

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

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RICHARD MICHAEL SANCHEZ,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Ninth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Does a plea agreement's limited appellate waiver preclude a defendant's challenge of a decision to impose a consecutive sentence where the appellate waiver and the plea agreement are silent regarding a consecutive sentencing decision?

## PARTIES TO THE PROCEEDINGS

The parties are Petitioner, Richard Michael Sanchez, and respondent, the United States of America. All parties appear in the caption of the case on the cover page.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Richard Michael Sanchez, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on October 26, 2018, Ninth Circuit Court of Appeals № 17-50163.

## OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished decision in this matter. App. 1a. The district court order from which Mr. Sanchez appealed is also unpublished. App. 3a.

## STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its dismissal order in the instant matter was October 26, 2018. App. 1a. Mr. Sanchez did not file a petition for rehearing in the matter. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

No person shall be . . . deprived of life, liberty,  
or property, without due process of law . . .

## STATEMENT OF THE CASE AND FACTS

### A. Mr. Sanchez's Personal History

#### 1. Mr. Sanchez's abusive childhood

Born in 1953, the appellant, Richard Michael Sanchez, is 66 years old. PSR 23. Mr. Sanchez has four siblings, and as the oldest, he received the brunt of the abuse heaped upon the family by his father, mother, and the men that came through his mother's life. ER 701; PSR 23.

Mr. Sanchez's father was a very aggressive man, ill-tempered and believed in handling things with his fists. ER 698. Mr. Sanchez's father used physical and mental abuse to "toughen up" Mr. Sanchez. He made Mr. Sanchez fight other people in the neighborhood to defend the "honor" of the family. He also made Mr. Sanchez and his siblings fight each other to see who would be the "last one standing." ER 698.

When Mr. Sanchez was about 10 years, the father pull him out of his car and beat him so bad that Mr. Sanchez had a seizure. The reason the father did this was because Mr. Sanchez wanted to take

his dog with the family when they were going somewhere. Mr. Sanchez's mother knew better than to intervene because the father would easily turn his anger on her. ER 701.

When Mr. Sanchez's parents divorced, life with his mother and siblings became unstable and even more difficult. The mother worked long hours, leaving Mr. Sanchez and his siblings with little supervision. PSR 23-22. The lack of money meant the family never stayed in one place for more than a year. Mr. Sanchez was left in charge of taking care of his siblings which included fighting to protect them from other kids or one of the many men with whom their mother was involved. ER 798.

Mr. Sanchez's mother had a serious alcohol problem most of her life. she also had a bad temper and was physically abusive to her children. PSR 24. When disciplining them, she would use anything she could get her hands on including extension cords, belts, hot utensils from the stove, etc. One of her ways of punishing her children was to strip them down and make them kneel on uncooked rice. ER 701; PSR 25.

To escape the unrelenting abuse, Mr. Sanchez started running away at the age of 11. From 11 to 13, he was in court-ordered juvenile placement. After leaving juvenile placement, Mr. Sanchez attended continuation school, but dropped out at the age of 17 and married. PSR 22. His wife, however, died from cancer in 2000. PSR 24.

Despite the abuse he received, Mr. Sanchez was a loving brother and friend. ER 701. Richard Guerra, has known Mr. Sanchez since they were in the 6<sup>th</sup> grade. He informed the district court that Mr. Sanchez, “. . . was never an instigator or trouble maker.” ER 701. Mr. Guerra explained that Mr. Sanchez “. . . is a God fearing and good hearted person. He has always been a person of his word. He is one of the best friends that I have. [He] is held in the highest regard by all his friends and family.” ER 702.

## 2. Mr. Sanchez’s poor physical health

Mr. Sanchez has suffered and continues to suffer from a number of debilitating diseases. He suffered from polio when he was a child and consequently, only grew to 5’3” in height. PSR 122.

As a child, Mr. Sanchez was so pigeon-toed and bow-legged he had to wear metal braces on his legs. PSR 24-26. He had undiagnosed vision problems which caused him to have difficulties in school. PSR 24.

As an adult, the condition of Mr. Sanchez's health worsened. He contracted Hepatitis C and began experiencing debilitating degenerative arthritis in his back at an early age. He suffered several injuries to his neck and back, causing herniated discs and lumbar facet syndrome. He also suffered injuries to his knees, causing medial meniscus tears and joint pain. In 2006, he began pain management treatment, which included morphine. He also received steroid injections. PSR 4. 25-26, 37.

Despite his various treatments, Mr. Sanchez is constantly in pain and has limited physical mobility. PSR 26. He will likely need orthopedic surgery in the future. PSR 4, 26, 37.

Mr. Sanchez was addicted to heroin for many years. After making a promise to his late wife on her deathbed, he stop using drugs when he was in his late 40s. As a result of the pain medication



prescribed for his back injuries, however, Mr. Sanchez became addicted to prescription pain medications, which he abused until 2013 when he began methadone maintenance treatment. PSR 25-26, 37.

3. Mr. Sanchez's work history.

Prior to 1993, Mr. Sanchez worked various construction laborer jobs. PSR 27. He also worked as a janitor at a community hospital. ER 701. Mr. Sanchez last worked in 2006 when he was employed as a warehouse worker. He stopped working, however, due to injuries and illness. PSR 25, 27.

4. Mr. Sanchez's 2015 state criminal conviction

At the time of Mr. Sanchez's detention, he was serving an undischarged prison term in California arising from a nolo contendere plea to voluntary manslaughter. He was sentenced to 15 years of prison on May 29, 2015.<sup>1</sup> PSR 37.

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<sup>1</sup>In that matter, the state alleged that Mr. Sanchez met with co-participants of the offense and instructed the two shooters to "take care" of the victim. PSR 21.

During Mr. Sanchez's sentencing hearing, the superior court and the district attorney indicated that they did not object to the district court running Mr. Sanchez's federal sentence concurrent to the state sentence. ER 729. Correspondingly, the superior court and the district attorney did not object to Mr. Sanchez serving his state sentence while in federal custody. ER 702, 708.

#### B. The Indictment, Arraignment, and Bail

On July 23, 2014, the government filed an indictment against 41 defendants, including Mr. Sanchez. The indictment alleged 62 substantive counts based on alleged gang activity that included acts of violence (ranging from battery to murder), drug trafficking, robbery, burglary, carjacking, witness intimidation, kidnapping, weapons trafficking, credit card, fraud, identity theft, and hate crimes directed against African Americans. ER 747, 960.

Mr. Sanchez was named in Counts 1, 7, 20, 36, 52, 59 of the Indictment which alleged that (1) he was a member of a criminal conspiracy know as the El Monte Flores gang, in violation of 18

U.S.C. § 1962(d); (2) he had possessed at least 5 grams methamphetamine with the intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(viii) and § 846; (3) he had possessed a loaded Sturm Ruger and a loaded Colt revolver in furtherance of the drug trafficking crime and in violation of 18 U.S.C. §§ 922(g)(1), 924(c)(1)(A)(i), (c)(1)(B) (ii); and, (4) he delivered “tax” payments derived from drug trafficking, robbery, extortion, and identity theft to El Monte Flores gang members and Mexican Mafia leaders in violation of 18 U.S.C. § 1956(h). These “tax” payments were allegedly in the amounts of \$100 and \$200. ER 878-880, 911, 932, 941-942, 985, 956, 960, 972-973, 998-1000, 1003, 1005-1006, 1010, 1026, 1028-1029, 1033.

On July 24, 2014, the government filed a request for Mr. Sanchez’s detention. ER 867. Mr. Sanchez was not immediately taken into custody apparently because he was in state custody awaiting trial. ER 852. On June 19, 2015, the district court issued a Writ of Habeas Corpus Ad Prosequendum to secure Mr. Sanchez’s appearance at his arraignment hearing. ER 850. Mr. Sanchez was

then arrested on July 31, 2015, and his arraignment hearing took place on August 3, 2015. ER 825. At that hearing, the district court ordered Mr. Sanchez detained without bail. ER 829-830, 841-842. Mr. Sanchez pleaded not guilty. ER 831, 837, 842.

### C. The Plea Agreement and Change of Plea Hearing

On December 19, 2016, Mr. Sanchez and the government entered into a binding plea agreement under F.R.Cr.P. 11(c)(1)(C). ER 801. The plea agreement was part of a package deal in which the disposition of the case against Mr. Sanchez was tied to and conditioned on the disposition of the cases against defendants, James Gutierrez, Kenneth Cofer, Robert Rodriguez and Jose Salas. ER 802.

Mr. Sanchez agreed to enter a plea of guilty to Counts 1, 7, and 59 of the indictment which charged him with Racketeer Influenced and Corrupt Organizations (“RICO”) Conspiracy, in violation of 18 U.S.C. § 1962(d); Conspiracy to Distribute Controlled Substances, in violation 21 U.S.C. §§ 846, 841(b)(1)(A); and Conspiracy to Launder Money, in violation of 18 U.S.C. § 1956(h). ER 802.

Mr. Sanchez further agreed to a sentence of 180 months of imprisonment, 5 years of supervised release with conditions to be fixed by the Court, and a \$300 special assessment. ER 816. The plea agreement made no mention of whether the sentence would run concurrently or consecutively with the state sentence Mr. Sanchez was serving.

In entering into the agreement, Mr. Sanchez stated that he understood the agreement and entered into its terms voluntarily. ER 801, 822-823. He also stated that, “No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement.” ER 823. Correspondingly, Mr. Sanchez’s attorney stated that her client’s decision to enter in the agreement was an informed and voluntary one. In the plea agreement, Mr. Sanchez agreed to waive certain appeal rights. ER 451-452, 454-455, 817, 823-824.

Mr. Sanchez’s attorney stated that she believed Mr. Sanchez had entered the agreement freely and voluntarily and that no other promises had been made by the government or anyone on behalf of

the government to induce Mr. Sanchez to sign the plea agreement that were not in the agreement itself. ER 456, 458, 460-461, 823-824. The government also stated that, other than the terms in the plea agreement, the government had not made any promises, representations or guarantees to Mr. Sanchez to induce him to sign the plea agreement. ER 459.

Mr. Sanchez pleaded guilty. ER 468-469, 756. The district court found that Mr. Sanchez's pleas of guilty were knowingly, voluntarily and intelligently made. ER 471. The district court accepted the plea agreement. ER 471, 756.

#### D. The Sentencing and Appeal

##### 1. Probation's Presentence Reports

In its Presentence Reports (PSR) regarding Mr. Sanchez, the Office of Probation recommended that the district court impose the sentence agreed to in the parties' plea agreement which was 180

months of incarceration followed by 5 years of supervised release.<sup>2</sup>

PSR 33-34. 38. Although not addressed in the plea agreement, Probation recommended that Mr. Sanchez's term of confinement run consecutively to any undischarged prison term imposed by the state of California. ER. 33-34. 37-38.

## 2. The Parties' Sentencing Positions

The government requested the district court sentence Mr. Sanchez in keeping with the binding plea agreement. ER 748. The government agreed with Probation that the sentence should run consecutively to the undischarged state term of imprisonment Mr. Sanchez. ER 748-752.

In his position paper, Mr. Sanchez requested that his federal sentence run concurrently with the undischarged portion of his state sentence. ER 733. He pointed out that if the district court imposed its sentence concurrently to the undischarged portion of the state

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<sup>2</sup> Probation calculated Mr. Sanchez's advisory guideline range as being 262 to 327 months based on an offense level of 34 and a criminal history category of VI. PSR 33.

sentence, He would be continuously in custody from July 2, 2013, the date of arrest on the state case at age 60, to the end of his 15 year federal term, which would mean release after service of 153 months at the age of 75 to begin 5 years supervised release. ER 733.

3. Mr. Sanchez's motion requesting specific performance of the government's promise to recommend concurrent time

Mr. Sanchez's sentencing hearing was scheduled for July 21, 2016. ER 639, 651, 724. At the hearing, Mr. Sanchez informed the court that Special Investigative Agent (SIA) Joshua Halstead, who had free reign of the MDC where Mr. Sanchez and other co-defendants were housed, had spoken to Mr. Sanchez and his co-defendants directly to broker the package plea deal. ER 655, 669. During those negotiations, SIA Halstead had promised Mr. Sanchez that the government would recommend that his state and federal sentences be served concurrently. ER 669-673. The district court continued the sentencing hearing so that Mr. Sanchez could confer



with his counsel about how he wanted to proceed, given the government's refusal to recommend concurrent sentencing. ER 676.

The government later filed an ex parte request to further continue the sentencing. ER 641, 643. The district court granted the continuance and allowed additional briefing on the issue of concurrent sentencing. ER 649. Accordingly, Mr. Sanchez filed a Motion Requesting Specific Performance of Promise of Concurrent Time. ER 611, 685. In that motion, Mr. Sanchez requested that the district compel the government to make a recommendation of concurrent sentencing consistent with SIA Halstead's oral promise. ER 680. In the alternative, Mr. Sanchez requested that the district court find that SIA Halstead communicated with Mr. Sanchez about the government's intention regarding recommending a concurrent sentence, that such communications with a represented inmate about plea negotiations in his case was improper, and that the communications influenced Mr. Sanchez to accept the plea agreement and in consideration of that misconduct, sentence Mr. Sanchez to concurrent time. ER 680.

In response to Mr. Sanchez's motion, the government filed, inter alia, an opposition, an ex parte application authorizing the disclosure of certain attorney-client communications between Mr. Sanchez and his counsel, and closing briefs. ER 98, 105, 329, 334, 336, 339, 342, 599, 626, 628. Mr. Sanchez, in turn, filed a reply, an opposition to the government's filings, and closing briefs. ER 86, 88, 117, 303, 305, 308, 612, 616.

The district court ultimately denied the government's request for disclosure of certain attorney-client communications. ER 541, 570, 575, 577, 614. Following an evidentiary hearing, the district court denied Mr. Sanchez's motion for specific performance. ER 73, 131, 301. It did not, however, make a decision on Mr. Sanchez's alternate request that, based on SIA Halstead's conduct, the court should impose concurrent state and federal sentences. Rather, the court stated that Mr. Sanchez could raise the issue at sentencing. ER 85.

#### 4. The Sentencing Hearing

As allowed by the district court, Mr. Sanchez filed a supplemental position paper requesting that his state and federal sentences run concurrently because of (1) the statements made by SIA Halstead; (2) the state superior court's contemplation of concurrent sentences; (3) Mr. Sanchez's calculated sentencing guidelines range; and, (4) the ability of the concurrent sentence to promote respect for the law. ER 58, 60, 65-68. The government filed a supplemental position in response. ER 51.

The district court conducted Mr. Sanchez's sentencing hearing on April 27, 2017. ER 10. In attendance were Richard's two daughters, and his childhood friends, Richard and Danny. ER 16.

Mr. Sanchez once again requested a concurrent sentence whereas the government argued against it. ER 13, 17. Throughout the hearing, the district court repeatedly asked defense counsel and counsel for the government whether the court had the discretion to "impose a sentence that is partially concurrent and partially consecutive." ER 21-22.

Initially, the government responded in the negative stating, “Your honor, I don't believe there is. I believe that the determination is typically made by the Bureau of Prisons.” ER 22. The district court pressed further, and in response the government stated it was unsure. ER 23.

When the district court asked a third time, and directed the question to defense counsel, counsel stated that she did not know, but she believed it was up to the Bureau of Prisons (BOP) to make the determination, not the district court. ER 25-26. Still dissatisfied, the district court asked the government again, and again, the government answered that it did not know, but that it had never seen a partially concurrent/partially consecutive sentence imposed. ER 27.

Immediately following that exchange, the district court rendered its decision. ER 27-28. In so doing, the district court stated that its discretion was limited to imposing a “concurrent or consecutive sentence. . . .” ER 30-31. On that basis, the district court sentenced Mr. Sanchez to 180 months of incarceration to be followed

by 5 years of supervised release, and that his federal term of imprisonment was to run consecutive to the undischarged portion of his state sentence. ER 27, 34,-35. The remaining counts alleged against Mr. Sanchez were dismissed. ER 1-2, 41.

## 5. The Appeal

On May 8, 2016, the district court filed Mr. Sanchez's notice of appeal which challenged his conviction and sentence. ER 44. On October 26, 2018, the Ninth Circuit Court of Appeals dismissed Mr. Sanchez's appeal on the ground that ". . .his agreement to waive his right to appeal. . ." encompassed the claims he sought to raise on appeal. The dismissal order further stated that ". . .the record shows that appellant knowingly and voluntarily waived his right to appeal." App. 1a.

## E. Bail Status

Mr. Sanchez is currently incarcerated by the state of California serving a 15-year sentence. He has not yet begun his federal sentence of imprisonment.

## REASONS FOR GRANTING THE WRIT

### I. THE DECISION IN THIS MATTER CONFLICTS WITH THE DECISIONS OF SISTER CIRCUITS ON AN IMPORTANT ISSUE OF LAW; THUS, THERE ARE COMPELLING REASONS TO GRANT CERTIORARI.

The Ninth Circuit Court of Appeals dismissed Mr. Sanchez's appeal on the ground that the appellate waiver contained in his plea agreement precluded him from challenging the district court's imposition of a consecutive sentence. App 2a. The Ninth Circuit dismissed Mr. Sanchez's appeal on this grounds even though neither the appellate waiver nor the plea agreement referenced the imposition of concurrent or consecutive sentencing. As discussed below, the Ninth Circuit's decision is in conflict with the decisional authority of sister circuits.

A defendant may waive his statutory right to appeal as part of his plea agreement. *United States v. Cope*, 527 F.3d 944, 949 (9<sup>th</sup> Cir. 2008). Because they are of a contractual nature, plea agreements are

interpreted using contract law standards. *United States v. Ellis*, 641 F.3d 411, 417 (9<sup>th</sup> Cir. 2011). See also *United States v. Jeronimo*, 398 F.3d 1149, 1153 (9<sup>th</sup> Cir. 2005) citing *United States v. Clark*, 218 F.3d 1092, 1095 (9<sup>th</sup> Cir. 2000). A defendant's waiver of his appellate rights is enforceable if the language of the waiver encompasses the defendant's right to appeal on the grounds raised. *Cope*, 527 F.3d at 949-950; *United States v. Joyce*, 357 F.3d 921, 922 (9<sup>th</sup> Cir. 2004). The scope of a waiver is demonstrated by the express language of the plea agreement. *United States v. Medina–Carrasco*, 815 F.3d 457, 461 (9<sup>th</sup> Cir. 2016); *United States v. Leniear*, 574 F.3d 668, 672 (9<sup>th</sup> Cir. 2009); *United States v. Watson*, 582 F.3d 974, 986 (9<sup>th</sup> Cir. 2009).

In this case, the pertinent appellate waiver states:

#### LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

28. Defendant agrees that, provided the Court imposes the sentence specified in paragraph 25 above, defendant gives up the right to appeal any portion of that sentence.

ER 817.

Paragraph 25 of the plea agreement, in turn, states:

25. Defendant and the USAO agree that, taking into account the factors listed in 18 U.S.C. § 3553(a)(1)-(7) and the relevant sentencing guideline factors set forth above, an appropriate disposition of this case is that the Court impose a sentence of: 180 months imprisonment; five years supervised release with conditions to be fixed by the Court; and a \$300 special assessment.

ER 816.

Nowhere in the appellate waiver or the plea agreement is there any discussion of whether Mr. Sanchez's federal sentence was to be concurrent with or consecutive to his state sentence. The appellate waiver states that Mr. Sanchez's appellate waiver was a "limited" one. In this regard, it was limited to the sentence discussed in paragraph 25 of the plea agreement. The language of paragraph 25 is limited to ". . .180 months imprisonment; five years supervised release with conditions to be fixed by the Court; and a \$300 special assessment." ER 816. Thus, the decision in this matter holds that a limited appellate waiver be found to encompass a sentencing



provision on which the plea agreement was silent. App 1a. This holding squarely contradicts the holdings of the Second and Sixth Circuits.

Case law in the Second Circuit holds that where a plea agreement does not specify whether the sentence is to run concurrently or consecutively to another sentence, a limited appellate waiver does not prevent a defendant from challenging a consecutive sentence on appeal. See *United States v. Velasquez*, 136 F.3d 921, 922 (2d Cir.1998); *United States v. Brown*, 232 F.3d 44, 48 (2d Cir. 2000); *United States v. Williams*, 260 F.3d 160, 164-65 (2d Cir.2001); *United States v. Stearns*, 479 F.3d 175, 178 (2d Cir. 2007).

Decisional authority in the Sixth Circuit is similar to that of the Second Circuit. In this regard, Sixth Circuit case law holds that when a plea agreement's waiver clause allows appeal on some grounds, disallows appeal on other grounds, and is silent regarding the appealability of a consecutive sentencing decision, that silence is construed against the government and the defendant may appeal the

decision to impose a consecutive sentence. *United States v. Bowman*, 634 F.3d 357, 361 (6<sup>th</sup> Cir.2011); *United States v. Kelley*, 585 Fed.Appx. 310, 313 (6<sup>th</sup> Cir.2014) (per curiam); *United States v. Denton*, 557 Fed.Appx. 506, 506 (6<sup>th</sup> Cir.2014) (per curiam). See also *United States v. McCree*, 299 Fed.Appx. 481, 482-483 (6<sup>th</sup> Cir.2008); *United States v. Brown*, 579 F.3d 672, 677 (6<sup>th</sup> Cir.2009).

The conflict between the circuits on the issue of waiver deepens upon review of additional circuits' authority. Fifth, Seventh, and Tenth-Circuit case law essentially holds that any general reference to sentencing in an appellate waiver can suffice to preclude a challenge to the imposition of a consecutive sentence. *United States v. Barrett*, 403 Fed.Appx. 963, 965 (5<sup>th</sup> Cir. 2010); *United States v. Sadler*, 388 Fed.Appx. 445, 446 (5<sup>th</sup> Cir. 2010); *United States v. Henry*, 702 F.3d 377, 380 (7<sup>th</sup> Cir. 2012); *United States v. Lacy*, 813 F.3d 654, 657 (7<sup>th</sup> Cir. 2016); *United States v. Ibarra-Coronel*, 517 F.3d 1218, 1221 (10<sup>th</sup> Cir.2008); *United States v. Guzman*, 352 Fed.Appx. 284, 287 (10<sup>th</sup> Cir. 2009); *United States v. Sarber*, 646 Fed.Appx. 678, 679 (10<sup>th</sup> Cir.

2016); United States v. Belcher, 637 Fed.Appx. 515 , 517 (10<sup>th</sup> Cir.

2016). These circuits are thus also in conflict with the holdings of the Second and Sixth Circuits.

The conflict between the instant decision and those of the Second and Sixth Circuits is made more pronounced by the various holdings on the relevant issue among the sister circuits. Under these circumstances, this Court should grant the instant petition.

## CONCLUSION

The Ninth Circuit Court of Appeals' decision in this matter is at odds with the decisions of the Second and Sixth Circuits. The relevant decisions in the Fifth, Seventh, and Tenth Circuits deepened this conflict. For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: January 23, 2019

Respectfully submitted,

/s/ *Andrea R. St. Julian*

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Attorney for Defendant-Appellant,  
RICHARD MICHAEL SANCHEZ

# APPENDICES

# APPENDIX A

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

OCT 26 2018

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RICHARD MICHAEL SANCHEZ, a.k.a.  
Pitbull,

Defendant-Appellant.

No. 17-50163

D.C. No. 2:14-cr-00429-JAK  
Central District of California,  
Los Angeles

ORDER

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Appellee's motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 25) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Contrary to appellant's contention, his agreement to waive his right to appeal "any portion" of the stipulated 180-month sentence unambiguously encompasses the claims he now seeks to raise. Moreover, the record shows that appellant knowingly and voluntarily waived his right to appeal.

**DISMISSED.**

# APPENDIX B



**United States District Court  
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. LA CR14-00429 JAK (SSx) (2)

Defendant Richard Michael Sanchez

Social Security No. 0 6 7 5

Alias(es): Richard Michael Ross;

(Last 4 digits)

akas: Monikers: "Pitbull", "Littleman", "LittleRichard"

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
04	27	2017

**COUNSEL**

Marilyn E. Bednarski, Appt.

(Name of Counsel)

**PLEA**☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea.☐ **NOLO  
CONTENDERE**☐ **NOT  
GUILTY****FINDING**

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of: Racketeer Influenced and Corrupt Organizations Conspiracy pursuant to 18 U.S.C. § 1962(d), 18 U.S.C. § 1963(a) as charged in Count 1 of the Indictment; Conspiracy to Distribute Controlled Substances pursuant to 21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A) as charged in Count 7 of the Indictment; and Conspiracy to Launder Money pursuant to 18 U.S.C. § 1956(h) as charged in Count 59 of the Indictment

**JUDGMENT  
AND PROB/  
COMM  
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Richard Michael Sanchez, is hereby committed on Counts, 1, 7, and 59 of the Indictment to the custody of the Bureau of Prisons for a term of **ONE HUNDRED EIGHTY (180) MONTHS**. This term consists of 180 months on each of Counts 1, 7, and 59, to be served concurrently.

Pursuant to USSG §5G1.3(c), his term is to run consecutive to any undischarged prison term imposed in Los Angeles County Superior Court, Pomona, Docket No. KA102293.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five (5) years. This term consists of 5 years on each of Counts 1 and 7, and 3 years on Count 59 of the Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation Office and General Order 05-02.
2. 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, not to exceed eight tests per month, as directed by the Probation Officer.
3. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath and/or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
4. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the United States Probation Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs, and the defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.
5. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the defendant's drug dependency to the aftercare contractors during the period of community supervision, pursuant to 18 U.S.C. § 3672. The defendant shall provide

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payment and proof of payment as directed by the Probation Officer.

6. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
7. The defendant shall cooperate in the collection of a DNA sample from the defendant.
8. The defendant shall not associate with anyone known to him to be a El Monte Flores or Mexican Mafia gang member and others known to him to be participants in the El Monte Flores, El Monte Hayes, or Mexican Mafia gang's criminal activities, with the exception of his family members. He may not wear, display, use or possess any gang insignias, emblems, badges, buttons, caps, hats, jackets, shoes, or any other clothing that defendant knows evidence affiliation with the El Monte Flores or Mexican Mafia gang, and may not display any signs or gestures that defendant knows evidence affiliation with the El Monte Flores or Mexican Mafia gang.
9. As directed by the Probation Officer, the defendant shall not be present in any area known to him to be a location where members of the El Monte Flores, El Monte Hayes, and Mexican Mafia gang meet and/or assemble.
10. The defendant shall submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without warrant, by any law enforcement or Probation Officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant, and by any Probation Officer in the lawful discharge of the officer's supervision function.

The Court authorizes the Probation Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

It is ordered that the defendant shall pay to the United States a special assessment of \$300, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

The Court has found that the property identified in the preliminary order of forfeiture is subject to forfeiture. The preliminary order is incorporated by reference into this judgment and is final.

The defendant is advised of his right to appeal.

The Court grants the Government's request to dismiss all remaining counts as to this defendant only.

The Court recommends to the Bureau of Prisons that the defendant be housed at a facility located in Southern California.

# **IT IS SO ORDERED.**

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

April 28, 2017

Date



John A. Kronstadt, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

April 28, 2017

Filed Date

By



Andrea Keifer, Deputy Clerk

USA vs. Richard Michael Sanchez

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The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

**STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE**

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. 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;
11. 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;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. 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;
14. 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 conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

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☐ The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

#### **STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS**

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15<sup>th</sup>) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence (pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
  - Non-federal victims (individual and corporate),
  - Providers of compensation to non-federal victims,
  - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

#### **SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE**

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Richard Michael SanchezDocket No.: LA CR14-00429 JAK (SSx) (2)**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

Defendant noted on appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_  
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By \_\_\_\_\_

Date \_\_\_\_\_

Deputy Marshal

**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By \_\_\_\_\_

Filed Date \_\_\_\_\_

Deputy Clerk

**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_

Defendant

Date \_\_\_\_\_

\_\_\_\_\_  
U. S. Probation Officer/Designated Witness

Date \_\_\_\_\_

**NOTICE PARTY SERVICE LIST**

Case No. \_\_\_\_\_ Case Title \_\_\_\_\_

Title of Document \_\_\_\_\_

<u>ADR</u>
<u>BAP (Bankruptcy Appellate Panel)</u>
<u>BOP (Bureau of Prisons)</u>
<u>CA State Public Defender</u>
<u>CAAG (California Attorney General's Office - Keith H. Borjon, L.A. Death Penalty Coordinator)</u>
<u>Case Assignment Administrator</u>
<u>Chief Deputy – Administration</u>
<u>Chief Deputy – Case Processing</u>
<u>Chief Deputy – Judicial Services</u>
<u>CJA Supervising Attorney</u>
<u>Clerk of Court</u>
<u>Death Penalty H/C (Law Clerks)</u>
<u>Deputy-in-Charge Eastern Division</u>
<u>Deputy-in-Charge Southern Division</u>
<u>Federal Public Defender</u>
<u>Fiscal Section</u>
<u>Intake Section, Criminal LA</u>
<u>Intake Section, Criminal SA</u>
<u>Intake Supervisor, Civil</u>
<u>Managing Attorney, Legal Services Unit</u>
<u>MDL Panel</u>
<u>Ninth Circuit Court of Appeal</u>
<u>PIA Clerk - Los Angeles (PIALA)</u>
<u>PIA Clerk - Riverside (PIAED)</u>
<u>PIA Clerk - Santa Ana (PIASA)</u>
<u>PSA - Los Angeles (PSALA)</u>
<u>PSA - Riverside (PSAED)</u>
<u>PSA - Santa Ana (PSASA)</u>
<u>Statistics Clerk</u>

<u>US Attorney's Office - Civil Division -L.A.</u>
<u>US Attorney's Office - Civil Division - S.A.</u>
<u>US Attorney's Office - Criminal Division -L.A.</u>
<u>US Attorney's Office - Criminal Division -S.A.</u>
<u>US Bankruptcy Court</u>
<u>US Marshals Service - Los Angeles (USMLA)</u>
<u>US Marshals Service - Riverside (USMED)</u>
<u>US Marshals Service - Santa Ana (USMSA)</u>
<u>US Probation Office (USPO)</u>
<u>US Trustee's Office</u>
<u>Warden, San Quentin State Prison, CA</u>
<u>Warden, Central California Women's Facility</u>

**ADD NEW NOTICE PARTY (if sending by fax, mailing address must also be provided)**Name:Firm:Address (include suite or floor):\*E-mail:\*Fax No.:

\* For CIVIL cases only

**JUDGE / MAGISTRATE JUDGE (list below):**

Initials of Deputy Clerk \_\_\_\_\_