

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS MONTANO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

**APPENDIX (VOLUME II) – PRESENTED SEPARATELY UNDER S. CT.
R. 14.1(i)**

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

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 CARLOS MONTANO,
AKA, "LOCO,"
15 Defendant.

CASE NO. 1:17-CR-00198 LJO
PLEA AGREEMENT
DATE: TBD
TIME: TBD a.m.
COURT: Hon. Lawrence J. O'Neill

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18 I. INTRODUCTION

19 A. Scope of Agreement

20 The superseding indictment in this case charges the defendant with a violation of 21 U.S.C. §§
21 846, 841(a)(1) – Conspiracy to distribute and possess with intent to distribute methamphetamine (Counts
22 2 and 3); 21 U.S.C. § 841(a)(1) – possession with intent to distribute methamphetamine (Counts 11-13);
23 18 U.S.C. § 922(g)(1) – felon in possession of a firearm; 18 U.S.C. §§ 371, 2421 – Conspiracy to engage
24 in interstate transportation for prostitution (Count 28); 18 U.S.C. § 2421 – interstate transportation for
25 prostitution (Count 29); and 18 U.S.C. § 1952 – use of a facility of interstate commerce to promote
26 prostitution. This document contains the complete plea agreement between the United States Attorney’s
27 Office for the Eastern District of California (the “government”) and the defendant regarding this case.
28 This plea agreement is limited to the United States Attorney’s Office for the Eastern District of

1 California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory
2 authorities.

3 **B. Court Not a Party**

4 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
5 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
6 concerning the criminal activities of defendant, including activities that may not have been charged in
7 the superseding indictment. The Court is under no obligation to accept any recommendations made by
8 the government, and the Court may in its discretion impose any sentence it deems appropriate up to and
9 including the statutory maximum stated in this plea agreement.

10 If the Court should impose any sentence up to the maximum established by the statute, the
11 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
12 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
13 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
14 receive.

15 **II. DEFENDANT'S OBLIGATIONS**

16 **A. Guilty Plea**

17 The defendant will plead guilty to Counts 3, 24 and 29 of the indictment. The defendant agrees
18 that he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached
19 hereto as Exhibit A are accurate.

20 The defendant agrees that this plea agreement will be filed with the Court and become a part of
21 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
22 plea should the Court not follow the government's sentencing recommendations.

23 The defendant agrees that the statements made by him in signing this Agreement, including the
24 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
25 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
26 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal
27 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these
28 rules are inconsistent with this paragraph or with this Agreement generally.

1 The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C.
2 § 3143(a)(2), and agrees that he will be remanded into/remain in custody upon the entry of his plea.

3 The defendant acknowledges he has been advised this plea offer expires on December 2, 2018 at
4 5:00 p.m. unless he requests and the government agrees to an extension of that deadline.

5 **B. Sentencing Recommendation**

6 The defendant and his counsel may recommend whatever sentence they deem appropriate.

7 **C. Special Assessment**

8 The defendant agrees to pay a special assessment of \$300 at the time of sentencing by delivering
9 a check or money order payable to the United States District Court to the United States Probation Office
10 immediately before the sentencing hearing. If the defendant is unable to pay the special assessment at
11 the time of sentencing, he agrees to earn the money to pay the assessment, if necessary by participating
12 in the Inmate Financial Responsibility Program.

13 **D. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

14 If the defendant, violates this plea agreement in any way, withdraws his plea, or tries to withdraw
15 his plea, this plea agreement is voidable at the option of the government. The government will no longer
16 be bound by its representations to the defendant concerning the limits on criminal prosecution and
17 sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any crime
18 or provide any statement or testimony which proves to be knowingly false, misleading, or materially
19 incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a
20 violation of the agreement. The determination whether the defendant has violated the plea agreement
21 shall be decided under a probable cause standard.

22 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
23 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded
24 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
25 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
26 be subject to prosecution for any federal criminal violation of which the government has knowledge,
27 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
28 options is solely in the discretion of the United States Attorney's Office.

1 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
2 defenses that the defendant might have to the government's decision to exercise the options stated in the
3 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as
4 of the date of this plea agreement may be commenced in accordance with this paragraph,
5 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement
6 and the commencement of any such prosecutions. The defendant agrees not to raise any objections
7 based on the passage of time with respect to such counts including, but not limited to, any statutes of
8 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
9 Amendment to any counts that were not time-barred as of the date of this plea agreement.

10 In addition: (1) all statements made by the defendant to the government or other designated law
11 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
12 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
13 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
14 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
15 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
16 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
17 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

18 **E. Forfeiture**

19 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right
20 title and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. §§ 924(d)(1),
21 981(a)(1)(C), 2253, and 21 U.S.C. 853. Those assets include, but are not limited to, the following:

- 22 1. 2009 Mercedes C63 AMG, License Plate 7PUN109, VIN: WDDGF77X49F321757;
- 23 2. Smith & Wesson XD40 Pistol seized from defendant on or about June 9, 2017;
- 24 3. Springfield Armory XD Pistol seized from defendant on or about August 12, 2017;
- 25 4. Any and all ammunition seized from defendant on or about June 9, 2017, and August 12,
26 2017;

27 The defendant agrees that the listed assets constitutes property proceeds and used in the
28 facilitation of a violation of 18 U.S.C. §§ 922(g)(1), 21 U.S.C. §§ 846 and 841(a)(1), and 18 U.S.C.

1 §2421.

2 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to
3 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,
4 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed
5 assets.

6 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
7 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
8 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
9 claim in that forfeiture proceeding.

10 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
11 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
12 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
13 and agrees to waive any claim or defense under the Eighth Amendment to the United States
14 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
15 the State of California or its subdivisions.

16 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
17 defenses or defects that may pertain to the forfeiture.

18 **III. THE GOVERNMENT'S OBLIGATIONS**

19 **A. Dismissals**

20 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
21 remaining counts in the pending superseding indictment. The government also agrees not to reinstate
22 any dismissed count except if this agreement is voided as set forth herein, or as provided in II.D
23 (Defendant's Violation of Plea Agreement), VI.B (Guidelines Calculations), and VII.B (Waiver of
24 Appeal) herein.

25 **B. Recommendations**

26 **1. Incarceration Range**

27 The government will recommend that the defendant be sentenced to a sentence within the
28 applicable guideline range for his offense, including the application of the mandatory statutory minimum

1 term, as determined by the Court. The government may recommend whatever it deems appropriate as to
2 all other aspects of sentencing.

3 2. Acceptance of responsibility

4 The government will recommend a two-level reduction (if the offense level is less than 16) or a
5 three-level reduction (if the offense level reaches 16) in the computation of defendant's offense level if
6 he clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1.
7 This includes the defendant meeting with and assisting the probation officer in the preparation of the
8 pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in
9 conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
10 preparation of the pre-sentence report or during the sentencing proceeding.

11 C. Use of Information for Sentencing

12 The government is free to provide full and accurate information to the Court and the United
13 States Probation Office ("Probation"), including answering any inquiries made by the Court and/or
14 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,
15 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement
16 bars the government from defending on appeal or collateral review any sentence that the Court may
17 impose.

18 IV. ELEMENTS OF THE OFFENSE

19 At a trial, the government would have to prove beyond a reasonable doubt the following
20 elements of the offense(s) to which the defendant is pleading guilty:

21 Count Three:

22 As to Count Three, conspiracy to distribute and possess with intent to distribute
23 methamphetamine:

24 First, there was an agreement between two or more persons to distribute or possess with intent to
25 distribute methamphetamine;

26 Second, the defendant joined in the agreement knowing of its purpose and intending to help
27 accomplish that purpose.

28 Third, that the offense involved 50 grams and more of a mixture containing a detectable amount

1 of methamphetamine and 5 grams and more of methamphetamine.

2 **Count Twenty-Four:**

3 As to Count Twenty-Four, felon in possession of a firearm:

4 First, the defendant knowingly possessed a firearm, to wit: an HS Products (IM Metal) .40
5 caliber pistol, model XD4;

6 Second, the firearms had been shipped and transported in interstate and foreign commerce; and

7 Third, at the time the defendant possessed the firearms, the defendant had been convicted of a
8 crime punishable by imprisonment for a term exceeding one year.

9 **Count Twenty-Nine:**

10 As to Count Twenty-Nine, interstate transportation for prostitution

11 First, the defendant knowingly transported a person in interstate commerce; and

12 Second, the defendant transported a person with the intent that such person engage in prostitution
13 (any sexual activity for which a person can be charged with a criminal offense).

14 The defendant fully understands the nature and elements of the crimes charged in the
15 superseding indictment to which he is pleading guilty, together with the possible defenses thereto, and
16 has discussed them with his attorney.

17 **V. MAXIMUM SENTENCE**

18 **A. Maximum penalty**

19 The maximum sentence that the Court can impose is:

20 **Count 3 – Conspiracy to Distribute and Possess with Intent to Distribute**

21 **Methamphetamine**

22 5 years of incarceration minimum and 40 years prison maximum, a fine of \$ 2,000,000, a minimum of 4
23 years of supervised release to a maximum of life and a special assessment of \$100. The charge to which
24 defendant is pleading guilty carries a ten-year mandatory minimum sentence, absent a motion by the
25 government for reduction pursuant to 18 U.S.C. § 3553(e). In addition, the defendant may be ineligible
26 for certain federal and/or state assistance and/or benefits, pursuant to 21 U.S.C. § 862.

27 **Count 24 – Felon in Possession of a Firearm**

28 10 years incarceration maximum, a \$250,000 fine, 3 years of supervised release, and \$100 special

1 assessment

2 **Count 29 – Interstate Transportation for Prostitution**

3 10 years incarceration maximum, a \$250,000 fine, 3 years of supervised release, \$100 special
4 assessment, and \$5,000 pursuant to 18 U.S.C. § 3014.

5 By signing this plea agreement, the defendant also agrees that the Court can order the payment of
6 restitution for the full loss caused by the defendant’s wrongful conduct. The defendant agrees that the
7 restitution order is not restricted to the amounts alleged in the specific counts to which the defendant is
8 pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in
9 any present or future bankruptcy proceeding any restitution imposed by the Court.

10 **B. Violations of Supervised Release**

11 The defendant understands that if he violates a condition of supervised release at any time during
12 the term of supervised release, the Court may revoke the term of supervised release and require the
13 defendant to serve up to three years of additional imprisonment.

14 **VI. SENTENCING DETERMINATION**

15 **A. Statutory Authority**

16 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
17 must take them into account when determining a final sentence. The defendant understands that the
18 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
19 Sentencing Guidelines and must take them into account when determining a final sentence. The
20 defendant further understands that the Court will consider whether there is a basis for departure from the
21 guideline sentencing range (either above or below the guideline sentencing range) because there exists
22 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
23 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
24 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
25 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

26 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
27 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence.

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VII. WAIVERS

A. Waiver of Constitutional Rights

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be compelled to incriminate himself.

B. Waiver of Appeal and Collateral Attack

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case. The defendant specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence the defendant receives, the defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the rights set forth in paragraph II.D (Defendant's Violation of Plea Agreement) herein.

C. Waiver of Attorneys' Fees and Costs

The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the

1 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
2 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
3 charges previously dismissed).

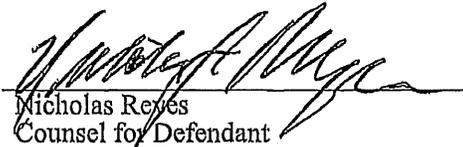
4 **VIII. ENTIRE PLEA AGREEMENT**

5 Other than this plea agreement, no agreement, understanding, promise, or condition between the
6 government and the defendant exists, nor will such agreement, understanding, promise, or condition
7 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
8 counsel for the United States.

9 **IX. APPROVALS AND SIGNATURES**

10 **A. Defense Counsel**

11 I have read this plea agreement and have discussed it fully with my client. The plea agreement
12 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
13 plead guilty as set forth in this plea agreement.

14 Dated: 1-14-19 
15 Nicholas Reyes
16 Counsel for Defendant

17 **B. Defendant**

18 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
19 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
20 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
21 case. No other promises or inducements have been made to me, other than those contained in this plea
22 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.
23 Finally, I am satisfied with the representation of my attorney in this case.

24 Dated: 1-14-19 
25 CARLOS MONTANO, Defendant

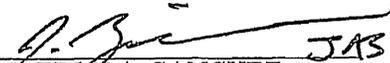
26 **C. Attorney for the United States**

27 I accept and agree to this plea agreement on behalf of the government.
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Dated: 1/23/19

McGREGOR W. SCOTT
United States Attorney

By:  JAS
KIMBERLY A. SANCHEZ
Assistant United States Attorney

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EXHIBIT "A"
Factual Basis for Plea

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

On April 18, 2017, MONTANO, aka, "Loco," a Bond Street Bulldog gang member, sold a Confidential Source (CS) 1 pound of methamphetamine in a controlled purchase. Co-defendant BOLANOS met with MONTANO immediately prior to MONTANO selling the CS the methamphetamine. BOLANOS provided MONTANO with the pound of methamphetamine which MONTANO immediately sold to the CS for \$3,000.

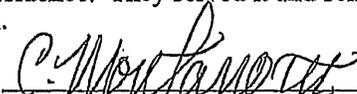
On June 6, 2017, MONTANO sold 292.8 grams of 97% pure and 199.2 grams of a mixture of methamphetamine to a buyer in Iowa. J.F. sent the package at MONTANO's direction, which agents then intercepted, and searched. The package contained a mason jar candle -- inside was three bags of methamphetamine.

On June 22, 2017, a CS met with MONTANO, who took a black bag from his backpack and provided it to him/her. The black bag contained 446.3 grams of 99% pure methamphetamine. The CS paid MONTANO \$3,000 for the methamphetamine.

On or about July 19, 2017, MONTANO and J.F. traveled to New York. They originally were in Fresno, traveled to Los Angeles and flew to New York. The purpose of the trip was for J.F. to engage in acts of prostitution for profit to be given to MONTANO. They then traveled to New Jersey. On July 27, agents conducted a controlled call to J.F. in response to a posting for sexual acts in New Jersey. She arranged to meet the undercover officer to perform sex acts for payment, confirming she was prostituting.

On August 12, 2017, SA Varela observed MONTANO in the back yard of his residence wearing a pistol on his hip and appearing to drink promethazine in a snapchat video MONTANO had posted that same morning. Agents got a search warrant for the residence. They served it and seized the firearm seen on MONTANO's hip in the video. It was stolen.

Dated: 1/14/19


CARLOS MONTANO, Defendant

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

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

Fresno, California

Monday, June 17, 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, June 17, 2019 Fresno, California

2 9:25 a.m.

3 THE COURT: Number 3 on calendar, Carlos Montano.

4 MR. REYES: Good day, your Honor. Nicholas Reyes for
5 Mr. Montano, present.

6 MR. SPIVAK: Jeff Spivak for the United States.

7 THE COURT: Sir, what is your name?

8 THE DEFENDANT: Carlos Montano.

9 THE COURT: Mr. Montano, have you had a chance to
10 review the Presentence Report with your attorney?

11 THE DEFENDANT: Yes.

12 THE COURT: Are there any questions about it?

13 THE DEFENDANT: No, sir.

14 THE COURT: The Court has received and reviewed the
15 Presentence Report, the government's memorandum, the defense
16 memo, the eight letters.

17 And the Court notes that the offense level is 35.
18 History Category is V. Guideline range is 262 to 327. The
19 Probation's recommendation is 290 on Count 3; on Count 24,
20 120; and on Count 29, 120, for a total concurrent sentence as
21 to those three counts of 290.

22 The Court has considered the extensive 3553(a)
23 factors.

24 Mr. Reyes, do you wish to be heard?

25 MR. REYES: Your Honor, this is a very difficult

1 case. And I say "difficult" perhaps not on the factual end,
2 but difficult because this young man, at age 29, has lived a
3 horrific life from day one.

4 THE COURT: He has caused a few lives to be horrific
5 too.

6 MR. REYES: Precisely, your Honor. At age 11, he
7 picked up his first felony. Age 11. At age seven, he sees
8 his mother hang herself. His father is a pimp. He has 20 or
9 25 siblings he doesn't even know. I laid quite clearly out on
10 the memorandum --

11 THE COURT: I agree.

12 MR. REYES: -- I don't think this kid had a chance.
13 And I say "kid," because from sixth grade, fourth grade, his
14 inability to get a decent grade makes him shell up like a
15 turtle. He has a speech impediment where he stutters. He was
16 ridiculed as a child. He never had a starting chance.

17 And then the fact that he is not going to school,
18 doesn't even have a home, moves about 20 times in his
19 childhood from house to house, home to home. He is the eldest
20 of the boys, and basically becomes a caretaker.

21 I'm surprised he is alive. He is surprised he is
22 alive. He has witnessed three or four deaths within the last
23 three years. A victim of a shooting at a funeral from his
24 friend who was killed on a motorcycle accident. He sees his
25 own Cisco Hernandez, codefendant in the case, hang himself in

1 the jail, just like, at seven-years-old, he saw his mother
2 hang herself.

3 I don't know what to do. Well, I do know one thing,
4 though. I hated the kid when I saw him at first because I
5 tried to straighten him out. And over time, I get to see a
6 part of him that people don't see. And that part has been a
7 very humble, which maybe is reflected in some of the letters.

8 But I don't know, you cage an animal, he is going to
9 turn vicious. Here, what happens is his environment produced
10 this young gentleman. And I say "gentleman," because in some
11 ways, he is, and other ways, he is not.

12 So I don't argue with Probation is to the, what I
13 would call unmeritorious arguments as to leadership or
14 enhancements, but I do think that the 3553(a) factors here
15 compel, and I say "compel" a reasonable sentence within the
16 range of what the parties contemplated.

17 Four points is not a significant number. I was once
18 in San Diego before I believe it was Judge Churntiner
19 (phonetic). And we had a case which was off the charts. And
20 the prosecutor said -- well, I think the Court says, "Well,
21 how do I reach where you want me to reach?"

22 And the prosecutor says, "Your Honor, how much time
23 is enough time?"

24 I ask this Court the present question, which is
25 rhetorical: How much time is enough time? There is a

1 ten-year minimum. We are not asking for the minimum. We are
2 asking for a reasonable sentence within the range, which is
3 still a 15-year sentence. That means he doesn't come out
4 until 42 years old, maybe even more.

5 If the Court follows Probation, it is 49 years old or
6 more. He has lost a significant part of his life.

7 He knows he is going to be a federal prisoner. He
8 couldn't even look me in the eye when I would go see him in
9 jail. Every time, he turned his head down, and he would turn
10 his head to the left, and then he would look down, and he
11 couldn't look at you.

12 What was that? I don't know what it is. He has got
13 issues he has never dealt with. Maybe the institutions in
14 federal prison can help him with some of that, but he has
15 dealt with some unresolved issues from day one. And it's
16 grown, it's developed to what you see before you. It is not a
17 pretty picture.

18 But somehow, he manages to pull in a family, which is
19 still here, to my far right in the back. There is grandmas,
20 there is aunts, there is extended family.

21 I don't know what the answer is here. I don't wear
22 the black robe, and I do know that it is a tough call.

23 And I don't try to make unmeritorious arguments, so I
24 don't argue with Probation as to the enhancements, but I do
25 argue that the 3553(a) should account for what has happened

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1 here.

2 I have got a young Shepherd, which we just picked up.
3 He used to have a combo Shepherd with a Pit Bull, or a
4 Rottweiler, and he was the friendliest, nicest dog around.

5 If you chain him up and lock him up, like I think his
6 family did to him initially. His father is, I think the key
7 source of being the evil instrument player here. He is not
8 even here.

9 The mother is here. She survived the hanging. The
10 grandmother is here. She has also helped assist in some ways.
11 Both grandmothers helped.

12 But what has happened to this family, to this young
13 man, it has been terrible. He is nothing more than a repeat,
14 a mirror image of his father's, and he carries the same name.

15 Now, I have heard that the father has done better
16 now, but he has never been a person in his life. Mom has
17 tried to be around, but she had her own issues from day one,
18 maybe being the same victimization of the dad.

19 But I don't know. I don't know what the answer is.
20 I think I tried to give you the answer in my chart. What can
21 I say?

22 He wants to say a few words himself, but I suppose
23 when he reads, he doesn't stutter as much, but he has a very
24 pronounced stuttering where he goes, "I -- I -- I --" and then
25 he starts his sentence. And then he won't look at you. And

ER 13

1 that is a product of his upbringing. That's a product of
2 being ridiculed from day one.

3 And then he turns to a life, an MTV life, a pulp
4 fiction life. I don't know what it is, but he turns to
5 something, which that they put out on chat face. I call it
6 "chat face" because I ridicule that stuff, but it is Facebook,
7 and I don't even know what the other one is, but all the
8 social media, where they put out an image of something that
9 they are really not.

10 They are really incapable of having the tools
11 initially to have a starting chance, and they write it out
12 there. And I say, you know what? This kid didn't have a
13 chance from day one. He is lost from day one. Look at his
14 face. He is lucky to be alive. And I still call him a "kid"
15 because I still think he is.

16 He has expressed some sincere things with me, which I
17 don't know how deeply ingrained they are at this stage, but I
18 think that they are the seeds of a future, or maybe he can use
19 the prison system and what it has to offer by way of education
20 to maybe come back and maybe be a father to his children.

21 And I do know that he has two young children which I
22 have seen, and they expressed some deep affection for him when
23 they do see him.

24 But in this particular case, your Honor, I think
25 the -- a 15-year sentence would be actually double the

1 minimum, almost double. One-and-a-half times the minimum, but
2 it may be a reasonable sentence in light of what this
3 gentleman was created to be.

4 And I don't think he has the IQ or the wherewithal to
5 make his own decisions because he has made all the wrong ones.

6 THE COURT: Does he wish to be heard?

7 MR. REYES: He did write something out, your Honor.

8 THE COURT: Does he wish me to read it or does he
9 wish to read it to me?

10 THE DEFENDANT: I will read it to you, sir.

11 THE COURT: Go ahead.

12 THE DEFENDANT: Dear Judge O'Neill, first off, I want
13 to address you, your Honor, and of course say I apologize for
14 taking up the Court's time to hear me out. I want to
15 apologize to my family and friends.

16 My name is Carlos Montano III, and I'm 29 years old,
17 with three daughters and a son I look forward to going home
18 to.

19 Growing up wasn't easy for me. I grew up with a
20 single mother struggling with my father was incarcerated. We
21 had a unstable household. Father on drugs. My mother had
22 multiple boyfriends. Things in our household were not normal.

23 I grew up to be exposed to things at a young age and
24 never got to enjoy my childhood. When I was six, we all
25 shared a room. I hardly went to school, so I lacked

1 education.

2 I always felt I wasn't good enough because I had
3 troubles in school, so I let my emotions get the best of me.
4 I never had a positive role model to even show me that they
5 cared.

6 I never been in this position before, looking at so
7 much time. I realize that my life was headed in the wrong
8 direction, and who knows what could have happened a day later
9 on the streets.

10 I'm sorry for the people's lives that I affect, and I
11 accept full responsibility for my actions.

12 I ask for a fair sentence so I can take care of my
13 children and make up for my time being absent. I'm going to
14 utilize this time and take advantage of the education and
15 programs it has to offer, and repent for my sins and turn
16 these negatives into positives.

17 I ask God for forgiveness and the courts as well so
18 when I go home, I have the proper tools to take care of my
19 responsibilities and accomplish my goals and change my way of
20 thinking.

21 This is a chapter in my life to grow from my
22 mistakes. Thank you, your Honor, for your time to hear me
23 out. Carlos Montano III.

24 THE COURT: Let me ask you a couple of questions.

25 MR. REYES: May I add one thing, your Honor?

1 THE COURT: Yes.

2 MR. REYES: I could probably say this now because he
3 is deceased, but I had a partner in the practice. He had an
4 issue with women which arose, and he confided to me early on,
5 because he saw the merry-go-round in his home when he was a
6 young man of the door opening and closing of men with his
7 mother.

8 And he always, always had a very difficult time, not
9 only -- when he got married, he told his future to-be wife
10 that his mother had died, but it wasn't true.

11 Some of the underlying issues have never been dealt
12 with here, your Honor. And I would ask this Court to give him
13 the opportunity at some stage to deal with those issues in
14 prison.

15 THE COURT: I understand what your lawyer is arguing.
16 And I understand what you are telling me in your letter about
17 the absence of chances that most people seek and most people,
18 frankly, have.

19 But I don't have the luxury in sentencing of simply
20 looking at one side of any case. I also have the obligation
21 at looking at victims.

22 What do I tell this 15-year-old girl that you
23 basically took over and ruined? You put her in a position of
24 being raped, of being sold, of having her entire life and any
25 possible relationship that could even remotely look like a

1 healthy one, be nonexistent. You took her chances away from
2 her.

3 What do I tell the Highway Patrol officer who very
4 easily, or his widow, who very easily could have died in a
5 chase at 150 miles an hour?

6 What do I tell the people who have gotten drugs and
7 ruined their lives and their family's lives? What do you on
8 expect me to do with them? Nothing.

9 THE DEFENDANT: I don't know like --

10 (Counsel and the defendant conferred off the record.)

11 THE DEFENDANT: I don't know what they are talking
12 about, 15-year-old girl.

13 (Counsel and the defendant conferred off the record.)

14 THE DEFENDANT: All I ask is for a reasonable
15 sentence. I know -- I know -- I know I made mistakes in my
16 life, and I'm not asking to go unpunished, sir. But I'm
17 asking for a fair sentence so I can come back and raise my
18 kids, you know. I'm doing this time, I realize a lot.

19 MR. REYES: Look at him.

20 THE DEFENDANT: I have been reading a lot of stuff.

21 MR. REYES: Look at him.

22 THE DEFENDANT: And I'm just trying to educate my
23 mind and just turn these negatives into positives. I'm sorry
24 for the people's lives that I have affected. That's why I
25 wrote that letter. And everything I said in this letter, I

1 mean it. I promise you, if you give me a chance, you will
2 never see my face again.

3 THE COURT: Does the government wish to be heard?

4 MR. SPIVAK: Thank you. The Court's questions hit
5 the points we wanted to make, your Honor. The women at issue.
6 The defendant says that he is lucky to be alive, but I think a
7 lot of other people are lucky to be alive as well.

8 THE COURT: Certainly, this 15-year-old girl who is
9 out there with strangers doing things that a 15-year-old girl
10 frankly shouldn't even know about, she could have died too.

11 There are -- the people who get the drugs that you
12 are selling, they could have died. And maybe some did. I
13 have no idea. But it is a very slow death, to be addicted.

14 So I get what you are talking about. I get the fact
15 that you have now come to a point in your life where you are
16 sick of it, and you would like to turn things around.

17 But just because you are sorry does not take away the
18 sting, the pain, and the ruination of all of these other
19 people who are in your wake, who are there because of your
20 actions.

21 Do you understand what I'm saying to you?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: All right. Anything else?

24 THE DEFENDANT: No, sir.

25 MR. REYES: Your Honor, there is a vicious circle

1 here, your Honor.

2 THE COURT: I agree.

3 MR. REYES: Vicious circle. And he, too, was a
4 victim of sexual --

5 THE COURT: Sure. You and I have both seen it for
6 decades. This is the typical 300/600 flip. That's exactly
7 what this is, the Welfare & Institutions Code in juvenile
8 Court. We see it all the time. I saw it when I was presiding
9 out there, and it is horrible.

10 MR. REYES: It is.

11 THE COURT: But at some point in time, it's got to
12 stop. And if it doesn't stop, which it has not in your case,
13 at some point in time, the remedy is that we keep you away
14 from civilized society so you don't ruin more people. It's
15 terrible. I get it.

16 Anything else?

17 MR. REYES: We would submit on our sentencing
18 memorandum, your Honor, and the chart.

19 THE COURT: Okay.

20 MR. SPIVAK: No, your Honor.

21 THE COURT: Had you gone to trial, the maximum
22 possible sentence in your case would have been 60 years'
23 imprisonment, and you may well have gotten it based on the
24 criminal conduct here and the record that you bring with you
25 into the courtroom. I hope you understand that.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Pursuant to the Sentencing Reform Act of
3 1984, it is the judgment of the Court that you are committed
4 to the custody of the Bureau of Prisons, to be imprisoned on
5 Count 3 for the within-the-guideline range of 262 months, and
6 a term on count -- each Count 24 and 29, of 120 months, for a
7 total term of 262 months.

8 You shall pay a special assessment of \$300, payment
9 to begin immediately, and the Court does find you do not have
10 the ability to pay a fine, and that's waived.

11 The preliminary order of forfeiture filed in April of
12 201 is made final to you, and shall be incorporated on this
13 judgment.

14 Upon release from imprisonment, you shall be placed
15 on supervised release for a term of 60 months on Count 3, 36
16 on each of Counts 24 and 29, to be served concurrently for a
17 total of 60 months.

18 Within 72 hours of release from the custody of the
19 Bureau of Prisons, you shall report in person to Probation in
20 the District where you are released.

21 While on release, you shall not commit another
22 federal, state, or local crime; not illegally possess
23 controlled substances; shall cooperate in the collection of
24 DNA, as directed by Probation; shall comply with the standard
25 conditions recommended by the Sentencing Commission and

1 adopted by the Court; shall refrain from unlawful use of any
2 controlled substances; shall submit to one drug test within 15
3 days of release from imprisonment, and at least two
4 thereafter, not to exceed four per month.

5 The Court is going to order the eight special
6 conditions, which I can read or incorporate by reference.

7 MR. REYES: Incorporation.

8 MR. SPIVAK: Incorporation.

9 THE COURT: Done and ordered.

10 Is there a request on location, geographical?

11 MR. REYES: We would ask for California placement,
12 and the 500-hour BOP RDAP Program.

13 THE COURT: Court will make both those
14 recommendations as they accord with security classification
15 and space availability.

16 Are there remaining counts, Mr. Spivak?

17 MR. SPIVAK: The United States moves to dismiss the
18 remaining counts on the superseding indictment against this
19 defendant.

20 THE COURT: Granted. Appellate rights have been
21 waived.

22 Is there anything else?

23 MR. REYES: No, your Honor.

24 MR. SPIVAK: No, your Honor.

25 THE COURT: May I have a copy of that letter that he

1 read to me? We need the letter that you read so we have a
2 correct copy.

3 Sir, we will get that back to you. We need to make a
4 record, a copy of it.

5 (The proceedings were concluded at 9:48 a.m.)

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

8

9 Dated: 6th of December, 2019 /s/ Peggy J. Crawford
PEGGY J. CRAWFORD, RDR-CRR

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 18 2020

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: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Counsel for Carlos Montano has filed a brief stating that she finds no meritorious issues for review and a motion to withdraw as counsel of record pursuant to *Anders v. California*, 386 U.S. 738 (1967). No pro se supplemental brief or answering brief has been filed.

Our independent review of the record, *see Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses the following potentially arguable issues for direct appeal:

1. Whether the factual basis for Montano's guilty plea to being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1) was insufficient in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), and if so, whether any error was harmless. *See* Fed. R. Crim. P. 11(b)(3), (h); *United States v. Monzon*, 429 F.3d 1268, 1271-74 (9th Cir. 2005) (failure to establish that

guilty plea had an adequate factual basis was plain error because it was “reasonably probable” that the defendant would have gone to trial on the charge absent the error).

2. Whether Montano’s guilty plea as a whole was not knowing and voluntary because of the numerous Federal Rule of Criminal Procedure 11 violations at the change-of-plea hearing. *See United States v. Dominguez Benitez*, 542 U.S. 74, 76 (2004) (Rule 11 violation is reversible plain error if defendant shows a “reasonable probability that, but for the error, he would not have entered the plea”).

The motion of Lindsay Sweet, Esq., 600 F St., Ste 3, PMB 600, Arcata, CA 95521, (618) 713-0257, to withdraw (Docket Entry No. 17) is **GRANTED**. New counsel will be appointed by separate order.

The Clerk will serve a copy of this order on the appointing authority for the Eastern District of California, who will locate appointed counsel. The appointing authority is directed to provide the Clerk of this court with the name and address of appointed counsel at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

The *Anders* brief filed at Docket Entry No. 14 is stricken. New counsel must address the issues identified above. Appellant’s replacement opening brief and any supplement to the excerpts of record filed at Docket Entry No. 15 are due

July 20, 2020; appellee's brief is due August 19, 2020; the optional reply brief is due within 21 days after service of appellee's brief.

This appeal will be assigned to a new panel after briefing is complete.

No. 19-10220

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

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

Defendant - Appellant.

**Appeal from a Final Judgment, Following a Conviction and Sentence, Entered
by the United States District Court for the Eastern District of California (D.C.
No. CR-17-00198-LJO-SKO-1) (The Hon. Laurence J. O'Neill, Presiding)**

[INCARCERATED INMATE APPEAL]

APPELLANT'S REPLACEMENT OPENING BRIEF

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I. INTRODUCTION.

As this Court's merits panel (Berzon, N.R. Smith, Miller, CJJ) suggested correctly after it rejected the Anders brief that Appellant Carlos Montano's original appellate counsel had filed, the district court's Rule 11 colloquy had two sets of material deficiencies. Each of those should result in this Court's reversing Montano's convictions – either in their entirety or specific to count 24 of the first superseding indictment – and remanding for further proceedings.

First, as the merits panel observed, the district court did not elicit a factual basis regarding whether Montano had possessed a firearm knowing that he been convicted previously of a felony offense, a necessary element under 18 U.S.C. § 922(g)(1) as the Supreme Court held in Rehaif v. United States, 139 S. Ct. 2191 (2019). Consequently, regardless of whether this Court were to evaluate that error from a rules-based perspective or as a Due Process Clause violation, it is sufficiently plain to warrant – at a bare minimum – reversing Montano's § 922(g)(1) conviction. See, e.g., United States v. Seesing, 234 F.3d 456, 462 (9th Cir. 2000) (citing Henderson v. Morgan, 426 U.S. 637, 644-45 (1976)).

And second, as the merits panel opined correctly, the district court's overall Rule 11 colloquy during Montano's change-of-plea proceedings was riddled with errors. Moreover, because at least three of those errors involved advisals that, if given, might have resulted in Montano's deciding not to plead guilty to any of the

three counts that the plea agreement specified, plain error resulted and this Court should reverse Montano's conviction in its entirety. At a bare minimum, those plain errors under Rule 11(b)(1)-(3) violated Montano's substantial rights within this case's unique factual context, and also seriously affected the fairness, integrity, or public reputation of judicial proceedings. Because those Rule 11 violations were so pervasive, Montano's purported appellate waiver is not valid concerning this claim.

Separately, on remand, this Court should also direct the district court to vacate a standard supervised release condition that is substantially similar to one that this Court recently held to be unconstitutionally vague in United States v. Magdirila, 962 F.3d 1152, 1158-59 (9th Cir. 2020).

II. STATEMENT OF JURISDICTION.

A. The District Court's Jurisdiction

A grand jury empaneled in the Eastern District of California returned a first superseding indictment on September 21, 2017, that among other things charged Montano with violating 21 U.S.C. §§ 841(a)(1) and 846 by allegedly conspiring to possess methamphetamine with intent to distribute, 18 U.S.C. § 922(g)(1) by supposed possessing a firearm after being convicted of a felony offense, and 18 U.S.C. § 2421(a) by allegedly conspiring to transport a person across state lines

Accordingly, Montano's notice was timely. See Fed. R. App. P. 4(b)(1)(A)(i).

III. STATEMENT OF ISSUES.

1. Appellate Waiver: This Court has long held that pervasive Rule 11 errors will vitiate a plea agreement's appellate waiver provision. Here, did the district court's fourteen Rule 11 violations invalidate Montano's purported waiver?

2. Rehaif: In Rehaif, the Supreme Court held that the government must prove beyond a reasonable doubt under § 922(g)(1) that the defendant knew he was a convicted felon when he possessed a firearm. Rehaif, 139 S. Ct. at 2194. Here, as an earlier merits panel of this Court suggested, did the district court plainly err under the Due Process Clause and Rule 11(b)(3) by not having the government establish a factual basis for Montano's guilty plea to count 24 of the first superseding indictment? Relatedly, because count 24 of the first superseding indictment was constitutionally insufficient under Rehaif, did the district court commit plain error by accepting Montano's guilty plea to that count?

3. Other Rule 11 Errors: Rule 11 enumerates a lengthy set of acts that a district court "must" undertake during a change-of-plea hearing before it can accept the plea as knowing, voluntary, and intelligent. See Fed. R. Crim. P. 11(b)(1)-(3). Here, as an earlier merits panel of this Court suggested, by contravening Rule 11(b)(1)-(3) in at least fourteen separate ways, did the district court plainly err?

More particularly, is there a reasonable probability that Montano might otherwise have declined to change his plea if the district court had complied strictly with Rule 11(b)(1)-(3)? See, e.g., United States v. Dominguez Benitez, 542 U.S. 74, 83 (2004).

4. Unconstitutionally Vague Supervised Release Condition: In Magdirila, this Court recently held that a standard supervised release requiring a defendant to notify “specific persons and organizations of specific risks posed by the defendant to those persons” and organizations was unconstitutionally vague. 962 F.3d at 1158-59. Here, did the district court plainly err by imposing a similar condition on Montano that essentially delegated the “risk” assessment process to a probation officer, but without defining the word?

IV. STATEMENT OF THE CASE.

Montano draws the following factual rendition from the district court record, including the Presentence Report. Those facts pertinent to the first superseding indictment’s charges against Montano come from Exhibit A to his plea agreement, purporting to specify a factual basis for the three counts to which Montano pleaded guilty. ER 62.

Consequently, the merits panel directed this Court to appoint new appellate counsel, who would address at least those two issues in a replacement opening brief.

V. SUMMARY OF ARGUMENT.

1. As a threshold issue, there are two bases for this Court to determine that Montano's purported appellate waiver in his plea agreement either has been vitiated or is inapplicable. First, because the district court's colloquy with Montano manifestly did not comply with Rule 11, this Court has long held that such a pervasive procedural deficiency nullifies a defendant's appellate waiver. See infra at 25-27. Thus, this Court therefore has appellate jurisdiction to consider any of the issues that Montano raises here,

And second, even if the district court's error did not vitiate Montano's waiver, this Court has long held that an appellant who executed such a provision in a plea agreement can always raise constitutional issues on appeal. Here, Montano raises three such claims that this Court has jurisdiction to entertain. See infra at 27-30, 42-44.

2. Regarding the first issue that the earlier merits panel ordered Montano's newly appointed appellate counsel to address, it was indeed plain error for the district court to have accepted Montano's guilty plea to count 24

(§ 922(g)(1)) without an adequate factual basis. As the Fourth Circuit persuasively held recently post-Rehaif in United States v. Gary, 954 F.3d 194, 198, 202-08 (4th Cir. 2020), a district court violates the Due Process Clause whenever it accepts a guilty plea to a § 922(g)(1) count without establishing a factual basis for all of the offense's essential elements, including the defendant's knowledge of his felon status when he possessed the firearm. Moreover, Exhibit A to the plea agreement here also did not establish that Montano's firearm had been shipped in interstate commerce (only that it was "stolen"), another missing essential element.

Thus, under Gary's logic, which this Court should adopt, the plea proceedings here regarding the § 922(g)(1) count were so insufficient that they did not pass constitutional muster, and Montano therefore satisfies all four prongs of plain-error review. This Court should accordingly reverse.

Alternatively, viewing this issue purely from a Rule 11(b)(3) perspective, as the earlier merits panel did, there is at least a reasonable probability that Montano might not have pleaded guilty if he had been aware the government did not have a sufficient factual basis for the § 922(g)(1) count. Notwithstanding the government's presumptive argument that Montano's criminal history contained multiple felony offenses, it is notable that its proffer – albeit quite detailed for the Mann Act conspiracy count's elements (see ER 62) – omitted proof regarding another essential

element for § 922(g)(1), whether the firearm had been transported interstate or internationally.

Thus, knowing that the government might have had insufficient evidence regarding that count, it is at least possible that Montano might have decided not to plead guilty to it. He therefore demonstrates that the plain error violated his substantial rights, necessarily satisfying United States v. Monzon's final discretionary prong under plain-error review. 429 F.3d 1268 (9th Cir. 2005). And this Court should consequently reverse Montano's conviction under count 24 and remand for resentencing.

3. As for the second issue that the earlier merits panel ordered Montano's newly appointed appellate counsel to brief, there is at least a reasonable possibility that but for the district court's plain errors under Rule 11, Montano might otherwise have decided not to change his plea. In particular, the district court's curious decision not to discuss how the federal sentencing process operates under the Guidelines and § 3553(a) precluded Montano from obtaining important information about how the district court would calculate his sentence. Thus, despite facing a 5-year mandatory minimum sentence under § 841(b)(1)(A)(viii), Montano might not have wished to plead guilty to count 3 if he had been aware of the considerable discretion the district court possessed to impose a lengthier custodial term.

Additionally, without realizing the appellate waiver's vast scope – including collateral attacks under 28 U.S.C. § 2255 – there is at least a reasonable possibility that Montano might not have changed his not-guilty plea. Indeed, Montano's deciding to file a notice of appeal in the district court despite the purported waiver illustrates the significance he attaches to pursuing appellate remedies. And the district court's inadequate colloquy regarding Montano's "competence and intelligence" (Fuentes-Galvez, slip op. at 5) – particularly considering Montano's habitually consuming an opioid-laced beverage and his limited formal education – further suggests that a comprehensive plea colloquy that satisfied Rule 11(b)(2) would have resulted in Montano's deciding not to change his plea.

Consequently, because Montano satisfies Dominguez Benitez's and Monzon's tests for demonstrating that the district court's Rule 11 deficiencies violated his substantial rights, this Court should therefore reverse his conviction on all three counts and remand for further proceedings.

4. Additionally, the district court committed plain error by imposing a standard supervised release condition that is substantially similar to one that this Court held in Magdirila to be unconstitutionally vague. And because it affects Montano's substantial rights and would also compromise the judiciary's integrity by permitting the district court to impose condition similar to one that this Court has

already categorically invalidated, this Court should at least direct the district court on remand to modify it, as Magdirila directed.

VI. STANDARDS OF REVIEW.

A. Appellate Waiver

This Court reviews de novo whether an appellant has waived his right to appeal his conviction and sentence – and, more particularly, if he raises issues that fall within standard exceptions to the waiver doctrine. See, e.g., United States v. Watson, 582 F.3d 974, 981-87 (9th Cir. 2009). Whenever (as is true here) the appellant contends that the district court erred constitutionally, this Court initially reviews his proffered issues on the merits before determining if the waiver were valid. See id.

B. Due Process Issues Involving Montano’s Change of Plea

Because Montano did not raise in the district court that its conducting a change-of-plea colloquy without eliciting an adequate factual basis violated the Due Process Clause, this Court reviews that issue for plain error. See, e.g., United States v. Ameline, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc). Under that standard, this Court determines whether there was an ““(1) error, (2) that is plain, and (3) that affects substantial rights.”” Id. (quoting United States v. Cotton, 535 U.S. 625, 631 (2002)). If an appellant satisfies those “three conditions of the plain

the district court's contravening merely one part of what was then Rule 11(c) was sufficient to void Portillo-Cano's appellate waiver. Portillo-Cano, 192 F.3d at 1249-52.

Consequently, this Court has appellate jurisdiction over any issue that Montano raises here.

B. At a Bare Minimum, This Court Has Jurisdiction to Consider the Constitutional Issues That Montano Raises

As this Court has held repeatedly, an appellate waiver does not apply when the appellant claims that a sentence "violates the Constitution." Bibler, 495 F.3d at 624. Here, Montano contends that the district court violated the Due Process Clause by sentencing him after accepting a change-of-plea by Montano to the § 922(g)(1) count without notifying him about an essential element of that offense. See infra at 27-30. Further, just a few days ago, this Court noted that a district court violates the same clause by not determining whether the plea had been knowing and voluntary (Fuentes-Galvez, slip op. at 9), an issue that Montano raises here. See infra at 40-41. And Montano also challenges one of his standard supervised release conditions on vagueness grounds. See infra at 42-44.

Consequently, this Court plainly has appellate jurisdiction at least to consider those three issues.

VIII. THE DISTRICT COURT VIOLATED THE DUE PROCESS CLAUSE BY ACCEPTING A CHANGE-OF-PLEA FOR THE § 922(g)(1) COUNT, AND LATER SENTENCING MONTANO, WITHOUT INFORMING HIM OF AN ESSENTIAL ELEMENT FOR THAT OFFENSE.

Although this Court apparently has not yet considered whether a plea colloquy for a § 922(g)(1) offense that did not comply with Rehaif constitutes plain error,⁹ at least one of its sister circuits has answered that question affirmatively.¹⁰ Recently in Gary, a case in which the district court conducted a pre-Rehaif plea colloquy in which it did not “inform[]” the defendant that an additional element of the offense was that ‘he knew he had the relevant status when he possessed’” the firearm, the Fourth Circuit held that such an error was structural, therefore requiring the conviction be vacated even on plain-error review. Gary, 954 F.3d at 199-208; see also United States v. Lockhart, 947 F.3d 187, 197 (4th Cir. 2020) (en banc) (“Before a defendant enters a plea of guilty, he is entitled to understand the nature of the offense to which he is admitting guilt and the consequences of his plea

⁹ But see United States v. Johnson, 963 F.3d 847, 849-54 (9th Cir. 2020) (rejecting Rehaif claim in post-trial context).

¹⁰ But see United States v. Coleman, 961 F.3d 1024, 1029 (8th Cir. 2020); United States v. Trujillo, 960 F.3d 1196, 1205 (10th Cir. 2020); United States v. Lavalais, 960 F.3d 180, 184 (5th Cir. 2020); United States v. Williams, 946 F.3d 968, 973-74 (7th Cir. 2020); United States v. Burghardt, 939 F.3d 397, 404 (1st Cir. 2019).

The errors that occurred in this case prevented Lockhart from engaging in the calculus necessary to enter a plea on which this Court can rest in confidence.”) (internal citations omitted)).

In particular, after noting that the government had conceded the deficient plea colloquy satisfied the first two prongs of United States v. Olano, 507 U.S. 725 (1993) (an error that is plain), the Fourth Circuit rejected the government argument that the due process violation did not infringe the defendant’s substantial rights because “the evidence [show]ed that the defendant knew of his status as a prohibited person at the time of his gun possession.” Id. at 201.

Rather, the Fourth Circuit concluded, “[r]egardless of evidence in the record that would tend to prove that Gary knew of his status as a convicted felon, it is in the interest of justice that Gary knowingly and intelligently ‘engag[e] in the calculus necessary to enter a plea on which this Court can rely in confidence.’” Id. at 207 (quoting Lockhart, 947 F.3d at 197) (alteration in original)). And it therefore held “that the district court’s constitutional error is structural and affects Gary’s substantial rights, satisfying the third prong of the Olano inquiry.” Id.

Finally, the Fourth Circuit further held – regarding Olano’s discretionary fourth prong – that “[t]o allow a district court to accept a guilty plea from a defendant who has not been given notice of an element of the offense in violation of

his Fifth Amendment due process rights would surely cast doubt upon the integrity of our judicial process.” Id. at 208 (internal quotation marks and alteration omitted). It added that it could not “envision a circumstance where, faced with such constitutional infirmity and deprivation of rights as presented in this case, we would not exercise our discretion to recognize the error and grant relief.” Id. Consequently, the Fourth Circuit vacated Gary’s “plea and convictions” and remanded “for further proceedings.” Id.

Similarly, case law from this Court at least suggests that a district court’s omitting essential elements from a change-of-plea colloquy violates the defendant’s due process rights. See Seesing, 234 F.3d at 462 (citing Henderson, 426 U.S. at 644-45); see also United States v. Minore, 292 F.3d 1109, 1115-16 (9th Cir. 2002). Considering, therefore, that Gary’s analysis is at least somewhat consistent with this Court’s holdings regarding omitted essential elements during change-of-plea hearings, this Court should therefore adopt it within the post-Rehaif context. And after applying Gary’s rationales to Montano’s § 922(g)(1) conviction, this Court should therefore reverse it and remand.¹¹

¹¹ Unlike the Fourth Circuit, this Court’s preferred approach appears to be reversing a conviction resulting from a defective plea colloquy instead of vacating it. See, e.g., Monzon, 429 F.3d at 1274.

Court should reverse Montano's § 922(g)(1) conviction, "and remand with instructions to vacate" Montano's "plea and sentence" and "afford" him "the opportunity to enter a new plea." Monzon, 429 F.3d at 1274.

X. THE DISTRICT COURT PLAINLY ERRED BY DEVIATING SIGNIFICANTLY FROM RULE 11(b)(1)-(3)'S EXPLICIT REQUIREMENTS, AND THOSE ERRORS AFFECTED MONTANO'S SUBSTANTIAL RIGHTS BECAUSE BUT FOR THEM, THERE IS A REASONABLE PROBABILITY HE WOULD NOT HAVE CHANGED HIS PLEA TO ALL THREE COUNTS THAT THE PLEA AGREEMENT SET FORTH.

At bottom, as Montano demonstrated and discussed supra (at 13-17) and reiterates here, one cannot reasonably dispute that the district court plainly erred under Rule 11(b)(1)-(3) during its plea colloquy with February 11, 2019. Indeed, the earlier merits panel's briefing order presumed as such. Consequently, the more-challenging question is whether there is a reasonable probability that Montano would not have changed his guilty plea to all three counts (3, 24, and 29) if the district court had conducted an adequate Rule 11 colloquy.

Within that context, Monzon explained, this Court "should consider 'record evidence tending to show that a misunderstanding was inconsequential to a defendant's decision, or evidence indicating the relative significance of other facts that may have borne on his choice regardless of any Rule 11 error.'" Monzon, 429 F.3d at 1272 (quoting Dominguez Benitez, 524 U.S. at 84). That "inquiry," this

11(b)(1)(N)) was sufficient standing alone to void his appellate waiver, doing so might have affected his change-of-plea calculus. That is, if the district court had carefully explained the waiver provision's sweeping nature to Montano, doing so might have prompted Montano – knowing that he would then likely be locked into a lengthy sentence without any review from this Court – not to plead guilty. Indeed, Montano's present appeal – which he took without any guarantee that this Court would assert appellate jurisdiction because of the purported waiver – illustrates the importance he ascribed to having Article III judicial review of his conviction and sentence.

It is therefore reasonably probable that if the district court had fully apprised Montano of his likely waiving his appellate (and collateral review, see ER 59) rights categorically, he would have decided to not to plead guilty.

3. Finally, as this Court recently recognized in Fuentes-Galvez (see supra at 16-17), it is vital that a district court make comprehensive “inquiries” to confirm that a defendant had the requisite “competence and intelligence to enter a plea of guilty.” Slip op. at 5. But besides a limited inquiry into whether Montano's change of plea resulted from “force, threat, or promises,” (id.) the district court did not do anything that Fuentes-Galvez specified as being mandatory under Rule 11(b)(2). This included not asking Montano's “defense counsel whether he thought

[Montano] was pleading knowingly and voluntarily” Id.; see supra at 16-17.

Nor did the district court “make any inquiries as to whether [Montano] was capable of knowingly and voluntarily entering a plea at that time (e.g., whether he was under the care of a physician, whether he was taking any medication, how far he had gone through school, or other questions that might bear on whether he understood the nature of his plea).” Id.; see supra at 16-17. And the district court “did not ask [Montano] whether he understood his attorney or felt fully satisfied with the counsel, representation, and advice given to him by his attorney. Id.; see supra at 17.

As Fuentes-Galvez made clear, moreover, those palpable Rule 11(b)(2) errors here violated Montano’s substantial rights because “there is a reasonable probability that the district court’s omissions could have affected his decision to continue in the guilty plea.” Slip op. at 8. For instance, much as was true for the defendant in Fuentes-Galvez (see slip op. at 8), Montano had “little schooling” (he did not complete any grade past the eighth, see PSR at 23). Additionally, Montano had habitually imbibed promethazine, a prescription medication that contains an opioid (codeine). Consequently, despite Montano’s having been detained when the plea proceeding occurred (see FER 172-73), it is entirely possible that the district court might have learned about Montano’s continued use of the controlled substance or —

alternatively – withdrawal symptoms from being deprived it.

Thus, if the district court had inquired correctly, it would have been “aware [that] Montano was especially vulnerable to entering an involuntary plea.” Fuentes-Galvez, slip op. at 8. And consequently, “[u]nder the totality of the circumstances, the [district] court’s failure to make further inquiries created a significant enough risk of overlooking potential involuntariness” to demonstrate that “there was a reasonable probability that the error may have affected his decision to plead” guilty. Id.

D. As this Court made clear in Monzon, once it establishes that a plain error under Rule 11 violated a defendant’s substantial rights, the final review prong under United States v. Olano, 507 U.S. 725, 732 (1993) (whether the error “seriously affects the fairness, integrity or public reputation of judicial proceedings”) becomes a straightforward inquiry. Indeed, Monzon noted without further analysis only that the “Rule 11 error” there satisfied Olano’s fourth prong. Monzon, 429 F.3d at 1274; see also United States v. Bain, 925 F.3d 1172, 1179 (9th Cir. 2019). Here, given how patently deficient the overall plea colloquy was – deviating in its totality even more from Rule 11(b)(1)-(3) than what had occurred in Monzon (see 429 F.3d at 1269-71) – it would seem beyond cavil that this Court would reach a similar conclusion. See also Fuentes-Galvez, slip op. at 9 (“In this

case, the district court's plain error prevented the court from creating a record that establishes voluntariness as required by the Due Process Clause and Rule 11," therefore making it "sufficiently serious to impinge on the fairness, integrity, or public reputation of judicial proceedings.") (internal quotation marks omitted)).

Thus, as occurred in Monzon and Fuentes-Galvez, this Court should reverse Montano's conviction in its entirety and remand for further proceedings.

XI. THE DISTRICT COURT COMMITTED PLAIN ERROR BY IMPOSING A SUPERVISED RELEASE CONDITION SUBSTANTIALLY SIMILAR TO ONE THAT, AS THIS COURT RECENTLY HELD, IS UNCONSTITUTIONALLY VAGUE.

At bottom, this is a relatively straightforward issue. In Magdirila, this Court held that – consistent with the principles that Court enunciated in United States v. Evans, 883 F.3d 1154, 1162-64 (9th Cir. 2018) – the following standard supervised release condition was unconstitutionally vague:

As directed by the probation officer, the defendant must notify specific persons and organizations of specific risks posed by the defendant to those persons and organizations and must permit the probation officer to confirm the defendant's compliance with such requirement and to make such notifications.

Magdirila, 962 F.3d at 1158-59. In particular, this Court determined that the vagueness resulted "because," much like in Evans, "it failed to answer the question of *what* conduct the defendant needed to warn the public about." Id. at 1158 (citing

specific risks *posed by the defendant's criminal record.*") (original emphasis)).

XII. CONCLUSION.

This Court should reverse Montano's conviction in its entirety and remand for further proceedings. Alternatively, it should at a bare minimum reverse Montano's conviction on count 24 and remand for resentencing. Further, this Court should vacate Montano's challenged supervised release condition and direct the district court to amend it to be consistent with Magdirila's directives.

Dated: August 19, 2020

Respectfully submitted,

s/David A. Schlesinger

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APPEAL

**U.S. District Court
Eastern District of California – Live System (Fresno)
CRIMINAL DOCKET FOR CASE #: 1:17-cr-00198-NONE-SKO-1**

Case title: USA v. Montano et al
Magistrate judge case numbers: 1:17-mj-00129-BAM
1:17-mj-00147-EPG

Date Filed: 08/24/2017
Date Terminated: 06/17/2019

Assigned to: UnassignedDJ
Referred to: Magistrate Judge
Sheila K. Oberto

Appeals court case number:
19-10220 9th Circuit Court of
Appeal

Defendant (1)

Carlos Montano
TERMINATED: 06/17/2019
also known as
Loco
TERMINATED: 06/17/2019

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Pending Counts

18 U.S.C. §922(g)(1) – Felon in
Possession of a Firearm
(1)

Disposition

DISMISSED

Conspiracy to Distribute and to Possess with Intent to Distribute Methamphetamine (2s)	DISMISSED
Conspiracy to Distribute and to Possess with Intent to Distribute Methamphetamine (3s)	CUSTODY: 262 Months CONCURRENT. Special Assessment \$100. Supervised Release: 60 Months CONCURRENT.
Distribute Methamphetamine (11s-13s)	DISMISSED
Felon in Possession of Firearm (24s)	CUSTODY: 120 Months CONCURRENT. Special Assessment \$100. Supervised Release: 36 Months CONCURRENT.
Felon in Possession of Firearm (27s)	DISMISSED
Conspiracy to Engage in Interstate Transportation for Prostitution (28s)	DISMISSED
Interstate Transportation for Prostitution (29s)	CUSTODY: 120 Months CONCURRENT. Special Assessment \$100. Supervised Release: 36 Months CONCURRENT.
Use of a Facility of Interstate Commerce to Promote Prostitution (31s)	DISMISSED
Use of a Facility of Interstate Commerce to Promote Prostitution (33s)	DISMISSED
Use of a Facility of Interstate Commerce to Promote Prostitution (35s-36s)	DISMISSED

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

21 USC 846, 841(a)(1) – Conspiracy to distribute & possess with intent to distribute controlled substances; 21 USC 841(a)(1) – Distribution and possess with intent to distribute controlled substances; 18 USC 922(g)(1) – felon in of a firearm; 18 USC 922(a)(1)(A), 371 – Engaging in 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

Disposition

interstate commerce to promote
prostitution; 26 USC 5861(d) –
Possession of an unregistered
firearm

18:922(g)(1)– Unlawful Transport
of Firearms, etc.

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Date Filed	#	Docket Text
08/14/2017	<u>1</u>	CRIMINAL COMPLAINT as to Carlos Montano (1). (Martin-Gill, S) [1:17-mj-00129-BAM] (Entered: 08/14/2017)
08/14/2017	3	SHACKLING MINUTE ORDER signed by Magistrate Judge Barbara A. McAuliffe on 8/14/2017: Pursuant to Local Rule 401, the Court hereby determined that the appropriate restraint level for Carlos Montano is Fully Shackled (USM # 76743-097). (Herman, H) [1:17-mj-00129-BAM] (Entered: 08/14/2017)
08/14/2017	4	MINUTES (Text Only) for proceedings before Magistrate Judge Barbara A. McAuliffe on 8/14/2017: INITIAL APPEARANCE re Criminal Complaint as to Carlos Montano – held. Dft advised charges, rights. Atty Quinlan request this case be continued to tomorrow, he's hoping to be retained by then. Court sets a <u>FURTHER INITIAL APPEARANCE set for 8/15/2017 at 02:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto.</u> Defendant is temporarily detained until further Order of the Court. Government Counsel: Ross Pearson – present. Defense Counsel: Scott Quinlan and Erin Snider (was present in case court had questions) – present. Custody Status: in Custody FULLY (USM # previously added for Dft) – present. Court Reporter/CD Number: ECRO – Jami Thorp. (Herman, H) [1:17-mj-00129-BAM] (Entered: 08/14/2017)
08/15/2017	5	MINUTES (Text Only) for proceedings before Magistrate Judge Sheila K. Oberto: INITIAL APPEARANCE re CRIMINAL COMPLAINT as to Carlos Montano held on 8/15/2017. Defendant advised of charges and rights; waived further reading of charges and statutory and constitutional rights; NOT GUILTY PLEA ENTERED. Discovery to be produced following indictment. Detention Hearing set for 8/17/2017, at 02:00 PM in Courtroom 9 (SAB) before Magistrate Judge Stanley A. Boone. Defendant to remain temporarily detained pending the detention hearing. Defense counsel requested the government file a supplemental affidavit regarding the firearm. The Court suggested that defense counsel provide the information he has to pretrial services prior to the detention hearing. Preliminary Examination set for 8/25/2017, at 02:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe. Government Counsel: J. Spivak on behalf of K. Sanchez present. Defense Counsel: S. Quinlan, retained, present. Custody Status: Custody – FULLY SHACKLED. Court Reporter/CD Number: ECRO / J. Thorp. (Timken, A) [1:17-mj-00129-BAM] (Entered: 08/15/2017)
08/15/2017	<u>7</u>	NOTICE of ATTORNEY APPEARANCE: W. Scott Quinlan appearing for Carlos Montano (Martin-Gill, S) [1:17-mj-00129-BAM] (Entered: 08/17/2017)
08/16/2017	<u>6</u>	ARREST WARRANT RETURNED Executed on 08/12/17 as to Carlos Montano. (Martin-Gill, S) [1:17-mj-00129-BAM] (Entered: 08/17/2017)
08/17/2017	8	MINUTES (Text Only) for proceedings before Magistrate Judge Stanley A. Boone: DETENTION HEARING as to Carlos Montano held on 8/17/2017. Defense counsel argues release. The Government seeks detention and refers to the Pretrial Service Report. The Court orders the defendant Carlos Montano DETAINED. Government Counsel: K Sanchez present. Defense Counsel: S Quillan present. Custody Status: (C) Fully Shackled. Court Reporter/CD Number: ECRO J Thorp. (Hernandez, M) [1:17-mj-00129-BAM] (Entered: 08/18/2017)
08/18/2017	<u>2</u>	DETENTION ORDER signed by Magistrate Judge Stanley A. Boone on 8/17/2017 as to Carlos Montano. (Hernandez, M) [1:17-mj-00129-BAM] (Entered: 08/18/2017)
08/18/2017	<u>10</u>	TRANSCRIPT REQUEST for proceedings held on 08/17/17 before Judge McAuliffe. Court Reporter ECRO Fresno. (Quinlan, W.) [1:17-mj-00129-BAM] (Entered: 08/18/2017)
08/21/2017	<u>11</u>	TRANSCRIPT of Proceedings as to Carlos Montano (1), held on 8/17/2017, before Magistrate Judge Stanley A. Boone. DETENTION HEARING filed by ECRO, Phone number 559-499-5928 or 559-499-5980, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 9/11/2017. Redacted Transcript Deadline set for 9/21/2017.

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		Release of Transcript Restriction set for 11/20/2017. (Rosales, O) [1:17-mj-00129-BAM] (Entered: 08/21/2017)
08/24/2017	<u>12</u>	INDICTMENT as to Carlos Montano (1) count(s) 1. (Attachments: # <u>1</u> True Bill) (Hellings, J) (Entered: 08/24/2017)
08/25/2017	13	MINUTES (Text Only) for proceedings before Magistrate Judge Barbara A. McAuliffe on 8/25/2017: ARRAIGNMENT / Initial Appearance re Indictment as to Carlos Montano (1) Count 1 – held. Dft advised of charges, rights; received Indictment – True Name stated as charged; waived reading, rights – NOT GUILTY PLEA & Denial ENTERED. Discovery requested & by statutory time; & Initial discovery received by defense today; reciprocal – SO ORDERED. Parties request next hearing date be a status conference and waived excludable time – So Ordered, 18 USC 3161. 1st STATUS CONFERENCE set for 11/6/2017 at 01:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto. Excludable started as to Carlos Montano: XT Start: 8/25/2017 Stop: 11/6/2017. Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Government Counsel: Kim Sanchez – present. Defense Counsel: Scott Quinlan – present. Custody Status: in Custody FULLY (USM # previously added for Dft) – present. Court Reporter/CD Number: ECRO – Jami Thorp. (Herman, H) (Entered: 08/25/2017)
09/06/2017	<u>1</u>	COMPLAINT as to Carlos Montano (1), Filibert Chavez (2), Robin Gill (3), Gabriel Gomez (4), Juan Briceno (5), Nicholas Bolanos (6), Daniel Villanueva (7), Gerrick Travis Tyrell Franklin (8), Amina Padilla (9), Robert Lockhart (10), Ildelfonso Soto (11), Carlos Melgar (12), Jeni Fries (13), Cisco Hernandez (14), Miguel Murrillo (15), Adolfo Jesus Mendoza (16), Jesus Melgarejo (17), Cesar Gutierrez (18). (Hellings, J) [1:17-mj-00147-EPG] (Entered: 09/06/2017)
09/06/2017	<u>20</u>	EX PARTE APPLICATION for Order Sealing Complaint and Supporting Affidavit; Memorandum of Points and Authorities; Declaration of Kimberly A. Sanchez by USA as to Carlos Montano, Filibert Chavez, Robin Gill, Gabriel Gomez, Juan Briceno, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez (Hellings, J) [1:17-mj-00147-EPG] (Entered: 09/06/2017)
09/06/2017	<u>21</u>	SEALING ORDER signed by Magistrate Judge Erica P. Grosjean on 9/5/17 as to Carlos Montano, Filibert Chavez, Robin Gill, Gabriel Gomez, Juan Briceno, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez. (Hellings, J) [1:17-mj-00147-EPG] (Entered: 09/06/2017)
09/07/2017	32	MINUTES (Text Only) for proceedings before Magistrate Judge Erica P. Grosjean: INITIAL APPEARANCE RE COMPLAINT as to Carlos Montano (1) held on 9/7/2017. Financial Affidavit received; Scott Quinlan appointed. Defendant advised of charges, rights and maximum penalties; received Complaint – True Name stated as charged; waived further reading/advisement of rights; NOT GUILTY PLEA & Denial ENTERED. Government ordered to provide preliminary discovery. Attorney Quinlan requested to defer detention as defendant is currently being held on another case. Court orders Defendant DETAINED. PRELIMINARY HEARING set for 9/21/2017 at 02:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto. Government Counsel: Jeffrey Spivak present. Defense Counsel: Scott Quinlan present. Custody Status: (C) – Fully Shackled. Court Reporter/CD Number: ECRO–Otilia Rosales. (Valdez, E) [1:17-mj-00147-EPG] (Entered: 09/08/2017)
09/07/2017	<u>36</u>	ARREST WARRANT RETURNED Executed on 8/12/17 as to Carlos Montano. (Marrujo, C) [1:17-mj-00147-EPG] (Entered: 09/08/2017)
09/07/2017	<u>62</u>	NOTICE of ATTORNEY APPEARANCE: W. Scott Quinlan appearing for Carlos Montano (1). (Gonzalez, R) [1:17-mj-00147-EPG] (Entered: 09/11/2017)

09/08/2017	<u>34</u>	MOTION to UNSEAL Complaint by USA as to Carlos Montano, Filibert Chavez, Robin Gill, Gabriel Gomez, Juan Briceno, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez. (Marrujo, C) [1:17-mj-00147-EPG] (Entered: 09/08/2017)
09/08/2017	<u>35</u>	ORDER to UNSEAL Complaint as to Carlos Montano (1), Filibert Chavez (2), Robin Gill (3), Gabriel Gomez (4), Juan Briceno (5), Nicholas Bolanos (6), Daniel Villanueva (7), Gerrick Travis Tyrell Franklin (8), Amina Padilla (9), Robert Lockhart (10), Ildelfonso Soto (11), Carlos Melgar (12), Jeni Fries (13), Cisco Hernandez (14), Miguel Murrillo (15), Adolfo Jesus Mendoza (16), Jesus Melgarejo Jr. (17), Cesar Gutierrez (18) signed by Magistrate Judge Sheila K. Oberto on 9/8/17. (Marrujo, C) [1:17-mj-00147-EPG] (Entered: 09/08/2017)
09/08/2017	<u>37</u>	DETENTION ORDER signed by Magistrate Judge Erica P. Grosjean on 9/7/2017 as to Carlos Montano (1). (Valdez, E) [1:17-mj-00147-EPG] (Entered: 09/08/2017)
09/11/2017	<u>85</u>	CJA 20 APPOINTING ATTORNEY W. Scott Quinlan as to Carlos Montano (1) signed by Magistrate Judge Erica P. Grosjean on 9/11/17. (Marrujo, C) [1:17-mj-00147-EPG] (Entered: 09/12/2017)
09/15/2017	<u>119</u>	NOTICE of ATTORNEY APPEARANCE: Marc Days on behalf of Carlos Melgar. Attorney Days, Marc added. (Days, Marc) [1:17-mj-00147-EPG] (Entered: 09/15/2017)
09/15/2017	<u>120</u>	NOTICE of ATTORNEY APPEARANCE: Carol Ann Moses on behalf of Jeni Fries. Attorney Moses, Carol Ann added. (Moses, Carol) [1:17-mj-00147-EPG] (Entered: 09/15/2017)
09/18/2017	<u>130</u>	NOTICE of ATTORNEY APPEARANCE: Eric Vincent Kersten on behalf of Robin Gill. Attorney Kersten, Eric Vincent added. (Kersten, Eric) [1:17-mj-00147-EPG] (Entered: 09/18/2017)
09/21/2017	<u>136</u>	FIRST SUPERSEDING INDICTMENT as to Carlos Montano (1) count(s) 2s-3s, 11s-13s, 24s, 27s, 28s, 29s, 31s, 33s, 35s-36s, Filibert Chavez (2) count(s) 4, 14, 20, 28, 32, 34, Robin Gill (3) count(s) 1, 7-10, 21, 23, Gabriel Gomez (4) count(s) 1, 7, 9-10, 21, 23, Nicholas Bolanos (5) count(s) 1, 2, 5-6, 7, 11, 15-16, 21, Daniel Villanueva (6) count(s) 1, 21, Gerrick Travis Tyrell Franklin (7) count(s) 21, 37-38, Amina Padilla (8) count(s) 4, 14, 20, 32, 34, Robert Lockhart (9) count(s) 4, 17, Ildelfonso Soto (10) count(s) 4, 14, 35-36, Carlos Melgar (11) count(s) 4, 14, Jeni Fries (12) count(s) 3, 12, Cisco Hernandez (13) count(s) 6, 19, 22, Miguel Murrillo (14) count(s) 28, 30, 33, Adolfo Jesus Mendoza (15) count(s) 5, 18, Jesus Melgarejo, Jr (16) count(s) 21, 25, Cesar Gutierrez (17) count(s) 26. (Attachments: # 1 True Bill) (Marrujo, C) (Entered: 09/22/2017)
09/21/2017	141	MINUTES (Text Only) for proceedings before Magistrate Judge Sheila K. Oberto: ARRAIGNMENT and PLEA re INDICTMENT as to Carlos Montano (1) Counts 1,2s-3s,11s-13s,24s,27s,28s,29s,31s,33s,35s-36s and Filibert Chavez (2) Counts 4,14,20,28,32,34 and Robin Gill (3) Counts 1,7-10,21,23 and Nicholas Bolanos (5) Counts 1,2,5-6,7,11,15-16,21 and Amina Padilla (8) Counts 4,14,20,32,34 and Robert Lockhart (9) Counts 4,17 and Ildelfonso Soto (10) Counts 4,14,35-36 and Carlos Melgar (11) Counts 4,14 and Jeni Fries (12) Counts 3,12 and Cisco Hernandez (13) Counts 6,19,22 and Miguel Murrillo (14) Counts 28,30,33 and Adolfo Jesus Mendoza (15) Counts 5,18 and Jesus Melgarejo Jr. (16) Counts 21,25 held on 9/21/2017. All defendants advised of charges and rights; waived further reading of charges and statutory and constitutional rights; NOT GUILTY PLEAS ENTERED. Discovery/reciprocal requested and ORDERED. First Status Conference set for 12/18/2017, at 01:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto. Time is excluded under the Speedy Trial Act for the reasons set forth on the record. The Court finds that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. XT Start: 9/21/2017 Stop: 12/18/2017 Government Counsel: K. Sanchez and J. Spivak present. Defense Counsel: S. Quinlan; Y. Shrayberman; E. Kersten; P. Jones; B. O'Neill; J. Garland; M. Mitchell; M. Days; C. Moses; R. Beshwate; D. Harralson; R. Lamanuzzi; J. Meyer present. Custody Status: Montano; Chavez; Gill; Bolanos; Lockhart; Soto; Hernandez; Murrillo; Melgarejo - CUSTODY (Fully Shacked); Padilla; Melgar;

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		Fries; Mendoza – O/R – PRESENT. Court Reporter/CD Number: ECRO / A. Gil-Garcia. (Timken, A) (Entered: 09/22/2017)
09/29/2017	<u>143</u>	ORDER SUBSTITUTING ATTORNEY Nicholas F. Reyes for Carlos Montano, signed by Magistrate Judge Sheila K. Oberto on 09/29/17. Attorney W. Scott Quinlan terminated. (Martin-Gill, S) (Entered: 10/02/2017)
10/16/2017	<u>165</u>	ORDER GIVING NOTICE TO ALL PARTIES AND TO ALL COUNSEL OF A LONG TERM SCHEDULING CONFERENCE TO BE HELD ON DECEMBER 18, 2017, at 1:30 P.M. IN COURTROOM 4 signed by Chief Judge Lawrence J. O'Neill on October 16, 2017. NOTE: Status Conference currently set 12/18/2017 before Judge Oberto is VACATED. (Munoz, I) (Entered: 10/16/2017)
10/20/2017	<u>179</u>	STIPULATION and PROPOSED ORDER for Vacating Status Conference. (Reyes, Nicholas) (Entered: 10/20/2017)
10/23/2017	<u>183</u>	DESIGNATION of COUNSEL FOR SERVICE. (Spivak, Jeffrey) (Entered: 10/23/2017)
10/23/2017	<u>186</u>	STIPULATION TO VACATE STATUS CONFERENCE HEARING OF NOVEMBER 6, 2017 as to Carlos Montano signed by Chief Judge Lawrence J. O'Neill on October 23, 2017. (Munoz, I) (Entered: 10/23/2017)
10/27/2017	<u>190</u>	MINUTE ORDER signed by Magistrate Judge Erica P. Grosjean on 10/27/2017. Per the minutes of 10/26/2017, document <u>12</u> , in case 1:17-MJ-185 EPG, defendant Carlos Montano is to appear for a STATUS CONFERENCE RE ATTORNEY CONFLICT OF INTEREST set for 11/6/2017 at 02:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto. (Rooney, M) (Entered: 10/27/2017)
11/06/2017	<u>191</u>	MINUTE ORDER ***TEXT ENTRY ONLY*** The Status Conference re Attorney Conflict of Interest set per 10/26/2017, minutes at (Doc. 12) in case 1:17-mj-00185 has been continued to 11/13/2017, therefore defendant CARLOS MONTANO is to appear on 11/13/2017, at 02:00 PM in Courtroom 9 (SAB) before Magistrate Judge Stanley A. Boone , as ordered at (Doc. 12) in case 1:17-mj-00185. Minute order signed by Magistrate Judge Sheila K. Oberto on 11/6/2017., (Timken, A) (Entered: 11/06/2017)
11/09/2017	<u>192</u>	NOTICE of <i>Related Cases</i> by USA. (Sanchez, Kimberly) (Entered: 11/09/2017)
11/13/2017	<u>194</u>	MINUTES (Text Only) for proceedings before Magistrate Judge Stanley A. Boone: STATUS HEARING RE ATTORNEY CONFLICT as to Carlos Montano held on 11/13/2017. The parties discussed the waiver and advisements re attorney conflict. The Government informs the Court its been resolved. Scheduling Conference set for 12/18/2017 at 01:30 PM in Courtroom 4 (LJO) before Chief Judge Lawrence J. O'Neill shall remain as previously set. Government Counsel: Kim Sanchez present. Defense Counsel: Nicholas Reyes present. Custody Status: (C) Fully Shackled. Court Reporter/CD Number: ECRO. (Hernandez, M) (Entered: 11/14/2017)
12/06/2017	<u>213</u>	NOTICE of <i>Related Cases</i> by USA. (Sanchez, Kimberly) (Entered: 12/06/2017)
12/06/2017	<u>215</u>	ORDER SUBSTITUTING ATTORNEY signed by Chief Judge Lawrence J. O'Neill on 12/6/17. Attorney Kevin Gerard Little for Robin Gill Added, attorney Eric Vincent Kersten terminated. (Martin-Gill, S) (Entered: 12/07/2017)
12/18/2017	<u>225</u>	MINUTES (Text Only) for proceedings before Chief Judge Lawrence J. O'Neill: FIRST SCHEDULING CONFERENCE as to Carlos Montano, Filibert Chavez, Robin Gill, Gabriel Gomez, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr held on 12/18/2017. ORDER TO FOLLOW. COMPLEX CASE PURSUANT TO 18 U.S.C. § 3161(h)(7)(B)(ii). Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. XE Start: 12/18/2017 Stop: 5/7/2019. Government Counsel: Kimberly Sanchez, Jeffrey Spivak present. Defense Counsel: Nicholas Reyes, Yan Shrayberman, Kevin Little, Steven Crawford, Virna Santos, Michael Berdinella, Barbara O'Neill, John Garland, Michael Mitchell

		Marc Days, Carol Moses, Richard Beshwate, Robert Lamanuzzi, John Meyer present. Custody Status: CUSTODY/BOND/WAIVER. Court Reporter/CD Number: Peggy Crawford. (Munoz, I) (Entered: 12/19/2017)
12/19/2017	<u>226</u>	SCHEDULING ORDER signed by Chief Judge Lawrence J. O'Neill on December 19, 2017 as to Carlos Montano, Filibert Chavez, Robin Gill, Gabriel Gomez, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr. (Munoz, I) (Entered: 12/19/2017)
03/27/2018	<u>257</u>	REQUEST for <i>Court Order Authorizing Defendant Carlos Montano to Attend Funeral Services</i> by Carlos Montano (Attachments: # <u>1</u> Exhibit Funeral Details, # <u>2</u> Proposed Order)(Reyes, Nicholas) (Entered: 03/27/2018)
03/30/2018	260	MINUTES (Text Only) for proceedings before Magistrate Judge Barbara A. McAuliffe on 3/30/2018; REQUEST for Release to Attend Funeral Service (Doc. 257) (MOTION) HEARING as to Carlos Montano (1) – held; argued & submitted. Court states on the record with it's concerns, after a lengthy discussion, what defense needs to provide to the court to make a decision, but the court has NOT decided one way or the other about the Request. Government Counsel: Kim Sanchez – present. Defense Counsel: Nick Reyes – present. Custody Status: in Custody FULLY (USM # previously added for Dft) – present. Court Reporter/CD Number: ECRO – Otilia Rosales. (Herman, H) (Entered: 04/02/2018)
04/02/2018	<u>261</u>	WITHDRAWAL of MOTION by Carlos Montano. <i>Withdrawal of Request for Court Order Authorizing Defendant to Attend Funeral Services</i> (Reyes, Nicholas) (Entered: 04/02/2018)
10/31/2018	<u>277</u>	MOTION to SEVER by Daniel Villanueva as to Carlos Montano, Filibert Chavez, Robin Gill, Gabriel Gomez, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez. Motion Hearing set for 2/4/2019 at 01:30 PM in Courtroom 4 (LJO) before Chief Judge Lawrence J. O'Neill. (Santos, Virna) (Entered: 10/31/2018)
12/13/2018	<u>300</u>	REPLY by Daniel Villanueva to RESPONSE to. (Santos, Virna) (Entered: 12/13/2018)
01/04/2019	<u>308</u>	NOTICE of <i>Bill of Particulars for Forfeiture of Property</i> by USA. (Spivak, Jeffrey) (Entered: 01/04/2019)
01/25/2019	<u>317</u>	PLEA AGREEMENT as to Carlos Montano. (Spivak, Jeffrey) (Entered: 01/25/2019)
01/28/2019	319	MINUTE ORDER (TEXT ENTRY ONLY) Change of Plea Hearing as to defendant Carlos Montano set for 2/11/2019 at 08:30 AM in Courtroom 4 (LJO) before Chief Judge Lawrence J. O'Neill signed by Chief Judge Lawrence J. O'Neill on January 28, 2019. (Munoz, I) (Entered: 01/28/2019)
02/11/2019	329	MINUTES (Text Only) for proceedings before Chief Judge Lawrence J. O'Neill: CHANGE of PLEA HEARING as to Carlos Montano held on 2/11/2019. Carlos Montano (1) entered GUILTY PLEA on Counts 3, 24, 29. Sentencing set for 5/6/2019 at 08:30 AM in Courtroom 4 (LJO) before Chief Judge Lawrence J. O'Neill. Jury trial currently set for 5/7/2019 is VACATED as to Carlos Montano ONLY. Government Counsel: Jeffrey Spivak present. Defense Counsel: Nicholas Reyes present. Custody Status: CUSTODY. Court Reporter/CD Number: Peggy Crawford. (Munoz, I) (Entered: 02/12/2019)
03/25/2019	<u>351</u>	(TO BE VIEWED BY ASSIGNED COUNSEL ONLY) DISCLOSED PRESENTENCE INVESTIGATION REPORT (DRAFT) as to Carlos Montano. Informal objections shall not be submitted via CM/ECF and shall be in compliance with the sentencing schedule and pursuant to Local Rule 460. (Una'Dia, T) (Entered: 03/25/2019)
03/25/2019	354	MINUTES (Text Only) for proceedings before Chief Judge Lawrence J. O'Neill: MOTION to SEVER as to defendant DANIEL VILLANUEVA held on 3/25/2019. The Court ruled from the bench and the rulings are preserved on the record. Jury trial confirmed for 5/7/2019. Government Counsel: Jeffrey Spivak present. Defense Counsel: Virna Santos present. Custody Status: BOND. Court Reporter/CD Number: PER206

		Peggy Crawford. (Munoz, I) (Entered: 03/26/2019)
03/29/2019	<u>355</u>	PRETRIAL ORDER signed by Chief Judge Lawrence J. O'Neill on March 29, 2019. (Munoz, I) (Entered: 03/29/2019)
04/01/2019	<u>357</u>	PROPOSED ORDER re Preliminary Order of Forfeiture by USA as to Carlos Montano, Gabriel Gomez, Nicholas Bolanos, Gerrick Travis Tyrell Franklin, Ildelfonso Soto, Miguel Murrillo, Adolfo Jesus Mendoza. (Attachments: # <u>1</u> Application for Preliminary Order of Forfeiture and Publication Thereof)(Spivak, Jeffrey) (Entered: 04/01/2019)
04/02/2019	<u>359</u>	PRELIMINARY ORDER of FORFEITURE signed by Chief Judge Lawrence J. O'Neill on 4/1/2019 as to Carlos Montano, Gabriel Gomez, Nicholas Bolanos, Gerrick Travis Tyrell Franklin, Ildelfonso Soto, Miguel Murrillo, Adolfo Jesus Mendoza. (Hellings, J) (Entered: 04/02/2019)
04/15/2019	<u>373</u>	SENTENCING PRESENTENCE INVESTIGATION REPORT (FINAL) as to Carlos Montano. (Attachments: # <u>1</u> No Objection Letter)(Una'Dia, T) (Entered: 04/15/2019)
04/24/2019	<u>393</u>	STIPULATION and PROPOSED ORDER for Continuance of Sentencing. (Reyes, Nicholas) (Entered: 04/24/2019)
04/24/2019	<u>394</u>	STIPULATION and ORDER as to Carlos Montano signed by Chief Judge Lawrence J. O'Neill on April 24, 2019. Sentencing currently set for 5/6/2019 has been CONTINUED to 6/17/2019 at 08:30 AM in Courtroom 4 (LJO) before Chief Judge Lawrence J. O'Neill. (Munoz, I) (Entered: 04/24/2019)
04/29/2019	<u>398</u>	ORDER and WRIT of HABEAS CORPUS AD TESTIFICANDUM to Transport <i>Carlos Montano</i> , #2238229, signed by Chief Judge Lawrence J. O'Neill on 4/26/19 as to Carlos Montano (1), Filibert Chavez (2). (Gonzalez, R) (Entered: 04/29/2019)
05/10/2019	<u>452</u>	DECLARATION of Publication Regarding Forfeiture. (Spivak, Jeffrey) (Entered: 05/10/2019)
06/12/2019	<u>479</u>	SENTENCING MEMORANDUM by USA as to Carlos Montano. (Spivak, Jeffrey) (Entered: 06/12/2019)
06/13/2019	<u>481</u>	SENTENCING MEMORANDUM by Carlos Montano. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Character Reference Letters)(Reyes, Nicholas) (Entered: 06/13/2019)
06/17/2019	<u>487</u>	MINUTES (Text Only) for proceedings before Chief Judge Lawrence J. O'Neill: SENTENCING held on 6/17/2019 for Carlos Montano (1) CUSTODY: 262 months on Count 3, and terms of 120 months on each of Counts 24 and 29, all to be served concurrently, for a total term of imprisonment of 262 months. Special Assessment \$300. Supervised Release: 60 months on Count 3, and 36 months on each of Counts 24 and 29, all to be served concurrently, for a total term of 60 months with conditions. Prison: California and 500 hour drug treatment program. USA Motion to Dismiss Counts 1, 2, 11-13, 27, 28, 31, 33, 35-36-GRANTED. Preliminary Order of Forfeiture-GRANTED. Appeal Rights waived. DEFENDANT TERMINATED. Government Counsel: Jeffrey Spivak present. Defense Counsel: Nicholas Reyes present. Custody Status: CUSTODY. Court Reporter/CD Number: Peggy Crawford. (Munoz, I) (Entered: 06/18/2019)
06/19/2019	<u>488</u>	JUDGMENT and COMMITMENT signed by Chief Judge Lawrence J. O'Neill on 06/19/2019 as to Carlos Montano. (Gonzales, V) (Entered: 06/19/2019)
06/24/2019	<u>493</u>	SENTENCING MEMORANDUM by Carlos Melgar as to Carlos Montano, Filiberto Chavez, Robin Gill, Gabriel Gomez, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B)(Days, Marc) (Entered: 06/24/2019)
06/28/2019	<u>495</u>	NOTICE of APPEAL by Carlos Montano. (Filing fee \$ 505, receipt number 0972-8335389) (Attachments: # <u>1</u> Notice Judgment)(Reyes, Nicholas) (Entered: 06/28/2019)

06/28/2019	<u>496</u>	APPEAL PROCESSED to Ninth Circuit re <u>495</u> Notice of Appeal filed by Carlos Montano. Filed dates for Notice of Appeal *6/28/2019*, Complaint *8/14/2017* and Appealed Order / Judgment *6/19/2019*. Court Reporter: *Peggy Crawford*. *Fee Status: Paid on 6/28/2019 in the amount of \$505.00* (Attachments: # <u>1</u> Appeal Information) (Lundstrom, T) (Entered: 06/28/2019)
07/01/2019	<u>499</u>	USCA CASE NUMBER 19-10220 for <u>495</u> Notice of Appeal filed by Carlos Montano. (Lundstrom, T) (Entered: 07/02/2019)
10/07/2019	<u>540</u>	ORDER of USCA as to <u>495</u> Notice of Appeal filed by Carlos Montano. <i>Appellants submission of a completed Form CJA 23 is construed as a motion to proceed in forma pauperis. So construed, the motion is GRANTED. The Renewed Motion of Appellant's Retained Counsel to Withdraw as Counsel of Record and for Appointment of new Counsel is GRANTED.</i> (Sant Agata, S) (Entered: 10/07/2019)
11/14/2019	<u>552</u>	TRANSCRIPT REQUEST for proceedings held on 11/13/17; 2/11/19; 6/17/19 before Judge Lawrence J O'Neill. MULTIPLE REPORTERS REQUESTED (Sweet, Lindsay) (Entered: 11/14/2019)
12/02/2019	<u>554</u>	TRANSCRIPT of Proceedings as to Carlos Montano (1), held on 11/13/2017 , before Magistrate Judge Stanley A. Boone. CONFLICT ISSUE HEARING filed by ECRO, Phone number 559-499-5928 or 559-499-5980, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 12/23/2019. Redacted Transcript Deadline set for 1/2/2020. Release of Transcript Restriction set for 3/2/2020. (Rosales, O.) (Entered: 12/02/2019)
12/06/2019	<u>555</u>	TRANSCRIPT of Proceedings as to Carlos Montano held on 2/11/2019, Change of Plea, before Chief Judge Lawrence J. O'Neill, filed by Court Reporter Peggy Crawford, Phone number 559-266-3789 E-mail peggycrawford@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 12/27/2019. Redacted Transcript Deadline set for 1/6/2020. Release of Transcript Restriction set for 3/5/2020. (Crawford, P) (Entered: 12/06/2019)
12/06/2019	<u>556</u>	TRANSCRIPT of Proceedings as to Carlos Montano held on 6/17/2019, Sentence, before Chief Judge Lawrence J. O'Neill, filed by Court Reporter Peggy Crawford, Phone number 559-266-3789 E-mail peggycrawford@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 12/27/2019. Redacted Transcript Deadline set for 1/6/2020. Release of Transcript Restriction set for 3/5/2020. (Crawford, P) (Entered: 12/06/2019)
01/10/2020	<u>560</u>	SENTENCING MEMORANDUM by Daniel Villanueva as to Carlos Montano, Filiberto Chavez, Robin Gill, Gabriel Gomez, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez. (Attachments: # <u>1</u> Exhibit 1)(Santos, Virna) (Entered: 01/10/2020)
02/03/2020	<u>569</u>	ORDER UNASSIGNING DISTRICT JUDGE signed by Chief Judge Kimberly J. Mueller: Due to the inactive senior status of District Judge Lawrence J. O'Neill, this action is hereby unassigned until a new district judge is appointed. The parties are referred to the attached Standing Order in Light of Ongoing Judicial Emergency in the Eastern District of California. (Attachments: # <u>1</u> Standing Order) (Rivera, O) (Entered: 02/03/2020)
05/19/2020	<u>579</u>	USCA ORDER as to <u>495</u> Notice of Appeal filed by Carlos Montano. Appellant's replacement opening brief and any supplement to the excerpts of record filed at Docket Entry No. 15 are due July 20, 2020; appellee's brief is due August 19, 2020; the optional reply brief is due within 21 days after service of appellee's brief.(Flores, E)

		(Entered: 05/19/2020)
05/19/2020	<u>580</u>	ORDER APPOINTING ATTORNEY, signed by District Judge Dale A. Drozd on 5/19/2020 as to Carlos Montano (1). Added Attorney David Andrew Schlesinger for Carlos Montano. (Rivera, O) (Entered: 05/19/2020)
06/17/2020	<u>585</u>	TRANSCRIPT REQUEST for proceedings held on 08/14/2017, 08/15/2017, 08/25/2017, 09/07/2017, 09/21/2017, 12/18/2017, 03/30/2018 before Judge Boone, Grosjean, McAuliffe, Oberto, O'Neill. MULTIPLE REPORTERS REQUESTED (Schlesinger, David) (Entered: 06/17/2020)
06/18/2020	<u>586</u>	TRANSCRIPT REQUEST for proceedings held on 08/14/2017, 08/15/2017, 08/25/2017, 09/07/2017, 09/21/2017, 12/18/2017, 03/30/2018 before Judge Boone, Grosjean, McAuliffe, Oberto, O'Neill re <u>495</u> Notice of Appeal. MULTIPLE REPORTERS REQUESTED (Attachments: # <u>1</u> Attachment)(Schlesinger, David) (Entered: 06/18/2020)
07/02/2020	<u>589</u>	TRANSCRIPT of Proceedings as to Carlos Montano held on 8/14/2017 , before Magistrate Judge Barbara A. McAuliffe. Initial Appearance re Criminal Complaint filed by ECRO, Phone number 559-499-5928 or 559-499-5612, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)
07/02/2020	<u>590</u>	TRANSCRIPT of Proceedings as to Carlos Montano held on 8/15/2017 , before Magistrate Judge Sheila K. Oberto. Initial Appearance re Criminal Complaint filed by ECRO, Phone number 559-499-5928 or 559-499-5612, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)
07/02/2020	<u>591</u>	TRANSCRIPT of Proceedings as to Carlos Montano held on 8/25/2017 , before Magistrate Judge Barbara A. McAuliffe. Arraignment and Plea re Indictment filed by ECRO, Phone number 559-499-5928 or 559-499-5612, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)
07/02/2020	<u>592</u>	TRANSCRIPT of Proceedings as to Carlos Montano, Filiberto Chavez, Robin Gill, Nicholas Bolanos, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Cisco Hernandez, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr held on 9/7/2017 , before Magistrate Judge Barbara A. McAuliffe. Initial Appearance re Complaint , filed by ECRO, Phone number 559-499-5928 or 559-499-5612, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)
07/02/2020	<u>593</u>	TRANSCRIPT of Proceedings as to Carlos Montano, Filiberto Chavez, Robin Gill, Nicholas Bolanos, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr held on 9/21/2017 , before Magistrate Judge Sheila K. Oberto. Preliminary Examination filed by ECRO, Phone number 559-499-5928 or 559-499-5612, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)

		obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)
07/02/2020	<u>594</u>	TRANSCRIPT of Proceedings as to Carlos Montano and Jesus Melgarejo, Jr held on 3/30/2018 , before Magistrate Judge Barbara A. McAuliffe. Request for Release to Attend Funeral Service filed by ECRO, Phone number 559-499-5928 or 559-499-5612, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 7/23/2020. Redacted Transcript Deadline set for 8/3/2020. Release of Transcript Restriction set for 10/1/2020. (Timken, A) (Entered: 07/02/2020)
07/14/2020	<u>602</u>	TRANSCRIPT of Proceedings as to Carlos Montano, Filiberto Chavez, Robin Gill, Gabriel Gomez, Nicholas Bolanos, Daniel Villanueva, Gerrick Travis Tyrell Franklin, Amina Padilla, Robert Lockhart, Ildelfonso Soto, Carlos Melgar, Jeni Fries, Cisco Hernandez, Miguel Murrillo, Adolfo Jesus Mendoza, Jesus Melgarejo, Jr, Cesar Gutierrez held on 12/18/2017, First Scheduling Conference, before District Judge Lawrence J. O'Neill, filed by Court Reporter Peggy Crawford, Phone number 559-266-3789 E-mail peggycrawford@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 8/6/2020. Redacted Transcript Deadline set for 8/14/2020. Release of Transcript Restriction set for 10/13/2020. (Crawford, P) (Entered: 07/14/2020)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS MONTANO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for A Writ of *Certiorari* to The United States Court of Appeals for
the Ninth Circuit**

PROOF OF SERVICE

I, David A. Schlesinger, declare that on May 16, 2022, as required by Supreme Court Rule 29, I served Petitioner Carlos Montano's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to her, and with first-class postage prepaid.

The name and address of counsel for Respondent is as follows:

The Honorable Elizabeth B. Prelogar, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

Additionally, I mailed a copy of the motion and the petition to my client,
Petitioner Carlos Montano, by depositing an envelope containing the documents in
the United States mail, postage prepaid, and sending it to the following address:

Carlos Montano
Register No. 76743-097
FCI Terre Haute
Federal Correctional Institution
P.O. Box 33
Terre Haute, IN 47808

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 16, 2022



DAVID A. SCHLESINGER
Declarant