

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 7 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CARLOS MONTANO, AKA Loco, AKA
Carlos Montano III, AKA Loco Montano,

Defendant-Appellant.

No. 19-10220

D.C. No.

1:17-cr-00198-LJO-SKO-1

MEMORANDUM*

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

Argued and Submitted December 6, 2021
San Francisco, California

Before: LUCERO,** IKUTA, and VANDYKE, Circuit Judges.

At a change-of-plea hearing on February 11, 2019, Carlos Montano pleaded guilty to three of the thirteen counts in his indictment: conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1), interstate

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

** The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

transportation for prostitution in violation of 18 U.S.C. § 2421, and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court imposed a sentence of 262 months imprisonment and 60 months supervised release.

Montano challenges the validity of his guilty plea, arguing the district court plainly erred because the factual basis for Montano's plea failed to establish that (1) Montano knew he was a felon with respect to the § 922(g)(1) charge, (2) the firearm traveled in interstate commerce, and (3) the firearm Montano possessed was the same firearm identified in the indictment. Montano also argues that the district court plainly erred under Federal Rule of Criminal Procedure 11 ("Rule 11") during his plea colloquy by failing to inform him of the full rights and consequences of his plea (in violation of Rule 11(b)(1)) and failing to inquire on the record whether his plea was voluntary (in violation of Rule 11(b)(2)). He also challenges the district court's imposition of a standard risk-notification condition of supervised release as unconstitutionally vague.

We have jurisdiction under 28 U.S.C. § 1291 and review all of Montano's challenges for plain error given that he failed to raise them below. *United States v. Vonn*, 535 U.S. 55, 59 (2002). Finding no plain error that affected Montano's substantial rights, we affirm his convictions, sentence, and conditions of release.

To convict a defendant under § 922(g)(1), the government must prove the defendant knew he was a felon at the time he possessed the firearm. *Rehaif v. United*

States, 139 S. Ct. 2191, 2200 (2019). The district court did not advise Montano of this element at his change-of-plea hearing, nor was it mentioned in the plea agreement exhibit laying out the factual basis for Montano's guilty plea. To establish plain error, Montano bears the burden of showing (1) an error, (2) that is plain, (3) that affects substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of the judicial proceedings. *United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc). Here, it is undisputed that the first two elements of the plain error test are satisfied as the district court committed (1) an error, (2) that is plain under *Rehaif*.

But Montano has not satisfied the third element of the plain error test because the *Rehaif* error did not affect his substantial rights. An error affects substantial rights only when, based on the entire record, the defendant shows "a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Monzon*, 429 F.3d 1268, 1272 (9th Cir. 2005) (citation omitted); *see also Greer v. United States*, 141 S. Ct. 2090, 2098 (2021). According to his presentence investigation report, Montano had an extensive criminal history, including four prior felony convictions (one as a felon in possession of a firearm, and two that resulted in multi-year sentences). Montano points to nothing in the record indicating that he would not have entered the plea if the district court had satisfied *Rehaif*. Accordingly, the district court's *Rehaif* error did not amount to plain error sufficient

to reverse Montano's convictions.

Likewise, no plain error resulted from the fact that the exhibit to the plea agreement setting forth the factual basis for Montano's guilty plea failed to establish that Montano's firearm traveled in interstate commerce, and erroneously identified a different gun than the gun charged in the indictment. The record as a whole provided an adequate factual basis for both elements. First, the presentence report describes a video posted on social media by Montano, in which Montano is holding the gun referenced in Count 24 of the indictment. This sufficiently establishes that Montano illegally possessed the same gun identified in the indictment. Second, the record shows that this gun was manufactured in California, later reported stolen in Nevada, and ultimately found in Montano's possession in California. This provides a sufficient factual basis that Montano's firearm traveled in interstate commerce. Therefore, Montano has failed to establish, based on the entire record, "a reasonable probability that, but for the error, he would not have entered the plea." *Monzon*, 429 F.3d at 1272 (citation omitted).

Next, Montano contends that the district court erred by failing to strictly comply with Rule 11(b)(1) and Rule 11(b)(2) during his plea colloquy. Because Montano did not object during the plea colloquy, we review for plain error and Montano bears the burden of showing "a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Dominguez Benitez*, 542

U.S. 74, 76 (2004); Fed. R. Crim. P. 52(b).

Rule 11(b)(1) requires the district court to “inform the defendant of, and determine that the defendant understands,” various rights and consequences during a personal address in open court. Fed. R. Crim. P. 11(b)(1). Montano argues that the district court failed to comply with several subsections of Rule 11(b)(1).¹ But none of the alleged shortcomings, even if they amounted to plain error, affected Montano’s substantial rights as he has not demonstrated a reasonable probability that absent those errors he would have pleaded differently. *Dominguez Benitez*, 542 U.S. at 76. Accordingly, any Rule 11(b)(1) error does not amount to plain error sufficient to reverse Montano’s convictions.

Rule 11(b)(2) requires the district court to “address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement)” before accepting a guilty plea. Fed. R. Crim. P. 11(b)(2). The district court asked Montano if his decision to plead guilty was the result of force, threats, or promises beyond the plea agreement, but did not specifically ask Montano if his plea was “voluntary.”

After reviewing “the entire record and not [] the plea proceedings alone,” however, it is clear that Montano’s plea was nonetheless entered voluntarily, and he

¹ Specifically, Montano claims that the district court violated subsections (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E), (b)(1)(J), (b)(1)(L), (b)(1)(M), and (b)(1)(N) of Rule 11.

has failed to prove otherwise or establish a “reasonable probability” that proper compliance with Rule 11(b)(2) would have resulted in a different plea. *Monzon*, 429 F.3d at 1271–72. Montano’s plea agreement, which he signed after reviewing with his attorney, acknowledged that: “I understand it, and I voluntarily agree to it.” Further, after explaining Montano’s trial rights to him, the district court asked Montano: “Do you wish to give [your trial rights] up and plead guilty?” To which Montano responded: “Yes, sir.” Accordingly, Montano has not met his burden to demonstrate that the Rule 11(b)(2) error affected his substantial rights. *See United States v. Ferguson*, 8 F.4th 1143, 1146–48 (9th Cir. 2021) (reaffirming that “a Rule 11 error doesn’t automatically lead to reversal” and “a defendant must continue to show a Rule 11 violation’s impact on substantial rights before we will undo a guilty plea”).

Montano also claims, relying on *United States v. Fuentes-Galvez*, that the district court violated Rule 11(b)(2) by failing to explicitly confirm on the record his competence and intelligence to enter a guilty plea. 969 F.3d 912, 916 (9th Cir. 2020). But as we recognized in *Ferguson*, the inquiry into competence and intelligence required in *Fuentes-Galvez* “was driven by the defendant’s unique susceptibility to coercion”—special circumstances that are not present here. *Ferguson*, 8 F.4th at 1147. Montano offered insufficient evidence that he was uniquely susceptible to coercion, and his counsel conceded the same at oral

argument. Accordingly, the district court's Rule 11(b)(2) error did not amount to plain error sufficient to reverse Montano's convictions.²

Finally, Montano argues that the district court plainly erred by imposing an unconstitutionally vague condition of supervised release ("Standard Condition 12"), as it failed to specifically define what type of conduct requires a risk notification. Montano did not raise this objection below, so we review for plain error. *United States v. Wolf Child*, 699 F.3d 1082, 1089 (9th Cir. 2012). Montano's argument is foreclosed by *Gibson*, in which our court upheld as constitutional a similar risk-notification condition that closely tracked the language used in the Sentencing Guidelines Manual § 5D1.3(c)(12). *See United States v. Gibson*, 998 F.3d 415, 423 (9th Cir. 2021) (holding "there is nothing unconstitutionally vague about Standard Condition 12"). Accordingly, the district court did not plainly err by imposing Standard Condition 12.

For the reasons expressed herein, Montano's convictions, sentence, and conditions of release are hereby **AFFIRMED**.

² We do not reach the validity of Montano's appellate waiver in his plea agreement, as the government conceded at oral argument that the merits of this appeal may be reached before addressing the waiver's validity.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA,)	1:17-cr-198 LJO-SK0
Plaintiff,)	CHANGE OF PLEA
vs.)	
CARLOS MONTANO,)	
Defendant.)	

Fresno, California

Monday, February 11, 2019

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government: **JEFFREY SPIVAK**
Assistant U.S. Attorney
2500 Tulare Street, Rm. 4401
Fresno, California 93721

For the Defendant: LAW OFFICES OF NICHOLAS F. REYES
1107 R Street
Fresno, CA 93721
BY: **NICHOLAS F. REYES**

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 Monday, February 11, 2019 Fresno, California

2 8:30 a.m.

3 THE COURT: Thank you, everyone. Please be seated.

4 Let's call the case of United States versus Montano,
5 Soto and Mendoza, number 1 on calendar.

6 MR. REYES: Do you want all three, your Honor?

7 THE COURT: Any one first.

8 MR. REYES: We stepped up, Montano.

9 THE COURT: You are there.

10 MR. SPIVAK: Good morning. Jeff Spivak for the
11 United States.

12 MR. REYES: And good morning, your Honor. Nicholas
13 Reyes with Mr. Montano.

14 BY THE COURT:

15 Q. Sir, what is your name?

16 A. Carlos Montano, sir.

17 Q. How do you spell your last name?

18 A. M-o-n-t-a-n-o.

19 Q. Mr. Montano, do you read English?

20 A. Yes, sir.

21 Q. I think that I have your plea agreement in my hand, and I
22 think that it has been signed by you twice.

23 Do you recognize those two signatures on the plea
24 agreement?

25 A. Yes, I do.

1 Q. Those are yours?

2 A. Yes.

3 Q. Those signatures to me mean that you have had a chance to
4 review the entire document with the help of your lawyer, and
5 if you had any questions, you asked, he answered, and you have
6 no more questions about the plea agreement.

7 Is that what the signatures mean to you?

8 A. Yes.

9 Q. When you went through the document, did you understand the
10 elements of the counts, Counts 3, 24, and 29, to which I
11 believe you wish to plead?

12 A. Yes, sir.

13 Q. And did you understand the facts?

14 A. Yes.

15 Q. And are those facts true?

16 A. Yes, sir.

17 Q. Do you understand that with regard to the maximum possible
18 penalties, as to Count 3, the maximum penalty is five years,
19 minimum; 40 years, maximum; fine of \$2 million, or both; a
20 minimum of four years of supervised release, and a maximum of
21 life; a special assessment, which is mandatory, of a hundred
22 dollars. And that this count carries a ten-year mandatory
23 minimum absent a motion by the government for a reduction.

24 Do you understand that?

25 A. Yes, sir.

1 Q. And do you also understand that as a result of the
2 conviction, you will be ineligible for certain federal and
3 state benefits, and you may be ineligible for others. Do you
4 understand that?

5 A. Yes, sir.

6 Q. As far as Count 24 is concerned, the maximum possible
7 sentence is ten years' imprisonment, \$250,000 fine, or both;
8 three-year term of supervised release, and a hundred dollar
9 special assessment.

10 Do you understand?

11 A. Yes, sir.

12 Q. And finally, Count 29, the maximum is ten years'
13 imprisonment; \$250,000 fine, or both; three years of
14 supervised release; a hundred dollar special assessment, and a
15 \$5,000 fine pursuant to the United States Code.

16 Do you understand that?

17 A. Yes, sir.

18 Q. And do you understand that you are giving up, or waiving,
19 your right to appeal?

20 A. Yes, sir.

21 Q. I don't know if immigration is an issue in your life, but
22 if it is, this would be grounds for deportation. Do you
23 understand that?

24 A. Yes, sir.

25 Q. Finally, there are certain things you are agreeing to

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1 forfeit, give up permanently, to the government. Do you
2 understand that?

3 A. Yes.

4 Q. Do you have any questions about the plea agreement at all?

5 A. No, sir.

6 Q. If you wanted to not plead guilty to these three counts
7 and you wanted to go to trial, all you would have to do is
8 tell me. We would confirm the date already set, which is
9 May 7. It would proceed on that date in a timely fashion.

10 You would be there, your lawyer would be there. The
11 government would have the burden of proving the case against
12 you. They would attempt to meet the burden by bringing in
13 witnesses and evidence. You would watch the witnesses testify
14 against you. Your lawyer would ask them questions, or
15 cross-examine them.

16 If you wanted to testify, you could. If you didn't,
17 nobody would use it against you. You could bring in witnesses
18 and evidence, and we would help you get that here by the
19 subpoena power of the Court. And your trial would be open to
20 the public, just like today's hearing is.

21 Do you understand those trial rights?

22 A. Yes, sir.

23 Q. Do you wish to give them up and plead guilty?

24 A. Yes, sir.

25 Q. Is anybody forcing you or threatening you in any way to

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1 get you to do this?

2 A. No, sir.

3 Q. Is anybody promising you anything other than what's in
4 your plea agreement?

5 A. No, sir.

6 Q. Do you understand I'm not a part of the plea agreement,
7 and if I don't follow it, you cannot take your change of plea
8 back; do you understand that?

9 A. Yes. I understand.

10 Q. Do you have any questions at all?

11 A. No, sir.

12 THE COURT: Is there any reason, Counsel, I should
13 not take the change of plea?

14 MR. REYES: No, your Honor.

15 MR. SPIVAK: No, your Honor.

16 BY THE COURT:

17 Q. What I will do then is I will read you the three charges.
18 If, while I'm doing that, you have a question, or you get
19 confused, or you just want to talk with your lawyer for any
20 reason, you need to interrupt and tell me. Otherwise, I won't
21 know you have an issue. All right?

22 A. Yes, sir.

23 Q. In the first superseding indictment, in Count 3, the Grand
24 Jury charged you and another, between on a date unknown to the
25 Grand Jury, but not later than June 6, 2017, continuing

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1 through on or about June 7, 2017, in the County of Fresno,
2 State and Eastern District of California, and elsewhere, you
3 knowingly and intentionally conspired and agreed with each
4 other and with persons, known and unknown to the Grand Jury,
5 to distribute and to possess with the intent to distribute
6 methamphetamine, a Schedule II controlled substance, all in
7 violation of Title 21 of United States Code, sections 846 and
8 841(a)(1).

9 As to Count 3, how do you wish to plead, guilty or
10 not guilty?

11 A. Guilty, sir.

12 Q. Still on Count 3, it is further alleged that the amount of
13 methamphetamine involved in the offense is 50 grams and more
14 of a mixture containing a detectible amount of
15 methamphetamine. Do you admit that or do you deny that?

16 A. I admit.

17 Q. Move on then to Count 24, the Grand Jury further charges
18 that you, on or about June 9, 2017, in the County of Fresno,
19 State and Eastern District of California, having been
20 convicted of a crime punishable by a term of imprisonment
21 exceeding one year; specifically, three different felonies,
22 all in Fresno Superior Court, the first one in the year 2009,
23 a violation of California Health and Safety Code 11377(a);
24 also in 2012, a violation of Penal Code, California Penal Code
25 12021(a)(1); and finally, in 2014, a conviction for a

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1 California Health and Safety Code section 11378, and in spite
2 of those three convictions, you knowingly possessed a firearm,
3 specifically, a .40 caliber pistol, Model XD4, which had been
4 shipped and transported in interstate and foreign commerce,
5 all in violation of Title 18 of United States Code section
6 922(g)(1).

7 As to Count 24, how do you wish to plead, guilty or
8 not guilty?

9 A. Guilty, sir.

10 Q. Moving on, lastly, as to Count 29, the Grand Jury further
11 charges that you, beginning on or about July 18, 2017, and
12 continuing until on or about July 19, 2017, in the County of
13 Fresno, State and Eastern District of California, and
14 elsewhere, you knowingly transported an adult female, whose
15 initials are J.F., in interstate commerce from California to
16 New York, with the intent that she engage in prostitution and
17 sexual activity for which a person can be charged with a
18 criminal offense, and aided and abetted that conduct, all in
19 violation of Title 18 of United States Code sections 2(a) and
20 2421.

21 As to Count 29, how do you wish to plead, guilty or
22 not guilty?

23 A. Guilty, sir.

24 THE COURT: Court accepts the knowing, intelligent,
25 and voluntary waiver of rights, knowing, intelligent, and

1 voluntary change of plea.

2 And as a result, how does judgment and sentencing
3 look, May 6 of this year, at 8:30?

4 MR. REYES: That's good, your Honor.

5 MR. SPIVAK: Yes, your Honor.

6 THE COURT: Done. Anything else we need to do?

7 MR. REYES: No, your Honor. Thank you.

8 THE COURT: Okay.

9 (The proceedings were concluded at 8:39 a.m.)

10 I, PEGGY J. CRAWFORD, Official Reporter, do hereby
11 certify the foregoing transcript as true and correct.

12
13 Dated: 22nd of November, 2019 /s/ Peggy J. Crawford
14 PEGGY J. CRAWFORD, RDR-CRR
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UNITED STATES DISTRICT COURT Eastern District of California

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **1:17CR00198-001**

CARLOS MONTANO

Defendant's Attorney: Nicholas F. Reyes, Retained

AKA: Carlos Montano III; Loco; Loco Montano

THE DEFENDANT:

- pleaded guilty to count(s) 3, 24, 29 of the First Superseding Indictment.
- pleaded nolo contendere to count(s) , which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 846 and 841(a)(1)	Conspiracy to Distribute and to Possess with Intent to Distribute Methamphetamine (CLASS B FELONY)	06/07/2017	3
18 U.S.C. § 922(g)(1)	Felon in Possession of Firearm (CLASS C FELONY)	06/09/2017	24
18 U.S.C. § 2421	Interstate Transportation for Prostitution (CLASS C FELONY)	07/19/2017	29

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) .
- Count(s) 2, 11-13, 27, 28, 31, 33, 35-36 are 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 ordered that the defendant must 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 or fine, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/17/2019

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

6/19/2019

Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 262 months on Count 3, 120 months on Count 24, 120 months on Count 29 to be served concurrently for a total term of 262 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 in a 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

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
60 months on Count 3, 36 months on Count 24, 36 months on Count 29 to be served concurrently for a total term of 60 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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
- 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 (34 U.S.C. § 20901, *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 full-time employment, you must try to find full-time 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. The defendant shall provide the probation officer with access to any requested financial information.
3. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
4. 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.
5. The defendant shall not possess or have access to any cellular phone without the advance permission of the probation officer. The defendant shall provide all billing records for such devices, whether used for business or personal, to the probation officer upon request.
6. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
7. 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.
8. The defendant shall not associate with any known gang member of the Bond Street or Fresno Bulldog street gang or any other known member of a criminal street gang, as directed by the probation officer.

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	\$300.00		

The determination of restitution is deferred until ____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

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.

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.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is 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/probation 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: The Preliminary Order of Forfeiture is hereby made final as to this defendant and shall be incorporated into the Judgment. The Preliminary Order of Forfeiture filed on April 1, 2019 is hereby made final.

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.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 15 2022

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CARLOS MONTANO, AKA Loco, AKA
Carlos Montano III, AKA Loco Montano,

Defendant-Appellant.

No. 19-10220

D.C. No.

1:17-cr-00198-LJO-SKO-1

Eastern District of California,
Fresno

ORDER

Before: LUCERO,* IKUTA, and VANDYKE, Circuit Judges.

The full court has been advised of Defendant-Appellant's petition for rehearing en banc and petition for panel rehearing, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The panel judges have voted to deny the petition for panel rehearing. Judge Lucero recommended denying the petition for rehearing en banc. Judges Ikuta and VanDyke voted to deny the petition for rehearing en banc.

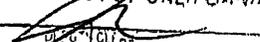
Accordingly, Defendant-Appellant's petition for rehearing en banc and petition for panel rehearing, filed January 21, 2022 (ECF 72), and Defendant-Appellant's Pro Se Letter filed February 8, 2022 (ECF No. 73), are hereby DENIED.

* The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

1 PHILLIP A. TALBERT
United States Attorney
2 KIMBERLY A. SANCHEZ
Assistant U.S. Attorney
3 2500 Tulare Street, Suite 4401
Fresno, California 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

FILED

AUG 24 2017

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 

6 Attorneys for the
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 1:17 CR 00198 LJO SKO

11 UNITED STATES OF AMERICA,) CASE NO.
12)
Plaintiff,) VIOLATIONS: 18 U.S.C. § 922(g)(1)
13 v.) - Felon In Possession Of a
Firearm; 18 U.S.C. § 924(d) and
14 CARLOS MONTANO,) 28 U.S.C. § 2461(c) - Criminal
Forfeiture
15 Defendant.)
16)
17)

18 I N D I C T M E N T

19 COUNT ONE: [18 U.S.C. §922(g) (1) - Felon in Possession of a
20 Firearm]

21 The Grand Jury charges: T H A T
22 CARLOS MONTANO,
23 defendant herein, on or about August 12, 2017, in the County of
24 Fresno, State and Eastern District of California, having been
25 convicted of a crime punishable by more than a year imprisonment, to
26 wit:

27 2009 Fresno County Superior Court conviction for a
violation of California Health and Safety Code, section
28 11377(a), possession of a controlled substance;

1 2012 Fresno County Superior Court conviction for a
2 violation of California Penal Code, section 12021(a)(1),
felon in possession of a firearm;

3 2014 Fresno County Superior Court conviction for a
4 violation of California Health and Safety Code, Section
11378, possession of a controlled substance for sale

5 did knowingly and intentionally possess a firearm, to wit, a .40
6 caliber Springfield XD40 pistol which had been shipped and transported
7 in interstate and foreign commerce.

8 All in violation of Title 18, United States Code, Section
9 922(g)(1).

10 FORFEITURE ALLEGATION: [18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c)
11 - Criminal Forfeiture]

12 The Grand Jury further alleges:

13 CARLOS MONTANO,

14 defendant herein, as follows:

15 Upon conviction of an offense alleged in Count One of this
16 Indictment, defendant CARLOS MONTANO, shall forfeit to the United
17 States pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), all
18 firearms and ammunition involved in the commission of the offense.

19
20 A TRUE BILL,

/s/ Signature on file w/AUSA

21 _____
FOREPERSON

22
23 PHILLIP A. TALBERT
United States Attorney

24 By **KIRK E. SHERRIFF**
25 Kirk E. Sherriff
26 Assistant U.S. Attorney
Chief, Fresno Office
27
28

1 PHILLIP A. TALBERT
United States Attorney
2 KIMBERLY A SANCHEZ
JEFFREY A. SPIVAK
3 Assistant United States Attorney
2500 Tulare Street, Suite 4401
4 Fresno, CA 93721
Telephone: (559) 497-4000
5 Facsimile: (559) 497-4099

FILED

SEP 21 2017

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

6 Attorneys for Plaintiff
7 United States of America

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 (1) Carlos MONTANO, aka "Loco;"
15 (2) Filibert CHAVEZ, aka "Freeway Beto,"
AKA "Big Boy;"
16 (3) Robin GILL, aka "PJ Rob;"
17 (4) Gabriel GOMEZ, aka "G;"
18 (5) Nicholas BOLANOS;
19 (6) Daniel VILLANUEVA;
20 (7) Gerrick Travis Tyrell FRANKLIN, aka "G-
Stacks;"
21 (8) Amina PADILLA, aka "Mina;"
22 (9) Robert LOCKHART, aka, "Rob Dolla;"
23 (10) Ildelfonso SOTO, aka "Manny Fresh;"
24 (11) Carlos MELGAR;
25 (12) Jeni FRIES;
26 (13) Cisco HERNANDEZ, aka "C-Murder;"
27 (14) Miguel MURILLO;
28 (15) Adolfo Jesus MENDOZA;
(16) Jesus MELGAREJO JR, aka "Chewy," aka
"Chuy;" and
(17) Cesar GUTIERREZ,
Defendants.

CASE NO. 1:17-CR-00198-LJO
21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to
Distribute and to Possess with Intent to Distribute
Methamphetamine (6 Counts); 21 U.S.C. § 841(a)(1)
– Distribution of Methamphetamine (10 Counts); 21
U.S.C. § 841(a)(1) – Possession with Intent to
Distribute Methamphetamine (4 Counts); 18 U.S.C.
§§ 371, 922(a)(1)(A) – Conspiracy to Engage in the
Business of Dealing Firearms Without a License; 18
U.S.C. § 924(c) – Carrying a Firearm During and In
Relation to a Drug Trafficking Offense; 18 U.S.C. §
922(g)(1) – Felon in Possession of Firearm (4
Counts); 18 U.S.C. §§ 371, 2421 – Conspiracy to
Engage in Interstate Transportation for Prostitution;
18 U.S.C. § 2421 – Interstate Transportation for
Prostitution; 18 U.S.C. § 1952(a) – Use of
Communication Facility to Promote Prostitution (6
Counts); 21 U.S.C. § 853(a), 18 U.S.C. § 924(d)(1)
and 28 U.S.C. § 2461(c) – Criminal Forfeiture

FIRST SUPERSEDING INDICTMENT

I. INTRODUCTION

At all relevant times:

A. Defendant Members of the Fresno Bulldogs Criminal Street Gang

1. The following defendants are members of the Bulldog Criminal Street Gang:

- a. Carlos MONTANO, aka "Loco" (Bond Street Bulldogs);
- b. Filibert CHAVEZ, aka "Freeway Beto" (Northside Fresno Bulldogs);
- c. Ildelfonso SOTO, aka "Manny Fresh" (Pleasant Street Bulldogs);
- d. Cisco HERNANDEZ, aka "C-Murder" (Bond Street Bulldogs);
- e. Miguel MURILLO (Northside Fresno Bulldogs);
- f. Jesus MELGAREJO, JR., aka "Chewy," aka "Chuy" (Calwa Varrio Locos Bulldogs);
- g. Cesar GUTIERREZ (Fresno Bulldogs)

B. The Fresno Bulldogs Criminal Street Gang

2. During the 1970's and into the 1980's, Hispanic gang members from Fresno referred to themselves as F-14ers. They were under the command and structure of the Hispanic prison gang known as the Nuestra Familia (the rival of the Mexican Mafia prison gang).

3. In the mid 1980's a political war began between the F-14ers and the Nuestra Familia. The F-14ers wanted to separate themselves from the Nuestra Familia gang and their structure. By 1986, the F-14ers changed their name to the "Fresno Bulldogs." They adopted the Bulldog logo as their symbol, and the color red.

4. The Fresno Bulldogs are divided into 6 major sets with over 20 smaller subsets. Every Bulldog belongs to one of these major sets:

5. The Fresno Bulldogs are divided into 6 major sets with over 20 smaller subsets:

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- a. Northside Bulldogs: Pinedale Bulldogs, Varrío Tent City, Highway City Bulldogs, Pleasant Street
- b. Eastside Bulldogs: College Street, Fifth Street, Bond Street, Lewis Street, Floradora Street, McKenzie Street, Mariposa Street, Foodtown Bulldogs, Daisy Park, Butler Park, Primos, Dog Life Gangsters, Forever Riding Dirty, Eastside Ruthless Thug Life, Varrío Fresno Flats, and others
- c. Westside Bulldogs: Sunset Bulldogs, Westside Ruthless Thug Life, Prospect Bulldogs
- d. Calwa Varrío Locos Bulldogs
- e. Parkside Bulldogs
- f. Fresno County Bulldogs: Reedley Bulldogs, Sanger Chankla Bulldogs, Sanger Olivo Street Bulldogs, Varrío Selma Rifa, Northside Selma Bulldogs, Varrío Orange Cove Bulldogs, Varrío Parlier Locos, Malaga Bulldogs, Huron Bulldogs, Parkside Huron Bulldogs, Laton County Bulldogs, Mendota Bulldogs, Coalinga Bulldogs, Easton Bulldogs, San Joaquin Bulldogs

6. Signs and symbols used by the Bulldog criminal street gang include SF Giants symbols and attire, SF 49ers symbols and attire, Chicago Bulls attire, St. Louis Cardinals attire, Boston Red Sox attire, Atlanta Falcons attire, 559, 624, the letter "B", The Budweiser "B" logo, ESF, BDS, dog paws, dog collars, the number 14, 4 dots, the word "Fresno" and, the word "Bulldogs."

7. Turf/Territory: Bulldog gang members are contacted throughout the city of Fresno on a daily basis by law enforcement. However some Bulldogs subsets are very territorial and traditionally will live and stay in the neighborhood which they claim as theirs.

8. Membership: Fresno Bulldogs make up more than half of Fresno's gang population, with at least 6,000 members.

5. Bulldog Rivals include:

- a. Nortenos
- b. Surenos
- c. Latin Kings
- d. Tiny Rascals Gang

10. One of the founding principles of the Bulldogs was promoting a lack of written, well-defined structure. As such, the Bulldogs operate under a set of rules that are communicated between members through conversations and practices. Bulldog gang members pledge their allegiance and

1 loyalty to the gang and are instructed on their rules, rituals and obligations by other Bulldog gang
2 members. No member is allowed to provide information to the police about crimes committed by
3 Bulldog gang members. No member can associate with police, child molesters, police informants, or
4 members of various gangs, such as Surenos, Nortenos, TRG (Tiny Rascal Gang), or Latin Kings.
5 Members join forces to identify and attack individuals who provide information to law enforcement
6 about Bulldog gang members. The Bulldog gang enforces its rules and promotes discipline among its
7 members and associates by assaulting and threatening those individuals who violate the rules or pose a
8 threat to the organization.

9 11. Bulldog gang members are consistently and repeatedly being arrested for crimes,
10 including assault with deadly weapons, robbery, possession of stolen vehicles and auto theft, illegal
11 possession of firearms, and possession with intent to distribute and distribution of controlled substances
12 to benefit themselves and the gang by producing income, increasing reputation, and getting discounted
13 prices on various illegal commodities. There is a growing trend among Bulldog gang members to
14 engage in sex trafficking.

15 12. When Bulldogs are committed to local jail facilities, they are segregated from rival gang
16 members, such as Surenos, Nortenos, TRG, and Latin Kings.

17 13. For the last 30 years, numerous individuals have become associated with or members of
18 the Bulldogs, a violent street gang. Several factors have historically determined whether one is able to
19 become or remain a member of the Fresno Bulldogs criminal street gang, which include: long term
20 residence within the Fresno Bulldogs gang territory, familial connections, close relationships with
21 current gang members, and a demonstrated willingness to engage in violent behavior to further the
22 gang's criminal activities, protect its reputation and secure its territory from outsiders.

23 14. In an effort to preserve the continued viability of the gang, gang members routinely guard
24 their territory and resort to acts of violence, if necessary, to ensure that no rival gang members encroach
25 upon their territory to sell drugs, or for any other reason.

26 15. In addition to protecting territory, all Bulldogs are expected to retaliate when outsiders,
27 including rival gang members, commit acts of disrespect or violence against one or more of the
28 Bulldogs. Members feel that the failure to do so will lessen their stature within the gang community in

1 Fresno and likewise threaten their territory.

2 16. Bulldogs have routinely and openly armed themselves with firearms in order to protect
3 themselves and to project a violent attitude to rival gang members, and to retaliate against any person
4 who commits acts of violence against any Bulldog gang members.

5 17. Influential positions within the gang are generally earned over time. However, several
6 factors are involved in determining who occupies influential positions, including one's age or longevity
7 within the gang, strength of familial connections within the gang, close relationships with current gang
8 members, success in drug sales or any other criminal activity which would profit gang members, and the
9 demonstrated willingness to engage in violent acts or otherwise project a violent attitude on behalf of the
10 gang.

11 **II. THE CONSPIRACIES AND THEIR OBJECTS:**
12 **SEX, DRUG, AND FIREARMS TRAFFICKING**

13 18. The defendants entered into several conspiracies and other criminal conduct as set forth
14 herein. Carlos MONTANO and Filibert CHAVEZ are influential Bulldog gang members. They
15 engaged in a variety of criminal offenses, including drug trafficking, sex trafficking, and/or illegal
16 firearms possession as alleged herein, and within the class of offenses commonly engaged in by Bulldog
17 gang members. They conspired and assisted each other in sex trafficking offenses. They provided
18 guidance to and were assisted by Ildefonso SOTO and Miguel MURILLO, both Bulldog gang members,
19 who engaged with them in sex trafficking and/or drug trafficking as alleged herein. Defendants
20 PADILLA and MELGAR also assisted CHAVEZ in drug distribution. FRIES assisted MONTANO in
21 drug distribution. MONTANO was sourced methamphetamine by Nicholas BOLANOS, who also
22 sourced Robin GILL, Adolfo MENDOZA, and Cisco HERNANDEZ. GILL then worked with Gabriel
23 GOMEZ and Daniel VILLANUEVA to sell the methamphetamine and firearms, including to a
24 confidential informant. Gerrick FRANKLIN, BOLANOS, and Jesus MELGAREJO provided one or
25 more firearms each to GILL/GOMEZ for further resale. Adolfo MENDOZA and Robert LOCKHART
26 purchased methamphetamine from BOLANOS and CHAVEZ for further resale. The criminal conduct
27 as set forth herein was in furtherance of Bulldog gang activities.
28

1 COUNT ONE: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Distribute and to Possess with Intent to
2 Distribute Methamphetamine]

3 The Grand Jury charges: T H A T

4 NICHOLAS BOLANOS,
5 ROBIN GILL,
6 GABRIEL GOMEZ, and
7 DANIEL VILLANUEVA,

8 [Paragraphs 1-18 above are incorporated herein by reference.]

9 defendants herein, between on a date unknown to the Grand Jury but not later than March 8, 2017, and
10 continuing through on or about September 7, 2017, in the County of Fresno, State and Eastern District of
11 California, and elsewhere, did knowingly and intentionally conspire and agree with each other and with
12 persons known and unknown to the Grand Jury to distribute and to possess with intent to distribute a
13 mixture containing a detectable amount of methamphetamine, a Schedule II Controlled Substance.

14 It is further alleged that the amount of methamphetamine involved in the offense was 500 grams
15 and more of a mixture containing a detectable amount of methamphetamine.

16 COUNT TWO: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Distribute and to Possess with Intent to
17 Distribute Methamphetamine]

18 The Grand Jury further charges: T H A T

19 CARLOS MONTANO, and
20 NICHOLAS BOLANOS,

21 [Paragraphs 1-18 above are incorporated herein by reference.]

22 defendants herein, between on a date unknown to the Grand Jury but not later than April 18, 2017, and
23 continuing through on or about April 18, 2017, in the County of Fresno, State and Eastern District of
24 California, and elsewhere, did knowingly and intentionally conspire and agree with each other and with
25 persons known and unknown to the Grand Jury to distribute and to possess with intent to distribute a
26 mixture containing a detectable amount of methamphetamine, a Schedule II Controlled Substance.

27 It is further alleged that the amount of methamphetamine involved in the offense was 50 grams
28 and more of a mixture containing a detectable amount of methamphetamine.

All in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

1 COUNT THREE: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Distribute and to Possess with Intent to
2 Distribute Methamphetamine]

3 The Grand Jury charges: T H A T

4 CARLOS MONTANO, and
5 JENI FRIES,

6 [Paragraphs 1-18 above are incorporated herein by reference.]

7 defendants herein, between on a date unknown to the Grand Jury but not later than June 6, 2017, and
8 continuing through on or about June 7, 2017, in the County of Fresno, State and Eastern District of
9 California, and elsewhere, did knowingly and intentionally conspire and agree with each other and with
10 persons known and unknown to the Grand Jury to distribute and to possess with intent to
11 methamphetamine, a Schedule II Controlled Substance.

12 It is further alleged that the amount of methamphetamine involved in the offense is 50 grams and
13 more of a mixture containing a detectable amount of methamphetamine.

14 All in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

15 COUNT FOUR: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Distribute and to Possess with Intent to
16 Distribute Methamphetamine]

17 The Grand Jury charges: T H A T

18 FILIBERT CHAVEZ,
19 CARLOS MELGAR,
20 AMINA PADILLA,
21 ILDEFONSO SOTO,
22 and
23 ROBERT LOCKHART,

24 [Paragraphs 1-18 above are incorporated herein by reference.]

25 defendants herein, between on a date unknown to the Grand Jury but not later than July 6, 2017, and
26 continuing through on or about July 8, 2017, in the County of Fresno, State and Eastern District of
27 California, and elsewhere, did knowingly and intentionally conspire and agree with each other and with
28 persons known and unknown to the Grand Jury to distribute and to possess with intent to distribute a
mixture containing a detectable amount of methamphetamine, a Schedule II Controlled Substance.

It is further alleged that the amount of methamphetamine involved in the offense is 50 grams and
more of a mixture containing a detectable amount of methamphetamine.

1 All in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

2 COUNT FIVE: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Distribute and to Possess with Intent to
3 Distribute Methamphetamine]

4 The Grand Jury charges: T H A T

5 NICHOLAS BOLANOS, and
6 ADOLFO JESUS MENDOZA,

7 [Paragraphs 1-18 above are incorporated herein by reference.]

8 defendants herein, between on a date unknown to the Grand Jury but not later than July 22, 2017, and
9 continuing through on or about July 24, 2017, in the County of Fresno, State and Eastern District of
10 California, and elsewhere, did knowingly and intentionally conspire and agree with each other and with
11 persons known and unknown to the Grand Jury to distribute and to possess with intent to distribute
12 methamphetamine, a Schedule II Controlled Substance.

13 It is further alleged that the amount of methamphetamine involved in the offense was 50 grams
14 and more of a mixture containing a detectable amount of methamphetamine.

15 All in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

16 COUNT SIX: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Distribute and to Possess with Intent to
17 Distribute Methamphetamine]

18 The Grand Jury charges: T H A T

19 NICHOLAS BOLANOS, and
20 CISCO HERNANDEZ,

21 [Paragraphs 1-18 above are incorporated herein by reference.]

22 defendants herein, between on a date unknown to the Grand Jury but not later than July 28, 2017, and
23 continuing through on or about August 3, 2017, in the County of Fresno, State and Eastern District of
24 California, and elsewhere, did knowingly and intentionally conspire and agree with each other and with
25 persons known and unknown to the Grand Jury to distribute and to possess with intent to distribute a
26 mixture containing a detectable amount of methamphetamine, a Schedule II Controlled Substance.

27 It is further alleged that the amount of methamphetamine involved in the offense is 50 grams and
28 more of a mixture containing a detectable amount of methamphetamine.

All in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

COUNTS SEVEN - SIXTEEN: [21 U.S.C. § 841(a)(1) – Distribution of Methamphetamine]

The Grand Jury further charges T H A T:

[Paragraphs 1-18 above are incorporated herein by reference.]

defendants herein as noted in the below table, in the County of Fresno, State and Eastern District of California, did knowingly and intentionally distribute a mixture containing a detectable amount of methamphetamine, a Schedule II controlled substance on or about the dates noted in the below table:

COUNT	DEFENDANT(S)	DATE (ON/ABOUT)	AMOUNT ALLEGATION
7	NICHOLAS BOLANOS ROBIN GILL GABRIEL GOMEZ	March 8, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
8	ROBIN GILL	March 13, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
9	ROBIN GILL GABRIEL GOMEZ	March 23, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
10	ROBIN GILL GABRIEL GOMEZ	March 29, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
11	NICHOLAS BOLANOS CARLOS MONTANO	April 18, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
12	CARLOS MONTANO JENI FRIES	June 7, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
13	CARLOS MONTANO	June 22, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
14	FILIBERT CHAVEZ AMINA PADILLA CARLOS MELGAR ILDEFONSO SOTO	July 8, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
15	NICHOLAS BOLANOS	July 24, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
16	NICHOLAS BOLANOS	August 3, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNTS SEVENTEEN - TWENTY: [21 U.S.C. § 841(a)(1) – Possession With Intent to Distribute Methamphetamine]

The Grand Jury further charges T H A T:

[Paragraphs 1-18 above are incorporated herein by reference.]

defendants herein as noted in the below table, in the County of Fresno, State and Eastern District of California, did knowingly and intentionally possess with intent to distribute a mixture containing a detectable amount of methamphetamine, a Schedule II controlled substance on or about the dates noted in the below table:

COUNT	DEFENDANT(S)	DATE	AMOUNT ALLEGATION
17	ROBERT LOCKHART	July 8, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
18	ADOLFO MENDOZA	July 24, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
19	CISCO HERNANDEZ	August 3, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine
20	FILIBERT CHAVEZ, AMINA PADILLA	July 11, 2017	50 grams and more of a mixture containing a detectable amount of methamphetamine

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT TWENTY-ONE: [18 U.S.C. §§ 371, 922(a)(1)(A) – Conspiracy to Engage in the Business of Dealing Firearms Without a License]

The Grand Jury further charges: T H A T

ROBIN GILL,
GABRIEL GOMEZ,
NICHOLAS BOLANOS,
DANIEL VILLANUEVA,
GERRICK TRAVIS TYRELL FRANKLIN, and
JESUS MELGAREJO

1 [Paragraphs 1-18 above are incorporated herein by reference.]

2 defendants herein, beginning on a date no later than March 15, 2017 and continuing until on or about
3 June 29, 2017, in the County of Fresno, State and Eastern District of California, did knowingly conspire
4 and agree with each other, and with other persons known and unknown to the Grand Jury, to commit the
5 following offenses against the United States:

- 6 (a) to unlawfully and willfully engage in the business of dealing firearms without a license,
7 in a violation of Title 18, United States Code, Section 922(a)(1)(A)

8 **MANNER AND MEANS OF THE CONSPIRACY**

- 9 1. It was a part of the conspiracy that Robin GILL, Gabriel GOMEZ, and Gerrick
10 FRANKLIN and others known and unknown to the Grand Jury sold firearms to others,
11 and obtained those firearms from Nicholas BOLANOS and Jesus MELGAREJO, and
12 others known and unknown to the Grand Jury.
- 13 2. It was further a part of the conspiracy that BOLANOS, MEGAREJO, and others agreed
14 to provide the firearms to Robin GILL and Gabriel GOMEZ for further resale, and resold
15 firearms to others.
- 16 3. At all times in the conspiracy, the defendants knew the firearms were to be resold to other
17 buyers.
- 18 4. None of the listed defendants was licensed to engage in the business of dealing firearms
19 by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

20 **OVERT ACTS**

- 21 5. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following
22 overt acts, among others, were committed in the Eastern District of California and
23 elsewhere:

24 **March 15, 2017**

- 25 (a) On or about March 15, 2017, GILL and GOMEZ sold three firearms to a buyer:
26 (1) a Cobra Enterprises/Kodiak pistol for \$800,
27 (2) a Hi Point, model C9, 9mm caliber for \$500, and
28 (3) a SWD, Model M11, 9mm firearm for \$1,400.

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(b) **March 16, 2017**

On or about March 16, 2017, GILL and GOMEZ sold a Walther, Model Colt M4 Carbine, .22 caliber rifle for \$1,500 to a buyer.

March 27, 2017

(c) On or about March 27, 2017, GILL and GOMEZ sold a Ruger, pistol, model: Mark III, caliber .22, and a ALFA-PROJ SPOL S.R.O., revolver, model: UNKNOWN, Caliber: unknown, to a buyer for \$2,000.

March 29, 2017

(d) On or about March 29, 2017, GILL and GOMEZ sold a Norinco (North China Industries) rifle, Model SKS, Caliber 7.62 to a buyer.

April 21, 2017

(e) On or about April 21, 2017, GILL and GOMEZ sold a Glock pistol, model: 36, to a buyer.

April 25, 2017

(f) On or about April 25, 2017, GILL sold a Bryco Arms pistol, model: 48, caliber: .380 to a buyer.

(g) On or about April 25, 2017, GILL and VILLANUEVA sold a Glock pistol, model: 23, caliber: .40, to a buyer.

May 8, 2017

(h) On or about May 8, 2017, GILL and VILLANUEVA sold three firearms to a buyer for \$3,500:

- (1) a CALWEST, pistol, model J22, caliber .22;
- (2) a Tula Arsenal, model SKS style, rifle, 7.62 Caliber; and
- (3) a Tula Arsenal, model SKS style, rifle, 7.62 Caliber.

May 17, 2017

(i) On or about May 17, 2017, GILL, GOMEZ and VILLANUEVA sold a sten Gun type, 9mm caliber machine gun to a buyer for \$3,200.

May 31, 2017

1 (j) On or about May 31, 2017, GILL sold an EP Armory, unknown model, AR-15
2 style pistol to a buyer for \$1,900.

3 **June 6, 2017**

4 (k) On or about June 6, 2017, GILL sold a Smith and Wesson, Model M&P 15, to a
5 buyer for \$2,100.

6 **June 29, 2017**

7 (l) On or about June 29, 2017, GILL and FRANKLIN sold three firearms to a buyer:

8 (1) a Ruger, Mini 14, rifle, .223 caliber, with one compatible magazine for
9 \$1,700;

10 (2) a Glock, 23, pistol, .40 caliber for \$1,200 with two compatible magazines;

11 (3) an AR style, pistol, unknown caliber for \$1,800.

12 (m) On or about June 29, 2017, in connection with this transaction, BOLANOS,
13 FRANKLIN, and MELGAREJO provided firearms to GILL for sale to a buyer.

14 (n) Also, on or about June 29, 2017, GILL attempted to sell three firearms to a buyer:

15 (1) A Sig Sauer, pistol, caliber 9mm;

16 (2) A Smith & Wesson SW40 VE, pistol, .40 caliber; and

17 (3) a AR-15 Variant rifle, .223 caliber.

18 (o) On or about June 29, 2017, in connection with this transaction, BOLANOS and
19 FRANKLIN provided the firearms to GILL for sale to a buyer.

20 All in violation of Title 18, United States Code, Sections 371 and 922(a)(1)(A).

21 COUNT TWENTY-TWO: [18 U.S.C. §924(c) - Carrying a Firearm During and in Relation to a
22 Drug Trafficking Crime]

23 The Grand Jury further charges T H A T:

24

25 CISCO HERNANDEZ, aka "C-Murder,"

26 [Paragraphs 1-18 are incorporated herein by reference.]

27 defendant herein, on or about August 3, 2017, in the County of Fresno, State and Eastern District of

28 California, knowingly used and carried a firearm during and in relation to a drug trafficking offense for

1 which he may be prosecuted in a court of the United States, to wit, possession with intent to distribute
2 methamphetamine as alleged in Count 19, in violation of Title 21, United States Code, Section
3 841(a)(1).

4 All in violation of Title 18, United States Code, Section 924(c)(1).

5 COUNT TWENTY-THREE: [26 U.S.C. § 5861(d) – Possession of an Unregistered Firearm]

6 The Grand Jury further charges: T H A T
7 ROBIN GILL, and
8 GABRIEL GOMEZ,

9 [Paragraphs 1-18 above are incorporated by reference.]

10 defendants herein, on or about May 17, 2017, in the County of Fresno, State and Eastern District of
11 California, did knowingly possess a firearm, as defined in Title 26, United States Code, Section 5845, to
12 wit, an unknown make and model machine gun, 9mm caliber sten gun, which was not registered to them
13 in the National Firearm Registration and Transfer Record.

14 All in violation of Title 26, United States Code, Section § 5861(d).

15 COUNT TWENTY-FOUR: [18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm]

16 The Grand Jury further charges: T H A T
17 CARLOS MONTANO,

18 [Paragraphs 1-18 above are incorporated herein by reference.]

19 defendant herein, on or about June 9, 2017, in the County of Fresno, State and Eastern District of
20 California, having been convicted of a crime punishable by a term of imprisonment exceeding one year,
21 that is:

22 2009 Fresno County Superior Court conviction for a violation of California Health and Safety
23 Code, section 11377(a), possession of a controlled substance;

24 2012 Fresno County Superior Court conviction for a violation of California Penal Code, section
25 12021(a)(1), felon in possession of a firearm;

26 2014 Fresno County Superior Court conviction for a violation of California Health and Safety
27 Code, Section 11378, possession of a controlled substance for sale

28 did knowingly possess a firearm, specifically, a HS Products (IM Metal) .40 caliber, pistol, model XD4,
which had been shipped and transported in interstate and foreign commerce.

1 All in violation of Title 18, United States Code, Section 922(g)(1).

2
3 COUNT TWENTY-FIVE: [18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm]

4 The Grand Jury further charges: T H A T

5 JESUS MELGAREJO, JR.,

6 [Paragraphs 1-18 above are incorporated herein by reference.]

7 defendant herein, on or about June 29, 2017, in the County of Fresno, State and Eastern District of
8 California, having been convicted of a crime punishable by a term of imprisonment exceeding one year,
9 that is:

10 2012 Fresno County Superior Court conviction for a violation of California Penal Code Section
11 594(A), felony vandalism; and

12 2012 Fresno County Superior Court conviction for a violation of California Health and Safety
13 Code section 11350(a), possession of a controlled substance for sale

14 did knowingly possess a firearm, specifically, a Llama, .38 caliber pistol, which had been shipped and
15 transported in interstate and foreign commerce.

16 All in violation of Title 18, United States Code, Section 922(g)(1).

17 COUNT TWENTY-SIX: [18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm]

18 The Grand Jury further charges: T H A T

19 CESAR GUTIERREZ,

20 [Paragraphs 1-18 above are incorporated herein by reference.]

21 defendant herein, on or about July 20, 2017, in the County of Fresno, State and Eastern District of
22 California, having been convicted of a crime punishable by a term of imprisonment exceeding one year,
23 that is:

24 2016 Fresno County Superior Court felony conviction for a violation of California Penal Code,
25 Section 25400(a)(1), carrying a concealed weapon in a vehicle

26 did knowingly possess a firearm, specifically, a Weihrauch, Hermann Revolver, Model#: EA/R, .38
27 caliber, which had been shipped and transported in interstate and foreign commerce.

28 All in violation of Title 18, United States Code, Section 922(g)(1).

COUNT TWENTY- SEVEN: [18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm]

The Grand Jury further charges: T H A T

CARLOS MONTANO,

[Paragraphs 1-18 above are incorporated herein by reference.]

defendant herein, on or about August 12, 2017, in the County of Fresno, State and Eastern District of California, having been convicted of a crime punishable by a term of imprisonment exceeding one year, that is:

2009 Fresno County Superior Court conviction for a violation of California Health and Safety Code, section 11377(a), possession of a controlled substance;

2012 Fresno County Superior Court conviction for a violation of California Penal Code, section 12021(a)(1), felon in possession of a firearm;

2014 Fresno County Superior Court conviction for a violation of California Health and Safety Code, Section 11378, possession of a controlled substance for sale

did knowingly possess a firearm, specifically, a .40 caliber Springfield XD40 pistol, which had been shipped and transported in interstate and foreign commerce.

All in violation of Title 18, United States Code, Section 922(g)(1).

COUNT TWENTY-EIGHT: [18 U.S.C. §§ 371, 2421(a) – Conspiracy to Engage in Interstate Transportation for Prostitution]

The Grand Jury charges: T H A T

FILIBERT CHAVEZ,
CARLOS MONTANO, and
MIGUEL MURILLO

[Paragraphs 1-18 above are incorporated herein by reference.]

defendants herein, beginning on a date no later than July 12, 2017 and continuing until on or about July 27, 2017, in the County of Fresno, State and Eastern District of California, New York and elsewhere, did knowingly conspire and agree with each other, and with other persons known and unknown to the Grand Jury, to commit the following offenses against the United States: to knowingly transported in interstate commerce from California to New York, J.F. (an adult female), J.C. (an adult female), and K.S. (an adult female) with the intent that such individuals engage in prostitution and sexual activity for which a person can be charged with a criminal offense in violation of Title 18, United States Code, Section 2421(a).

1 MANNER AND MEANS OF THE CONSPIRACY

- 2 a. It was a part of the conspiracy that Filibert CHAVEZ, Carlos MONTANO, and Miguel
- 3 MURILLO caused J.F., J.C., and K.S. to travel to New York from California for the purposes
- 4 of engaging in sex acts for profit.
- 5 b. It was further a part of the conspiracy that that CHAVEZ, MONTANO and MURILLO
- 6 planned and secured flights, lodging and target locations for J.F., J.C., and K.S. to engage in
- 7 prostitution in New York.
- 8 c. At all times in the conspiracy, the defendants knew that J.F., J.C., and K.S. would be
- 9 engaging in prostitution in New York.

10 OVERT ACTS

- 11 a. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt
- 12 acts, among others, were committed in the Eastern District of California and elsewhere:

13 **July 14, 2017**

- 14 1) On or about July 14, 2017, MONTANO spoke to MURILLO asking
- 15 MURILLO for MURILLO and MURILLO's prostitute J.C.'s legal name and
- 16 driver's license information for purposes of booking MURILLO and J.C.'s
- 17 flight to New York.
- 18 2) On or about July 14, 2017, MURILLO sent a text message to MONTANO
- 19 containing pictures of MURILLO and J.C.'s driver's licenses.
- 20 3) On or about July 14, 2017, CHAVEZ called MONTANO to discuss the status
- 21 of MONTANO's flight to New York and bringing prostitutes to New York.
- 22 4) On or about July 14, 2017, CHAVEZ and MONTANO spoke on the phone,
- 23 and discussed whether MONTANO should invite co-defendant SOTO and his
- 24 "girl" to New York and discussed the prostitution plans for New York.

25 **July 16, 2017**

- 26 5) On or about July 16, 2017 MONTANO sent a text message to MURILLO
- 27 containing a text message of an airline confirmation for MONTANO,
- 28 MURILLO, J.F., and J.C.

July 19, 2017

6) On or about July 19, 2017, MURILLO sent a text message to CHAVEZ concerning the prostitution of individuals brought to New York.

COUNT TWENTY-NINE: [18 U.S.C. §2421 – Interstate Transportation for Prostitution]

The Grand Jury further charges: T H A T

CARLOS MONTANO,

[Paragraphs 1-18 above are incorporated herein by reference.]

defendant herein, beginning on or about July 18, 2017, and continuing until on or about July 19, 2017 in the County of Fresno, State and Eastern District of California and elsewhere, knowingly transported J.F. an adult female, in interstate commerce from California to New York, with the intent that J.F. engage in prostitution and sexual activity for which a person can be charged with a criminal offense, and aided and abetted such conduct.

All in violation of Title 18, United States Code, Sections 2(a) and 2421:

COUNT THIRTY: [18 U.S.C. §2421 – Interstate Transportation for Prostitution]

The Grand Jury further charges: T H A T

MIGUEL MURILLO,

[Paragraphs 1-18 above are incorporated herein by reference.]

defendant herein, beginning on or about July 18, 2017, and continuing until on or about July 19, 2017 in the County of Fresno, State and Eastern District of California and elsewhere, knowingly transported J.C. an adult female in interstate commerce from California to New York, with the intent that J.C., engage in prostitution and sexual activity for which a person can be charged with a criminal offense, and aided and abetted such conduct.

All in violation of Title 18, United States Code, Sections 2(a) and 2421.

COUNTS THIRTY-ONE TO THIRTY-SIX: [18 U.S.C. §1952(a) – Use of a Facility of Interstate Commerce to Promote Prostitution]

The Grand Jury further charges: T H A T

[Paragraphs 1-18 above are incorporated herein by reference.]

1 beginning at a time unknown, but no later than on or about July 3, 2017, and continuing until on or
2 about July 19, 2017, in the County of Fresno, State and Eastern District of California and elsewhere,
3 each defendant named below used a facility in interstate/foreign commerce, namely a cellular telephone,
4 with the intent to promote, manage, establish, carry on and facilitate the promotion, management,
5 establishment and carrying on of an unlawful activity, that is, prostitution in violation of California and
6 New York law, and thereafter performed and attempted to perform an act to promote, manage, establish
7 and carry on, and to facilitate the promotion, management, establishment and carrying on of such
8 unlawful activity:

<u>COUNT</u>	<u>DEFENDANT</u>	<u>CALLS/ TEXT MESSAGES</u>
31	CARLOS MONTANO	On or about June 6, 2017, MONTANO (using telephone number 559-612-7706 exchanged wire communications and text messages with J.F. regarding her engaging in prostitution activities
32	FILIBERT CHAVEZ, AMINA PADILLA	On or about July 3, 2017, CHAVEZ (using telephone number 559-290-3352) spoke to PADILLA (using telephone number 559-862-6407) regarding prostitution advertisements.
33	CARLOS MONTANO; MIGUEL MURILLO	On or about July 12, 2017, MONTANO (using telephone number 559-612-7006) exchanged text messages with MURILLO (using telephone number 559-724-1465) regarding purchasing airline tickets to New York where they were taking their prostitutes to work.
34	FILIBERT CHAVEZ, AMINA PADILLA	On or about June 23, 2017, CHAVEZ (using 559-290-3351) spoke with PADILLA (using telephone number 559-862-6407 about PADILLA posting an ad for CHAVEZ's prostitute.
35	CARLOS MONTANO, ILDEFONSO SOTO	On or about July 20, 2017, MONTANO (using 559-612-7006) spoke with SOTO (using 559-579-7014), and asked him to obtain an Amazon card for \$40 so MONTANO could post a prostitution ad.

36	CARLOS MONTANO, ILDEFONSO SOTO	On or about July 20, 2014, MONTANO (using 559-612-7006) spoke with SOTO (using 559-579-7014), and agreed to repay SOTO the \$40 by posting prostitution ads for SOTO.
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All in violation of Title 18, United States Code, section 1952(a)(3).

COUNT THIRTY-SEVEN: [18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm]

The Grand Jury further charges: T H A T

GERRICK TRAVIS TYRELL FRANKLIN,

[Paragraphs 1-18 above are incorporated herein by reference.]

defendant herein, on or about June 29, 2017, in the County of Fresno, State and Eastern District of California, having been convicted of a crime punishable by a term of imprisonment exceeding one year, that is:

a 2012 Fresno County Superior Court felony conviction for a violation of California Penal Code, section 215(a), carjacking;

a 2012 Fresno County Superior Court felony conviction for a violation of California Health and Safety Code, section 11378, possession of a controlled for sale; and

a 2015 Fresno County Superior Court felony conviction for a violation of California Penal Code, section 4573.6, prisoner in possession of a controlled substance

did knowingly possess a firearm, specifically, a Glock .40 caliber pistol, model 23, which had been shipped and transported in interstate and foreign commerce.

All in violation of Title 18, United States Code, Section 922(g)(1).

COUNT THIRTY-EIGHT: [18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm]

The Grand Jury further charges: T H A T

GERRICK TRAVIS TYRELL FRANKLIN,

[Paragraphs 1-18 above are incorporated herein by reference.]

defendant herein, on or about June 29, 2017, in the County of Fresno, State and Eastern District of California, having been convicted of a crime punishable by a term of imprisonment exceeding one year, that is:

a 2012 Fresno County Superior Court felony conviction for a violation of California Penal Code, section 215(a), carjacking;

1 a 2012 Fresno County Superior Court felony conviction for a violation of California Health and
2 Safety Code, section 11378, possession of a controlled for sale; and

3 a 2015 Fresno County Superior Court felony conviction for a violation of California Penal Code,
4 section 4573.6, prisoner in possession of a controlled substance

5 did knowingly possess firearms, specifically, a Sig Sauer, pistol, caliber 9mm; and a Smith & Wesson
6 SW40 VE, pistol, .40 caliber, which had been shipped and transported in interstate and foreign
7 commerce.

8 All in violation of Title 18, United States Code, Section 922(g)(1).

9 FORFEITURE ALLEGATION: [18 U.S.C. §§ 981(A)(1)(C), 924(D)(1), 2428, 21 U.S.C. § 853(a), and
10 28 U.S.C. § 2461(c) – Criminal Forfeiture]

11 1. Upon conviction of one or more of the offenses alleged in Counts One through Twenty,
12 defendants NICHOLAS BOLANOS, ROBIN GILL, GABRIEL GOMEZ, DANIEL VILLANUEVA,
13 CARLOS MONTANO, JENI FRIES, FILIBERT CHAVEZ, CARLOS MELGAR, AMINA PADILLA,
14 ROBERT LOCKHART, ADOLFO JESUS MENDOZA, CISCO HERNANDEZ, and ILDEFONSO
15 SOTO, shall forfeit to the United States pursuant to Title 21, United States Code, Section 853(a), the
16 following property:

17 a. All right, title, and interest in any and all property involved in violation of Title
18 21, United States Code, Sections 841(a)(1) and 846, or conspiracy to commit such offenses, for which
19 defendants are convicted, and all property traceable to such property, including the following: all real or
20 personal property, which constitutes or is derived from proceeds obtained, directly or indirectly, as a
21 result of such offenses; and all property used, or intended to be used, in any manner or part to commit or
22 to facilitate the commission of the offenses.

23 b. A sum of money equal to the total amount of proceeds obtained as a result of the
24 offenses, or conspiracy to commit such offenses, for which defendants are convicted.

25 2. Upon conviction of one or more of the offenses alleged in Counts Twenty-One, Twenty-
26 Eight, and Thirty-One through Thirty-Six of this Indictment, defendants ROBIN GILL, GABRIEL
27 GOMEZ, NICHOLAS BOLANOS, DANIEL VILLANUEVA, GERRICK TRAVIS TYRELL
28 FRANKLIN, JESUS MELGAREJO, FILIBERT CHAVEZ, CARLOS MONTANO, AMINA
PADILLA, ILDEFONSO SOTO, and MIGUEL MURILLO shall forfeit to the United States, pursuant

1 to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property; real and personal, which constitutes
2 or is derived from proceeds traceable to such violations, including, but not limited to:

3 a. A sum of money equal to the amount of proceeds traceable to such offenses, for
4 which defendants are convicted.

5 3. Upon conviction of the offenses alleged in Counts Twenty-Two, Twenty-Four through
6 Twenty-Seven, and Thirty-Seven to Thirty-Eight of this Indictment, defendants CISCO HERNANDEZ,
7 aka "C-Murder", CARLOS MONTANO, JESUS MELGAREJO, JR., CESAR GUTIERREZ,
8 FILIBERT CHAVEZ, MIGUEL MURILLO, and Gerrick Travis Tyrell FRANKLIN shall forfeit to the
9 United States pursuant to Title 18, United States Code, Section 924(d)(1) and Title 28, United States
10 Code, Section 2461(c), any firearms and ammunition involved in or used in the knowing commission of
11 the offenses.

12 4. Upon conviction of the offense alleged in Count Twenty-Three of this Indictment,
13 defendants ROBIN GILL and GABRIEL GOMEZ shall forfeit to the United States pursuant to Title 26,
14 United States Code, Section 5872 and Title 28, United States Code, Section 2461(c), any firearm
15 involved in any violation of 26 U.S.C. § 5861(d).

16 5. Upon conviction of the offense alleged in Count Thirty of this Indictment, defendant
17 MIGUEL MURILLO shall forfeit to the United States pursuant to Title 18, United States Code, Section
18 2428, any property, real or personal, that was used or intended to be used to commit or to facilitate the
19 commission of such violation and any property, real or personal, constituting or derived from any
20 proceeds that the defendant obtained, directly or indirectly, as a result of such violation.

21 **[Remainder of page left blank intentionally.]**
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 --oOo--

4 UNITED STATES OF AMERICA,) Case No. 17CR00198-SKO
5 Plaintiff,) Fresno, California
6 vs.) Friday,
7 CARLOS MONTANO,) August 25, 2017
8 Defendant.) 2:00 p.m.
9)

10 TRANSCRIPT OF ARRAIGNMENT AND PLEA RE INDICTMENT
11 BEFORE THE HONORABLE BARBARA MCAULIFFE
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff: KIM SANCHEZ, ESQ.
15 Assistant United States
16 Attorney
17 2500 Tulare Street
18 Suite 4401
19 Fresno, California 97321
(559) 497-4080

20 For the Defendant: W. SCOTT QUINLAN, ESQ.
21 2333 Merced Street
22 Fresno, California 93721
(559) 442-0634

23 Court Recorder: Otilia Rosales
24 United States District Court
25 2500 Tulare Street
Sixth Floor
Fresno, California 93721

26 Proceedings recorded by electronic sound recording;
27 Transcript produced by transcription service.

1 Transcriber:

Crystal Thomas
Echo Reporting, Inc.
2160 Fletcher Parkway
Suite 209
El Cajon, California 92020
(858) 453-7590

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1 FRESNO, CALIFORNIA FRIDAY, AUGUST 25, 2017 2:00 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: The Court will call the United States
5 versus Carlos Montano, Case Number 17-198.

6 Sir, it's my duty to tell you why you've been
7 brought here and what the charges are and what your rights
8 are. You've been brought to this Court because an
9 indictment -- a criminal indictment has issued against you
10 which charges you with being in violation of Title 18 of the
11 United States Code Section 922(g)(1), which is a felon in
12 possession of a firearm. If you're convicted of this charge
13 -- and, as we sit here today, I do not know if you'll be
14 convicted -- there's a maximum penalty of 10 years of
15 imprisonment, \$250,000 fine, and three years of supervised
16 release and a \$100 special assessment.

17 You've also been charged under the forfeiture
18 statutes for forfeiture of any of the property associated
19 with the criminal activity only if you are convicted.

20 But for today, you have the right to remain
21 silent, and you're not required to say anything here today.
22 If you choose to say anything other than in confidence with
23 your attorney, whatever you say can be used against you. At
24 trial, the Government is required to prove the charge
25 against you beyond a reasonable doubt, and you do not have

1 the burden of proof at trial as to the charges against you.

2 You have the right to a preliminary -- excuse me.

3 You have the right to be represented by counsel, and you're

4 entitled to appointment of counsel if you cannot afford to

5 retain your own counsel, and I believe you've already been

6 appointed counsel to represent you in this case.

7 So, Mr. Quinlan, have you received a copy of the

8 indictment?

9 MR. QUINLAN: I have, your Honor. I waive further

10 reading of the indictment and statutory and constitutional

11 rights, enter a plea of not guilty to the charge and deny

12 the forfeiture allegation.

13 THE COURT: Okay.

14 MR. QUINLAN: We would request discovery, and I

15 have received some discovery today.

16 THE COURT: Okay.

17 MR. QUINLAN: And we would request a status

18 hearing.

19 THE COURT: All right. And so the Court will

20 enter a not guilty plea on Mr. Montano's behalf and deny the

21 forfeiture allegation. And you're requesting discovery?

22 MR. QUINLAN: Yes.

23 THE COURT: The Court will order discovery as well

24 and note that initial discovery has been provided.

25 What about true name? Is that Mr. Montano's

1 correct name?

2 MR. QUINLAN: I believe it is, your Honor.

3 THE COURT: Okay. So the Court will make a true
4 name finding that Mr. Montano's name is correctly stated as
5 charged on the indictment.

6 And, for the Government?

7 MS. SANCHEZ: Kim Sanchez representing the United
8 States. The Government request reciprocal discovery.

9 THE COURT: And the Court will order reciprocal
10 discovery.

11 Have the parties discussed a potential date for
12 status conference?

13 MR. QUINLAN: No, your Honor. But I would suggest
14 sometime in late October.

15 MS. SANCHEZ: That's fine with the Government.

16 THE COURT: October 30th or November 6th?

17 MS. SANCHEZ: Either is fine with the Government.

18 MR. QUINLAN: November 6th, your Honor?

19 THE COURT: November 6th, yes, or October 30th.

20 MR. QUINLAN: Oh, I'm sorry. November 6th.

21 THE COURT: Oh, okay. November 6th, 2017 at 1:00
22 p.m. before Judge Oberto for a status conference.

23 And do you agree to exclude time until then?

24 MR. QUINLAN: Yes, your Honor.

25 THE COURT: Okay. So the Court will make an ends

1 of justice finding that time should be excluded for case
2 preparation, settlement exploration, and pre-plea
3 negotiations. All right.

4 MR. QUINLAN: Thank you, your Honor.

5 THE COURT: Thank you.

6 MS. SANCHEZ: Thank you.

7 THE COURT: Thank you.

8 (Proceedings concluded.)

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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/Crystal Thomas 6/30/2020
6 Transcriber, AAERT CERT*654 Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8
9 /s/L.L. Francisco
10 L.L. Francisco, President
11 Echo Reporting, Inc.

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SEALED

FILED

UNITED STATES DISTRICT COURT

for the

Eastern District of California

SEP 06 2017
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

United States of America)
v.)

CARLOS MONTANO,)
FILIBERT CHAVEZ,)
ROBIN GILL,)
AND OTHERS LISTED ON ATTACHED SHEET)

Case No. 17 MJ 00147 : EPG

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 10 - September 1, 2017 in the county of Fresno in the Eastern District of California, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
21 USC 846, 841(a)(1)	conspiracy to distribute & possess with intent to distribute controlled substances
21 USC 841(a)(1)	distribution and possession with intent to distribute controlled substances
18 USC 922(g)(1)	felon in possession of a firearm
18 USC 922(a)(1)(A), 371	engaging in the business of dealing firearms without a license and conspiracy
18 USC 2421	transportation in interstate commerce for prostitution
18 USC 1952	use of a facility of interstate commerce to promote prostitution
26 USC 5861(d)	possession of an unregistered firearm

This criminal complaint is based on these facts:

See Affidavit of DEA SA Joshua Copeland, attached hereto and incorporated herein.

Continued on the attached sheet.



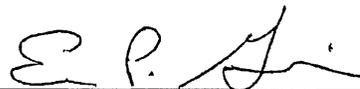
Complainant's signature

Joshua Copeland, DEA Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: Sept 5, 2017



Judge's signature

City and state: Fresno, California

Erica P. Grosjean, U.S. Magistrate Judge

Printed name and title

COMPLAINT (continuation of Defendants)

Gabriel GOMEZ,

Juan Carlos BRICENO, aka JC,

Nicholas BOLANOS,

Daniel VILLANUEVA,

Gerrick Travis Tyrell FRANKLIN, aka G-Stacks,

Amina PADILLA,

Robert LOCKHART,

Ildelfonso SOTO, aka Manny Fresh,

Carlos MELGAR,

Jeni FRIES,

Cisco HERNANDEZ,

Miguel MURRILLO,

Adolfo Jesus MENDOZA,

Jesus MELGAREJO JR and

Cesar GUTIERREZ

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

1
2
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4 UNITED STATES OF AMERICA,
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6 Plaintiff,
7
8 v.
9
10 Carlos MONTANO,
11
12 Filibert CHAVEZ, aka Freeway Beto,
13
14 Robin GILL, aka PJ Rob,
15
16 Gabriel GOMEZ,
17
18 Juan Carlos BRICENO, aka JC,
19
20 Nicholas BOLANOS,
21
22 Daniel VILLANUEVA,
23
24 Gerrick Travis Tyrell FRANKLIN, aka G-Stacks,
25
26 Amina PADILLA,
27
28 Robert LOCKHART,
Ildelfonso SOTO, aka Manny Fresh,
Carlos MELGAR,
Jeni FRIES,
Cisco HERNANDEZ,
Miguel MURRILLO,
Adolfo Jesus MENDOZA,
Jesus MELGAREJO JR and
Cesar GUTIERREZ

Case No.

AFFIDAVIT OF DEA SPECIAL AGENT
JOSHUA COPELAND IN SUPPORT OF
COMPLAINT

COMPLAINT AFFIDAVIT

EXPERTISE, TRAINING AND EXPERIENCE OF THE AFFLIANT

I, Joshua Copeland, being sworn, depose, and state the following:

1. I am an "investigative or law enforcement officer" within the meaning of Title 18, United States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Title 18, United States Code, Section 2516, and Title 21, United States Code.

2. I am a Special Agent (SA) with the U.S. Drug Enforcement Administration (DEA), assigned to the Fresno Area Surveillance Team (FAST), and have been so employed since May 2014. During this time, I have completed an eighteen-week training Academy in Quantico, Virginia. This training included the investigation of violations of Title 21, United States Code, Sections 841(a)(1) and 846. In addition, I have received special training in the methods used by drug traffickers to illegally produce methamphetamine. I was a police officer for the Gwinnett County Police Department in Georgia for four years prior to being employed by DEA. During that time, I worked drug investigations as a patrol officer before being assigned to the Narcotics Unit. Based on my experience and training, I have become knowledgeable regarding tactics employed by drug traffickers to manufacture, transport, distribute and conceal illegal drugs.

3. As a DEA Special Agent, part of my duties and responsibilities include investigating criminal violations relating to narcotics possession and distribution. I have participated in investigations involving organizations trafficking in controlled substances, I have personally investigated and/or assisted other agents and officers in their investigations involving violations of Title 21, United States Code, Section 841(a)(1), the manufacture of, distribution of and possession with intent to distribute controlled substances; and Title 21, United States Code, Section 846, conspiracy to commit the foregoing. Specifically, those investigations have focused on the distribution of methamphetamine, heroin and other illicit drugs. I am familiar with, and have participated in; investigative methods, including, but not limited to, electronic surveillance, surveillance, the use of GPS/E-911 data, general questioning of witnesses, search warrants,

1 Consortium, and information obtained from confidential human sources, I am familiar with all
2 aspects of this investigation. Based on this familiarity and other information I have reviewed and
3 determined to be reliable, I declare that the facts contained in this affidavit show that there is
4 probable cause that the target subjects have engaged in the following offenses:

- 5 a. Dealing in firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A);
- 6 b. Conspiracy to engage in the business of dealing firearms without a license, in
7 violation of 18 U.S.C. § 371, 922(a)(1)(A);
- 8 c. Prohibited possession of firearms and/or ammunition, in violation of 18 U.S.C. §
9 922(g);
- 10 d. Distribution and Possession of controlled substances with intent to distribute, in
11 violation of 21 U.S.C. § 841(a)(1);
- 12 e. Conspiracy to distribute or possess with intent to distribute controlled substances,
13 in violation of 21 U.S.C. § 846;
- 14 f. Possession of an unregistered firearm, in violation of Title 26 U.S.C. § 5861(d);
- 15 g. Using a facility of interstate commerce to promote prostitution, in violation of 18
16 U.S.C. § 1952(a); and
- 17 h. Mann Act, Interstate transportation for purposes of prostitution, in violation of
18 Title 18 U.S.C § 2421

19
20 **CONFIDENTIAL HUMAN SOURCES**

21 5. The facts in this affidavit were obtained, in part, with the use of three confidential
22 human sources (herein referred to as "CHS"). All CHS' wish to remain confidential for fear of
23 retaliation from the subjects of the investigation and their associates.

24 6. CHS#1 has provided information towards this investigation in return for monetary
25 compensation. CHS#1 is considered to be a "professional CHS" and has worked with several
26 law enforcement agencies approximately over the past decade. CHS#1 has a criminal history
27 which includes two misdemeanor convictions for the following crimes: Failure to appear and
28 assault domestic violence. CHS#1 has demonstrated knowledge of the firearms and narcotics

COMPLAINT AFFIDAVIT

1 trafficking sub-culture and is familiar with methods used to distribute firearms and narcotics.
2 CHS#1 has provided information on the target subjects and their involvement in firearms and
3 methamphetamine trafficking. Much of this information provided by CHS#1 has been
4 corroborated through review of police reports, criminal histories, probation and parole records,
5 data obtained through pen register trap and traces, and through surveillance. The information
6 provided by CHS#1 has been relied upon by the investigative team and has been proven to be
7 accurate. During this investigation CHS#1 has conducted several controlled purchases of either
8 firearms, cocaine, or methamphetamine while under the direction of the ATF and FBI. During
9 each of the controlled purchases CHS#1 has worn a recording and transmitting device. These
10 recordings have been reviewed following the transactions. The recordings have accurately
11 reflected the reporting provided by CHS#1. I have found CHS#1 to be reliable.

12 7. CHS#2 has been providing reliable information to HSI for roughly 4 years. This
13 information has led to several arrests and seizures and has been found to be reliable. CHS#2 has
14 been providing information in exchange for immigration benefits and monetary compensation.
15 CHS#2 has several convictions. In 1996, CHS#2 was convicted for grand theft; 1999 petty theft;
16 2000 being in possession of fraudulent identification documents; 2003 petty theft; 2004 willful
17 cruelty to child; 2009 burglary; 2010 illegal reentry deported alien into the United States; and
18 2014 theft. CHS#2 also was arrested in March 2013 for taking a vehicle without the owner's
19 consent, and those charges were dismissed.

20 8. Information in this affidavit was also obtained from undercover ATF Special
21 Agents, herein referred to as UC1 and UC 2. During this investigation, UC1 has posed as a boss
22 of CHS#1 and UC 2 has posed as CHS#1's brother-in-law.

23 **TARGET SUBJECTS**

24 9. Carlos MONTANO was identified by CHS#2 as a methamphetamine dealer and pimp.
25 During the investigation, DEA and HSI conducted two controlled purchases of crystal
26 methamphetamine from MONTANO, utilizing CHS#2. On June 6, 2017, investigators
27 intercepted a call regarding a package being mailed to Des Moines, Iowa. Surveillance observed
28

1 a box taken from MONTANO's residence, placed in a vehicle, and driven to a local UPS store.
2 Investigators intercept the package and discover approximately one pound of crystal
3 methamphetamine in a glass jar concealed in wax. MONTANO was the target of a wiretap
4 investigation. In July 2017, MONTANO travelled with Jeni FRIES to New York, New York for
5 the purposes of engaging FRIES in prostitution. MONTANO and FRIES also travelled to New
6 Jersey to engage in prostitution. MONTANO is prohibited from possessing firearms after a
7 felony conviction. On January 12, 2009, MONTANO was convicted in the State of California,
8 Superior Court of Fresno County, for a violation of California Health and Safety Code 11377(a)
9 Possession of controlled substance Methamphetamine. Based on the evidence set forth below,
10 there is probable cause to believe MONTANO committed the following offenses:

- 11 a. Title 21 U.S.C., Section 846 - Conspiracy to distribute or possess with intent to
12 distribute controlled substances (5 g and more of actual and 50 g and more of a
13 mixture containing a detectable amount of methamphetamine)
- 14 b. Title 21 U.S.C., Section 841(a)(1) - Possession of controlled substances with intent to
15 distribute,
- 16 c. Title 18 U.S.C., Section 922(g)(1) - Felon in possession of a firearm,
- 17 d. Title 18 U.S.C., Section 2421 - Mann Act, Interstate transportation for purposes of
18 prostitution.
19

20 10. Filibert CHAVEZ is a member of the Pleasant Street Bulldog street gang and he was the
21 target of the investigation. CHAVEZ was a close associate of GILL and MONTANO. Through
22 review of social media and through intercepted calls over TT1, utilized by GILL and TT9,
23 utilized by MONTANO, CHAVEZ was identified as the user of 559-290-3351, TT11.
24 CHAVEZ was the subject of a wiretap investigation. The investigation revealed CHAVEZ acted
25 as a pimp and trafficker of crystal methamphetamine. Based on the evidence set forth below,
26 there is probable cause to believe CHAVEZ committed the following offenses:
27
28

1 300. The investigative team contacted federal and state law enforcement officers from
2 the Paramus, New Jersey area. The New Jersey agents were asked to respond to FRIES
3 backpage ad and set up a date with her. On July 27, 2017, agents, acting in an undercover
4 capacity, responded to the ad and visited FRIES in New Jersey for the purpose of engaging in
5 prostitution. Ultimately, FRIES offered sexual services and was arrested for prostitution by local
6 law enforcement. FRIES was also interviewed. After being advised of her Miranda rights,
7 FRIES stated she traveled to the New York/New Jersey area a couple of days ago with the intent
8 of engaging in prostitution activity. FRIES indicated that she does not engage in prostitution on
9 a full-time basis, but only does it when she needs extra money.

10 301. On July 20, 2017, SA Varela sent a Department of Homeland Security (DHS)
11 subpoena to American Airlines requesting flight records pertaining to MONTANO, MURILLO,
12 FRIES and CASTRO. On July 20, 2017, American Airlines responded to the aforementioned
13 subpoena and provided information related to American Airlines reservation #HJLHDM
14 indicating that MONTANO, MURILLO, FRIES and CASTRO departed from Los Angeles, CA
15 (LAX) on July 18, 2017, and arrived into New York (JFK) on July 19, 2017.

16 302. SA Varela reviewed MONTANO's Snapchat and Instagram accounts as well as
17 FRIES' Instagram account and located several photographs and videos indicating that
18 MONTANO and FRIES had travelled to New York.
19

20 303. Based on the above information, I believe there is probable cause to believe that
21 MONTANO and MURILLO violated the Mann Act, Title 18, United States Code, Section 2421,
22 by transporting FRIES and CASTRO in interstate commerce to engage in prostitution or sexual
23 activity.

24 **CONCLUSION**

25 304. The above facts set forth probable cause to believe that the target subject were in
26 violation of Title 18 and 21 United States Codes:

27 a. Dealing in firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A);
28

1 b. Conspiracy to engage in the business of dealing firearms without a license, in
2 violation of 18 U.S.C. § 371, 922(a)(1)(A);

3 c. Prohibited possession of firearms and/or ammunition, in violation of 18 U.S.C. §
4 922(g);

5 d. Distribution and Possession of controlled substances with intent to distribute, in
6 violation of 21 U.S.C. § 841(a)(1);

7 e. Conspiracy to distribute or possess with intent to distribute controlled substances,
8 in violation of 21 U.S.C. § 846;

9 f. Possession of an unregistered firearm, in violation of Title 26 U.S.C. § 5861(d)

10 g. Using a facility of interstate commerce to promote prostitution, in violation of 18
11 U.S.C. § 1952(a); and

12 h. Mann Act, Interstate transportation for purposes of prostitution, in violation of
13 Title 18 U.S.C § 2421.

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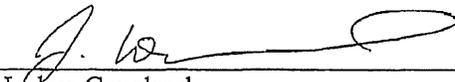
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1 305. I request that arrest warrants are to be issued for Carlos MONTANO, Filibert
2 CHAVEZ, Robin GILL, Gabriel GOMEZ, Juan Carlos BRICENO, Nicholas BOLANOS, Daniel
3 VILLANUEVA, Gerrick Travis Tyrell FRANKLIN, Amina PADILLA, Robert LOCKHART,
4 Carlos MELGAR, Ildelfonso SOTO, Jeni FRIES, Cisco HERNANDEZ, Miguel MURRILLO,
5 Jesus Adolfo Jesus MENDOZA, Jesus MELGAREJO JR., and Cesar GUTIERREZ who were
6 involved in violating the target offenses.

7
8
9 
10 Joshua Copeland
11 Special Agent
12 Drug Enforcement Administration

13 SWORN TO BEFORE ME, AND SUBSCRIBED
14 IN MY PRESENCE THIS DAY

15 Sept 5, 2017
16 (Date)

17 
18 Honorable Erica P. Grosjean
19 U.S. Magistrate Judge

20 Approved as to form:

21 /s/ Kimberly A. Sanchez
22 By Kimberly A. Sanchez
23 Jeffrey A. Spivak
24 Assistant U.S. Attorneys
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 --oOo--

4 UNITED STATES OF AMERICA,) Case No. 17CR00198-SKO
5 Plaintiff,) Fresno, California
6 vs.) Thursday,
7 CARLOS MONTANO, et al.,) September 7, 2017
8 Defendants.) 2:00 p.m.
9)

10 TRANSCRIPT OF INITIAL APPEARANCE RE COMPLAINT
11 BEFORE THE HONORABLE ERICA P. GROSJEAN
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff: KIM SANCHEZ, ESQ.
15 JEFF SPIVAK, ESQ.
16 Assistant United States
17 Attorney
2500 Tulare Street
Suite 4401
Fresno, California 97321
(559) 497-4080

18 For Defendant Montano: W. SCOTT QUINLAN, ESQ.
19 2333 Merced Street
Fresno, California 93721
20 (559) 442-0634

21 For Defendant Gill: REED B. GRANTHAM, ESQ.
22 Office of the Federal Defender
2300 Tulare Street, Suite 330
24 Fresno, California 93721
25 (559) 487-5561

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

1 APPEARANCES: (Cont'd.)

2 For Defendant Briceno: MARK W. COLEMAN, ESQ.
3 Nuttall, Coleman & Drandell
4 2333 Merced Street
Fresno, California 93721
(559) 233-2900

5 For Defendant Bolanos: PETER M. JONES, ESQ.
6 Wanger, Jones, Helsley PC
7 265 East River Park Circle
Suite 310
8 Post Office Box 28340
Fresno, California 93729
(559) 233-4800

9 For Defendant Padilla: BARBARA H. O'NEILL, ESQ.
10 Barbara Hope O'Neill, Attorney
at Law
11 Post Office Box 11825
Fresno, California 93775
12 (559) 459-0655

13 For Defendant Lockhart: JOHN GARLAND, ESQ.
14 Law Office of John Garland
2950 Mariposa Street
Suite 130
15 Fresno, California 93721
(559) 497-6132

16 For Defendant Soto: MARK W. COLEMAN, ESQ.
17 Nuttall, Coleman & Drandell
2333 Merced Street
18 Fresno, California 93721
(559) 233-2900

19 For Defendant Melgar: MARK CASTRO, ESQ.

20 For Defendant Hernandez: RICHARD A. BESHWATE, JR., ESQ.
21 Law Office of Richard A.
Beshwate, Jr.
22 1330 L Street, Suite D
Fresno, California 93721
23 (559) 266-500

24

25

1 APPEARANCES: (Cont'd.)

2 For Defendant Melgarejo:

JOHN A. MEYER, ESQ.
Meyer Law and Research
Services
854 South Kenneth Avenue
Kerman, California 93630
(559) 385-1565

3
4
5 Court Recorder:

Otilia Rosales
United States District Court
2500 Tulare Street
Sixth Floor
Fresno, California 93721

6
7
8 Transcriber:

Crystal Thomas
Echo Reporting, Inc.
2160 Fletcher Parkway
Suite 209
El Cajon, California 92020
(858) 453-7590

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1 FRESNO, CALIFORNIA, THURSDAY, SEPTEMBER 7, 2017 2:00 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Okay. Then let's next take up matter
5 number seven. That's United States versus Carlos Montano,
6 et al., 17MJ147, for an initial appearance on the complaint.

7 I know that there are a lot of people involved in
8 this, and I want to proceed in a reasonable way. What I
9 think I want to do is I want to name each of the people and
10 see who they are. I'm going to do an initial advisement of
11 rights so I don't have to repeat it each time, and then --
12 and then we'll go down the list and make sure that we've
13 informed of charges.

14 One question I have before I proceed, I have the
15 complaint that lists the charges on the front, but it isn't
16 broken out by Defendant. Are each of these for all
17 Defendants? Does somebody have a breakdown of which
18 Defendants?

19 MR. SPIVAK: Your Honor, Jeff Spivak for the
20 United States. I think the easiest way would be probably to
21 follow the penalty slips, and I have an extra copy if that
22 would be helpful.

23 THE COURT: That would be helpful. I --

24 MR. SPIVAK: Yeah.

25 THE COURT: That would be helpful, and I don't

1 The penalties you face are a mandatory minimum of
2 five years incarceration, maximum 40 years of incarceration,
3 maximum \$5,000,000 fine, minimum four years to life
4 supervised release, and a \$100 mandatory special assessment
5 fee.

6 In Count 2, it alleges against you a violation of
7 21 U.S.C. Section 841(a)(1), possession of controlled
8 substances with intent to distribute. The penalties are a
9 maximum of 20 years of incarceration, a maximum \$1,000,000
10 fine, minimum three years to life supervised release, \$100
11 mandatory special assessment fee.

12 Count 3 alleges a violation of 18 U.S.C. Section
13 1922(g)(1) for felon in possession of a firearm. The
14 penalty is 10 years maximum term of incarceration, \$250,000
15 fine, three years supervised release, \$100 mandatory special
16 assessment fee.

17 And Count 4 is a violation of 18 U.S.C. Section
18 2421 of the Mann Act for interstate transportation for
19 purposes of prostitution. The penalty is 10 years maximum
20 term of incarceration, \$250,000 fine, three years of
21 supervised release, \$100 mandatory special assessment fee.

22 Do you understand the charges against you?

23 DEFENDANT MONTANO: Yes, ma'am.

24 THE COURT: Thank you.

25 Okay. Mr. Quinlan, how would you like to proceed

1 regarding Mr. Montano?

2 MR. QUINLAN: Waive further reading of the
3 complaint, further reading of his statutory and
4 constitutional rights, enter a plea of not guilty, and ask
5 that the matter be set for preliminary hearing.

6 THE COURT: Okay. I'll enter a not guilty plea
7 and a denial of any forfeiture allegation, if any. And
8 let's set a date for a preliminary hearing.

9 Mr. Spivak, when would you like?

10 MR. SPIVAK: Two weeks from today, Thursday.

11 THE CLERK: I have September 21st at 2:00 p.m.
12 before Judge Oberto.

13 THE COURT: Okay.

14 MR. QUINLAN: That's fine, your Honor.

15 THE COURT: Okay. And when would -- when would
16 you like -- or would -- is the Government seeking detention?

17 MR. SPIVAK: Yes, your Honor.

18 THE COURT: Okay. Mr. Quinlan, do you know when
19 you would like to proceed with the detention hearing?

20 MR. QUINLAN: I'd like to defer detention because
21 in another case he's been detained on, and so I don't see
22 any point in raising the issue right at the moment.

23 THE COURT: Okay. I'm going to detain on the
24 basis of flight and danger, but I will note for the record
25 that this was based on not -- not a full examination of the

1 facts in light of the fact that Mr. Montano is already
2 detained on another hearing or another matter. And to the
3 extent that Mr. Montano is released on that other matter, it
4 would be appropriate to have a motion for bail review.

5 Okay. Anything else for Mr. Montano today?

6 MR. QUINLAN: No, your Honor. Thank you.

7 THE COURT: Mr. Spivak?

8 MR. SPIVAK: I'm going to be providing defense
9 counsel some initial discovery. It's wiretap information,
10 and I'll be doing that for each Defendant today. So --

11 THE COURT: Thank you. Okay. We'll note that as
12 well.

13 Oh, I'd also like to make a true name finding if I
14 may. Is his name Carlos Montano?

15 MR. QUINLAN: Yes.

16 THE COURT: Okay. So we'll make a true name
17 finding that the Defendant is Carlos Montano.

18 MR. QUINLAN: And what time on September the 21st,
19 your Honor?

20 THE COURT: 2:00 p.m.

21 MR. QUINLAN: Thank you.

22 THE COURT: Okay. Very good. Let's next take up
23 United States versus Filibert Chavez.

24 Let me take appearances.

25 MS. SANCHEZ: Your Honor, I'm not sure if Mr.

1 going to put that over to Monday when you have counsel
2 present.

3 (Proceedings concluded.)
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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.
4

5 /s/Crystal Thomas 6/30/2020
6 Transcriber, AAERT CERT *654 Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8
9 /s/L.L. Francisco
10 L.L. Francisco, President
11 Echo Reporting, Inc.
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AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT
for the
Eastern District of California

FILED

OCT 26 2017

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

United States of America
v.
Jose Esai Martinez

Case No.

1:17-115-191-EP6

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of July 10-11, 2017 in the county of Fresno in the
Eastern District of California, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
21 U.S.C. 841(a)(1) 21 U.S.C. 846; 841(a)(1)	Possession with Intent to Distribute a Controlled Substance; and Conspiracy to Possess a Controlled Substance with Intent to Distribute (more than 50 grams of a mixture or substance of methamphetamine)
	Maximum Penalties: Mandatory Minimum 5 Years up to 40 Years Imprisonment; \$5,000,000.00 fine, Minimum 4 year up to Life S/R, \$100 SA

This criminal complaint is based on these facts:

See affidavit of Special Agent Andres Varela, attached hereto and incorporated by reference.

Continued on the attached sheet.

[Signature]
Complainant's signature

SA Andres Varela
Printed name and title

Sworn to before me and signed in my presence.

Date: Oct 26, 2017

[Signature]
Judge's signature

City and state: Fresno, CA

Erica P. Grosjean, United States Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

1
2
3 UNITED STATES OF AMERICA,
4
5 Plaintiff,

6 v.

7 JOSE ESAI MARTINEZ,
8
9

CASE NO.

AFFIDAVIT OF HSI SPECIAL AGENT
ANDRES VARELA IN SUPPORT OF
COMPLAINT

10
11 **EXPERTISE, TRAINING AND EXPERIENCE OF THE AFFIANT**

12 I, Andres Varela, being sworn, depose, and state the following:

13 1. I am an "investigative or law enforcement officer" within the meaning of Title 18, United
14 States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to
15 conduct investigations of, and to make arrests for, offenses enumerated in Title 18, United States Code,
16 Section 2516, and Title 21, United States Code.

17 2. I am a Special Agent with the United States Department of Homeland Security ("DHS"),
18 Immigration and Customs Enforcement /Homeland Security Investigations ("HSI"), presently assigned
19 to the Office of the Resident Agent in Charge, Fresno, California ("HSI Fresno"). I am a "federal law
20 enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C). I have
21 been employed as an HSI Special Agent (SA) for approximately six and a half years. As part of my daily
22 duties as an HSI SA, I investigate narcotics offenses in violation of 21 USC § 841(a) (1). I have received
23 training in the area of federal narcotic offenses and am a graduate of the Federal Law Enforcement
24 Training Center, Criminal Investigator and Immigration and Customs Enforcement Special Agent
25 Training Programs. In addition to my training at FLETC, I received my Bachelor's Degree in
26 International Business from Barry University in Miami Shores, FL.

27 3. I was assigned as a task force agent to the Central Valley Marijuana Investigation Team
28 (CVMIT) investigate drug trafficking, drug manufacturing and the activities of drug trafficking

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 --oOo--

4 UNITED STATES OF AMERICA,) Case No. 17CR00198-SKO
5 Plaintiff,) Fresno, California
6 vs.) Tuesday,
7 CARLOS MONTANO,) August 15, 2017
8 Defendant.) 2:00 p.m.
9)

10 TRANSCRIPT OF INITIAL APPEARANCE RE CRIMINAL COMPLAINT
11 BEFORE THE HONORABLE SHEILA K. OBERTO
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff: JEFF SPIVAK, ESQ.
15 Assistant United States
16 Attorney
17 2500 Tulare Street
18 Suite 4401
19 Fresno, California 97321
(559) 497-4080

20 For the Defendant: W. SCOTT QUINLAN, ESQ.
21 2333 Merced Street
22 Fresno, California 93721
(559) 442-0634

23 Court Recorder: Otilia Rosales
24 United States District Court
25 2500 Tulare Street
Sixth Floor
Fresno, California 93721

26 Proceedings recorded by electronic sound recording;
27 Transcript produced by transcription service.

1 Transcriber: Crystal Thomas
2 Echo Reporting, Inc.
3 2160 Fletcher Parkway
4 Suite 209
5 El Cajon, California 92020
6 (858) 453-7590
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1 FRESNO, CALIFORNIA, TUESDAY, AUGUST 15, 2017 2:00 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Calling the first matter on the
5 calendar, United States versus Carlos Montano, Case Number
6 17MJ129. If we can please have the parties appearances.

7 MS. SNIDER: Your Honor, this is Mr. Quinlan's
8 case. I think he just stepped outside for a moment.

9 THE COURT: Okay.

10 MS. SNIDER: He may be coming back in right now.

11 MR. QUINLAN: Sorry, your Honor.

12 THE COURT: Okay. Good afternoon to you, Mr.
13 Quinlan.

14 MR. QUINLAN: Good afternoon. I received a copy
15 of the complaint, and -- well, let me back up. Scott
16 Quinlan for Carlos Montano, who's present in court in
17 custody, and he does not need the Spanish interpreter.

18 THE COURT: Okay. Good afternoon to you, Mr.
19 Quinlan. Good afternoon to you, Mr. Montano.

20 MR. SPIVAK: And good afternoon, your Honor. Jeff
21 Spivak for the United States.

22 THE COURT: Good afternoon to you, Mr. Spivak.

23 THE COURT: Is your name Carlos -- is it Montano
24 or Montano?

25 THE DEFENDANT: It's Montano.

1 THE COURT: Montano. Good afternoon to you, sir.
2 And that's your name?

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Montano, a complaint has been
5 filed against you dated August 14th, 2017, and it charges
6 you with being a felon in possession of a firearm which
7 carries a maximum possible penalty of up to 10 years in
8 custody, up to a \$250,000 fine, and up to a three-year term
9 of supervised release.

10 Do you understand what you are charged with and
11 the maximum possible penalties that could be imposed if
12 you're convicted of this offense?

13 THE DEFENDANT: Yes.

14 THE COURT: Thank you. You have the -- you
15 actually have retained counsel, correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Thank you very much.

18 You have the right to remain silent. If you could
19 not afford counsel, you would have the right to have counsel
20 appointed for you, but I understand that you've retained
21 counsel. You also have the right to remain silent.
22 Anything you say can and will be used against you.

23 On behalf of Mr. Montano, have you received a copy
24 of the complaint, Mr. Quinlan?

25 MR. QUINLAN: I have, your Honor.

1 THE COURT: Thank you. And have you had an
2 opportunity to review it?

3 MR. QUINLAN: I have.

4 THE COURT: And how does Mr. Montano wish to
5 proceed?

6 MR. QUINLAN: We will waive further reading of the
7 complaint and of his statutory constitutional rights, enter
8 a plea of not guilty, request discovery. And, as I
9 understand it, the Government would like to set the
10 detention hearing for Thursday.

11 THE COURT: Okay. That would be fine.

12 As far discovery, is that something you're going
13 to be producing or does that get produced following the
14 arraignment?

15 MR. SPIVAK: Probably following indictment, your
16 Honor.

17 THE COURT: Okay. Thank you very much.

18 MR. QUINLAN: Yeah. My mistake.

19 THE COURT: Okay. So thank you very much, Mr.
20 Quinlan.

21 With regard to detention, Mr. Montano, you are
22 entitled to be released if there are conditions or a
23 combination of conditions that would assure your appearance
24 at all future court proceedings and ensure the safety of the
25 community.

1 Is the Government requesting detention?

2 MR. SPIVAK: Yes, your Honor.

3 THE COURT: And I will set the detention hearing
4 is -- Pretrial Services Officer, Mr. Quinlan indicated
5 Thursday, the 17th. That's acceptable, Mr. Olson or --

6 MR. OLSON: Yes, it is, your Honor. I'm here on
7 behalf of Officer Zerine Craddock (phonetic), and that was
8 what he had informed me as well.

9 THE COURT: Thank you very much. So that will be
10 the date of the detention hearing, and it will be at 2:00
11 p.m.

12 And, with regard to the preliminary hearing, so
13 you'll remain temporarily detained pending the outcome of
14 the detention hearing, and the preliminary hearing -- can I
15 set that on August 25th? That would be Friday, a week from
16 Friday. Is that acceptable to the parties?

17 MR. QUINLAN: Yes, your Honor.

18 MR. SPIVAK: One moment. Yes, your Honor.

19 THE COURT: Thank you very much. And that will be
20 at 2:00 p.m.

21 Is there anything else I can assist the parties
22 with today?

23 MR. QUINLAN: I would like either a supplemental
24 submission by the Government in support of their affidavit
25 or the opportunity to call one of the officers at the

1 THE COURT: You're welcome.

2 MR. QUINLAN: What time on the 17th for the
3 detention hearing?

4 THE COURT: 2:00 p.m.

5 MR. QUINLAN: 2:00 p.m.?

6 THE COURT: Yes.

7 MR. QUINLAN: And the 25th, 2:00 p.m.?

8 THE COURT: The 25th will also be at 2:00 p.m.,
9 correct.

10 MR. QUINLAN: Okay. And both of them here?

11 THE COURT: No. I believe those would be -- the
12 17th I believe will be before Judge Boone, but I would
13 double-check the calendar. And the 25th I believe will be
14 before Judge McAuliffe, but there have been so many duty
15 trades I would suggest that you check to make sure that you
16 go to the right courtroom. Don't take my word for it, but
17 that's the best I can tell from what I have on the calendar
18 today. Thank you.

19 MR. QUINLAN: Thank you, your Honor.

20 THE COURT: You're welcome.

21 (Proceedings concluded.)
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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/Crystal Thomas 6/30/2020
6 Transcriber, AAERT CERT *654 Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8
9 /s/L.L. Francisco
10 L.L. Francisco, President
11 Echo Reporting, Inc.

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