

APPENDIX

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Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Jose Ramon Pulido-Nolazco</i> , 17-13912	A-1
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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13912
Non-Argument Calendar

D.C. Docket No. 4:17-cr-10002-JLK-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RAMON PULIDO-NOLAZCO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(April 19, 2018)

Before MARCUS, MARTIN and JILL PRYOR, Circuit Judges.

PER CURIAM:

Jose Ramon Pulido-Nolazco appeals his 63-month sentence for one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). For

the first time on appeal, Pulido-Nolazco argues that the district court committed plain error by imposing as a special condition of his supervised release the requirement that he participate in and contribute to the cost for a sex-offender treatment program. After careful review, we affirm.

We review the imposition of special conditions of supervised release for abuse of discretion. United States v. Moran, 573 F.3d 1132, 1137 (11th Cir. 2009). However, when a party did not raise a sentencing issue before the district court, we review under the plain error standard. United States v. Lange, 862 F.3d 1290, 1293 (11th Cir.), cert. denied, 138 S. Ct. 488 (2017). To establish plain error, the defendant must show (1) an error, (2) that is plain, and (3) that affected his substantial rights. United States v. Turner, 474 F.3d 1265, 1276 (11th Cir. 2007). If the defendant satisfies these conditions, we may exercise our discretion to recognize the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. Id. Where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it. United States v. Hesser, 800 F.3d 1310, 1325 (11th Cir. 2015).

The district court may order special conditions that: (1) are reasonably related to the nature and circumstances of the offense, history and characteristics of the defendant, the need for adequate deterrence, the need to protect the public, and

the need to provide the defendant with needed training, medical care, or correctional treatment in an effective manner; (2) involve no greater deprivation of liberty than is reasonably necessary; and (3) are consistent with any pertinent policy statements issued by the Sentencing Commission. 18 U.S.C. § 3583(d)(1)-(3); see also U.S.S.G. § 5D1.3(b). The special conditions need not be related to each applicable § 3553(a) factor; rather, each factor is an independent consideration to be weighed. Moran, 573 F.3d at 1139.

The Sentencing Guidelines recommend that the court order, as a special condition of supervised release, that the defendant participate in a mental health treatment program “[i]f the court has reason to believe that the defendant is in need of psychological or psychiatric treatment.” U.S.S.G. § 5D1.3(d)(5). The district court must consider what conditions best accomplish the purposes of sentencing. Moran, 573 F.3d at 1139. Special conditions of supervised release need not be related to the particular offense imposed by the district courts. United States v. Bull, 214 F.3d 1275, 1277-78 (11th Cir. 2000) (upholding imposition of anger management treatment for conviction for unauthorized use of credit card). Although a condition of supervised release should not unduly restrict a defendant’s liberty, a condition is not invalid simply because it limits a probationer’s ability to exercise constitutionally protected rights. Moran, 573 F.3d at 1139.

In Moran, the defendant was convicted of being a felon in possession of a firearm. Id. at 1135. The court imposed a special order requiring the defendant to participate in a sex-offender treatment program based on the defendant's prior convictions for sex offenses, which occurred ten years prior to the present offense. Id. at 1136. The defendant objected that the trial court's sentence imposed special conditions which were not related to his present conviction, were not supported by his history and characteristics, and unnecessarily infringed upon his liberty. Id. at 1139. Reviewing for abuse of discretion, we affirmed the district court's special order because (1) it addressed a prior sex offense, even if it was not related to the offense of conviction, and (2) there was no evidence that the program was unduly burdensome, since the defendant was not required to continue treatment if the treatment providers did not believe it was necessary. Id. at 1139-40.

The district court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence. 18 U.S.C. § 3553(c). The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision-making authority. Rita v. United States, 551 U.S. 338, 356 (2007).

Here, the district court did not commit plain error by ordering Pulido-Nolazco to participate in a sex-offender treatment program. As the record reveals, the district court gave sufficient reasons for its order, and the order was justified by

relevant sentencing factors, including Pulido-Nolazco's prior convictions for sex offenses. The court said at sentencing that it was imposing its sentence "to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offense, and to protect the public from future crime by the Defendant." Though Pulido-Nolazco is correct that 18 U.S.C. § 3553(c) and Rita require the court to generally state its reasons for imposing its sentence, neither § 3553(c) nor Rita involved a specialized condition of supervised release. Moreover, binding precedent does not clearly impose a requirement on the court to state on the record why each special condition ordered was appropriate. See 18 U.S.C. § 3553(c); Rita, 551 U.S. 338. Under plain error review, the district court's statement more than fulfilled the court's requirements under § 3553(c) and Rita.

Further, to the extent the court needed to provide specific reasons on the record for requiring Pulido-Nolazco to participate in a sex-offender treatment program, the court did so. At the sentencing hearing, the district court adopted the findings of the PSI, which identified that Pulido-Nolazco had been previously convicted of sex offenses and recommended that Pulido-Nolazco be placed into a sex-offender treatment program. Pulido-Nolazco did not pose any objections to the PSI, and did not object to the court's adoption of the PSI's findings. The court announced that it was imposing its sentence "after considering" the PSI, and said it was adopting the recommendation in "Part G of the PSI about sex offender

treatment.” The court, by making repeated and explicit references to the PSI during sentencing, demonstrated that it was imposing the special order based on the findings in the PSI, including Pulido-Nolazco’s prior convictions for sex offenses and repeated failures to abide by the mandatory reporting requirements for convicted sex offenders. By discussing relevant sentencing factors and referring to the factual findings and the recommendations in the PSI, the court did not err, much less plainly err, and set forth enough to demonstrate that it had a reasoned basis for exercising its decision-making authority. Rita, 551 U.S. at 356.

In addition, the court’s order was reasonably related to relevant § 3553(a) factors, including Pulido-Nolazco’s rehabilitation, the need to protect the public from Pulido-Nolazco’s further crimes, and Pulido-Nolazco’s characteristics and history, including his prior convictions for sex offenses and for failing to abide by the sex offender registration requirements. 18 U.S.C. § 3553(a). While Pulido-Nolazco argues that his prior convictions are too temporally remote to be relevant, and that he has not shown signs of recidivism, his arguments are refuted by our clear precedent. In Moran, the district court had imposed similar restrictions based solely on the defendant’s decade-old prior convictions, and we upheld these restrictions under the abuse of discretion standard of review. 573 F.3d 1132, 1135, 1139-1140. Moreover, Pulido-Nolazco was convicted twice in the past ten years (and had an outstanding warrant from 2015 at the time of his arrest) for failing to

abide by the sex-offender registration requirements. Although these convictions were not sexual offenses per se, they are factors that negate Pulido-Nolazco's argument that his prior offense is too remote to be considered for special conditions. Moran, 573 F.3d at 1139. As for his claim that the restrictions here are unduly restrictive, the district court here, like in Moran, reasonably limited the amount of prejudice to Pulido-Nolazco by only requiring him to continue treatment for as long as his treatment providers consider it necessary. Id. Thus, based on established precedent, Pulido-Nolazco has not shown that the district court erred, or plainly erred, by ordering him to participate in a sex-offender treatment program.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 19, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13912-GG
Case Style: USA v. Jose Pulido-Nolazco
District Court Docket No: 4:17-cr-10002-JLK-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Joe Caruso, GG at (404) 335-6177.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

A-2

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 27, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13912-GG
Case Style: USA v. Jose Pulido-Nolazco
District Court Docket No: 4:17-cr-10002-JLK-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joe Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13912-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOSE RAMON PULIDO-NOLAZCO,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, MARTIN and JILL PRYOR, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

A-3

United States District Court
Southern District of Florida
KEY WEST DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number - 4:17-10002-CR-KING-001

JOSE RAMON PULIDO-NOLAZCO

USM Number: 15690-104

Counsel For Defendant: Katherin Carmon, AFD
Counsel For The United States: Mark D. Wilson, AUSA
Court Reporter: Glenda Powers

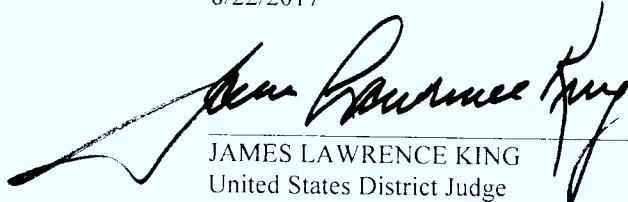
The defendant was found guilty on Count One of the Indictment.
The defendant is adjudicated guilty of the following offense:

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 922(g)(1)	Possession of a firearm by a convicted felon	September 26, 2016	1

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

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:
8/22/2017



JAMES LAWRENCE KING
United States District Judge

August 22, 2017

DEFENDANT: JOSE RAMON PULIDO-NOLAZCO
CASE NUMBER: 4:17-10002-CR-KING-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **SIXTY-THREE (63) Months.**

The Court makes the following recommendations to the Bureau of Prisons:

that the defendant be designated to a facility in South Florida.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

DEFENDANT: JOSE RAMON PULIDO-NOLAZCO
CASE NUMBER: 4:17-10002-CR-KING-001

SUPERVISED RELEASE

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

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOSE RAMON PULIDO-NOLAZCO
CASE NUMBER: 4:17-10002-CR-KING-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

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

Sex Offender Treatment - The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Surrendering to Immigration for Removal After Imprisonment - At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

DEFENDANT: JOSE RAMON PULIDO-NOLAZCO
CASE NUMBER: 4:17-10002-CR-KING-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$100.00		

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSE RAMON PULIDO-NOLAZCO
CASE NUMBER: 4:17-10002-CR-KING-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. Lump sum payment of **\$100.00** due immediately, balance due

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

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

The assessment is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.