *United States v. Barboa*, 777 F.2d 1420, 1423 n.3 (10th Cir. 1985); *see also United States v. Green*, 797 F.2d 855, 856 (10th Cir. 1986) (relying on *Barboa*); *United States v. Barnhardt*, 93 F.3d 706, 707–08 (10th Cir. 1996) (same). The rationale behind *Barboa* and its progeny was that guilty pleas do not waive such challenges because they are jurisdictional in nature insofar as they challenge "'the very power of the State to bring the defendant into court to answer the charge brought against him.'" 777 F.2d at 1423 n.3 (quoting *Blackledge v. Perry*, 417 U.S. 21, 30 (1974)). But in *United States v. Cotton*, 535 U.S. 625, 630 (2002), the Supreme Court advanced a less expansive view of jurisdiction. There, the Court suggested that jurisdiction refers to "'the courts' statutory or constitutional *power* to adjudicate the case.'" *Id.* (quoting *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 89 (1998)). Thus, the Court

concluded that indictment defects are not jurisdictional because they "do not deprive a court of its power to adjudicate a case." *Id.* at 630–31. In *De Vaughn*, this court acknowledged that *Cotton* was a "superseding contrary Supreme Court decision" which directly contradicted our holding in *Green* which relied on *Barboa*. 694 F.3d at 1149 n.4. Therefore, Mr. Barnes's reliance on pre-*De Vaughn* cases is misplaced. *See* Aplt. Reply Br. at 6–8.

Moreover, two of our sibling circuits have recently held that unconditional guilty pleas waive similar challenges to convictions. *Grzegorczyk v. United States*, 997 F.3d 743, 745–48 (7th Cir. 2021); *United States v. Pittman*, 125 F.4th 527, 530–31 (4th Cir. 2025). We agree with those circuits that such arguments present issues of statutory interpretation. *Grzegorczyk*, 997 F.3d at 748; *Pittman*, 125 F.4th at 530. And "an unconditional plea of guilty is sufficient to waive a defendant's right to contest the proper interpretation of the statute of conviction." *Grzegorczyk*, 997 F.3d at 748. Indeed, "the most basic function of a guilty plea" is that the defendant "necessarily admit[s] that his conduct violated the statute[.]" *Pittman*, 125 F.3d at 530; *see also United States v. Broce*, 488 U.S. 563, 570 (1989) ("A guilty plea is more than a confession which admits that the accused did various acts . . . [i]t is an admission that he committed the crime charged against him." (citations and quotations omitted)). And "a valid guilty plea relinquishes any claim that would contradict the 'admissions necessarily made upon entry of a voluntary plea of guilty.'" *Class*, 583 U.S. at 183 (quoting *Broce*, 488 U.S. at 573–74).

Mr. Barnes's argument that the offense to which he pled — assault on a federal officer under § 111(b) — is not actually a crime of violence under § 924(c) is a statutory interpretation argument which Mr. Barnes waived by entering an unconditional guilty plea. *See Grzegorczyk*,

997 F.3d at 745–48. Such challenges do not fit within the narrow category of claims which are not waived by a guilty plea. *See De Vaughn*, 694 F.3d at 1145–46. Adopting Mr. Barnes's argument — that § 111(b) is not a crime of violence — "would contradict the 'admissions necessarily made'" in his plea. *Class*, 583 U.S. at 183 (quoting *Broce*, 488 U.S. at 573–74). Mr. Barnes suggests that this creates a "waiver by plea rule" whereby defendants must go to trial to preserve such challenges. Aplt. Reply Br. at 2–3. Not so. Defendants can enter conditional pleas, thereby "reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." Fed. R. Crim. P. 11(a)(2). Mr. Barnes pled unconditionally and, in doing so, waived the challenge which he now makes to his § 924(c) conviction. We therefore affirm that conviction.

II. Mr. Barnes's Sentence is Reasonable.

Next, Mr. Barnes appeals from the district court's decision to depart and vary upward to impose a sentence 12 months above the guideline range. Aplt. Br. at 26–31. Specifically, he argues that the upward departure was erroneous because the offense conduct was not outside of U.S.S.G. § 2A2.2's heartland. *Id.* at 26. He further argues that the district court's separate decision to vary upward does not render that error harmless. *Id.* at 30. We disagree.

We first note that "[d]epartures and variances are analytically distinct, and courts must be careful not to confuse them." *Vazquez-Garcia*, 130 F.4th at 899 (quotations omitted). Still, this court has acknowledged that district courts may "issue both a variance and a departure," and need not "choose one over the other[.]" *United States v. Fykes*, 678 F. App'x 677, 688 (10th Cir. 2017). Indeed, a district court "does not necessarily need

to discuss each one separately." *Id.*; *see also United States v. Martinez-Barragan*, 545 F.3d 894, 901 (10th Cir. 2008) ("[A] sentencing judge does not commit reversible error by consolidating the two discussions."). As explained below, the district court did not abuse its discretion by varying upward. Thus, we need not consider whether the upward departure was separately warranted. Even if some of the district court's statements regarding the departure were erroneous, such an error would be harmless because there is "no reason to think that the district court would impose a different sentence on remand if we were to reverse the departure while affirming the variance[.]" *United States v. DeRusse*, 859 F.3d 1232, 1238 (10th Cir. 2017) (quotations omitted). In fact, the district court explicitly stated that it would impose the same sentence by way of an upward variance, even if it did not also depart upward. III R. 55.

We review sentences for reasonableness, which has both procedural and substantive components. *Martinez-Barragan*, 545 F.3d at 898. "Review for substantive reasonableness focuses on whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a)." *United States v. Sample*, 901 F.3d 1196, 1199 (10th Cir. 2018) (quotations omitted). We construe Mr. Barnes's challenge as a substantive reasonableness challenge, given that he claims that a thirteen-year sentence is unreasonable in light of the § 3553(a) factors. Aplt. Br. at 30–31; Aplee. Br. at 42.

Our review is for abuse of discretion. *Martinez-Barragan*, 545 F.3d at 905. A district court abuses its discretion if the sentence imposed is "arbitrary, capricious, whimsical, or manifestly unreasonable." *United States v. Gross*, 44 F.4th 1298, 1302 (10th Cir. 2022) (quotations omitted). The sentence must "exceed[]

the bounds of permissible choice" to be unreasonable. *Id.* (quotations omitted). In making this determination, "we give due deference to the sentencing court's variance based on 18 U.S.C. § 3553(a)'s factors." *Id.* (quotations omitted). Indeed, "[t]he sentencing judge is in a superior position to find facts and judge their import under § 3553(a) in the individual case." *Gall v. United States*, 552 U.S. 38, 51 (2007) (quotations omitted). This court has declined to find an abuse of discretion where the district court "carefully considers" the § 3553(a) factors and conducts "a detailed, individualized assessment" of how those factors apply in a specific case. *United States v. McCulley*, 679 F. App'x 643, 645 (10th Cir. 2017). "We will not reweigh the factors on appeal[.]" *Id.* Comparatively, we have found abuse of discretion where the district court relies "solely on one § 3553(a) factor" in varying upward and does not "address[] other relevant factors." *United States v. Crosby*, 119 F.4th 1239, 1247 (10th Cir. 2024).

Here, in varying upward, the district court conducted "a detailed, individualized assessment" of the relevant § 3553(a) factors. *See McCulley*, 679 F. App'x at 645; III R. 53–55. The court carefully explained that an upward variance was warranted based on the severity of the offense conduct, the danger that the shooting posed to the neighborhood, the "indiscriminate" manner in which the shooting occurred, the need to promote respect or the law, Mr. Barnes's willingness to engage in gang-related violence, deterrence for those like Mr. Barnes who "willingly sign[] on to be a part of this," and the need for "incarceration and incapacitation" to protect the public. III R. 53–55. We do not second-guess the district court's assessment of the § 3553(a) factors. Rather, we defer to the district court's decision to vary upward based on those factors. *Gross*, 44 F.4th at 1301. We therefore are not persuaded that Mr. Barnes's above-guideline sentence

"exceed[s] the bounds of permissible choice" in this case. *Id.* at 1302 (quotations omitted).

We need not separately assess whether a departure was warranted because we do not think that Mr. Barnes's sentence would be any different if we reversed the departure while affirming the variance. *DeRusse*, 859 F.3d at 1238. In any event, although the district court was incorrect to suggest that § 2A2.2 only applies to federal officers rather than all aggravated assaults, our decision in *United States v. Pettigrew*, 468 F.3d 626 (10th Cir. 2006), convinces us that the district court was not incorrect in ultimately concluding that this case falls outside the heartland of typical cases covered by § 2A2.2. III R. 50–53. In *Pettigrew*, this court acknowledged that an upward departure under § 2A2.2 may be warranted where the assault involves multiple victims and was carried out "in an excessively reckless manner with regard to others." 468 F.3d at 640. As the district court explained, that is what happened here. III R. 50–53.

AFFIRMED.

APPENDIX B

[FILED: OCTOBER 7, 2025]

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. NADARIUS BARNES, Defendant-Appellant.	No. 24-3062 (D.C. No. 2:21-CR-20027-JAR-3) (D. Kan.)

ORDER

Before **HARTZ**, **KELLY**, and **CARSON**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

APPENDIX C

[FILED: APRIL 25, 2024]

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
v.	Case Number: 2:21CR20027 – 003
Nadarius Barnes	USM Number: 53216-509
	Defendant's Attorney: Edward K. Fehlig Jr.

THE DEFENDANT:

☒ pleaded guilty to count(s): 1 and 2 of the Indictment.

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

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 111(a)(1) 18 U.S.C. § 111(b)	Forcible Assault of a Federal Officer, a Class C Felony	08/03/2020	1
18 U.S.C. § 924(c)(1)(A)(iii)	Use of a Firearm in Furtherance	08/03/2020	2

18 U.S.C. § 924(c)(1)(A) 18 U.S.C. § 2	of a Crime of Violence, a Class A Felony

The defendant is sentenced as provided in pages 1 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) .

☐ Count(s) is dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall 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 shall notify the court and United States attorney of material changes in economic circumstances.

04/23/2024
Date of Imposition of Judgment

s/ Julie A. Robinson
Signature of Judge

Honorable Julie A. Robinson, Senior U.S. District Judge
Name & Title of Judge

4/25/24
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 156 months. The sentence consists of 36 months on Count 1 and 120 months on Count 2 to run consecutive.

☒ The Court makes the following recommendations to the Bureau of Prisons. As close to the Kansas City, KS area to facilitate family visitations.

☒ 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 Officer.

RETURN

I have executed this judgment as follows:

_____
_____
_____

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

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 5 years. This sentence consists of 3 years on count 1 and 5 years on count 2 to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.

2. You must not unlawfully possess a controlled substance.

3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight (8) drug tests per month.

☐ The above drug testing condition is suspended based on the court's determination that you pose a low risk of future substance abuse. *(Check if applicable.)*

4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(Check if applicable.)*

5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check if applicable.)*

6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(Check if applicable.)*

7. ☐ You must participate in an approved program for domestic violence. *(Check if applicable.)*

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

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, after obtaining court approval, require you to notify the person about the risk and you must comply with that instruction.

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 the www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must not be a member of any street gang, participate in any gang-related activities, or knowingly associate with any gang members during the term of supervision, without first gaining permission of the U.S. Probation Officer.

2. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

3. You must successfully participate in and successfully complete an approved program for substance abuse, which may include urine, breath, or sweat patch testing, and/or outpatient treatment, and share in the costs, based on the ability to pay, as directed by the Probation Office. You must abstain from the use and possession of alcohol and other intoxicants during the term of supervision.

ACKNOWLEDGMENT OF CONDITIONS:
I have read or have had read to me the conditions of supervision set forth in this judgment; and I fully understand them. I have been provided a copy of them. I understand upon finding of a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision and/or (3) modify the conditions of supervision.

Defendant's Signature _____ Date _____

USPO Signature _____ Date _____

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments set forth in this Judgment.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$200	$2,113.45	Waived	Not applicable	Not applicable

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

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

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

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*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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
ATF		$2,113.45	1
TOTALS	**$2,113.45**	**$2,113.45**	

☐ Restitution amount ordered pursuant to plea agreement $ ___.

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution 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 set forth in this Judgment 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 and/or ☒ restitution.

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

***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.

SCHEDULE OF PAYMENTS

Criminal monetary penalties are due immediately. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows, but this schedule in no way abrogates or modifies the government's ability to use any lawful means at any time to satisfy any remaining criminal monetary penalty balance, even if the defendant is in full compliance with the payment schedule:

A ☐ Lump sum payment of $ due immediately, balance due

☐ not later than , or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

C ☐ Payment in monthly installments of not less than 5% of the defendant's monthly gross household income over a period of years to commence days after the date of this judgment; or

D ☒ Payment of not less than 10% of the funds deposited each month into the inmate's trust fund account and monthly installments of not less than 5% of the defendant's monthly gross household income over a period of 5 years, to commence 30 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 restitution is ordered, the Clerk, U.S. District Court, may hold and accumulate restitution payments, without distribution, until the amount accumulated is such that the minimum distribution to any restitution victim will not be less than $25.

Payments should be made to Clerk, U.S. District Court, U.S. Courthouse - Room 204, 401 N. Market, Wichita, Kansas 67202, or may be paid electronically via Pay.Gov.

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

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

Case Number			
Defendant and Co-Defendant Names (including defendant number)	**Total Amount**	**Joint and Several Amount**	**Corresponding Payee, if appropriate**
Nadarius Barnes-1083:2:21CR20027-003		$2,113.45	
G'Ante Butler --1083:2:21CR20027-001		$2,113.45	
Zarion Butler --1083:2:21CR20027-002		$2,113.45	
Donnell Hall --1083:2:21CR20027-005		$2,113.45	

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States. Payments against any money judgment ordered as part of a forfeiture order should be made payable to the United States of America, c/o United States Attorney, Attn: Asset Forfeiture Unit, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202.

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.

APPENDIX D

18 U.S.C. § 111. Assaulting, resisting, or impeding certain officers or employees

(a) In general.--Whoever--

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

(b) Enhanced penalty.--Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Extraterritorial jurisdiction.—There is extraterritorial jurisdiction over the conduct prohibited by this section.

APPENDIX E

Section 924 of Title 18 of the United States Code provides:

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

> **(i)** be sentenced to a term of imprisonment of not less than 5 years;
>
> **(ii)** if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> **(iii)** if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection--

> **(i)** is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or
>
> **(ii)** is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall--

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law--

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of

another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section--

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition–

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

APPENDIX F

Fed. R. Crim. P. 11. Pleas

(a) Entering a Plea.

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or

that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must

include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

APPENDIX G

[FILED: NOVEMBER 9, 2023]

Filed in Open Court 11-8-23
Skyler B. O'Hara
By /s/ Deputy

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	) NO. 21CR20027 JAR
Plaintiff,	) PETITION TO ENTER) PLEA OF GUILTY AND
v.	) ORDER ENTERING) PLEA
NADARIUS BARNES, Defendant.	) [Federal Rules of Criminal) Procedure, Rules 10 and 11]

The defendant represents to the Court:

1. My full true name is: Nadarius Elijah Barnes. I am 24 years of age. I have completed 12 grade. I request that all proceedings against me be in my true name.

2. I am represented by a lawyer, his name is:

Edward K. Fehlig .

3. I received a copy of the Indictment[1] before being called upon to plead. I read the Indictment and have discussed it with my lawyer. I fully understand every charge made against me.

4. I told my lawyer all the facts and circumstances known to me about the charges made against me in the

[1] *"Indictment" also includes "Information."*

Indictment. I believe that my lawyer is fully informed on all such matters.

5. I know that the Court must be satisfied that there is a factual basis for a plea of "GUILTY" before my plea can be accepted. I represent to the Court that I did the following acts in connection with the charges made against me in Count(s): Count I: 18 USC 111 (b) and 2; Count II: 18 USC 924 (c) (1) (A) (iii).

6. My lawyer has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in this case.

7. I know that I have the right to plead "NOT GUILTY" to any offense charged against me. If I plead "NOT GUILTY" I know the Constitution guarantees me: (a) the right to a speedy and public trial by a jury; (b) at that trial, and at all stages of the proceedings, the right to the assistance of a lawyer; (c) the right to see and hear all witnesses called to testify against me, and the right to cross-examine those witnesses; (d) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor; and (e) the right not to be compelled to incriminate myself by taking the witness stand, and if I do not take the witness stand, no inference of guilt may be drawn from such decision.

8. I know that if I plead "GUILTY," I am thereby waiving my right to a trial, and that there will be no further trial of any kind, either before a Court or jury; and further, I realize the Court may impose the same punishment as if I had pleaded "NOT GUILTY," stood trial, and been convicted by a jury.

9. I know that if I plead "GUILTY," the Court will ask me questions about the offense(s) to which I have pleaded, and since I will be answering these questions under oath,

on the record, and in the presence of my lawyer, that my answers may later be used against me in a prosecution for perjury or false statement.

10. My lawyer informed me that the plea of "GUILTY" could subject me to a mandatory minimum sentence of not less than 10 years (if applicable) and to a maximum punishment which, as provided by law, is life years to be followed by a term of supervised release of at least n/a years on (Title 21 Drug Offense) and not to exceed 5 years (greater of 18 U.S.C. § 3583(b) or Title 21 Drug Offense), and a fine of not less than $0 nor more than $250000 (which may accrue interest if not paid at time of sentencing) for the offense(s) charged in Count(s) I&2 of the Indictment or Information. I have also been informed that should the Court find me in violation of the supervised release term, the term could be revoked and an additional term of imprisonment not to exceed __ years may be imposed. I have also been informed that the Court may order me to make restitution in compliance with 18 U.S.C. § 3663 and§ 3664 or as a condition of supervision, if such is ordered under 18 U.S.C. § 3563, in addition to any other penalty provided by law. I further understand that if I am pleading "GUILTY" to an offense which is subject to the Sentencing Reform Act, I cannot be released on parole and, if imprisonment is ordered in my case, the sentence imposed by the Court will be the sentence I serve less any good time credit if I earn it.

11. I know that in addition to any other penalty imposed, including any fine or restitution order, the Court is required to impose a special monetary assessment in the amount of $200.

$100 for each count in which the offense occurred after April 24, 1996. (Not less than $100.00 for a felony, $25.00 for a Class A misdemeanor; if the defendant is other than an individual the assessment is not less than

$400.00 for a felony and $100.00 for a Class A misdemeanor). I UNDERSTAND THIS SPECIAL ASSESSMENT MUST BE PAID AT THE TIME OF THE SENTENCING HEARING UNLESS THE COURT DIRECTS OTHERWISE.

12. I understand that if my case involves drug trafficking or drug possession, the Court may deny or suspend my eligibility to receive federal benefits pursuant to 21 U.S.C. § 862, except for those specifically exempted. I understand that if this is my second or subsequent conviction for possession of a controlled substance, the Court may order me to complete drug treatment or community service as specified in the sentence as a condition for reinstatement of benefits.

13. I know that the Court may also order, in addition to the penalty imposed, that I give reasonable notice and explanation of the conviction, in such form as the Court may approve, to the victims of the offense.

14. I have been advised and understand that if I am not a U.S. citizen, a conviction of a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.

15. If I am on probation or parole in this or any other Court, I know that by pleading guilty here, my probation or parole may be revoked and I may be required to serve time in that case, which will be consecutive, that is, in addition to any sentence imposed upon me in this case.

16. I declare that no officer or agent of any branch of government (federal, state, or local) has promised, suggested, or predicted that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "GUILTY," except as follows:

My attorney did discuss how the Sentencing Guidelines may apply in my case.

If anyone else, including my attorney, made such a promise, suggestion, or prediction, except as noted in the previous sentence, I know that he had no authority to do so.

I know that the sentence I will receive is solely a matter within the control of the Judge. I do understand that there is no limitation on the information the Judge can consider at the time of sentencing concerning my background, character, and conduct, provided the information is reliable, 18 U.S.C. § 3661. I do understand that if I am subject to sentencing under the Sentencing Reform Act and the Sentencing Guidelines issued by the United States Sentencing Commission, a sentencing guideline range is established. The Judge will consider a sentence from within the guideline range and, if my case presents features which persuade the Judge to vary from the guideline range the Judge could impose a sentence either above or below the recommended guideline range. In determining the guideline range, any variance, and the sentence to impose, the Court may take into account all relevant criminal conduct, which may include counts to which I have not pled guilty or been convicted, and take into account background characteristics, unless otherwise prohibited by law. I further understand that my background characteristics including, but not limited to, the recency and frequency of my prior criminal record, whether or not a substantial portion of my income resulted from criminal conduct, my role in the offense, victim-related circumstances, and my acceptance of responsibility for the offense, may have a specific effect on the sentence.

I hope to receive leniency, but I am prepared to accept any punishment permitted by law which the Court

sees fit to impose. However, I respectfully request the Court to consider, in mitigation of punishment, that I have voluntarily entered a plea of guilty.

17. I understand that a U.S. Probation Officer will be assigned to conduct a thorough presentence investigation to develop all relevant facts concerning my case, unless the Court finds that there is in the record sufficient information to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. § 3553. The report of the presentence investigation shall contain the factors set forth in Rule 32. These include the classification of the offense and of the defendant under the categories established by the Sentencing Commission, the kinds of sentence available to the Court, and the sentencing range the officer believes applicable. The report shall include the history and characteristics of the defendant, and such other information required by the Court recognizing the factors set forth in paragraph (16) above.

18. My plea of guilty is/is not the result of my plea agreement entered into between the Government attorney, my attorney, and me.

If my plea of guilty is the result of a plea agreement, I hereby state that the terms of said agreement are as follows:

Open Plea

I fully understand that the Court is not bound by the terms of the plea agreement, and may accept or reject said agreement. If the Court rejects the agreement, I also understand the Court will not give me the opportunity to withdraw my plea of guilty, unless the plea agreement, signed by all parties, is executed in accordance with Federal Rules of Criminal Procedure, Rule 11(c)(1)(A) or Rule 11(c)(1)(C).

19. I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME.

20. I know that the Court will not permit anyone to plead "GUILTY" who maintains he/she is innocent and, with that in mind, and because I am "GUILTY" and do not believe I am innocent, I wish to plead "GUILTY", and respectfully request the Court to accept my plea of "GUILTY" and to have the Clerk enter my plea of "GUILTY" as follows.[2]

Plea of Guilty to Counts I&II.

21. My mind is clear, I am not under the influence of alcohol. I currently am not under a doctor's care. The only drugs, medicines or pills that I took within the past seven (7) days are:

N/A.

22. I have never been confined in an institution for the treatment of mental illness. I have never been adjudicated mentally incompetent. No psychiatrist, physician, or psychologist has ever found me to be mentally ill. I know of no reason why my mental competence at the time of the commission of the alleged offense(s), or at the present time, should be questioned. (If there are any exceptions to the above statement, explain below.)

N/A.

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[2] *The defendant's plea of "GUILTY" or "NOT GUILTY" to each offense should be entered in the blank spaces provided in paragraph (20). If the Indictment charges a single offense, a defendant who wishes to plead "GUILTY" should write in paragraph (20) "GUILTY as charged in the Indictment." If more than one offense is charged, the defendant may write in paragraph (20) "GUILTY as charged in Count(s)___," "NOT GUILTY as charged in Count(s)___."*

23. I offer my plea of "GUILTY" freely and voluntarily, and further state that my plea of guilty is not the result of any force or threats against me, or of any promises made to me other than those noted in this petition. I further offer my plea of "GUILTY" with full understanding of all the matters set forth in the Indictment, in this petition, and in the certificate of my attorney which is attached to this petition.

24. I waive the reading of the Indictment in open court, and I request the Court to enter my plea of "GUILTY" as set forth in paragraph (20) of this petition.

25. I swear that I have read, understood, and discussed with my attorney, each and every part of this Petition to Plead Guilty, and that the answers which appear in every part of this petition are true and correct.

Signed and Sworn to by me in open court, in the presence of my attorney, this 8th day of November, 2023.

BARNES

(Defendant)

Subscribed and Sworn to before me this 8th day of November, 2023.

Sarah Spegal

(Deputy Clerk)

CERTIFICATE OF COUNSEL

The undersigned, as lawyer and counselor for the defendant Nadarius Barnes hereby certifies:

1. I have read and fully explained to the defendant the allegations contained in the Indictment in this case.

2. To the best of my knowledge and belief, the statements, representations and declarations made by the defendant in the foregoing petition are in all respects accurate and true.

3. I explained the maximum penalty for each count to the defendant.

4. The plea of "GUILTY" offered by the defendant in paragraph (20) accords with my understanding of the facts he/she related to me and is consistent with my advice to the defendant.

5. In my opinion, the defendant's waiver of reading of the Indictment in open court as provided by Rule 10 is voluntarily and understandingly made, and I recommend to the Court that the waiver be accepted.

6. In my opinion, the plea of "GUILTY" offered by the defendant in paragraph (20) of the petition is voluntarily and understandingly made. I recommend that the Court accept the plea of "GUILTY."

7. I have made no predictions or promises to the defendant concerning any sentence the Court may award, except as noted in the space below:

I have discussed with my client how the Sentencing Guidelines may apply in his case.

8. I further represent to the Court that the defendant's plea of "GUILTY" is the result of a plea agreement. The terms of the agreement are set out in paragraph (18) of the petition, and I have informed the defendant that the Court is not bound by the terms of the

agreement and that if the Court rejects the agreement, the Court will not give him/her the opportunity to withdraw his/her plea of "GUILTY," unless the plea agreement, signed by all parties, is executed in accordance with Federal Rules of Criminal Procedure, Rule 11(c)(l)(A) or Rule 11(c)(1)(C).

Signed by me in open court in the presence of the defendant above named and after full discussion of the contents of this certificate with the defendant, this 8th day of November, 2023.



(Attorney for the Defendant)

ORDER

I find that the plea of guilty was made by the defendant freely, voluntarily, and because he/she is guilty as charged, and not out of ignorance, fear, inadvertence or coercion, and with full understanding of its consequences. I further find that the defendant has admitted the essential elements of the crime charged and is mentally competent.

IT IS THEREFORE ORDERED that the defendant's plea of "GUILTY" be accepted and entered as prayed for in the petition and as recommended in the certificate of his/her lawyer.

Done in open court this 8th day of November, 2023.

(UNITED STATES DISTRICT JUDGE)