

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

Hon. Nancy G. Edmunds

v.

Case No. 21-cr-20613

D-3 ANDRAE SIMS,

Defendant.

Plea Agreement

The United States of America, by and through the United States Attorney's Office for the Eastern District of Michigan and the Department of Justice, Criminal Division, Fraud Section (collectively, the "Offices"); and the defendant, Andrae Sims (the "defendant" or "Sims"), have reached a plea agreement under Rule 11 of the Federal Rules of Criminal Procedure. The plea agreement's terms are:

1. Count of Conviction

Sims will waive his right to an indictment and will plead guilty to Count 1 of the Information. Count 1 charges Sims with Conspiracy to Commit Wire Fraud in violation of 18 U.S.C. § 1349.

2. Statutory Maximum Penalties

The defendant understands that his guilty plea carries the following maximum statutory penalties:

Count 1	Term of imprisonment:	20 years
	Fine:	\$250,000 or twice the gross pecuniary gain or the gross pecuniary loss
	Term of supervised release:	3 years

3. Agreement Not to Bring Additional Charges

If the Court accepts this agreement and imposes a sentence consistent with its terms, the Offices will not bring additional charges against the defendant for the conduct reflected in the factual basis of this Rule 11 Plea Agreement.

4. Elements of Count of Conviction

The elements of Count 1 are:

- (A) First, that two or more persons conspired or agree to commit the crime of wire fraud; and
- (B) Second, that the defendant knowingly and voluntarily joined the conspiracy.

As set forth in the Information, Sims is charged with conspiracy to commit wire fraud in violation of 18 U.S.C. 1343 which makes it a Federal offense

for anyone to knowingly and willfully advance or further a scheme to commit fraud by transmitting, or causing to transmit any writing, signal, or sound by means of a wire, radio or television communication in interstate commerce.

5. Factual Basis

The parties agree that the following facts are true; accurately describe the defendant's role in the offenses; and provide a sufficient factual basis for the defendant's guilty plea:

The Payroll Protection Program ("PPP") is a program administered by the United States Small Business Administration ("SBA") that helps businesses keep their workforces employed during the coronavirus pandemic. Enacted on March 27, 2020 as part of the CARES Act, the program is designed to provide a direct incentive for small businesses to keep their workforces on the payroll during the pandemic. The PPP allows small businesses to obtain forgivable loans from participating financial institutions. The SBA will forgive the loans if all employees are on payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

The PPP loan application requires the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) must state, among other things, the following: (a) average monthly payroll expenses; and (b)

number of employees. These figures are used to calculate the amount of money the small business is eligible to receive under the PPP. In addition, businesses applying for a PPP loan must provide documentation showing their payroll expenses

The Economic Injury Disaster Loan (“EIDL”) program is an SBA program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. The CARES Act authorized the SBA to provide EIDLs of up to \$2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to \$10,000 to small businesses within three days of applying for an EIDL. The amount of the advance is determined by the number of employees the applicant certifies having. The advances do not have to be repaid.

In order to obtain an EIDL and advance, a qualifying business must submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. The applicant must also certify that all of the information in the application is true and correct to the best of the applicant’s knowledge. The amount of the loan, if the application is approved, is determined based, in part, on the information provided in the application about employment, revenue, and cost of goods, as described above.

If the applicant also obtains a loan under the PPP, the EIDL funds cannot be used for the same purpose as the Paycheck Protection Program funds.

Sims was an owner, registered agent, banking signatory, and/or otherwise affiliated with The Black Wolf, Inc. (“Black Wolf”) and Defined Jewelry, Inc. (“Defined”).

Beginning in or around June 2020 and continuing through at least July 2020, Sims and certain co-conspirators submitted two applications seeking PPP funds, one on behalf of Black Wolf and the other on behalf of Defined. Sims and certain co-conspirators also submitted two applications seeking EIDL funds, one on behalf of Black Wolf and the other on behalf of Defined. The applications that Sims and his co-conspirators submitted contained materially false information and were transmitted by Sims and his co-conspirators by wire communication in interstate commerce. Specifically, Sims and others obtained payroll and other information that was used to support a seemingly legitimate PPP loan application submitted on behalf of an unrelated entity and then used the unrelated entity’s payroll information to support fraudulent PPP and EIDL loan applications on behalf of Black Wolf and Defined.

The falsified payroll and employee information used to support the PPP and EIDL loan applications submitted by Sims and others was material insofar as it induced financial institutions to disburse funds that Sims and his co-conspirators

were not otherwise entitled to. All told, Sims and his co-conspirators sought, or caused to be sought, approximately \$392,383 in PPP funds and \$274,300 in EIDL funds to which they were not entitled.

6. Advice of Rights

The defendant has read the Information; has discussed the charges and any possible defenses with his attorney; and understands the crime for which he is charged. The defendant understands that, by pleading guilty, he is waiving many important rights, including the following:

- A. The right to plead not guilty and to persist in that plea;
- B. The right to a speedy and public trial by jury;
- C. The right to the assistance of an attorney at every critical stage of the proceedings, including trial;
- D. The right to an appointed attorney, if the defendant cannot afford to retain one;
- E. The right to be presumed innocent and to require the government to prove the defendant guilty beyond a reasonable doubt at trial;
- F. The right to confront and cross-examine adverse witnesses at trial;
- G. The right to testify or not to testify at trial, whichever the defendant chooses;

H. If the defendant chooses not to testify, the right to have the jury informed that it may not treat that choice as evidence of guilt;

I. The right to present evidence or not to present evidence at trial, whichever the defendant chooses; and

J. The right to compel the attendance of witnesses at trial.

7. Collateral Consequences of Conviction

The defendant understands that his conviction here may carry additional consequences under federal or state law. The defendant understands that, if he is not a United States citizen, his conviction here may require him to be removed from the United States; denied citizenship; and denied admission to the United States in the future. The defendant further understands that the additional consequences of his conviction here may include, but are not limited to, adverse effects on his immigration status; naturalized citizenship; right to vote; right to carry a firearm; right to serve on a jury; and ability to hold certain licenses or to be employed in certain fields. The defendant understands that no one, including his attorney or the Court, can predict to a certainty what the additional consequences of his conviction might be. The defendant, nevertheless, affirms that he chooses to plead guilty regardless of any immigration or other consequences from his conviction.

8. Defendant's Guideline Range

A. Court's Determination

The Court will determine the defendant's guideline range at sentencing.

B. Acceptance of Responsibility

The government recommends under Federal Rule of Criminal Procedure 11(c)(1)(B) that the defendant receive a two-level reduction for acceptance of responsibility under USSG § 3E1.1(a). Further, if his offense level is 16 or greater and he is awarded the two-level reduction under USSG § 3E1.1(a), the government recommends that the defendant receive an additional one-level reduction for his acceptance of responsibility under USSG § 3E1.1(b). If, however, the government learns that the defendant has engaged in any conduct inconsistent with acceptance of responsibility—including, but not limited to, making any false statement to, or withholding information from, his probation officer; obstructing justice in any way; denying his guilt on the offense to which he is pleading guilty; committing additional crimes after pleading guilty; or otherwise demonstrating a lack of acceptance of responsibility as defined in USSG § 3E1.1—the government will be released from its obligations under this paragraph; will be free to argue that the defendant not receive *any* reduction for acceptance of responsibility under USSG § 3E1.1; and will be free to argue that the defendant receive an enhancement for obstruction of justice under USSG § 3C1.1.

C. Other Guideline Recommendations

The parties recommend that the following guideline provisions apply to the defendant's guideline calculation on Count 1:

- USSG Section 2B1.1(a)(1): Base Offense Level of 7
- USSG Section 2B1.1(b)(1)(H): Loss Greater than \$550,000 (add 14 Levels)

The parties have no other recommendations as to the defendant's guideline calculation.

D. Factual Stipulations for Sentencing Purposes

The parties stipulate and agree that, for purposes of determining the applicable sentencing guidelines range, the loss amount attributable to the defendant's conduct is \$666,683.

E. Parties' Obligations

Both the defendant and the government agree not to take any position or make any statement that is inconsistent with any of the guideline recommendations or factual stipulations in paragraphs 8.B, 8.C or 8.D. Other than the guideline recommendations and stipulations in those paragraphs, however, neither party is restricted in what it may argue or present to the Court as to the defendant's guideline calculation.

E. Not a Basis to Withdraw

The defendant understands that he will have no right to withdraw from this agreement or withdraw his guilty plea if he disagrees, in any way, with the guideline range determined by the Court, even if that guideline range does not incorporate the parties' recommendations in paragraphs 8.B or 8.C. Likewise, the government has no right to withdraw from this agreement if it disagrees with the guideline range determined by the Court.

9. Imposition of Sentence

A. Court's Obligation

Defendant Sims understands that in determining his sentence, the Court must calculate the applicable guideline range at sentencing and must consider that range, any possible departures under the sentencing guidelines, and the sentencing factors listed in 18 U.S.C. § 3553(a); and apply any applicable mandatory minimums.

B. Imprisonment

1. Recommendation

Under Federal Rule of Criminal Procedure 11(c)(1)(B), the government recommends that the defendant's sentence of imprisonment not exceed 27 months.

2. No Right to Withdraw

The government's recommendation in paragraph 9.B.1 is not binding on the Court. The defendant understands that he will have no right to withdraw from this

agreement or withdraw his guilty plea if the Court decides not to follow the government's recommendation. Likewise, the government has no right to withdraw from this agreement if the Court decides not to follow the government's recommendation. If, however, the Court rejects or purports to reject any other term or terms of this plea agreement, the government will be permitted to withdraw from the agreement.

C. Supervised Release

1. Recommendation

Under Federal Rule of Criminal Procedure 11(c)(1)(B), the parties recommend that the Court impose a three-year term of supervised release.

2. No Right to Withdraw

The parties' recommendation is not binding on the Court. Defendant Sims understands that he will have no right to withdraw from this agreement or withdraw his guilty plea if the Court decides not to follow the parties' recommendation. The defendant also understands that the government's recommendation concerning the length of the defendant's sentence of imprisonment, as described above in paragraph 9.B.1, will not apply to or limit any term of imprisonment that results from any later revocation of the Defendant Sims's supervised release.

D. Fines

There is no recommendation or agreement as to a fine.

E. Restitution

The Court must order restitution to every identifiable victim of the defendant's offense. The parties agree that restitution in this case shall total \$319,683.

F. Forfeiture

The defendant agrees, pursuant to 18 U.S.C. § 982(a)(2)(A), to forfeit all property constituting, or derived from, proceeds he obtained, directly or indirectly, as the result of his violation of 18 U.S.C. § 1349 including, but not limited to:

1. \$178,067.51 seized from Fifth Third Bank Account #XXXXXX5487 held in the name of The Black Wolf Incorporation;
2. \$104,200.00 seized from Fifth Third Bank Account #XXXXXX9324 held in the name of Defined Jewelry, Inc.

The defendant agrees to the entry of one or more orders of forfeiture, including the entry of a Preliminary Order of Forfeiture, incorporating the forfeiture of the above referenced property following his guilty plea, upon application by the United States as mandated by Federal Rule of Criminal Procedure 32.2. The defendant agrees that the forfeiture order will become final as to him at the time entered by the Court.

The defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives his right to challenge any failure by the court to advise him of his rights with respect to forfeiture, set forth in Federal Rule of Criminal Procedure 11(b)(1)(J). The defendant also expressly waives his right to have a jury determine the forfeitability of his interest in the above identified property, as provided by Rule 32.2(b)(5).

The defendant further waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, pronouncement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

The defendant agrees to hold the United States and its agents and employees harmless from any claims whatsoever in connection with the seizure and forfeiture of any property referenced above.

G. Special Assessment

The defendant understands that he will be required to pay a special assessment of \$100, due immediately upon sentencing.

10. Appeal Waiver

The defendant waives any right he may have to appeal his conviction on any grounds. If his sentence of imprisonment does not exceed the top of the guideline range determined by the Court, the defendant also waives any right he may have to appeal his sentence on any grounds.

11. Collateral Review Waiver

The defendant retains the right to raise claims alleging ineffective assistance of counsel, as long as the defendant properly raises those claims by collateral review under 28 U.S.C. § 2255. The defendant also retains the right to pursue any relief permitted under 18 U.S.C. § 3582(c), as long as the defendant properly files a motion under that section. The defendant, however, waives any other right he may have to challenge his conviction or sentence by collateral review, including, but not limited to, any right he may have to challenge his conviction or sentence on any grounds under 28 U.S.C. § 2255, 28 U.S.C. § 2241, or Federal Rule of Civil Procedure 59 or 60.

12. Consequences of Withdrawal of Guilty Plea or Vacation of Judgment

If the defendant is allowed to withdraw his guilty plea, or if his conviction or sentence under this agreement is vacated, the government may reinstate any charges against the defendant that were dismissed as part of this agreement and may file additional charges against the defendant relating, directly or indirectly, to any of the

conduct underlying his guilty plea or any relevant conduct. If the government reinstates any charges or files any additional charges as permitted by this paragraph, the defendant waives his right to challenge those charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

13. Use of Withdrawn Guilty Plea

The defendant agrees that if he is permitted to withdraw his guilty plea for any reason, he waives all of his rights under Federal Rule of Evidence 410, and the government may use his guilty plea, any statement that he made at his guilty plea hearing, and the factual basis set forth in this agreement, against him in any proceeding.

14. Parties to Plea Agreement

This agreement does not bind any government agency except the Offices, as defined herein.

15. Scope of Plea Agreement

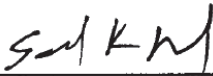
This plea agreement is the complete agreement between the parties and supersedes any other promises, representations, understandings, or agreements between the parties concerning the subject matter of this agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to the defendant, or to his attorney, at any time

before the defendant pleads guilty are binding, except to the extent that they have been explicitly incorporated into this plea agreement. If the parties have entered, or subsequently enter, into a written proffer or cooperation agreement, this plea agreement does not supersede or abrogate the terms of that agreement. This plea agreement also does not prevent any civil or administrative action against the defendant, or any forfeiture claim against any property, by the United States or any other party.

16. Acceptance of Agreement by Defendant


Unless this agreement has been fully signed by the defendant and received by the United States Attorney's Office before 5:00 PM on August 2, 2021, the government may withdraw from this agreement at any time before the defendant pleads guilty.

SAIMA MOHSIN
Acting United States Attorney
Eastern District of Michigan



JOHN K. NEAL
Chief, White Collar Crime Unit
Assistant United States Attorney
Eastern District of Michigan

JOSEPH S. BEEMSTERBOER
Acting Chief
Fraud Section, Criminal Division
United States Department of Justice



PATRICK J. SUTER
Trial Attorney
Fraud Section, Criminal Division
United States Department of Justice

Dated: October 25, 2021

By signing below, the defendant and his attorney agree that the defendant has read or been read this entire document, has discussed it with his attorney, and has had a full and complete opportunity to confer with his attorney. The defendant further agrees that he understands this entire document, agrees to its terms, has had all his questions answered by his attorney, and is satisfied with his attorney's advice and representation.



Elias Muawad
Attorney for Defendant



Andrae Sims
Defendant

Dated: 9-1-2021

WORKSHEET A

OFFENSE LEVEL

Defendant Andrae Sims

District/Office Eastern District of Michigan

Docket Number _____

Count Number(s) 1 U.S. Code Title & Section 18:1349; _____:

Guidelines Manual Edition Used: 2020 (Note: The Worksheets are keyed to the November 1, 2016 *Guidelines Manual*)

INSTRUCTIONS

Complete a separate Worksheet A for each count of conviction or as required in a situation listed at the bottom of Worksheet B.*
Exceptions: Use only a single Worksheet A where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (see §3D1.2(d)) or where a count of conspiracy, solicitation, or attempt is grouped with a substantive count that was the sole object of the conspiracy, solicitation, or attempt (see §3D1.2(a) & (b)).

1. Offense Level (See Chapter Two)

Enter the applicable base offense level and any specific offense characteristics from Chapter Two and explain the bases for these determinations. Enter the sum in the box provided.

Guideline	Description	Level
2B1.1(a)(1)	Conspiracy to Commit Wire Fraud (18 U.S.C. 1349)	7
2B1.1(b)(1)(H)	Loss more than \$550,000	14
_____	_____	_____
_____	_____	_____
_____	_____	_____

If the Chapter Two guideline requires application of a cross reference or other reference, an additional Worksheet A may be needed for that analysis. See §1B1.5. Sum 21

2. Victim-Related Adjustments (See Chapter Three, Part A)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0". § _____ 0

3. Role in the Offense Adjustments (See Chapter Three, Part B)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If the adjustment reduces the offense level, enter a minus (-) sign in front of the adjustment. If no adjustment is applicable, enter "0". § _____ 0

4. Obstruction Adjustments (See Chapter Three, Part C)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0". § _____ 0

5. Adjusted Offense Level

Enter the sum of Items 1–4. If this Worksheet A does not cover all counts of conviction or situations listed at the bottom of Worksheet B, complete Worksheet B. Otherwise, enter this result on Worksheet D, Item 1. 21

Check here if **all** counts (including situations listed at the bottom of Worksheet B)* are addressed on this one Worksheet A. If so, no Worksheet B is used.

If the defendant has no criminal history, enter "I" here and on Worksheet D, Item 4. No Worksheet C is used.

WORKSHEET B

MULTIPLE COUNTS*

Defendant Andrae Sims

Docket Number _____

INSTRUCTIONS

STEP 1: Determine if any of the counts group under §3D1.2(a)–(d) (“the grouping rules”). All, some, or none of the counts may group. Some of the counts may have already been grouped in the application under Worksheet A, specifically: (1) counts grouped under §3D1.2(d); or (2) a count charging conspiracy, solicitation, or attempt that is grouped with the substantive count of conviction (see §3D1.2(a)). Explain the reasons for grouping:

STEP 2: Using the box(es) provided below, for each group of “closely related counts” (i.e., counts that group together under any of the four grouping rules), enter the highest adjusted offense level from Item 5 of the various Worksheets “A” that comprise the group. See §3D1.3. Note that a “group” may consist of a single count that has not grouped with any other count. In those instances, the offense level for the group will be the adjusted offense level for the single count.

STEP 3: Enter the number of units to be assigned to each group (see §3D1.4) as follows:

- One unit (1) for the group of counts with the highest offense level
- An additional unit (1) for each group that is equally serious or 1 to 4 levels less serious
- An additional half unit (1/2) for each group that is 5 to 8 levels less serious
- No increase in units for groups that are 9 or more levels less serious

1. Adjusted Offense Level for the First Group of Counts

Count number(s) _____

_____ Unit

2. Adjusted Offense Level for the Second Group of Counts

Count number(s) _____

_____ Unit

3. Adjusted Offense Level for the Third Group of Counts

Count number(s) _____

_____ Unit

4. Adjusted Offense Level for the Fourth Group of Counts

Count number(s) _____

_____ Unit

5. Adjusted Offense Level for the Fifth Group of Counts

Count number(s) _____

_____ Unit

6. Total Units

_____ Total Units

7. Increase in Offense Level Based on Total Units (See §3D1.4)

1 unit:	no increase	2½ – 3 units:	add 3 levels
1½ units:	add 1 level	3½ – 5 units:	add 4 levels
2 units:	add 2 levels	More than 5 units:	add 5 levels

8. Highest of the Adjusted Offense Levels from Items 1–5 Above

9. Combined Adjusted Offense Level (See §3D1.4)

Enter the sum of Items 7 & 8 here and on Worksheet D, Item 1.

*Note: Worksheet B also includes applications that are done “as if there were multiple counts of convictions,” including: multiple-object conspiracies (see § 1B1.2(d)); offense guidelines that direct such application (e.g., §2G2.1(d)(1) (Child Porn Production)); and stipulations to additional offenses (see § 1B1.2(c)). Note also that these situations typically require the use of multiple Worksheets A.

WORKSHEET C

CRIMINAL HISTORY

[Page 1 of 2]

Defendant Andrae Sims

Docket Number _____

Note: As an aid, some of the basic criminal history "rules" are listed below. However, there are numerous additional criminal history rules at §§4A1.1 and 4A1.2 that must be used with Worksheet C and for correct application.

Enter the Earliest Date of the Defendant's Relevant Conduct _____
 (The date of the defendant's commencement of the instant offense(s))

1. Prior Sentences Resulting from Offenses Committed Prior to the Defendant's 18th Birthday

- (a) **3 Points** if convicted as an **adult**, for each prior sentence of imprisonment **exceeding one year and one month** imposed within 15 years of the defendant's earliest date of relevant conduct or resulting in incarceration during any part of that 15-year period. See §§4A1.1(a) and 4A1.2(d)(1) & (e)(1).
- (b) **2 Points** for each prior **adult or juvenile sentence** of confinement of **at least 60 days** not counted under §4A1.1(a) imposed within 5 years or from which the defendant was released from confinement within 5 years of the defendant's earliest date of relevant conduct. See §§4A1.1(b) and 4A1.2(d)(2)(A).
- (c) **1 Point** for each prior **adult or juvenile sentence** not counted under §4A1.1(a) or §4A1.1(b) imposed within 5 years of the defendant's earliest date of relevant conduct. See §§4A1.1(c) and 4A1.2(d)(2)(B).

Note: Identify as "**adult**" any sentence exceeding one year and one month that resulted from an adult conviction. A **release date** is required in only two instances: (1) when a sentence covered under §4A1.1(a) was imposed more than 15 years prior to the defendant's earliest date of relevant conduct but resulted in the defendant being incarcerated during any part of such 15-year period; or (2) when a sentence counted under §4A1.1(b) was imposed more than 5 years prior to the defendant's earliest date of relevant conduct, but release from confinement occurred within such 5-year period.

Date of Imposition	Offense	Sentence	Release Date	Guideline Section	Criminal History Points

2. Prior Sentences Resulting from Offenses Committed On or After the Defendant's 18th Birthday

- (a) **3 Points** for each prior sentence of imprisonment **exceeding one year and one month** imposed within 15 years of the defendant's earliest date of relevant conduct or resulting in incarceration during any part of that 15-year period. See §§4A1.1(a) and 4A1.2(e)(1).
- (b) **2 Points** for each prior sentence of imprisonment of **at least 60 days** not counted under §4A1.1(a) imposed within 10 years of the defendant's earliest date of relevant conduct. See §§4A1.1(b) and 4A1.2(e)(2).
- (c) **1 Point** for each prior sentence not counted under §4A1.1(a) or §4A1.1(b) imposed within 10 years of the defendant's earliest date of relevant conduct. See §§4A1.1(c) and 4A1.2(e)(2).

Note: A **release date** is required when a sentence covered under §4A1.1(a) was imposed more than 15 years prior to the defendant's earliest date of relevant conduct but resulted in the defendant being incarcerated during any part of such 15-year period.

Date of Imposition	Offense	Sentence	Release Date	Guideline Section	Criminal History Points

Defendant Andrae Sims

Docket Number _____

(continued from *Sentences Resulting from Offenses Committed On or After the Defendant's 18th Birthday*)

Date of Imposition	Offense	Sentence	Release Date	Guideline Section	Criminal History Points
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

3. Sum of Criminal History Points for prior sentences under §4A1.1(a), (b), & (c) in Items 1 & 2

A total of 4 points can be added for all the 1-Point sentences counted in Items 1 & 2 combined.

4. "Status" of Defendant at Time of Instant Offense

2 Points for "status" if the defendant committed any part of the instant offense (*i.e.*, any relevant conduct) while under any criminal justice sentence (*e.g.*, probation, parole, supervised release, imprisonment, work release, or escape status) for a sentence counted in Items 1 or 2. *See* §4A1.1(d) and Application Note 4. List the type of control and identify the counted sentence that resulted in the control. Otherwise, enter **0 Points**.

5. Crimes of Violence

1 Point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under §4A1.1(a), (b), or (c) because such sentence was counted as a single sentence which also included another sentence resulting from a conviction for a crime of violence. A total of 3 points can be added under this subsection. *See* §4A1.1(e) and Application Note 5, and §4A1.2(a)(2) & (p). Identify the crimes of violence and briefly explain why the cases are considered a single sentence. Otherwise, enter **0 Points**.

4. Total Criminal History Points (Sum of Items 3–5)

5. Criminal History Category (Enter here and on Worksheet D, Item 4)

Total Points	Criminal History Category
0–1	I
2–3	II
4–6	III
7–9	IV
10–12	V
13 or more	VI

WORKSHEET D

DETERMINING THE SENTENCE

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Defendant Andrae Sims

Docket Number _____

1. Adjusted Offense Level (From Worksheet A or B)

If Worksheet B is required, enter the result from Worksheet B, Item 9. Otherwise, enter the result from Worksheet A, Item 5.

2. Acceptance of Responsibility (See Chapter Three, Part E)Enter the applicable reduction of **2** or **3** levels. If no adjustment is applicable, enter "0".**3. Offense Level Total** (Item 1 less Item 2)**4. Criminal History Category** (From Worksheet A or C)

Enter the result from Worksheet C, Item 8, unless the defendant has no criminal history, and as directed at the bottom of Worksheet A, no Worksheet C is used and "I" is entered here.

5. Terrorism; Career Offender; Criminal Livelihood; Armed Career Criminal; Repeat and Dangerous Sex Offender (See Chapter Three, Part A, and Chapter Four, Part B)**a. Offense Level Total**

If the provision for Career Offender (§4B1.1), Criminal Livelihood (§4B1.3), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in an offense level total higher than Item 3, enter the offense level total. Otherwise, enter "N/A".

b. Criminal History Category

If the provision for Terrorism (§3A1.4), Career Offender (§4B1.1), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in a criminal history category higher than Item 4, enter the applicable criminal history category. Otherwise, enter "N/A".

6. Guideline Range from Sentencing Table

Enter the applicable guideline range from Chapter Five, Part A, in months.

7. Restricted Guideline Range (See Chapter Five, Part G)

If the statutorily authorized maximum sentence or the statutorily required minimum sentence restricts the guideline range (Item 6) (see §§5G1.1 and 5G1.2), enter either the restricted guideline range or any statutory maximum or minimum penalty that would modify the guideline range. Otherwise, enter "N/A".

 Check here if §5C1.2 (Limitation on Applicability of Statutory Minimum Penalties in Certain Cases) and 18 U.S.C. § 3553(e) – "The Safety Valve" – are applicable.**8. Undischarged Term of Imprisonment; Anticipated State Term of Imprisonment** (See §5G1.3) If the defendant is subject to an undischarged term of imprisonment, or an anticipated state term of imprisonment, check this box. Below list the undischarged/anticipated term(s), the applicable section of §5G1.3 and its direction or guidance as to whether the instant federal sentence is to be imposed to run concurrently or consecutively to the undischarged/anticipated term(s), and any sentence adjustment.

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9. Sentencing Options (See Chapter Five, Sentencing Table and §§5B1.1(a) and 5C1.1)

Check the applicable box that corresponds to the Guideline Range entered in Item 6 or Item 7, if applicable.

Zone A (See §§5B1.1(a)(1) & 5C1.1(a) & (b))

If checked, the following options are available:

- Fine (See §§5C1.1(b) & 5E1.2(a))
- “Straight” Probation (See §§5B1.1(a)(1) & 5C1.1(b))
- Imprisonment (See §5C1.1(a) & (c)(1))

Zone B (See §§5B1.1(a)(2) & 5C1.1(a) & (c))

If checked, *the minimum term may be satisfied by:*

- Imprisonment (See §5C1.1(a) & (c)(2))
- Imprisonment of **at least one month plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(c)(2))
- Probation with a condition that substitutes intermittent confinement, community confinement, or home detention for imprisonment (See §§5B1.1(a)(2) and 5C1.1(c)(3))

Zone C (See §5C1.1(a) & (d))

If checked, *the minimum term may be satisfied by:*

- Imprisonment (See §5C1.1(a) & (d)(1))
- Imprisonment of **at least one-half of the minimum term plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(d)(2))

Zone D (See §5C1.1(a) & (f))

If checked, *the minimum term is to be satisfied by* a sentence of imprisonment

10. Length of Term of Probation (See §5B1.2)

If probation is imposed, the guideline for the length of such term of probation is: (Check the applicable box)

At least one year, but not more than five years if the offense level total is 6 or greater.

No more than three years if the offense level total is 5 or less.

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11. Supervised Release (See §§5D1.1 and 5D1.2)

a. Imposition of a Term of Supervised Release:

Ordered because required by statute (See §5D1.1(a)(1)).

Ordered because a sentence of imprisonment of more than one year is imposed (See §5D1.1(a)(2)).

Is **not** ordered although a sentence of more than one year is imposed, because it is not required by statute **and** the defendant likely will be deported after imprisonment (See §5D1.1(c)).

Ordered because it may be ordered in any other case (See §5D1.1(b)).

b. Length of Term of Supervised Release

Check the Class of the Offense:

Class A or B Felony: Two to Five Year Term (See §5D1.2(a)(1))

Class C or D Felony: One to Three Year Term (See §5D1.2(a)(2))

Class E Felony or Class A Misdemeanor: One Year Term (See §5D1.2(a)(3))

If a statutorily required mandatory minimum term of supervised release for the offense impacts the guideline range for the applicable Class of Offense above, also check this box, and list the statutory minimum term (See §5D1.2(c)):

3 years mandatory minimum term of supervised release

If an offense in 18 U.S.C. § 2332b(g)(5)(B) that resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or if a sex offense, the term of supervised release will not be less than the minimum term established above, and may be up to life (See §5D1.2(b)).

Policy Statement: If a sex offense, the *statutory maximum term* of supervised release is recommended.

12. Restitution (See §5E1.1)

a. If restitution is applicable, enter the amount. Otherwise enter "N/A" and the reason:

\$516,683

b. Enter whether restitution is statutorily mandatory or discretionary:

Mandatory

c. Enter whether restitution is by an order of restitution, or **solely** as a condition of supervision. Enter the authorizing statute:

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13. Fines (The Guideline Range for Fines for Individual Defendants) (See §5E1.2)

	Minimum	Maximum
<p>a. Special Fine Provisions</p> <p><input type="checkbox"/> Check box if any of the counts of conviction is for a statute with a special fine provision. (This does not include the general fine provisions of 18 USC § 3571(b)(2) & (d).)</p> <p>Enter the sum of statutory maximum fines for all such counts.</p>		\$ 250,000
<p>b. Fine Table (§5E1.2(c)(3))</p> <p>Enter the minimum and maximum fines.</p>	\$ 10,000	\$ 100,000
<p>c. Fine Guideline Range</p> <p>(Determined by the minimum of the Fine Table (Item 13(b)) and the greater maximum above (Item 13(a) or 13(b))).</p>	\$ 10,000	\$ 250,000
<p>d. Ability to Pay</p> <p><input checked="" type="checkbox"/> Check this box if the defendant does not have an ability to pay.</p>		

14. Special Assessments for Individual Defendants (See §5E1.3)

Enter the total amount of the statutory special assessments required for all counts of conviction:

- \$100 for each felony count of conviction.
- \$25 for each Class A misdemeanor count of conviction.
- While not subject to guideline sentencing, the special assessments for a Class B misdemeanor, and a Class C misdemeanor or infraction are \$10 and \$5 per count, respectively.

TOTAL: \$ 100

15. Factors That May Warrant a Departure (See §1B1.1(b))

Consider Chapter Five, Part H (Specific Offender Characteristics) and Part K (Departures), and other policy statements and commentary in the *Guidelines Manual* that might warrant consideration in sentencing. (See also the “List of Departure Provisions” included in the *Guidelines Manual* after the Index).

16. Factors That May Warrant a Variance (See §1B1.1(c))

Consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole.

Completed by Patrick Suter

Date October 25, 2021