

No. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

JOSE ANGEL TORRES,
Petitioner

v.
UNITED STATES OF AMERICA,
Respondent

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATE COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Denton B. Lessman
Texas State Bar No: 24042474
100 N. 6th Street, Ste. 702
Waco, TX 76701
Telephone: (254) 776-4544
Fax: (254) 776-4551
Email: Denny@LessmanLaw.com
Attorney for the Petitioner,
Jose Angel Torres

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE UNITED STATES SUPREME COURT:

COMES NOW, JOSE ANGEL TORRES, Petitioner, and requests leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Undersigned counsel was appointed¹ to represent Petitioner in accordance with the Criminal Justice Act by the Honorable District Court for the Western District of Texas, Waco Division, and Petitioner has previously been granted permission to proceed in forma pauperis in the Fifth Circuit Court of Appeals.

Respectfully Submitted,

Law Office of Denton B. Lessman
100 N. 6th Street, Ste. 702
Waco, TX 76701
Telephone: (254) 776-4544
Fax: (254) 776-4551

/s/ Denton B. Lessman
Email: Denny@LessmanLaw.com
Attorney for the Petitioner,
Jose Angel Torres

¹ A copy of the order of appointment is appended.

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing document has been served upon the following party(ies) via First Class Mail with Tracking on December 28, 2020:

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530-001

United States Attorney for the Western District of Texas
Appellate Division
601 NW Loop 410, Suite 600
San Antonio, Texas 78216

Jose Angel Torres BOP #95080-380
Beaumont Medium MCI
5830 Knauth Road
Beaumont, Texas 77705

/s/ Denton B. Lessman
Attorney for Jose Angel Torres

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA

vs.

(3) JOSE ANGEL TORRES

§
§
§
§
§

NO: WA:17-CR-00233(3)-ADA


ORDER

Came on this date to be considered the Motion of Attorney withdrawing from case to Withdraw as Attorney of Record for Defendant. The Court, having considered the motion, finds that it has merit and should be granted. Accordingly, it is

ORDERED that the Motion of Wade N. Faulkner to Withdraw as Attorney of Record for the defendant is **GRANTED**. It is further

ORDERED that Denton Bryan Lessman is **APPOINTED** to represent the Defendant for purposes of appeal.

SIGNED this February 7, 2019.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

JOSE ANGEL TORRES,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

Denton B. Lessman
Texas Bar No. 24042474
100 N. 6th Street, Ste. 702
Waco, Texas 76701
Tel: (254) 776-4544
Email: Denny@LessmanLaw.com
Attorney for the Petitioner,
Jose Angel Torres

QUESTIONS PRESENTED FOR REVIEW

Is a Defendant denied a Fair Trial when a District Court Finds that additional video evidence is admissible under the Rule of Completeness to prevent the jury from being misled by the Government but is prevented from presenting the evidence because it is considered hearsay?

If a District Court makes an error of law, does a circuit court err under the abuse of discretion standard when it concludes that such error is not substantial?

Is the Rule of Completeness, including Rule 6 of the Federal Rules of Evidence, subject to a hearsay analysis?

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OPINION BELOW

The opinion from the Fifth Circuit was issued on June 8, 2020, was not selected for publication in the Federal Reporter, but reported at 808 Fed.Appx. 270 and is attached hereto as Appendix A.

A Petition for Rehearing En Banc was denied on July 28, 2020 and is attached hereto as Appendix B.

The criminal judgment from the Western District of Texas was entered on January 23, 2019, and is attached hereto as Appendix C.

JURISDICTION

The Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254. The date on which the United States Court of Appeals decided this case was June 8, 2020 and the Order denying an En Banc Rehearing was entered on July 28, 2020. The March 19, 2020 Covid-19 order extended the filing deadline to 150 days or December 25, 2020 which is extended past the Christmas holiday weekend to December 28, 2020.

The United States District Court for the Western District of Texas, Waco Division had proper subject matter jurisdiction for this case under 18 U.S.C. 3231 & 3232.

The Fifth Circuit had jurisdiction of this appeal under 28 U.S.C. Sec. 1291 and 18 U.S.C. Sec. 3742(a). Notice of appeal was properly filed on January 24, 2019. (ROA.90)

STATEMENT OF THE CASE AND
ARGUMENT

Nature of the Case

Jose Angel Torres (Torres) was convicted in the Western District of Texas by a jury for possession with the intent to distribute at least 500 grams of methamphetamine and was sentenced to 260 months incarceration, five years supervised release, a \$1000 fine, and a \$100 special assessment.

Nature of the Issues

The issues in this case centers around: 1) Torres' Sixth Amendment right to a fair trial, 2) Torres' ability or right to present evidence under Fed. R. Evid. 106 and the common law rule of completeness and the question of these rules being subject to a hearsay analysis, and 3) the Fifth Circuit not finding error under an abuse of discretion standard when the District Court made an error of law.

Specifically, after being arrested, Torres was immediately interviewed by an officer with the Texas Department of Public Safety and was subsequently interviewed a second time two days later. (ROA. 348, 358) At trial, the Government introduced multiple video clips from the two recorded interviews of Torres, approximately 15 or 16 with the longest video clip being about three and a half minutes. (ROA. 190, 334, 368)

Torres asserted that the Government's exhibits were misleading to the jury because they did not provide the full context of the statements that were made. (ROA. 338-339) Torres moved to admit additional video and audio recordings and argued

that under the rule of optional completeness the defense exhibits should be considered by the jury. (ROA.338)

The Government objected that the defense exhibits were not admissible under Rule 801(d)(2) as inadmissible hearsay.

The District Court ruled that video/audio evidence by Torres was relevant and would be admitted under Fed. R. Evid. 106 and the common law rule of completeness; however, it was hearsay and not admissible.

The Fifth Circuit, under an abuse of discretion analysis, deferred to the evidentiary ruling of the District Court.

District Court Felt Constrained because Torres' Evidence was Relevant and Admissible Under Rule 106 and the Rule of Completeness

The Court ruled that Torres' exhibits contained his own statements and were therefore hearsay and inadmissible as hearsay. However, "The Court finds that were the evidence admissible, then he would be correct under the rule of optional completeness and I would certainly allow the additional testimony to be played to put it into context." (ROA.340)

The trial court then asked, "Is there anything else the government wants to put on the record in support of its argument?" (ROA.341)

The government replied, "Judge, the government's position is – and this is under several cases, Your Honor. The doctrine of completeness does not require the admission of otherwise irrelevant material. The statements that this defendant is wanting to admit are not going to explain, they're not going to place in into context,

they're not going to void the misleading of the trier of fact, nor are they going to ensure a fair and impartial understanding. They are clearly just self-serving statements by the defendant. That's the reason that the government – under 106 – another reason that the government would oppose them being in. (ROA.341-342)

The Court and government continued with the following dialog:

The Court: Okay. I will – don't agree with you on that one; however, I will sustain the objection based on hearsay. They're not coming in, but I would –were they admissible, I would think they would be relevant and I will –

[Prosecutor]: And the Court's ruling is that they're just not admissible?

The Court: My ruling is that they're hearsay and they're inadmissible as an evidentiary basis. (ROA.342)

It is clear that the District Court would have admitted Torres' evidence but for hearsay.

Was the District Court Constrained?

Is Fed. R. Evid. 106 and the common law rule of completeness subject to hearsay analysis? Torres asserts not.

The First Circuit, Second Circuit, Tenth Circuit, & D.C. Circuit¹ have held that the Rule 106 and the rule of completeness allows the admission of hearsay statements

¹ *United States v. Bucci*, 525 F.3d 116, 133 (1st Cir. 2008); *United States v. Williams*, 930 F.3d 44, 60 (2nd Cir. 2019); *United States v. Lopez-Medina*, 596 F.3d 716, 735 (10th Cir. 2010); *United States v. Sutton*, 801 F.2d 1346, 1368 (D.C. Cir. 1986).

while the Sixth Circuit and Ninth Circuit² have held that Rule 106 and the rule of completeness is subject to a hearsay determination. The Fifth Circuit has never ruled upon this question.³

Rule of Completeness SHOULD trump the hearsay rule.

“Rule 106 can adequately fulfill its function only by permitting the admission of some otherwise inadmissible evidence when the court finds in fairness that the proffered evidence should be considered contemporaneously. A contrary construction raises the specter of distorted and misleading trials, and creates difficulties for both litigants and the trial court.” *United states v. Sutton*, 801 F.2d 1346, 1368 (D.C. Cir. 1986).

A bar against admitting hearsay under the Rule of Completeness leaves defendants without redress for “the government’s unfair presentation of the evidence.” *United States v. Adams*, 722 F.3d 788, 826-27, n. 31 (6th Cir. 2013) (dissent suggesting en banc reconsideration of the circuit’s rule).

The rule of completeness was designed to prevent the government from offering a misleading-tailored snippet... Although the Rule of completeness cannot serve as an end run around the prohibition on inadmissible hearsay, this principle does not

² *United States v. Adams*, 722 F.3d 788, 826 (6th Cir. 2013); *United States v. Quinones-Chavez*, 641 Fed. Appx. 722, (9th Cir. 2016).

³ The Fifth Circuit acknowledged in *United States v. Garcia*, 530 F.3d 348, 354 n.29 (5th Cir. 2008) that “It remains unsettled whether Rule 106 trumps other evidentiary rules and makes the inadmissible admissible.”

allow the Government to offer abridged portions of statements that distort the meaning of a statement. *U.S. v. Quinones-Chavez*, 641 Fed.Appx. 722, 730 (9th Cir. 2016)(J. Fisher dissenting and quoting *United States v. Collicot*, 92 F. 3d 973, 983 [9th Cir. 1996])

The Admitted Video Clips were Substantial to the Government's Case

The Government referenced these video/audio recordings extensively in closing argument – over half of its entire closing argument. Specifically, the Government's closing argument began on the bottom half of page 385 of the record and concluded on the top of page 396 of the record. The reference to the video/audio recordings of Torres' interviews began on the bottom of page 390 of the record and concluded on the top of page 396. (ROA.385-396)

In the Government's rebuttal argument, which began on the bottom of page 404 of the record and concluded on the top of page 413, the Government specifically referenced Torres' statements on pages 405, 406, 408, and 409 and based its remaining argument heavily on these video/audio recordings. (ROA.404-413)

A Defendant's Constitutional Rights Need Protecting

The analysis and reasoning for holding that the Rule of Completeness, including Rule 106, is not subject to a hearsay analysis is sound. "The trumping function served by the rule of completeness is all the more important where, as here, a criminal defendant's constitutional right against self-incrimination is involved. As numerous courts have recognized, a criminal defendant should not be forced to choose between leaving the government's distorted presentation unanswered and

surrendering the Fifth Amendment right to not testify. See *Sutton*, 801 F.2d at 1370 (“Since this was a criminal case [the defendant] had a constitutional right not to testify, and it was thus necessary for [the defendant] to rebut the government’s inference with the excluded portions of these recordings.”); *United States v. Marin*, 669 F.2d 73, 85 n.6 (2nd Cir. 1982) (“[W]hen the government offers in evidence a defendant’s confession and in confessing the defendant has also made exculpatory statements that the government seeks to omit, the defendant’s Fifth Amendment rights may be implicated”); *United States v. Walker*, 652 F.2d 708, 713-14 (7th Cir. 1981) (observing “the Government’s incomplete presentation may have painted a distorted picture of [the criminal defendant’s] prior testimony which he was powerless to remedy without taking the stand” and acknowledging that “[f]orcing the defendant to take the stand in order to introduce the omitted exculpatory portions of [a] confession...is a denial of his right against self-incrimination...” *Quinones*, 641 Fed.Appx. at 731 (Dissenting Opinion of Judge Fisher).

The Fifth Circuit Misapplied the Abuse of Discretion Standard of Review.

The Fifth Circuit affirmed the judgment because any error would have been harmless because even had the additional evidence been admitted at trial, the jury would have found Torres guilty beyond a reasonable doubt based on the trial testimony.

A district court by definition abuses its discretion when it makes an error of law. The abuse of discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions. *Koon v. United States*, 518 U.W. 81,

100 (1996).

The District Court incorrectly applied Torres' evidence to a hearsay analysis. Therefore, the Fifth Circuit should have reversed and remanded this case for a new trial.

Torres' Substantial Rights

In *Simmons v. United States*, 390 U.S. 377, 394 (1968) a defendant was required to testify to establish his standing to assert a Fourth Amendment objection. In doing so, the lower courts had held that such a defendant waived his Fifth Amendment right against self-incrimination because the defendant's testimony was voluntary. The Supreme Court stated that it was intolerable that one constitutional right should have to surrendered in order to assert another.

Likewise, Torres should not have to surrender his Fifth Amendment right to remain silent in order to exercise his Sixth Amendment right to a fair trial.

REASONS FOR GRANTING THE PETITION

There is a split amongst the Circuits as to whether the Rule of Completeness, including Rule 106 of the Federal Rules of Evidence, is subject to a hearsay analysis.

The application of the law in this case has affected Torres' Substantial Rights including his right to a fair trial, and forced him to elect either to waive his Fifth Amendment right to remain silent or to waive his Sixth Amendment right to a fair trial.

The Fifth Circuit has rendered a decision contrary to the prior decisions of this Court by not reversing and remanding the case to the District Court because of the

District Court's error of law.

PRAYER

WHEREFORE PREMISES CONSIDERED, Jose Angel Torres prays that the Court will grant this petition for a writ of certiorari to the Honorable Fifth Circuit Court of Appeals.

Respectfully Submitted,

Lessman & Lessman
Attorneys & Counselors at Law
100 N. 6th Street, Ste. 702
Waco, Texas 76701
Tel: (254) 776-4544
Fax: (254) 776-4551

/s/ Denton B. Lessman
Denny@LessmanLaw.com
Attorney for Petitioner,
Jose Angel Torres

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing document has been served upon the following party(ies) via First Class Mail with Tracking on December 28, 2020:

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530-001

United States Attorney for the Western District of Texas
Appellate Division
601 NW Loop 410, Suite 600
San Antonio, Texas 78216

Jose Angel Torres BOP #95080-380
Beaumont Medium MCI
5830 Knauth Road
Beaumont, Texas 77705

/s/ Denton B. Lessman
Attorney for Jose Angel Torres

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This petition complies with the type-volume limitations of Supreme Court Rule 33 because this entire petition contains 2584 words including the parts that are excluded therefrom.

2. This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 12-point Century font.

/s/ Denton B. Lessman

Attorney for Jose Angel Torres

Dated: December 28, 2020.

APPENDIX

| | |
|------------|--|
| Appendix A | Fifth Circuit Panel Opinion |
| Appendix B | Fifth Circuit Order Denying Rehearing |
| Appendix C | Criminal Judgment from Western District of Texas, Waco Division |

APPENDIX A

808 Fed.Appx. 270 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff–Appellee,
v.
Jose Angel TORRES, Defendant–Appellant.

No. 19-50072
|
Summary Calendar
|
FILED June 8, 2020

Appeal from the United States District Court for the Western District of Texas, USDC No. 6:17-CR-233-3

Attorneys and Law Firms

Joseph H. Gay, Jr., Assistant U.S. Attorney, Mark Randolph Stelmach, Esq., Assistant U.S. Attorney, U.S. Attorney's Office, Western District of Texas, San Antonio, TX, for Plaintiff - Appellee

Denton Bryan Lessman, Law Office of Denton Lessman, Waco, TX, for Defendant - Appellant

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.

Opinion

PER CURIAM: *

Jose Angel Torres appeals his conviction for possession with intent to distribute at least 500 grams of a mixture or substance

containing a detectable amount of methamphetamine and for aiding and abetting another in possession with intent to distribute at least 500 grams of a mixture or substance containing a detectable amount of methamphetamine. **Torres** argues that the district court abused its discretion by denying his request to admit additional portions of the recorded statements offered by the Government at trial. The district court concluded that the additional statements were hearsay. **Torres** asserts that whether [Federal Rule of Evidence 106](#) and the rule of completeness are subject to a hearsay evidentiary ruling is a novel issue before this court and that a circuit split exists. For the reasons set forth below, we need not resolve the issue here.

This court reviews “a district court’s evidentiary rulings for abuse of discretion, subject to harmless error review.” [United States v. Isiwele](#), 635 F.3d 196, 199 (5th Cir. 2011) (citing [United States v. Jackson](#), 625 F.3d 875, 879 (5th Cir. 2010)). A district court “abuses its discretion when its ruling is based on an erroneous view of the law or a clearly erroneous assessment of the evidence.” [United States v. Ebron](#), 683 F.3d 105, 133 (5th Cir. 2012) (quoting [United States v. Yanez Sosa](#), 513 F.3d 194, 200 (5th Cir. 2008)). If this court determines that the district court abused its discretion, the next step in the inquiry is to determine “whether this error was harmless beyond a reasonable doubt.” [Isiwele](#), 635 F.3d at 201 (citing [Jackson](#), 625 F.3d at 885). Any error was harmless because even had the additional evidence been admitted at trial, the jury would have found **Torres** guilty beyond a reasonable doubt based on the trial testimony. *See id.* at 202.

Accordingly, the judgment is AFFIRMED.

All Citations

808 Fed.Appx. 270 (Mem)

Footnotes

* 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.

End of Document

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APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA

v.

JOSE ANGEL TORRES

Defendant.

Case Number: 6:17-CR-00233(3)- ADA
USM Number: 95080-380

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

The defendant, JOSE ANGEL TORRES, was represented by Wade N. Faulkner.

The defendant was found guilty to Count One of the Indictment by a jury on September 4, 2018. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|--|--|----------------------|--------------|
| 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii); 18 U.S.C. § 2 | Possession With Intent To Distribute At Least 500 Grams Of Methamphetamine, A Schedule II Controlled Substance; Aiding and Abetting | 08/19/2017 | 1 |

As pronounced on January 23, 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.

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.

Signed this 23rd day of January, 2019.


ALAN D ALBRIGHT
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50072

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JOSE ANGEL TORRES,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion 6/8/20, 5 Cir., _____, _____ F.3d _____)

Before OWEN, Chief Judge, and Judges SOUTHWICK and WILLETT,
Circuit Judges.

PER CURIAM:

- (✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.
- () Treating the Petition for Rehearing En Banc as a Petition for Panel

Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

A handwritten signature in black ink, reading "Priscilla A. Owen". The signature is written in a cursive, flowing style. The first name "Priscilla" is written in a larger, more prominent script, followed by "A." and "Owen". The signature is positioned above a horizontal line.

UNITED STATES CIRCUIT JUDGE

In the 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

July 28, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-50072 USA v. Jose Torres
USDC No. 6:17-CR-233-3

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Mary Frances Yeager", is written over a rectangular box.

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Joseph H. Gay Jr.
Mr. Denton Bryan Lessman
Mr. Mark Randolph Stelmach

APPENDIX C

DEFENDANT: JOSE ANGEL TORRES
CASE NUMBER: 6:17-CR-00233(3) -ADA

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **Two Hundred and Sixty (260) months** as to Count One (1).

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 this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE ANGEL TORRES
CASE NUMBER: 6:17-CR-00233(3) -ADA

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) 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 participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment if financially able.

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: JOSE ANGEL TORRES
CASE NUMBER: 6:17-CR-00233(3) -ADA

CONDITIONS OF SUPERVISION

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.
- [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.

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- [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.

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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, 800 Franklin Ave, Room 380, Waco, TX 76701. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Federal Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the U.S. Probation office and approved by the Court.

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|---------------|-------------------|-------------|--------------------|
| TOTALS | \$100.00 | \$1,000.00 | \$.00 |

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00. Payment of this sum shall begin immediately.

FINE

The defendant shall pay a fine of \$1,000.00.

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) community restitution, (6) fine interest, (7) penalties, and (8) 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.