

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 29 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 16-10540

Plaintiff-Appellee,

D.C. No.

v.

1:13-cr-00238-LJO-SKO-1

JUAN MANUEL PEREZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, FRIEDLAND and BENNETT, Circuit Judges.

Juan Manuel Perez appeals from the district court’s judgment and challenges the 100-month concurrent sentences imposed on remand following his jury-trial convictions for possession of an illegal firearm, in violation of 26 U.S.C. § 5861(d), and being a felon in possession of a firearm, in violation of 18 U.S.C.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 922(g)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Perez contends that the district court erred in concluding that his two prior convictions for assault with a deadly weapon in violation of California Penal Code § 245(a)(1) are categorical crimes of violence under U.S.S.G.

§§ 2K2.1(a)(1) and 4B1.2(a)(1). Perez’s argument is foreclosed by *United States v. Vasquez-Gonzalez*, 901 F.3d 1060, 1065-68 (9th Cir. 2018), which was decided after briefing in this case was complete. In *Vasquez-Gonzalez*, this court held that section 245(a)(1) is a categorical crime of violence under 18 U.S.C. § 16(a), which is materially identical to § 4B1.2(a)(1). *See id.* at 1068; *see also United States v. Werle*, 877 F.3d 879, 883-84 (9th Cir. 2017) (stating that the language of § 16(a) “largely mirrors” the language of § 4B1.2(a)(1)). Accordingly, *Vasquez-Gonzalez* controls here and the district court did not err in concluding that Perez’s prior convictions for assault with a deadly weapon in violation of section 245(a)(1) are categorical crimes of violence.

AFFIRMED.

**UNITED STATES DISTRICT COURT
Eastern District of California**

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **1:13CR00238-001**

JUAN MANUEL PEREZ

Defendant's Attorney: Peggy Sasso, Assistant Federal Defender

AKA: Juan Manuel Perez, Jr.; John Manuel Perez, Jr.; plus variations

Date of Original Judgment: November 17, 2014
(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (Fed R. Crim. P. 35(a))
- Reduction of Sentence for Changed Circumstances (Fed R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed R. Crim. P. 35(c))
- Correction of Sentence for Clerical Mistake (Fed R. Crim. P. 36)
- Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment (s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant to 28 U.S.C. §2255, 18 U.S.C. §3559(c)(7), Modification of Restitution Order

THE DEFENDANT:

- pleaded guilty to count(s) ____ .
- pleaded nolo contendere to count(s) ____ which was accepted by the court.
- was found guilty on count(s) 1, 2, 3 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
26 U.S.C. §5861(d)	POSSESSION OF AN ILLEGAL FIREARM (Class C Felony)	04/26/2013	1
18 U.S.C. §922(g)(1)	FELON IN POSSESSION OF A FIREARM (Class C Felony)	04/26/2013	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ____ and is discharged as to such count(s).
- Count (s) 3 is dismissed pursuant to Remand from Ninth Circuit.
- Indictment is to be dismissed by District Court on motion of the United States.
- Appeal rights given. Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall 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 material changes in economic circumstances.

12/12/2016
Date of Imposition of Judgment
/s/ Lawrence J. O'Neill
Signature of Judicial Officer
Lawrence J. O'Neill, United States District Judge
Name & Title of Judicial Officer
12/20/2016
Date

DEFENDANT: **JUAN MANUEL PEREZ**
CASE NUMBER: **1:13CR00238-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 100 months on each of Counts 1 and 2, to be served concurrently, for a total term of imprisonment of 100 months.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be incarcerated at Mendota, California facility, but only insofar as this accords with security classification and space availability. The Court recommends the defendant participate in the 500-Hour Bureau of Prisons Substance Abuse Treatment Program.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district
 - at ___ on ___.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before ___ on ___.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.
 If no such institution has been designated, to the United States Marshal for this district.

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 United States Marshal

DEFENDANT: **JUAN MANUEL PEREZ**
CASE NUMBER: **1:13CR00238-001**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
36 months on Counts 1 and 2, all to be served concurrently, for a total term of 36 months.

MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- You must cooperate in the collection of DNA as directed by the probation officer.
- You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense.
- You must participate in an approved program for domestic violence.
-

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

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the Court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment, you must try to find fulltime employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the Court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
3. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
4. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
5. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
6. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.

DEFENDANT: **JUAN MANUEL PEREZ**
 CASE NUMBER: **1:13CR00238-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200		

- The determination of restitution is deferred until ____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals	\$ ____	\$ ____	

- Restitution amount ordered pursuant to plea agreement \$ ____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - The interest requirement is waived for the fine restitution
 - The interest requirement for the fine restitution is modified as follows:
- If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.
- If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

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

DEFENDANT: **JUAN MANUEL PEREZ**
CASE NUMBER: **1:13CR00238-001**

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ 200.00 due immediately, balance due
 Not later than ____, or
 in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

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.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

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.

FILED

JUN 22 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN MANUEL PEREZ,

Defendant - Appellant.

No. 14-10528

D.C. No. 1:13-cr-00238-LJO-
SKO-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Chief District Judge, Presiding

Argued and Submitted June 14, 2016
San Francisco, California

Before: D.W. NELSON, TASHIMA, and OWENS, Circuit Judges.

Juan Manuel Perez appeals from the district court's denial of his motion to suppress, his convictions, and his sentence. We affirm in part, and vacate and remand in part.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1. The district court did not err in denying Perez's motion to suppress evidence found and statements made during the search of the structure in which Perez was located because the police had probable cause to believe the structure at issue was Perez's residence.

For the police to enter a residence on the basis of an arrest warrant or on the basis of a parole search condition, there must be probable cause to believe that the person named in the arrest warrant or the person subject to the search condition resides there. *See United States v. Harper*, 928 F.2d 894, 896 (9th Cir. 1991) (arrest warrant), *overruled in part on other grounds by United States v. King*, 687 F.3d 1189 (9th Cir. 2012) (per curiam); *see also United States v. Howard*, 447 F.3d 1257, 1262 (9th Cir. 2006) (parole search condition). Our circuit has "applied a relatively stringent standard in determining what constitutes probable cause that a residence belongs to a person on supervised release." *Howard*, 447 F.3d at 1262. "[T]he facts known to the officers at the time of the search must have been sufficient to support a belief, in a man of reasonable caution," that the parolee lived at the residence. *Id.* (internal quotation marks and citation omitted). "This is a higher standard than a mere well-founded suspicion." *Id.*

Given the totality of the circumstances, the police here had probable cause to believe the structure was Perez's residence. There was a warrant for Perez's arrest

because he failed to keep an address on file with his parole officer. The police therefore did not have an address at which officers could locate him (or any address to surveil to determine whether he lived at a reported address, as opposed to the address the witness reported). *See id.* at 1265 (listing as an important factor in the probable cause analysis whether a parolee had an address on file). Further, it was reasonable for the police to rely on the information provided by the witness. She was not a confidential or otherwise suspicious informant, but rather came to provide information to the police in person. Additionally, her information was corroborated when the police confirmed that Perez was a parolee-at-large and when she led police to Perez's specific location amongst several other structures.

Accordingly, we affirm the district court's denial of Perez's motion to suppress.

2. There was sufficient evidence for the jury to convict Perez for possession of the firearm in violation of 18 U.S.C. § 922(g)(1) under a constructive possession theory. The firearm was found in his residence, and the caliber of the firearm matched the caliber of ammunition that Perez was carrying in his pocket. Moreover, some of the ammunition in Perez's pocket had the same manufacturer markings as the cartridge loaded in the weapon. A reasonable juror could have inferred that Perez knew of the firearm's existence and had the power and intent to

control it. *See United States v. Vasquez*, 654 F.3d 880, 885-86 (9th Cir. 2011). Thus, we affirm Perez's conviction for felon in possession fo a firearm under § 922(g)(1).

3. Perez's convictions and sentences on count two (for felon in possession of a firearm under § 922(g)(1)) and count three (for felon in possession of ammunition under § 922(g)(1)) are cumulative punishments that violate the Double Jeopardy Clause.

To be convicted on two separate counts under § 922(g)(1), the government must demonstrate that the firearms and/or ammunition "were stored or acquired at different times and places." *United States v. Wiga*, 662 F.2d 1325, 1336 (9th Cir. 1981) (quotation omitted). Separateness of acquisition or possession must be found by a jury. *See United States v. Szalkiewicz*, 944 F.2d 653, 653-54 (9th Cir. 1991) (per curiam); *see also United States v. Ankeny*, 502 F.3d 829, 838 (9th Cir. 2007).

Here, the district court gave no instructions to the jury regarding separateness of acquisition or possession. The jury therefore made no such finding regarding separateness of acquisition or possession of the firearm and ammunition Perez possessed. This is plain error. *See id.* at 839. Thus, we vacate and remand with instructions for the district court to vacate the multiplicitious conviction,

sentence, and special assessment fee. *See United States v. Zalapa*, 509 F.3d 1060, 1065 (9th Cir. 2007). The district court may, in its discretion, choose which multiplicitous conviction and sentence to vacate. *See United States v. Hector*, 577 F.3d 1099, 1104 (9th Cir. 2009).

4. Perez challenges his sentence under the Armed Career Criminal Act (ACCA). Perez was sentenced under the ACCA because the district court determined that he had been convicted of three predicate violent felonies, one of which—the violation of Cal. Penal Code § 69—was considered a violent felony under the residual clause. *See* 18 U.S.C. § 924(e)(2)(B)(ii). Since Perez’s sentencing, the Supreme Court decided *Johnson v. United States*, 135 S.Ct. 2551 (2015), holding that the residual clause is unconstitutionally vague, in violation of the Due Process Clause. Accordingly, and consistent with the position of both parties, we vacate and remand for resentencing in light of *Johnson*.

For the reasons stated in Parts 3 and 4, the sentence is vacated and the case remanded for resentencing.

AFFIRMED in part, VACATED and REMANDED in part.

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA

v.

JUAN MANUEL PEREZ**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **1:13CR00238-001**

Defendant's Attorney: Andras Farkas, Victor Chavez, Assistant Federal Defender

THE DEFENDANT:

- pleaded guilty to count(s) ____ .
 pleaded nolo contendere to count(s) ____ which was accepted by the court.
 was found guilty on count(s) 1, 2, 3 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
26 U.S.C. §5861(d)	POSSESSION OF AN ILLEGAL FIREARM	04/26/2013	1
18 U.S.C. §922(g)(1)	FELON IN POSSESSION OF A FIREARM	04/26/2013	2
18 U.S.C. §922(g)(1)	FELON IN POSSESSION OF AMMUNITION	04/26/2013	3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ____ and is discharged as to such count(s).
 Count (s) ____ dismissed on the motion of the United States.
 Indictment is to be dismissed by District Court on motion of the United States.
 Appeal rights given. Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall 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 material changes in economic circumstances.

11/17/2014

Date of Imposition of Judgment

/s/ Lawrence J. O'Neill

Signature of Judicial Officer

Lawrence J. O'Neill, United States District Judge

Name & Title of Judicial Officer

11/19/2014

Date

DEFENDANT: **JUAN MANUEL PEREZ**
CASE NUMBER: **1:13CR00238-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months on Count 1, and terms of 360 months on each of Counts 2 and 3, all to be served concurrently, for a total term of imprisonment of 360 months.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be incarcerated at Mendota, California facility, but only insofar as this accords with security classification and space availability. The Court recommends the defendant participate in the 500-Hour Bureau of Prisons Substance Abuse Treatment Program.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district
 - at ___ on ___.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before ___ on ___.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.
 If no such institution has been designated, to the United States Marshal for this district.

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 United States Marshal

DEFENDANT: **JUAN MANUEL PEREZ**
CASE NUMBER: **1:13CR00238-001**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
of 36 months on Counts 1, 2, and 3, all to be served concurrently, for a total term of 36 months.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two 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 controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- 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.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.), as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of qualifying offense.
- The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, 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 with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow 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 ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol;
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 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;
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.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
3. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
4. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
5. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
6. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.

DEFENDANT: **JUAN MANUEL PEREZ**
 CASE NUMBER: **1:13CR00238-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300		

- The determination of restitution is deferred until ____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals	\$ _____	\$ _____	

- Restitution amount ordered pursuant to plea agreement \$ ____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - The interest requirement is waived for the fine restitution
 - The interest requirement for the fine restitution is modified as follows:
- If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.
- If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

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

DEFENDANT: **JUAN MANUEL PEREZ**
CASE NUMBER: **1:13CR00238-001**

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ 300.00 due immediately, balance due
 Not later than ____, or
 in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

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.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

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.