

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 5 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 21-50208

Plaintiff-Appellee,

D.C. Nos.

v.

2:10-cr-01049-FMO-1

2:10-cr-01049-FMO

DAVID RYAN TEJERA,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the Central District of California  
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted November 18, 2022  
Pasadena, California

Before: NGUYEN and SUNG, Circuit Judges, and FITZWATER,\*\* District  
Judge.

David Tejera appeals from an order directing the Bureau of Prisons to turn  
over funds in his inmate trust account to the Clerk of the United States District

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Sidney A. Fitzwater, United States District Judge for  
the Northern District of Texas, sitting by designation.

Court for payment of his court ordered restitution.<sup>1</sup> We have jurisdiction under 28 U.S.C. § 1291. We review the district court’s interpretation of § 3664(n) de novo, *United States v. Berger*, 574 F.3d 1202, 1204 (9th Cir. 2009), and the district court’s decision to authorize a payment for abuse of discretion, *see United States v. Gagarin*, 950 F.3d 596, 607 (9th Cir. 2020). We vacate and remand.

1. The Mandatory Victims Restitution Act requires an inmate who “receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration . . . to apply the value of such resources to any restitution or fine still owed.” 18 U.S.C. § 3664(n).<sup>2</sup> Tejera contends that the payment plan imposed by the district court limits his obligation to \$25 per quarter. The government counters that the payment plan sets a \$25 per quarter minimum payment, but Tejera still “owes” the full amount of his outstanding restitution.

The plain language of § 3664(n) supports the government’s position. At the

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<sup>1</sup> Tejera filed an unopposed motion for judicial notice of seven district court orders cited by the government in its answering brief. Dkt. 25. Because the “court may take judicial notice of undisputed matters of public record, which may include court records available through PACER,” *see United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018), we GRANT Tejera’s motion.

<sup>2</sup> Tejera does not contest that his Covid-19 stimulus check qualifies as a sudden windfall. *See United States v. Poff*, 781 F. App’x 593, 594 (9th Cir. 2019) (“We are persuaded by the Fifth Circuit’s analysis in *United States v. Hughes* that § 3664(n) ‘refers to windfalls or sudden financial injections . . . that become suddenly available’ to the defendant.” (quoting 914 F.3d 947, 951 (5th Cir. 2019))).

time of filing, Tejera owed the victims of his crime \$6,210.45. The district court's payment plan does not alter the fact that Tejera still owes his full restitution obligation. *See* 18 U.S.C. § 3771(a)(6) (stating that a crime victim has "[t]he right to full and timely restitution as provided in law"). Accordingly, the "restitution still owed" by Tejera refers to the full restitution—\$6,210.45—not \$25 per quarter.

2. The government provides insufficient evidence that the funds in Tejera's account at the time of the government's motion resulted from a Covid stimulus check and not some other source to which § 3664(n) does not apply. The government relies on Inspector Sangirardi's declaration that identifies only the following transactions: (1) Tejera's \$1,400.00 stimulus check was deposited into his account on May 14, 2021; (2) between May 14, 2021 and August 25, 2021, Tejera's account received \$680.00 from "other sources" and paid \$350.00 "to an individual outside the BOP"; and (3) between May 14, 2021 and August 25, 2021, Tejera made a \$30.00 quarterly restitution payment. If Tejera's inmate trust account had a \$0 balance prior to receipt of the stimulus check, these transactions would result in a \$1,700.00 balance on August 25, 2021. But the record shows that Tejera's inmate trust account contained \$822.89 on that date. Therefore, the evidentiary record regarding the source of the funds in Tejera's inmate trust

account contains gaps.<sup>3</sup>

Because the record is unclear about the source of the funds seized from Tejera’s inmate trust account, we vacate and remand for the district court to determine whether Tejera’s account contained at least \$800 in Covid stimulus funds. *See, e.g., Poff*, 781 F. App’x at 595; *see also Saucillo v. Peck*, 25 F.4th 1118, 1133 (9th Cir. 2022) (“[F]actfinding is the basic responsibility of district courts, rather than appellate courts.” (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982))).

3. Finally, the parties disagree whether the funds sought qualify as “substantial” for the purposes of § 3664(n). The record is not sufficiently developed on this question for meaningful appellate review. On remand, the district court should determine in the first instance whether the funds sought by the government qualify as “substantial” under the statute.

**VACATED AND REMANDED.**

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<sup>3</sup> The government argues briefly that its judgment lien permits it to collect from Tejera’s inmate account “[s]eparate and apart from § 3664(n).” But the government brought its initial motion pursuant to § 3664(n), not the civil garnishment proceedings outlined in 18 U.S.C. § 3613(c). Moreover, this argument was not sufficiently developed, so we do not address it further. *See Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259 (9th Cir. 1996). The government also raised a § 3664(k) argument for the first time at oral argument. Section 3664(k) was not raised in the government’s briefing, and we decline to address it for the first time here. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).