

No. 22-

IN THE
SUPREME COURT OF THE UNITED STATES

Jose Luis Nunez — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

The United States Court of Appeals for the Ninth Circuit and the United States

District Court for the Central District of California

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☒ The appointment was made under the following provision of law: _____
18 U.S.C. § 3006A. Ninth Circuit Rule 4-1(a), or

☒ a copy of the order of appointment is appended.

/s/ Robert N. Hochman

(Signature)

PACER fee: Exempt

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 21-50131**Docketed:** 06/03/2021

USA v. Jose Nunez

Termed: 08/10/2022**Appeal From:** U.S. District Court for Central California, Los Angeles**Fee Status:** IFP**Case Type Information:**

- 1) criminal
- 2) Direct Criminal
- 3) null

Originating Court Information:**District:** 0973-2 : [2:19-cr-00212-SVW-2](#)**Lead:** [2:19-cr-00212-SVW](#)**Court Reporter:** Maria Rita Bustillos, Official Court Reporter**Court Reporter:** Lisa Gonzalez, Court Reporter**Court Reporter:** Chia Mei Jui**Court Reporter:** Alberto V. Ortiz, Court Reporter Supervisor**Court Reporter:** Katie Elizabeth Thibodeaux, Official Court Reporter**Trial Judge:** Stephen V. Wilson, District Judge**Date Filed:** 04/05/2019**Date Order/Judgment:**

05/28/2021

Date Order/Judgment EOD:

06/01/2021

Date NOA Filed:

06/01/2021

Date Rec'd COA:

06/01/2021

Prior Cases:

None

Current Cases:

None

UNITED STATES OF AMERICA

Plaintiff - Appellee,

Bram M. Alden

Email: usacac.crimappeals@usdoj.gov

[COR LD NTC Assist US Attorney]

DOJ - Office of the U.S. Attorney

312 N Spring Street

Los Angeles, CA 90012

Kevin James Butler, Assistant U.S. Attorney

Direct: 213-894-6495

Email: kevin.butler2@usdoj.gov

[COR NTC Assist US Attorney]

DOJ - Office of the U.S. Attorney

Suite 1200

312 N Spring Street

Los Angeles, CA 90012

Robert I. Lester, Assistant U.S. Attorney

Email: robert.lester@usdoj.gov

[COR NTC Assist US Attorney]

USLA - Office of the U.S. Attorney

300 N Los Angeles Street

Los Angeles, CA 90012

v.

JOSE LUIS NUNEZ, AKA Corps

Defendant - Appellant,

Elena Sadowsky, Deputy Federal Public Defender

Direct: 213-894-2854

Email: elena_sadowsky@fd.org

Fax: 213-894-0081

[COR LD NTC Assist Fed Pub Def]

FPDCA - Federal Public Defender's Office (Los Angeles)

321 E 2nd Street

Los Angeles, CA 90012-4202

Andrew Brian Talai

Direct: 213-894-2854

Email: Andrew_Talai@fd.org
Fax: 213-894-0081
[COR NTC Assist Fed Pub Def]
FPDCA - Federal Public Defender's Office (Los Angeles)
321 E 2nd Street
Los Angeles, CA 90012-4202

DIGNITY AND POWER NOW
Amicus Curiae,

Claire Simonich
Direct: 860-328-0179
Email: csimonich@socialjusticelaw.org
[COR LD NTC Retained]
The Social Justice Legal Foundation
523 W 6th Street
Suite 450
Los Angeles, CA 90014

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS NUNEZ, AKA Corps,

Defendant - Appellant.

- 06/03/2021 ☐ [1](#)
27 pg, 768.33 KB DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Reporters Transcript required: Yes. Sentence imposed: 24 Months. Transcript ordered by 06/22/2021. Transcript due 07/22/2021. Appellant briefs and excerpts due by 08/31/2021 for Jose Luis Nunez. Appellee brief due 09/30/2021 for United States of America. Appellant's optional reply brief is due 21 days after service of the answering brief. [12132405] (JPD) [Entered: 06/03/2021 09:46 AM]
- 06/23/2021 ☐ 2 Attorney L. Ashley Aull in 21-50131 substituted by Attorney Bram M. Alden in 21-50131 (Court correction of docket) [12152601] (ASW) [Entered: 06/23/2021 03:51 PM]
- 08/03/2021 ☐ 3 Filed (ECF) notice of appearance of Andrew Brian Talai (Federal Public Defender's Office for the Central District of California, 321 E. 2nd Street, Los Angeles, CA 90012) for Appellant Jose Luis Nunez. Substitution for Attorney Ms. Elena Sadowsky for Appellant Jose Luis Nunez. Date of service: 08/03/2021. (Party was previously proceeding with counsel.) [12190365] [21-50131] (Talai, Andrew) [Entered: 08/03/2021 09:54 AM]
- 08/03/2021 ☐ 4 Added Attorney(s) Andrew Brian Talai for party(s) Appellant Jose Luis Nunez, in case 21-50131. [12190842] (RR) [Entered: 08/03/2021 02:04 PM]
- 08/27/2021 ☐ 5 Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Jose Luis Nunez. New requested due date is 09/30/2021. [12213239] [21-50131] (Talai, Andrew) [Entered: 08/27/2021 09:29 AM]
- 08/27/2021 ☐ 6 **Streamlined request [5] by Appellant Jose Luis Nunez to extend time to file the brief is approved. Amended briefing schedule: Appellant briefs and excerpts due by 09/30/2021 for Jose Luis Nunez. Appellee brief due 10/30/2021 for United States of America. The optional reply brief is due 21 days from the date of service of the answering brief.** [12213325] (BG) [Entered: 08/27/2021 10:05 AM]
- 09/21/2021 ☐ [7](#)
5 pg, 97.42 KB Filed (ECF) Appellant Jose Luis Nunez Unopposed Motion to extend time to file Opening brief until 11/15/2021. Date of service: 09/21/2021. [12234588] [21-50131] (Talai, Andrew) [Entered: 09/21/2021 11:47 AM]
- 09/23/2021 ☐ [8](#)
1 pg, 100.2 KB Filed clerk order (Deputy Clerk: TAH): The appellant's unopposed motion (Docket Entry No. [7](#)) for a second extension of time to file the opening brief is granted. The opening brief is due November 15, 2021. The answering brief is due December 15, 2021. The optional reply brief is due within 21 days after service of the answering brief. [12236677] (WL) [Entered: 09/23/2021 08:53 AM]
- 11/04/2021 ☐ [9](#)
5 pg, 97.37 KB Filed (ECF) Appellant Jose Luis Nunez Unopposed Motion to extend time to file Opening brief until 12/15/2021. Date of service: 11/04/2021. [12278155] [21-50131] (Talai, Andrew) [Entered: 11/04/2021 10:44 AM]
- 11/08/2021 ☐ [10](#)
1 pg, 102.57 KB Filed clerk order (Deputy Clerk: TAH): The appellant's unopposed motion (Docket Entry No. [9](#)) for a third extension of time to file the opening brief is granted. The opening brief is due December 15, 2021. Any further request for an extension of time to file this brief is disfavored. The answering brief is due January 14, 2022. The optional reply brief is due within 21 days after service of the answering brief. [12280751] (AF) [Entered: 11/08/2021 09:33 AM]
- 12/15/2021 ☐ [11](#)
85 pg, 951.56 KB Submitted (ECF) Opening Brief for review. Submitted by Appellant Jose Luis Nunez. Date of service: 12/15/2021. [12317141] [21-50131] (Talai, Andrew) [Entered: 12/15/2021 03:58 PM]
- 12/15/2021 ☐ [12](#)
275 pg, 9.72 MB Submitted (ECF) excerpts of record. Submitted by Appellant Jose Luis Nunez. Date of service: 12/15/2021. [12317151] [21-50131] (Talai, Andrew) [Entered: 12/15/2021 04:02 PM]
- 12/15/2021 ☐ 13 Filed (ECF) presentence report UNDER SEAL by Appellant Jose Luis Nunez. [12317153] [21-50131] (Talai, Andrew) [Entered: 12/15/2021 04:03 PM]
- 12/15/2021 ☐ [14](#)
4 pg, 93.1 KB Filed (ECF) Appellant Jose Luis Nunez Unopposed Motion to transmit exhibit. Date of service: 12/15/2021. [12317156] [21-50131] (Talai, Andrew) [Entered: 12/15/2021 04:04 PM]
- 12/15/2021 ☐ [15](#)
2 pg, 95.28 KB Filed clerk order: The opening brief [11](#) submitted by Jose Luis Nunez is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [12](#) submitted by Jose Luis Nunez are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12317368] (LA) [Entered: 12/15/2021 05:36 PM]
- 12/20/2021 ☐ 16 Received 3 paper copies of excerpts of record [12](#) in 1 volume(s) filed by Appellant Jose Luis Nunez. [12320462] (SML) [Entered: 12/20/2021 11:55 AM]
- 12/20/2021 ☐ 17 Received 6 paper copies of Opening Brief [11](#) filed by Jose Luis Nunez. [12321047] (SD) [Entered: 12/20/2021 03:47 PM]
- 01/07/2022 ☐ [18](#)
5 pg, 97.76 KB Filed (ECF) Appellee USA Unopposed Motion to extend time to file Answering brief until 03/15/2022. Date of service: 01/07/2022. [12334439] [21-50131] (Butler, Kevin) [Entered: 01/07/2022 01:21 PM]

- 01/12/2022 ☐ [19](#) Filed clerk order (Deputy Clerk: LBS): The appellee's unopposed motion (Docket Entry No. [18](#)) for an extension of time to file the answering brief is granted. The answering brief is due March 15, 2022. The optional reply brief is due within 21 days after service of the answering brief. [12338843] (RY) [Entered: 01/12/2022 12:37 PM]
1 pg, 100.57 KB
- 03/15/2022 ☐ [20](#) Submitted (ECF) Answering Brief for review. Submitted by Appellee USA. Date of service: 03/15/2022. [12395728] [21-50131] (Butler, Kevin) [Entered: 03/15/2022 05:17 PM]
56 pg, 363.93 KB
- 03/16/2022 ☐ [21](#) Filed clerk order: The answering brief [20](#) submitted by USA is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be submitted to the principal office of the Clerk. [12396100] (LA) [Entered: 03/16/2022 10:11 AM]
2 pg, 94.86 KB
- 03/21/2022 ☐ 22 Received 6 paper copies of Answering Brief [20](#) filed by USA. [12400683] (SD) [Entered: 03/21/2022 02:21 PM]
- 03/22/2022 ☐ 23 Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant Jose Luis Nunez. New requested due date is 05/05/2022. [12401995] [21-50131] (Talai, Andrew) [Entered: 03/22/2022 03:02 PM]
- 03/23/2022 ☐ 24 **Streamlined request [23](#) by Appellant Jose Luis Nunez to extend time to file the brief is approved. Amended briefing schedule: the optional reply brief is due 05/06/2022.** [12403008] (BG) [Entered: 03/23/2022 01:01 PM]
- 04/12/2022 ☐ [25](#) Filed clerk order (Deputy Clerk: HEG): Appellant's unopposed motion pursuant to Fed. R. App. P. 27 and 9th Cir. R. 27-14 (Docket Entry No. [14](#)) for leave to transmit to this court a copy of Exhibit B to Appellant's Motion to Suppress Evidence is granted. Counsel shall submit four copies of the exhibit within seven days after the date of this order. [12418755] (WL) [Entered: 04/12/2022 01:36 PM]
1 pg, 100.25 KB
- 04/14/2022 ☐ 26 This case is being considered for an upcoming oral argument calendar in Pasadena
- Please review the Pasadena sitting dates for August 2022 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's [instructions](#) carefully.
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document**: Correspondence to Court; **Subject**: request for mediation).[12421338]. [21-50131] (KS) [Entered: 04/14/2022 11:41 AM]
- 04/14/2022 ☐ 27 Filed 4 CDs by Appellant Jose Luis Nunez containing Exhibit B to motion to suppress evidence. Sent to Records. [12421642] (KWG) [Entered: 04/14/2022 02:39 PM]
- 04/28/2022 ☐ [28](#) Filed (ECF) Appellant Jose Luis Nunez Unopposed Motion to extend time to file Reply brief until 05/20/2022. Date of service: 04/28/2022. [12434158] [21-50131] (Talai, Andrew) [Entered: 04/28/2022 05:11 PM]
5 pg, 97.41 KB
- 05/10/2022 ☐ [29](#) Filed (ECF) Attorney Kevin James Butler for Appellee USA response to notice for case being considered for oral argument. Date of service: 05/10/2022. [12443382] [21-50131] (Butler, Kevin) [Entered: 05/10/2022 04:15 PM]
1 pg, 122.87 KB
- 05/20/2022 ☐ [30](#) Submitted (ECF) Reply Brief for review. Submitted by Appellant Jose Luis Nunez. Date of service: 05/20/2022. [12452862] [21-50131] (Talai, Andrew) [Entered: 05/20/2022 03:15 PM]
41 pg, 510.64 KB
- 05/22/2022 ☐ 31 Notice of Oral Argument on Tuesday, August 2, 2022 - 09:00 A.M. - Courtroom 1 - Scheduled Location: Pasadena CA.
The hearing time is the local time zone at the scheduled hearing location.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. See Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Check [here](#) for updates on the status of reopening as the hearing date approaches. At this time, even when in person hearings resume, an election to appear remotely by video will not require a motion, **and any attorney wishing to appear in person must provide proof of vaccination**. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in

person appearance or to make any necessary arrangements for remote appearance.

Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so.

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the [ACKNOWLEDGMENT OF HEARING NOTICE](#) filing type in CM/ECF no later than 28 days before Tuesday, August 2, 2022. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12453157]. [21-50131] (KS) [Entered: 05/22/2022 06:08 AM]

- 05/31/2022 ☐ 32 Filed text clerk order (Deputy Clerk: AF): The appellant's unopposed motion for an extension to file appellant's reply brief, Dkt. [28], is granted. [12459845] (AF) [Entered: 05/31/2022 01:37 PM]
- 05/31/2022 ☐ [33](#)
2 pg, 95.22 KB Filed clerk order: The reply brief [30] submitted by Jose Luis Nunez is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [12459899] (KT) [Entered: 05/31/2022 01:53 PM]
- 06/02/2022 ☐ 34 Received 6 paper copies of Reply Brief [30] filed by Jose Luis Nunez. (sent to panel) [12462131] (SD) [Entered: 06/02/2022 01:17 PM]
- 07/01/2022 ☐ [35](#)
41 pg, 553.24 KB Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Dignity and Power Now. Date of service: 07/01/2022. [12485662] [21-50131]--[COURT UPDATE: attached corrected PDF of amicus brief. 07/05/2022 by KT] (Simonich, Claire) [Entered: 07/01/2022 07:54 PM]
- 07/05/2022 ☐ 36 Entered appearance of Amicus Curiae - Pending Dignity and Power Now. [12485924] (KT) [Entered: 07/05/2022 09:31 AM]
- 07/05/2022 ☐ 37 Filed (ECF) Acknowledgment of hearing notice by Attorney Andrew Brian Talai for Appellant Jose Luis Nunez. Hearing in Pasadena on 08/02/2022 at 09:00 A.M. (Courtroom: 1). Filer sharing argument time: No. (Argument minutes: 10) Appearance in person or by video: I wish to appear in person. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 07/05/2022. [12486281] [21-50131] (Talai, Andrew) [Entered: 07/05/2022 12:15 PM]
- 07/05/2022 ☐ 38 Filed (ECF) Acknowledgment of hearing notice by Attorney Kevin James Butler for Appellee USA. Hearing in Pasadena on 08/02/2022 at 09:00 A.M. (Courtroom: Courtroom 1). Filer sharing argument time: No. (Argument minutes: 10) Appearance in person or by video: I wish to appear by video. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 07/05/2022. [12486319] [21-50131] (Butler, Kevin) [Entered: 07/05/2022 12:54 PM]
- 08/02/2022 ☐ 39 ARGUED AND SUBMITTED TO CONSUELO M. CALLAHAN, HOLLY A. THOMAS and DIANE J. HUMETEWA. [12507512] (DLM) [Entered: 08/02/2022 11:55 AM]
- 08/05/2022 ☐ [40](#)
1 pg, 23.06 MB Filed Audio recording of oral argument.
Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/> [12510202] (DLM) [Entered: 08/05/2022 09:16 AM]
- 08/10/2022 ☐ [41](#)
12 pg, 635.66 KB FILED MEMORANDUM DISPOSITION (CONSUELO M. CALLAHAN, HOLLY A. THOMAS and DIANE J. HUMETEWA) The judgment is AFFIRMED. The Social Justice League Foundation (SJLF) filed a motion for leave to file an amicus brief in support of Nunez. While both parties have consented to the filing, the Foundation requires leave from the court because it is not timely. See Fed. R. App. P. 29(a)(6). We grant the motion. FILED AND ENTERED JUDGMENT. [12513852] (AKM) [Entered: 08/10/2022 09:46 AM]
- 08/10/2022 ☐ [42](#)
1 pg, 91.6 KB Filed clerk order: The amicus brief [35] submitted by Dignity and Power Now is filed. No paper copies are required at this time. [12513911] (KWG) [Entered: 08/10/2022 10:39 AM]
- 08/11/2022 ☐ [43](#)
5 pg, 99.42 KB Filed (ECF) Appellant Jose Luis Nunez Unopposed Motion to extend time to file petition for rehearing until 09/23/2022. Date of service: 08/11/2022. [12515237] [21-50131] (Talai, Andrew) [Entered: 08/11/2022 02:41 PM]
- 08/11/2022 ☐ 44 Filed text clerk order (Deputy Clerk: AF): Appellant's unopposed motion for a 30-day extension to file a petition for panel rehearing or rehearing en banc, Dkt. [43], is granted. [12515486] (AF) [Entered: 08/11/2022 05:06 PM]
- 09/23/2022 ☐ [45](#)
35 pg, 611.24 KB Filed (ECF) Appellant Jose Luis Nunez petition for panel rehearing and petition for rehearing en banc (from 08/10/2022 memorandum). Date of service: 09/23/2022. [12548209] [21-50131] (Talai, Andrew) [Entered: 09/23/2022 03:08 PM]

12/23/2022	<input type="checkbox"/> 46 10 pg, 274.11 KB	Filed order and amended memorandum (CONSUELO M. CALLAHAN, HOLLY A. THOMAS and DIANE J. HUMETEWA). The Memorandum Disposition, filed on August 10, 2022 in the above-captioned matter, is amended as follows: [SEE ORDER FOR FULL TEXT] With these amendments, the panel unanimously voted to deny the petition for panel rehearing. Judges Callahan and Thomas voted to deny the petition for rehearing en banc, and Judge Humetewa so recommended. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote. Appellant's petition for rehearing and rehearing en banc, filed on September 23, 2022, are DENIED. No further petitions for rehearing or rehearing en banc may be filed. [12617082] (MM) [Entered: 12/23/2022 08:45 AM]
01/03/2023	<input type="checkbox"/> 47 1 pg, 92.39 KB	MANDATE ISSUED.(CMC, HAT and DJH) [12621104] (HH) [Entered: 01/03/2023 08:59 AM]
03/17/2023	<input type="checkbox"/> 48 2 pg, 16.76 KB	Received letter from the Supreme Court dated 03/13/2023: The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kagan, who on March 13, 2023, extended the time to and including May 22, 2023. Supreme Court No. 22A804. [12677282] (HH) [Entered: 03/20/2023 11:23 AM]

Clear All

- ☒ Documents and Docket Summary
- ☐ Documents Only

☒ Include Page Numbers

Selected Pages: 0

Selected Size: 0 KB

View Selected

PACER Service Center			
Transaction Receipt			
U.S. Court of Appeals for the 9th Circuit - 05/18/2023 10:24:27			
PACER Login:	AndrewTalai	Client Code:	
Description:	Docket Report (filtered)	Search Criteria:	21-50131
Billable Pages:	5	Cost:	0.50
Exempt Flag:	Exempt	Exempt Reason:	Always

Selected docket entries for case 21–50131

Generated: 07/23/2022 13:04:51

Filed	Document Description	Page	Docket Text
08/03/2021			Filed (ECF) notice of appearance of Andrew Brian Talai (Federal Public Defender's Office for the Central District of California, 321 E. 2nd Street, Los Angeles, CA 90012) for Appellant Jose Luis Nunez. Substitution for Attorney Ms. Elena Sadowsky for Appellant Jose Luis Nunez. Date of service: 08/03/2021. (Party was previously proceeding with counsel.) [12190365] [21–50131] (Talai, Andrew)

1 APPEARANCES:

2 FOR THE PLAINTIFF UNITED STATES OF AMERICA:

3 NICOLA T. HANNA
4 UNITED STATES ATTORNEY
5 BRANDON FOX
6 CHIEF, CRIMINAL DIVISION
7 ASSISTANT UNITED STATES ATTORNEY
8 BY: EDWARD HAN
9 ASSISTANT UNITED STATES ATTORNEY
10 GENERAL CRIMES SECTION
11 12TH FLOOR
12 312 NORTH SPRING STREET
13 LOS ANGELES, CALIFORNIA 90012

9 FOR THE DEFENDANT JOSE LUIS NUNEZ:

10
11 AMY KARLIN, INTERIM
12 FEDERAL PUBLIC DEFENDER
13 BY: ELENA ROSE SADOWSKY
14 DEPUTY FEDERAL PUBLIC DEFENDER
15 321 EAST 2ND STREET
16 LOS ANGELES, CALIFORNIA 90012
17
18
19
20
21
22
23
24
25

I N D E X

CR 19-00212-SVW

MAY 10, 2019

PROCEEDINGS: DETENTION HEARING; POST-INDICTMENT ARRAIGNMENT

1 LOS ANGELES, CALIFORNIA; MAY 10, 2019

2 THE CLERK: -- ONCE AGAIN IN SESSION.

3 THE HONORABLE JOHN E. MC DERMOTT, UNITED STATES
4 MAGISTRATE JUDGE, PRESIDING.

5 CALLING CASE NUMBER CR 19-212, COUNSEL -- I'M SORRY.
6 UNITED STATES OF AMERICA VERSUS JOSE LUIS NUNEZ.

7 COUNSEL, PLEASE STATE YOUR APPEARANCES.

8 MR. HAN: EDWARD HAN FOR THE UNITED STATES.

9 MS. SADOWSKY: ELENA SADOWSKY ON BEHALF OF JOSE
10 NUNEZ.

11 THE COURT: OKAY.

12 IS YOUR TRUE NAME JOSE LUIS NUNEZ?

13 THE DEFENDANT: YES, YOUR HONOR. THAT'S CORRECT.

14 THE COURT: IS THIS YOUR SIGNATURE ON THE FINANCIAL
15 AFFIDAVIT FORM?

16 THE DEFENDANT: YES, YOUR HONOR.

17 THE COURT: IS EVERYTHING ON THERE TRUE AND CORRECT?

18 THE DEFENDANT: YES, YOUR HONOR.

19 THE COURT: THE COURT FINDS THE DEFENDANT IS ENTITLED
20 TO APPOINTMENT OF COUNSEL AND APPOINTS MS. SADOWSKY TO
21 REPRESENT THE DEFENDANT.

22 HAVE YOU RECEIVED AND READ THE CHARGES AGAINST YOU?

23 THE DEFENDANT: YES, I HAVE, YOUR HONOR.

24 THE COURT: I'M NOT ASKING YOU TO ADMIT OR DENY THE
25 TRUTH OF THE CHARGES, BUT DO YOU UNDERSTAND WHAT THE GOVERNMENT

1 CLAIMS YOU DID?

2 THE DEFENDANT: YES, YOUR HONOR.

3 THE COURT: I'LL HEAR FROM THE GOVERNMENT ON BAIL OR
4 DETENTION.

5 MR. HAN: YOUR HONOR, WE'D MOVE FOR DETENTION HERE.

6 I'LL PROFFER THE INDICTMENT, THE PRETRIAL SERVICES
7 REPORT BUT NOT ITS RECOMMENDATION.

8 AND WOULD THE COURT LIKE TO HEAR ARGUMENT NOW, OR?

9 THE COURT: GO AHEAD.

10 MR. HAN: YOUR HONOR, I THINK THAT HERE THE DEFENDANT
11 POSES BOTH FLIGHT RISK AND DANGER.

12 ON FLIGHT, HE WAS CURRENTLY ON PROBATION FOR HIS
13 PREVIOUS CONVICTION WHEN HE COMMITTED THE INSTANT OFFENSE.

14 HE ALSO HAS AT LEAST SEVEN I COUNTED INSTANCES WHERE
15 HE WAS DRIVING WITH A SUSPENDED LICENSE. AND, SO, EVEN THOUGH
16 THAT MAY NOT SEEM LIKE THE MOST SERIOUS OFFENSE IN A VACUUM I
17 THINK THE REPEAT NATURE OF HIM NOT COMPLYING WITH WHAT THE
18 COURT HAS ORDERED GOES TO -- ARGUABLY GOES TO FLIGHT.

19 ON DANGER, ALTHOUGH POSSESSION OF A FIREARM AS A
20 FELON IS NOT INHERENTLY DANGEROUS UNDER THE BAIL REFORM ACT,
21 THE FACT THAT HIS PREVIOUS FELONY CONVICTION WAS FOR A VIOLENT
22 OFFENSE -- IT'S ASSAULT WITH GREAT BODILY INJURY POSSIBLE --
23 THAT COMBINED WITH THE POSSESSION OF TWO FIREARMS HERE I THINK
24 DOES POSE A DANGER TO THE COMMUNITY.

25 HE HAS ALSO SAID THAT HE USES METHAMPHETAMINE AND

1 MARIJUANA ON A REGULAR BASIS. AND THAT'S IN THE PRETRIAL
2 SERVICES REPORT.

3 THE COURT: MS. SADOWSKY.

4 MS. SADOWSKY: THANK YOU, YOUR HONOR.

5 WE -- WE WOULD -- WE WOULD ASK THE COURT TO ADOPT THE
6 PRETRIAL OFFICER'S RECOMMENDATION OF A 25,000-DOLLAR BOND TO BE
7 SIGNED BY MR. NUNEZ'S GIRLFRIEND RACHEL, WHO'S HERE IN COURT
8 TODAY.

9 I WOULD NOTE THAT IF THAT IS NOT ENOUGH FOR -- FOR
10 THE COURT, THERE IS AN ADDITIONAL SURETY, MR. NUNEZ'S COUSIN
11 JEFFREY VASQUEZ, WHO IS ALSO IN COURT TODAY.

12 AND I DID WANT TO JUST TELL THE COURT A LITTLE BIT
13 MORE ABOUT THE HISTORY OF THIS CASE WHICH I THINK CUTS AGAINST
14 THE GOVERNMENT'S ARGUMENT ABOUT FLIGHT.

15 MR. NUNEZ WAS ORIGINALLY ARRESTED FOR THIS CASE BACK
16 IN FEBRUARY, FEBRUARY 14TH.

17 HE WAS BAILED OUT OF STATE COURT. AND HE WAS GIVEN
18 AN APPEARANCE DATE OF MARCH 11TH. HE SHOWED UP FOR THAT COURT
19 DATE.

20 HE -- WHEN HE SHOWED UP HE WAS TOLD THEY HAD NO
21 RECORD OF HIS CASE ON FILE. AND, SO, HE WENT HOME BUT HE -- HE
22 DID SHOW UP.

23 AND THEN HE WAS ARRESTED AND BROUGHT TO FEDERAL COURT
24 ON MONDAY.

25 I -- AND MR. NUNEZ'S GIRLFRIEND AND COUSIN AND HIS

1 SISTER ALL SHOWED UP AGAIN ON TUESDAY WHEN THEY THOUGHT THIS
2 CASE WAS GOING FORWARD.

3 AND NOW HIS GIRLFRIEND AND COUSIN ARE HERE AGAIN
4 TODAY.

5 AND THE REASON THAT I MENTION THAT IS BECAUSE IT
6 SHOWS, FIRST, THAT MR. NUNEZ IS TAKING THESE -- THIS CASE
7 SERIOUSLY. HE SHOWED UP BEFORE. AND HE'S COMMITTED TO KEEP
8 SHOWING UP.

9 AND IT ALSO SHOWS THAT HIS FAMILY, HIS FRIENDS AND
10 THE POTENTIAL SURETIES ARE ALSO TAKING THIS CASE SERIOUSLY AND
11 THAT THEY'RE HERE TO SUPPORT HIM AND MAKE SURE HE COMPLIES WITH
12 THE COURT'S ORDERS.

13 AS THE PRETRIAL SERVICES REPORT MENTIONS, HE HAS
14 EXTENSIVE TIES TO HIS COMMUNITY. RIGHT NOW HE'S LIVING WITH
15 HIS FATHER AND HIS GRANDPARENTS IN HIS CHILDHOOD HOME. HE'S
16 BEEN AT THAT HOUSE HIS WHOLE -- HIS WHOLE LIFE.

17 HIS GIRLFRIEND WHO'S A POTENTIAL SURETY ACTUALLY
18 LIVES A FEW HOUSES DOWN ON THE SAME BLOCK. SO, THERE ARE GOING
19 TO BE A LOT OF -- A LOT OF EYES ON HIM AND A LOT OF REASONS FOR
20 HIM -- FOR HIM TO STAY.

21 HE'S CURRENTLY WORKING TWO JOBS. HE'S BEEN AT THE
22 WILSHIRE COUNTRY CLUB FOR ABOUT A YEAR AND A HALF. HE'S BEEN
23 AT HIS SECOND JOB P.F. CHANG'S FOR ABOUT SIX MONTHS.

24 AND NOW THAT HE HAS THE STEADY EMPLOYMENT HE'S BEEN
25 ABLE TO SUPPORT HIS THREE CHILDREN. AND HE'S -- HE'S VERY

1 PROUD THAT HE'S FINALLY ABLE TO HELP SUPPORT THEM.

2 AND, OF COURSE, ORDERING DETENTION WOULD -- WOULD --
3 WOULD, YOU KNOW, PUT -- PUT HIS CHILDREN AT RISK AS WELL.

4 HIS CRIMINAL HISTORY, HE DOES HAVE -- HAVE THAT ONE
5 FELONY FROM 2016 I BELIEVE. SO, IT'S -- IT IS A FEW YEARS OLD.

6 AND WHILE HE WAS ON PROBATION HE WAS COMPLYING WITH
7 PROBATION. AND I THINK THAT'S ANOTHER -- ANOTHER FACT THAT
8 INDICATES HE'S GOING TO -- HE'S GOING TO COMPLY WITH THIS
9 COURT'S ORDERS.

10 HE KNOWS -- HE KNOWS WHAT HE NEEDS TO DO. AND HE'S
11 COMMITTED TO DO IT.

12 I THINK THE COURT CAN IMPOSE SOME CONDITIONS THAT
13 WOULD MITIGATE ANY OF THE CONCERNS ABOUT DRUG USE AS PRETRIAL
14 RECOMMENDED.

15 THE COURT: YOU WANT TO RESPOND?

16 MR. HAN: NOTHING FURTHER FROM THE GOVERNMENT, YOUR
17 HONOR.

18 THE COURT: WELL, THE COURT IS NOT UNSYMPATHETIC, BUT
19 THERE'S NO WAY I'M GOING TO DO AN UNSECURED BOND FOR \$25,000.
20 I MEAN, YOU WOULD HAVE TO DO SOMETHING MUCH MORE SIGNIFICANT TO
21 PERSUADE ME THAT THE RISKS HERE OF -- I'M NOT SO WORRIED ABOUT
22 NONAPPEARANCE AS I AM COMMUNITY DANGER.

23 I MEAN, YOU TALK ABOUT THE FACT THAT HE HAS COMPLIED
24 WITH HIS PROBATION AND -- BUT HE ALSO IS CHARGED WITH FELON IN
25 POSSESSION OF WEAPONS.

1 MS. SADOWSKY: UH-HMM.

2 THE COURT: SO, WHILE IT LOOKS LIKE IT'S WORKED TO
3 SOME DEGREE, WE'VE GOT THAT HICCUP IN THERE.

4 AND I'M NOT GOING TO GRANT BAIL UNLESS IT'S SOMETHING
5 MORE SUBSTANTIAL HERE THAN WHAT YOU'VE PROFFERED.

6 MS. SADOWSKY: WOULD -- WOULD THE COURT --

7 THE COURT: YOU WANT MORE TIME --

8 MS. SADOWSKY: UH-HMM.

9 THE COURT: I HATE TO DO THIS BECAUSE MONDAY IS MY
10 LAST DAY BEFORE I GO AWAY FOR TWO WEEKS. BUT YOU MIGHT WANT TO
11 COME BACK ON MONDAY HAVING SERIOUSLY RECONFIGURED THIS BAIL
12 PACKAGE. BECAUSE RIGHT NOW IT'S INSUFFICIENT. IT JUST DOESN'T
13 -- GIVEN THE CRIMINAL HISTORY, GIVEN THE VIOLATION WHILE HE'S
14 ON PROBATION, I JUST DON'T FEEL COMFORTABLE WITH SUCH A SMALL
15 AMOUNT.

16 MS. SADOWSKY: WOULD THE COURT CONSIDER THE
17 ADDITIONAL SURETY WHO IS -- WHO'S PRESENT IN COURT? AND I CAN
18 -- I CAN GIVE THE COURT SOME MORE INFORMATION ABOUT THAT
19 SURETY WHO WE BELIEVE IS VERY VIABLE. AND, PERHAPS, THAT COULD
20 BE AN ADDITIONAL \$25,000. SO, WE'RE UP TO A 50,000-DOLLAR
21 BOND.

22 THAT SURETY IS --

23 THE COURT: NEITHER -- NEITHER SECURED?

24 MS. SADOWSKY: THAT'S CORRECT, YOUR HONOR.

25 BUT I WOULD LIKE TO JUST TELL THE COURT ABOUT THIS

1 SURETY BECAUSE I THINK -- I THINK IT IS A VIABLE SURETY.

2 THE COURT: I'M NOT -- I'M NOT CONTESTING THAT.

3 MS. SADOWSKY: OKAY.

4 THE COURT: AND IT'S SOMETHING THAT YOU'D HAVE TO VET
5 WITH PRETRIAL SERVICES UNDER ANY CIRCUMSTANCES.

6 THAT'S WHY I'M SUGGESTING YOU MAY WANT TO COME BACK
7 ON MONDAY HAVING RETHOUGHT THIS.

8 MS. SADOWSKY: OKAY, YOUR HONOR.

9 THE COURT: I DON'T THINK 50,000 UNSECURED IS ENOUGH.

10 MS. SADOWSKY: OKAY. I WOULD LIKE TO COME BACK ON
11 MONDAY THEN IF WE COULD SCHEDULE A TIME.

12 THE COURT: ALL RIGHT.

13 THE CLERK: 1:30.

14 (PAUSE IN PROCEEDINGS.)

15 THE CLERK: 1:30.

16 THE COURT: YES.

17 THE CLERK: LET ME DO THE PIA DATES.

18 (PAUSE IN PROCEEDINGS.)

19 THE CLERK: IS YOUR TRUE NAME JOSE LUIZ NUNEZ?

20 THE DEFENDANT: YES, MA'AM.

21 THE CLERK: DID YOU SEE AND SIGN A STATEMENT OF YOUR
22 RIGHTS?

23 THE DEFENDANT: YES, MA'AM, I DID.

24 THE CLERK: DID YOU RECEIVE A COPY OF THE INDICTMENT?

25 THE DEFENDANT: YES, I DID.

1 THE CLERK: DO YOU UNDERSTAND THE SUBSTANCE OF THE
2 CHARGES PENDING AGAINST YOU?

3 THE DEFENDANT: YES, MA'AM.

4 THE CLERK: COUNSEL, HOW WILL YOUR CLIENT ENTER THE
5 PLEA?

6 MS. SADOWSKY: NOT GUILTY.

7 THE CLERK: THANK YOU.

8 MR. NUNEZ, DO YOU PLEAD TO THE CHARGES PENDING
9 AGAINST YOU?

10 THE DEFENDANT: NOT GUILTY.

11 THE CLERK: THIS CASE HAS BEEN ASSIGNED TO DISTRICT
12 JUDGE WILSON.

13 JURY TRIAL IS SET FOR JULY 2ND, 2019 AT 9:00 A.M.

14 THE PARTIES ARE REFERRED TO JUDGE WILSON'S PROCEDURES
15 AND SCHEDULES. THEY ARE LOCATED ON THE COURT'S WEBSITE.

16 JUDGE WILSON IS LOCATED IN COURTROOM 10-A ON THE
17 TENTH FLOOR OF THE FIRST STREET COURTHOUSE.

18 AND, AGAIN, THIS MATTER REGARDING BAIL IS CARRIED
19 OVER TO MAY 13TH, 2019 AT 1:30 P.M. IN JUDGE MC DERMOTT'S
20 COURTROOM, WHICH IS COURTROOM 6-4-0 ON THE 6TH FLOOR.

21 THANK YOU.

22 MS. SADOWSKY: THANK YOU.

23 MR. HAN: THANK YOU.

24 THE CLERK: COURT IS ADJOURNED.

25 (PROCEEDINGS CONCLUDED.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

/S/ DOROTHY BABYKIN

7/8/21

FEDERALLY CERTIFIED TRANSCRIBER
DOROTHY BABYKIN

DATED