

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FRANCISCO JAVIER NUNEZ,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Respectfully submitted,

Steve Hershberger, Attorney at Law
Texas State Bar # 09543950
600 No. Marienfeld St., Ste 1035
432-570-4014

Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the District Court denied the Petitioner's constitutional right to substantive due process under the Fifth Amendment in this constructive possession firearm case by the adding a four-point enhancement of the firearm base offense level for a scratched serial absent proof of scienter.

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IN THE SUPREME COURT OF THE UNITED STATES

FRANCISCO JAVIER NUNEZ,

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v.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, FRANCISCO JAVIER NUNEZ, Appellant in the United States Court of Appeals for the Fifth Circuit in Case No. 19-50882 and the Defendant in Case No. MO-19-CR-094, submits this Petition for Writ of Certiorari and respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on August 20, 2020.

OPINION BELOW

On August 20, 2020, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the sentence returned against Petitioner. A copy of the Opinion is attached as Appendix A.

The District Court's Criminal Judgment is attached as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in pertinent part to the Case *sub judice*:

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

STATEMENT OF THE CASE

The Government, on April 24, 2019, obtained a single-count indictment against FRANCISCO NUNEZ alleging he was a prohibited person, i.e., a felon, who was in possession of a firearm. A Superseding Information was filed on or about June 18, 2019, alleging an offense under 18 U.S.C. Sec. 922(g)(1). Specifically, the Superseding Information alleged that Petitioner and one Karley Machel Hollums, possessed a Ruger LCP .380 caliber firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year.

On or about, Petitioner entered a plea of "guilty" on or about June 18, 2019.

The United States District Court, Western District of Texas, Midland Division, returned a sentence of 120 months. Prior to the sentencing, the United States Probation Department recommended a four-point sentencing increase to the base offense level premised on the subject firearm had an "scratched off" serial number.

Petitioner objected to the four-point enhancement on the ground that this particular case involved constructive possession, the subject firearm had been purchased and controlled by a co-defendant and Petitioner lacked scienter of the tarnished serial number. The objection was overruled by the District Court

Petitioner appealed to the United States Court of Appeals, for the Fifth Circuit. On or about August 20, 2020, the United States Court of Appeals affirmed the sentence of the District Court, the United States District Court for the Western District of Texas.

REASON FOR GRANTING THE WRIT

The District Court erred, as a matter of law, by increasing the base offense level against Petitioner by four level based on a finding of a scratched serial number absent a finding of Scierter.

In general, litigants are entitled to a fair adjudication based solely on the evidence adduced at a trial or sentencing hearing. Jordan v. Massachusetts, 225 U.S. 167, 176 (1912); Smith v. Phillips, 455 U.S. 209, 217 (1982). Further, the United States Supreme Court has recognized that due process implies a tribunal both impartial and mentally competent to afford a hearing with a factfinder capable and willing to decide the case solely on the evidence before it. Tanner v. United States, 483 U.S. 107, 117 (1987).

The Government in this case obtained a one-count indictment against Petitioner, alleging that he was a felon in possession of a firearm contra to 18 U.S.C. Sec. 922(g)(1). The core of the case centered on the facts that the firearm was purchased by the co-defendant and she actually possessed the firearm and carried it with her into Petitioner's pickup truck. The Government's evidence was that Petitioner constructively possessed the firearm. There was no evidence from the Government that Petitioner either altered the firearm's serial number, or knew of the serial number alteration.

The operative provision in this case is Section 2K2.1 of the United States Sentencing Guidelines. That section provides:

...[i]f any firearm...had an altered or obliterated serial number, increase by 4 levels.

18 U.S.S.G.S. Sec. 2K2.1(b)(4)(B) (USCS 2019). The United States Court of Appeals for the Fifth Circuit reiterated its strict liability standard regarding the question of scienter. United States v. Perez, 585 F.3d 880 (5th Cir. 2009). In that case, the Court of Appeals held that the four-level enhancement applies regardless whether the defendant knew or had reason to believe that the firearm had an altered or obliterated serial number. Id. at 884.

Petitioner will concede that the majority of circuit courts of appeal employ a strict liability standard. United States v. Gonzalez, 857 F.3d 46 (1st Cir. 2017); United States v. Schnell, 982 F.2d 216 (7th Cir. 1992); United States v. Martinez, 339 F.3d 759 (8th Cir. 1996); United States v. Mobley, 956 F.2d 450 (3^d Cir. 1992); United States v. Richardson, 8 F.3d 769 (11th Cir. 1993); United States v. Singleton, 946 F.2d 23 (5th Cir. 1991), cert. denied 502 U.S. 1117 (1999).

This case is distinct from that line of authority. In the first place, the co-defendant had purchased the gun and brought the gun into the vehicle. There was no evidence that Petitioner had ever handled the gun or had direct care, custody or control of the Ruger or encouraged its use by Hollums.

The Government's case centered on a theory of opportunity possession. He knew that the co-defendant had in her possession a pistol, and he could access the firearm, if he wished. However, Petitioner had not committed an affirmative act regarding the firearm. He did not place the gun in the vehicle; he did not handle the gun; nor did he use the gun.

The absence of a scienter requirement under the facts of this case violates substantive due process. In general, a mens rea-less statute can violate a defendant's rights to due process. Staples v. United States, 511 U.S. 600, 615 (1994). The existence of mens rea is the rule of,

rather than, the exception, to principles of American jurisdiction. Dennis v. United States, 347 U.S. 494 (1951). There is a presumption against strict liability in criminal law. Perrin v. United States, 444 U.S. 37, 42 (1979).

Petitioner moves for this Court to examine and hold that the Government must prove scienter, i.e., intent in applying the four level upward adjustment to the base offense level. The United States Supreme Court has imposed an intent requirement in criminal prosecution. In Liparota v. United States, 471 U.S. 419 (1985), the United States Supreme imposed an intent element for the crime of unauthorized possession of food stamps. Additionally, Morrisette v. United States, 342 U.S. 246 (1952) held intent must be proven in the offense of unauthorized use of government property.

This case is distinct from the circuit courts of appeals holdings listed above. First, those cases uniformly detail actual possession of the firearm. In other words, the defendant could see the serial numbers or had an opportunity to view the serial numbers. This case involves constructive possession. The firearm was owned and possessed by the co-defendant, Hollums.

The opinions of the circuit courts of appeals dismiss a scienter requirement in Section 2K2 on a distinction that the four-level is not a criminal statute, but a sentencing mechanism. Petitioner urges the distinction ignores the fundamentals of due process on two grounds. First, strict liability has the potential to punish a defendant for unknown conduct. Second, the sentencing factor operates to increase substantially a sentence. Thus, the applicable of Staples into the sentencing calculation would comport with due process.

Petitioner requests the District Court sentence be vacated on the ground that the imposition of the four-level upward adjustment to Petitioner's base offense level in sentencing

violates substantive due process.

CONCLUSION

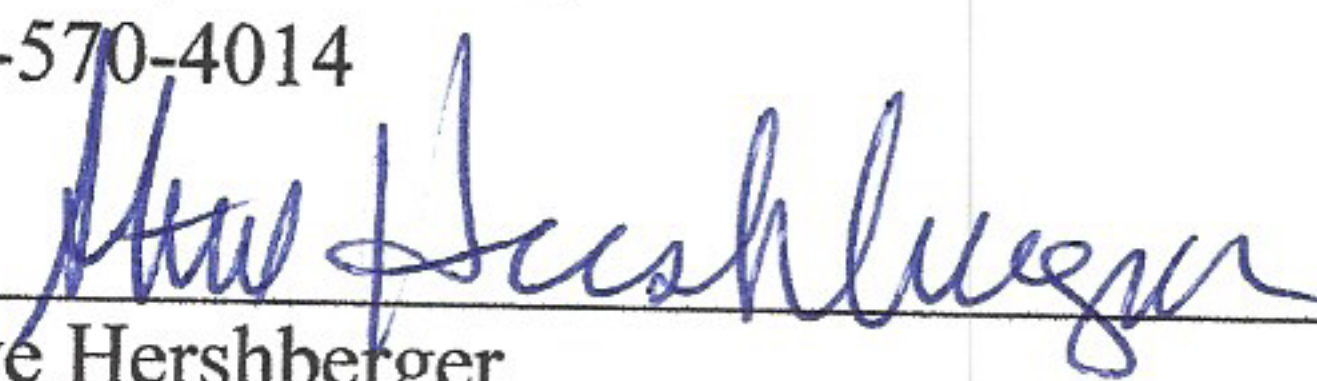
For the foregoing reasons, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted and prays that the Criminal Judgment be reversed, and the case be remanded to the United States District Court for the Western District of Texas for resentencing premised on a lower base offense level. Petitioner further requests such other relief to which he is justly entitled to receive either in law or through equity.

PRAYER FOR RELIEF

Petitioner, FRANCISCO JAVIER NUNEZ, requests that the Petition for Writ of Certiorari be granted for the reasons stated and that the conviction entered against him be vacated and this case remanded for re-sentencing, and such other relief to which Petitioner would be entitled to receive in law or in equity.

Respectfully submitted,

Steve Hershberger, Attorney at Law
600 No. Marienfeld St., Ste. 1035
Midland, TX 79701
432-570-4014

By: 
Steve Hershberger
Texas State Bar # 09543950

Attorney for Petitioner

APPENDIX A
(Opinion of the United States Court of Appeals, for the Fifth Circuit)

CASE: 19-50882 Document: 00010001010 Page: 1 Date Filed: 08/20/2020

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 20, 2020

Lyle W. Cayce
Clerk

No. 19-50882
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANCISCO JAVIER NUNEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:19-CR-94-1

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Francisco Javier Nunez pleaded guilty to possessing a firearm as a felon and was sentenced to 120 months of imprisonment and three years of supervised release. Nunez now appeals his

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

sentence, arguing that the district court erred in calculating his guidelines sentencing range by improperly applying a four-level enhancement to his offense level because the firearm's serial number had been scratched off. "We review a district court's application of the Sentencing Guidelines *de novo*, and its factual findings for clear error." *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013).

"Guideline § 2K2.1(b)(4) applies a four-level enhancement to a defendant's base offense level '[i]f any firearm ... had an altered or obliterated serial number.'" *United States v. Jones*, 927 F.3d 895, 896 (5th Cir. 2019). "Subsection (b)(4) applies regardless of whether the defendant knew or had reason to believe that the firearm ... had an altered or obliterated serial number." UNITED STATES SENTENCING GUIDELINES § 2K2.1, cmt. n.8(B). It "does not require that the defendant be the one who obliterated or altered the serial number or that he know it had been obliterated or altered." *United States v. Perez*, 585 F.3d 880, 883 (5th Cir. 2009).

Nunez contends that the district court should not have applied § 2K12.2(b)(4) in his case because his codefendant purchased the gun and brought it into Nunez's car, and that he had not touched the gun or taken any other affirmative action with respect to it. We have "continually enforced the clear and unambiguous language of § 2K2.1(b)(4) and its strict liability standard." *Perez*, 585 F.3d at 883. Nunez does not challenge the district court's finding that the firearm's serial number had been scratched off, so he has not shown that the district court erred by applying § 2K2.1(b)(4) when it calculated his sentence. *See Perez*, 585 F.3d at 885. The judgment of the district court is AFFIRMED.

Case: 19-50882 Document: 00010001070 Page: 1 Date Filed: 08/20/2020

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 20, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 19-50882 USA v. Francisco Nunez
USDC No. 7:19-CR-94-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5TH Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5TH Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

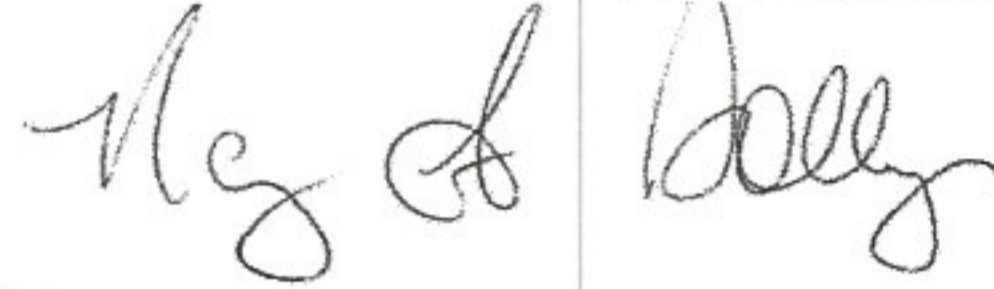
Direct Criminal Appeals. 5TH Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. Joseph H. Gay Jr.
Mr. James Steven Hershberger
Ms. Diane D. Kirstein

APPENDIX B
(Criminal Judgment, United States District Court for the Western District
of Texas, Midland Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:19CR00094(1) DC

USM Number: 29725-480

FRANCISCO JAVIER NUNEZ

Alias(es):

AKA Javier Nunez,; **AKA** Frankie Javier Nunez,; **AKA**

Fransisco Nunez,; **AKA** Francisco Nunez,;

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Francisco Javier Nunez, was represented by Steve Hershberger.

The defendant pled guilty to Count(s) 1, of the Superseding Information on June 18, 2019. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

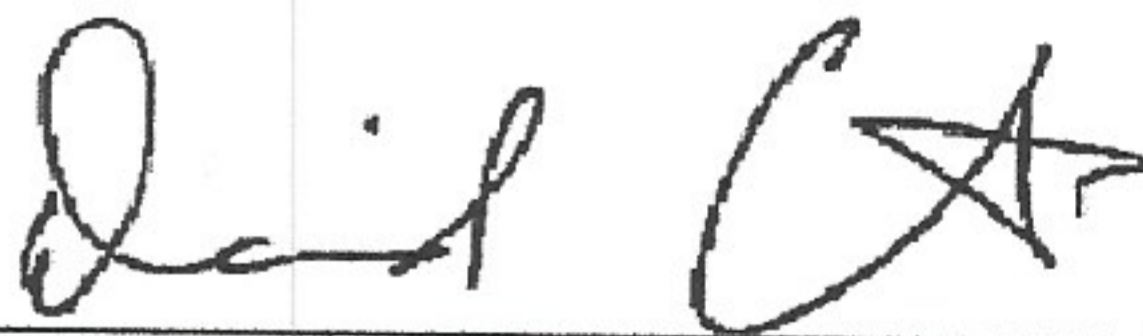
| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count(s)</u> |
|----------------------------|----------------------------------|----------------------|-----------------|
| 18 U.S.C. § 922(g)(1) | Felon in Possession of a Firearm | March 28, 2019 | 1s |

As pronounced on September 11, 2019, 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.

On motion of the United States, the Court has dismissed all remaining counts with prejudice.

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 shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 23rd day of September, 2019.



David Counts
United States District Judge

DEFENDANT: FRANCISCO JAVIER NUNEZ
CASE NUMBER: 7:19CR00094(1) DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **One Hundred Twenty (120) months** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

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

That the defendant be incarcerated in a federal facility on the East Coast if possible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of the Judgment.

United States Marshal

DEFENDANT: FRANCISCO JAVIER NUNEZ
CASE NUMBER: 7:19CR00094(1) DC

SUPERVISED RELEASE

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

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: FRANCISCO JAVIER NUNEZ
CASE NUMBER: 7:19CR00094(1) DC

CONDITIONS OF SUPERVISED RELEASE
(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] 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 on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.

DEFENDANT: FRANCISCO JAVIER NUNEZ
CASE NUMBER: 7:19CR00094(1) DC

- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: FRANCISCO JAVIER NUNEZ
CASE NUMBER: 7:19CR00094(1) DC

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701.

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

| | | | | |
|--------|----------------------------------|--------------------------------|--------------------|---------------------------|
| | <u>Special Assessment</u> | <u>JVTA Assessment*</u> | <u>Fine</u> | <u>Restitution</u> |
| TOTAL: | \$100.00 | \$0.00 | \$0.00 | \$0.00 |

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$100.00**.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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.

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22