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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,  
Plaintiff,

v.

Michael Anthony Williams - 005,  
Samuel Lee Berrelle Rakestraw, III – 004,  
Defendants.

CR-18-01695-TUC-JAS (EJM)

**REPORT AND  
RECOMMENDATION**

Pending before the Court is a Joint Motion to Preclude Rap Music, Videos, and Associated Content filed by counsel for defendants Michael Anthony Williams and Samuel Lee Berrelle Rakestraw. Doc. 1615. The defense argues that the rap video, which depicts the defendants and others rapping a song, and the songs themselves should be precluded from admission into evidence at trial because the probative value of this evidence is substantially outweighed by the danger of unfair prejudice. Specifically, the defense argues that the videos and songs have no probative value because the author of the lyrics is unknown, and the lyrics are fictional and not tied to any charged offense or allegation in the Third Superseding Indictment. Moreover, the depictions in the video and the lyrics of the rap songs are so inflammatory that the admission of this prejudicial evidence will deprive the defendants of a fair trial.

The government argues that the rap video and songs are probative because they

1 directly relate to charged offenses. Specifically, the songs constitute admissions made by  
2 these defendants about criminal acts and allegations in the Third Superseding Indictment,  
3 and detail the acts committed to plan, further, commit, and conceal the charged offenses.  
4 The government does not directly address the defendants' argument concerning the unfair  
5 prejudice that could result from the admission of the video and songs or suggest a way to  
6 reduce any prejudice. Rather, the government argues that courts have routinely admitted  
7 rap videos and songs where the probative value is high, like in the case at hand.

8 The Court concludes that the danger of unfair prejudice and the risk of misleading  
9 and confusing the jury that will result from the admission of the rap video and songs  
10 substantially outweighs the probative value of this evidence. The Court finds that the rap  
11 video and music are unfairly prejudicial for two related reasons. First, the rap lyrics are so  
12 highly inflammatory that they could cause the jury to convict the defendants on  
13 impermissible grounds. Second, the rap video and songs have the potential to become a  
14 feature of the trial, and as a result, confuse and mislead the jury. The Court finds that the  
15 probative value of the rap video and songs is minimal because the video and songs are  
16 cumulative of the other substantial evidence that the government will introduce at trial; the  
17 author of the lyrics is unknown; some of the lyrics cannot be definitively deciphered; and  
18 the lyrics do not mirror or exhibit an unmistakable connection to the facts of the charged  
19 offenses. For these reasons, the Court recommends that the District Court grant the Motion  
20 to Preclude the rap video and music from evidence at trial.

21 **FACTUAL BACKGROUND**

22 **A. The Charged Offenses.**

23 On April 6, 2022, a federal grand jury sitting in Tucson, Arizona returned a Third  
24 Superseding Indictment against Michael Williams, Samuel Rakestraw, and seventeen other  
25 individuals. Doc. 1425. The charged offenses pertain to an alleged criminal enterprise  
26 operated by a gang known as the Western Hills Bloods (“WHB”). Williams and Rakestraw  
27 are charged with the following four felony offenses. Count One charges Williams and  
28 Rakestraw (and other co-defendants) with participating in a RICO conspiracy, in violation

1 of 18 U.S.C. §§ 1962(d) and 1963(a), the objects of which are: (a) acts involving murder  
2 (18 U.S.C. §§ 1959(b)(1) and 1961(1)); (b) offenses involving drug trafficking (21 U.S.C.  
3 §§ 846 and 841); and (c) acts involving the obstruction of justice (18 U.S.C. § 1512).  
4 Count Two charges Williams and Rakestraw (and other co-defendants) with Violent Crime  
5 in Aid of Racketeering – Conspiracy to Commit Murder, in violation of 18 U.S.C. §  
6 1959(a)(5). Count Three charges Williams and Rakestraw (and other co-defendants) with  
7 Violent Crime in Aid of Racketeering – Murder, in violation of 18 U.S.C. §§ 1959(a)(1)  
8 and 2. Count Four charges Williams and Rakestraw (and other co-defendants) with Use of  
9 a Firearm During and in Relation to a Crime of Violence Resulting in Death, in violation  
10 of 18 U.S.C. §§ 924(j), 924(c)(1)(A)(i), (ii), (iii), and 2.

11 Michael Williams is also charged with the following additional offenses which are  
12 not alleged against Rakestraw: (1) Counts 12, 13, and 16: Possession of a Firearm by a  
13 Prohibited Person, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); (2) Counts 14 and  
14 17: Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18  
15 U.S.C. §§ 924(c)(1)(A)(i) and 2; (3) Count 24: Conspiracy to Possess with the Intent to  
16 Distribute Cocaine, in violation of 21 U.S.C. §§ 846 and 841; (4) Count 25: Possession  
17 with the Intent to Distribute Cocaine, in violation of 21 U.S.C. § 841; (5) Count 33:  
18 Conspiracy to Possess with the Intent to Distribute Marijuana, in violation of 21 U.S.C. §§  
19 846 and 841; (6) Counts 34 and 37: Possession with the Intent to Distribute Marijuana, in  
20 violation of 21 U.S.C. § 841; and (7) Count 38: Possession with the Intent to Distribute  
21 Cocaine, in violation of 21 U.S.C. § 841.

### 22 **B. The Motion to Preclude.**

23 On May 9, 2022, defense counsel filed a Joint Motion to Preclude Rap Music,  
24 Videos, and Associated Content. Doc. 1615. The defense argues that a rap video, which  
25 depicts Michael Williams, Samuel Rakestraw, and other co-defendants, and rap songs  
26 allegedly sung by Williams, Rakestraw, and other rappers, should be excluded under  
27 Federal Rule of Evidence 403 because any probative value of the video and songs is  
28 substantially outweighed by the danger of unfair prejudice. Relatedly, the defense also

1 argues that the admission of the rap video and songs will confuse the issues and mislead  
2 the jury because they will become a feature at the trial.

3 The defense first sets forth the origins of rap music generally and its evolution into  
4 subgenre known as gangsta rap. Specifically, the defense points out that rap music is a  
5 Black American art form “that employs well-known literary and poetic techniques.” *Id.* at  
6 2-3. Rap music has been described as “an expressive artistic outlet for a marginalized  
7 urban social bloc, and a contemporary response to joblessness, poverty, and  
8 disempowerment.” *Id.* at 2. However, it is a fictional artform that is not “reliable, factual  
9 evidence of what it recounts or shows.” *Id.* at 3. Even though rap music is one of the most  
10 popular musical genres across racial and cultural segments, “anti-rap attitudes are likely  
11 also rooted in anti-Black prejudice.” *Id.* at 3.

12 "'Gangsta rap' has been described as the 'most controversial style of the rap music  
13 genre,' which has 'achieved global prominence through its vivid [and often] violent  
14 depiction[s] of urban ghetto life in America.'" *Id.* It universally features extensive  
15 profanity and violence, and hypermasculine topics, such as, “objectifying women, bragging  
16 about using or selling drugs, displaying tattoos and grills, owning and using guns, and  
17 flaunting expensive clothing, jewelry or other forms of wealth.” *Id.* at 4. Gangsta rap uses  
18 outlaw figures who are upheld as heroes, which is related to the Black experience in  
19 America where the gangster is viewed as a “rare example of black male authority over his  
20 domain.” *Id.* The hypermasculine persona is the result of “a long tradition of challenging  
21 the oppression of white society” and frightens the mainstream by exploiting its fears. This  
22 persona embodies a role dating back to the time of slavery where a Black person refuses to  
23 submit to his oppressors, but rather is fearless and unruly. *Id.* at 6.

24 Gangsta rap has become popular beyond the Black community; as a result, it is  
25 profitable and is “the preference of most aspiring rappers today.” *Id.* at 4. Studies have  
26 shown that violence and hypermasculine lyrics are pervasive in gangsta rap because it helps  
27 boost record sales. *Id.* at 5. Audiences often regard rappers as less credible, valuable, or  
28 successful when they are not sufficiently tough or “gangster.” *Id.* at 6. For those reasons,

1 gangsta rappers often employ violent and rebellious themes in a local and “gang” setting  
2 for entertainment and commercial purposes. *Id.*

3 With that backdrop, the defense argues that the video and songs in the case at hand  
4 include all the violent and hypermasculine elements of gangsta rap that are necessary for  
5 the artist to be taken seriously and to help with commercial success. Specifically, the music  
6 video (My N’s Out Here Bustin’), features the defendants and co-defendants miming the  
7 firing of handguns and rifles, drinking alcohol, and exhibiting “youthful masculine  
8 aggression, violent intent, criminal lifestyle and corruption.” *Id.* at 14. Additionally, the  
9 lyrics of all three songs contain threats of violence, boast about possessing guns, drive-by  
10 shootings and murder, express disdain for other N’s, degrade women, and use lewd and  
11 profane references. *Id.*<sup>1</sup>

12 The defense argues that a jury who is unfamiliar with gangsta rap will draw  
13 inaccurate, unwarranted, and highly prejudicial conclusions based on what they see and  
14 hear in the video and songs. As a result, the prejudicial effect of this inflammatory  
15 evidence “would be devastating – and unfairly so.” *Id.* at 16. And that is especially true  
16 because the musical genre is gangsta rap, as opposed to rock or country music. *Id.*

17 The defense cites to studies that show that rap music is highly and uniquely  
18 prejudicial because the participants viewed rap lyrics more threatening than these other  
19 musical genres. *Id.* at 17. The studies found that these views were the result of race  
20 because rap music is associated with Black audiences and other genres are not. *Id.* at 18.  
21 Other studies have shown that “[e]xposure to rap music . . . increase[d] the ease of  
22 associating [B]lack people with negative traits like hostility, being violent, and being  
23 sexist[.]” *Id.* And yet another study showed that the participants who listened to rap music  
24 “were likely to view the [B]lack man presented to them in the experiment as more  
25 inherently violent and less intelligent.” *Id.*

26 The defense argues that the significant racial disparity in the way lyrics are

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27 <sup>1</sup> References to “N,” “N’s,” and “the N-word” are used instead of the racist word that was,  
28 and unfortunately still is, used to refer to Black people.

1 perceived by listeners can have grave consequences in a criminal justice context. *Id.* at 19.  
2 For instance, participants in a study where a hypothetical 18-year-old Black man was  
3 charged with murder who were shown violent and sexually explicit rap lyrics allegedly  
4 written by this man “were significantly more likely to think the man was capable of  
5 committing murder.” *Id.* Moreover, the study found that the “exposure to the lyrics evoked  
6 a negative reaction in participants that was more intense than the reaction” to the fact that  
7 the man was charged with murder. *Id.*

8 The defense argues that the probative value of the video and songs is very low  
9 because rap music is fictional, and therefore, the Court cannot presume that simply because  
10 an author wrote about certain topics, s/he has acted in accordance with those views. *Id.* at  
11 20. The defense maintains that the rap video and songs at issue are highly imitative and  
12 contain all standard gangsta rap tropes, such as, the penchant for violence, display of guns,  
13 the discussion of crime, the belittling of competitors and women, references to local gang  
14 rivalries and taunting. *Id.* at 20-21. The rap lyrics also use ambiguous words “piled  
15 together in vague and non-consecutive phrases, leaving a totality that means little, except  
16 in the ears of the individual listener.” *Id.* at 23. For these reasons, the defense argues that  
17 the rap video and music have little probative value because the government is trying to  
18 make evidence out of poetry. *Id.*

19 Finally, the defense argues that the probative value in the “N’s Out Here Bustin’”  
20 song is further reduced because it was written and recorded prior to any of the violent acts  
21 that the indictment alleges against these defendants. *Id.* at 24. This song was recorded  
22 near the beginning of 2014, which was at least eight months before the first violent act  
23 alleged in the indictment (the E.M. homicide); and Michael Williams is not charged with  
24 that offense. *Id.* The associated music video to this song was published to YouTube on  
25 April 8, 2015. There are three overt acts alleging that Michael Williams was involved in  
26 violent incidents on May 15, 2015, September 11, 2015, and January 1, 2018. Thus, the  
27 defense reasons that “unless the government is contending that Mr. Williams is the rap  
28 Nostradamus, the music, lyrics and accompanying videos have no probative value

1 whatsoever.” *Id.*

2 The defense also argues that the danger of prejudice overwhelms any probative  
3 value in light of the other evidence that the government will admit at trial. *Id.* at 25. For  
4 example, the government has evidence in the form of testimony from cooperators and  
5 agents, hundreds of thousands of lines of social media communications, and tens of  
6 thousands of text messages and video events from eighteen phones seized during this  
7 investigation, to prove gang names, symbols, membership, motive, and modus operandi.  
8 *Id.* at 25-26. Thus, the inflammatory video and songs are cumulative. *Id.*<sup>2</sup>

9 Finally, the defense makes two additional evidentiary-based arguments for why the  
10 rap video and songs should be excluded. First, the video and songs are improper character  
11 evidence under Federal Rule of Evidence 404 because they suggest that the defendants  
12 committed the charged offenses in conformity with the negative persona projected in the  
13 rap music. Second, the video and songs are not party admissions under Rule 801(d)(2)(A)  
14 because the lyrics are fictional, and do not accurately depict the past or future conduct  
15 referenced in the lyrics.<sup>3</sup>

### 16 **C. The Government’s Response.**

17 The government first points out that the RICO conspiracy in Count One is a  
18 conspiracy to participate in the affairs of the criminal enterprise through a pattern of  
19 racketeering. Doc. 1667 at 7. As a result, the overt acts alleged in Count One “are not  
20 just limited to the acts that are criminal or constitute substantive racketeering charges[.]”  
21 *Id.* The government maintains that “[e]nterprise evidence in a RICO prosecution like this  
22 one may include gang aliases, gang paraphernalia, gang literature, gang symbols, and other  
23 indicia of gang affiliation, which the government would use at trial to establish the  
24 defendants’ affiliation with the WHB,” which is the “enterprise” in this case. *Id.* at 8.

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26 <sup>2</sup> Relatedly, the defense argues that the admission of this cumulative evidence will unduly  
27 delay this trial which is already set for six weeks.

28 <sup>3</sup> The defense also argues that the rap music should be excluded under the First  
Amendment. Because that argument is easily dispensed with in text *infra*, the First  
Amendment argument made in the defense’s pleading will not be set forth in greater detail.

1           As a result, the government argues that it seeks to admit the rap video and songs to  
2 show the defendants’ “involvement in the WHB and their explicit participation in  
3 racketeering activities. This evidence is probative of the defendants’ knowledge of the  
4 enterprise, association with the enterprise, and their agreement that they or other gang  
5 members would commit racketeering acts.” *Id.* at 10. The government argues that the  
6 video and songs are admissible because “they make a fact of consequence, the existence of  
7 the WHB enterprise and the enterprise’s racketeering activity, more probable than it would  
8 be without the evidence. *See* Federal Rule of Evidence (Fed. R. Evid.) 401.” *Id.* at 11.  
9 The government claims that many of the lyrics and depictions in the video “directly relate  
10 to real-life events and include real information about the WHB Enterprise.” *Id.* at 27. For  
11 example, these defendants “rap about the WHB, Southpark Family Gangsters, 36, 29, and  
12 their ‘homie K.’” *Id.* Additionally, the rap lyrics set forth the motive for the murder of  
13 Floyd Davis, a rival gang member suspected of killing WHB leader Marcus Darton. *Id.* at  
14 12. And “the defendants use WHB code words” for drugs and murder, and use gang  
15 terminology. Additionally, the rap video shows the defendants’ association with the  
16 enterprise via “the use of gang monikers, gang colors, gang hand signs, displaying gang  
17 tattoos, and statements regarding the hierarchy of the gang.” *Id.*

18           If the Court determines that the video and songs are relevant and not unfairly  
19 prejudicial, the government argues that the rap video and songs are admissible either as:  
20 (1) verbal acts; (2) admissions of a party opponent; (3) adopted statements; or (4) co-  
21 conspirator statements. *Id.* at 21. The Court will not set forth the proffered bases for the  
22 admission of this evidence because, at this point, the Court is primarily concerned with the  
23 relevance of the evidence.

24           The government does not address the potential prejudice that would result from the  
25 admission of the video and songs. Nor does the government suggest a mechanism to lessen  
26 any prejudice. Instead, the government repeats its argument that the rap video and songs  
27 “are highly probative, on-topic, and important evidence tending to establish that the  
28 defendants and co-conspirators belonged to the charged enterprise and engaged in conduct



1 to further its purpose and goals.” *Id.* at 25.

2 On September 1, 2022, the government filed a Notice of Rap Lyrics/Songs/Videos.  
3 Doc. 2064. That document sets forth the lyrics of the three rap songs that the government  
4 seeks to introduce at trial. However, the relevance of the proffered lyrics was not set forth.

5 **D. The Evidentiary Hearing.**

6  
7 The Court held an evidentiary hearing on the Motion to Preclude over the course of  
8 three days: September 2, 2022, September 27, 2022, and September 29, 2022. Professor  
9 Erik Nielson, a rap music expert, testified on September 2, 2022. At the conclusion of the  
10 hearing, the Court ordered the government to file a supplemental pleading that identified  
11 the relevance of the specific rap lyrics that it seeks to introduce at trial. That pleading was  
12 filed on September 23, 2022. Doc. 2101. ATF Special Agent Paul Parkinson, who  
13 interpreted the rap lyrics, testified on September 27 and 29, 2022. The testimony of both  
14 witnesses is set forth in great detail below.

15 **1. Professor Erik Nielson**

16 **Direct Examination by Mr. Flores:**

17 Erik Nielson is employed at the University of Richmond as a professor and chair of  
18 the liberal arts department. 9/2/22 Tr. at 8. His courses focus on African American  
19 literature, hip-hop culture generally, and rap music specifically. *Id.* He recently co-taught  
20 a course called the Voice of Hip-Hop in America with a rap artist named Mad Skillz, as  
21 well as courses on African American literature in the 20<sup>th</sup> century. *Id.* He is currently  
22 teaching a class called Rap on Trial. *Id.* Although his focus was initially on African  
23 American musical and literary traditions, he has become specifically “interested in the  
24 relationship between Black artistic expression in the U.S. and the law, law enforcement,  
25 and how they have impacted one another.” *Id.* at 9.

26 Professor Nielson has published ten peer reviewed articles and recently wrote a  
27 book called “Rap on Trial: Race, Lyrics, and Guilt in America.” *Id.* He also writes  
28 routinely for publications such as Rolling Stone, the New York Times, and The Atlantic.

1 *Id.* Professor Nielson has testified as an expert witness on rap music about a dozen times.  
2 *Id.* at 9-10. He has been retained as an expert on rap music about a hundred times. *Id.* at  
3 10. Based on these qualifications, the government did not object to the defense request  
4 that Professor Nielson be deemed an expert witness in rap music. *Id.*

5 Testimony turned to “how rap music came about” and “how it’s now morphed into  
6 what it is today.” *Id.* at 11. He explained that the roots of hip-hop are traditionally traced  
7 to the early to mid-1970’s in the South Bronx in New York City. *Id.* Rap music came out  
8 of “centuries of artistic tradition.” *Id.* For example, Professor Nielson explained that in  
9 a class that he teaches called the Voice of Hip-Hop, he provides students with a poem told  
10 in the first person that is rhymed, bawdy, violent, and sexually explicit. *Id.* The students  
11 “think they’re reading gangsta rap” when, in fact, the poem is 120 years old. He explained  
12 that the poem reflects “a long tradition of sort of celebrating the larger-than-life sort of bad  
13 man and things like that.” *Id.* The influence of this type of fiction that celebrated the  
14 urban underworld of the pimps and hustlers, combined with the Blacksploitation films of  
15 the 1970’s and the confrontational rhetoric of the Black arts movement, were “the  
16 beginnings of what hip-hop and especially rap music would become.” *Id.* at 12. Professor  
17 Nielson explained that rap music can be traced to “verbal games that would have originated  
18 within the African American community.” *Id.* at 13. Although he would not want to  
19 exclude the Latino influence on hip-hop, the rap musical form “definitely comes out of  
20 Black culture.” *Id.*

21 Professor Nielson clarified that “[h]ip-hop is the broader cultural movement that  
22 would have included elements like break dancing, graffiti writing, and so forth, and then  
23 rap was the sort of musical verbal element of hip-hop.” *Id.* at 13-14. Rap music has grown  
24 into multiple subgenres such as gangsta rap, which itself has multiple subgenres. *Id.* at 14.  
25 Gangsta rap differs from politically conscious rap which tends to be “far more focused on  
26 political structures and making sort of social or political commentary.” *Id.* Although  
27 gangsta rap does have that element, it tends to focus on illicit activity. *Id.* It has been  
28 described as “nihilistic” in that there is “no real world view that you’re trying to present.”

1 *Id.*

2 Gangsta rap lyrics are sexually explicit, depict violence, contain a lot of profanity,  
3 and depict all kinds of illicit activity. *Id.* at 14, 17. Gangsta rap “could be sexually explicit  
4 without any real violence[;] it could talk about the drug trade or drug distribution without  
5 actual violence and it would still definitely classify as some form of gangsta rap.” *Id.* at  
6 17. But violence is one of the most important themes. *Id.*

7 The most dominant manner of violence is the use of guns. *Id.* at 18. Rappers are  
8 “highly specific” when rapping about guns. *Id.* They rap about “a veritable arsenal of  
9 weapons” like a Glock 9mm, a .40 caliber Smith and Wesson, an AK-47, and/or an AR.  
10 *Id.* There are artists that mention 7.62 caliber ammunition which is fired out of an AK-  
11 47, which is probably the most popular rifle in rap music. *Id.* at 19. In fact, there are  
12 “artists who are named after AK-47s.” *Id.* An AK-47 is also referred to as “K.” *Id.*  
13 Professor Nielson often sees the term “chopper” used to describe a gun, although not a  
14 specific type of gun. *Id.*

15 Rap lyrics also talk about the targets or subjects of violence. *Id.* at 20. For instance,  
16 the group N.W.A.’s classic song “Fuck the Police,” “where the police were targeted in the  
17 song, fictionally, of course[.]” *Id.* Professor Nielson explained that it is very common for  
18 rap artists to “set up some sort of rival,” whether it’s a real person or imagined person, to  
19 begin “a battle.” *Id.* Professor Nielson explained that “often part of the structure of these  
20 songs is [that] if you mess with me or if you step to me or if you challenge me, I’m going  
21 to do X, Y, Z. Whether there’s anybody who is ever going to challenge you doesn’t matter,  
22 it’s really just about asserting your own dominance within your environment.” *Id.* Rappers  
23 will certainly target one another; in fact, “basically every famous rap artist has at some  
24 point targeted a rival rapper” because it helps boost sales. *Id.* at 20-21. “[I]t’s well known  
25 that rappers will often try to provoke one another to engage in beefs . . . where they go back  
26 and forth on record” as a marketing tactic. *Id.* at 21. In fact, if a lesser-known rapper is  
27 able to provoke a well-known rapper who responds, then the aspiring rapper has elevated  
28 his status in the industry. *Id.* The provocation can include “taunting, insults, you name

1 it.” *Id.* at 23.

2 “[A]nother major feature of gangsta rap is the emphasis on localities, geographies.”  
3 *Id.* The songs are “kind of a map” in that they provide street names, businesses, and  
4 landmarks that the artist is familiar with to highlight his/her own geography. *Id.* Relatedly,  
5 rap songs discuss local gangs. *Id.* Professor Nielson explained that if a rapper’s  
6 community is gang active, then s/he is “naturally going to talk about . . . the gang active  
7 people in your community” because that is your potential fan base. *Id.* at 24. Prior to  
8 social media, an aspiring rap artist “had to go through the traditional gatekeepers” which  
9 would have been record labels and radio stations. *Id.* “Now the model is much more about  
10 trying to cultivate a local base, then hopefully using social media” to become national at  
11 some point. *Id.* So if an artist is going to “build that local base and that local base happens  
12 to be gang members” then songs will reference the locality.

13 Sexually explicit lyrics and lyrics that are degrading to women are also common in  
14 rap music. *Id.* at 24-25. Drugs are prominent as well. *Id.* at 25. Professor Nielson  
15 explained that “[t]he earlier rappers would talk about selling but the mantra was you don’t  
16 get high off your own supply.” *Id.* “Now rappers will talk about doing every kind of drug  
17 there is.” *Id.* But what is most common is “the drug distribution business as a theme;” for  
18 instance, “establishing yourself as the head of some major drug cartel[.]” *Id.* Rap music  
19 also incorporates the theme that “you don’t want to be perceived as weak” because  
20 “weakness obviously does not correspond to victory.” *Id.* at 26. It is also common for  
21 rappers to reference deceased family members, friends, and/or fellow rappers in their lyrics.  
22 *Id.* at 27.

23 The references to violence, drug dealing, profanity, sex, and degradation of women  
24 found in gangsta rap lyrics is “incentivized by the industry.” *Id.* As a result, it is not  
25 surprising that a “local up-and-coming gangsta rap artist” would incorporate these elements  
26 into lyrics. *Id.* at 28. In fact, if a local artist wants to be a successful gangsta rapper s/he  
27 has to rap about drugs, guns, violence, and sex. *Id.*

28 Gangsta rap lyrics generally focus on an unlawful lifestyle and/or outlaw figures.

1 *Id.* That phenomenon dates back to the 120-year-old poem which creates “a mythical  
2 figure, this larger-than-life criminal,” and “celebrates that sort of bad man figure.” *Id.* at  
3 29. This theme is seen “throughout not just rap music but a lot of Black popular culture.”  
4 *Id.*

5 Professor Nielson’s opinion is that the phrase “keeping it real” means “being  
6 authentic.” *Id.* However, he clarified that “being authentic does not necessarily mean that  
7 what you are uttering is meant to be true.” *Id.* Rather, it means “that you are supposed to  
8 be true to yourself and the sort of music that you’re producing.” *Id.* Professor Nielson  
9 explained that there was a time in rap history when if you rapped about violence and grew  
10 up in Beverly Hills, you would not have been seen as “keeping it real.” *Id.* at 30. But,  
11 today, people are less focused on “trying to believe that the artist is actually leading the life  
12 that he or she depicts in the lyrics.” *Id.* There are gangsta rappers who went to college.  
13 *Id.* One example is a rapper named Rick Ross, whose “songs are all about his connection  
14 to the criminal underworld, his connections to the cartels in South America.” *Id.*  
15 However, Ross not only went to college, he was a corrections officer. *Id.* But after that  
16 became known to the general public, his career actually improved. *Id.* at 30-31. Professor  
17 Nielson’s opinion is that rap music generally and gangsta rap specifically “is a form of  
18 fiction.” *Id.* at 31. He clarified that he is not saying that the lyrics do not correspond to  
19 the author’s reality because “all fiction in some way or another draws off an author’s lived  
20 experiences.” *Id.*

21 Testimony turned to the effect of gangsta rap on the general public. *Id.* at 32.  
22 Professor Nielson testified that the general public views rap music as “highly  
23 inflammatory. People have a strong negative, often visceral, reaction to rap music that they  
24 do not have to any other fictional forms, even more violent or sexually explicit forms.” *Id.*  
25 at 34. Those feelings have “been borne out repeatedly in the scholarship.” *Id.* For  
26 example, in a study in 1999, a social psychologist took stock violent lyrics that came from  
27 a folk song and put the lyrics on a page and gave them to two groups of people. *Id.* at 35.  
28 One group was told the lyrics came from a rap song, and the other group was told that the

1 lyrics came from a country song. *Id.* The people who believed the “lyrics came from a rap  
2 song found them far more threatening and in need of regulation than the exact same lyrics  
3 that were characterized as country.” *Id.*

4 That study was replicated in 2016. The “findings were identical except they added  
5 one other element which was that people” who were told these were rap lyrics “were far  
6 more likely or significantly more likely to view these or to read these lyrics or interpret  
7 them literally as compared to the same lyrics from, say, a country song.” *Id.* at 35-36. The  
8 researcher’s conclusion “was definitely that this was racially implicated, that it relates to  
9 the race of the author.” *Id.* at 37. There was also a finding that the participants of the study  
10 “believed that the fans of rap music are more likely to be a danger to society whereas fans  
11 of rock music might be more likely to be a danger to themselves.” *Id.* at 38.

12 There was also a study applied to the jury context where several groups of people  
13 were provided with information about a hypothetical 18-year-old Black man. *Id.* at 39.  
14 One group was told that the man was charged with murder but were not exposed to his  
15 violent and sexually explicit rap lyrics; a second group was told about the murder and rap  
16 lyrics; a third group was told about the lyrics but not the murder charge. *Id.* The result of  
17 the study was “that people who were exposed to the rap lyrics . . . thought he was more  
18 likely to be capable of committing a murder after they read those.” *Id.* at 40. But more  
19 significantly and surprising “was that the negative reaction to the rap lyrics was more  
20 intensively negative than the reaction to knowing that this person was being charged with  
21 a murder.” *Id.* The results show that “these stereotypes and biases absolutely persist” for  
22 rap music. *Id.*

23 Oftentimes rappers do not write their own lyrics. *Id.* at 42. A “ghostwriter” is used  
24 where “it’s done quietly but the primary artist presents him- or herself as having written  
25 them.” *Id.* Many times there are multiple rappers who perform a song. *Id.* at 41. In fact,  
26 that is what has become kind of the model “where you have these collectives or groups and  
27 they will all cross-promote one another by appearing on each other’s songs.” *Id.*

28 The video of a rap song allegedly sang by Michael Williams was played in court.

1 Ex. 4A. Professor Nielson testified that there is nothing “about this video that is out of the  
2 ordinary as far as its presentation to the public on social media[.]” *Id.* at 43. In fact,  
3 Professor Nielson was struck by a couple things in the video that are common in most  
4 gangsta rap videos and music: (1) street sign intersections which reflect a neighborhood;  
5 (2) having friends or associates in the video; and (3) the lyrics have “the same conventions,  
6 tropes” that were discussed earlier. *Id.* at 43-44. This video “fall[s] in line with what you  
7 would expect to hear for somebody who was trying to become commercially successful.”  
8 *Id.* at 44.

9 Professor Nielson testified that rap music “is verse and it contains all of the same  
10 literary devices” and metaphor that is found in traditional poetry. *Id.* at 45. But rap music  
11 “adds other layers of complexity and sophistication, especially when it comes to jargon”  
12 and various slang terms that “can be difficult if you’re not familiar with the genre.” *Id.*  
13 Because rap music uses metaphors, it is subject to interpretation by the listener. *Id.* The  
14 lyrics are “intended to be slippery” in that they can mean different things to listeners and  
15 meanings can even change over time. *Id.* at 45-46. It is possible that rap lyrics could be  
16 interpreted ten different ways by ten listeners. *Id.* at 46. “It’s actually one of the things  
17 that makes rap and hip-hop so vibrant is that people are able to bring multiple  
18 interpretations to it and see various things that maybe are not the same as what somebody  
19 else experiences. It’s elastic like that.” *Id.* at 46-47.

20 Testimony turned to legislative trends regarding the use of rap lyrics as evidence at  
21 a trial. *Id.* at 47. In the book “Rap on Trial,” a series of recommendations are offered to  
22 curb the unfair practice on introducing rap music at a criminal trial. *Id.* Professor Nielson  
23 and the other authors “proposed a statutory solution so that at the state and federal level  
24 there would be laws introduced that would severely restrict the ability for prosecutors to  
25 use rap lyrics as evidence in criminal cases.” *Id.* Professor Nielson explained that there is  
26 such a bill pending in New York state, “one that’s been put forward at the federal level that  
27 we are optimistic will become law,” and a slightly different bill that passed in California  
28 which is waiting for the governor to sign. *Id.* The legislation is an effort to address a trend

1 “where oftentimes the state will introduce creative expression in order to secure  
2 convictions in many cases where there is little other credible evidence.” *Id.* at 57. The  
3 concern is that rap lyrics are “so highly prejudicial that it has the capacity, the potential to  
4 deny somebody their right to a fair trial.” *Id.*

5 **Direct Examination by Mr. Payson:**

6 After being asked to put his modesty aside, Professor Nielson agreed with defense  
7 counsel that the LA Times has called him the “go-to guy” on the issues surrounding the  
8 use of rap music in criminal trials. *Id.* at 49. He also agreed that he has conducted  
9 interviews with multiple news agencies on this issue – *e.g.*, PBS News Hour, Good  
10 Morning America, New York Times, L.A. Times, Washington Post, and Rolling Stone. *Id.*

11 Testimony turned back to the ambiguity of meaning in rap music. *Id.* Professor  
12 Nielson believes that rap music is analogous to professional wrestling. *Id.* at 50. He  
13 explained that in professional wrestling there are “big guys going at each other in the ring,”  
14 but “the audience understands that that’s not really what’s happening.” *Id.* Nevertheless,  
15 “the wrestlers themselves don’t break character” because it is important to the audience  
16 experience to maintain those characters. *Id.* “That is often true of rap artists as well, that  
17 the performance continues beyond just what is happening in a studio but it’s also important  
18 for self promotion that they’ll maintain this character.” *Id.* at 50-51.

19 Professor Nielson again testified that rap is like poetry and is subject to many  
20 different interpretations based on the listener’s experiences. *Id.* at 51. Rap lyrics are  
21 sometimes “very vague intentionally[.]” *Id.* And many times the words used in the lyrics  
22 are not clear. *Id.* at 51-52. Professor Nielson testified that in all the cases that he has been  
23 involved with, “the transcriptions that people try to produce are inaccurate.” *Id.* at 52. It  
24 is difficult to understand words based on the cadence, the slang, and/or the audio quality.  
25 *Id.* For example, in a song called Brother Like a MF which was allegedly sung by Michael  
26 Williams, Agent Parkinson first interpreted a word used in a lyric as “C-40.” *Id.* The same  
27 lyric was later transcribed differently – “hit him with a brand-new 240.” *Id.* at 52-53.  
28 Professor Nielson testified that he and defense counsel “have been unable to definitively



1 determine what the lyric [is].” *Id.* at 53. Professor Nielson has never heard the term “C-  
2 40” used in a rap lyric. *Id.* He testified that he had to Google that term and “the first  
3 number of hits” were “a reference to a pellet gun.” *Id.* Professor Nielson’s opinion is that  
4 law enforcement officers should not be allowed to interpret rap lyrics. *Id.* at 54.  
5 Significant problems have occurred when law enforcement officers do so. *Id.*

6 Testimony turned to the collaborative effort used to produce rap music. *Id.* at 57.  
7 Professor Nielson testified that “typically speaking there are multiple people involved in  
8 the production of a video” like the one watched in court. *Id.* at 58. They include the  
9 performers, the cameraman, a videographer to edit the video, perhaps a sound engineer,  
10 and a person to upload the video onto social media. *Id.* Professor Nielson further testified  
11 that “[i]t is very possible that the person performing the lyrics in this video is not actually  
12 the author of those lyrics.” *Id.* Professor Nielson believes that given the production value  
13 of this video, it is very unlikely that it was produced in the course of a single day. *Id.* at  
14 61.

15 Professor Nielson again testified that rap music (including gangsta rap) is a fictional  
16 form; although he noted that within that fiction there can be elements of reality. *Id.* at 59.  
17 He testified that gangsta rap is “generally made up,” and contains braggadocio, hyperbole,  
18 exaggeration; these are the “hallmarks of rap music and actually hallmarks of a whole host  
19 of examples of Black artistic expression.” *Id.* at 59-60. Moreover, “it is absolutely  
20 possible that by reciting a lyric that somebody else wrote, you are not adopting it as your  
21 own in any way.” *Id.* at 60.

22 Rap music is “the most listened to genre in the country right now” in large part  
23 “because of the emergence of gangsta rap.” *Id.* at 14-15. Rap music is also global. *Id.* at  
24 62. Professor Nielson explained that an artist has to be able to produce gangsta style rap  
25 “to break into the commercial sort of mainstream rap scene.” *Id.* at 15-16. That is because  
26 “gangsta rap or the subgenres beneath it is still the dominant form of rap music, at least in  
27 the mainstream.” *Id.* at 16. And this dominance translates into commercial success, as  
28 some of the richest entertainers in the world are rap artists. *Id.* at 16, 62. Professor Nielson

1 explained that up-and-coming artists feel the need to produce gangsta rap to “break into  
2 the rap industry” and ultimately obtain commercial success. *Id.* In order to be successful  
3 in gangsta rap, an artist has to employ conventions such as dedication to a gang, shooting  
4 guns (of every type), being violent generally and/or specifically to a rival, and misogyny.  
5 *Id.* at 64-65.

6 **Cross-Examination by Government Counsel:**

7 Professor Nielson agreed with government counsel that he would testify as an expert  
8 at trial about the following matters: (1) “the lyrics in the rap songs in evidence in this case  
9 are consistent with the mainstream fictional genre of rap;” and (2) “rap lyrics are subject  
10 to interpretive ambiguity, are ubiquitous, constitute braggadocio, and are often fantastical  
11 or fictional rather than autobiographical confessions.” *Id.* at 67. He does not believe that  
12 his testimony would include “specific interpretation about the rap songs that are in evidence  
13 in this case,” or “opining on artistic intent[.]” *Id.* at 68. He also would not be “testifying  
14 about any of the evidence gathered in this case.” *Id.* In fact, he does not believe he was  
15 provided with police reports, crime scene photos, or transcripts of witness interviews. *Id.*  
16 at 68-69.

17 With respect to Professor Nielson’s amicus brief filed with the Supreme Court on  
18 an appeal from the Fifth Circuit, the rap lyrics admitted at the criminal trial reflected the  
19 actual crime that was charged. *Id.* at 69. Professor Nielson explained that “the lyrics were  
20 themselves characterized and charged as a true threat and then prosecuted as that.” *Id.* He  
21 added that “that’s distinct from what’s going on here.” *Id.* With respect to the rap lyrics  
22 in the case at hand that reference “chops” or “chopsticks,” Professor Nielson testified that  
23 he does not know if he has ever heard of the term “chopstick,” but “chops” or “chopper”  
24 refers to an AK-47. *Id.* at 70.

25 Professor Nielson again testified that rap music is fiction; but what he is not “saying  
26 is that within these fictional works there are not realistic depictions of things that actually  
27 did happen or could happen[.]” *Id.* at 71. But he agreed with counsel that there are a few  
28 examples “of rap lyrics that do correspond pretty clearly to reality[.]” *Id.* at 72. He also

1 agreed that a song called “The Race” talks about the rapper cutting off his ankle bracelet  
2 and going on the run while he was facing a murder charge. *Id.* at 73. Professor Nielson  
3 added that most of the song “sounded like standard fair gangsta rap.” *Id.* But he did  
4 concede that the lyrics suggested that the rapper was including elements of real things that  
5 were going on at the time. *Id.* at 74. This song was released while the rapper was on  
6 absconder status, and “the novelty of that is what made it so popular.” *Id.*

7 Professor Nielson agreed with counsel that he thought it was unfair that “a specific  
8 lyric Drakeo rapped in which he referred to somebody named RJ being tied up in the back  
9 and yelling while driving a car” was introduced into evidence at his trial. *Id.* at 77. He  
10 explained that he thought “including that lyric was ridiculous because nobody actually  
11 claimed that he did any of those things.” *Id.* Professor Nielson further explained that  
12 what he is “concerned about is the extent to which in these cases prosecutors argue that  
13 there is a close connection between the lyrics when really there isn’t.” *Id.* at 78. When  
14 asked if the inverse was true, that it would be fair if the evidence in a case closely resembled  
15 the rap lyrics, Professor Nielson testified as follows:

16 [T]he reason why I think it is unfair to introduce rap lyrics is because we  
17 know that they are so inflammatory and prejudicial that introducing them at  
18 all can tilt the balance against the defendant, and so I’m very concerned by  
19 the -- their use generally. I can say that I’ve --in the hundred cases I’ve  
20 worked on, I have yet to really see a song where I thought: Wow, he’s  
actually rapping about something he definitely planned to do.

21 *Id.* Professor Nielson added that he did not “see anything in the lyrics that [he] saw with  
22 these defendants that would change [his] view[.]” *Id.* at 79.

23 Professor Nielson agreed with counsel that he previously testified that  
24 “territoriality” is often seen in the subgenre of gangsta rap. *Id.* at 82. He also agreed that  
25 territoriality would often correspond to reality. *Id.* The video shown in court includes  
26 visual references to territoriality and “maybe even lyrical” references which is common in  
27 gangsta rap. *Id.* at 83. Professor Nielson explained that this particular subgenre often  
28 includes a “high degree of fidelity” in terms of reproducing geographies and communities

1 by using street signs and intersections which “map to reality.” *Id.* at 83. He added that  
2 this is “what’s so interesting about this subgenre because it has this base of . . . factual  
3 topography and then layered on top of it is all of this fictional stuff.” *Id.*

4 Professor Nielson has seen gangsta rap lyrics that talk about “freeing friends or  
5 releasing friends or associates from prison.” *Id.* He agreed with counsel that it would be  
6 “pretty easy to verify whether that is, in fact, the case,” provided you “actually knew who  
7 they were referring to.” *Id.* at 84. Professor Nielson also agreed that gang colors are often  
8 seen in gangsta rap. *Id.* In the video watched in court, he saw the color red which is  
9 traditionally associated with the Bloods street gang. *Id.* Professor Nielson does not  
10 consider himself an expert in gang culture or social science. *Id.* at 85.

11 Counsel questioned Professor Nielson about his testimony on January 18, 2018, in  
12 a trial in the District of Maryland. *Id.* at 88. Counsel pointed to the following question and  
13 answer:

14 Q: And when you watch gangsta rap, can you tell from watching it whether  
15 the person is describing an actual situation or making something up?

16 A: In isolation, no, but in total, yes.

17 *Id.* at 89. Counsel asked Professor Nielson if his response was “referring to in total viewing  
18 the circumstances of a particular lyric or in total viewing your knowledge and body of rap  
19 in gangsta rap in general?” *Id.* Professor Nielson testified that “I think at that time I was  
20 talking about gangsta rap in general because I see that, after I said, ‘but in total, yes,’ I said,  
21 ‘I mean, if rappers committed half the murders that they rapped about, there would be  
22 nobody left on earth.’” *Id.*

23 Professor Nielson was asked if his opinion about the admissibility of rap lyrics at a  
24 trial would change if there were “unique facts in the lyrics” “that did match some of the  
25 evidence” in the case. *Id.* Professor Nielson testified that he would need to know a lot  
26 more information, such as whether the rapper may have gotten the information from the  
27 street. *Id.* In response to counsel’s question of whether Professor Nielson has ever come  
28

1 across a case where he thought the use of rap lyrics at a trial was fair, he testified that it  
2 was logical that rap lyrics were admitted at trial in the “true threats case where somebody’s  
3 lyrics were construed as a true threat.” *Id.* at 90. But he added that he did not agree with  
4 that conclusion. *Id.*

5 Professor Nielson agreed with counsel that political speech raises “a very high First  
6 Amendment concern.” *Id.* Because Professor Nielson apparently believed that counsel  
7 was insinuating that rap music did not contain political speech, he explained that “[r]ap  
8 music, even the most political rap music, is often dismissed by judges as apolitical or  
9 nonpolitical.” *Id.* When asked if any of the rap songs in the case at hand “could in any  
10 way be construed as political speech,” Professor Nielson testified as follows:

11 I think one argument I would make is that to some extent they are political  
12 as a whole. I mean, when you have, in a country with our legacy of racism,  
13 a criminal justice system that targets young African American men,  
14 expressing this kind of speech which goes against the grain, which sends up  
15 all types of taboos and which is not often respected at all by a White  
mainstream audience, you are engaging in something political. . . . And you  
could potentially – and you face punishment for it.

16 *Id.* at 91.

17 Professor Nielson has conducted trainings which included law enforcement officers  
18 and prosecutors about using rap songs at trials. *Id.* at 92. Professor Nielson agreed with  
19 counsel that one of the “themes of [his] writing and public message is that prosecutors and  
20 law enforcement should be more careful in playing rap songs in criminal trials;” but he  
21 added that that’s a “gentle way of putting it[.]” *Id.* at 93. Counsel asked Professor Nielson  
22 whether the government’s decision to only “play two full songs and two verses of a third  
23 song” is consistent with what he is advocating. *Id.* Professor Nielson responded as  
24 follows:

25 No, I wouldn’t. You know, it goes both ways. You know, what that also is  
26 is cherry picking, right? I mean, what you’re also doing is you’re  
27 decontextualizing these songs by not revealing the other songs. It’s up to his  
28 defense attorneys what they think the smart move is there, I’m not a lawyer.  
But it’s kind of akin to what it looks like may be happening in this case  
anyway, which is you’re zeroing in on just specific lines but taking them

1 totally out of context. I would say that only producing a song or it sounded  
2 like in one just a half of a song, that seems to me like it could also be an abuse  
3 of that. . . I don't think it stands to reason because you've limited it to three  
4 songs that it's going to be any less prejudicial . . . I think maybe it could be  
5 more so because maybe a jury would benefit from seeing this entire person's  
6 body of work.

6 *Id.* at 93-94.

7 Professor Nielson again testified that the video played in court has production value  
8 because "there appeared to be some thought into that production." *Id.* at 95. The video is  
9 "perfectly within the genre of gangsta rap," which is the most listened to type of music. *Id.*  
10 at 95. Professor Nielson testified that to determine if the 100,000 views on YouTube of  
11 the defendants' collective body of work is significant, he would need to know how many  
12 songs are included in those views. *Id.* at 96. If there are a thousand songs, then that number  
13 of views is not impressive; but if it's a handful of songs, then the views are not insignificant.  
14 *Id.*

15 **Redirect Examination by Mr. Flores:**

16 Testimony returned to rap artists borrowing lyrics from other artists. *Id.* at 97.  
17 Professor Nielson agreed with counsel that the song "Dome Body" produced by the  
18 defendants includes an artist named Mozzy who is a very well-known rapper. *Id.* at 98.  
19 He also agreed that if Mozzy was part of a collaboration with unknown artists, Mozzy  
20 would have a lot of input on the theme of the song and/or the lyrics because "he's the bigger  
21 known person." *Id.*

22 Professor Nielson testified that if the defendants had about twenty songs on  
23 YouTube which received 100,000 views, then it "would demonstrate potential" and be  
24 promising for the artists. *Id.* at 99. And it "seems consistent with somebody who is trying  
25 to make it" in the rap music industry. *Id.* It also shows that the defendants are "clearly  
26 more serious" than "somebody who's just writing lyrics at home and then publishing them  
27 on some social media" given the collaboration with Mozzy. *Id.*

28 Professor Nielson agreed with counsel that it is definitely possible that some of the

1 defendants’ “rap lyrics are incorporating things that the artist may have heard from the  
2 streets[.]” *Id.* at 100. Professor Nielson testified that lyrics that are “exaggerated or even  
3 completely untrue as to the real facts” is how he “would characterize rap lyrics as a general  
4 rule.” *Id.* at 100-101.

5 Professor Nielson again testified that the territorialities and geography seen in rap  
6 music “are often very true to reality” and then “a whole lot of other stuff is kind of layered  
7 on top of that isn’t true.” *Id.* at 101-102. He explained that “an analogy that might be  
8 helpful is historical fiction.” *Id.* at 102. Many of “the details in historical fiction map to  
9 what actually happened or what we historians believe actually happened. But a lot of the  
10 characters in there are added, made up, there are exchanges that” nobody knows if they  
11 actually happened. *Id.* Professor Nielson added that a work of historical fiction would  
12 never be used in place of a high school textbook because it’s understood that it is not  
13 reliable; the same is true for rap lyrics. *Id.*

14 Professor Nielson again testified that an artist’s intent can only be discerned from  
15 the artist or someone who has spoken to the artist. *Id.* A rap artist’s intent cannot be  
16 determined from the fictional rap lyrics that s/he wrote. *Id.* at 103. Professor Nielson again  
17 testified that empirical data shows that rap music is inflammatory and prejudicial both  
18 inside and outside of a jury context. *Id.*

19 **Examination by the Court:**

20 Professor Nielson testified that an artist (whether well-known or unknown) does not  
21 have to be in a gang to produce gangsta rap. *Id.* at 107. In response to the Court’s question  
22 of whether he has an explanation for why gangsta rap is the genre that could catapult a  
23 local artist’s career, Professor Nielson testified that “if you consider popular culture more  
24 broadly, I think violence often does sell and, again, I don’t just mean in the rap context.”  
25 *Id.* at 108. He explained that the famous gangsta rap group N.W.A., did not, by and large,  
26 lead a criminal lifestyle, but it “created a way for and continues to create a way for artists  
27 to connect with communities that do actually have violence surrounding them, that do face  
28 poverty and addiction, and so those are common themes in gangsta rap[.]” *Id.* at 108-109.

1 Gangsta rap can be reflective of the artist's living situation in terms of violence and drugs;  
2 but it also attempts "to speak to folks who are in those situations." *Id.* at 110. Thus, a goal  
3 of gangsta rap is to raise attention beyond those communities. *Id.* When an aspiring rapper  
4 is trying to establish a base, rapping about violence and drugs are "one prominent way to  
5 create a connection to your listener" and reach the desired audience. *Id.* at 109-110. There  
6 has also been pressure from the music industry "for artists to conform much more often to  
7 this gangsta type style and so up-and-coming artists are keenly aware of that." *Id.*

8 In response to the Court's question of whether an artist who raps about violence or  
9 drug dealing may be taking credit for the acts of others, Professor Nielson testified as  
10 follows: "I think that's very possible. I think with criminal activity generally, you  
11 definitely see artists who claim to be engaged in the kinds of behavior that perhaps other  
12 people in their communities are when they really aren't." *Id.* at 111.

13 There are very few examples of where a White defendant was charged with a crime  
14 and the prosecution sought to introduce the defendant's rap lyrics. *Id.* at 113. However,  
15 Professor Nielson has worked on cases in California where that scenario occurred with  
16 Latino artists. *Id.*

17 The Court asked Professor Nielson if law enforcement officers should not attempt  
18 to interpret rap music because they lack the expertise to do so and/or because they are  
19 viewing the music "through the lens of potential criminality[.]" *Id.* at 114. He responded  
20 that it is definitely the lack of credentials because the "police officers who testify in these  
21 cases not only don't have that but often have no real understanding or familiarity with the  
22 genre and will say that openly and honestly." *Id.*

23 **Follow-up Examination by Mr. Flores:**

24 Counsel followed up on the Court's question about a rapper taking credit for another  
25 person's crimes. Professor Nielson testified that a famous rapper named Rick Ross  
26 "borrowed his name from Freeway Rick Ross, who was a well-known notorious drug  
27 dealer/trafficker" in Los Angeles. *Id.* at 117. He testified that this is a great example of  
28 a rapper "wanting to enhance his status as a rapper by taking credit for what someone else



1 has done.” *Id.* at 117-118.

2 With respect to law enforcement officers interpreting rap lyrics, Professor Nielson  
3 testified that he does not “think seeing it through the lens of criminality is, in and of itself,  
4 disqualifying.” *Id.* at 119. Rather, he sees it as “likely to lead to very skewed conclusions  
5 that are probably based on some confirmation bias. That is, I already know this guy’s a  
6 criminal so now I’m going to read these lyrics and that’s now I know that person committed  
7 these acts.” *Id.* Again, he is not saying the officer is unqualified to render an opinion; it  
8 just would be bad opinion. *Id.*

9 **Follow-up Examination by Mr. Payson:**

10 Professor Nielson has never seen the government attempt “to use country music  
11 lyrics against a defendant in a criminal trial.” *Id.* at 122. He explained that a journalist  
12 that he works closely with went back to the 1950s “to try to find examples where fictional  
13 forms that weren’t rap music” had been used or attempted to be used at a criminal trial. *Id.*  
14 at 122-123. The journalist discovered “four examples in all of those years” and those cases  
15 were either reversed or did not result “in any kind of serious convictions.” *Id.* at 123. By  
16 contrast, “just in a couple of decades we’ve identified several hundred” cases where rap  
17 lyrics were admitted or sought to be admitted at criminal trials. *Id.* The defendants in the  
18 cases involving rap lyrics are overwhelmingly Black or Latino. *Id.* Professor Nielson’s  
19 opinion is that this phenomenon “is definitely racially based.” *Id.* When asked to elaborate  
20 on the basis for his opinion, Professor Nielson explained that film actors and country music  
21 artists commit crimes and “often engage in hyperviolent, hypersexual forms of  
22 entertainment.” *Id.* at 123-124. But “we’re just not seeing those types of artists being  
23 targeted at all by the criminal justice system.” *Id.* at 124. Professor Nielson believes that  
24 race is at the center of this phenomena given the racial outcomes that are seen in the  
25 criminal justice system in terms of Black people being more likely to be arrested, more  
26 likely to be charged with a crime if arrested, and more likely to receive a stiffer sentence if  
27 convicted of a crime. *Id.*

28

1                   **2. Special Agent Paul Parkinson**

2                   **Direct Examination by Government Counsel:**

3                   Special Agent Parkinson has been employed by the Bureau of Alcohol, Tobacco,  
4 and Firearms (“ATF”) since 2014. 9/27/22 Tr. at 6. He investigates federal violations of  
5 firearms, arson, and explosives offenses, as well as violent crime. *Id.* at 7. Agent  
6 Parkinson started in the ATF Tucson office in 2015 after graduating from the ATF  
7 academy. *Id.* He currently works in another field office outside of Arizona. *Id.*

8                   While in the Tucson office, Agent Parkinson worked on an investigation into a  
9 group known as the Western Hills Bloods (“WHB”). *Id.* He reviewed information  
10 downloaded from phones of WHB members, reviewed Facebook accounts for members,  
11 and listened to recorded conversations of members. *Id.* at 7-8. As a result, he became  
12 familiar with “terms that members of the Western Hills Bloods would use when  
13 communicating with each other,” as well as “outsiders[.]” *Id.* at 8. Agent Parkinson also  
14 viewed photographs of tattoos of WHB members. *Id.*

15                   Agent Parkinson became familiar with the manner of communication of Michael  
16 Williams and Samuel Rakestraw as a result of listening to audiovisual material and  
17 recorded interviews. *Id.* 9. He also became familiar with James Jones (aka YM Da Kid  
18 and YM) who, prior to his death in 2017, was a member of WHB and a local rap performer.  
19 *Id.* at 9-10.

20                   As part of his investigation, Agent Parkinson became aware of rap songs (both  
21 audio and audiovisual) that WHB members would post to social media. *Id.* at 10. A report  
22 of investigation authored by ATF Special Agent Don Berlin reflects that he reviewed a  
23 music video uploaded onto YouTube on April 8, 2015, called "Out Here Bustin'." 9/27/22  
24 Tr. at 11; Gov. Ex. 6. Agent Berlin’s report reflects that Michael Williams posted that  
25 video. *Id.* The music video was played in court. Gov. Ex. 1. Agent Parkinson identified  
26 the rapper as Michael Williams and also recognized his voice. 9/27/22 Tr. at 13. He also  
27 recognized the Western Hills neighborhood depicted in the video. *Id.* at 14.

28                   Agent Parkinson testified about various screenshots from the video. *Id.* at 15.

1 There is a screenshot that shows Mr. Williams, Mr. Rakestraw, and defendant Mark  
2 Holguin (another WHB member) displaying gang signs. 9/27/22 Tr. at 15; Gov. Ex. 6 at  
3 12. Specifically, Mr. Williams is prominently displaying the WHB gang hand sign – *i.e.*,  
4 creating a W by touching his thumb and the ring finger, and putting forward his index,  
5 middle and pinky fingers. 9/27/22 Tr. at 15-16. Agent Parkinson explained that this hand  
6 sign represents W for WHB, and also 36<sup>th</sup> Street because when turned sideways the fingers  
7 appear to make the number six. *Id.* at 16. Agent Parkinson saw this hand sign frequently  
8 during the course of his investigation. *Id.* There is another screenshot of Mr. Rakestraw  
9 making a B with his hands, which stands for Blood. 9/27/22 at 24-25; Gov. Ex. 6 at 34.  
10 Agent Parkinson also saw this gang sign repeatedly during the course of his investigation.  
11 9/27/22 Tr. at 25.

12 There are various screenshots that show defendant Marcell Gray, James Jones,  
13 defendant David Williams, and Jimmy Grigsby. 9/27/22 Tr. at 17, 21; Gov. Ex. 6 at 15,  
14 19, 30-33. Jones and Grigsby are associates of the WHB. 9/27/22 at 23-24. These  
15 individuals are wearing red clothing in the screenshots, which is a color associated with  
16 the WHB. *Id.* at 19, 24.

17 There is “a screenshot of Michael Williams standing atop the Western Hills sign in  
18 the Western Hills neighborhood.” 9/27/22 Tr. at 18; Gov. Ex. 6 at 17. Agent Parkinson  
19 testified that Mr. Williams is wearing red clothing (*i.e.*, a red shirt, red hat, and red shoes).  
20 9/27/22 Tr. at 19. A screenshot shows WHB members Raymond Symonette, Samuel  
21 Rakestraw, Michael Williams and James Jones sitting atop a Western Hills sign, and  
22 wearing red clothes. 9/27/22 Tr. at 21-22; Gov. Ex. 6 at 24.

23 Another screenshot shows “a T-shirt commemorating the life of Marcus Darton  
24 [aka Mar-K or K] with the words ‘Hills in Paradise’ ascribed atop his photograph with the  
25 dates of his birth and death.” 9/27/22 Tr. at 19; Gov. Ex. 6 at 18. Agent Parkinson testified  
26 that “Mr. Darton was killed by rival gang members from the Freestone Bloods gang,”  
27 specifically, Floyd Davis and Marshall Davis. 9/27/22 Tr. at 19-20. Agent Parkinson  
28 described the shirt as being “worn by other members of the gang as a way to pay tribute”

1 to deceased gang members. *Id.* at 20. The phrase “Hills in Paradise” (or HIP) is a reference  
2 to the Western Hills and is “very similar to RIP, rest in peace.” *Id.* at 21. Agent Parkinson  
3 saw this reference throughout social media postings. *Id.*

4 A screenshot shows Michael Williams holding an “in memoriam shirt for Mr.  
5 Chandler Booker,” which has the acronym “HIP” on it. 9/27/22 Tr. at 22; Gov. Ex. 6 at  
6 25. Mr. Rakestraw is also seen in this screenshot. *Id.*

7 Mr. Williams' large tattoo on his back can be seen in another screenshot. 9/27/22 at  
8 23; Gov. Ex. 6 at 27. Agent Parkinson testified that it is a WHB tattoo, and he has seen the  
9 tattoo before on Mr. Williams and other gang members. 9/27/22 Tr. at 23.

10 Agent Parkinson’s opinion is that the music video took several hours to record  
11 because some portions of the video were shot during daylight hours and other portions at  
12 night. *Id.* at 25. Agent Parkinson testified that Mr. Williams made this video a prominent  
13 part of his Facebook page. *Id.* at 26. For example, there is a screenshot dated June 17,  
14 2015 from the video on his Facebook page. 9/27/22 Tr. at 26; Gov. Ex. 6 at 47. And there  
15 are other screenshots from the video added later. 9/27/22 Tr. at 26; Gov. Ex. 6 at 48. The  
16 caption on these screenshots says that the pictures posted are of the video “Out Here  
17 Bustin’,” and references the term “WHoop.” *Id.* Agent Parkinson testified that “WHoop”  
18 is “a call sign for Blood gang members with particular reference to the Western Hills  
19 having the W-H capitalized.” 9/27/22 Tr. at 26. Agent Parkinson also testified that he has  
20 seen references to “WH36p,” which refers to the 36<sup>th</sup> Street boundary of WHB territory.  
21 *Id.* at 27.

22 There is a screenshot with Mr. Williams “holding his hands in a way to simulate as  
23 if he were holding a rifle and firing it[.]” 9/27/22 Tr. at 27-28; Gov. Ex. 6 at 58. There are  
24 more screenshots with several gang members displaying gang signs and depicting shooting  
25 a rifle. 9/27/22 Tr. at 28. For example, Mr. Williams, Mr. Gray, Mr. Holguin, and Mr.  
26 Jones can be seen depicting the W with their hands, and Mr. Rakestraw is depicted using  
27 his hands to fire a rifle. *Id.*

28 During the course of his investigation, Agent Parkinson became familiar with the

1 term “Young Wreckin Krew” and its relation to the WHB. *Id.* at 29. He saw social media  
2 postings where individuals “proclaim themselves to be members of the Young Wreckin  
3 Krew.” *Id.* at 29-30. Specifically, in their social media postings, both Mr. Williams and  
4 Mr. Rakestraw say that they are members of Young Wreckin Krew. *Id.* at 31.

5 Testimony turned to Agent Parkinson’s interpretations of various lyrics in the  
6 Bustin’ song. *Id.* Agent Parkinson first testified that context was very important in his  
7 understanding of what the lyrics mean. *Id.* at 32. Also, for words or phrases that he was  
8 not familiar with, he researched through Google searches, including Urban Dictionary. *Id.*  
9 With respect to the lyric “[i]f you ain’t from Park or Hills,” Agent Parkinson testified that  
10 “the South Park neighborhood area that’s near Western Hills is aligned with the Western  
11 Hills Bloods. South Park family gang has many members that are aligned with and friendly  
12 with members of the Western Hills.” *Id.* at 32-33. Similarly, he testified that the phrase  
13 “Deuce Nine,” which is 2-9, stands for “29<sup>th</sup> Street which is a major street in the South  
14 Park area,” which is an important boundary for the WHB. *Id.* at 33.

15 Agent Parkinson was asked to provide his interpretation of the following lyrics from  
16 the Bustin song:

17 I move around with that stick, that steel.  
18 Try me, I’m going to kill,  
19 Better write your will,  
20 I tell Mack to hold that wheel, that wheel,  
21 When I’m hanging out that window, window,  
22 Burner come with extendo, extensos.

23 *Id.* at 34. Agent Parkinson testified that the word “Mack” is the moniker of Samuel  
24 Rakestraw, so he understood that this reference was to Rakestraw. *Id.* Agent Parkinson  
25 testified that there was an investigation into the connection of WHB gang members to a  
26 drive-by shooting of Mia Scott. *Id.* at 35. However, he added that Mr. Williams was never  
27 a suspect in that shooting. *Id.*

28 Agent Parkinson testified that the lyric “I do the shit for my N-word K, . . . I think  
about that, the shit every day,” refers to Marcus Darton (aka Mar-K). *Id.* This lyric was

1 sung around the time the T-shirt with the picture of Darton was shown in the video. *Id.*  
2 Agent Parkinson explained that the homicide of Darton was the reason for the retaliation  
3 against two brothers, Floyd and Marshall Davis. *Id.* at 36. Marshall Davis was a member  
4 of the Freestone Blood gang who was killed in 2014. *Id.* The motivation for his murder  
5 was his alleged participation in the killing of Darton. *Id.*

6 Marshall Davis had already been killed prior to the release of the Bustin' song on  
7 April 8, 2015. *Id.* at 36-37. However, Floyd Davis was still alive when Bustin' was  
8 released. *Id.* at 37. Ana Rodriguez, a cooperating defendant, had not met up with Floyd  
9 Davis prior to the release of Bustin'. *Id.*

10 Counsel turned to the following lyrics that purportedly relate to information  
11 provided to law enforcement by Rodriguez:  
12

13 We'll have the bitch to come chill with you  
14 Just to cause diversion, huh  
15 Now we up in your house  
16 Standing behind your curtains,  
17 Ain't no talkin' when it comes to it  
18 I see your ass in person,  
19 Leave your ass worthless,  
20 I feel like it's worth it.

21 *Id.* at 37. Agent Parkinson testified that Rodriguez "said that Floyd Davis told her that  
22 they believed that that was the mode that was used to – in part of Marshall Davis's  
23 homicide." *Id.* at 38. And a few weeks after Bustin' was released, a similar method of  
24 obtaining access to Floyd Davis was used, and Ana Rodriguez had a similar role as the  
25 "bitch" referred to in these lyrics. *Id.*

26 Agent Parkinson testified that the following people were present when Darton was  
27 murdered: Floyd and Marshall Davis, from the Freestone's side, and David Williams,  
28 Michael Williams, and Marcell Gray, from the Western Hills side. *Id.* at 39. Darton was  
considered to be a "big homie," meaning a leader of the WHB gang. *Id.*

Testimony turned to the following lyrics:

1 I do the shit for my N-word K, my N-word K,  
2 I think about the shit every day,  
3 Firm grip when I hold the cane,  
4 That's a green light,  
5 That means right away, bang.

6 *Id.* at 40.

7 Agent Parkinson interpreted the phrase “green light” in the lyrics to mean “a kill  
8 order.” *Id.* at 40. He explained that it is “a common street phrase.” *Id.* It was also  
9 significant that the phrase “green light” in the song comes immediately after references to  
10 Darton. *Id.* at 41. Agent Parkinson testified this “green light” phrase “shows that there  
11 was a hierarchy that called for this and sanctioned and approved it.” *Id.* Agent Parkinson  
12 testified that the word “bust” is a “common street term for shoot and according to a source  
13 ‘bustin’ is shooting N-words nonstop.” *Id.* at 41-42.

14 Agent Parkinson testified about the following lyrics:

15 So don't get out of line,  
16 I'm from Tre Six,  
17 But I fuck with some N-words from Deuce Nine.  
18 Try me, I'm going to shoot mine.  
19 At these bitch N-words's throats,  
20 Call me when it's go time.

21 *Id.* at 42.

22 He testified that the reference to “Tre Six” (which means three six) in the lyrics is  
23 “a reference to the 36<sup>th</sup> Street boundary in the Western Hills neighborhood.” *Id.* at 42.  
24 With respect to the lyric “[b]ut I fuck with some N-words from Deuce Nine,” Agent  
25 Parkinson testified that the phrase “fuck with” is “a positive reference meaning that they're  
26 cordial with or friendly with.” *Id.* at 42-43. The Court asked Agent Parkinson how he came  
27 to the conclusion that “fuck with” shows a positive relationship when the next lyric is “Try  
28 me, I'm going to shoot mine.” *Id.* at 43-44. Agent Parkinson responded that the subsequent  
lyric “is a departure from the previous line so it's a new context.” *Id.* at 44. More  
specifically, he tried to explain that “[s]o when he's talking about the people from Deuce  
Nine, speaking in friendly terms, the next line, ‘Try me I'm going to shoot mine’”

1 referencing to shoot his guns at these others, meaning rivals, and then at their throats, at  
2 the rivals's throats. So it's a departure from the people from two nine street that he's close  
3 to rivals." *Id.* at 45. Counsel asked Agent Parkinson if the phrase "fuck with" in the lyrics  
4 is similar to social media posts that said, "Fuck with rats, you're as good as a rat." *Id.*  
5 Agent Parkinson testified as follows: "[y]es, another way to think about it is if you associate  
6 with a rat, you're as good as a rat." *Id.* As a result, Agent Parkinson interprets the lyric  
7 "fuck with Deuce Nine" to mean "associate with some people from Deuce Nine." *Id.* at  
8 46. And his interpretation is consistent with information that he learned during his  
9 investigation that the WHB gang was "at least not antagonistic rivals with members of the  
10 South Park Blood[s]." *Id.*

11 Agent Parkinson testified that the lyric "We gotta do this shit for my bros N-word"  
12 shows this "brotherhood closeness" of WHB gang members. *Id.* at 47. He testified that  
13 the "lyrics were consistent with what we learned in the investigation about the gang." *Id.*

14 Testimony turned to other lyrics where "green light" is mentioned. Specifically, the  
15 following: "If the big homie set that green light, then all my N-words go gonna go, I'm  
16 gonna go." *Id.* Agent Parkinson testified that this lyric "refers to the kill order sent by the  
17 or decreed by the big homie, the leader in the gang." *Id.* at 48. And his investigation  
18 revealed that several members of the WHB gang were present at the Floyd Davis homicide,  
19 which is consistent with the lyric: "Then all my people gonna go, gonna go[.]" *Id.*

20 Counsel turned to a lyric purportedly referencing the "code of silence" among gang  
21 members: "smoke a N-word and don't talk about it. So don't ax me over that phone." *Id.*  
22 Agent Parkinson testified that "smoke" is a common street term for killing someone; "[a]nd  
23 then don't ask me over that phone was something that we know that the members of the  
24 Western Hills did with other people and counseled them and told them not to talk about the  
25 murder of Floyd Davis, for example, over the phone." *Id.* at 49. In fact, in recorded  
26 conversations between David Williams and Ana Rodriguez, David Williams repeatedly  
27 encouraged her not to talk to the police and "to stick to the story[.]" *Id.* Additionally, in  
28 Facebook postings between Mr. Rakestraw, defendant Megan Borges, and a rival gang



1 member named Kenyatta Dilyou, both Rakestraw and Borges confronted Dilyou and called  
2 him a rat and a snitch. *Id.* at 49-50. And the investigation led Agent Parkinson to believe  
3 that WHB members actually targeted Dilyou after those postings. *Id.* at 50.

4 The song “Brother Like a MF,” which was posted on Mr. Williams’ Facebook page  
5 on July 23, 2017, was played in court. 9/27/22 Tr. at 51; Gov. Ex. 3. In September 2017,  
6 Agent Parkinson found this song on YouTube via a link on Mr. Williams’ Facebook page.  
7 9/27/22 Tr. at 52; Gov. Ex. 8. The entire caption referenced Lil Mike, Sammy Mack, and  
8 YM Da Kid. 9/27/22 at 53. Agent Parkinson heard all three men’s voices on the recording.  
9 *Id.* The voice at the beginning of the song is James Jones (aka YM Da Kid).

10 Counsel turned to the following lyric – “Shoot a N-word up, and then watch the  
11 news. She was on my dick, until she heard that I killed her dude” – and tried to tie this  
12 lyric to comments made by Christina Monge during an interview. *Id.* at 54. Agent  
13 Parkinson testified that Monge recalled an incident when her live-in boyfriend, Reginald  
14 Johnson, was out late with the other members of the Western Hills. *Id.* She recalls him  
15 making it “a point to get up early, which was unusual for him, to watch the news.” *Id.*  
16 The news report that she saw him watching involved a drive-by shooting, although Monge  
17 did not mention the victim. *Id.* Agent Parkinson testified that the drive-by shooting  
18 “likely” involved Mia Scott. *Id.* Additionally, Agent Parkinson testified that a download  
19 of defendant Shawmaine Moore’s phone revealed that “on the day of the homicide of Floyd  
20 Davis, just a few hours after and from what I understand before it was made public, [Moore]  
21 did a search of the news for the incident at the airport, the shooting at the airport.” *Id.* at  
22 55.

23 Testimony turned to the following lyric: “These N-words speakin’ on me. Guess  
24 I’m hot now.” *Id.* Agent Parkinson testified that “[b]ased on the investigation and  
25 context,” the lyric “speakin’ on me” appears to refer to the singer (YM Da Kid) talking  
26 about “having people cooperating with law enforcement talking about him.” *Id.* at 55-56.  
27 With respect to the lyric “Blood, I’m aiming for that eyebrow,” Agent Parkinson testified  
28 that the word “Blood” is “kind of a preface to a statement.” *Id.* at 56.

1 Agent Parkinson next testified about his interpretation of the following lyrics: “And  
2 if I ain’t got it on me, [y]ou bet Blood do[.] And if we got it . . . on us, [t]hen we all shoot.”  
3 *Id.* at 57. He testified that “there’s several instances when the gang acted as a gang to carry  
4 out a violent act. And so this is a call to – saying that if one gang member is involved, then  
5 all of the gang members will rally behind that person and be involved to the point of being  
6 violent and shooting.” *Id.* at 57-58.

7 Agent Parkinson testified that the lyric, “Dope fiend kitchen[.] We was cooking  
8 like a muthafucka,” was significant to him because the investigation revealed that WHB  
9 gang members “sell crack cocaine and that in many instances they convert powder cocaine  
10 to crack cocaine through a process of cooking it, often within the kitchen of sometimes  
11 their homes, often in the kitchen of the shops or the rental houses from which they sell  
12 drugs.” *Id.* at 58. Specifically, Monge testified about this cooking process in shops or  
13 houses and “several shops or houses affiliated with Western Hills members” were “taken  
14 down” by the Tucson Police Department during the investigation. *Id.* And the evidence  
15 seized showed that the cooking process was consistent among the houses and shops. *Id.* at  
16 58-59.

17 Agent Parkinson was asked to give his interpretation of these lyrics that appeared to  
18 be sung by Mr. Rakestraw: “Red flags. We’re from the hood. This is some gang shit.” *Id.*  
19 at 59. He testified that “red flag” in the gang context refers to the red bandana worn by  
20 Blood gang members. *Id.* The “hood” is a “reference to being part of the gang and the  
21 territory” that is part of their gang activities. *Id.* Similarly, the phrases “Hills with it” and  
22 “Hills” are “an identification of which gang they represent” or are “affiliated with.” *Id.* at  
23 60. The lyric “that’s my brother, different moms” shows the brotherhood of the gang  
24 members; and only men are members of the WHB gang. *Id.* at 62. Also, the lyric, “My  
25 N-words talkin’ about family,” is a reference to being part of the gang and the gang being  
26 family. *Id.* at 60. The lyric, “I catch some family talkin’, they got circumcised,” is a  
27 reference to gang members or associates “cooperating with police or snitching and, as a  
28 result of that, they got cut down in some way.” *Id.*

1 The lyric “I let it flame” has two meanings to Agent Parkinson. *Id.* at 59. The first  
2 is when a gang member dresses in predominantly red, “that’s called being flamed out.” *Id.*  
3 “Let it flame” is also a reference to firing a gun. *Id.*

4 Testimony turned to lyrics that appeared to be sung by Michael Williams. *Id.* at 61.  
5 Specifically, “Lil Mike, boi, YWK, we hold the K, they killed my N-word K.” *Id.* Agent  
6 Parkinson testified that “YWK” refers to the Young Wreckin Krew. *Id.* “They killed my  
7 N-word K” is a reference to the murder of Marcus Darton. *Id.* Agent Parkinson agreed  
8 with counsel that there is another reference to “green light” immediately after the reference  
9 to Darton. *Id.*

10 Agent Parkinson next testified about the significance of the following lyrics: “Hit  
11 him with a brand-new 240, just to test it out.” *Id.* at 62. A “240” is a reference to an “M240  
12 machine gun” which fires 7.62 caliber ammunition. *Id.* Agent Parkinson explained that  
13 the reference to this firearm and ammunition was significant because “Ms. Rodriguez told  
14 us that she was with David Williams when he test fired a rifle and she identified the  
15 location” and law enforcement “found 7.62 shells consistent with what she described[.]”  
16 *Id.* And shells from 7.62 caliber ammunition were recovered from the scene of the Floyd  
17 Davis homicide. *Id.* at 63.

18 The rap song “Dome Body Dome Shot” was then played in court. Gov. Ex. 2. This  
19 song was posted to Michael Williams’ Facebook account on April 12, 2015. *Id.* at 69.  
20 Defendant Marcell Gray also posted references to this song on a Facebook account on  
21 September 23, 2015. *Id.* at 70. Agent Parkinson testified that YM Da Kid (James Jones)  
22 was rapping at the beginning of the song. 9/27/22 Tr. at 63-64. The lyric “Fuck a Stone”  
23 sung by Jones is a disparaging “reference to a Freestone Blood gang member, the rival  
24 gang.” *Id.* at 64. Agent Parkinson explained that if the lyric was “fuck with Stones,” it  
25 would have a completely different meaning. “It would indicate a friendship or cordiality  
26 with Stones.” *Id.* With respect to the lyric “Hit ’em with their chopsticks,” Agent  
27 Parkinson testified that “'chopsticks' is a common street term for a firearm or rifle.” *Id.*

28 Agent Parkinson believes that when Michael Williams begins singing, his first

1 words are “Hills with it, see a Yabba.” *Id.* at 65. Agent Parkinson testified that “Yabba”  
2 is a disparaging reference to a Freestone gang member. *Id.* He bases that conclusion on  
3 the fact that “Yabba killer” is “prominently displayed on an in memoriam shirt of some  
4 deceased Western Hills member[.]” *Id.* The “Hills with it” lyric means that the WHB gang  
5 was “on board to carry out the violence.” *Id.*

6 Testimony returned to Facebook postings made by Mr. Rakestraw and Ms. Borges  
7 and their relation to rap lyrics. *Id.* at 66. Agent Parkinson testified that the lyrics “You N-  
8 words pussy on Facebook hellafakin’, you N-words can’t get what when these levies  
9 breakin’” are significant because it was a disparaging comment about rivals of the WHB  
10 being active of Facebook. *Id.*

11 Testimony turned to the relevance of cameras in the drug “shops” and certain lyrics  
12 that refer to cameras at the shops. Agent Parkinson first testified that the lyrics “If you  
13 ain’t trying to push” means that if you’re not trying to sell drugs, because “push” is a  
14 common street term for selling drugs. *Id.* at 68. The lyrics “you ain’t from the turf then”  
15 is another reference to not being loyal or part of the gang. *Id.* The lyrics “Because all my  
16 N-words clockin’ in to put work in,” is a commentary that gang members are expected to  
17 “put work in both at the shops selling drugs and put work in on behalf of the gang.” *Id.*  
18 The lyrics, “Got N-words working the cameras. In case the cops hit us,” refers to the shops  
19 having security cameras to give the people selling drugs at the shops “either lead time to  
20 get rid of the drugs or know that the police are coming and plan an escape.” *Id.* at 68-69.  
21 Agent Parkinson explained that several of the shops had security cameras. *Id.* at 66.  
22 Additionally, in recorded jail calls between defendants Clifton Martinez and Labarr  
23 Martinez, they “were lamenting that Reginald Johnson and Marcell Howell should not have  
24 been caught by police” because of the security cameras. *Id.* at 67. Finally, Agent Parkinson  
25 testified that the lyric “slidin’ out with the chops” means “coming out with guns ablazing.”  
26 *Id.* at 69.

27 Agent Parkinson testified that the lyric “Free Sly like a mothafucka” means “a call  
28 to free” defendant Shawmaine Moore, whose nickname is Sly, from prison. *Id.* at 70.

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**Cross-Examination by Mr. Flores:**

Agent Parkinson does not recall attending trainings that dealt specifically with rap music. *Id.* at 72-73. And he has not had any training on interpreting rap music. *Id.* at 73. He is not a fan of rap music and does not listen to it on a regular basis. *Id.* He has heard rap songs but has not “sought it out or chose to listen to it[.]” *Id.*

Counsel explored Agent Parkinson’s testimony on direct that he listened to a lot of recorded conversations “in order to help him understand these songs.” *Id.* at 74. Agent Parkinson listened to jail calls, although he cannot recall specific calls. *Id.* When asked for one example, he testified about the jail call between Clifton Martinez and Labarr Martinez discussing security cameras at the shops “to provide insight into what some of the lyrics meant.” *Id.* at 74-75. Agent Parkinson agreed with counsel that neither Michael Williams, Samuel Rakestraw, nor James Jones were part of those recorded conversations. *Id.* at 75. He also agreed with counsel that he cannot point to a recorded conversation involving Williams, Rakestraw, or Jones that would “put some kind of context into this rap music.” *Id.*

Agent Parkinson estimates that he listened to about a dozen of the rap songs at issue, including the three played in court. *Id.* at 76. He does not have any indication of who wrote the lyrics of any of the songs. *Id.* But he seems to recall being told during interviews that Michael Williams wrote the “Bustin” song. *Id.* at 77. But the interviews were not of Williams, Rakestraw, or Jones, and he cannot recall the interviewee(s). *Id.*

Agent Parkinson agreed with counsel that he testified on direct examination that certain screenshots from the Bustin’ video show areas around the 36<sup>th</sup> Street neighborhood that he believes was the territory of the WHB. *Id.* at 78-79. He acknowledged that there are other gangs in that area, but to his knowledge they do not claim the Western Hills neighborhood. *Id.* at 80. His understanding is that the Vista Bloods are north of 36<sup>th</sup> Street. *Id.* He is not familiar with the boundaries of the Vista Brown Pride gang. *Id.*

Agent Parkinson conceded that he does not need the music video to establish the area allegedly controlled by the WHB. *Id.* He also conceded that he does not need the

1 video to establish gang affiliation in light of the tattoos, alleged gang colors, and alleged  
2 gang signs depicted in the screenshots. *Id.* at 80-81. Agent Parkinson agreed with counsel  
3 that “there’s a lot of evidence indicating that Mr. Williams and others are part of this gang”  
4 apart from the video. *Id.* at 81-82. In fact, Agent Parkinson testified that even without the  
5 rap songs, he can “say confidently that these are gang members[.]” *Id.* at 82. Similarly,  
6 Agent Parkinson testified that the screenshot that captures the in memoriam T-shirt  
7 depicting Marcus Darton (aka Mar-K), “is certainly helpful in determining or in showing  
8 the purpose of a lot of the gang violence.” *Id.* at 82-83. And there is other evidence that  
9 will be presented “through eyewitnesses that will discuss the rivalry between Freestones  
10 and Western Hills Bloods[.]” *Id.* at 83.

11 Testimony turned to a statement in a law enforcement report that refers to Young  
12 Wreckin Krew as a subset of Western Hills or WHB gang members comprised of Michael  
13 Williams, Samuel Rakestraw, Sherman Shields, Marcell Gray, Shawmaine Moore, and  
14 David Williams. 9/27/22 at 84; Doc. 2101 at 4. Agent Parkinson did not speak with  
15 Michael Williams, Mr. Rakestraw, or Sherman Shields about their alleged membership in  
16 the Young Wreckin Crew. *Id.* at 84. The statement in the report that the “Young Wreckin  
17 Krew is known for killing, selling drugs, making rap music, and profiting off of the WHB”  
18 came from Bernard Rayford, a cooperating witness. *Id.* at 85. Agent Parkinson’s  
19 understanding is that Rayford got this information “based on his life in Tucson and being  
20 in the streets, so to speak, and based on his conversations with other members of the  
21 Western Hills Bloods[.]” *Id.* at 86.

22 Agent Parkinson was made aware the morning of the evidentiary hearing that  
23 Michael Williams and Mr. Rakestraw “incorporated a company called the Young Wreckin  
24 Krew in order to advance their rap careers.” *Id.* at 86-87. “As part of the investigation, he  
25 never looked into that[.]” *Id.* at 87. Agent Parkinson was shown public documents from  
26 the Arizona Corporation Commission which reflect that Michael Williams and Mr.  
27 Rakestraw incorporated Young Wreckin Krew in 2018. Def. Ex. 33; 9/27/22 Tr. at 87-88.  
28 Agent Parkinson agreed with counsel that a corporation would need to be formed “to

1 legally conduct business in Arizona.” 9/27/22 Tr. at 88. He also agreed that the names  
2 Sherman Shields, Marcell Gray, Shawmaine Moore, and David Williams do not appear in  
3 those incorporation documents. *Id.*

4 Agent Parkinson was aware that there was a group of individuals in Tucson called  
5 the Wrecking Crew, but he was “not familiar with their rap.” *Id.* at 89-90. He was also  
6 aware that Michael Williams's older brother was a member of the Wrecking Crew; but he  
7 did not know it was a rap group. *Id.* at 90. When asked to concede that he “never  
8 investigated thoroughly enough to determine that the Wrecking Crew was actually a rap  
9 group that was led by Mr. Michael Williams’s older brother,” Agent Parkinson responded  
10 that his “investigation indicated that the Wrecking Crew was a subset of violent gang  
11 members, not rappers.” *Id.* In response to counsel’s question whether he simply “took  
12 the word[] of a confidential informant who was bargaining his way out of prison,” Agent  
13 Parkinson testified that he does not recall “all of the reference materials” or sources, but it  
14 seems to him “that there was more information that Young Wreckin Krew was active in  
15 carrying out gang business than just making rap music.” *Id.*

16 Agent Parkinson testified that he wants to make sure justice is served in this case,  
17 and “justice is served once a jury reaches a verdict.” *Id.* at 91. He also testified that when  
18 reading and listening to the rap lyrics, he was “of the mind” that he wanted justice served.  
19 *Id.* at 92.

20 Testimony turned to Agent Parkinson’s interpretation of the lyrics. Agent Parkinson  
21 believes that the song "Bustin'" “provides motive for the homicide of Floyd Davis[.]” *Id.*  
22 He agreed with counsel that he testified on direct examination that the word “dump” used  
23 in the lyric “they’ll dump on you . . . if you ain’t from Park or Hills . . . can mean empty  
24 the clip of one’s firearm[.]” *Id.*

25 Agent Parkinson also agreed that he testified that the lyric, “I tell Mack to hold that  
26 wheel” refers to Mr. Rakestraw driving a car, and the lyric “When I’m hanging out the  
27 window” refers to a drive-by shooting. *Id.* at 92-93. Agent Parkinson explained that he  
28 did not previously testify that these lyrics refer to the Mia Scott shooting because that

1 shooting occurred after the release of "Bustin'." *Id.* at 93. Counsel pointed Agent Parkinson  
2 to the government's pleading which says that these lyrics could be referring "to the Mia  
3 Scott shooting but it also puts the co-defendants acting together to commit acts of  
4 violence[.]" *Id.* Agent Parkinson agreed with counsel that Michael Williams was clearly  
5 not involved in the Mia Scott shooting because he was incarcerated at that time. *Id.* Agent  
6 Parkinson cannot recall if Mr. Rakestraw was also incarcerated at that time, but it would  
7 not surprise him if that was the case. *Id.* at 93-94. Agent Parkinson agreed with counsel  
8 that the lyrics do not reference a victim, and neither Michael Williams nor Mr. Rakestraw  
9 are charged in the indictment with a drive-by shooting. Counsel pointed out that there was  
10 a drive-by shooting of Kenyatta Dilyou, and asked Agent Parkinson if he was aware that  
11 Mr. Rakestraw was falsely accused of being involved in that crime. *Id.* at 94-95. Agent  
12 Parkinson testified that "I know Mr. Rakestraw was arrested for it," but he does not know  
13 "the extent of his involvement[.]" *Id.* He added that he knows that the case was dismissed.  
14 *Id.* at 95.

15 Agent Parkinson did internet searches to find definitions of terms to assist in his  
16 interpretation of the Bustin' lyrics. *Id.* at 97-98. Counsel proceeded to go through the  
17 definitions of terms and phrases that resulted from the internet searches which Agent  
18 Parkinson used to interpret certain lyrics. The definition "Lil" is an abbreviation for  
19 "little," and denotes a relatively younger or newer gang member who falls under the  
20 mentorship of an older gang member known as big homies. *Id.* at 99. As a result, the  
21 reference in the lyrics to "Lil Mike," signified that Michael Williams was a newer or  
22 younger gang member. *Id.* at 100. Agent Parkinson denied counsel's assertion that he  
23 "cherry-picked" parts of the sources that reference gang membership. *Id.* For example,  
24 Agent Parkinson denied that he ignored the part of the article that he relied upon which  
25 discussed how prevalent "Lil" is in the hip hop industry. *Id.* at 101.

26 Agent Parkinson used the Urban Dictionary to find a definition of "bustin'" as  
27 "shooting ends, nonstop, shooting repeatedly, like shooting coppers." *Id.* at 102-103.  
28 Agent Parkinson again denied that he "cherry-pick[ed] the best meaning to fit" his theory



1 of the case. *Id.* at 103. Agent Parkinson testified that “[b]ased on my understanding of  
2 the lyric and the context, I found references that supported that.” *Id.* He agreed with  
3 defense counsel that he “did that over and over” for different words. *Id.* Agent Parkinson  
4 never checked the source of the definitions on Urban Dictionary. *Id.*

5 Agent Parkinson agreed that “two people can listen to the same song and actually  
6 hear different words.” *Id.* at 105-106. For example, Agent Parkinson believes that a lyric  
7 is: “I do the shit for my N[-word] K.” *Id.* at 106. Agent Berlin believed the lyric is: “I do  
8 this shit for my N[-word] K.” *Id.* Agent Parkinson agreed with counsel that “the” and  
9 “this” can have different meanings. *Id.* However, he believes that this lyric means violence  
10 toward other people, regardless of whether the lyric uses “the” or “this.” *Id.* at 107.  
11 Counsel asked Agent Parkinson if “I’m doing this shit” could mean that Michael Williams  
12 is rapping and putting out this video to pay homage to his dead friend. *Id.* Agent Parkinson  
13 said that he doesn’t know. *Id.* When asked if the reason he doesn’t know is because that’s  
14 another reasonable interpretation of the lyric, Agent Parkinson responded “Well, I don’t  
15 know if it’s reasonable.” *Id.* He added that “the reasonableness, I believe, comes in the  
16 context.” *Id.*

17 With respect to the lyric, “Now it’s a green light,” Agent Parkinson agreed that his  
18 report reflects that he initially interpreted that lyric to mean “right away.” *Id.* He also  
19 agreed that he “testified on direct that ‘green light’ meant order to kill” or a “kill order.”  
20 *Id.* at 108. Agent Parkinson admitted that “green light” can have a different meaning. *Id.*  
21 at 111. For example, when he told Agent Berlin, “Let me know when you want to give the  
22 CI [Ana Rodriguez] the green light,” he was not giving a kill order or conspiring to kill  
23 anyone. *Id.* at 110. Although Agent Parkinson agreed that “green light” does not mean  
24 kill order every time the phrase is used, he added that it depends on the context in which it  
25 is made. *Id.* at 111.

26 The Urban Dictionary defined “spray” as blinding or rapidly shooting a weapon. *Id.*  
27 Agent Parkinson again testified that he believes this is how the word was used in the rap  
28 lyrics based on the context. *Id.* He agreed that the government incorporated this definition

1 in its pleading setting forth the rap lyrics it wants to introduce at trial. *Id.* at 112.

2 Agent Parkinson acknowledged another instance when two people heard the same  
3 rap lyrics differently. *Id.* at 116. Specifically, in the government’s pleading, the following  
4 lyric is quoted: “Don’t play it right. Then you a day away.” *Id.* Agent Berlin’s report  
5 shows his translation of the lyric as “dead weight.” *Id.* Agent Berlin agreed with counsel  
6 that it is difficult to get to a proper interpretation of the lyrics if people hear the words  
7 differently. *Id.* at 116-117.

8 Counsel turned to lyrics that Agent Parkinson previously testified were related to  
9 the Marshall Davis homicide. *Id.* at 117. Specifically, “We’ll have a bitch come . . . chill  
10 with you. Just to cause diversion. Now we up in your house. Standing behind the  
11 curtains.” *Id.* Agent Parkinson agreed that Floyd Davis was alive when the video that  
12 contained these lyrics was published. *Id.* He also agreed that Ms. Rodriguez “hadn’t even  
13 been talking to Floyd Davis when this video was published[.]” *Id.* at 117-118. As a result,  
14 counsel asked Agent Parkinson whether his theory is causing a diversion was the modus  
15 operandi for the murder of Marshall Davis. *Id.* at 118. Agent Parkinson testified that “it’s  
16 not what I believe, . . . it’s what was reported to me” by Ms. Rodriguez. *Id.* Specifically,  
17 Rodriguez told Agent Parkinson that Floyd Davis told her that he “believed that there was  
18 a woman involved in” the set-up of his brother. *Id.* at 118-119.

19 Counsel asked if what Ms. Rodriguez reported was the only evidence that he used  
20 to interpret these lyrics as referring to Marshall Davis being set up by using a female. *Id.*  
21 at 119. Agent Parkinson testified that Ms. Rodriguez “was specific about what David  
22 Williams told her to do, to include using the word see if Floyd will come ‘chill’ with you,  
23 ‘chill and drink with you.’” *Id.* Counsel reminded Agent Parkinson that his question  
24 pertained to Marshall Davis. *Id.* Agent Parkinson testified that the lyrics “seem to be a  
25 blueprint.” *Id.* However, he agreed with counsel that Ms. Rodriguez “reported that she  
26 had not had recent contact with Floyd Davis around the time of this video.” *Id.* at 120.  
27 Counsel followed up by asking, “so unless the author of this lyric could tell the future,  
28 could predict the future, these lyrics are not referring to anything regarding Floyd Davis,

1 correct?” *Id.* Agent Parkinson testified that “I think the author of these lyrics . . . used  
2 these lyrics moving forward and it’s my understanding, based on the content and the  
3 context . . . that it was used previously and, as we later found out with Floyd Davis, used  
4 again.” *Id.* When asked to explain what he meant by the phrase “used previously,” Agent  
5 Parkinson testified “based on the context, this appears to be the MO that they used for  
6 Marshall Davis, ‘they’ meaning whoever carried out that murder, and then it was again  
7 used later on Floyd Davis.” *Id.* at 121. When counsel asked Agent Parkinson what  
8 information he had except Ms. Rodriguez’s statement “that suggests Marshall Davis was  
9 lured to his death by a female,” Agent Parkinson testified that he could not answer that  
10 without his reports and notes. *Id.*

11 The Court asked Agent Parkinson how the lyric could refer to the murder of  
12 Marshall Davis given that it is in the future tense: “we will have a bitch come chill with  
13 you.” *Id.* at 124. Agent Parkinson testified that “[a]s it reads, that appears to be a future –  
14 yeah. So it’s my understanding . . . that this was the MO that the gang used to carry out  
15 their acts of violence.” *Id.*

16 With respect to the next verse, “Now we’re up in your house standing behind the  
17 curtains,” counsel asked Agent Parkinson if he had any evidence that Marshall Davis was  
18 killed in his home. *Id.* at 122. Agent Parkinson could not answer that question without his  
19 notes. *Id.* But he agreed that Marshall Davis was killed in a parking lot of an apartment  
20 complex after he was ambushed getting out of his car. *Id.* at 123. He also agreed that no  
21 one has ever been charged with the murder of Marshall Davis. *Id.*

22 Agent Parkinson added that he seems to recall that “Ms. Rodriguez told us of  
23 another incident when there was a rival gang member in an apartment of a nearby associate  
24 and that their plan was to then, from that apartment, carry out violence against that person.”  
25 *Id.* at 122. Counsel asked Agent Parkinson if “that means that these lyrics can now refer  
26 to a third occurrence” that he does not “have a lot of facts about.” *Id.* Agent Parkinson  
27 testified that “what I’m saying is these lyrics appear to be the MO for how they operate.”  
28 *Id.* at 122-123.

1 Counsel further explored Agent Parkinson's theory that causing a diversion using a  
2 female was the MO of the WHB. *Id.* at 125-126. Agent Parkinson agreed that the  
3 following violent acts are alleged in the indictment: (1) the Floyd Davis homicide; (2) the  
4 Edward Murphy homicide; (3) the Kiana Griffin shooting; (4) the Kenyatta Dilyou  
5 shooting; (5) the Mia Scott shooting; and (6) the hookah lounge shooting allegedly against  
6 Michael Williams. *Id.* at 126. When asked to identify which of these violent acts involved  
7 a female causing diversions, Agent Parkinson only identified the Floyd Davis shooting. *Id.*  
8 Counsel asked Agent Parkinson for the basis of his opinion that the gang's modus operandi  
9 is to use a female to cause a diversion given that five of the six violent acts do not involve  
10 that MO. *Id.* at 127. Agent Parkinson testified that, if he recalls correctly, in the Kenyatta  
11 Dilyou shooting "a female was used to lure him out or to lure the parties together." *Id.* at  
12 127-128. Counsel asked whether "that shooting was allegedly motivated for girlfriend  
13 reasons." *Id.* at 128. Agent Parkinson does not "know what all the reasons were motivating  
14 that shooting." *Id.* But Agent Parkinson agreed that the remaining violent acts alleged in  
15 the indictment did not involve using a female to create a diversion. *Id.* at 127-128.

16 Testimony turned to lyrics allegedly referencing a code of silence. Specifically, the  
17 lyric: "I smoke an N and don't talk about it, so don't ask me over that phone." *Id.* at 128.  
18 Agent Parkinson agreed with counsel that he testified on direct that this lyric refers to David  
19 Williams continually telling Ms. Rodriguez during phone calls "not to talk to the police  
20 about the homicide." *Id.* at 129. Counsel asked whether those phone conversations were  
21 in direct conflict with the alleged "code of silence" lyrics, "Don't axe me over the phone."  
22 *Id.* Agent Parkinson testified that, on the contrary, David Williams is telling Ms.  
23 Rodriguez "to follow the advice of, 'Don't axe me over that phone.'" *Id.* Agent Parkinson  
24 has no knowledge of whether David Williams is "the author of these lyrics." *Id.* at 130.

25 The Court pointed out that reference in the lyric to not talking on the phone cannot  
26 relate to the Floyd Davis homicide because that occurred after the song was released. *Id.*  
27 at 139. Agent Parkinson testified that the "statement refers to the philosophy of the gang  
28 of not speaking about their crimes over the phone." *Id.* Counsel pointed out that there are

1 thousands of text messages “where they’re talking about selling drugs, buying guns, [and]  
2 possessing guns.” *Id.* at 130. Agent Parkinson conceded that “[c]ertain crimes are openly  
3 discussed” in the phones and in text messages, to include drug dealing.” *Id.* at 131.

4 Counsel turned to lyrics that Agent Parkinson believes reference the territory of the  
5 WHB. *Id.* Specifically, the lyric “I’m from Tre Six” is a reference to the WHB. *Id.* at  
6 132. The lyric, “But I fuck with some N’s from Deuce,” refers to the South Park and shows  
7 a positive relationship between South Park and WHB. *Id.* Agent Parkinson’s  
8 understanding is that “Deuce Nine” refers to 29<sup>th</sup> Street. *Id.* Agent Parkinson is aware that  
9 there is a 29<sup>th</sup> Street gang, but he does not know if they are affiliated with South Park. *Id.*  
10 Agent Parkinson’s understanding is that South Park refers to the area in and around South  
11 Park Avenue in Tucson, Arizona. *Id.* Agent Parkinson agreed with counsel that 29<sup>th</sup> Street  
12 “runs through that boundary near South Tucson,” and it “goes all the way up to Wilmot  
13 and 29<sup>th</sup> Street . . . which is considered the east side of Tucson. *Id.* at 133. As a result,  
14 counsel asked Agent Parkinson if he may have been incorrect in correlating Deuce Nine  
15 with South Park. *Id.* Agent Parkinson testified that “based on my understanding of the  
16 lyrics and the other information that investigators obtained, this was the only context that  
17 made sense” to me. *Id.*

18 Counsel turned to the following lyrics: “I say my life is trustin’ this trigga (This  
19 trigga). Look, I said it once. I ain’t perfect (I ain’t perfect). Pistol cocked and I’m searchin’  
20 (I’m searchin’). Leave you bitch [N’s] worthless (Worthless). ‘Cause I felt the shit. And  
21 it’s all worth it.” *Id.* at 133-134. Counsel pointed out that the government’s pleading states  
22 that the lyrics evidence that “Michael Williams will not associate or trust with anyone  
23 outside of his gang, and that he relies on his ability to kill rivals for his own safety[.]” Doc.  
24 2101 at 11; 9/27/22 Tr. at 133. Contrary to this statement in the pleading, Agent Parkinson  
25 testified “there’s nothing in here about being loyal only to his gang or being trusting only  
26 to his gang in this verse.” 9/27/22 Tr. at 134. However, Agent Parkinson testified that  
27 the lyrics on the prior page of the pleading – “I ain’t fuckin’ with none of you [N’s] ([N’s]).  
28 I ain’t trustin’ none of you [N’s] ([N’s]) – do tend to show Michael Williams not associating

1 or trusting anyone other than his gang. *Id.* at 135. Agent Parkinson testified that he  
2 interpreted the reference in the lyrics to “trusting his life in this trigger” to mean that “he’s  
3 going [to] rely on his ability to kill rivals for his own safety.” *Id.* at 136.

4 Testimony turned to the Dome Body song. *Id.* at 139. Agent Parkinson agreed that  
5 he testified on direct that the rappers in this song are YM Da Kid, potentially Mr.  
6 Rakestraw, and allegedly Michael Williams. *Id.* at 140. He agreed that Agent Berlin  
7 completed his review of this song in March of 2016. *Id.* Agent Berlin noted in his report  
8 “that there was a wall post from an account associated to Marcell Gray on September 23<sup>rd</sup>  
9 of 2015[.]” *Id.* That is the only reference in the report about the posting of this song. *Id.*  
10 at 141. When asked if he was aware that Michael Williams was in state custody on  
11 September 23, 2015, Agent Parkinson testified that he cannot say definitely without his  
12 “reference materials,” but it was possible. *Id.* Agent Parkinson agreed that Michael  
13 Williams was also in state custody on October 4, 2015, the night of the Mia Scott shooting.  
14 *Id.* When asked if it was clear that Michael Williams could not have posted this song  
15 during these time frames, Agent Parkinson testified that the only information he has is that  
16 Gray posted the song in September 2015; he does not know when the song was posted onto  
17 SoundCloud. *Id.* at 141-142.

18 Agent Parkinson agreed that Dome Body involved a rapper named Mozzy. *Id.* at  
19 142. In fact, the title of the song says, “YM DA Kid, ‘Dome Body’ featuring Mozzy, Lil  
20 Mike, and Sammy Mack[.]” *Id.* Agent Parkinson is aware that Mozzy is a successful rap  
21 artist. *Id.* Agent Parkinson does not know who authored the lyrics for Dome Body. *Id.*  
22 Agent Parkinson agreed that lyrics in this song have been interpreted differently. One  
23 person interpreted a lyric as “Get it blazing with the winner.” *Id.* at 144. “Agent Berlin  
24 hears, ‘Get it blazing with the wetter, not a chrome hot.’” *Id.* Agent Parkinson agreed that  
25 “whenever a lyric is interchanged, it could change the meaning of it[.]” *Id.* Agent  
26 Parkinson added that when he listened to the lyric, “‘wetter’ is what I most recently heard.”  
27 *Id.* Agent Parkinson agreed with counsel that “that’s something that’s happened before...  
28 between [him] and Agent Berlin,” where both listened to the same song and talked about

1 the “potential differences” in what was heard. *Id.* at 144-145. He also agreed that it’s  
2 possible that other listeners could hear something differently than what he and Agent Berlin  
3 heard. *Id.* at 145. There is another lyric in Dome Body that is heard differently by two  
4 listeners. In the government’s pleading, it says the lyric is: “The 40 isn’t edible.” *Id.* Agent  
5 Berlin believed the lyric was: “Phony as an animal.” *Id.*

6 Testimony turned to lyrics in Dome Body that Agent Parkinson interpreted as  
7 references to threatening Facebook postings made by Megan Borges and Mr. Rakestraw.  
8 *Id.* at 146. Those lyrics are: You [N's] pussy on Facebook. Hella fakin’ (Hella fakin’).  
9 You [N's] can’t get wet. When these levies breakin’ (These levies breakin’). Doc. 2101  
10 at 23. Agent Parkinson testified that these lyrics are “relevant because of the conversations  
11 on Facebook that had incited so much back and forth between the rivals.” 9/27/22 Tr. at  
12 146. When asked if the reference to Facebook was “the only commonality between that  
13 verse” and postings by Ms. Borges and Mr. Rakestraw, Agent Parkinson testified that “the  
14 context of this causes me to believe that the Facebook posts between Borges and Rakestraw  
15 are relevant.” *Id.* at 147. He added that “I think that my review of the evidence in this case  
16 has given me an insight into much of what the Western Hills gang members talk about,  
17 including these lyrics.” *Id.* at 148. However, he agreed with counsel that he has never  
18 been qualified, or attempted to be qualified, as an expert to interpret rap lyrics. *Id.*

19 With respect to the use of the word “shop” in the lyrics, Agent Parkinson again  
20 testified that he “related this back to a conversation” between Labarr Martinez and Clifton  
21 Martinez. *Id.* Neither Michael Williams nor Mr. Rakestraw were part of the conversation.  
22 *Id.* at 149. As far as Agent Parkinson is aware, neither of these men authored the lyrics.  
23 *Id.* at 148-149. Agent Parkinson agreed with counsel that the word “shops” has been  
24 referred to as a crack house, and both words are used nationwide, and are not specific to  
25 the WHB. *Id.* at 150.

26 The word “Yabba” used on the Dome Body song was also interpreted differently by  
27 Agent Berlin. He heard “Hills with it, see ya’, yup, I’m trying to knock ‘em down.” *Id.* at  
28 151. Agent Parkinson’s understanding is that “Agent Berlin hadn’t heard the term ‘Yabba’

1 in context at that point.” *Id.* Specifically, he does not believe that Agent Berlin was  
2 “familiar with the term ‘Yabba’ as a disparaging term toward the Freestone gang  
3 members.” *Id.* at 152.

4 Agent Parkinson interpreted the lyric “Fuck a Stone” as a reference to the rivalry  
5 between the WHB and the Freestones. *Id.* Agent Parkinson agreed with counsel that there  
6 are fact witnesses, including Ms. Rodriguez, that know about that rivalry. *Id.* at 152-153.

7 **Cross-Examination by Mr. Payson:**

8 Agent Parkinson does not have any formal education in rap music and is not a fan  
9 of rap music. *Id.* at 155. He has never attended a rap concert. *Id.* at 156. When asked if  
10 he dislikes rap music, Agent Parkinson responded: “I don’t favor it.” *Id.* at 155. He  
11 explained that he objects to “[m]uch of the content and the profanity and the vulgar  
12 language[.]” *Id.* at 156. Because he does not listen to rap music, he does not have an  
13 opinion on whether rap music has artistic value. *Id.* He has heard of several rappers or rap  
14 groups, such as Kanye West, Cypress Hill, and Wu-Tang Clan. *Id.* at 156-157.

15 Agent Parkinson used the Urban Dictionary as a source to confirm his understanding  
16 of what the rap lyrics at issue mean. *Id.* at 157. He described the Urban Dictionary as a  
17 “changing dictionary based on the trends in popular jargon of the time.” *Id.* He does not  
18 know if “anyone can just send in the definition of a word[.]” *Id.* The Urban Dictionary  
19 has multiple definitions for some words, including the words that he queried. *Id.* at 157-  
20 158. Agent Parkinson agreed that in most instances, he picked the definition “that matched  
21 the understanding that [he] had of the lyrics.” *Id.* at 158.

22 Agent Parkinson agreed with counsel that the Urban Dictionary definition of “Urban  
23 Dictionary” is “what you get when you cross Wikipedia with mental retardation.” *Id.* at  
24 159. It also states that “Urban Dictionary is supposed to be a user inputted dictionary for  
25 words. However, it has become a mindless forum of jokes, viewpoints, sex, and basically  
26 anything but the real definition of a word.” *Id.* Agent Parkinson testified that he found  
27 many of the Urban Dictionary’s definitions of words to be accurate and mirror the  
28 definition set forth in a regular dictionary. *Id.* at 159-160. Agent Parkinson does not recall



1 ever using the Urban Dictionary to interpret language in court. *Id.* at 160. And he does  
2 not know the people who provided the definitions for the words that he queried. *Id.* at 161.

3 Counsel turned to the Urban Dictionary's definitions of certain words. *Id.* at 160.  
4 One definition of "ride dirty" is "[t]o roll in your car with drugs, guns, or other shit you  
5 don't want the cops to find, usually drugs." *Id.* Another definition is "[t]o not have taken  
6 a shower in a while or wiped one's ass properly." *Id.* There are two definitions for "dinner  
7 plate," which is used in the lyrics. *Id.* at 162-163. In his report, Agent Parkinson referenced  
8 the definition of a girl that you "want to have sexual intercourse with," which he explained  
9 is sometimes referred to "on the streets as a 'dinner.'" *Id.* at 163. Agent Parkinson did not  
10 include the other definition, which is "a way of making money" to feed oneself. *Id.* at 162-  
11 163.

12 Agent Parkinson agreed that he testified on direct that "fuck with" has a positive  
13 connotation -- *i.e.*, to be cordial or friendly with -- in the context in which it was used in  
14 the lyrics. *Id.* at 164-165. But he agreed that the word "fuck" can mean something very  
15 negative, so the word has a double meaning that can be taken out of context. *Id.* at 165.

16 Agent Parkinson agreed with counsel that he testified on direct that the Young  
17 Wreckin Krew is a group of violent people and rappers. 9/29/22 Tr. at 6. He also testified  
18 that this group included: Michael Williams, Samuel Rakestraw, Sherman Shields, Marcell  
19 Gray, Shawmaine Moore, and David Williams. *Id.* Agent Parkinson obtained some of his  
20 information about YWK from Bernard Rayford. *Id.* at 8. When asked if Rayford was the  
21 only source for the information, he testified that "I know that YWK and Young Wreckin  
22 Krew has come up," but he cannot recall in which conversations without his reports or  
23 notes. *Id.* at 9. Agent Parkinson is aware that Michael Williams and Samuel Rakestraw  
24 have a YWK tattoo; he is "not aware of all the tattoos on the others." *Id.* at 6-7. He agreed  
25 that he learned shortly prior to this hearing that Michael Williams and Samuel Rakestraw  
26 incorporated YWK. *Id.* at 7. He also agreed that none of the other men that he believes  
27 are in the YWK are listed in the incorporation paperwork. *Id.* Agent Parkinson is aware  
28 that Michael Williams and Samuel Rakestraw are rappers; he does not know if David

1 Williams, Shawmaine Moore, Marcell Gray, or Sherman Shields are rappers. *Id.* at 8.

2 Agent Parkinson is not aware of any information that Mr. Rakestraw was involved  
3 in the Marshall Davis homicide. *Id.* at 10. He also does not recall Michael Williams's  
4 "name specifically being mentioned as being involved." *Id.* at 11. Agent Parkinson knows  
5 that there are at least four suspects in that homicide, but he cannot recall their names  
6 without his reference material. *Id.* at 11-12. When asked if Michael Williams or Samuel  
7 Rakestraw were suspects, Agent Parkinson would not directly answer the question; instead,  
8 he testified that he's "not aware of what Mike Williams's involvement or Samuel  
9 Rakestraw's involvement is in that homicide." *Id.* at 11.

10 Testimony turned to the song "Brother Like An MF," which was posted on July 23,  
11 2017. *Id.* at 12. Agent Parkinson agreed that the song was posted a couple years after the  
12 Floyd Davis homicide. *Id.* He believes that one of the rappers is YM DA Kid, which is  
13 James Jones. *Id.* at 13. Agent Parkinson agreed that his testimony on direct was that he  
14 would have attempted to include Jones in this investigation if he had not passed away in  
15 2017. *Id.* at 13-14. Jones would have been included in the investigation based on  
16 information received about his involvement in the Mia Scott shooting in October 2015 and  
17 drug crimes. *Id.* at 14. Agent Parkinson agreed with counsel that the instant case was  
18 presented to federal prosecutors in the Fall of 2015. *Id.* at 14-15. He also agreed that  
19 Jones was not among the nine people presented to the prosecutors for prosecution. *Id.* at  
20 15.

21 Counsel turned back to the Urban Dictionary. *Id.* at 19. With respect to the lyric,  
22 "Hills with it," Agent Parkinson cited to the definition of "getting ready to fight." *Id.* at  
23 19-20. Agent Parkinson acknowledged that the Urban Dictionary provides another  
24 definition: "Cool, be on top of things, in the know, in with current styles or trends." *Id.* at  
25 20. Agent Parkinson interpreted the phrase "We're gonna slide" to mean "to fight." *Id.*  
26 Agent Parkinson agreed that there are many definitions of "slide," including "coming or  
27 going" to a place. *Id.* at 21.

28 Counsel returned to the song "Brother Like An MF" and errors made in translating

1 the lyrics. *Id.* at 22. Agent Parkinson agreed that he sent an email to Agent Korn in  
2 September 2017 in which he said a lyric was “YM K.” 9/29/Tr at 23; Def. Ex. 13. Agent  
3 Parkinson testified that perhaps this was a typographical error because this song was sung  
4 by YM DA Kid. 9/29/22 Tr. at 23. He does not know what “YM K” stands for. *Id.* In the  
5 email, Agent Parkinson also translated a lyric as: “Hit ‘em with a brand-new C40.” 9/29/22  
6 Tr. at 23; Def. Ex. 13. Agent Parkinson is not familiar with the term “C40.” 9/29/22 Tr.  
7 at 24. He does not know that a “C40” is the model of a Volvo car or a pellet gun. *Id.* He  
8 testified that, to the best of his knowledge, a pellet gun was not used in the charged offenses.  
9 *Id.* He agreed that this lyric has recently been translated as “a 240.” *Id.* As a result, Agent  
10 Parkinson’s interpretation of “a 240” is that it is a reference to an M240 fully automatic  
11 machine gun which is a heavy weapon used by the United States military. *Id.* at 25-26.  
12 He testified that a “normal civilian” cannot buy this gun and that they are very expensive.  
13 *Id.* at 26. This gun fires 600 to 800 rounds a minute. *Id.* To the best of his knowledge,  
14 “no such weapon was ever used in this case.” *Id.* at 26-27. However, the 7.62 ammunition  
15 used for this machine gun is “a very common round” that is used in many different types  
16 of firearms. *Id.* at 27.

17 Agent Parkinson translated another lyric as “Right out the woods we shot, send them  
18 on a crash.” 9/29/22 Tr. at 29; Def. Ex. 13. Agent Parkinson agreed that he interpreted  
19 this lyric to mean that Floyd Davis “was ambushed by Williams and other Western Hills  
20 Bloods members who laid in wait for Davis in the desert.” 9/29/22 Tr. at 29. Agent  
21 Parkinson also agreed that the official translation of this lyric is: “It’s right out the whip.”  
22 *Id.* at 28. And if that is the correct translation, “then that would not make sense in the  
23 context of the Floyd Davis homicide.” *Id.* at 30. Agent Parkinson agreed that a “whip” is  
24 typically a car. *Id.* He also agreed that Mr. Rakestraw is not charged in the indictment with  
25 a drive-by shooting and had nothing to do with the Mia Scott drive-by shooting because he  
26 was in the Pima County Jail at the time it occurred. *Id.* at 30-31. Although Mr. Rakestraw  
27 was initially charged with the Kenyatta Dilyou shooting, the charges were later dismissed  
28 when Dilyou told law enforcement that Mr. Rakestraw was not involved. *Id.* at 31. Agent

1 Parkinson agreed with counsel that the meaning of this lyric completely changes depending  
2 on whether the word “woods” or “whip” was used. *Id.* at 32.

3 Agent Parkinson interpreted the lyric, “Shoot N up,” as to carry out a gang shooting.  
4 *Id.* at 32-33. When asked if the word “shoot” denotes “gang,” Agent Parkinson testified  
5 that “based on the context of the entire song, that’s the understanding that I had based on  
6 that lyric.” *Id.* at 33. But he agreed that “shoot” is not synonymous with “gang.” *Id.* In  
7 response to counsel’s question if Agent Parkinson just added the word “gang,” Agent  
8 Parkinson testified that he did so “[b]ased on the totality of the song.” *Id.*

9 Testimony turned to the lyric: “Then watch the news, she was on my dick until she  
10 heard that I killed her dude.” Def. Ex. 3 at 1; 9/29/22 Tr. at 34. Agent Parkinson agreed  
11 that YM DA Kid sang this lyric. 9/29/22 Tr. at 35. When asked if he had any information  
12 to suggest that YM DA Kid was involved in a homicide, Agent Parkinson testified that he  
13 cannot recall. *Id.*

14 Agent Parkinson interpreted the phrase “Poppin’ Ns” used in a lyric to mean  
15 “shooting rivals.” *Id.* at 35-36. His interpretation of the word “apocalypse” used in the  
16 same lyric is “a final battle.” *Id.* at 36. Thus, his interpretation of the lyric in which this  
17 phrase and word are used is: “Shootin’ Ns in a final battle.” *Id.* Agent Parkinson is not  
18 aware of a “final battle” that occurred or was planned in this case. *Id.* Nevertheless, Agent  
19 Parkinson disagreed with counsel’s assertion that this “apocalypse” lyric “is just fantasy”  
20 and does not “correspond to anything in real life that this investigation has turned up.” *Id.*  
21 at 36-37. Counsel asked Agent Parkinson to detail any evidence that exists which shows  
22 that a final battle or an apocalypse occurred or was planned. *Id.* at 37. Agent Parkinson  
23 testified that witness interviews have “documented that the ongoing feud driven by the  
24 Western Hills gang members is intended to kill all the members of the Freestones gang.”  
25 *Id.* Agent Parkinson specifically pointed to the interviews of Ana Rodriguez and Bernard  
26 Rayford. *Id.*

27 Counsel turned to another discrepancy in the translation of a lyric. The official  
28 transcript sets forth the following lyric: “I think I’ll die in Hills.” *Id.* at 38. However,

1 Agent Parkinson later emailed a prosecutor to correct the lyric to: “I think I died, did.” *Id.*  
2 Thus, the lyric does not say “Hills.” *Id.* Agent Parkinson agreed that his interpretation of  
3 the incorrect lyric was that “he’ll die as an active Western Hills gang member[.]” *Id.* at 39.  
4 Therefore, he agreed that the actual lyric does not support that interpretation. *Id.*

5 Agent Parkinson interpreted the lyric, “I catch some family talkin’,” to mean that  
6 “he caught members of the gang cooperating with police.” *Id.* at 39-40. He interpreted  
7 the lyric, “They got circumcised,” to mean “administered punishment by cutting them  
8 down.” *Id.* at 40. Agent Parkinson testified that he used the phrase “cutting them down”  
9 to mean murder or some form of punishment. *Id.* Agent Parkinson agreed that the lyric  
10 is in the past tense and that he believes Mr. Rakestraw sang this lyric. *Id.* Agent Parkinson  
11 is not aware of any “information that Mr. Rakestraw ever killed any snitches[.]” *Id.*  
12 Moreover, “[t]here are no snitches that have been killed in this case[.]” *Id.* at 42. Agent  
13 Parkinson agreed that Mr. Rakestraw is “not specifically” confessing to anything that he  
14 may have done. *Id.* at 40-41.

15 Testimony turned back to the “Bustin” song; specifically, the lyrics that reference  
16 using a female to cause a diversion. *Id.* at 44. Agent Parkinson agreed that he testified  
17 on direct examination that the lyric suggested an “MO used by the gang” and “that it is  
18 consistent with the evidence found” in the Marshall and Floyd Davis homicides *Id.* at 44.  
19 Agent Parkinson again testified that without reviewing his reports, he cannot definitely say  
20 whether there is any evidence Mr. Rakestraw or Michael Williams was involved in the  
21 Marshall Davis homicide. *Id.* at 45. Agent Parkinson agreed with counsel that the  
22 homicides of the Davis brothers did not occur in a house and there was “nobody waiting  
23 behind curtains.” *Id.* at 45-46.

24 With respect to the Floyd Davis homicide, Agent Parkinson agreed that Ana  
25 Rodriguez had not seen Davis for years at the time she ran into him at a supermarket. *Id.*  
26 at 46. To his knowledge, neither Mr. Rakestraw nor anyone else ever instructed Rodriguez  
27 to go find Floyd Davis. *Id.* However, Agent Parkinson added that “it was reported that  
28 Mr. Rakestraw was part of the planning when the directions were given that she should

1 lure him to a hotel room.” *Id.* at 47. But, again, he does not believe that Mr. Rakestraw  
2 asked Rodriguez to do anything. *Id.* at 47.

3 Finally, counsel returned to Agent Parkinson’s interpretations of additional rap  
4 lyrics. *Id.* Agent Parkinson agreed with counsel that he interpreted the lyric, “And if my  
5 N-word need him buried, he ain’t got to ask,” to mean that “if a fellow gang member  
6 wanted a person killed, it will be done[.]” *Id.* at 47-48. He also agreed that the prosecutors  
7 submitted another interpretation of that lyric in a pleading: it “might refer to fundraising  
8 operations Western Hills Bloods members would do for other members’ funeral expenses.”  
9 *Id.* at 48. Agent Parkinson conceded that “that’s a valid interpretation.” *Id.* at 49.

10 **Redirect Examination by Government Counsel:**

11 Agent Parkinson explained that to interpret the lyrics, “[y]ou can’t break each word  
12 down and get the full meaning of the song without the context of the entire song.” *Id.* at  
13 53. With respect to lyrics possibly referring to fundraising for funeral expenses, Agent  
14 Parkinson agreed with government counsel that there is an alternative interpretation in the  
15 pleading that is consistent with his interpretation; that is, “a reference to the violent acts  
16 that Western Hills members commit on behalf of other members[.]” *Id.* at 52. Agent  
17 Parkinson agreed that the lyric, “Hills with it,” immediately precedes the lyric, “I think I  
18 died, did,” which was initially misinterpreted as, “I think I’ll die in Hills.” *Id.* at 52-53. In  
19 Agent Parkinson’s opinion, the “Hills with it” is undoubtedly a reference to Western Hills.  
20 *Id.* at 53.

21 Government counsel emailed Agent Parkinson asking for his help in preparing the  
22 pleading that sets forth the lyrics in the three songs at issue. *Id.*; *see* Doc. 2101. In  
23 response, Agent Parkinson produced a document setting forth definitions of words or  
24 phrases used in the lyrics. 9/29/22 Tr. at 53; Gov. Ex. 9. However, he did not intend his  
25 document “to be the sole interpretation of the lyrics in this case.” 9/29/22 Tr. at 53. His  
26 intention in preparing the document was not to provide what he “thought the lyrics meant,”  
27 but rather provide definitions that he “found matched what [he] understood the lyrics to  
28 mean based on the totality of the circumstances.” *Id.* at 53-54.

1 In the video of the song "Bustin'," it is significant that Michael Williams and other  
2 people in the video are making the gesture of firing a firearm when contemporaneously  
3 saying the word "bustin.'" *Id.* at 55. As a result, it is significant "to watch the video as  
4 you're listening to the lyrics in order to get the full picture of the possible meanings[.]" *Id.*

5 There are witness accounts that Michael Williams was in the area of one of the shops  
6 at the time of a shooting. *Id.* at 56. In fact, Williams was shot, and it is believed that the  
7 shooting took place at or outside of a shop. *Id.*

8 Agent Parkinson again testified that the word "'chop'" is a "common street term  
9 for the abbreviated form of chopper, which is a firearm." *Id.* at 57. The word "also suggests  
10 what it does, it chops somebody down, the act of chopping." *Id.* Text messages extracted  
11 from Michael Williams's cell phone seized on August 30, 2018, contain conversations  
12 between Williams and other people where the word "chop" or "chops" is used, and the  
13 context shows that "chop" or "chops" is referring to firearms. *Id.* at 58. There were "quite  
14 a few other conversations about firearms within Mr. Williams's phone downloads," as well  
15 as pictures of firearms. *Id.* A download of Michael Williams's Facebook account revealed  
16 that the word "burner" is used in a "conversation in which Mr. Williams asked a third party:  
17 'Any burners?'" The third-party responds: "'Two N-words trying to get rid of sum'"? *Id.*  
18 at 59. Williams then sends the third-party a picture of a firearm. *Id.* Bernard Rayford  
19 also said that Michael Williams "had shown him the chopper before." *Id.* at 69. It is this  
20 type of evidence that helped Agent Parkinson interpret some of the rap lyrics. *Id.* at 59-60.

21 Agent Parkinson recalls defense counsel asking if any violent acts committed  
22 against snitches were alleged against Mr. Rakestraw. *Id.* at 60. Counsel pointed Agent  
23 Parkinson to a Facebook conversation between Borges, Rakestraw, and Kenyatta Dilyou,  
24 in which Dilyou is accused of snitching. *Id.* Agent Parkinson testified that Mr. Rakestraw  
25 wrote that Dilyou and N-word Jason Watkins were "rats," and "dats . . . a snitch N-word  
26 for you[.]" *Id.* at 61. There is also what appears to be a grand jury transcript posted which  
27 lists Mr. Rakestaw's and Michael Williams's names. *Id.* at 61-62.

28 Testimony returned to the phrase "fuck with" and whether it has a positive or

1 negative connotation. *Id.* at 62. In the Facebook conversation discussed above, Dilyou  
2 says to Borges: “You don’t fucc with me?” *Id.* Borges responds, in part, by saying “not  
3 after you was in that paperwork giving up everybody name, including mine[.]” *Id.* at 63.  
4 Given the context of the conversation, Agent Parkinson interprets Dilyou’s use of “fuck  
5 with” to mean: “Are we still cordial? Are you still going to associate with me?” *Id.* Later  
6 in the conversation, Borges uses the same phrase when she says: “I lost a lot behind all  
7 that, and at the end of the day, I got a baby with a N-word from Park and I don’t fuck with  
8 enemies like that.” *Id.* at 63. Agent Parkinson believes that “enemies” refers to Dilyou.  
9 *Id.* He believes the reference to Park in the conversation relates to the fact that Borges  
10 shares a child with Jermaine Maxwell, who is associated with the Park gang. *Id.* at 63-64.  
11 According to Agent Parkinson, the “gist of the conversation is that Megan Borges is . . . in  
12 this conversation expressing loyalty to the Western Hills and the Park gangs[.]” *Id.* at 64.  
13 Similarly, Borges makes the following statement during the Facebook conversation with  
14 Dilyou: “You can say what you want, it don’t hurt my feelings N ‘cause I still fuck with  
15 Hills, hmm, lol, least I’m not a snitch.” *Id.* Additionally, Michael Williams uses the  
16 phrase, “fuck with Park or Hills” in the Bustin’ song, and the phrase, “I’ll fuck with it,” in  
17 a text message. *Id.* at 65. Agent Parkinson believes these references also denote a positive  
18 connotation. *Id.* Again, this is the type of evidence that affects how Agent Parkinson  
19 interprets the use of a phrase in a rap song. *Id.* at 64.

20 Mr. Rakestraw also refers to Dilyou being a “snitch” that “we” got a problem with  
21 during this Facebook conversation noted above. *Id.* Agent Parkinson took this comment  
22 “to be a threat to someone believed to be providing information to law enforcement.” *Id.*  
23 at 65.

24 Testimony turned to the code of silence. Rochelle Valadez testified that she was in  
25 a relationship with Floyd Davis at the time he was killed. *Id.* at 66. After Davis was killed,  
26 she was in a relationship with defendant Marcell Gray. *Id.* She testified that defendant  
27 Shawmaine Moore spent the night at her house shortly after the murder of Floyd Davis.  
28 *Id.* That testimony was corroborated by an audio recording extracted from Moore’s phone



1 of a conversation between him and Valadez. *Id.* at 67. In the recording, Ms. Valadez is  
2 hesitant to tell Moore any information about Floyd Davis. *Id.* Specifically, she told Moore  
3 that “that’s how people end up murdered.” *Id.* Ms. Valadez was not aware that Moore  
4 was recording their conversation. *Id.* at 68. Agent Parkinson testified that the code of  
5 silence is also shown by Moore telling the recipient of a text message to erase something  
6 they had talked about. *Id.* at 73.

7 In her interview with law enforcement, Ms. Valadez stated that “I don’t fuck with  
8 guys like that. I’m just letting you know, like, N-words men in Western Hills.” *Id.* at 68.  
9 Agent Parkinson interpreted this comment to mean that “she does not associate with those  
10 guys.” *Id.* Ms. Valadez identified the following people who were present when Marcus  
11 Darton was murdered: David Williams, Michael Williams, Gil from the Freestone gang,  
12 Marshall Davis, and Floyd Davis. *Id.* at 68. She also said that Darton was “an OG, which  
13 is original gangster, a leader of the gang.” *Id.* at 68-69. This information also affected  
14 Agent Parkinson’s interpretations of the rap songs. *Id.* at 69.

15 Jail calls also reference words and phrases used in the rap songs. For instance, the  
16 phrase “big homie” was used multiple times during a recorded jail call involving Jermaine  
17 Maxwell. *Id.* at 71. And in another jail call Cliffon Martinez references cameras being  
18 in the shops. *Id.* at 70.

19 According to Ana Rodriguez, the Bustin’ song was recorded on March 6<sup>th</sup>. *Id.* at  
20 71. Agent Parkinson testified that March 6<sup>th</sup> is significant because “March is the third  
21 month of the year and the 6<sup>th</sup> date, so if you put them together, three six is a tribute to the  
22 36<sup>th</sup> Street boundary which is prominent in the Western Hills gang.” *Id.* Also, a download  
23 of Mr. Williams’ phone reflects that a third party “wished him a happy hood day on March  
24 6<sup>th</sup>. *Id.* at 72. He also addressed Williams as “blood,” but spelled it “B136d.” *Id.* Mr.  
25 Williams responded: “Happy turf day on Blood, love you, too[.]” *Id.* Once again, this  
26 information assisted Agent Parkinson in understanding the totality of the rap video and its  
27 significance. *Id.*

28 With respect to the use of the word “lurking” in a rap song, a download of

1 Shawmaine Moore's phone revealed he sent the following text message: "lrkin on these  
2 yabbz head." *Id.* at 74. Agent Parkinson testified that Moore's use of the word "lrkin" was  
3 consistent with the use of the word in the rap song and with the definition of that word in  
4 the Urban Dictionary. *Id.* at 74. He again testified that "yabbz," which is either misspelled  
5 or an abbreviation of yabbas, "is a disparaging term used to identify Freestone Blood gang  
6 members." *Id.* This text message was sent May 2, 2015, which was two weeks prior to  
7 the Floyd Davis homicide, and "around the time" that Ana Rodriguez was in contact with  
8 Floyd Davis. *Id.* at 74-75.

9 Information extracted from Moore's phone also reflects a conversation between  
10 Moore and Michael Williams about going to the "shop." *Id.* at 76. Agent Parkinson  
11 testified that the word "shop" in the context of the conversation meant to him "the location  
12 that was controlled by the Western Hills Bloods from which they sell drugs." *Id.* There  
13 is another text message to Sammy Mack where Moore stated that he was with Michael  
14 Williams at the "spot," which Agent Parkinson "know[s] to be another reference to the  
15 shop." *Id.* at 76-77.

16 With respect to the code of silence, Agent Parkinson received information  
17 "regarding Moore's standing regarding his conversations with police officers." *Id.* at 75.  
18 Agent Parkinson explained while "it didn't rise to the level of being considered a snitch,"  
19 Moore made statements that angered other gang members. *Id.* As a result, gang members  
20 said they "would deal with him in a physical manner" after he was released from prison.  
21 *Id.* Agent Parkinson considered this information when interpreting the word "circumcised"  
22 in the rap lyrics. *Id.*

23 Testimony turned to David Williams' phone conversations with Ana Rodriguez in  
24 which he tells her not to talk on the phone about crimes or to the police. *Id.* at 77. As far  
25 as Agent Parkinson is aware, David Williams "did not know that he was being recorded."  
26 *Id.* Specifically, Williams tell Rodriguez: (1) "quit talking crazy on the phone;" (2) "I  
27 don't need you saying stupid shit on the phone;" and (3) "I keep telling your stupid ass stop  
28 saying stupid shit, motherfucker." *Id.* at 78. With respect to the "code of silence," David

1 Williams tells Rodriguez: “That’s the only way they can get to it ‘cause ain’t nobody else  
2 saying shit.” *Id.* With respect to their text messages and phone calls, Williams tells  
3 Rodriguez: “Every time we talk on these phones, erase it.” *Id.* at 79. David Williams also  
4 told her to keep her phone on silent because he did not “want anyone to know about this  
5 other phone that they used to communicate on.” *Id.* at 82. Agent Parkinson considered  
6 these statements “when reviewing rap lyrics about negative connotations to speaking on  
7 the phone[.]” *Id.* at 79.

8 David Williams used the phrase “big homies” when describing Mar-K and Chanky,  
9 which is “moniker for Chandler Booker.” *Id.* at 79-80. The context of this conversation  
10 with Rodriguez is David Williams “talking about how the police officers are not  
11 investigating the deaths of his other big homies, Marcus Darton and Chandler Booker.” *Id.*  
12 at 80. Williams was “comparing that to the police investigation of Floyd Davis.” *Id.*  
13 Agent Parkinson testified that David Williams also mentioned that when Marshall Davis  
14 got killed “the cops was everywhere, and this was giving Ms. Rodriguez another example  
15 of police scrutiny but trying to alleviate her concerns again by reiterating that not talking  
16 to the police was their way out of that situation.” *Id.* at 80-81. These conversations  
17 occurred after the Floyd Davis murder. *Id.* at 81. Again, Agent Parkinson considered  
18 these conversations when interpreting the rap lyrics. *Id.*

19 Agent Parkinson testified that Labarr Martinez’s use of the phrase “slide on” is  
20 consistent with how he interpreted the use of that phrase in the rap lyrics. *Id.* at 83. With  
21 respect to the use of the word “apocalypse” in the rap lyrics, Agent Parkinson testified that  
22 “Ms. Valdez [made] a statement to Shawmaine Moore that war between the Western Hills  
23 Bloods and the Freestones was imminent.” *Id.* at 84.

24 Agent Parkinson testified that hollow point bullets were recovered at the scene of  
25 the Floyd Davis homicide. *Id.* Hollow point bullets were also recovered at the Michael  
26 Williams residence when he was arrested. *Id.*

27 The lyric that refers to either a 240 or C40 directly follows the lyric that “refers to  
28 catching a body[.]” *Id.* at 85. Agent Parkinson interpreted that phrase as referring to a

1 murder. *Id.* He added that the lyric “just to test it out” that follows the reference to 240  
2 or 40 is consistent with information developed during the investigation. *Id.* at 86. Agent  
3 Parkinson testified that the phrase “the 40 isn’t edible” is not “talking about a 40-ounce  
4 can of beer being edible but that it’s a .40 caliber firearm or a round of .40 caliber that is  
5 not edible.” *Id.* at 87. His conclusion is based on other lyrics: the reference to 7.62  
6 ammunition; the phrase “sat him on his ass;” and “trying to kill an N-word.” *Id.* at 86.  
7 Also, .40 caliber casings were recovered at the scene of the Floyd Davis homicide. *Id.* at  
8 88. And the word “edible” is significant because Davis suffered “significant damage to  
9 the face and to the mouth and jaw and teeth.” *Id.*

10 Agent Parkinson testified that he does not expect “every single lyric in any rap song  
11 to be 100 percent true, [or a] 100 percent autobiographical narration.” *Id.* at 86. Agent  
12 Parkinson does a lot of recorded interviews, and it is common to “find mistakes or problems  
13 with some transcription.” *Id.* at 87.

#### 14 DISCUSSION

15 The First Amendment protects music “as a form of expression and communication.”  
16 *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989). However, the First Amendment  
17 “does not prohibit the evidentiary use of speech to establish the elements of a crime or to  
18 prove motive or intent.” *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993). The First  
19 Amendment simply bars the admission of evidence relating to a defendant’s beliefs “when  
20 those beliefs have no bearing on the issue being tried.” *Dawson v. Delaware*, 503 U.S.  
21 159, 165, 168 (1992). “The crucial question is whether the evidence at issue [is] used for  
22 permissible purposes or merely to show that [a defendant] was morally reprehensible due  
23 to his abstract beliefs.” *United States v. Fell*, 531 F.3d 197, 229 (2d Cir. 2008 (internal  
24 quotations omitted) (*quoting United States v. Kane*, 452 F.3d 140 (2d Cir. 2006))).

25 The Court finds that the government is not seeking to admit the rap video and songs  
26 for impermissible purposes in violation of the defendants’ First Amendment rights. The  
27 lyrics are not being offered to show that the defendants are morally reprehensible due to  
28 their beliefs. In fact, as discussed below, the lyrics cannot even be said to be evidence of

1 the defendants' beliefs because the author of the lyrics is not known. Rather, the rap lyrics  
2 are being offered to allegedly prove elements of the charged offenses and motive and intent.  
3 Thus, the question becomes whether the video and songs are relevant to the charged crimes  
4 and/or motive and intent, and if so, whether the probative value of this evidence is  
5 substantially outweighed by the risk factors laid out in Fed. R. Evid. 403.

6 Evidence is relevant if it has "any tendency to make the existence of any fact that is  
7 of consequence to the determination of the action more probable or less probable than it  
8 would be without the evidence. Fed. R. Evid. 401. Relevant evidence may be excluded,  
9 "if its probative value is substantially outweighed by a danger of one or more of the  
10 following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting  
11 time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "Unfair prejudice  
12 'does not mean the damage to a defendant's case that results from the legitimate probative  
13 force of the evidence; rather, it refers to evidence which tends to suggest decision on an  
14 improper basis." *United States v. Gibbs*, 182 F.3d 408, 430 (6<sup>th</sup> Cir. 1999) (*quoting United*  
15 *States v. Bonds*, 12 F.3d 540, 567 (6<sup>th</sup> Cir. 1993)).

16 Rule 403 balancing lies within the "broad discretion" of the district court based on  
17 the factual circumstances of each case. *United States v. Vosburgh*, 602 F.3d 512, 537 (3d  
18 Cir. 2010). As a result, none of the cases that address the admission of rap videos, music,  
19 and/or lyrics at trial control the outcome in the case at hand. However, as discussed below,  
20 these cases set forth factors that are important for the Court in determining whether the  
21 probative value of the rap video and songs is substantially outweighed by the danger of  
22 unfair prejudice and the risk of confusing and misleading the jury.<sup>4</sup>

23 All courts recognize that a significant concern with the admission of gangsta rap  
24 music at trial is that the lyrics present a serious risk of inflaming the jurors and influencing  
25 them to convict a defendant on impermissible grounds. *See United States v. Gamory*, 635  
26 F.3d 480 (11<sup>th</sup> Cir. 2011); *United States v. Bey*, 2017 WL 1547006 (E.D. Pa. 2017); *United*

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27 <sup>4</sup> There are no Ninth Circuit cases that address the admissibility of rap lyrics in a criminal  
28 trial.

1 *States v. Williams*, 2017 WL 4310712 (N.D. Cal. 2017); *State v. Cheesboro*, 346 S.C. 526  
2 (2002). Courts have also universally recognized that rap music features fictional imagery,  
3 metaphors, and exaggerated storylines. *See Id.* As a result, it is difficult to identify the  
4 probative value in fictional or other forms of self-expressive endeavors because it cannot  
5 be presumed that the author has acted in accordance with the views that he wrote about.  
6 *State v. Skinner*, 218 N.J. 496, 521 (2014). Relatedly, rap music can mislead or confuse  
7 the jury because it will become a feature of the trial and overshadow the acts giving rise to  
8 the charges. *United States v. Stephenson*, 550 F. Supp. 3d 1246, 1252-53 (M.D. Fla. 2021).  
9 Thus, the risk of inflaming and influencing the jurors to the point of compromising a  
10 defendant's right to a fair trial is a significant factor to be considered in determining  
11 whether to admit rap music.

12 Courts have precluded the admission of prejudicial rap videos and lyrics when they  
13 are cumulative of other evidence that the government will use to prove what is depicted in  
14 the videos and/or articulated in the lyrics. *Gamory*, 635 F.3d at 493; *People v. Coneal*, 41  
15 Cal. App. 5<sup>th</sup> 951, 966-967 (2019); *Williams*, 2017 WL 4310712 at \*8. In fact, the  
16 admission of this cumulative evidence could cause an undue delay in the trial stemming  
17 from the witnesses who will attempt to interpret the lyrics and/or educate the jury about  
18 rap music. *Williams*, 2017 WL 4310712 at \*7.

19 The probative value of rap lyrics is greatly reduced when it is unknown who wrote  
20 the lyrics, when the lyrics were written, when the songs were recorded and perhaps edited,  
21 and/or when they were uploaded to YouTube or similar social media. *Gamory*, 635 F.3d  
22 at 493; *Stephenson*, 550 F. Supp.3d at 1252-53. In fact, the inability to differentiate  
23 between fact and fiction is intensified when the author of the lyrics is not known and the  
24 government plans to explain ambiguous lyrics, and not the individuals who wrote the  
25 songs. *Stephenson*, 550 F. Supp.3d at 1253; *Williams*, 2017 WL 4310712 at \*7.

26 Rap lyrics are more likely to be found probative and admitted at trial when they  
27 mirror the charged crime(s) or describe activity that resembles aspects of the central  
28 crime(s) alleged. *See United States v. Stuckey*, 253 Fed. App'x 468, 482 (6<sup>th</sup> Cir. 2007);

1 *United States v. Wilson*, 493 F. Supp.2d 484, 488-89 (E.D.N.Y. 2006). In fact, circuit  
2 courts have admonished trial judges against admitting rap videos or lyrics with merely a  
3 tenuous connection to the defendant or issues in the case. See *United States v. Gamory*,  
4 635 F.3d 480, 493 (11<sup>th</sup> Cir. 2011); *Boyd v. City & Cnty. of S.F.*, 576 F.3d 938, 949 (9<sup>th</sup>  
5 Cir. 2009).

6 With that backdrop, the Court turns to its analysis of whether the probative value of  
7 rap video and songs is substantially outweighed by the danger of unfair prejudice and risk  
8 of misleading and confusing the jury that would result from the admission of this evidence.  
9 To determine the admissibility of evidence under Rule 403, a court must balance: (1) the  
10 strength of the evidence; (2) the need for the evidence in light of the contested trial issues  
11 and the other evidence available to the government; and (3) the danger that the evidence  
12 will inflame the jurors and cause them to convict on impermissible grounds. *United States*  
13 *v. Sriyuth*, 98 F.3d 739, 747-48 (3d Cir. 1996).

14 After balancing these factors (albeit in reverse order), the Court concludes that the  
15 prejudice resulting from the admission of the rap video and songs substantially outweighs  
16 the probative value of this evidence for the following reasons. First, the admission of the  
17 video and songs creates a substantial danger of unfair prejudice because: (1) the highly  
18 inflammatory nature of the rap video and songs create a serious risk that the jury will  
19 convict the defendants on impermissible grounds; and (2) the video and songs will become  
20 a feature of the trial and create a risk of confusing or misleading the jury. Second, the rap  
21 video and songs are cumulative evidence in light of the substantial amount of other  
22 evidence that the government will introduce at trial. As a result, the need for the video and  
23 songs is minimal and the admission of this cumulative evidence will unduly delay what is  
24 already expected to be a lengthy trial. Third, the probative value of the rap video and songs  
25 is minimal because the author of the lyrics is unknown, Agent Parkinson has no expertise  
26 in interpreting rap lyrics, certain lyrics are heard differently by different listeners, and the  
27 lyrics do not mirror or exhibit an unmistakable factual connection to the charged offenses.  
28 As a result, the Court recommends that the rap video and songs be precluded from evidence

1 at trial.

2 **1. The Danger of Unfair Prejudice is Substantial**

3 The admissions of the rap video and songs creates a substantial danger of unfair  
4 prejudice for two reasons. The rap video and songs are so inflammatory that they create a  
5 serious risk that the jury will convict on impermissible grounds. Relatedly, the rap video  
6 and songs will become the feature of the trial and create a risk of confusing and misleading  
7 the jury.

8 **A. The Rap Videos and Songs are Highly Inflammatory and Present a  
9 Serious Risk that the Jury will Convict the Defendants on  
10 Impermissible Grounds.**

11 There can be no dispute that the rap video and songs are highly inflammatory. They  
12 contain language and imagery related to drugs, gun crime, violence, and misogyny. The  
13 lyrics are also filled with profanity and use of the N-word. *See Gamory*, 635 F.3d at 493  
14 (error to admit rap lyrics that “presented a substantial danger of unfair prejudice because  
15 they contained violence, profanity, sex, promiscuity, and misogyny and could be  
16 reasonably understood as promoting a violent and unlawful lifestyle.”) In *Williams*, the  
17 court found that the danger of unfair prejudice was substantial because “the videos depict  
18 images of young African-American men, guns, and drugs atop musical lyrics that denigrate  
19 other African-Americans, women, and cooperating witnesses.” 2017 WL 4310712 at \*7.  
20 (internal quotation omitted). Therefore, the court concluded that it is “undeniable that  
21 certain scenes [in the rap video] may arouse an emotional response, evoke a sense of horror,  
22 or appeal to an instinct to punish.” *Id.* Likewise, in *Stephenson*, the court found that the  
23 lyrics and depictions of the defendants and other alleged gang members in the lyrics “create  
24 a significant risk that the jury will view [them] as a violent drug dealer[s] and gang  
25 member[s] and find [them] guilty of the charged offenses for improper reasons.” F.  
26 Supp.3d at 1253.

27 The rap video and songs in the case at hand essentially mirror those in *Williams* and  
28 *Stephenson*. The rap video depicts images of young African-American men who simulate  
shooting guns atop musical lyrics that denigrate other African-Americans and women. And



1 the lyrics of all three songs are replete with references to violence, guns, and drugs.  
2 Therefore, as in these cases, the Court concludes that the admission of the rap video and  
3 songs raises significant concerns that a jury will convict the defendants for improper  
4 reasons. And that conclusion is supported by Professor Nielson’s expert testimony.

5 Professor Nielson explained that rap music is a fictional art form; however, within  
6 that fiction can be elements of reality. 9/2/22 Tr. at 59. Rap music has been described as  
7 “nihilistic” in that there is “no real world view that you’re trying to present.” *Id.* at 14.  
8 Gangsta rap is “generally made up,” and contains braggadocio, hyperbole, and  
9 exaggeration. *Id.* at 59-60. These hallmarks of rap music are also present in a “whole host  
10 of examples of Black artistic expression.” *Id.* at 59-60

11 Professor Nielson explained gangsta rap music tends to focus on illicit activity, an  
12 unlawful lifestyle, and/or outlaw figures. *Id.* at 14, 28. This theme is seen “throughout not  
13 just rap music but a lot of Black popular culture.” *Id.* at 29. Rap lyrics depict violence,  
14 use of guns, drug dealing, and other illicit activity. *Id.* at 14, 17. In fact, violence is one  
15 of the most important themes and the most dominant manner of violence is the use of guns.  
16 *Id.* at 17-18. Rappers are “highly specific” when rapping about guns; they rap about “a  
17 veritable arsenal of weapons.” *Id.* at 18. Rap lyrics also talk about the targets of violence.  
18 Sexually explicit lyrics and lyrics that are degrading to women are also common to rap  
19 music; the lyrics also contain a lot of profanity. *Id.* at 14, 17, 24-25. Rap lyrics also focus  
20 on localities or geographies, which make the songs “kind of a map” in that they provide  
21 street names, businesses, and landmarks that the artist is familiar with. *Id.* at 23. Rap songs  
22 also discuss local gangs. *Id.*

23 As a result of the content of the lyrics, rap music is “highly inflammatory. People  
24 have a strong negative, often visceral, reaction to rap music that they do not have to any  
25 other fictional forms, even more violent or sexually explicit forms.” *Id.* at 34. Those  
26 feelings have been demonstrated by several studies.

27 Identical studies conducted in 1999 and 2016 found that participants of the study  
28 who believed “the lyrics came from a rap song found them far more threatening and in

1 need of regulation than the exact same lyrics that were characterized as country.” *Id.* at  
2 34. The 2016 study further found that participants “were significantly more likely” to  
3 view or interpret the rap lyrics “literally as compared to the same lyrics from” a song from  
4 another musical genre. *Id.* at 35-36. That study also found that the participants “believed  
5 that fans of rap music are more likely to be a danger to society whereas fans of rock music  
6 might be more likely to be a danger to themselves.” *Id.* at 38. The researchers’ conclusion  
7 was that the perceived race of the author of the songs impacted these feelings, views, and  
8 beliefs. *Id.* at 37.

9 There was another study applied to a jury context where participants were provided  
10 with information about a hypothetical 18-year-old black male. *Id.* at 39. One group was  
11 told that the man was charged with murder but was not exposed to his violent and sexually  
12 explicit rap lyrics; a second group was told about the murder and exposed to the rap lyrics;  
13 and a third group was told about the rap lyrics but not the murder charge. *Id.* The result  
14 of the study was that people who were told about the murder charge and “exposed to the  
15 rap lyrics . . . thought he was more likely to be capable of committing a murder[.]” *Id.* at  
16 40. Even more surprising was that the reaction to the rap lyrics was more negative than  
17 the reaction to knowing that a person was charged with murder. *Id.*

18 Professor Nielson believes the results of these studies show that “these stereotypes  
19 and biases absolutely” persist for rap music. *Id.* As a result, Professor Nielson shares the  
20 concern of many others that rap lyrics are “so highly prejudicial that it has the capacity  
21 [and] potential to deny” a defendant the right to a fair trial. *Id.* at 57. More specifically,  
22 he believes that it is unfair to introduce rap lyrics at a trial because they are so inflammatory  
23 and prejudicial that they can tilt the balance against the defendant. *Id.* at 79.

24 The Court agrees with Professor Nielson and the reasoning of the courts discussed  
25 above. As such, the Court concludes that the admission of rap video and songs in the case  
26 at hand creates a serious risk of prejudice that could deny the defendants their right to a  
27 fair trial. Specifically, the highly inflammatory rap video and songs could result in a jury  
28 convicting the defendants based on what they allegedly rapped about, as opposed to the

1 criminal acts that they allegedly committed. As a result, the danger of unfair prejudice  
2 resulting from the admission of the inflammatory rap video and songs weighs strongly in  
3 favor of exclusion of this evidence.

4 **B. The Admission of Rap Video and Music Will Become a Feature of**  
5 **the Trial and Overshadow the Acts Giving Rise to the Charges, Thus**  
6 **Creating a Risk of Misleading and Confusing the Jury.**

7 The prejudicial effect of the admission of rap lyrics is heightened, and the probative  
8 value is lessened, when they have the potential to become a feature of the trial and  
9 overshadow the acts giving rise to the charges. The result is a risk of confusing and/or  
10 misleading the jury. In *Stephenson*, the court excluded the rap videos because they would  
11 overshadow the acts giving rise to the charges given that “the parties have each identified  
12 expert witnesses they intend to call if the videos are admitted in evidence[.]” 550 F.  
13 Supp.3d at 1252-53. The court reasoned that “[t]his presents a great risk of jurors having  
14 difficulty separating the issues and according the limited weight to the videos. In essence,  
15 the YouTube videos will become a feature of the trial. The likely curative effect of any  
16 limiting instruction will be minimal at best.” *Id.* The same is true in the case at hand.

17 If the rap video and songs are admitted at trial, Agent Parkinson will testify about  
18 his interpretation of certain lyrics, and Professor Nielson will testify in an attempt to  
19 educate the jury about rap music. This battle of the experts, which will occur over the  
20 course of several days at trial, has the potential to overshadow the acts that resulted in the  
21 instant charges. And, as discussed below, the government has ample evidence aside from  
22 the rap video and songs to support the charged offenses. Thus, focusing on that other  
23 evidence, rather than the rap video and songs, will ensure that lyrics do not overshadow  
24 the acts that resulted in the charged offenses. And, once again, it ensures that the  
25 defendants are tried for what they allegedly did, and not what they rapped about.

26 Relatedly, the inflammatory nature of the rap video and songs can mislead and  
27 confuse the jury. As courts and Professor Nielsen have explained, the visceral reaction to  
28 the video and lyrics may well impact the jury’s ability to understand that rap lyrics are not

1 necessarily autobiographical statements, but rather, a well-recognized musical genre that  
2 often utilizes exaggeration, metaphor, and braggadocio for the purpose of artistic  
3 expression. For example, the court in *Bey* noted that the difficulty in identifying probative  
4 value in fictional or other forms of self-expressive endeavors is that one cannot presume  
5 that, simply because an author has chosen to write about certain topics, he or she has acted  
6 in accordance with those views.” 2017 WL 1547006 at \* 7. In *Williams*, the court was  
7 wary of the probative value of the rap music because “[t]he inability to differentiate  
8 between fact and fiction is intensified here where the government plans to explain  
9 ambiguous lyrics through the interpretation of cooperators and/or informants, not the  
10 individuals that wrote the songs[.]”. 2017 WL 4310712 at \*7.

11 This Court is also wary of the probative value of the extremely prejudicial rap video  
12 and songs given that Agent Parkinson, and not the individuals who wrote the songs, will  
13 interpret ambiguous lyrics. And the concern in the case at hand is even greater than in  
14 *Williams* because Agent Parkinson, even though he has no experience in interpreting rap  
15 lyrics or first-hand knowledge about the jargon or slang terms used by rap artists, will likely  
16 be viewed by the jury as an expert given his lengthy involvement in the investigation that  
17 led to the charged offenses. Agent Parkinson would be putting the weight of the  
18 government behind his interpretations of the lyrics, unlike a cooperator and/or informant  
19 (as in *Williams*) whose motivation to testify is subject to easy and effective cross-  
20 examination, even though he lacks the credentials to interpret rap lyrics.

21 The rap lyrics and Agent Parkinson’s interpretation of the lyrics create a grave risk  
22 that the jury will convict the defendants based on what they allegedly rapped about. As a  
23 result, the Court concludes that there is a significant risk that admission of the rap videos  
24 and music will confuse and mislead the jury because this evidence will become a feature  
25 of the trial and overshadow the acts giving rise to the charges. Therefore, this factor weighs  
26 in favor of exclusion of the rap video and songs.

27  
28

1           **2. There is Not a Need for the Rap Video and Songs in Light of the Other**  
2           **Evidence the Government Will Admit at Trial and the Admission of This**  
3           **Cumulative Evidence Will Unduly Delay an Already Lengthy Trial.**

4           **A. The Rap Video and Songs are Unnecessary Cumulative Evidence.**

5           The probative value of rap music is reduced when it is cumulative of other evidence  
6           that the government will introduce at trial. The court in *Williams* noted that the admission  
7           of the rap videos and music in a RICO/VCAR prosecution may “needlessly present  
8           cumulative evidence since the government presumably has other means of proving the  
9           associations presented in these videos.” 2017 WL 4310712 at \*8. That was one of several  
10          reasons why the court precluded the admission of this evidence. Similarly, in *Gamory*, the  
11          Eleventh Circuit held that the district court erred in admitting a rap video, in part, because  
12          that evidence was cumulative of other evidence to establish that the defendant was “JB and  
13          he owned Hush Money Entertainment.” 635 F.3d at 493. Finally, in *Coneal*, the court  
14          held that the trial court erred in admitting rap videos because they were cumulative in light  
15          of “the substantial evidence of [the defendant’s] gang membership, including numerous  
16          screen shots from the rap videos.” 41 Cal. App. 5<sup>th</sup> at 966. *See also United States v.*  
17          *Graham*, 293 F. Supp.3D 732, 740 (E.D. Mich. 2017) (court noted that during the trial it  
18          may exclude cumulative or redundant rap evidence that goes to a fact firmly established by  
19          the government). As in these cases, the rap video and songs at issue here are cumulative  
20          of the substantial amount of other far more probative evidence that will be admitted at trial.

21          Agent Parkinson’s testimony made clear that he believes that the government has a  
22          substantial amount of evidence to prove the imagery in the video -- *e.g.*, gang membership,  
23          gang signs, wearing gang colors, tributes to slain gang members, the rivalry between WHB  
24          and the Freestones. In fact, Agent Parkinson admitted that he does not need the video to  
25          prove gang affiliation because the screen shots depict the WHB gang members, gang  
26          tattoos, gang colors, gang signs, and the t-shirt paying tribute to Marcus Darton. 9/27/22  
27          Tr. at 80-81.

28          Similarly, the government has never suggested that it does not have substantial  
evidence of what is purportedly referenced in the rap lyrics -- *e.g.*, gang affiliation, loyalty

1 to the gang, the code of silence, violent acts, drug dealing, the gang rivalry -- that the  
2 government believes has evidentiary value. Agent Parkinson admitted that there is a lot of  
3 other evidence to show that the defendants are part of the WHB and are rivals with the  
4 Freestones apart from the rap music and even the screen shots. *Id.* at 81-82. In fact, when  
5 providing his interpretation of the lyrics that he felt were relevant to this case, Agent  
6 Parkinson always referenced other evidence (*e.g.*, witness interviews) that purportedly  
7 support his interpretation or understanding of a lyric. Agent Parkinson repeatedly referred  
8 to interviews of Bernard Rayford and Ana Rodriguez when discussing other evidence that  
9 will be admitted at trial to support his interpretation of lyrics. The government has included  
10 both Rayford and Rodriguez on their witness list for trial. They will undoubtedly testify  
11 about their first-hand knowledge of WHB gang members, the evidence of gang affiliation,  
12 gang loyalty, the rivalry with the Freestones, the code of silence, violent acts, and drug  
13 dealing, all of which are purportedly referenced in the rap songs. Thus, the effect of Agent  
14 Parkinson's cumulative "expert" testimony interpreting the lyrics is to bolster the  
15 credibility of testifying witnesses and evidence, which is strongly discouraged. *See*  
16 *Skinner*, 218 N.J. at 520.

17 Based on the foregoing, the Court concludes that any probative value of the  
18 inflammatory and prejudicial rap video and songs is reduced by the other substantial  
19 evidence that the government maintains exists to prove the instant charges. As a result,  
20 this factor weighs in favor of exclusion of this cumulative evidence.

21 **B. This Lengthy Trial Will Be Unduly Delayed by the Admission of**  
22 **Cumulative Evidence.**

23 The concern about cumulative evidence is heightened when the admission of rap  
24 lyrics has the potential to unduly delay the trial as a result of the need to introduce testimony  
25 to explain the lyrics. For example, in *Williams*, the district court excluded the admission  
26 of rap music, in part, because of the undue delay stemming from the defense expert's  
27 attempts to educate the jury about gangsta rap, which the court found could waste precious  
28 time considering the prospective length of the trial. 2017 WL 4310712 at \*8.

1           The concern of undue delay here is greater than in *Williams* because, in addition to  
2 Professor Nielson's testimony, the government plans to call Agent Parkinson to interpret  
3 many of the lyrics. Thus, there is no doubt that the trial will be delayed both by Agent  
4 Parkinson's interpretation of the rap video and lyrics, as well as Professor Nielson's  
5 attempt to educate the jury about rap music generally and gangsta rap specifically.

6           The evidentiary hearing on the instant motion took more than two days. There is no  
7 doubt that the presentation of this evidence to a jury will take considerably longer. This  
8 Court is painfully aware of the crimes charged, the specific allegations against these  
9 defendants, and much of the evidence supporting the charges and allegations. The Court  
10 was also very familiar with the rap video, the screen shots from the video, the songs  
11 themselves, and translations of the lyrics, because most, if not all, of these materials were  
12 provided to the Court prior to the evidentiary hearing. As a result, the testimony and  
13 exhibits were presented to the Court in a far more streamlined manner than they will be  
14 presented to a jury who will be first learning about all of this information.

15           Specifically, there were many leading questions on direct examination which were  
16 either not objected to or overruled to expedite the evidentiary hearing. That will  
17 presumably not be the case at trial. And there are evidentiary issues relating to the rap  
18 song, such as hearsay and foundation, which were not raised at the evidentiary hearing  
19 because that was not the time for those objections. To be sure, many of those evidentiary  
20 issues will be resolved prior to trial; but a trial is fluid, and as a result, there are always  
21 objections on evidentiary issues either not covered by pretrial rulings or issues not  
22 anticipated during trial preparation. And those objections will make the trial testimony  
23 longer than the testimony at the evidentiary hearing.

24           Finally, but importantly, both government counsel and defense counsel now have a  
25 large amount of testimony that can be used to impeach Agent Parkinson and Professor  
26 Nielson at trial, which will further lengthen their testimony. And both the government and  
27 the defense may elicit further testimony from Agent Parkinson, Professor Nielson, and/or  
28 other witnesses regarding the rap video and songs which were not necessary for this Court

1 to resolve the instant motion. For example, the Court got the sense that the government  
2 will call other witnesses to interpret or at least discuss certain rap lyrics and/or depictions  
3 in the rap video. Additionally, Agent Parkinson testified that certain lyrics have been and  
4 can be heard differently depending on the listener. That point may be further explored at  
5 trial with Agent Parkinson, Professor Nielson, and/or other witnesses.

6 Based on the foregoing, the Court concludes that the battle of the experts over the  
7 meaning of lyrics will unreasonably delay the trial. That factor also weighs in favor of  
8 excluding the rap video and songs at trial.

9  
10 **3. The Probative Value of the Rap Video and Songs is Minimal.**

11 The probative value of the rap video and songs is minimal for several reasons. First,  
12 the author of the lyrics is unknown, which makes it impossible to determine if the lyrics  
13 are autobiographical statements of these defendants. Second, Agent Parkinson is not an  
14 expert in interpreting rap lyrics and has never done so before the instant case. Thus, his  
15 interpretations of the lyrics could be the result of confirmation bias. And that may well be  
16 demonstrated by the definitions that he assigned to certain words and phrases used in the  
17 lyrics. Third, certain words and phrases used in the rap songs are heard differently by  
18 different listeners; as a result, the jury is not aided by the admission of these lyrics that  
19 cannot be deciphered. Finally, the lyrics do not mirror or exhibit an unmistakable factual  
20 connection to the charged crimes, which may be the most important factor that courts  
21 consider in determining whether rap lyrics have probative value.

22 **A. The Probative Value of the Rap Video and Songs is Reduced Because**  
23 **the Author of the Lyrics, When They Were Authored and When the**  
24 **Rap Video and Songs Were Produced Are All Unknown.**

25 The probative value of rap lyrics is reduced when the author of the lyrics is  
26 unknown. In *Gamory*, the Eleventh Circuit found that the introduction of a rap video at  
27 trial was plain error, in part, because there was no “evidence that [the defendant] authored  
28 the lyrics or that the views and values reflected in the video were, in fact, adopted or shared  
by [the defendant].” 635 F.3d at 493. Similarly, the district court in *Stephenson* refused



1 to admit rap videos, in part, because the probative value of the videos was so low given  
2 that it was “unknown when the videos were produced,” and there was no evidence “as to  
3 when the lyrics were actually written, the songs recorded, or the videos filmed and edited.”  
4 550 F.Supp.3d at 1252-53. By contrast, in *Stuckey* the Sixth Circuit held that the district  
5 court did not err in admitting into evidence handwritten rap lyrics composed by the  
6 defendant. 253 Fed. App’x 468, 483 (6<sup>th</sup> Cir. 2007). *See also Daniels v. Lewis*, 2013 WL  
7 183968, at \*11 (N.D. Cal. 2013) (“Courts across the nation have allowed rap lyrics to be  
8 used against the defendants who penned them.”); *People v. Daniels*, 2009 WL 568918, at  
9 \*11 (rap lyrics written by the defendant which were seized from his cell were party  
10 admissions and admissible because the details in the lyrics were sufficiently close to the  
11 evidence of the crimes that the lyrics could be viewed as autobiographical).

12 Professor Nielson’s testimony also addressed why knowing the author of the lyrics  
13 is significant in the decision of whether to introduce rap music at a trial. As discussed  
14 above, Professor Nielson’s opinion is that rap lyrics are fictional, even if they contain  
15 certain elements of reality based on the author’s life. However, even if lyrics contain an  
16 element of reality, it is important to keep in mind that many times rappers do not write their  
17 own lyrics; they instead use a “ghost writer,” but the rapper presents himself as having  
18 written the lyrics. 9/2/22 Tr. at 42. As a result, “[i]t is very possible that the person  
19 performing the lyrics in the video is not actually the author of the lyrics.” *Id.* at 58.  
20 Moreover, reciting a lyric that somebody else wrote does not necessarily mean that you are  
21 “adopting it as your own in any way.” *Id.* at 60. Rather, the intent of the author of a lyric  
22 (like with any artist) can only be discerned from the artist or someone who has spoken with  
23 the artist. *Id.* at 103.

24 In the case at hand, there was no evidence presented to establish who wrote the  
25 lyrics for the three songs at issue, when the lyrics were written, or when the videos and  
26 songs were produced. In fact, government counsel admitted that there is no direct evidence  
27 of who wrote any of the lyrics for the songs at issue. 11/4/22 Tr. at 16. It appears that  
28 Michael Williams was a primary rapper in one song, and also performed in the other two

1 songs. Samuel Rakestraw rapped a few lyrics in the songs, but to a much lesser extent than  
2 Williams. YM DA kid raps in one song, and another song features a famous rap artist  
3 named Mozzy. Because either of these men, or someone else, could have written the lyrics,  
4 the government has not established that they are the defendants' "autobiographical  
5 statements of acts relevant to the case." *Stuckey*, 253 Fed. App'x at 482-83. As a result,  
6 the Court concludes probative value of the lyrics is low given that the author of the lyrics  
7 is unknown and there is no evidence that the defendants adopted the views or beliefs  
8 expressed in the lyrics.<sup>5</sup> Thus, this factor weighs in favor of precluding the admission of  
9 the rap music evidence at trial.

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11 <sup>5</sup> The government argues that the lyrics are admissible as party admissions under Fed. R.  
12 Evid. 801(d)(1). It is not clear to the Court how the government would lay the foundation  
13 to admit the lyrics as admissions given that the author of the lyrics is not known.  
14 Alternatively, the government argues that the lyrics are adoptive admissions because they  
15 appeared in the rap video and rapped the lyrics. In support of that argument, the  
16 government submitted a supplemental pleading in which they cite and discuss *United*  
17 *States v. Hankton*, 51 F.4<sup>th</sup> 578 (5<sup>th</sup> Cir. 2022). In that case, a defendant argued that the  
18 trial court erred in admitting a rap music video as an adoptive admission of a co-defendant  
19 who appeared in the video and put his finger to his lips in a "shh" sign as the rapper pulls  
20 the co-defendant next to him and mentions the co-defendant's nickname. *Hankton*, 51 F.4<sup>th</sup>  
21 at 600. It appears that the rapper was not a co-defendant, but the opinion is not clear on  
22 that point. The opinion also does not address if the author of the lyrics was the rapper, but  
23 it certainly was not the defendant or co-defendant. The court found that the video was  
24 properly admitted as an adoptive admission of the co-defendant, and that even if the video  
25 contained hearsay and was improperly admitted, any error was harmless because the lyrics  
26 did not mention the defendant. *Id.* at 601. The problem for the government in the case at  
27 hand is that it is not known whose admissions are purportedly being adopted – *e.g.*, the  
28 defendants, a co-defendant, YM DA Kid, Mozzy, or someone else – and whether what is  
being adopted is fact or fiction. In fact, in *Hankton* the court found that the lyrics had an  
unmistakable connection to the crime – *i.e.*, the lyrics at issue talk about a person getting  
"hit fifty times" and the victim was shot fifty times. *Id.* As discussed in text *infra*, that  
unmistakable connection is missing in the case at hand. Finally, even if the government  
could lay the foundation for the lyrics to qualify as an admission or an adoptive admission,  
that would only solve the hearsay problem. The lyrics must still be found to be relevant;  
more specifically, that the probative value of the lyrics is not substantially outweighed by  
the prejudice that would result from their admission. That is a hurdle the government  
cannot clear.

1                   **B. Agent Parkinson is Not an Expert in Interpreting Rap Lyrics.**

2           Agent Parkinson is clearly not an expert in interpreting rap lyrics. In fact, he  
3 admitted as much. He is not a fan of rap music, he does not “favor it,” he does not listen  
4 to rap music, and he has never been to a rap concert. 9/27/22 Tr. at 73, 155. He has no  
5 training or experience (apart from this case) in interpreting rap lyrics. *Id.* at 72-73.  
6 Moreover, he cannot recall listening to a recorded conversation involving Michael  
7 Williams or Samuel Rakestraw that would put the rap music at issue in context. *Id.* at 75.

8           Agent Parkinson’s lack of experience in interpreting rap lyrics is not surprising in  
9 light of Professor Nielson’s testimony that law enforcement officers are not qualified to  
10 interpret rap lyrics for several reasons. First, law enforcement officers are generally not  
11 familiar with this musical genre, which is the case for Agent Parkinson. Second, although  
12 rap music “is verse and contains all of the literally devices” and metaphor found in  
13 traditional poetry, rap music “adds other layers of complexity and sophistication, especially  
14 when it comes to jargon” and slang that can be difficult to interpret if a person is not  
15 familiar with this genre. 9/2/22 Tr. at 45. Third, rap lyrics are “intended to be slippery”  
16 and “very vague intentionally,” and are therefore, like poetry, subject to interpretation by  
17 the listener based on the listener’s experiences. *Id.* at 45-46, 51. Lyrics can mean different  
18 things to different listeners and meanings can change over time. *Id.* 45-46. *Id.* Professor  
19 Nielson believes that the intent of the author of a lyric can only be discerned from the artist  
20 or someone who has spoken with the artist. *Id.* at 103.

21           Professor Nielson’s opinion is that a law enforcement officer’s interpretation of  
22 rap lyrics is “likely to lead to very skewed conclusions that are probably based on some  
23 confirmation bias” – *i.e.*, “I already know this guy’s a criminal so now I’m going to read  
24 these lyrics” to confirm that. *Id.* at 119. In fact, Professor Nielson testified that significant  
25 problems have occurred when law enforcement officers interpret rap lyrics. *Id.* at 54. As  
26 a result, he is concerned with prosecutors arguing that there is a close connection between  
27 the lyrics and the crimes when there is not. *Id.* at 78.

28           The Court shares Professor Nielson’s concerns. Agent Parkinson’s interpretation

1 of the lyrics is likely to have led to skewed conclusions that may be based on confirmation  
2 bias. Specifically, Agent Parkinson could well have interpreted the lyrics (even  
3 unintentionally) to confirm what he already knew based on his years-long investigation of  
4 the alleged criminal acts.<sup>6</sup> That concern, coupled with Agent Parkinson's lack of  
5 experience in interpreting rap lyrics, both reduces the probative value of the video and  
6 songs and will create a risk of unfair prejudice when the government argues to the jury that  
7 there is a close connection between the lyrics and the crimes when, as discussed below,  
8 there is not.

9  
10 **C. Agent Parkinson Assigns Definitions to Words or Phrases That  
Have Reasonable Alternative Definitions.**

11 The concern about confirmation bias may well be reflected by the definitions that  
12 Agent Parkinson assigned to certain words and phrases in the lyrics that he believes refer  
13 to crimes or overt acts committed by WHB gang members, even though the words or  
14 phrases have reasonable alternative definitions. For example, Agent Parkinson defined  
15 "green light" as a kill order. 9/27/22 Tr. at 108. But he admitted that "green light" does  
16 not mean a kill order every time it is used. *Id.* at 110. In fact, he agreed with counsel that  
17 he used the phrase "green light" in an email to Agent Berlin; he was not giving a kill order,  
18 but rather stating that they were ready to go. *Id.* at 111. Agent Parkinson defined the  
19 phrase, "Hills with it," to mean "ready to fight." 9/29/22 Tr. at 19-20. But he agreed with  
20 defense counsel that it could also mean "cool, be on top of things, in with current styles or  
21 trends." *Id.* at 20. Agent Parkinson defined the word "slide" to mean "fight." *Id.* But he  
22 agreed that it can also mean "coming or going to a place." *Id.*

23 Agent Parkinson used the Urban Dictionary to define words and phrases that he was  
24 unfamiliar with, or to corroborate his understanding of a word or phrase. 9/27/22 Tr. at  
25 157. The defense established that the Urban Dictionary is in no way akin to an actual  
26 dictionary because anyone can apparently add their definition of a word or phrase to the

27  
28 <sup>6</sup> For example, Agent Parkinson interpreted the lyric "Shoot N up" to mean carry out a  
gang shooting even though the word "gang" is not used in the lyric. *Id.* at 32-33.

1 Urban Dictionary's website. *See id.* at 157-159.

2 The definitions that Agent Parkinson assigned to the words and phrases set forth  
3 above may well be accurate. However, "with it," "slide," and "green light" are terms used  
4 in popular culture, and not just in rap music or by the WHB members. And the alternate  
5 definitions, for at least "Hills with it" and "slide," also make sense in the context of the  
6 lyrics in which these phrases are used, and therefore, could evidence Professor Nielson's  
7 concern about confirmation bias. That said, if these definitions were the only problems  
8 with the interpretation of the rap lyrics, the defense may be able to effectively deal with  
9 that on cross-examination.

#### 10 **D. The Lyrics are Heard Differently Based on the Listener.**

11 It is not surprising that words and phrases in the rap songs are heard differently  
12 depending on the listener. Professor Nielson testified that in all the cases that he has been  
13 involved with, "the transcriptions that people try to produce are inaccurate." *Id.* at 52. It  
14 is difficult to understand words based on the cadence, the slang, and/or the audio quality.  
15 *Id.* That is the case here.

16 The first lyric that is heard differently is as follows. Agent Parkinson heard a lyric  
17 as: "I do the shit for my N-word K." 9/27/22 Tr. at 106. Agent Berlin heard the lyric as:  
18 "I do this shit for my N-word K." *Id.* Agent Parkinson agreed that the meaning of this  
19 lyric could change depending on whether the word "the" or "this" was used. *Id.* For  
20 example, if the word used is "this," it could mean that the rap song was made in tribute to  
21 Marcus Darton, and not that the WHB will seek revenge for his murder. *Id.* at 107

22 A second lyric that is heard differently is as follows. In the government's pleading,  
23 it states that the lyric is: "Don't play it right. Then you a day away." *Id.* at 116. Agent  
24 Berlin believes that "day away" is actually "dead weight." *Id.* Agent Parkinson did not  
25 testify about how he interpreted "dead weight."

26 In their pleading, the government states that a lyric is: "Get it blazing with the  
27 winner." Agent Berlin heard the lyric as, "Get it blazing with the wetter, not a chrome  
28 hot." *Id.* at 144. Agent Parkinson also heard the word as "wetter," not "winner." *Id.* If

1 the word used was “winner,” Agent Parkinson testified that “winner” would refer to WHB  
2 winning the war against the Freestones. There was no explanation for what “wetter”  
3 means.

4 Agent Berlin heard a lyric to say: “Hills with it, see ya’, yup, I’m trying to knock’em  
5 down.” 9/27/22 Tr. at 151. Government counsel and Agent Parkinson maintain that the  
6 word “yabba” is used in this lyric. Agent Parkinson testified that he believes that “yabba”  
7 stems from the Flintstones cartoon and is a derogatory word used to refer to the Freestones  
8 gang. He does not believe that Agent Berlin had heard the term “yabba” when he listened  
9 to the rap songs in which it is used. 9/27/22 Tr. at 151-152. However, the Court notes that  
10 the government has repeatedly pointed out that “yabba killer” is prominently displayed on  
11 the in-memoriam t-shirts worn by gang members. *Id.* at 65. As a result, it is not clear why  
12 Agent Berlin would not have heard the term “yabba” given his extensive involvement in  
13 the investigation that led to the instant charges.

14 A lyric was initially heard as, “Hit’em with a brand-new C40.” 9/29/22 Tr. at 23.  
15 However, the government later claimed that it was “240” and not “C40.” *Id.* Relatedly, in  
16 the government’s pleading, it states that a lyric is: “The 40 isn’t edible.” Agent Berlin  
17 heard the lyric to be: “Phony as an animal.” 9/27/22 Tr. at 145. Assuming that “40” was  
18 used in the lyric, no one explained what a “40” means.

19 A lyric was initially heard as “Right out the woods we shot, send them on a crash.”  
20 9/29/22 Tr. at 27. The government later transcribed the lyric as “right out the whip.” *Id.*  
21 at 28. Agent Parkinson testified that he initially interpreted the use of the word “woods”  
22 to mean that WHB members were waiting in the desert to kill Floyd Davis. *Id.* at 29.  
23 Agent Parkinson agreed with defense counsel that the word “whip” is used to refer to a car.  
24 *Id.* at 30. As a result, he also agreed that this lyric cannot relate to the Floyd Davis killing  
25 because it was not a drive-by shooting. *Id.*

26 In its pleading, the governments sets forth the lyric: “I think I’ll die in Hills.” *Id.*  
27 at 38. The government claims that this lyric shows loyalty to the gang. Agent Parkinson  
28 later sent government counsel an email correcting the lyric to: “I think I died, I did.” *Id.*

1 Agent Parkinson said that his translation of the lyric is still accurate because the preceding  
2 lyric says: “Hills with it, [t]il’ I die.” 9/29/22 Tr. at 52-53. But the fact remains that even  
3 the government cannot agree on the translation of this lyric.

4 The words and phrases in the lyrics that are heard differently by different listeners  
5 reduces the probative value of these lyrics because their meaning can change based on  
6 which word or phrase is correct (assuming any listener heard the word or phrase correctly).  
7 Put another way, there is little value in the jury hearing lyrics that cannot be deciphered,  
8 let alone what the lyrics mean.<sup>7</sup>

9 **E. The Lyrics Do Not Mirror or Exhibit an Unmistakable Factual**  
10 **Connection to the Charged Crimes.**

11 The probative value of rap music is strongest when the lyrics mirror or exhibit an  
12 “unmistakable factual connection to the charged crimes.” *See Skinner*, 218 N.J. at 523.  
13 *See also Green v. Commonwealth*, 197 S.W.3d 76, 86-87 (Ky. 2006) (rap video where  
14 defendant rapped about killing his wife was admissible because he was rapping about the  
15 very crime for which he was charged); *Bryant v. State*, 802 N.E.2d 968 (Ind. 2004) (rap  
16 lyric, “[c]uz the 5-0 won’t even know who you are when they pull yo ugly ass out the trunk  
17 of my car,” was admissible in trial of defendant charged with murdering his step-mother  
18 who was found in the trunk of his car); *Hankton*, 51 F.4th at 600 (rap lyrics which reference  
19 a N “getting hit fifty times” essentially mirror the charged crime where the victim was shot  
20 fifty times); *Coneal*, 41 Cal.App.5th at 969 (court noted that “where lyrics are written  
21 within a reasonable period of time before or after the charged crime and bear a sufficient  
22 level of similarity to the charged crime, their probative value as a statement of fact is  
23 increased.”); *Graham*, 293 F. Supp.3d at 738, 740 (court found that rap lyrics were not  
24 merely abstract beliefs but rather related to real life events); *United States v. Carpenter*,

25 \_\_\_\_\_  
26 <sup>7</sup> Government counsel maintains that the jury will ultimately determine which word or  
27 phrase is used in a lyric and what they mean. 11/4/22 Tr. at 6, 60. If that is true, then the  
28 jury should determine every word and phrase used in the lyrics, and not be provided with  
subtitles for the rap video or a transcript of the songs. And the jury should also make the  
factual determination of what a lyric means based on other evidence admitted at trial  
without the assistance of Agent Parkinson. That is not the route the government intends to  
take.

1 2022 WL 16960577, at \*3 (2d Cir. 2022) (rap lyrics and rap music which spoke “with  
2 specificity to the precise conduct” charged were properly admitted). For instance, in  
3 *Stuckey*, the Sixth Circuit held that rap lyrics about killing witnesses were admissible  
4 because they “described facts matching the crime charged[.]” 253 Fed. App’s at 482-483.  
5 The lyrics “concerned killing government witnesses and specifically referred to shooting  
6 snitches, wrapping them in blankets, and dumping their bodies in the street - precisely what  
7 the government accused” the defendant of doing to the victim. *Id.* The Court explained  
8 that the lyric was admitted as “autobiographical statements of acts relevant to the case” to  
9 prove the defendant had killed the victim, and not to show his propensity for violence. *Id.*

10 Similarly, in *United States v. Recio*, 884 F.3d 230, 235 (4<sup>th</sup> Cir. 2018), the court held  
11 that rap lyrics posted or authored by the defendant were relevant because “they match[ed]  
12 the details of the alleged crime.” Specifically, the court found that the lyric at issue – “It’s  
13 always tucked, Kuz I’ll B Damn If My Life Get Took” -- was relevant to the defendant’s  
14 alleged conduct, carrying a gun, and his motivation for doing so, to protect himself. *Recio*,  
15 884 F.3d at 236. The court reasoned that “It’s Always Tucked” suggested the defendant  
16 always carried a gun tucked in his waistband, which made it more probable that he did so  
17 on the date of the offense. *Id.* And the lyric, “Kuz I’ll B If My Life Get Took,” was  
18 relevant because it tended to show that the defendant always carried a gun for his  
19 protection, “which made the fact that he ‘always’ carried a gun more probable.” *Id.*<sup>8</sup>

20 By contrast, courts have found that the probative value of rap lyrics is low when  
21 they contain only general or vague references to violence rather than evidence of specific  
22 charged crimes. *See Cheesboro*, 346 S.C. at 550 (probative value of rap lyrics was low  
23 because the lyrics were too vague); *Skinner*, 218 N.J. at 523 (probative value of rap lyrics

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24 <sup>8</sup> The court also found that the probative value of the lyric was not substantially outweighed  
25 by its prejudicial effect. *Recio*, 884 F.3d at 483. The court reasoned that “the Government  
26 introduced a rap lyric consisting of a single sentence that described only the conduct of  
27 which [the defendant] is accused – carrying a gun – and a reason for doing so – self-  
28 protection.” *Id.* The lyric did not reference “other, irrelevant behavior, like threatening  
police or degrading women, that would have unfairly caused the jury to see [the defendant]  
as a culpable person.” *Id.*



1 was low because they lacked a strong nexus to the charged crime). For instance, in *Bey*,  
2 the district court precluded the admission of rap lyrics at the defendant's felon in possession  
3 of a firearm trial for several reasons, including because the probative value was  
4 substantially outweighed by the danger of unfair prejudice under Rule 403. *Bey*, 2017 WL  
5 1547006, at \*8. With respect to probative value, the court noted that although the  
6 defendant's "songs are expressed through a first-person narrative and includes references  
7 to his life – such as the intersection where he lives and where he was arrested for the offense  
8 – his lyrics also clearly feature fictional imagery, metaphors, and exaggerated storylines."  
9 *Id.* For example, the government did not establish that the defendant did some of what  
10 was described in the lyrics – carrying a pistol while in Porsches, had been shot in his chest  
11 and experienced burning "like vodka," had shot Jewish people, or kills "at will." *Id.* The  
12 court held that "[c]herry-picking the lyrics that reference firearms and entering them into  
13 evidence would take them out of context." *Id.* at \*7.

14 The Court notes that Professor Nielson also used the term "cherry-picking" to  
15 describe the government's desire to introduce into evidence the three rap songs that it  
16 contends support its theory of the case, rather than the entire body of the defendants' work.  
17 9/2/22 Tr. at 93. Therefore, as in *Bey*, the government may be "decontextualizing these  
18 songs by not revealing the other songs," and "zeroing in on just specific lines but taking  
19 them totally out of context." *Id.* at 93-94. However, that is apparently what the defense  
20 prefers if rap songs are found to be admissible.

21 To be clear, the government is not cherry-picking by only using certain lyrics in a  
22 song that it believes support the charged offenses or how they were committed. To the  
23 contrary, the government is seeking to introduce the entirety of two songs and a large  
24 portion of another. The problem is that there are lyrics that contain inflammatory material  
25 that is entirely irrelevant to this case (*e.g.*, misogyny and disrespect toward women). And  
26 other lyrics that talk about violence generally are improper propensity evidence because  
27 the only purpose for their admission is to show the defendants' violent character. *Id.*  
28 *Compare Recio*, 884 F.3d at 235 (unfair prejudice did not result from the admission of lyric

1 that did not reference “other, irrelevant behavior, like threatening police or degrading  
2 women, that would have unfairly caused the jury to see [the defendant] as a culpable  
3 person.”). Finally, unlike in *Recio* and *Stuckey*, the probative value of the remaining lyrics  
4 is minimal because the government has not established that the lyrics mirror or exhibit an  
5 unmistakable factual connection to the charged crimes.

6 At oral argument, the Court repeatedly questioned government counsel about how  
7 certain lyrics describe or refer to the facts of charged crimes. In response to one of the  
8 Court’s many questions on this topic, government counsel argued that every word and  
9 phrase in the lyrics are not going to refer directly to something in the indictment. 11/4/22  
10 Tr. at 28. Government counsel also argued that “there can be multiple relevant  
11 interpretations of these lyrics.” *Id.* at 55. Agent Parkinson testified similarly. He also  
12 testified that he does not expect every single lyric in a rap song to be 100 percent true or a  
13 100 percent autobiographical narrative. 9/29/22 Tr. at 86.

14 Ironically, the government’s arguments demonstrate the exact problem that results  
15 from someone other than the author of lyrics trying to interpret what s/he believes the lyrics  
16 mean. That problem is exacerbated for gangsta rap lyrics like those in the case at hand that  
17 focus on violence, use of guns, and drug dealing in highly specific terms, even though rap  
18 music is a fictional art form. Likewise, the lyrics here are also consistent with gangsta rap  
19 lyrics generally in terms of the references to: (1) geography or territory (*e.g.*, “36<sup>th</sup> Street,”  
20 “Hills,” “Tre Six”); (2) friends or associates (*e.g.*, “Sammy Mack,” “Mack,” “Lil’ Mike,”  
21 “Deuce Nine”); (3) deceased friends (*e.g.*, “Mar-K,” “K”); and (4) real or made up rivals  
22 (*e.g.*, “Freestones,” “Yabbas”). Professor Nielson testified that in the hundreds of cases  
23 that he has worked on, he has yet to see a rap song where the singer is rapping about what  
24 he did or planned to do. 9/2/22 Tr. at 79. To the contrary, Professor Nielson has  
25 encountered rap artists who claim to be involved in criminal activity in their songs but are  
26 not committing crimes. *Id.* at 111. Agent Parkinson simply does not have the credentials  
27 to distinguish between gangsta rap lyrics that are autobiographical narratives and those that  
28 are fictional, even if the lyrics (like all fiction) correspond to or “draw[] off an author’s

1 lived experiences.” 9/2/22 Tr. at 31. Those problems are demonstrated in Agent  
2 Parkinson’s interpretations of the lyrics set forth below.

3 The Court divides the lyrics in the songs at issue into three categories: (1) lyrics  
4 that the government claims are tied to allegations in the indictment and/or acts committed  
5 to further or conceal the crimes; (2) lyrics about WHB generally, but not specifically tied  
6 to the charges or acts that led to the charges; and (3) lyrics about violent street gangs  
7 generally.<sup>9</sup> The Court notes that at oral argument government counsel suggested that  
8 because Count One of the Indictment alleges that producing the video and songs is an overt  
9 act, all of the lyrics necessarily refer to an allegation in the indictment, and for that reason,  
10 are probative. The Court disagrees. The rap video and songs do not automatically become  
11 probative simply because the production of the video and songs is alleged an overt act.<sup>10</sup>  
12 Rather, a Court must assess whether the specific evidence that the government seeks to  
13 admit *to prove* an overt act or allegation in an indictment is in fact probative. Thus, in the  
14 case at hand, the Court must assess whether what is depicted in the video and the lyrics of  
15 the songs are evidence of the charged offenses, an alleged overt act to further the  
16 conspiracy, and/or any other pertinent allegation in the indictment. The Court turns to that  
17 analysis.

18 **1. Lyrics Allegedly Tied to the Indictment.**

19 The "Bustin" song contains the following lyrics that purportedly refer to allegations  
20 in the indictment. The first lyrics are:

21 They’ll dump on you N’s  
22 If you ain’t from Park or Hills

23  
24 <sup>9</sup> The government’s interpretation of the lyrics and their purported relevance at trial comes  
25 from three sources: (1) Agent Parkinson’s testimony; (2) reports and emails authored by  
26 Agent Parkinson and Agent Berlin, which were either admitted as exhibits at the  
27 evidentiary hearing or discussed during Agent Parkinson’s testimony; and (3) the  
28 government’s pleading captioned, Government’s Supplemental Notice of Rap  
Lyrics/Songs/Videos, in which the government identified the evidentiary purpose of the  
specific rap lyrics that it intends to introduce at trial (filed pursuant to this Court’s  
September 2, 2022 Order). Doc. 2101.

<sup>10</sup> The defense pointed out that the government did not even need to allege overt acts in  
charging the RICO conspiracy. *See* 18 U.S.C. § 1962(d).

1 I move around with that stick (That steel)  
2 Try me, I'm gonna kill (I kill)  
3 Better write your will  
4 I tell Mack to hold that wheel (That wheel)  
5 When I'm hangin' out of that window (Window)  
6 Burner come with extendos (Extendos)  
7 Breakin' backs just like Limbo (Like Limbo)  
8 Do you and your kinfolk (Huh)  
9 I do the shit for my N, K (My N K)  
10 I think about the shit every day  
11 Firm grip when I hold the cane  
12 That's a green light  
13 That means right away (Bang)

14 Doc. 2101 at 5.

15 In its pleading, the government represents that "Park or Hills" refers "to the WHB  
16 neighborhoods of South Park or Western Hills." *Id.* The government contends that  
17 "[d]ump" is a term that can mean to empty the clip of one's firearm." *Id.* The government  
18 asserts that the lyric "tell Mack to hold that wheel," when read in conjunction with the  
19 lyric, "When I'm hangin' out of that window (Window)" . . . could be referring to the Mia  
20 Scott shooting, but it also puts the co-defendant's acting together to commit acts of violence  
21 in furtherance of the criminal enterprise." *Id.*

22 The defense easily established during Agent Parkinson's cross-examination that  
23 these lyrics cannot pertain to the Mia Scott drive-by shooting for several reasons. First,  
24 the indictment does not charge Michael Williams or Samuel Rakestraw with the Mia Scott  
25 shooting or any other drive-by shooting. In fact, both Williams and Rakestraw were in jail  
26 at the time of that shooting. Second, the Mia Scott drive-by shooting occurred after the  
27 release of the "Bustin" song. Finally, Mr. Rakestraw was falsely accused of another drive-  
28 by shooting of Dilyou. Thus, the government has not proven that these lyrics mirror or  
exhibit an unmistakable factual connection to the charged crimes.

The government claims that the references to K mean that Michael Williams carries  
out violent acts for his deceased mentor and gang leader, Marcus Darton, and thinks about  
his murder by a rival gang member every day. Doc. 2101 at 5-6. The government

1 maintains that this is the exact motive for the killing of Floyd Davis alleged in the  
2 indictment. *Id.* The government also argues that “green light” combined with “that  
3 means right away” means that “a kill order is to be carried out without delay,” which is  
4 relevant to the hierarchy of the WHB gang where older gang leaders give a “green light”  
5 to younger members to commit an act. *Id.* at 6. The government maintains that the entire  
6 verse is specific to the murder of Floyd Davis in retaliation for the murder of Marcus  
7 Darton. *Id.*

8 As discussed earlier, there is a dispute as to whether the word “the” or “this”  
9 precedes “shit for my N, K.” As the defense pointed out, if the word is “this,” it could be  
10 referring to making this song in tribute to Marcus Darton. Agent Parkinson agreed that  
11 changing this one word would change the meaning of this lyric. Moreover, Floyd Davis  
12 was not killed in a drive-by shooting so the lyrics bear no relation to that crime. Finally,  
13 the government has ample evidence to support its theory that the motive for the Floyd  
14 Davis homicide was in retaliation to the Freestones murder of Marcus Darton. Therefore,  
15 the admission of this ambiguous lyric to help prove motive is unnecessary, especially in  
16 light of the prejudicial effect of the lyrics in the songs as a whole.

17 The government claims the following lyrics in the "Bustin'" song refer to a leader  
18 of the WHB giving the order to kill Floyd Davis and the plan for carrying out the murder:

19 We out here when the block is hot  
20 Like we standin' next to that stove (That stove)  
21 If the big homie set that green light  
22 Then all my N-words gonna go (I'm gonna go)

23 We'll have a bitch to come chill with you  
24 Just to cause diversion (Huh)  
25 Now we up in your house  
26 Standing behind the curtains (Huh)  
27 Ain't no talkin' when it comes to it  
28 I see your ass in-person (Huh)  
I leave your ass worthless (Huh)  
I feel like it's worth it

Doc. 2101 at 9.

1           The government asserts that the lyric, “If the big homie set that green light,” means  
2 that “older members of the gang gave permission and instruction for the murder” of Floyd  
3 Davis. *Id.* Also, the government argues that the lyric, “we’ll have a bitch come chill with  
4 you [j]ust to cause diversion,” “aligns with the factual scenario of multiple violent acts the  
5 defendants committed, including the homicides of Marshall Davis and Floyd Davis, which  
6 “were in retaliation for the murder of Mar-K according to cooperating witness AMR.” *Id.*  
7 The government notes that the Marshall Davis homicide occurred prior to the release of  
8 Bustin’, and the Floyd Davis homicide was committed several months after the release of  
9 the song. *Id.* And like the Floyd Davis homicide, in the Marshall Davis homicide “it is  
10 alleged that a female participated in the homicide at the direction of WHB members.” *Id.*  
11 The government also finds it “noteworthy that the lyric is not in the past tense.” *Id.*

12           The problem with government counsel’s interpretation of these lyrics is that it  
13 conflicts with Agent Parkinson’s testimony about how he interpreted this lyric. Agent  
14 Parkinson testified that his interpretation of this lyric came from Ana Rodriguez. 9/27/22  
15 Tr. at 118. She told law enforcement that Floyd Davis told her that this is how his brother  
16 Marshall was set up and killed. *Id.* at 118-119. But the lyric is written in the future tense  
17 so it cannot refer to the Marshall Davis homicide as Rodriguez told Agent Parkinson. And  
18 even if it somehow could relate to that homicide, Agent Parkinson testified that Marshall  
19 Davis was not killed in his house by someone standing behind curtains. *Id.* at 122-123.  
20 He was killed in a parking lot just like his brother.

21           When confronted with the problems about Agent Parkinson’s interpretation of these  
22 lyrics, both Agent Parkinson and government counsel maintained that these lyrics also  
23 show the defendants’ modus operandi of violent retaliatory acts. *Id.* at 121. However,  
24 defense counsel asked Agent Parkinson to identify a murder charged in the indictment,  
25 other than the Floyd Davis homicide, where a female was used to cause a diversion to  
26 commit a murder. *Id.* at 122. Agent Parkinson could not do so. *Id.* Thus, this lyric is not  
27 evidence of a modus operandi of the WHB.

28           Government counsel also argues that cooperating witnesses Ana Rodriguez and

1 Bernard Rayford provide similar statements about how the homicides of Floyd and  
2 Marshall Davis were committed. As discussed above, the fact that Rodriguez and Rayford  
3 will testify at trial about how these homicides were committed shows that these lyrics are  
4 cumulative evidence. To be sure, there is always cumulative evidence admitted at trial; for  
5 example, both Rodriguez and Rayford describing how the Floyd and Marshall Davis  
6 homicides were committed. But that type of cumulative evidence does not create the  
7 danger of unfair prejudice like inflammatory and ambiguous rap lyrics which cannot be  
8 specifically tied to alleged crimes.

9 The government argues that the following lyrics in the "Bustin'" song refer to the  
10 "code of silence" and not talking about crimes on the phone.

11 All my N's bustin' (Bang)  
12 We don't play around (Huh)  
13 It's murder season  
14 'Cause our life lived in that Tuck town  
15 Get laid down and I'm gone (I'm gone)  
16 Clips about a mile long  
17 Smoke a N and don't talk about it  
18 So don't ax me over that phone.

19 *Id.* at 10.

20 The government claims that the lyric, "Smoke a N-word and don't talk about it. So  
21 don't ax me over that phone," is relevant to prove territoriality and relates to allegations in  
22 Count One of the indictment of WHB using witness intimidation and a code of silence (*i.e.*,  
23 not talking on the phone). *Id.* The government argues that this is consistent with recorded  
24 phone calls between defendant David Williams and a cooperating witness, Ana Rodriguez,  
25 in which he tells her not to discuss anything related to the Floyd Davis homicide on the  
26 phone or talk to the police. *Id.* The government submits that this evidence aligns with and  
27 puts in context the philosophy set forth in these lyrics. *Id.*

28 The Court first notes that neither government counsel nor Agent Parkinson  
explained how these lyrics prove the territory of the WHB. The Court assumes that it is  
the reference to "Tuck town," as perhaps "Tuck" is short for Tucson. If that is the case,

1 that reference is not specific to the 36<sup>th</sup> Street area that the WHB allegedly controls.

2 More importantly, Agent Parkinson agreed that the reference to not talking on the  
3 phone could not relate to the Floyd Davis homicide or the code of silence with respect to  
4 this homicide because that murder occurred after this song was released. 9/27/22 Tr. at  
5 139. Faced with that reality, Agent Parkinson testified that the lyric refers to the philosophy  
6 of not talking about crime on the phone. *Id.* However, Agent Parkinson conceded  
7 that there are thousands of text messages where crimes are openly discussed. *Id.* at 131.

8 As a result of Agent Parkinson's testimony on cross-examination, the Court  
9 concludes that the probative value of these lyrics is low. The lyrics, written by some  
10 unknown person and allegedly sung by Michael Williams, have little probative value since  
11 no evidence was presented that Michael Williams knew about David Williams' attempts  
12 to silence Rodriguez. Rather than introducing into evidence ambiguous and prejudicial  
13 lyrics, the government can (and no doubt will) introduce the recorded conversations  
14 between David Williams and Rodriguez into evidence at trial to prove the philosophy of  
15 not talking about crimes over the phone, as well as witness intimidation and the code of  
16 silence. Thus, once again, probative value of the lyrics is reduced because they are  
17 cumulative evidence.

18 The following lyrics are in the song "Brother Like a MF," which was purportedly  
19 sung by Michael Williams, Samuel Rakestraw, and YM Da Kidd (although the specific  
20 singer was not identified):

21 My N-words talkin' about family  
22 But it was day and night  
23 I catch some family talkin'  
24 They got circumcised.

24 *Id.* at 16.

25 In the government's pleading, it is represented that this lyric refers to the code of  
26 silence and "how the code is enforced by violence," and that "[f]amily" is how WHB  
27 members commonly refer to others in the gang." Doc. 2101 at 16-17. Agent Parkinson's  
28 interpretation was a bit more specific; he testified that he interpreted the lyric to mean



1 killing a snitch. 9/29/22 Tr. at 40-41. However, he agreed with defense counsel that the  
2 lyric is in the past tense. *Id.* He also agreed that the indictment does not allege that a snitch  
3 was killed and there is no evidence of that; and Rakestraw (if he is the singer) is not  
4 confessing to anything he may have done. *Id.* at 40-42. Thus, this lyric does not mirror or  
5 exhibit an unmistakable factual connection to a charged offense.

6 This lyric is also in the "Brother Like a MF" song: "And if my N-word need him  
7 buried, he ain't go to ask." Doc. 2101 at 20. Agent Parkinson testified that this lyric refers  
8 to the fact that if gang members wanted someone killed, it would be done. 9/29/22 Tr. at  
9 47-48. In their pleading, the government states that the lyric "could be a reference to the  
10 violent acts the WHB members commit on behalf of other members," or it could refer to  
11 jail calls of co-defendants "that refer to fundraising operations WHB members would do  
12 for other WHB members funeral expenses." Doc. 2101 at 20. In light of the government's  
13 inability to commit to an interpretation of this lyric, the government cannot establish that  
14 the lyric relates to a charged offense or an allegation in the indictment.<sup>11</sup>

15 The following lyrics are also in "Brother Like a MF," which was uploaded on  
16 Michael Williams' Facebook page, and lists the rappers as Williams, Rakestraw, and YM  
17 Da Kidd (which is James Jones):

18  
19 Shoot a N up  
20 And then watch the news  
21 She was on my dick  
22 Until she heard that I killed her dude.

23 *Id.* at 12.

24 The government states that these lyrics reference several items in the disclosure.  
25 First, Christina Monge's grand jury testimony that the day after the Mia Scott shooting, co-  
26 defendant Reginald Johnson watched the news for a story about the shooting. *Id.* The

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27 <sup>11</sup> At oral argument, government counsel pointed out that many times a defendant's  
28 ambiguous post-arrest statement is subject to different interpretations. The government  
will argue that the ambiguous statement is incriminatory and the defense will argue that it  
is not. That is not an apt comparison because here it is the government offering different  
interpretations of the lyric.

1 government argues that Monge's testimony directly relates to these lyrics. *Id.* Also,  
2 Rochelle Valadez testified before the grand jury that she was in a relationship with Floyd  
3 Davis and then had later relationships with several co-defendants, some of whom made  
4 statements about the Floyd Davis homicide. *Id.*

5 The Court first notes that Agent Parkinson testified that YM Da Kidd sang these  
6 lyrics and, once again, the author of the lyrics is unknown. As a result, their probative  
7 value against these defendants is low. Additionally, the government did not explain (or  
8 sufficiently explain) how the Valadez testimony relates to these lyrics. In the Court's view,  
9 the lyric implies that a woman was first in a relationship with a WHB gang member. But  
10 Valadez's testimony is the opposite: she was first in a relationship with Floyd Davis and  
11 then with WHB members. The Court's interpretation of the lyric may not be correct; but  
12 the interpretation is not unreasonable and thus illustrates the problem of someone other  
13 than the author interpreting rap lyrics. Finally, Monge's testimony about Johnson watching  
14 the news after the Mia Scott shooting is not tied to a female being in a relationship with  
15 Floyd Davis. And no evidence was presented that showed that Michael Williams or  
16 Rakestraw knew about Reginald Johnson watching the news after the Mia Scott shooting  
17 (assuming this was in fact the shooting on the news) such that they could have written a  
18 lyric about that.

19 The government contends that the following lyrics in the "Brother Like a MF" song  
20 refer to cooking of powder cocaine into crack cocaine.

21 We used to ride dirty  
22 On the interstate  
23 Just to see a muthafuckin'  
24 Dinner plate  
25 (Uh)  
26 Back then we was chuggin'  
27 Like a muthafucka  
28 Dope fiend kitchen  
We was cookin' like a muthafucka

*Id.* at 13-14.

1           The government states that the lyrics “dope fiend kitchen” and “cookin’ like a  
2 muthafucka” is a direct reference to cooking crack cocaine as alleged in Counts One and  
3 Twenty-four of the indictment. *Id.* at 14. Agent Parkinson similarly testified that these  
4 lyrics refer to the defendants converting powder cocaine into crack cocaine through a  
5 cooking process, often in the kitchen of their homes, rental houses, or the “shops.” 9/27/22  
6 Tr. at 58. He added that Christina Monge testified before the grand jury about this cooking  
7 process in the houses and shops, and that TPD uncovered evidence of the cooking process  
8 when they executed search warrants at the houses and shops. *Id.*

9           Agent Parkinson agreed with defense counsel that “dinner plate” has different  
10 meanings. 9/29/22 Tr. at 162-163. Agent Parkinson defined it as a girl you “want to have  
11 sexual intercourse with.” The other definition is “a way of making money” to feed oneself.  
12 *Id.* No testimony was presented about how either definition of “dinner plate” fits into the  
13 context of this lyric. As a result, this term is ambiguous.

14           The Court admits that the references to “dope fiend kitchen” and “cookin’” is one  
15 of the few lyrics that bear some relation to the charged offenses. However, the lyric is  
16 cumulative since Monge will testify about the cooking process at houses, and law  
17 enforcement officers will testify about evidence of the cooking process recovered from the  
18 houses during the execution of search warrants. And, once again, Professor Nielson  
19 testified that gangsta rap almost always encompasses lyrics involving criminal activity such  
20 as drug dealing. For these reasons, the probative value of the lyric is low.

21           The following lyrics are also in the "Brother Like a MF" song:

22           When it’s time to catch a body  
23           We gonna fetch him out  
24           Hit him with a brand new 240  
25           Just to test it out

26           Doc. at 18-19.

27           In its pleading, the government claims that this lyric references a M240 rifle which  
28 uses .762 caliber ammunition, and .762 casings were found at the Floyd Davis murder  
scene. *Id.* at 19. Also, Ana Rodriguez will testify that WHB members testified that WHB

1 members test fired a rifle prior to the Floyd Davis homicide, and .762 ammunition was  
2 later recovered from the scene of the test firing by law enforcement. *Id.*

3 The proffered interpretation of these lyrics is undercut by Agent Parkinson's  
4 testimony on cross-examination. Specifically, he agreed with defense counsel that a M240  
5 is a fully automatic machine gun which fires 600 to 800 rounds a minute and is used by the  
6 United States military. 9/29/22 Tr. at 25-26. A normal civilian cannot buy a M240, and it  
7 is a very expensive firearm. *Id.* at 26. And no such weapon was used to commit the crimes  
8 charged in the indictment. *Id.* Thus, once again, the reference to this firearm and .762  
9 ammunition is consistent with gangsta rap's fixation on firearms and ammunition; and the  
10 M240 reference is consistent with the fictional and exaggerated form of gangsta rap. For  
11 what it's worth, the Court also notes that the lyric "hit him with a brand new 240, just to  
12 test it out" does not seem to relate to test firing a gun as the government contends. Rather,  
13 it seems to refer to an actual shooting given the prior lyrics referring to "catch a body" and  
14 "fetch him out." Thus, once again, the probative value of these lyrics is low.

15 In the song "Dome Body," which the government says was "likely sung by YM Da  
16 Kidd, James Jones, and/or Samuel Rakestraw," and also involved a famous rapper named  
17 Mozzy, the following terms and phrases are used: "Free Sly like a mothafucka," "Fuck a  
18 Stone," and "chopsticks." Doc. 2101 at 21. The government claims that these terms and  
19 phrases, in the context of the lyrics in which they are used, refer to the ongoing battle with  
20 the Freestones and a direct threat to use guns to retaliate against that rival gang. *Id.*

21 No evidence was presented with regard to how "Free Sly," which is Shawmaine  
22 Moore's nickname, relates to the charged offenses. The only testimony was that Moore  
23 was in jail at the time the song was released. Additionally, the government clearly has a  
24 substantial amount of other evidence to show the ongoing feud with the Freestones. And  
25 Professor Nielson explained that gangsta rappers often rap about a real or fictional rivalry  
26 with another group, almost always rap about guns, and often refer to guns as a "chop" or  
27 "chops."

28 The following lyrics are also in the "Dome Body" song:

1           You N’s pussy on Facebook  
2           Hella fakin’ (Hella Fakin’)  
3           You N’s can’t get wet  
4           When these levies breakin’ (These levies breakin’)

4       *Id.* at 23.

5           The government claims that this lyric “is relevant to the Megan Borges and Samuel  
6 Rakestraw conversations on Facebook to individuals they believed were speaking to police  
7 about WHB activities. This is very fact specific as to what gang members were doing to  
8 threaten or retaliate against others at the time.” *Id.* Agent Parkinson testified that these  
9 lyrics are significant because it was a disparaging comment about rivals of the WHB being  
10 active on Facebook.

11           Agent Parkinson agreed with defense counsel that the lyrics do not say “you N’s  
12 snitching on Facebook.” 9/27/22 Tr. at 147. And “pussy” is also a reference to the female  
13 anatomy. *Id.* When asked if the Facebook posting could refer to “someone’s girlfriend  
14 on Facebook,” Agent Parkinson testified that “[b]ased on the content and context, that’s  
15 not how I understand it.” *Id.*

16           The Court finds that this lyric has limited probative value. Agent Parkinson did not  
17 explain how any word or phrase used in this lyric, other than the word Facebook, shows  
18 that it references conversations involving Borges or Rakestraw about snitching or  
19 retaliation. The Facebook posting is the best evidence to establish that Borges and  
20 Rakestraw were threatening individuals, and not Agent Parkinson’s attempt to discern the  
21 meaning of this lyric.

22           These lyrics are also from the "Dome Body" song:

23           If you ain’t tryin’ to push  
24           You ain’t from the turf then  
25           (You ain’t from the turf)  
26           ‘Cause all my N’s clockin’ in to put work in  
27           Workin’ doubles  
28           Real hitters in the shop with us  
              (In the shop with us)  
              Got N’s workin’ the cameras  
              In case the cops hit us (In case the cops hit us)  
              Slidin’ out with the chops

1           But we do it movin' (Gotta do it movin')  
2           Unpackin' every bullet where we movin' to (Uh)

3           Doc. 2101 at 23.

4           The government represents that the reference to “shop” is where drugs were dealt,  
5           and “if you ain’t from the turf then” refers to not being loyal to the gang and/or the territory  
6           of the gang. *Id.* The word “push” is a common street term for selling drugs, “put in work”  
7           means that gang members are expected to work at the shops selling drugs. *Id.* Also, the  
8           government says that it will present evidence that each shop had security cameras for the  
9           purpose of seeing rival gang members or police activity outside of a shop. *Id.* And  
10           furthermore, jail calls of co-defendants where they speak about not understanding how  
11           people in the shop still had drugs on them when the police arrived since the police should  
12           have been visible on the cameras. *Id.*

13           On cross-examination, Agent Parkinson testified that he does not know who wrote  
14           the "Dome Body" lyrics. 9/27/22 Tr. at 142. There was also no testimony or evidence  
15           presented about who sang the lyrics referencing the shops. Agent Parkinson agreed with  
16           defense counsel that neither Michael Williams nor Samuel Rakestraw were part of the  
17           phone conversations where the cameras in the shops were discussed. *Id.* at 149. Finally,  
18           Agent Parkinson agreed that the word “shops” is also referred to as a crack house, and both  
19           words are used nationwide and are not specific to the WHB. *Id.* at 150.

20           As is the case with the lyrics that refer to “dope fiend kitchen” and “cooking,” the  
21           Court admits that the lyrics regarding the shops and cameras in the shops bear more relation  
22           to the evidence in this case than any other lyrics. However, the probative value is reduced  
23           based on the following: (1) the author of the lyrics is not known, and a famous rap artist  
24           named Mozzy was involved in making "Dome Body"; (2) relatedly, there was no evidence  
25           presented about who sang this lyric; and (3) “shops” and “chops” are terms commonly used  
26           by gangs and in rap songs; they are not specific to the WHB. Additionally, the lyrics are  
27           cumulative evidence because information extracted from Moore’s phone revealed a  
28           conversation with Michael Williams about going to the “shop.” Similarly, with respect to

1 the use of the word “chop” or “chops,” the lyrics are also cumulative because the  
2 government extracted many text messages from Michael Williams’ phone where he  
3 discussed selling “chops” and actually sent pictures of guns.

4 **2. Lyrics That Refer to the WHB Generally.**

5 There are lyrics in the songs that refer to the WHB generally. The Court turns first  
6 to the "Bustin" song (and video) allegedly sung by Michael Williams and published on  
7 social media on April 18, 2015.

8 Yeah – LilMikeBoii  
9 Young Wreckin Krew  
10 We in this bitch  
11 Bustin (Rah)  
12  
13 N’s ain’t even ready  
14 These bitch N’s ain’t  
15 These hoes ain’t  
16 We’ll give it to you anyway

17 Doc. 2101 at 4.

18 In its pleading, the government states that "Young Wreckin' Krew" is a subset of  
19 WHB gang members, including Michael Williams and Samuel Rakestraw, which “is  
20 known for killing, selling drugs, making rap music, and profiting off of the WHB.” *Id.*  
21 The government further states that the “lyric 'N’s ain’t even ready' portends to reference  
22 that the WHB members rivals are not ready for conflict that is underway, in conjunction  
23 with the rest of the song.” *Id.*

24 These lyrics clearly do not mirror or unmistakably exhibit a factual connection to  
25 the charges. The indictment certainly mentions the “Young Wreckin’ Krew” as a subset  
26 of the WHB. But the defense established that the Young Wreckin’ Krew is also the name  
27 of the defendants’ rap group. Agent Parkinson was aware that the defendants called their  
28 rap group the Young Wreckin’ Krew. 9/29/22 Tr. at 7. But he did not know that Michael  
Williams and Samuel Rakestraw filed paperwork with the Arizona Corporation  
Commission to incorporate the Young Wreckin’ Krew. 9/27/22 Tr. at 86-87. And that

1 paperwork only mentions these two men, and not the other alleged members of the Young  
2 Wreckin' Krew. *Id.* at 88. Thus, the lyric's reference to the Young Wreckin' Krew and  
3 that they will "give it to you anyway" can easily refer to many things other than that a rival  
4 gang is not ready. Moreover, as is the case with many other lyrics, the government has  
5 other evidence that it can use to prove that Young Wreckin' Krew is a subset of the WHB  
6 gang. In fact, Michael Williams and Samuel Rakestraw both have tattoos that reference  
7 the Young Wreckin' Krew. 9/29/22 Tr. at 6-7. Thus, the government need not use a lyric  
8 whose meaning is ambiguous.

9 The following lyrics are also in the "Bustin'" song:

10 My N's bustin', boy  
11 So don't get out of line  
12 I'm from Tre Six  
13 But I fuck with some N's from Deuce Nine  
14 Try me, I'm gonna shoot mine (Mine)  
15 At these bitch N's throats (Huh)  
16 Call me when it's go-time  
17 They told me double up  
18 I got two nines (I got two)

19 Doc. 2101 at 7.

20 Government counsel and Agent Parkinson maintain that this verse directly relates  
21 to the territoriality of the WHB, because "Tre six" is a reference to 36<sup>th</sup> Steet. The phrase  
22 "I fuck with some N's from Deuce Nine" can be taken to mean that the WHB also  
23 collaborates with the 29<sup>th</sup> Street gang members at times. *Id.* at 7-8. The government asserts  
24 that the lyric is highly relevant to both territory boundaries of the criminal enterprise and  
25 to alliances and rivalries with other gangs in the area. *Id.* at 8. And the lyric further  
26 explains and places into context other evidence at trial including phone downloads. The  
27 phrase "I got two nines" is a reference to a nine-millimeter handgun. *Id.*

28 Notwithstanding Agent Parkinson's explanation, the Court is still unclear the phrase  
"fuck with" shows a positive relationship with the 29<sup>th</sup> Street gang, especially given the  
next lyric: "Try me, I'm gonna shoot mine." Moreover, Agent Parkinson admitted that he



1 was aware that there is a 29<sup>th</sup> Street gang but did not know if they were affiliated with South  
2 Park. 9/27/22 Tr. at 132. And as discussed several times above, Professor Nielson  
3 explained that references to firearms of all types is a prominent feature in gangsta rap  
4 music. Finally, this Court has heard other evidence regarding the territory of the WHB in  
5 several evidentiary hearings which will be introduced at trial. Thus, probative value of  
6 these rap lyrics is minimal.

7 **3. Lyrics That Only Go to the Violent Tendencies of the Defendants**  
8 **and/or the WHB.**

9 The government asserts throughout its pleading that many lyrics are probative  
10 because they demonstrate the gang lifestyle, which is focused on violence, and the  
11 defendants embracing of that lifestyle. The Court notes that a prosecutor's intention to  
12 introduce rap lyrics that describe violence generally but are not specifically tied to the  
13 charged crimes or acts that led to those crimes, "skirt[s] dangerously close to advocating  
14 the use of the videos as evidence of [the defendants'] violent character." *Coneal*, 41 Cal.  
15 App.5<sup>th</sup> at 971.

16 At oral argument, government counsel argued that the admission of propensity  
17 evidence only becomes a concern for Rule 404(b) other act evidence, and not evidence  
18 directly related to charged offenses. However, the lyrics discussed below are clearly other  
19 act evidence because they are not tied to any allegation in the indictment, other than perhaps  
20 the overarching allegation that the WHB is a violent street gang. The lyrics discussed  
21 below are but a few examples of the lyrics that tend to show a general propensity for  
22 violence, which is improper under Rule 404(b). *See also* Doc. 2101 at 10, 13-14, 17 ("I  
23 say my life is trustin' this triggas"; "pistol cocked and I'm searchin'"; "leave you bitch N's  
24 worthless"; "Bitch I'm bangin'"; "Then we all shoot"; "And we don't shoot just to shoot";  
25 "Dr-dr-droppin' N's"; Poppin' N's"; "with hollow tips"; "Empty the whole damn clip").

26 The song "Bustin'" contains the following lyrics:

27 And I'm ridin' (What the fuck is up?)  
28 I'm swirvin' (Swervin')  
I'll spray you

1 Be like I ain't nervous (I ain't nervous)  
2 All my N's  
3 We really sinnin'  
4 We like fuck it though  
5 We ain't perfect (Perfect)

6 Doc. 2101 at 6.

7 Agent Parkinson testified that the word "spray" means to shoot guns rapidly.  
8 9/27/22 Tr. at 111. Thus, this lyric which does not mention WHB, an alleged gang member,  
9 or any specific act alleged in the indictment is improper propensity of violence evidence.

10 The same is true for the following lyric:

11 Fuck feelings.  
12 I ain't hurtin' (I ain't hurtin')  
13 For my N's  
14 I'm lurkin' (I'm lurkin')  
15 Smoke mine  
16 I'm gonna smoke yours  
17 'Cause I got the feelin' it's worth it (Huh)

18 Bust ten and tell 'em hold dat  
19 Said a N wasn't perfect (Huh)  
20 When it comes to it  
21 There's no right or wrong  
22 When I feel the shit  
23 It's all worth it

24 Man, my N's out here bustin'  
25 (Out here bustin')

26 Doc. 2101 at 6-7.

27 In its pleading, the government states that "bustin" is a street term meaning shooting  
28 repeatedly, and that "lurkin" is a term frequently used by WHB members to describe  
spying on or watching rival gangs. *Id.* at 7. Agent Parkinson testified similarly. He added  
that the phrases "smoke mine" and "I'm gonna smoke yours" refers to the rivalry between  
the WHB and the Freestones.

The references to "bustin" and "smoke" clearly relate to general violence. At the

1 evidentiary hearing, the term “lurkin” was tied to one text message or social media post  
 2 made by defendant Shawmaine Moore. In light of the massive amount of disclosure in this  
 3 case, the Court is hard-pressed to conclude that the lyric in which this term is used relates  
 4 to the instant charges based on that single reference. And, as Professor Nielson testified,  
 5 the references to a rivalry between gangs, including references to spying or watching them,  
 6 is common in gangsta rap music. Thus, the lyrics are improper propensity evidence.

7 The following lyrics, also in the "Bustin" song, also relate to violence generally.

8 Move around with that Sammy (Sammy)  
 9 Ain't no bitchness in me (Not in me)  
 10 All these guns on all my N's  
 11 Yeah, bullets  
 12 We got plenty (Plenty)  
 13 We gotta do this shit for my bros, N  
 14 Pistol cocked when I approach N's  
 15 Quick and fast to reload, N  
 16 Then give your ass a whole load, N (Load, N)

17 *Id.* at 8.

18 The government states that these lyrics relate to Count One of the indictment by  
 19 mentioning “Sammy,” which is Samuel Rakestraw, as well as motives of the WHB and the  
 20 criminal enterprise. *Id.* These lyrics undoubtedly relate to general violence and firearms  
 21 which, again, are common gangsta rap. The reference to Sammy is not surprising since  
 22 he is one of the rappers. Thus, there is no probative value in these lyrics.

23 Based on the discussion above, the Court finds that the government has not skirted  
 24 dangerously close to advocating the use of the videos and rap songs as evidence of the  
 25 defendants’ violent character, but rather, has crossed the line in seeking to admit the lyrics  
 26 identified above. The admission of this propensity evidence is improper.

27 **F. Any Probative Value in the Lyrics is Substantially Outweighed by**  
 28 **the Danger of Unfair Prejudice.**

Notwithstanding the discussion above, the Court acknowledges that certain lyrics,  
 or at least words and phrases used in lyrics, could be interpreted to relate to the charged  
 offenses or evidence in the case. However, the problem is that the government is twisting

1 and stretching words and phrases (even if unintentionally) to come up with an interpretation  
2 that supports the charges, the evidence, and/or their theory of the case. And in most  
3 instances, those attempted interpretations have failed. For example, there are several times  
4 when the government's proffered interpretation of lyrics is inconsistent with the evidence  
5 in the case. There are other times when Agent Parkinson's interpretation of a lyric is  
6 inconsistent with, or at least differs from, the interpretation set forth in the government's  
7 Supplemental Notice of Rap Lyrics/Songs/Videos. As a result, the defense does not know  
8 what interpretation will be testified to at trial. Additionally, there are lyrics that are  
9 ambiguous and some words or phrases used in lyrics are not even decipherable. Finally,  
10 many of word and phrases used in lyrics are a prominent feature in all gangsta rap and  
11 relate to violence generally, and thus are not specific to the WHB or tied to the charged  
12 offenses. As such, the probative value of the lyrics is minimal.

13 The Court notes that even if the probative value of the lyrics is greater than  
14 recognized by the Court, it would still recommend precluding the rap video and songs  
15 because the prejudice that will result from the admission of this evidence is devastating for  
16 the reasons already discussed at length. To summarize, even though the author of the lyrics  
17 is not known, the government essentially wants to use the lyrics as the defendants'  
18 confessions to the charged crimes. Second, the lyrics are so highly inflammatory that there  
19 is a great risk that a jury will convict the defendants for impermissible reasons. Third, the  
20 admission of the rap video and songs, and the resultant testimony from Agent Parkinson  
21 and Professor Nielson, has the potential to become a feature of the trial and overshadow  
22 the acts giving rise to the charges. The result is a risk of confusing and/or misleading the  
23 jury. There is simply no reason to jeopardize the defendants' right to a fair trial when the  
24 government has acknowledged that it has a ton of other evidence to prove what is depicted  
25 in the video and sung about by the defendants.

### 26 CONCLUSION

27 For the reasons discussed above, the Court concludes that the probative value of the  
28 rap video and rap songs is substantially outweighed by the danger of unfair prejudice and

1 the risk of misleading and confusing the jury that will result to the defendants if this  
2 evidence is admitted at trial. Accordingly, the Court recommends that the District Court  
3 grant the Joint Motion to Preclude Rap Music, Videos, and Associated Content.

4 Pursuant to Federal Rule of Criminal Procedure 59(b)(2), any party may serve and  
5 file written objections within 14 days of being served with a copy of this Report and  
6 Recommendation. A party may respond to the other party's objections within fourteen  
7 days. No reply brief shall be filed on objections unless leave is granted by the district court.  
8 If any objections are filed, this action should be designated case number: **CR 18-01695-**  
9 **TUC-JAS**. Failure to timely file objections to any factual or legal determination of the  
10 Magistrate Judge may be considered a waiver of a party's right to de novo consideration  
11 of the issues. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
12 banc).

13 Dated this 9<sup>th</sup> day of December, 2022.

14   
15 \_\_\_\_\_  
16 Eric J. Markovich  
17 United States Magistrate Judge  
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