

APPENDIX A

United States v. Juan Jose Camarena,
825 Fed. Appx. 478 (9th Cir. 2020)

825 Fed.Appx. 478 (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. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Juan Jose CAMARENA, Defendant-Appellant.

No. 19-30236

Submitted October 5, 2020 Seattle, Washington

FILED October 9, 2020

Attorneys and Law Firms

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Appeal from the United States District Court For the District of Montana, Donald W. Molloy, District Judge, Presiding, D.C. No. CR-19-04-DWM

Before: CALLAHAN and CHRISTEN, Circuit Judges, and RAKOFF, * District Judge.

MEMORANDUM **

Defendant-Appellant Juan Jose Camarena appeals from a final judgment of the United States District Court for the District of Montana (Molloy, J.), imposing a special condition on his supervised release that prohibits “any contact with anyone who belongs to or is affiliated with gangs or engaged in gang activity.” We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Camarena argues that three aspects of the condition are impermissibly vague and overbroad, in violation of due process and the First Amendment: (1) the term “gangs,” (2)

the term “any contact,” and (3) the term “affiliated.” Because Camarena “failed to object to [this condition] of supervised release in the proceedings below, we review ... for plain error.”

 *479 *United States v. Johnson*, 626 F.3d 1085, 1088–89 (9th Cir. 2010).¹

1. Camarena argues that the condition is impermissibly vague and overbroad because the term “gang,” which is “left undefined by the district court,” could be read to include groups gathering for both legal and illegal ends. Camarena points to out-of-circuit precedent holding a similar condition unlawful, *see*  *United States v. Washington*, 893 F.3d 1076, 1081 (8th Cir. 2018), but fails to identify any controlling authority on point. While we have struck down as impermissibly vague a condition that banned contact with “disruptive groups,”  *United States v. Soltero*, 510 F.3d 858, 867 (9th Cir. 2007), that does not amount to the sort of controlling authority that would render the district court's imposition of the “gang” condition “clear or obvious” error.

2. Camarena also argues that the condition is overbroad because it forbids not just “contact” but “any contact,” including incidental contact with individuals affiliated with gangs. However, courts routinely construe such conditions “consistent with well-established jurisprudence under which we presume prohibited criminal acts require an element of *mens rea*.”  *United States v. Vega*, 545 F.3d 743, 750 (9th Cir. 2008). Applying this presumption, the condition prohibits only knowing contact with those who belong to or are affiliated with gangs or engaged in gang activity. Its imposition, therefore, was not in error, much less plain error.

3. Finally, Camarena argues that the condition is impermissibly vague and overbroad because it is not clear “what constitutes someone who is ‘affiliated’ with a gang.” We have suggested, however, that a district court may forbid a defendant from having contact “with persons affiliated with [a] gang,” that is, persons who “are not ‘members’ of [a] gang in a formal sense” but who are still “involved in a gang's criminal activities.”  *Johnson*, 626 F.3d at 1091. Far from constituting plain error, then, this language finds approval in our precedent.

AFFIRMED.

All Citations

825 Fed.Appx. 478 (Mem)

Footnotes

- * The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.
- ** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).
- 1 Camarena suggests that he “objected to the gang condition in his [Presentence Report] objection and in his sentencing memorandum.” That is not so. While Camarena objected to portions of the Presentence Report that indicated that he had been affiliated with the MS 13 gang, he did not object to the Presentence Report’s recommended condition that he “shall not have any contact with anyone affiliated with the MS 13 and/or Sureños gangs.” Nor did he object to the district court’s imposition of a modified version of that condition—even after the district court expressly gave him the chance to do so at sentencing. For that reason, too, we decline Camarena’s request to apply the “pure question of law” exception to plain error review in this case.

APPENDIX B

U.S. Constitution Amd. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX C

18 U.S.C. § 3583

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 227. Sentences (Refs & Annos)
Subchapter D. Imprisonment (Refs & Annos)

18 U.S.C.A. § 3583

§ 3583. Inclusion of a term of supervised release after imprisonment

Effective: December 16, 2016

[Currentness](#)

(a) In general.--The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in [section 3561\(b\)](#).

(b) Authorized terms of supervised release.--Except as otherwise provided, the authorized terms of supervised release are--

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release.--The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in [section 3553\(a\)\(1\)](#), [\(a\)\(2\)\(B\)](#), [\(a\)\(2\)\(C\)](#), [\(a\)\(2\)\(D\)](#), [\(a\)\(4\)](#), [\(a\)\(5\)](#), [\(a\)\(6\)](#), and [\(a\)\(7\)](#).

(d) Conditions of supervised release.--The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with [sections 3663](#) and [3663A](#), or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in [section 3561\(b\)](#) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog

Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in [section 3563\(a\)\(4\)](#). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition--

(1) is reasonably related to the factors set forth in [section 3553\(a\)\(1\)](#), [\(a\)\(2\)\(B\)](#), [\(a\)\(2\)\(C\)](#), and [\(a\)\(2\)\(D\)](#);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in [section 3553\(a\)\(2\)\(B\)](#), [\(a\)\(2\)\(C\)](#), and [\(a\)\(2\)\(D\)](#); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to [28 U.S.C. 994\(a\)](#);

any condition set forth as a discretionary condition of probation in [section 3563\(b\)](#) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(e) Modification of conditions or revocation.--The court may, after considering the factors set forth in [section 3553\(a\)\(1\)](#), [\(a\)\(2\)\(B\)](#), [\(a\)\(2\)\(C\)](#), [\(a\)\(2\)\(D\)](#), [\(a\)\(4\)](#), [\(a\)\(5\)](#), [\(a\)\(6\)](#), and [\(a\)\(7\)](#)--

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) Written statement of conditions.--The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.--If the defendant--

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in [section 921](#) of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing imposed as a condition of supervised release; or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) Supervised release following revocation.--When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed revocation.--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary

for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) Supervised release terms for terrorism predicates.--Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in [section 2332b\(g\)\(5\)\(B\)](#) is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under [section 1201](#) involving a minor victim, and for any offense under [section 1591](#), [1594\(c\)](#), [2241](#), [2242](#), [2243](#), [2244](#), [2245](#), [2250](#), [2251](#), [2251A](#), [2252](#), [2252A](#), [2260](#), [2421](#), [2422](#), [2423](#), or [2425](#), is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or [section 1201](#) or [1591](#), for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

CREDIT(S)

(Added [Pub.L. 98-473, Title II, § 212\(a\)\(2\)](#), Oct. 12, 1984, 98 Stat. 1999; amended [Pub.L. 99-570, Title I, § 1006\(a\)\(1\)](#) to (3), Oct. 27, 1986, 100 Stat. 3207-6; [Pub.L. 99-646, § 14\(a\)](#), Nov. 10, 1986, 100 Stat. 3594; [Pub.L. 100-182, §§ 8, 9, 12, 25](#), Dec. 7, 1987, 101 Stat. 1267, 1268, 1272; [Pub.L. 100-690, Title VII, §§ 7108](#), 7303(b), 7305(b), Nov. 18, 1988, 102 Stat. 4418, 4464, 4465; [Pub.L. 101-647, Title XXXV, § 3589](#), Nov. 29, 1990, 104 Stat. 4930; [Pub.L. 103-322, Title II, § 20414\(c\)](#), Title XI, § 110505, Title XXXII, § 320921(c), Sept. 13, 1994, 108 Stat. 1831, 2016, 2130; [Pub.L. 105-119, Title I, § 115\(a\)\(8\)\(B\)\(iv\)](#), Nov. 26, 1997, 111 Stat. 2466; [Pub.L. 106-546, § 7\(b\)](#), Dec. 19, 2000, 114 Stat. 2734; [Pub.L. 107-56, Title VIII, § 812](#), Oct. 26, 2001, 115 Stat. 382; [Pub.L. 107-273, Div. B, Title II, § 2103\(b\)](#), Title III, § 3007, Nov. 2, 2002, 116 Stat. 1793, 1806; [Pub.L. 108-21, Title I, § 101](#), Apr. 30, 2003, 117 Stat. 651; [Pub.L. 109-177, Title II, § 212](#), Mar. 9, 2006, 120 Stat. 230; [Pub.L. 109-248, Title I, § 141\(e\)](#), Title II, § 210(b), July 27, 2006, 120 Stat. 603, 615; [Pub.L. 110-406, § 14\(b\)](#), Oct. 13, 2008, 122 Stat. 4294; [Pub.L. 114-22, Title I, § 114\(d\)](#), May 29, 2015, 129 Stat. 242; [Pub.L. 114-324, § 2\(a\)](#), Dec. 16, 2016, 130 Stat. 1948.)

VALIDITY

<The United States Supreme Court in [United States v. Haymond](#), (U.S. 2019) 139 S. Ct. 2369, 204 L.Ed. 2d 897, held that as applied, subsection (k) of this section governing revocation of supervised release, authorizing a new mandatory minimum sentence based on a judge's fact-finding by a preponderance of the evidence, rather than beyond a reasonable doubt, violated the Due Process Clause and the Sixth Amendment right to jury trial.>

[Notes of Decisions \(1031\)](#)

18 U.S.C.A. § 3583, 18 USCA § 3583

Current through P.L. 116-258. Some statute sections may be more current, see credits for details.