

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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HECTOR MANUEL GOMEZ RODRIGUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. DALE A. DROZD

UNITED STATES OF AMERICA, )  
Plaintiff, ) 19-cr-00161-DAD-BAM  
vs. ) SENTENCING HEARING  
HECTOR MANUEL GOMEZ )  
RODRIGUEZ, )  
Defendant. )

Fresno, California

Monday, September 26, 2022

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

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REPORTED BY: RACHAEL LUNDY, CSR, RPR, Official Reporter

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

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EXHIBITS

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GOVERNMENT'S

6, 6A, 6B, 7, 8, 9, 9A

Received  
32

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3 (The following proceedings were held remotely via Zoom  
4 application.)

5 THE CLERK: The Court calls item number 10,  
6 1:19-cr-161, United States vs. Hector Manuel Gomez Rodriguez,  
7 sentencing hearing.

8 THE COURT: And please state your appearances.

9 THE CLERK: Your Honor, one moment. I apologize.

10 THE COURT: That is all right.

11                   Please state your appearances beginning with counsel  
12 for the government.

13 MS. MONTOYA: Good afternoon, Your Honor.

14 Laurel Montoya appearing on behalf of the United States.

15 MR. HOMOLA: James Homola, appointed counsel for  
16 Mr. Rodriguez, who's being assisted by the Court interpreter  
17 in the Spanish language.

18 THE INTERPRETER: Rebecca O'Hanna, certified Spanish  
19 interpreter. Oath on file.

20 THE COURT: Mr. Gomez Rodriguez, are you hearing us  
21 okay?

22 THE DEFENDANT: I can hear you well.

23 THE COURT: Great. Thank you.

24 All right. The matter -- and I should also

25 reflect -- the record should reflect that we also have

1 Mr. Mora, the probation officer, who is the author of the  
2 presentence report in the case, present with us as well.

3 The matter is on calendar for imposition of judgment  
4 and sentence. It's been continued a few times before me for  
5 that purpose.

6 And Mr. Homola, does Mr. Gomez Rodriguez wish to  
7 waive any right that he may have to an in-person appearance  
8 before the Court for purposes of sentencing, and does he agree  
9 instead to proceed with this sentencing hearing by way of this  
10 video conference with each of us appearing remotely from our  
11 locations?

12 MR. HOMOLA: We acknowledge our right to be presently  
13 present. We waive that. We ask that the Court proceed by  
14 video conference.

15 THE COURT: And Mr. Gomez Rodriguez, is that correct,  
16 do you wish to waive any right you have to an in-person  
17 appearance before the Court for sentencing, and do you agree  
18 to proceed instead with this sentencing hearing by way of this  
19 video conference?

20 THE DEFENDANT: Yes. Yes.

21 THE COURT: (Reading:)

22 I find a national state of emergency has been  
23 declared in response to the spread of the Coronavirus. For  
24 everyone's health and safety, the general population of  
25 California had been under a gubernatorial order to shelter in

1 place, and remains under an emergency order.

2 The detention facilities have imposed quarantines or  
3 restrictions on access to detainees for the health of the  
4 detainees and staff.

5 The Judicial Conference of the United States has  
6 found the conditions due to the national emergency are  
7 materially affecting the functioning of the federal courts,  
8 and the Judicial Council of the Ninth Circuit has certified  
9 that emergency conditions existing in the Eastern District of  
10 California justify the temporary suspension of the 70-day  
11 period to bring defendants to trial.

12 Public health recommendations and restrictions have  
13 impacted this Court's ability to function as it usually does,  
14 to conduct in-person proceedings and has impaired the  
15 availability of counsel, the parties, and court staff to be  
16 present in the courtroom.

17 I, therefore, find that pursuant to the CARES Act,  
18 that the use of video conferencing to conduct this sentencing  
19 proceedings, with the consent of the defendant, Hector Manuel  
20 Gomez Rodriguez, is in the interest of justice, and that  
21 utilization of such a procedure may prevent the defendant from  
22 remaining incarcerated longer than is necessary, and will  
23 satisfy the objectives of sentencing under the U.S. Sentencing  
24 Guidelines in 18 U.S.C. Section 3553. I also find that the  
25 sentencing proceeding cannot be further delayed without doing

1 possible serious harm to the interest of justice.

2                   In connection with sentencing, the Court has reviewed  
3 the presentence report that was prepared back on April 22nd,  
4 2022; the defense's sentencing memorandum, docket number 82,  
5 filed May 20th, 2022. I've also reviewed a rough transcript  
6 of the hearing that we previously held on this matter in  
7 May -- I believe it was May 16th -- before we continued the  
8 matter to June, and then continued it again to this date.  
9 I've reviewed the defendant's supplemental sentencing  
10 memorandum, filed June 13th, 2022; and I've reviewed the  
11 government's most recent submission of exhibits, Exhibits 1  
12 through 9A. There's several subexhibit photographs of the  
13 grow site, the area, the firearm in question, and the like.

14                   The one thing I haven't reviewed is, apparently, a  
15 video that the government wishes to play. I didn't have -- I  
16 heard that there was a video, but I haven't -- I haven't  
17 viewed it. It wasn't provided to me in a format that I could  
18 play it apparently.

19                   I understand the government may have the desire to  
20 show it on a shared-screen basis here during the sentencing  
21 hearing. But before we get to that, is there -- is there  
22 anything else I should have reviewed in connection with  
23 sentencing?

24                   MR. HOMOLA: No, Your Honor.

25                   MS. MONTOYA: No, Your Honor.

1                   THE COURT: And Mr. Homola, have you reviewed the  
2 presentence report, filed April 22, docket number 78, and had  
3 a chance to discuss it with Mr. Gomez Rodriguez?

4                   MR. HOMOLA: Yes, Your Honor. The only thing we  
5 wanted to do is that we have -- we have proof by a  
6 preponderance of evidence that my client qualifies for the  
7 safety valve on the weapon.

8                   THE COURT: Well, before we get to that, Mr. Gomez  
9 Rodriguez, have you reviewed the presentence report prepared  
10 in your case and had the opportunity to discuss that report  
11 with your attorney?

12                  THE DEFENDANT: Yes, yes.

13                  THE COURT: As we discussed at least once, if not  
14 twice, the issue before the Court for sentencing all comes  
15 down to the defendant's eligibility for safety valve relief.

16                  I've done quite a bit of research along with the help  
17 of my staff independently as well as reviewed the cases  
18 submitted by the parties. Before we get into any substantive  
19 argument, Ms. Montoya, I take from the government's  
20 submissions are that the government maintains that the -- that  
21 Mr. Gomez Rodriguez is not eligible for safety valve relief.

22                  MS. MONTOYA: That is correct, Your Honor.

23                  THE COURT: Based on his possession of the firearm?

24                  MS. MONTOYA: Correct.

25                  THE COURT: And Mr. Homola, I'm a bit -- I'm a bit

1 perplexed by referencing your submissions to issues  
2 surrounding constructive possession.

3 There is a circuit split, seems to me, about this  
4 regarding whether constructive possession or actual possession  
5 is necessary. I think the Tenth Circuit is the lone circuit  
6 that may require actual possession of a firearm in connection  
7 with the offense in order to be found ineligible for safety  
8 valve relief under the applicable statute, which is 18 -- I  
9 had it here -- 18 U.S.C. Section 3553(f)(2), I believe is the  
10 applicable subdivision.

11 But I'm -- I'm a bit perplexed by the -- by this  
12 reference to the constructive possession, because it appears  
13 to me that in this particular case we have admitted and  
14 conceding actual possession of a firearm based upon the  
15 defendant's own statements.

16 And therefore, even under the most demanding of  
17 standards for ineligibility under the statute based upon the  
18 cases I've reviewed, Mr. Gomez Rodriguez, unfortunately, in my  
19 view, does not qualify for safety valve relief.

20 I'm troubled by that conclusion. I think I was  
21 pretty clear about that at the prior hearings that that  
22 troubles me, because it does certainly create -- it will  
23 create -- if that's what I conclude, it will create a  
24 significant disparity in sentencing between Hector Manuel  
25 Gomez Rodriguez and his brother. His brother was found to be

1 eligible for safety valve relief and was sentenced to 41  
2 months. That's one of the reasons why I kept this case, the  
3 case of the co-defendant, because I had already resolved that.

4                   I understand it's the government's position, look,  
5 it's -- as I recall it was, Look, Judge, out of, essentially,  
6 an abundance of caution, we took the position that we couldn't  
7 establish, there was no evidence by a preponderance or any  
8 other standard that the co-defendant brother actually --  
9 actually or constructively possessed either the handgun, the  
10 .45 caliber, or the -- or the pellet gun. A close call  
11 perhaps, but we felt that we could not in good faith take that  
12 position, but that's just not the position with this  
13 defendant. We think that, as to this defendant, it's clear  
14 that he possessed the firearm in connection with the offense.  
15 It does not require that he used it. It doesn't require that  
16 he fired it. It doesn't matter whether he's got a  
17 predisposition to violence or has ever acted violently. None  
18 of that matters under the applicable statute. It's whether he  
19 possessed the firearm or other dangerous weapon in connection  
20 with the offense.

21                   So I -- you know, intellectually, I understand the  
22 government's position. I think it's clear. I wish it wasn't  
23 the government's position, but it is.

24                   And the notion or the suggestion that the Court has  
25 the discretion to find otherwise, I disagree with that. I

1 don't have the discretion. I'm sworn to uphold the law, to  
2 apply the law. There are a lot of cases where I'd like to  
3 come to a different result. I can't. I have to -- I have to  
4 apply the law.

5 And here, I mean, I've taken as hard a look as I can  
6 take. I've read a lot of cases. And under the facts of this  
7 case, I see no way for me to reach the conclusion that  
8 Mr. Gomez Rodriguez did not possess a firearm in connection  
9 with the underlying offense. He admitted, he conceded from  
10 his own mouth, that he did. I don't think anything else  
11 matters. I don't think anything else matters.

12 I will say this, if I -- if I could make the  
13 finding -- if I felt that it was justified to make the finding  
14 that he did not possess a firearm in connection with the  
15 offense and that he was eligible for safety valve relief, I  
16 would sentence -- I would -- I would sentence him to no more  
17 than 57 months imprisonment and possibly less. But I don't  
18 think I can make that finding.

19 Now, I'll certainly hear from you and everybody can  
20 put on whatever evidence they wish to put on, because I think  
21 this issue may go up on appeal. So I certainly understand  
22 that you may -- you may wish to make the record as complete  
23 that you feel that it should be.

24 But let me turn to the government first, and then  
25 I'll turn to you, Mr. Homola.

1                   MR. HOMOLA: Yes, Your Honor.

2                   THE COURT: Ms. Montoya, is there anything else the  
3 government wishes to present, or any argument that you wish to  
4 present in this regard?

5                   MS. MONTOYA: Your Honor, I do have the exhibits, and  
6 I do have two witnesses that are present, who can expand on  
7 where the defendant was in relation to the firearm, at the  
8 time that they entered the clandestine marijuana grow site.

9                   Additionally, the photographs do not have the file on  
10 where it was seen by the officers when they first went into  
11 the grow, because obviously, for safety reasons, they removed  
12 it, rendered it safe, and whatnot.

13                  So the testimony I would expect to show where, and  
14 the witnesses can point out or describe in the photographs  
15 that I would be presenting, where the firearm was.

16                  It will -- as far as -- I mean, I understand the  
17 Court's dilemma. And it -- it is a tough call for me as well,  
18 but I -- because of the -- I mean, just the policy reasons,  
19 the dangerousness associated with firearms. And Mr. -- the  
20 evidence regarding Mr. Hector Gomez Rodriguez was certainly  
21 stronger than that of his brother.

22                  I will say that his brother denied knowledge of the  
23 firearms. His brother said that Mr. Hector Gomez Rodriguez  
24 did not know where the firearms were. When I asked him if  
25 he -- you know, What if I told you that your brother admitted

1 that he had touched the firearms and that he knew it was  
2 there? Mr. Musio Gomez Rodriguez stated that, Well, I don't  
3 know anything about that. But it was his position that his  
4 brother -- and I feel that's evidence that I should put before  
5 the Court, that in his statement he said that he did not  
6 believe that his brother knew that the firearm was present.

7 THE COURT: Which helps the defense not at all in  
8 light of the defendant's own admission that he had handled the  
9 firearm the previous day.

10 MS. MONTOYA: That is correct, but it's something  
11 that I did want to bring to the Court and Mr. Homola's  
12 attention.

13 THE COURT: Right. No, I appreciate it. I'm not  
14 accusing the government of acting in any way improperly here.  
15 It -- you know, ever -- you all understand that I'm troubled  
16 by the -- how this appears to me to all come out, that one  
17 brother gets 41 months and another brother gets 120. I mean,  
18 I can see some disparity but, boy, that's a significant  
19 disparity.

20 If I had the discretion to do what I want, I wouldn't  
21 sentence this defendant to 120 months, but I don't see a way  
22 out. I don't think I've got any discretion.

23 I mean, Mr. Homola's going to do his best to try to  
24 convince me I'm wrong about that, but I've thought about this,  
25 you know, several times, and taken a hard look and devoted a

1 fair amount of time to it. I don't like the conclusion I'm  
2 drawing, but I think it's compelled.

3 Ms. Montoya, does the government want to put on those  
4 witnesses for purposes of developing the record? Do you want  
5 to play the video? I'll do whatever you want.

6 MS. MONTOYA: I would like to. I'll make it as brief  
7 as possible and as complete as I can.

8 And I apologize about the video, Your Honor.  
9 Honestly, I've never done a shared screen, and had it been  
10 here, I would have walked it upstairs. But anyway, that was  
11 my ignorance of the proper procedure. So I apologize for  
12 that.

13 THE COURT: Sometimes they get submitted and get  
14 dropped in a box, the box.com, and I can play them from that.  
15 But it is of no bother to me. I just want to make sure  
16 everybody knows I haven't viewed it.

17 So how do you want to proceed? Do you want to call  
18 the officers?

19 MS. MONTOYA: Yes, Your Honor. I would like to call  
20 officer -- or excuse me, Special Agent Mike Grate first.

21 THE COURT: All right.

22 MS. MONTOYA: And I'm going to start sharing my  
23 screen.

24 THE COURT: Okay. And Madam Clerk, please swear  
25 Agent Grate.

1 | THE CLERK: Of course.

2 Please raise your right hand.

3 MIKE GRATE,

4 called as a witness on behalf of the Government, having been  
5 first duly sworn, testified as follows:

6 THE WITNESS: I do.

7 THE CLERK: Please state your name your full name and  
8 spell your last name for the record.

9                   THE WITNESS: Michael Earl Grate. My last name is  
10 G-R-A-T-E, Special Agent with the United States Forrest  
11 Service.

12 THE CLERK: Thank you.

13 THE COURT: You may proceed.

14 MS. MONTOYA: Thank you.

15 DIRECT EXAMINATION

16 | BY MS. MONTOYA:

17 Q. Special Agent Grate, were you employed July 16, 2019, at  
18 approximately 6:00 a.m. in the morning?

19 A. Yes.

20 Q. And was it at that date and at that time that you and  
21 other law enforcement officers and agents with the Forest  
22 Service approached a clandestine marijuana grow that was  
23 referred to as the Caskadell grow site?

24 A. Yes, that is correct.

25 Q. And how did you and the other agents approach this grow?

1 A. Well, speaking from my -- top to bottom in terms of  
2 topography elevation, we entered the grow through what I  
3 recall was the bottom of the grow, the lower end of it.

4 Special Agent Cooper Fouch lead the team in, and I  
5 was right behind him. He had prior knowledge of the area. I  
6 think he had done some scouting, I recall, and how -- knew  
7 of -- had the best idea of access, so we followed in right  
8 behind him that day.

9 Q. And when you approached the grow site, when you got in  
10 close proximity to what is referred to as the "camp area," did  
11 you see a subject in the camp area?

12 A. Yes. So we approached that area in question that you have  
13 on the camp area there from, like I said, lower, beneath it.  
14 So there was a steep incline, maybe, you know, 20 or 30 feet  
15 up above, up a pretty steep hill, kind of up a leafy, ducky,  
16 dirty hill that kind of -- you had to use your hands and feet  
17 to scramble up a little. But there was a trail leading to  
18 that camp where we would see -- we can probably even -- if you  
19 go move your -- to a different picture where you can kind of  
20 see the camp from a different angle.

21 Q. I'll show that one in a minute, but do you recognize  
22 what's depicted in Government's Exhibit 1?

23 A. Yes. And we approached from about 180 degrees off that --  
24 (Court reporter gains clarification.)

25 THE DEFENDANT: We just approached from the exact

1 opposite side of that, where that picture is taken, is all I  
2 said.

3 THE COURT: We're also getting feedback, residual  
4 noise from somebody. So if you think it's you, please mute  
5 unless you're speaking. Thank you.

6 You may proceed.

7 MS. MONTOYA: Sorry, Rachael.

8 BY MS. MONTOYA:

9 Q. So -- and this accurately depicts the other side of the  
10 camp as you approach from the opposite side?

11 A. That is correct.

12 Q. Now, regarding Government's Exhibit 2, do you recognize  
13 what is depicted in this photograph?

14 A. I do.

15 Q. And did you approach from the right side as depicted in  
16 that photograph?

17 A. Correct.

18 Q. And when you were -- and does this photograph accurately  
19 depict for the -- what you observed in the camp area on the  
20 16th of July 2019?

21 A. Yes, that is a picture taken post-arrest.

22 Q. Correct.

23 Now regarding what -- when you were approaching on  
24 the right side of what is depicted in Government's Exhibit 2,  
25 what did you observe as you were approaching?

1 A. Well, again, I was right behind Special Agent Fouch, and  
2 so kind of had to remain kind of unseen. We were squatting  
3 down low, and I was in touching distance of him. And we were  
4 both -- I was sort of peeking over his shoulder as he was  
5 peeking up, kind of cresting the horizon so only our heads --  
6 our eyes would be, you know, visible. I could see a male,  
7 Hispanic male adult going -- pacing really -- not pacing but  
8 walking back and forth in the direction -- in the direction  
9 from where the picture is taken towards the cot and then back  
10 and forth to there.

11 Q. So -- and you were -- this is a terraced area, correct?

12 A. Yes.

13 Q. -- and Mr. -- and the Hispanic male was pacing closer to  
14 the side of the camping area where the hat is depicted and the  
15 cooking items are located; is that correct?

16 A. Yes.

17 Q. And was that Hispanic male eventually identified?

18 A. Yes, he was.

19 Q. Who was he identified as?

20 A. Gomez Rodriguez.

21 Q. Hector or Musio?

22 A. Hector.

23 Q. So regarding Mr. Hector Gomez Rodriguez pacing back and  
24 forth, was he going along where the cursor is moving on the  
25 screen? Can you see my cursor?

1 A. I'm waiting to see a cursor.

2 Q. Maybe it's not showing.

3 A. It just popped up for a second then went off the screen  
4 again.

5 Q. Oh, over here perhaps?

6 A. There it is.

7 Q. Okay. Sorry.

8 So he was pacing in this area?

9 A. Maybe a little bit more to the right. Yes, right through  
10 there.

11 Q. Okay. And what happened after you made these  
12 observations?

13 A. Well, we watched for a while, waiting for an opportunity.  
14 We were waiting -- we were using ambient noise of cars down  
15 the road, the trees, you know, the birds. So we were just  
16 kind of creeping when there was a little bit of a noise to  
17 cover our -- conceal our movement. We'd creep a little bit  
18 closer, a little bit closer, and then we just were getting to  
19 the spot where we got as close as we could, and we were  
20 waiting for a go. We just kind of all worked together enough  
21 that we knew as soon as the gig was up, as soon as he saw us,  
22 that was the time to go. So we just tried to get as close as  
23 we could.

24 And at some point, he did look down and see us. And  
25 at that time, we immediately jumped to our feet and sprinted

1 up the remainder of the hill as fast as we could, saying,  
2 "Police, don't move," those sorts of commands. I don't  
3 remember the commands that we all shouted, but all of us were  
4 identifying ourselves as police officers and asking him to  
5 show his hands, and -- and to stop.

6 Q. Was this being done in English and Spanish?

7 A. I -- I don't recall. I don't know. I know I spoke  
8 English. There may have been -- we had a Spanish speaker with  
9 us and other LE0s who probably did announce some stuff in  
10 Spanish, but I can't recall specifically --

11 Q. And once you made --

12 A. -- the universal "police," but I don't remember me saying,  
13 you know, anything in Spanish.

14 Q. Once these commands were given, what did you observe  
15 Hector Gomez Rodriguez to do?

16 A. He locked eyes on us. Obviously, had a visual on us. We  
17 were all in police -- clearly marked police tactical uniforms  
18 and body armor, clearly identifying us as law enforcement.

19 And he saw us, and he had his hands kind of slowly  
20 going up in the direction -- and he was square -- squared to  
21 us, facing us directly, looking down the hill at us. And just  
22 as we almost -- you know, we're on -- on our way to him, he  
23 dropped his hands, and bolted to the -- you know, darted, took  
24 off in a fast, rapid motion directly to his right, which is in  
25 the direction where the picture is being taken from.

1 Q. So he would be -- when he took off running, he was running  
2 towards as we're looking at the picture?

3 A. Excuse me. Say it again, Laurel.

4 Q. Sorry, that was probably imprecise.

5           When he ran, he ran away from the cot that is  
6 located -- or the direction away from the cot that's located  
7 at the back of the campsite?

8 A. Yeah, he would have been going 180 degrees away from the  
9 cot, which is also away from us. The only reason he didn't  
10 run directly away from us was because that was uphill. So the  
11 best route of egress for him to make rapid -- you know, cover  
12 ground was to move around us to the side. Which he did go  
13 over the edge there, and then down the drop which we just came  
14 up.

15 Q. I'd like to show you Exhibit 3. Do you know what's  
16 depicted in this exhibit?

17 A. So I see part of it, because the people are --  
18 participants are blocking it. Can I move it?

19 Q. You can try.

20 A. There's a slide off to my right.

21 Q. This slide here, can you see this slide here that has  
22 Exhibit 3?

23 A. Yes, yes.

24 Q. Okay. What's depicted in that photograph?

25 A. The camp cooking area, primarily.

1 Q. And this was the area where Mr. Hector Gomez Rodriguez was  
2 pacing when you first made your observations of him?

3 A. Between there and the cot, yes.

4 Q. Okay. And did you chase after Mr. Gomez Rodriguez when he  
5 ran?

6 A. I'm sorry. Did I do what when he ran?

7 Q. Did you run after Mr. Gomez Rodriguez in order to take him  
8 into custody when he ran?

9 A. Yes. Cooper -- Special Agent Fouch was right ahead of me,  
10 and he directly followed Hector Rodriguez over a ledge. And I  
11 stopped short.

12 Q. So you stayed in the camp area?

13 A. Yes. So what happened was Special Agent Fouch made entry  
14 first, just one step ahead of me, and Hector went over the  
15 edge there, over this little embankment, this little drop,  
16 this little cliff, and circled back to our left, going back  
17 down the hill.

18 At the same time the law enforcement behind me,  
19 Nick -- or Law Enforcement Officer Bier, Law Enforcement  
20 Officer Villanueva, I remember yelling to them that the  
21 direction where he was running to. So they, those two  
22 officers, stopped and did not come all the way into the camp  
23 at that time. They immediately broke left and down the drop  
24 to intercept the fleeing Hector, and Cooper -- and Special  
25 Agent Fouch close behind.

1                   THE COURT: I'm sorry to interrupt. I'm sorry to  
2 interrupt. I know I said I would let everybody make their  
3 record, but I've got to say, this seems to have absolutely  
4 nothing to do with possession of a firearm.

5                   MS. MONTOYA: I'm trying to get to that point,  
6 Your Honor.

7                   THE COURT: All right.

8                   MS. MONTOYA: Maybe I can ask more pointed questions.

9 BY MS. MONTOYA:

10 Q. Special Agent Grate, did you inspect the camp area when --  
11 after Mr. Hector Rodriguez ran from the camp area?

12 A. So as soon as Special Agent Fouch ran over the edge and in  
13 pursuit of Hector, I then turned around to assess the scene  
14 where I was standing.

15 Q. And did you see a firearm?

16 A. Yes.

17 Q. And where did you see the firearm?

18 A. I recall the firearm over on the little shelf ledge, on  
19 the green map, next to the red book, and whatever the other  
20 red object there is, red stuff.

21 Q. And so this is the area next to this red book that you saw  
22 the firearm?

23 A. Yes.

24 Q. Now, let me skip ahead. Going to Exhibit 5, Special Agent  
25 Grate, is this the firearm that you saw in the -- in this

1 campsite area next to the red book?

2 A. Yes.

3 Q. And this is one side of the firearm, and then do you  
4 recognize what is depicted in Exhibit 6?

5 A. Well, it's the firearm, and it's the slide lock to the  
6 rear. And there's no magazine in it and some identifying  
7 markers on the firearm.

8 Q. And when you first saw the firearm, the magazine was in  
9 it; is that correct?

10 A. Yes.

11 Q. And then you, at some point, rendered the firearm safe; is  
12 that correct?

13 A. Yes. I don't have a vivid recollection of this. These  
14 things, I just had to refer to my report, and I know what I  
15 would have done. And so I grabbed the firearm, released the  
16 magazine, and pulled the slide to the rear, and it ejected a  
17 round that was chambered in the -- that was chambered in the  
18 firearm.

19 Q. And so --

20 A. It was -- go ahead.

21 Q. So what is depicted in Government's Exhibit 6 is the  
22 magazine and the round that was ejected from the chamber after  
23 you rendered the weapon safe?

24 A. That is correct.

25 Q. And regarding -- let me go back.

1           And the area that you found this firearm, which is  
2 near the red book, is that an area where Mr. Hector Gomez  
3 Rodriguez was pacing just prior to the agents giving their  
4 commands for him to stop?

5   A. Yes. I do remember thinking to myself when this -- when I  
6 saw the firearm, Man, that firearm was within an arm's grasp  
7 that whole time, and we got lucky. That's what I remember  
8 thinking.

9           MS. MONTOYA: I have no further questions for this  
10 witness, Your Honor.

11           THE COURT: Any cross-examination of this witness,  
12 Mr. Homola?

13           MR. HOMOLA: Very briefly.

14                           CROSS-EXAMINATION

15   BY MR. HOMOLA:

16   Q. While we're on Government's Exhibit 3, Agent, did Hector  
17 Gomez Rodriguez make any kind of motion towards the weapon?

18   A. No, not that I saw.

19   Q. About how far away was he?

20   A. How far away was Hector from the firearm?

21   Q. Yes, sir.

22   A. At what point?

23   Q. Well, when you first saw him, when he was pacing and then  
24 when he saw you, did he lode towards or reach for the weapon?

25   A. If you look at where the firearm was on that little red --

1 on that ledge by that red book --

2 Q. Yes, sir.

3 A. -- where he was pacing back and forth --

4 Q. Uh-huh.

5 A. -- I remember thinking, you know, as he was walking back  
6 and forth, hands down at his side, his hand was very close to  
7 that firearm at several points of pacing back and forth.

8 Q. Did you ever see him reach for the gun?

9 A. No, I did not.

10 Q. When he saw you after he put his hands up, he later ran  
11 from the area?

12 A. He ran immediately upon recognizing what was going on. He  
13 kind of -- these things happen really quick. You kind of see  
14 the brain processing and then realizing and then acting.

15 MR. HOMOLA: Thank you. No further questions.

16 THE COURT: Any redirect?

17 MS. MONTOYA: No, Your Honor.

18 THE COURT: May this witness be excused?

19 MS. MONTOYA: Subject to recall.

20 THE COURT: Thank you, Agent --

21 MR. HOMOLA: By the defense.

22 THE COURT: Thank you, Agent Grate. If you can  
23 remain on the line in case you're needed.

24 Government's next witness?

25 MS. MONTOYA: Government calls Special Agent Cooper

1 Fouch.

2 THE WITNESS: Present.

3 MS. MONTOYA: Special Agent Fouch, can you --

4 THE COURT: We need to swear him in.

5 MS. MONTOYA: Sorry.

6 THE COURT: Madam Clerk, please swear the witness.

7 THE WITNESS: Miss, you're on mute.

8 THE COURT: Don't see or hear you Otilia.

9 THE CLERK: Sorry, I muted myself to prevent  
10 feedback.

11 THE COURT: Okay.

12 THE CLERK: Please raise your right hand.

13 **COOPER FOUCH,**

14 called as a witness on behalf of the Government, having been  
15 first duly sworn, testified as follows:

16 THE WITNESS: Yes, I do.

17 THE CLERK: Please state your full name and spell  
18 your last name for the record.

19 THE WITNESS: Cooper Fouch, F-o-u-c-h.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. MONTOYA:

23 Q. Special Agent Fouch, with whom are you employed?

24 A. The United States Forrest Service.

25 Q. And did you, along with Special Agent Grate and other

1 agents, go into the Caskadell Clandestine growth site on 2016,  
2 at approximately 6:00 a.m. in the morning?

3 A. Yes, we did.

4 Q. And regarding this particular grow site, did -- strike  
5 that.

6 When you approached the camp area, did you see an  
7 individual pacing?

8 A. Yes.

9 Q. And in -- regarding Government's Exhibit 1, was he pacing  
10 in this area between the tarp and towards the back of the tarp  
11 where the cot is?

12 A. Yes.

13 Q. And you were not focused on the firearm, and you did not  
14 recover or make safe the firearm; is that correct?

15 A. That is correct. At that time I was not even aware that  
16 there was a firearm present.

17 Q. Okay. And I'd like to show you Government's Exhibit 4.  
18 Is this a picture of the cot that's in the camp area that is  
19 depicted in Government's Exhibits 1, 2, and 3?

20 A. Yes, it is.

21 Q. And this is the side that you and the other agents were  
22 approaching the camp area from; is that correct?

23 A. That is correct. The actual trail leading into the camp  
24 area is slightly off that photo to the bottom left. However,  
25 that is the same general area we were approaching from.

1 Q. You had an unobstructed view of Mr. Hector Gomez Rodriguez  
2 and his movement; is that correct?

3 A. Yes.

4 Q. And the individual that you saw pacing in this particular  
5 camp area he was later identified as Hector Gomez Rodriguez?

6 A. Yes, he was.

7 Q. And regarding the firearm that was eventually seized, did  
8 you examine the firearm?

9 A. Yes, I did.

10 Q. And regarding this firearm, did you note whether or not it  
11 a had an obliterated serial number?

12 A. Yes, I did.

13 Q. I'd like to draw your attention to Government's Exhibit

14 6A. Does that depict the area where the serial number was  
15 obliteration from the firearm that was found within the  
16 clandestine grow site in the kitchen area?

17 A. Yes.

18 Q. And then this is a -- 6B is a closer photograph of the  
19 obliterated serial number?

20 A. Yes.

21 Q. Now, regarding this particular camp that Mr. Hector Gomez  
22 Rodriguez was present in, was it the only area where there was  
23 cooking conveyances, or you know, cooking utensils, food, and  
24 a camp stove?

25 A. Yes, it was.

1 Q. And those items are depicted in Government's Exhibit 3?

2 A. That is correct.

3 Q. And then, was there information obtained that Hector Gomez  
4 Rodriguez slept in the cot that was adjacent to the cooking  
5 area?

6 A. I believe he indicated that -- that that was the area that  
7 he was sleeping at while he was in the cultivation cite.

8 Q. And then, I'd like to show you Government's Exhibit 9. Is  
9 that another sleeping area that was within the clandestine  
10 grow site?

11 A. Yes, it was on the other side of the cultivation site to  
12 the -- to the north.

13 Q. And was this the site where Musio Gomez Rodriguez was  
14 sleeping and where he was contacted near at the time agents  
15 went into the grow site?

16 A. I wasn't present when he was contacted. However, it was  
17 my understanding that he was contacted somewhat earlier in the  
18 cultivation cite near that location.

19 Q. What was determined to be plot 3?

20 A. Below what would have been identified as plot 3.

21 Q. And regarding Government's Exhibit 9A, do you recognize  
22 what's depicted in that photograph?

23 A. Yeah, it's a nine-volt battery with some type of wiring,  
24 likely to charge a cell phone.

25 Q. And the photographs that I've shown you as well as the

1 photographs that you reviewed prior to testifying today, are  
2 those photographs -- do they accurately depict what you viewed  
3 on the 16th of July 16, 2019?

4 A. Yes, they do.

5 Q. And I -- there's a video, and I'd like to show the video.

6 MS. MONTOYA: That would be Government's Exhibit A;  
7 if I may, Your Honor?

8 THE COURT: You may.

9 MS. MONTOYA: Let me -- so if I can -- hopefully I  
10 can get this to work.

11 I'm going to restart this, and I apologize. This did  
12 work at home.

13 (Video played via shared screen.)

14 MS. MONTOYA: Oh, shoot. I apologize. I meant to  
15 freeze it.

16 (Video played via shared screen.)

17 BY MS. MONTOYA:

18 Q. Now, Special Agent Fouch, regarding the video that was  
19 just shown, next to the hat and the red book, there was a  
20 Leatherman tool; is that correct?

21 A. Yes.

22 Q. And there was also ammunition, loose ammunition?

23 A. That is correct.

24 Q. And also next to the Leatherman tool and the loose  
25 ammunition there was a container that stated it contained

1 hallow points?

2 A. Yeah, that would be pellets.

3 Q. And regarding -- just to clarify, the pellet gun that was  
4 hanging in the tree towards the end of the video, that was not  
5 the location that it was actually located; is that correct?

6 A. No, it was not. It was -- law enforcement Officer  
7 Villanueva canvassed the cultivation cite and located that  
8 pellet gun in one of the plots, and brought it back to the  
9 camp area to secure it.

10 Q. And what is -- what you observed in the video,  
11 Government's Exhibit 8, does that accurately depict what the  
12 clandestine growth looked like on -- and the camp area looked  
13 like on July 16, 2019, except the fact that the firearm had  
14 already been removed and made safe, the Springfield Armory  
15 firearm?

16 A. Yes, that's an accurate depiction of the camp within the  
17 cultivation site.

18 Q. From your observations, Mr. Hector Gomez Rodriguez did not  
19 make any movements once you announced your presence to obtain  
20 the firearm?

21 A. No. He slowly raised his hands up and then fled to his  
22 right.

23 MS. MONTOYA: I have no further questions for this  
24 witness, Your Honor.

25 THE COURT: Does the government move Exhibits 1

1 through 6, 6A, 6B, 7, 8 -- 7A, 8, 9, and 9A into evidence?

2 MS. MONTOYA: Yes, Your Honor. We would so move at  
3 this time.

4 THE COURT: Any objection?

5 MR. HOMOLA: No objection. No objection.

6 THE COURT: All those exhibits are admitted. Any  
7 cross-examination of this witness, Mr. Homola?

8 (Government's Exhibit 6, 6A, 6B, 7, 8, 9, 9A were  
9 received.)

10 CROSS-EXAMINATION

11 BY MR. HOMOLA:

12 Q. Agent -- Special Agent Fouch, did you see the gun in the  
13 kitchen area?

14 A. I did not.

15 Q. Okay. Now, prior to going to the grow site to arrest the  
16 individual connected, did you have any cameras in the area to  
17 record the coming and going of people?

18 A. Yes.

19 Q. Did that show any -- did that show Hector Gomez Rodriguez  
20 on your film?

21 A. I don't believe anybody was specifically identified based  
22 on those photographs.

23 Q. Okay. Were there any aerial surveillance of the area  
24 prior to the arrest?

25 A. There was a recognizance overflight in attempt to identify

1 and locate marijuana cultivation sites located in the area,  
2 yes.

3 Q. But did it zoom in to go to the actual site to the  
4 campsite to show who was in the campsite?

5 A. No, it did not.

6 Q. Okay. Now, prior to the day of the arrest, was there any  
7 surveillance the day before or even three or four days before?

8 A. Just through surveillance cameras.

9 Q. Okay. But once again, the surveillance cameras didn't  
10 specifically identify either one of the Gomez Rodriguez  
11 brothers?

12 A. I have not reviewed those photos in quite a while, so I  
13 can't speak towards whether they did or not.

14 Q. Thank you.

15 Now, did you -- were you present when Hector Gomez  
16 Rodriguez was interviewed that day of the arrest?

17 A. Yes, I was.

18 Q. Okay. And did you ask him about the gun?

19 A. I don't recall.

20 Q. Okay. So what, if anything, he said, you can't recall?

21 A. I don't recall if we asked.

22 Q. No problem. Thank you, Agent, for answering it.

23 MR. HOMOLA: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MS. MONTOYA: Yes.

1 | **REDIRECT EXAMINATION**

2 BY MS. MONTOYA:

3 Q. Was there a reason why you were unable to identify anyone  
4 specific from the photographs, either the trail cam  
5 photographs, or the license plate reader photograph?

6 A. Many of the photos were captured either very early in the  
7 morning or late at night, and they're pretty dark photos.

8 Many cameras use infrared flashes to capture the photos.

9 However, a lot of times, those photos aren't clear enough to  
10 identify individuals.

11 Q. They merely show movement in and out of the grow  
12 locations?

13 A. Yes.

14 MS. MONTOYA: I have no further questions.

15 MR. HOMOLA: Nothing further.

16 THE COURT: May this witness be excused?

17 MS. MONTOYA: Yes.

18 MR. HOMOLA: By the defense, by the defense.

19 THE COURT: All right. And does the -- and Officer  
20 Fouch, stand by in case you're recalled for any reason. Thank  
21 you.

22 Any additional evidence to be presented by the  
23 government?

24 MS. MONTOYA: No, Your Honor.

25 THE COURT: Any evidence that the defense wishes to

1 present, Mr. Homola?

2 MR. HOMOLA: I'd like to call my client.

3 THE COURT: All right.

4 Madam Clerk, please swear Mr. Hector Gomez Rodriguez.

5 THE CLERK: Okay. Please raise your right hand.

6 **HECTOR GOMEZ RODRIGUEZ,**

7 called as a witness on behalf of the Defendants, having been  
8 first duly sworn, testified as follows:

9 THE WITNESS: Me? Yes. Yes.

10 THE CLERK: Thank you.

11 THE COURT: You may proceed, Mr. Homola.

12 DIRECT EXAMINATION

13 BY MR. HOMOLA:

14 Q. Mr. Gomez, were you at the marijuana site, the growth  
15 site?

16 A. Yes.

17 Q. How many days were you there?

18 A. Three days.

19 Q. Did you help set up the campsite and the kitchen area and  
20 the bunk beds and things like that?

21 A. No.

22 Q. Did you bring a gun to the growth site?

23 A. No.

24 Q. Did you see a gun at the growth site?

25 A. No. Well, it wasn't at the plant site, right in the plant

1 site. It's not there. The day before in the kitchen area,  
2 when I was preparing food, I just saw it there, but I didn't  
3 touch it or anything. I just saw it.

4 Q. Okay. So it was there?

5 A. I saw it there, but I never touched it or anything. I  
6 just --

7 Q. Did you ever fire it?

8 A. No, not at all.

9 Q. Did you know of any other guns at the growth site?

10 A. Not at all, no.

11 Q. Do you know who put the gun in the kitchen area at the  
12 campsite?

13 A. No, I didn't notice who did.

14 MR. HOMOLA: Thank you. No further questions.

15 THE COURT: Cross-examination?

16 MS. MONTOYA: No questions, Your Honor.

17 MR. HOMOLA: No further defense witnesses.

18 THE COURT: I've got a question for Mr. Gomez  
19 Rodriguez.

20 Sir, didn't you tell Probation Officer Mora when he  
21 interviewed you for the presentence report in this case that  
22 although you never fired the pistol, that you did touch the  
23 pistol a little bit the day before your arrest?

24 THE DEFENDANT: Yes, yes.

25 THE COURT: So you did touch it?

1           THE DEFENDANT: I was moving things around to make  
2 food, but I didn't realize that if I touched it or I didn't,  
3 but just to touch it, I -- I didn't.

4           THE COURT: Any other questions, Mr. Homola?

5           MR. HOMOLA: No. Thank you, Your Honor.

6           THE COURT: Ms. Montoya?

7           MS. MONTOYA: No, Your Honor.

8           THE COURT: Any other evidence that the defense  
9 wishes to present?

10          MR. HOMOLA: No. Thank you, Your Honor.

11          THE COURT: All right. With respect to the issue of  
12 whether Mr. Gomez Rodriguez qualifies for safety valve relief  
13 as well as the two-point reduction that would go along with  
14 safety valve relief in the guideline calculation, which I  
15 believe, if he were eligible for safety valve relief, and my  
16 understanding is he's satisfied the fifth criteria that  
17 two-point downward adjustment would result in an offense level  
18 23, with a criminal history category of 1, which would reduce  
19 his advisory sentencing guideline range down to 46 to 57  
20 months.

21          Anything the government wishes to add with respect to  
22 that issue?

23          MS. MONTOYA: No, Your Honor.

24          THE COURT: Mr. Homola?

25          MR. HOMOLA: No. Thank you, Your Honor.

1                   THE COURT: Submitted on that issue then?

2                   MR. HOMOLA: The only thing I would say is that he  
3 may have seen the gun and touched it the day before, but he  
4 didn't touch it the day of the arrest. He didn't make an  
5 attempt to use it, hide it, had other people -- encourage them  
6 to use it, threatened the officers or anything else. It's  
7 kind of like one of my old favorite jury instructions of mere  
8 presence. This time it's mere presence of the gun. He didn't  
9 use it, didn't fire it.

10                  THE COURT: Anything the government wants to add on  
11 that point before I rule?

12                  MS. MONTOYA: Your Honor, the gun was clearly  
13 connected with the -- in the government's -- government's  
14 position the gun was clearly connected to the clandestine  
15 marijuana grow. The gun was in the area where it was most  
16 available to Mr. Hector Gomez Rodriguez and anyone else who  
17 would be in the kitchen area preparing food. It was certainly  
18 close at hand where Mr. Gomez Rodriguez slept. And the fact  
19 that he didn't lunge for it when the officers made themselves  
20 known is of no moment.

21                  Also noted the reason the government put in the  
22 information concerning the obliteration serial number is that  
23 it's clearly a crime gun, and the government believes that it  
24 was for -- it's the government's position that it was  
25 connected with the offense. Therefore, he is not eligible for

1 safety valve relief, and the mandatory minimum would apply.

2 THE COURT: Anything else, Mr. Homola?

3 MR. HOMOLA: Well, the only thing I will submit is  
4 that he had no intent to exercise dominion or control of the  
5 firearm, and that he was truthful with the full disclosure  
6 about his -- his involvement in this, that this was not a  
7 continuing criminal enterprise. It was the -- the offense did  
8 not result in death or serious bodily injury to any person.

9 And I submit that he can qualify for the safety valve,  
10 Your Honor.

11 THE COURT: Well, as I indicated before the evidence  
12 was presented, I -- this is not the result that I would prefer  
13 to reach. I think it does result in what I view is unfair  
14 disparity with respect to the sentences to be imposed on the  
15 two defendants in this case. But my obligation is to apply  
16 the law, and I just cannot find a way to reach a conclusion  
17 that Mr. Hector Manuel Gomez Rodriguez has satisfied his  
18 burden in this regard.

19 The law requires that it is his burden by a  
20 preponderance of the evidence to establish that he did not  
21 possess the firearm in connection with the offense.

22 As I indicated, there's a circuit split in *United*  
23 *States vs. McLean*, 409 F.3d 492, First Circuit, *U.S.C. versus*  
24 *Herrera*, 446 F.3d 283, Second Circuit 2006; *United States vs.*  
25 *Matias*, 465 F.3d, 169, Fifth Circuit 2006. *U.S. versus*

1       *Stewart*, Sixth Circuit 2002, 306 F.3d 295, and *United States*  
2       *vs. Jackson* 552 F.3d 908, Eighth Circuit 2009, those five  
3       circuits have concluded that a defendant's constructive  
4       possession of a firearm disqualifies that defendant from  
5       safety valve relief provision under subsection (f)(2).

6               The Tenth Circuit stands alone in *United States vs.*  
7       *Zavala Rodriguez*, 379 F.3d 1182, Tenth Circuit, 2004, in  
8       rejecting that notion of allowing constructive possession  
9       alone to disqualify a defendant from safety valve relief, and  
10       instead requires that the defendant himself possessed the  
11       firearm in question.

12               But under all -- under all interpretations of the  
13       law, it's the defendant's burden by the very -- by a  
14       preponderance of the evidence to establish that he qualifies  
15       for safety valve relief.

16               And here, we don't have the issue of constructive  
17       versus actual possession. The firearm in question was  
18       obviously very closely positioned near where Mr. Hector Gomez  
19       Rodriguez was sleeping in the marijuana grow camp site, and  
20       obvious it's almost a 5,000 plant grow site. It was a  
21       significant marijuana grow.

22               He and his brother were the two people present. The  
23       firearm and the ammunition in connection with that firearm  
24       that pistol were located, as the officers have testified,  
25       within an arm's reach of Mr. Hector Gomez Rodriguez's cot, the

1 area in which he was found when the officers arrived. But  
2 more importantly, he had -- he conceded at the time of his  
3 probation interview, and he has, somewhat reluctantly again,  
4 conceded here at the hearing that he was aware that the gun  
5 was there, and he actually handled the gun the day before.

6 There's no requirement in order to be precluded from  
7 safety valve relief that he used the gun, that he fired the  
8 gun, that he'd be dangerous or threatening in any way. And  
9 I'll be the first to say, Mr. Hector Gomez Rodriguez was not  
10 threatening in any way. And when officers approached him, he  
11 did not reach for the gun in any way, but that's not relevant.

12 The safety valve provision says the question is: Did  
13 he possess a firearm in connection with the offense? And  
14 here, in my view, he's plainly conceded that he did, and all  
15 the evidence points to the overwhelming conclusion that he was  
16 aware of the presence of the gun, and he had actually handled  
17 it during his stay, however long that may have been at the  
18 grow site, and it's in the middle of a 5,000 plant grow. It's  
19 clearly in connection with the offense.

20 I wish I didn't have to reach this conclusion. I  
21 don't like this conclusion, but I believe it is the conclusion  
22 that the law requires. And I, therefore, find that Mr. Hector  
23 Manuel Gomez Rodriguez is ineligible for safety valve relief  
24 under subsection (f)(2) of 18 U.S.C. Section 3553(f), which is  
25 the same as the provisions of sentencing guidelines section

1 5C1.2.

2 I, therefore, find that the applicable offense level  
3 in this case is 25, that the defendant's criminal history  
4 places him in category Roman Numeral I. The result is an  
5 advisory guideline range calling for a term of imprisonment of  
6 between 57 and 71 months.

7 But however, this is a case in which the  
8 congressionally-mandated minimum sentence is ten years, and I  
9 have concluded that under the law, the defendant is not  
10 eligible for safety valve relief under the facts of this case,  
11 and that he's failed to establish by a preponderance of the  
12 evidence that he is.

13 Anything the government wishes to add with respect to  
14 the sentencing to be imposed?

15 MS. MONTOYA: No, Your Honor, other than I would ask  
16 the Court to -- I think there's an issue regarding the  
17 preliminary order of forfeiture. And also, there is -- I'm  
18 trying to find my -- sorry. There's a restitution --

19 THE COURT: Yes.

20 MS. MONTOYA: -- issue that I would ask the Court to  
21 impose.

22 THE COURT: Mr. Homola, anything that you wish to add  
23 with respect to the sentence to be imposed?

24 MR. HOMOLA: Submitted, Your Honor.

25 THE COURT: Mr. Gomez Rodriguez, is there anything

1 you wish to say to me before I impose sentence in your case?

2 THE DEFENDANT: Well, I -- I don't have anything to  
3 say, just to be fair with me.

4 THE COURT: All right. Given my findings as to what  
5 the law requires, given the ineligibility for safety valve  
6 relief that I feel compelled to reach, while at the same time  
7 recognizing I think the result that flows from that finding is  
8 not a fair result in this case. I think it leads to  
9 inappropriate disparity in sentencing between the  
10 co-defendants in this case. I don't think it's called for,  
11 but I feel like I have no choice under the law. It is a  
12 congressionally-mandated minimum sentence that I must impose.

13 As I said, if the case does go up on appeal for  
14 review of my determination as to what the law requires, if I  
15 were free to do so, I would impose -- I would -- I would  
16 impose a sentence of no more than 57 months in this case.  
17 Unfortunately, I don't think that I am free to do so.

18 Therefore, pursuant to the Sentencing Reform Act of  
19 1984, it's the judgment of the Court that the defendant Hector  
20 Manuel Gomez Rodriguez is hereby committed to the custody of  
21 the United States Bureau of Prisons to be imprisoned for a  
22 term of 120 months.

23 The defendant shall pay a special assessment of \$100,  
24 payment to begin immediately. The Court finds the defendant  
25 does not have the ability to pay a fine, imposition of a fine

1 is waived.

2           If already filed, the preliminary order of forfeiture  
3 is hereby made final as to this defendant, and shall be  
4 incorporated into the judgment.

5           It is further ordered that the defendant shall pay  
6 restitution to the victims of the offense in the amount of  
7 \$38,746.80 as outlined in the restitution attachment to the  
8 presentence report. Interest on the restitution is waived.  
9 Restitution shall be joint and several with any co-defendant  
10 as listed on the restitution attachment. Restitution is to be  
11 sent to the Clerk of the Court, who shall forward it to the  
12 victims.

13           If incarcerated, payment of any unpaid criminal  
14 monetary penalty in this case is due during imprisonment at  
15 the rate of 10 percent of the defendant's gross income per  
16 month or \$25 per quarter, whichever is greater. Payment shall  
17 be made through the Bureau of Prisons inmate financial  
18 responsibility program.

19           Upon release from imprisonment, the defendant shall  
20 be placed on supervised release for a term of 60 months, which  
21 will become unsupervised if he is deported.

22           Within 72 hours of release from the custody of the  
23 U.S. Bureau of Prisons the defendant shall report to the  
24 probation office in the district to which he is released.  
25 While on supervised release, he shall not commit another

1 federal, state, or local crime, and shall not illegally  
2 possess controlled substances.

3 He shall make restitution in accordance with  
4 18 U.S.C. Section 3663 and 3663(a), or any other statute  
5 authorized in a sentence of restitution.

6 The defendant shall cooperate in the collection of a  
7 DNA sample as directed by his probation officer, and shall  
8 comply with the standard conditions which have been  
9 recommended by the U.S. Sentencing Commission and adopted by  
10 this Court. Further, he shall refrain from any unlawful use  
11 of a controlled substance, and shall submit to one drug test  
12 within 15 days of release from imprisonment, and at least two  
13 periodic drug test thereafter not to exceed four drug tests  
14 per month.

15 The Court adopts the special conditions recommended  
16 by the probation officer on page 20 of the presentence report,  
17 and imposes all of those listed as special conditions.

18 And Mr. Homola, are you still requesting a  
19 recommendation to the Bureau of Prisons for imprisonment as  
20 near as possible to Maricopa, Arizona -- as possible?

21 MR. HOMOLA: Yes, Your Honor. Yes, Your Honor.

22 THE COURT: The Court will recommend to the U.S.  
23 Bureau of Prisons that Mr. Hector Manuel Gomez Rodriguez be  
24 designated to serve the remainder of his sentence at a  
25 facility as near as possible to Maricopa, Arizona. That

1 recommendation is only to the extent consistent with security  
2 classification and space availability.

3 The government's motion with respect to Counts 1 and  
4 3?

5 MS. MONTOYA: The government moves to dismiss those  
6 counts in light of the plea and sentencing.

7 THE COURT: Those counts are dismissed on the  
8 government's motion.

9 Mr. Gomez Rodriguez, I note as part of your plea  
10 agreement you've waived any right to appeal or collaterally  
11 attack any part of your plea and sentence in this case.  
12 Nonetheless, I will advise you that if you wish to appeal from  
13 the sentence I've just imposed, you must file a written notice  
14 of appeal with the Court within 14 days of today's date. If  
15 you cannot afford an attorney in connection with that appeal,  
16 the Court would appoint one for you.

17 Is there anything else?

18 THE DEFENDANT: Can I ask you something?

19 THE COURT: Yes, sir, you may.

20 THE DEFENDANT: So how many months was I given?

21 THE COURT: 120 months, sir.

22 THE DEFENDANT: Okay.

23 THE COURT: I am --

24 THE DEFENDANT: How much discount can I get?

25 THE COURT: Mr. Gomez Rodriguez, as I indicated, I'd

1 love, love to give you a discount. Congress -- the United  
2 States Congress says I can't under my interpretation of the  
3 law. I wish it was different.

4 THE DEFENDANT: Okay. Thank you very much.

5 THE COURT: Is there anything further in this case?

6 MR. HOMOLA: Thank you, Your Honor. Thank you for  
7 keeping the case.

8 MS. MONTOYA: No, Your Honor. Thank you.

9 THE COURT: Court's in recess.

10 (Proceedings were concluded at 3:48 p.m.)

11

12 I, RACHAEL LUNDY, Official Reporter, do hereby certify the  
13 foregoing transcript as true and correct.

14

15 Dated: December 8, 2022

/s/ Rachael Lundy  
RACHAEL LUNDY, CSR-RPR

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23

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25

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2 United States Attorney  
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9  
10  
11 Attorneys for Plaintiff  
12 United States of America

13 IN THE UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15  
16  
17 UNITED STATES OF AMERICA,  
18 Plaintiff,  
19 v.  
20 HECTOR GOMEZ RODRIGUEZ,  
21 Defendant.

22 CASE NO. 1:19-CR-00161-DAD-BAM  
23 EXHIBIT LIST  
24 DATE: September 26, 2022  
25 TIME: 2:30 p.m.  
26 COURT: Hon. Dale A. Drozd

27  
28 The government submits the following exhibit list:

19 A. **A power point presentation with the following exhibits:**

20 Exhibit 1: photograph of camp site and ledge  
21 Exhibit 2: photograph of camp site looking toward cot  
22 Exhibit 3: photograph of camp site cooking area and ledge  
23 Exhibit 4: photograph of camp site sleeping area with cot  
24 Exhibit 5: photograph of firearm, left side  
25 Exhibit 6: photograph of firearm, right side  
26 Exhibit 6A: photograph of firearm, right side; obliterated serial number circled  
27 Exhibit 6B: photograph of firearm, right side; obliterated serial number circled close up  
28 Exhibit 7: photograph of firearm, right side with magazine and round removed

29 ///

1 Exhibit 7A: photograph of firearm, right side with magazine and round removed; obliterated  
2 serial number circled.

### 3 Exhibit 8: video of camp area

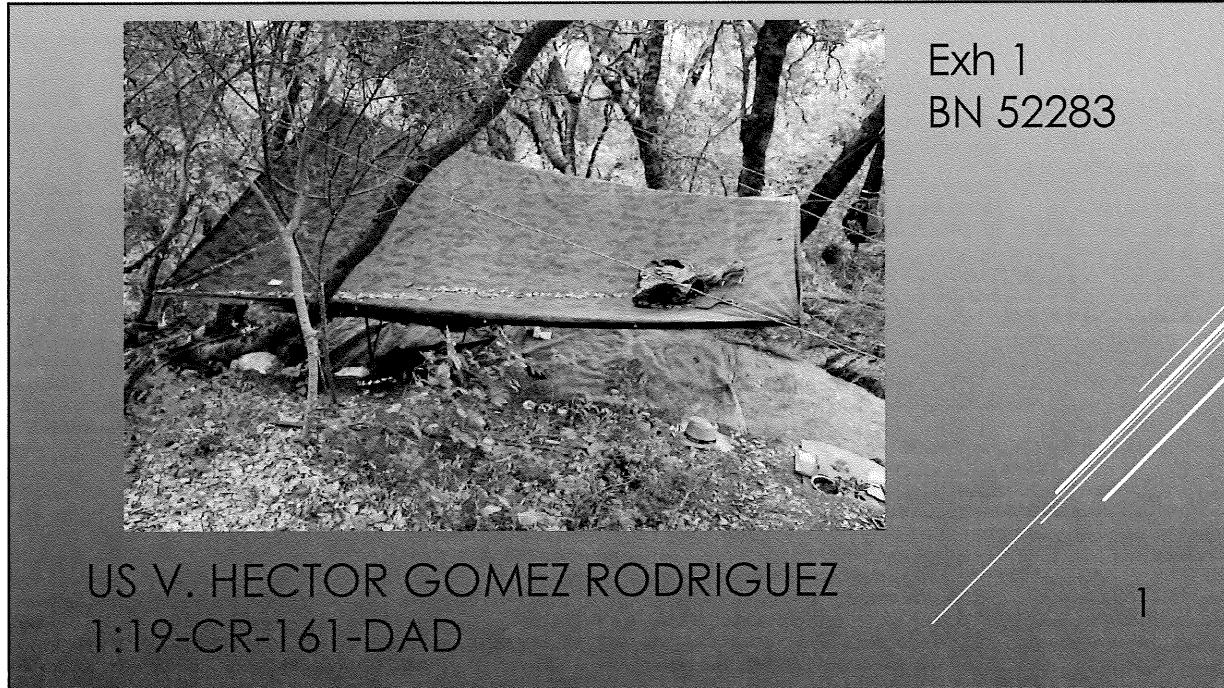
4 Exhibit 9: photograph of sleeping area below plot #3 (Mucio Gomez Rodriguez)

5 Exhibit 9A: photograph of sleeping area below plot #3 (Mucio Gomez Rodriguez) with battery  
6 attached to a cellphone charger circled

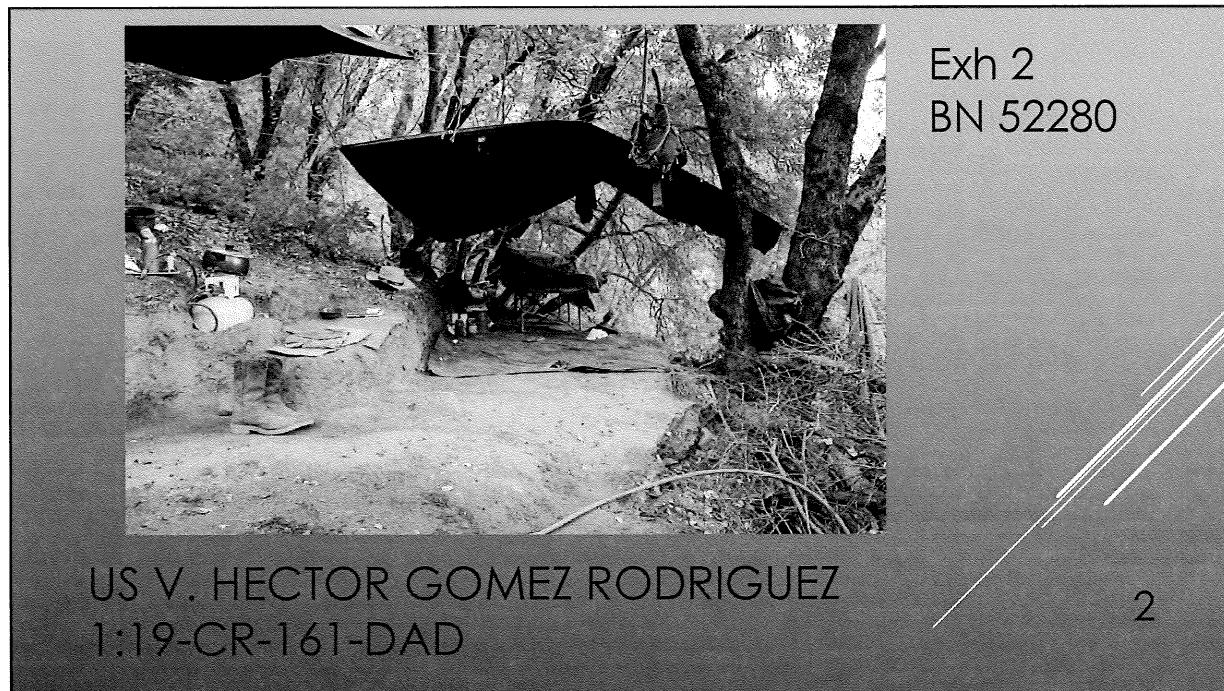
8 || Dated: September 26, 2022

PHILLIP A. TALBERT  
United States Attorney

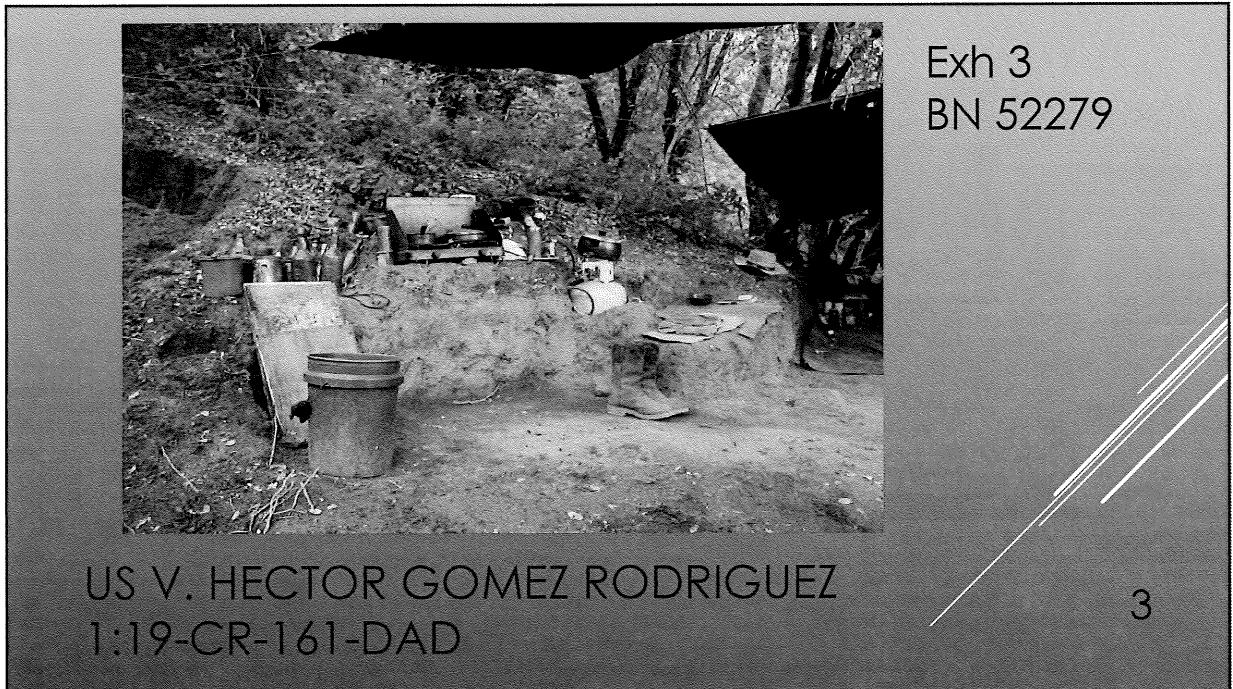
10 By: /s/ LAUREL J. MONTOYA  
11 LAUREL J. MONTOYA  
Assistant United States Attorney



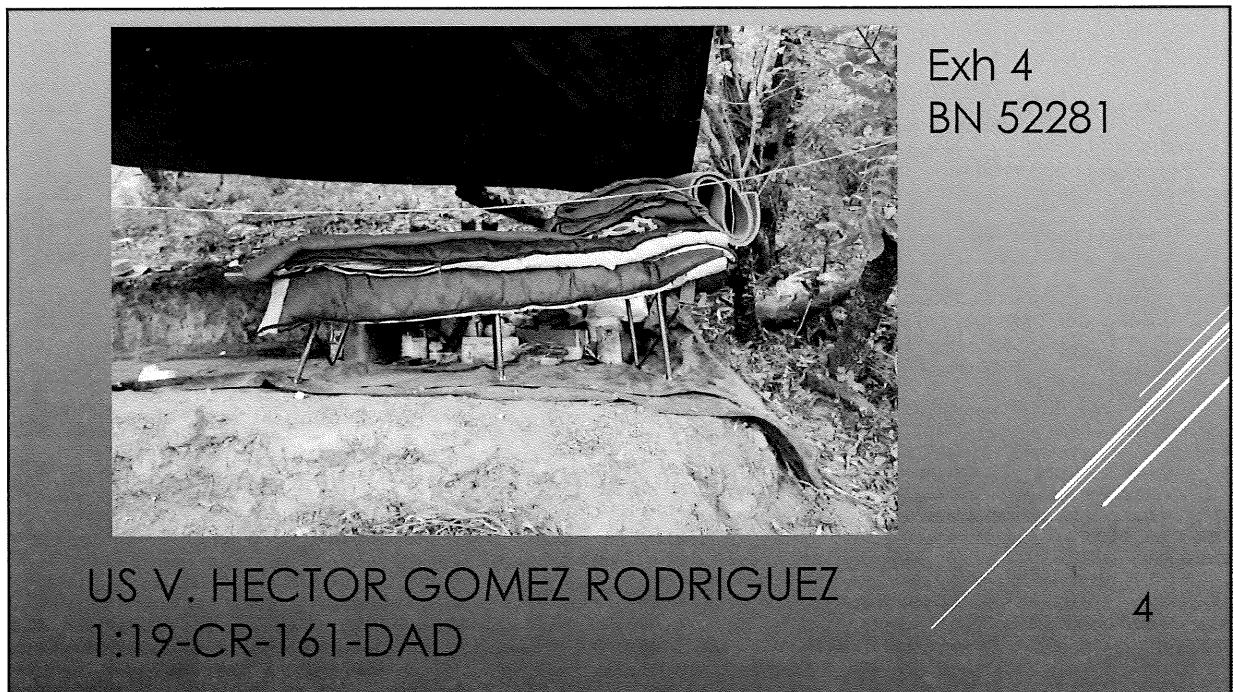
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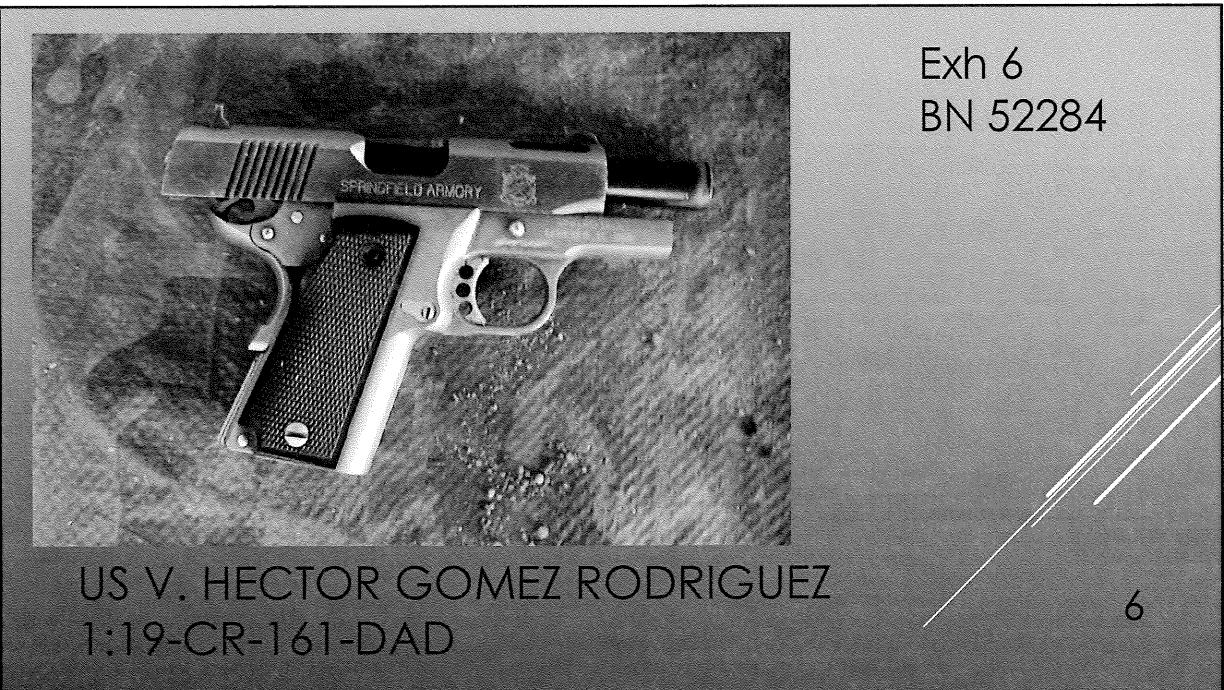
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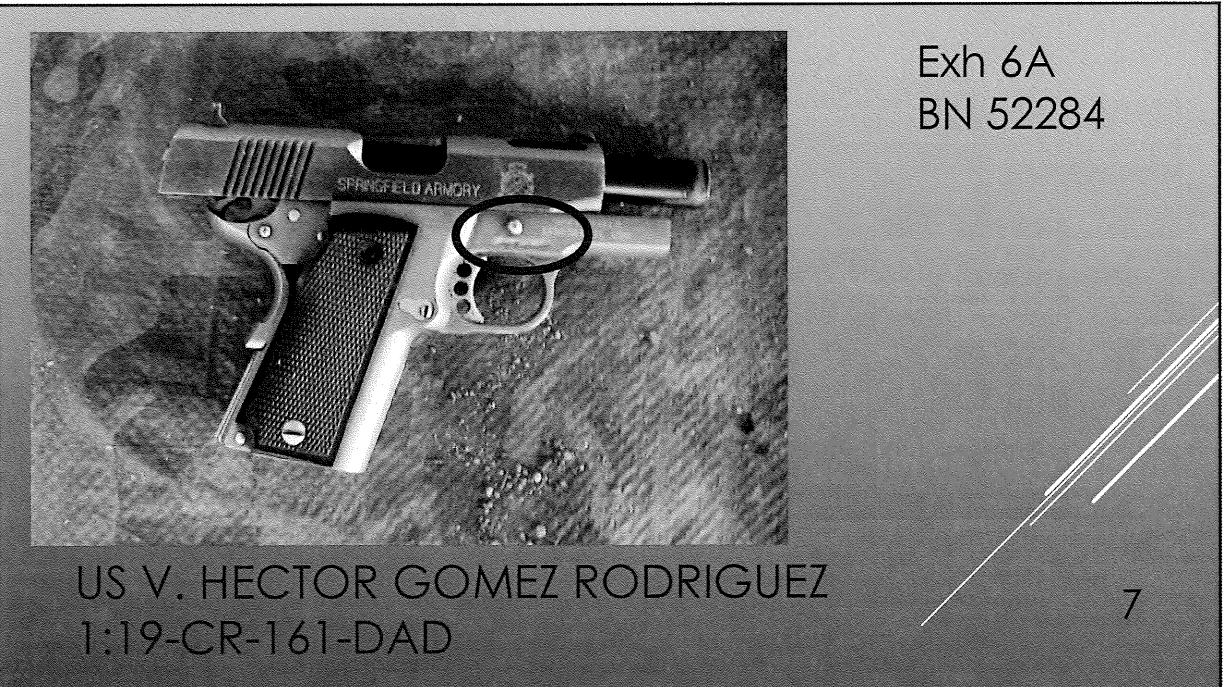
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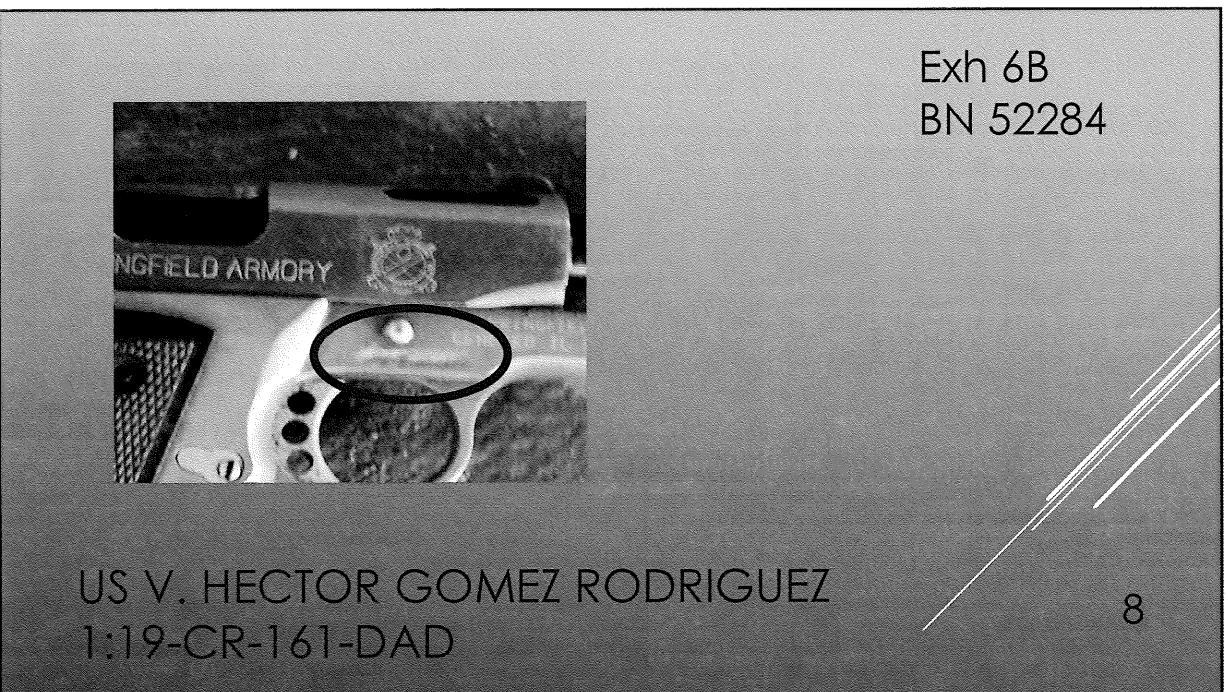
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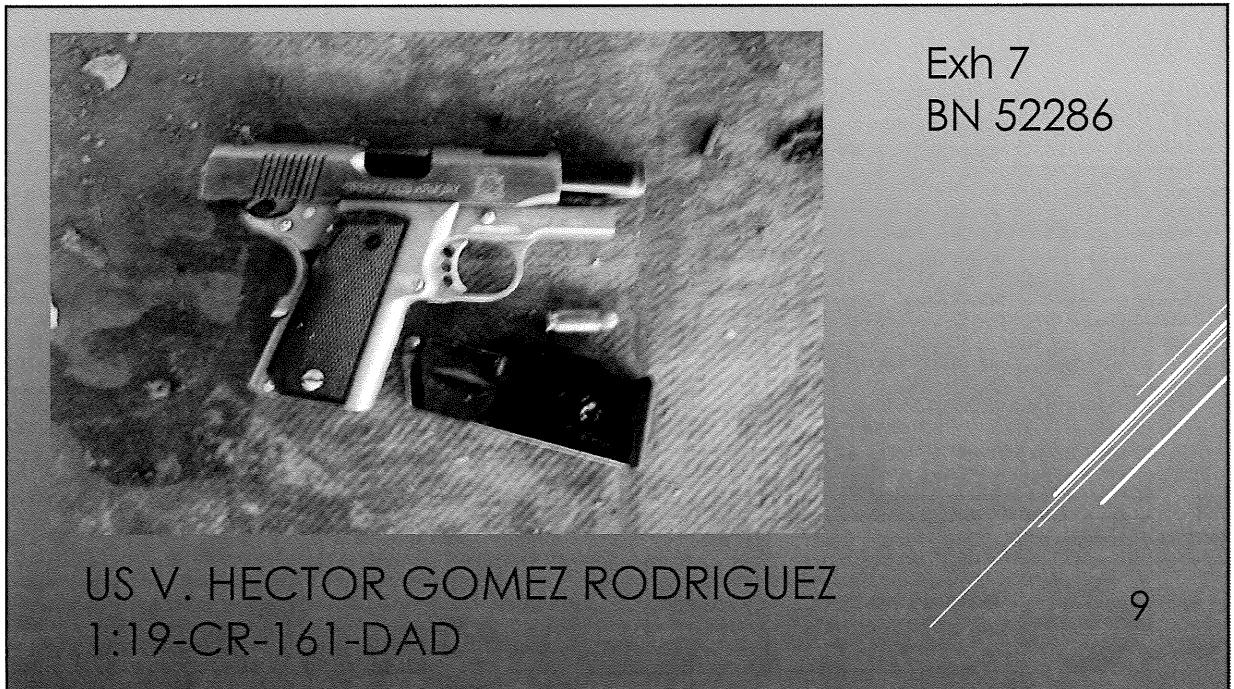
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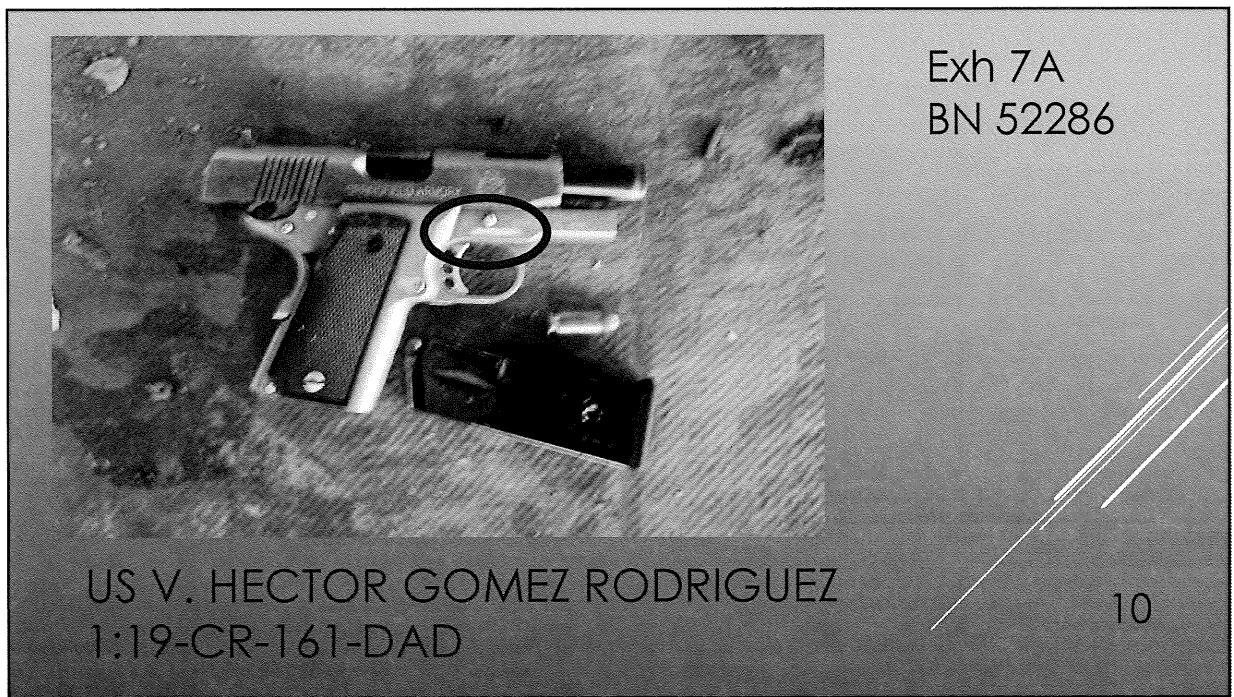
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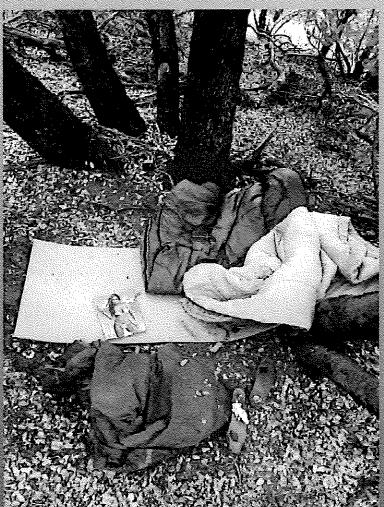


Exh 8  
BN 52347

US V. HECTOR GOMEZ RODRIGUEZ  
1:19-CR-161-DAD

11

11

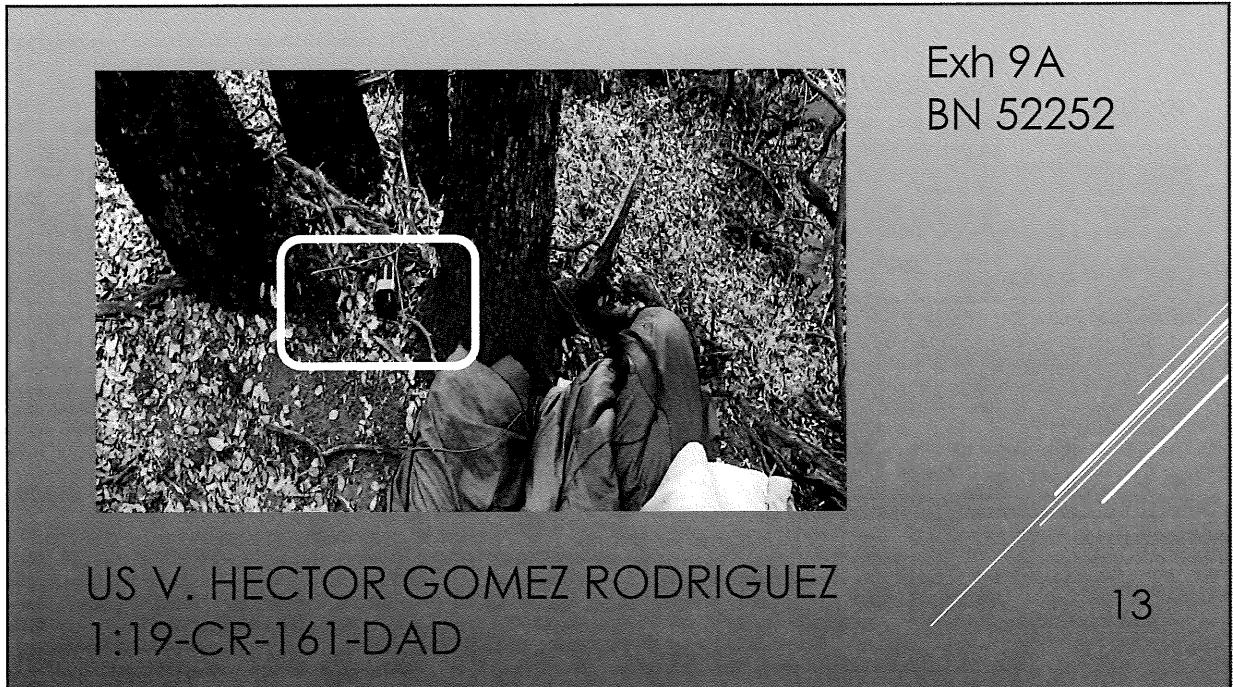


Exh 9  
BN 52252

US V. HECTOR GOMEZ RODRIGUEZ  
1:19-CR-161-DAD

12

12



13

**UNITED STATES DISTRICT COURT**  
**Eastern District of California**

UNITED STATES OF AMERICA

v.

**HECTOR MANUEL GOMEZ RODRIGUEZ**  
 AKA: Hector M Gomez Rodriguez, Hector Manuel Gomez  
 Rodriguez, Hector Manuel Gomez Rodriguez

**THE DEFENDANT:**

pleaded guilty to count Two of the Indictment.  
 pleaded nolo contendere to count(s)   , which was accepted by the court.  
 was found guilty on count(s)    after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)	Conspiracy to Manufacture Marijuana (Class A Felony)	7/16/2019	2

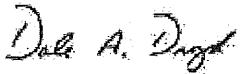
The defendant is sentenced as provided in pages 2 through    of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)   .  
 Counts One and Three are dismissed on the motion of the United States.  
 Indictment is to be dismissed by District Court on motion of the United States.  
 Appeal rights given.  Appeal rights waived.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution or fine, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/26/2022

Date of Imposition of Judgment



Signature of Judicial Officer

Dale A. Drozd, United States District Judge

Name &amp; Title of Judicial Officer

10/3/2022

Date

DEFENDANT: **HECTOR MANUEL GOMEZ RODRIGUEZ**  
CASE NUMBER: **1:19CR00161-1**

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
120 months.

No TSR: Defendant shall cooperate in the collection of DNA.

The court makes the following recommendations to the Bureau of Prisons:  
The court recommends that the defendant be incarcerated at an institution near Maricopa, Arizona, but only insofar as this accords with security classification and space availability.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district

at \_\_\_\_ on \_\_\_\_.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before \_\_\_\_ on \_\_\_\_.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Officer.

If no such institution has been designated, to the United States Marshal for this district.

Other, Please Specify:

### RETURN

I have executed this judgment as follows:

---

---

---

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

---

United States Marshal

---

By Deputy United States Marshal

DEFENDANT: **HECTOR MANUEL GOMEZ RODRIGUEZ**  
CASE NUMBER: **1:19CR00161-1**

### **SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:  
60 months (unsupervised, if deported).

### **MANDATORY CONDITIONS**

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
- You must cooperate in the collection of DNA as directed by the probation officer.
- You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense.
- You must participate in an approved program for domestic violence.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **HECTOR MANUEL GOMEZ RODRIGUEZ**  
CASE NUMBER: **1:19CR00161-1**

### **STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

#### **U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: **HECTOR MANUEL GOMEZ RODRIGUEZ**  
CASE NUMBER: **1:19CR00161-1**

**SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall not dispose of or otherwise dissipate any of his assets until the fine and/or restitution order by this Judgment is paid in full unless the defendant obtains approval of the Court or the probation officer.
3. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to any unpaid restitution ordered by this Judgment
4. The defendant shall provide the probation officer with access to any requested financial information.
5. The defendant shall not open additional lines of credit without the approval of the probation officer.
6. You must make payments toward any unpaid criminal monetary penalty in this case during supervised release at the rate of at least 10% of your gross monthly income. Payments are to commence no later than 60 days from placement on supervision. This payment schedule does not prohibit the United States from collecting through all available means any unpaid criminal monetary penalty at any time, as prescribed by law.
7. The defendant shall follow all lawful directives of Immigration and Customs Enforcement officials in the determination of his legal status in the United States.

DEFENDANT: **HECTOR MANUEL GOMEZ RODRIGUEZ**  
 CASE NUMBER: **1:19CR00161-1**

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

**TOTALS**

<u>Processing Fee</u>	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
	\$100.00	\$0.00	\$0.00	0.00	\$38,746.80

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

The court orders the defendant to pay restitution to the single victim as outlined in the Restitution Attachment on Sheet 5B.

In addition, the court gives notice that this case involves other defendants, or may involve other defendants, who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future. Such future orders do not increase the amount of restitution ordered against the defendant.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the  fine  restitution

The interest requirement for the  fine  restitution is modified as follows:

If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

Other:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**DEFENDANT: HECTOR MANUEL GOMEZ RODRIGUEZ**  
**CASE NUMBER: 1:19CR00161-1**

RESTITUTION PAYMENTS

Restitution of \$38,746.80, jointly and severally with co-defendant Mucio Alejandro Gomez Rodriguez (1:19-cr-00161-2), to:  
UNITED STATES FOREST SERVICE  
ALBUQUERQUE, NM 87109  
\$38,746.80

DEFENDANT: HECTOR MANUEL GOMEZ RODRIGUEZ  
CASE NUMBER: 1:19CR00161-1

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A.  Lump sum payment of \$ \_\_\_\_ due immediately, balance due
  - Not later than \_\_\_\_ or
  - in accordance  C,  D,  E, or  F below; or
- B.  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C.  Payment in equal \_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_ over a period of \_\_\_\_ (e.g. months or years), to commence \_\_\_\_ (e.g. 30 or 60 days) after the date of this judgment; or
- D.  Payment in equal \_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_ over a period of \_\_\_\_ (e.g. months or years), to commence \_\_\_\_ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E.  Payment during the term of supervised release/probation will commence within \_\_\_\_ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F.  Special instructions regarding the payment of criminal monetary penalties:

If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

The defendant shall make payments toward any unpaid criminal monetary penalties in this case during supervision at the rate of at least 10% of your gross monthly income. Payments are to commence no later than 60 days from placement on supervision. This payment schedule does not prohibit the United States from collecting through all available means any unpaid criminal monetary penalties at any time, as prescribed by law.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States: If already filed, the preliminary order of forfeiture is hereby made final as to this defendant and shall be incorporated into the judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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4 Assistant United States Attorney  
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7 Telephone: (559) 497-4000  
8 Facsimile: (559) 497-4099

9  
10 Attorneys for Plaintiff  
11 United States of America

FILED

JUL 25 2019

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

11  
12 IN THE UNITED STATES DISTRICT COURT  
13  
14 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

v.

17 HECTOR MANUEL GOMEZ RODRIGUEZ,  
18 MUCIO ALEJANDRO GOMEZ  
19 RODRIGUEZ,

20 Defendants.

CASE NO.

21 T 1 9 CR 0 0 1 6 0 DAD BAM  
22 VIOLATIONS: 21 U.S.C. § 841(a)(1) – Manufacture  
23 of Marijuana; 21 U.S.C. §§ 846, 841(a)(1) –  
24 Conspiracy to Manufacture Marijuana; 18 U.S.C. §  
25 1361 – Depredation of Public Lands and Resources;  
26 21 U.S.C. § 853(a) – Criminal Forfeiture

27  
28 INDICTMENT

29 COUNT ONE: [21 U.S.C. § 841(a)(1) & (b)(1)(A) – Manufacture of Marijuana]

30 The Grand Jury charges: T H A T

31 HECTOR MANUEL GOMEZ RODRIGUEZ,  
32 MUCIO ALEJANDRO GOMEZ RODRIGUEZ,

33 defendants herein, beginning on a date not later than on or about July 16, 2019, in the Sierra National  
34 Forest, in the County of Madera, State and Eastern District of California, did knowingly and  
35 intentionally manufacture marijuana, a Schedule I Controlled Substance, in violation of Title 21, United  
36 States Code, Section 841(a)(1).

37 It is further alleged that the offense involved 1,000 or more marijuana plants, in violation of Title  
38 21, United States Code, Section 841(a)(1) and 841(b)(1)(A).

1 COUNT TWO: [21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Manufacture Marijuana]

2 The Grand Jury further charges: T H A T

3 HECTOR MANUEL GOMEZ RODRIGUEZ,  
4 MUCIO ALEJANDRO GOMEZ RODRIGUEZ,

5 defendants herein, beginning on a date note later than on or about July 16, 2019, in the Sierra National  
6 Forest, in the County of Madera, State and Eastern District of California, and elsewhere, did knowingly  
7 and intentionally conspire and agree with each other and with persons known and unknown to the Grand  
8 Jury to manufacture marijuana, a Schedule I Controlled Substance, in violation of Title 21, United States  
9 Code, Sections 846 and 841(a)(1).

10 It is further alleged that the offense involved 1,000 or more marijuana plants, in violation of Title  
11 21, United States Code, Section 841(a)(1) and 841(b)(1)(A).

12 COUNT THREE: [18 U.S.C. § 1361 – Depredation of Public Lands and Resources]

13 The Grand Jury further charges: T H A T

14 HECTOR MANUEL GOMEZ RODRIGUEZ,  
15 MUCIO ALEJANDRO GOMEZ RODRIGUEZ,

16 defendants herein, beginning on a date unknown to the Grand Jury, and continuing to on or about July  
17 16, 2019, in the Sierra National Forest, in the County of Madera, State and Eastern District of California,  
18 did willfully and by means of committing one or more of the marijuana offenses alleged in Counts One  
19 and Two herein, injure or commit a depredation against property of the United States and of any  
20 department or agency thereof, namely land and natural resources in the Sierra National Forest, within  
the jurisdiction of the United States Forest Service.

21 It is further alleged that the damage or attempted damage to such property exceeds the sum of  
22 \$1,000.

23 All in violation of Title 18, United States Code, Section 1361.

24 FORFEITURE ALLEGATION: [21 U.S.C. § 853(a) – Criminal Forfeiture]

25 1. Upon conviction of one or more of the offenses alleged in COUNTS ONE and TWO,  
26 defendants HECTOR MANUEL GOMEZ RODRIGUEZ and MUCIO ALEJANDRO GOMEZ  
27 RODRIGUEZ shall forfeit to the United States pursuant to Title 21, United States Code, Section 853(a),  
28 the following property:

1                   a.     All right, title, and interest in any and all property involved in violations of Title  
2 21, United States Code, Section 841(a)(1), or conspiracy to commit such offenses, for which defendants  
3 are convicted, and all property traceable to such property, including the following: all real or personal  
4 property, which constitutes or is derived from proceeds obtained, directly or indirectly, as a result of  
5 such offenses; and all property used, or intended to be used, in any manner or part to commit or to  
6 facilitate the commission of the offenses.

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

9                   2.     If any property subject to forfeiture, as a result of the offenses alleged in COUNTS ONE  
10 and TWO of this Indictment, for which defendants are convicted:

11                   a.     cannot be located upon the exercise of due diligence;  
12                   b.     has been transferred or sold to, or deposited with, a third party;  
13                   c.     has been placed beyond the jurisdiction of the Court;  
14                   d.     has been substantially diminished in value; or  
15                   e.     has been commingled with other property which cannot be divided without  
16                   difficulty;

17 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek  
18 forfeiture of any other property of defendants, up to the value of the property subject to forfeiture.

19                   A TRUE BILL.

20                   /s/ Signature on file w/AUSA

21                   \_\_\_\_\_  
22                   FOREPERSON

23                   McGREGOR W. SCOTT  
24                   United States Attorney

25                   **KIRK E. SHERIFF**

26                   BY: \_\_\_\_\_

27                   KIRK E. SHERIFF  
28                   Assistant U.S. Attorney  
                    Chief-Fresno Office

No. \_\_\_\_\_

FILED

JUL 25 2019

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

UNITED STATES DISTRICT COURT

*Eastern District of California*

*Criminal Division*

THE UNITED STATES OF AMERICA

vs.

HECTOR MANUEL GOMEZ RODRIGUEZ,  
MUCIO ALEJANDRO GOMEZ RODRIGUEZ

INDICTMENT

1:19 CR 00161 DAD BAM

VIOLATION(S): 21 U.S.C. § 841(a)(1) – Manufacture of Marijuana;  
21 U.S.C. §§ 846, 841(a)(1) – Conspiracy to Manufacture Marijuana; 18  
U.S.C. § 1361 – Depredation of Public Lands and Resources; 21 U.S.C. §  
853(a) – Criminal Forfeiture

*A true bill,*

*151*  
Foreman.

Filed in open court this \_\_\_\_\_ day

of \_\_\_\_\_, A.D. 20 \_\_\_\_\_

*Clerk.*

Bail, \$ \_\_\_\_\_

AS PREVIOUSLY SET

GPO 863 525

*E.P. M.*

## DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY  COMPLAINT  INFORMATION  INDICTMENT  
 SUPERSEDING: Case No.

## OFFENSE CHARGED

See Indictment

 Petty  
 Minor  
 Misdemeanor  
 Felony
Place of offense  
FRESNO COUNTYU.S.C. Citation  
See IndictmentName of District Court, and/or Judge/Magistrate Judge Location (City)  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIADEFENDANT -- U.S. vs.  
Hector Manuel Gomez Rodriguez

Address

Birth  
Date

19 CR 00161 DAD BAM

 Male  Alien Female (if applicable)

(Optional unless a juvenile)

## PROCEEDING

Name of Complainant Agency, or Person (&amp; Title, if any)

SA Cooper Fouch, USFS

 person is awaiting trial in another Federal or State Court, give name of court  
 this person/proceeding is transferred from another district per FRCrP  20  21  40. Show District

 this is a reprocution of charges previously dismissed which were dismissed on motion of:  
 U.S. Att'y  Defense  
 this prosecution relates to a pending case involving this same defendant  
 prior proceedings or appearance(s) before U.S. Magistrate Judge regarding this defendant were recorded under
SHOW  
DOCKET NO.MAGISTRATE  
JUDGE CASE NO.  
19-MJ-00141

## DEFENDANT

## IS NOT IN CUSTODY

1)  Has not been arrested, pending outcome of this proceeding  
If not detained, give date any prior summons was served on above charges  
2)  Is a Fugitive  
3)  Is on Bail or Release from (show District)

## IS IN CUSTODY

4)  On this charge  
5)  On another conviction  
6)  Awaiting trial on other charges }  Fed'l  State  
If answer to (6) is "Yes," show name of institution
Has detainer  
been filed?  Yes  No  
If "Yes,"  
give date  
filed

Mo. Day Year

DATE OF  
ARREST

Or . . . if Arresting Agency &amp; Warrant were not Federal

Mo. Day Year

DATE TRANSFERRED  
TO U.S. CUSTODYName and Office of Person  
Furnishing Information on  
THIS FORM

STACEY MANRIQUEZ

 U.S. Att'y  Other U.S. AgencyName of Asst. U.S.  
Att'y (if assigned)

KATHERINE E. SCHUH

 This report amends AO 257 previously submitted

## ADDITIONAL INFORMATION OR COMMENTS

 ADD FORFEITURE UNIT (Check if Forfeiture Allegation)

Preliminary Examination set for 7/31/19 @ 2 PM in Courtroom 9 (SAB)

**United States v. Hector Manuel Gomez Rodriguez, et al.,**  
**Penalties for Indictment**

**Defendants**

**Hector Manuel Gomez Rodriguez**  
**Mucio Alejandro Gomez Rodriguez**

1:19 CR 00161 DAD BAM

**COUNT 1: ALL DEFENDANTS**

**VIOLATION:** 21 U.S.C. § 841(a)(1) – Manufacture of 1,000 or More Marijuana Plants

**PENALTIES:** Mandatory minimum of 10 years in prison and a maximum of up to life in prison; or  
Fine of up to \$10,000,000; or both fine and imprisonment  
Supervised release of at least 5 years up to life

**COUNT 2: ALL DEFENDANTS**

**VIOLATION:** 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Manufacture 1,000 or More Marijuana Plants

**PENALTIES:** Mandatory minimum of 10 years in prison and a maximum of up to life in prison; or  
Fine of up to \$10,000,000; or both fine and imprisonment  
Supervised release of at least 5 years up to life

**SPECIAL ASSESSMENT:** \$100 (mandatory on each count)

**COUNT 3: ALL DEFENDANTS**

**VIOLATION:** 18 U.S.C. § 1361 – Depredation of Public Lands and Resources

**PENALTIES:** Up to ten years in prison; or  
Fine of up to \$250,000 or twice the gross pecuniary loss pursuant to 18 U.S.C. § 3571  
Supervised release of up to 3 years

**SPECIAL ASSESSMENT:** \$100 (mandatory on each count)

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**FORFEITURE ALLEGATION:** all Defendants

**VIOLATION:** 21 U.S.C. § 853(a) - Criminal Forfeiture

**PENALTIES:** As stated in the charging document



**United States v. Hector Manuel Gomez Rodriguez, et al.,**  
**Penalties for Indictment**

**Defendants**

**Hector Manuel Gomez Rodriguez**  
**Mucio Alejandro Gomez Rodriguez**

1:19 CR 00161 DAD BAM

**COUNT 1: ALL DEFENDANTS**

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Supervised release of at least 5 years up to life

**COUNT 2: ALL DEFENDANTS**

**VIOLATION:** 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Manufacture 1,000 or More Marijuana Plants

**PENALTIES:** Mandatory minimum of 10 years in prison and a maximum of up to life in prison; or  
Fine of up to \$10,000,000; or both fine and imprisonment  
Supervised release of at least 5 years up to life

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Supervised release of up to 3 years

**SPECIAL ASSESSMENT:** \$100 (mandatory on each count)

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**FORFEITURE ALLEGATION:** all Defendants

VIOLATION: 21 U.S.C. § 853(a) - Criminal Forfeiture

PENALTIES: As stated in the charging document

**FILED**

UNITED STATES DISTRICT COURT  
for the

Eastern District of California

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

United States of America

v.

Hector Manuel GOMEZ RODRIGUEZ,  
Musio Alejandro GOMEZ RODRIGUEZ

Case No. 1:19-mj-00141-SKO

*Defendant(s)*

**CRIMINAL COMPLAINT**

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

On or about the date(s) of July 16, 2019 in the county of Madera in the  
Eastern District of California, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
21 U.S.C. 841(a)(1)	Manufacture Marijuana, a Schedule I Controlled Substance;
21 U.S.C. 846	Conspiracy to Manufacture, Distribute and Possess with Intent to Distribute Marijuana, a Schedule I Controlled Substance.

**Penalties:** mandatory minimum 10 years imprisonment up to life, fine of up to \$10,000,000; or both fine and imprisonment; 5 years to life term of supervised release; \$100 special assessment

This criminal complaint is based on these facts:

See attached Affidavit of Special Agent Cooper Fouch, which is incorporated herein by reference.

Continued on the attached sheet.



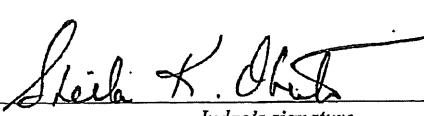
Complainant's signature

SA Cooper Fouch, USFS

*Printed name and title*

Sworn to before me and signed in my presence.

Date:

  
July 17, 2019

Judge's signature

City and state:

Fresno, CA

Hon. Sheila K. Oberto, U.S. Magistrate Judge

*Printed name and title*

1 **AFFIDAVIT IN SUPPORT OF APPLICATION FOR ARREST WARRANTS**

2 **I. AFFIANT'S TRAINING AND EXPERIENCE**

3 I, Cooper Fouch, being duly sworn, do hereby swear or affirm:

4 1. I am a Special Agent with the United States Forest Service (USFS), and have been since October  
5 2017. Prior to being a Special Agent, I was a USFS law enforcement officer (LEO) for approximately  
6 six years. Prior to being a USFS LEO, I was a wild land firefighter with the USFS from 2008 to 2011. I  
7 am a graduate of the Federal Law Enforcement Training Center's Land Management Police Training  
8 Program (2011) and Criminal Investigator Training Program (2018). My primary duties include  
9 detecting, investigating, apprehending, and prosecuting criminal activity on and relating to National  
10 Forest System lands. I also have the powers of a California State Peace Officer per California Penal  
11 Code section 830.8(b).

12 2. I have conducted numerous controlled substance investigations and have arrested/cited many  
13 persons for being under the influence, possession, manufacturing and transportation of various  
14 controlled substances and illegal drug paraphernalia. I have investigated or participated in the  
15 investigation of numerous clandestine, outdoor marijuana cultivation sites on federal, state and private  
16 lands. The marijuana cultivation sites have been in various stages of production. I have flown  
17 marijuana reconnaissance missions with officers and agents who have attended the DEA Aerial  
18 Cannabis Observation School and have spotted marijuana gardens by air. I have also taken part in  
19 marijuana cultivation and reclamation operations, along with residential search warrants related to  
20 marijuana cultivation investigations.

21 3. While employed as an LEO, I attended an 80-hour Drug Enforcement Training Program course  
22 given by the USFS, which focuses specifically on marijuana cultivation activities on Forest Service  
23 Lands. I have written and been the affiant on multiple search warrants, testified in front of a Grand Jury,  
24 and written multi-jurisdictional operations plans all related to marijuana cultivation investigations on  
25 public lands within the Eastern District of California.

26 4. During the course of my work, I have had the opportunity to converse with numerous Law  
27 Enforcement Officers and drug enforcement officers, informants, as well as admitted and known drug  
28 traffickers, including outdoor marijuana growers/traffickers, as to the methods, regarding the

1 manufacture, importation, transportation, distribution and sales of controlled substances. I have been the  
2 affiant on federal search and arrest warrants and have testified in federal court in the area of narcotics.

3 5. Through prior investigations and training, I have become familiar with the types and amounts of  
4 profits made by drug dealers and the methods, language and terms that are used. I am familiar and have  
5 participated in various investigative methods including, but not limited to, visual surveillance,  
6 interviewing of witnesses, search warrants and use of confidential informants. I have worked joint  
7 investigations with various experienced Law Enforcement Officers who are trained in narcotics  
8 investigations and I have drawn from their knowledge and expertise in the field of narcotics  
9 enforcement.

10 6. Typically, drug traffickers possess firearms and other dangerous weapons to protect themselves  
11 or their contraband. Based on my training, experience and discussions with other experienced narcotic  
12 agents, I know that firearms are often found at marijuana cultivation sites on public lands.

13 7. I know that marijuana traffickers often cultivate marijuana on public lands throughout the  
14 country, including the Eastern District of California.

15 8. Based on my training and experience, through discussions with experienced narcotics  
16 investigators and through the information I have learned through investigations, I know that most  
17 outdoor live-in marijuana cultivation operations are generally conducted in a similar manner. Outdoor  
18 marijuana cultivation operations involving a large number of marijuana plants require substantial labor  
19 to tend to the plants, provide logistical support for the labor force tending to the plants and provide  
20 financial support until proceeds for the processed marijuana are received.

21 9. Outdoor marijuana cultivation organizations start exploring and scouting potential cultivation  
22 sites in the late winter and early spring. These organizations are normally in search of areas in which the  
23 snow melts comparatively early, in close proximity to a viable water supply and isolated to avoid  
24 encounters with recreationalists. Most outdoor marijuana cultivation organizations desire to plant  
25 marijuana plants as early as possible in order to harvest the plants as early as possible and potentially  
26 tend a second crop for the year before it becomes too cold in the late fall and early winter. Additionally,  
27 during scouting excursions, these organizations attempt to identify drop points that can be utilized for  
28 the delivery of supplies, equipment and people, which are in adjacent proximity to the cultivators' trail

1 heads and/or cultivation sites. A drop point is a designated location where the drivers can deliver  
2 equipment, supplies and workers for the cultivation sites(s). Drop points are normally located along a  
3 rural route so that the cultivation workers can walk the delivered supplies to the camp area and the  
4 marijuana from the grow site to the drop point. It is normal to locate a distinct trail system near the drop  
5 points. On most occasions, these organizations favor their drop points to be located in remote areas  
6 where law enforcement and recreational traffic is scarce, in order to avoid detection.

7 10. Once an outdoor marijuana cultivation organization identifies possible cultivation sites, the  
8 organization engages in procuring needed supplies to prepare the land and locate and set up a water  
9 source for the cultivation site. In many cases, fertilizers, herbicides, pesticides and irrigation equipment  
10 are acquired from various vendors, as well as through illegal sources, such as through smuggled items  
11 brought into the United States.

12 11. As equipment and supplies for the marijuana grow site are procured, the outdoor marijuana  
13 cultivation organization starts to deliver items to the area of the marijuana cultivation site. Usually,  
14 these items are delivered to the pre-designated drop points.

15 12. The land is prepared for planting and watering of the marijuana plants. Once a natural water  
16 source is identified and tapped into and a water reservoir is established, an irrigation system is  
17 constructed. The natural vegetation is cut, removed or thinned to make space for the marijuana plants.  
18 Locations for the camp are also established.

19 13. After the land has been prepared for planting, the marijuana seeds or plants are placed into the  
20 ground. For cultivation sites that use live-in workers, camps are prepared and the live-in workers  
21 establish unauthorized occupancy in the cultivation areas.

22 14. Throughout the growing season, which typically lasts between three and six months, various  
23 supplies, equipment and groceries are purchased by or provided by individuals who deliver the supplies  
24 to the grow sites. These individuals are frequently referred to as "lunch men." The lunch men deliver  
25 needed supplies and workers to the designated drop point. The lunch men also retrieve processed  
26 marijuana from the grow site and pick up workers from the marijuana grow site.

27 15. As the marijuana plants mature, more workers arrive at the cultivation site(s) to help with the  
28 labor involved in harvesting and processing of the marijuana buds. The harvested marijuana is laid out

1 to dry in processing areas within the cultivation site(s) and as it becomes dried, it is packaged and  
2 moved to the drop point for pick up by the drivers for delivery to the distribution centers or to the  
3 organizations leadership.

4 16. I know that persons cultivating marijuana for sale will routinely have a variety of vehicles at  
5 their disposal, which will be newly purchased used vehicles, borrowed vehicles, or vehicles not  
6 registered to the current owner, to circumvent Law Enforcement from determining the identity of the  
7 person using the vehicle or the actual owner of the vehicle to deter further investigation.

8 17. Outdoor marijuana cultivation organizations have become dependent on the use of cellular  
9 telephones to facilitate communications in furtherance of their marijuana cultivation scheme. Cellular  
10 telephones are used to communicate among co-conspirators, distributors, purchasers, drivers, the  
11 laborers in the grow site(s) and their leaders. Communications include coordinating the procurement of  
12 supplies and equipment and oversight of the progress of the tended to marijuana plants. Some  
13 cultivation sites are located in areas where there is no cellular phone service. In these situations, a  
14 designated check in time is established, in which the growers walk to an area where there is cellular  
15 service to place their cellular telephone calls.

16 18. Upon completion of harvesting the marijuana plants, the sites are abandoned, leaving behind  
17 materials such as pesticides, herbicides, fertilizers, trash, propane tanks and food items. The items left  
18 behind attract wildlife, such as bears, which attempt to eat the discarded items. The by-products of  
19 marijuana cultivation have the capability of harming the environment and wildlife and contaminating  
20 nearby water sources, such as creeks and streams.

21 19. Based on my training, experience, and my participation in other investigations involving large  
22 amounts of controlled substances, I know that the following items are commonly found at drug  
23 trafficking locations such as outdoor marijuana grow sites:

24 a. Contraband, proceeds of drug sales, and records of transactions, drug sources, and drug  
25 customers,  
26 b. Drug traffickers often possess weapons in order to protect themselves, their drugs, and their  
27 drug proceeds from others,

28

- 1       c. Drug traffickers usually keep paraphernalia for packaging, cutting, weighing, and distributing
- 2       controlled substances,
- 3       d. Drug traffickers commonly maintain addresses or telephone numbers in books or papers which
- 4       reflect names, addresses, and/or telephone numbers of their associates in the drug trafficking
- 5       organization, even if these items might be in code,
- 6       e. Drug traffickers frequently take, or cause to be taken, photographs of themselves, their
- 7       associates, their property, and their product (controlled substances),
- 8       f. Drug traffickers often maintain articles of personal property, such as personal identification,
- 9       personal correspondence, delivery pouches, diaries, checkbooks, notes, photographs, keys,
- 10      utility bills, and receipts. These items are essential to establish the identities of individuals in
- 11      control or possession of the premises, residences, vehicles, storage areas, and containers being
- 12      searched,
- 13      g. Drug traffickers will often use cellular telephone and/or pagers to further their criminal
- 14      activity,
- 15      h. Drug traffickers often maintain, on hand, large amounts of U.S. currency in order to maintain
- 16      and finance their ongoing drug business, and
- 17      i. Drug traffickers often travel, sometimes great distances, to manage the production and/or
- 18      distribution of controlled substances. Documentation of this travel will often be kept at these
- 19      locations.
- 20     20. My awareness of these drug trafficking practices, as well as my knowledge of drug
- 21     manufacturing and distribution techniques as set forth in this Affidavit, arise from the following:
- 22      a. my training in controlled substance investigations;
- 23      b. my past experience in outdoor marijuana cultivation investigations;
- 24      c. my involvement in this drug investigation;
- 25      d. what other experienced drug agents have advised me when relating the substance of
- 26      debriefings of confidential informants and cooperating individuals in prior drug investigations
- 27      and the results of their own drug investigations; and
- 28      e. other information provided through law enforcement channels.

1                   **II. SUMMARY OF INVESTIGATION**

2       21. This investigation involves a marijuana cultivation site (hereinafter referred to as the Cascadel  
3 cultivation site) located on public lands administered by the USFS in Madera County, within the Eastern  
4 District of California. The Cascadel cultivation site was discovered by aerial reconnaissance on June 12,  
5 2019, when Madera County Sheriff's Deputy Mike Chambers observed live marijuana plants, in the  
6 location described below. On July 16, 2019, officers and agents conducted a raid operation and search  
7 warrant execution of the Cascadel cultivation site, during which two individuals, Musio Alejandro  
8 GOMEZ RODRIGUEZ and Hector Manuel GOMEZ RODRIGUEZ, were apprehended.

9                   **III. PURPOSE OF AFFIDAVIT**

10       This affidavit is made in support of a criminal complaint and the issuance of arrest warrants for  
11 Musio Alejandro GOMEZ RODRIGUEZ and Hector Manuel GOMEZ RODRIGUEZ. I have not  
12 included every detail of this investigation in this affidavit. I have included only the information that is  
13 necessary to establish probable cause for the purpose of charging Musio Alejandro GOMEZ  
14 RODRIGUEZ and Hector Manuel GOMEZ RODRIGUEZ.

15                   **IV. APPLICABLE LAW**

16       22. This affidavit is based on violations of Title 21, United States Code, sections 841(a)(1) and 846,  
17 conspiracy to manufacture, to distribute and to possess with intent to distribute marijuana, a schedule I  
18 controlled substance.

19       23. The facts and information set forth herein are based upon my knowledge and observations,  
20 observations of other law enforcement personnel, my review of investigative reports, and conversations  
21 with federal and state law enforcement officials. This affidavit is intended to show there is probable  
22 cause for the requested complaint and arrest warrants and does not purport to include every fact known  
23 to me, rather, only those facts I believe necessary to establish probable cause. Title 21, United States  
24 Code, Section 841(a)(1), states it is unlawful for any person to knowingly or intentionally manufacture,  
25 distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled  
26 substance. Title 21, United States Code, Section 846, states any person who attempts or conspires to  
27 commit any offense defined under Title 21 of the United States Code shall be subject to the same

1 penalties as those prescribed for the offense, the commission of which was the object of the attempt or  
2 conspiracy.

3 **V. FACTS ESTABLISHING PROBABLE CAUSE**

4 26. On June 12, 2019,<sup>1</sup> I was notified of an active marijuana cultivation site (the Cascadel cultivation  
5 site) on public lands administered by the USFS, in Madera County, within the Sierra National Forest,  
6 Eastern District of California. Madera County Sheriff's Office Detective Brad Dorr advised that the  
7 Cascadel cultivation site was located during aerial reconnaissance operations conducted on June 12,  
8 2019. Detective Dorr provided GPS coordinates obtained for the cultivation site during the aerial  
9 reconnaissance. The GPS coordinates provided were: 37.23881-119.47690 (37 14.328'N, -119  
10 28.613'W). Additionally, Detective Dorr provided me with photographs of the cultivation site, taken  
11 during aerial reconnaissance. In reviewing the photographs, I identified live marijuana plants in various  
12 stages of growth based on my training and experience.

13 27. On June 19, 2019, USFS LEO Nikolaus Beer and I conducted ground reconnaissance of the  
14 Cascadel cultivation site in an attempt to locate drop points and access trails associated with the site.  
15 LEO Beer and I began hiking from a large turnout on Madera County Road 233. We hiked through the  
16 vegetation to the north, down to a switchback turn along Road 233 which has been used as a drop point  
17 for clandestine marijuana cultivation sites in the past. At the switchback turn I observed a recently used  
18 trail heading downslope in the general direction of the Cascadel cultivation site. LEO Beer and I  
19 continued to follow the trail. The identified trail led LEO Beer and I directly to a camp in the same area  
20 as the GPS coordinates provided to me on June 12, 2019. The camp consisted of a large dark tent with a  
21 tarp above, tied off to surrounding trees in an attempt to conceal the location. The identified trail was  
22 well-used. There were multiple boot prints on the trail, significant damage to vegetation, and some  
23 areas where the trail had been worn to bare soil. Based on my training and experience, I believe this  
24 trail is the main trail being utilized to access the Cascadel cultivation site.

25 28. LEO Beer and I departed the area of the cultivation site and returned to the switchback turn  
26 along Road 233, where the trail originated from. At that time, I installed a license plate reading (LPR)  
27 surveillance camera along the turn, along with a surveillance camera on the trail adjacent to the turn.

28 <sup>1</sup> Any and all references herein to dates and times are to approximate dates and times.

1 29. Between the dates of June 19 and June 25, 2019, the surveillance cameras in the area of the drop  
2 point and drop point trail captured the following:

- 3 a. On June 19, 2019, at approximately 2019 hours, the LPR camera photographed two  
4 Hispanic male adults running onto the roadway and meeting a Chevy/GMC sports utility  
5 vehicle (SUV). The passenger of the SUV appeared to be holding a bottle to hand over to  
6 the subjects on the roadway.
- 7 b. On June 22, 2019, at approximately 2033 hours, one male subject was photographed  
8 walking down the drop point trail in the general direction of the cultivation site. At  
9 approximately 2212 hours, two male subjects were photographed walking back up the  
10 drop point trail towards the roadway.
- 11 c. On June 24, 2019, at approximately 2240 hours, three male subjects were photographed  
12 carrying supplies down the drop point trail in the direction of the cultivation site. Two of  
13 the subjects were carrying large military-style rucksacks. The third subject was carrying  
14 bags of fertilizer. At approximately 2246 hours, two of the subjects were photographed  
15 walking back up the trail towards the roadway.
- 16 d. On June 25, 2019, at approximately 0534 hours, one male subject was photographed  
17 walking up the trail towards the roadway. At approximately 0537 hours, the same subject  
18 was photographed walking down the trail with an unidentified black item under his arm.

19 30. On July 12, 2019, I obtained a federal search warrant for the Cascadel cultivation site, signed by  
20 the Honorable Judge Sheila K Oberto. The search warrant authorized the search of GPS coordinates 37  
21 14.337°N, -119 28.610°W, and any satellite sites.

22 31. On the morning of July 16, 2019, officers and agents conducted a raid operation and search  
23 warrant execution of the Cascadel cultivation site. As I approached the previously identified "camp"  
24 area, I observed one subject, later identified as Hector Manuel GOMEZ RODRIGUEZ, moving about  
25 the camp. When Forest Service SA Grate and I were approximately fifteen to twenty feet from H.  
26 GOMEZ RODRIGUEZ, I announced my presence as a police officer and ordered him, in Spanish, to put  
27 his hands up. H. GOMEZ RODRIGUEZ looked towards me and put his hands up momentarily. H.  
28 GOMEZ RODRIGUEZ then began running away. I pursued H. GOMEZ RODRIGUEZ on foot as he

1 continued fleeing down the hill. H. GOMEZ RODRIGUEZ tripped and fell in the vegetation and I took  
2 him into custody without incident. The "camp" area where H. GOMEZ RODRIGUEZ was first  
3 encounter by myself and SA Grate was situated directly adjacent to a plot containing live marijuana  
4 plants.

5 32. While I was pursuing H. GOMEZ RODRIGUEZ, Forest Service SA Michael Grate observed a  
6 pistol in the camp area H. GOMEZ RODRIGUEZ was originally contacted. SA Grate identified the  
7 pistol as being loaded and rendered the pistol safe by removing the magazine and ejecting the  
8 chambered round. The loaded pistol was less than five feet from the location H. GOMEZ RODRIGUEZ  
9 was originally contacted.

10 33. While I was securing H. GOMEZ RODRIGUEZ, SA Grate and CA Department of Fish and  
11 Wildlife Warden Garrett Lenz continued to move through and clear the Cascadel cultivation site for  
12 additional suspects. SA Grate and Warden Lenz observed a Hispanic male adult, later identified as  
13 Musio Alejandro GOMEZ RODRIGUEZ, walking through the cultivation site in their general direction.  
14 As M. GOMEZ RODRIGUEZ moved closer to SA Grate and Warden Lenz, they announced their  
15 presence as police officers and ordered M. GOMEZ RODRIGUEZ to stop. M. GOMEZ RODRIGUEZ  
16 fled on foot for a short distance before being apprehended by SA Grate and Warden Lenz. After  
17 securing M. GOMEZ RODRIGUEZ, SA Grate located a sleeping area, in the direction M. GOMEZ  
18 RODRIGUEZ was walking from. At the sleeping area, SA Grate located a loaded pellet gun.

19 34. The Cascadel cultivation site was photographed and video documented prior to eradication.  
20 Additional personnel were brought into the cultivation site to assist with the eradication. Based on my  
21 training and experience, I recognized the plants growing at the site to be live marijuana plants. The  
22 plants had a leaf shape, smell, and overall appearance consistent with live marijuana plants. A total of  
23 4,494 live marijuana plants were eradicated from the Cascadel cultivation site.

24 \\  
25 \\  
26 \\  
27 \\  
28 \\

## VI. OPINIONS AND CONCLUSION

2 35. Based on the foregoing, I submit there is probable cause to believe that Hector Manuel GOMEZ  
3 RODRIGUEZ and Musio Alejandro GOMEZ RODRIGUEZ violated Title 21, United States Code,  
4 Sections 841(a)(1) and 846, manufacture and conspiracy to manufacture, to distribute and to possess  
5 with intent to distribute marijuana, a Schedule I controlled substance.

6 36. I swear under penalty of perjury that the facts presented are true and accurate to the best of my  
7 knowledge.

Cooper Fouch  
Special Agent  
United States Forest Service

Sworn and subscribed to before me on  
July 17<sup>th</sup>, 2019.

The Honorable Sheila K. Oberto

Approved as to Form:

/s/ Katherine E. Schuh  
KATHERINE E. SCHUH  
Assistant United States Attorney

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

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HECTOR MANUEL GOMEZ RODRIGUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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**PROOF OF SERVICE**

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I, David A. Schlesinger, declare that on March 26, 2024, as required by Supreme Court Rule 29, I served Petitioner Hector Manuel Gomez Rodriguez'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 Hector Manuel Gomez Rodriguez, by depositing an envelope containing the documents in the U.S. mail, first-class postage prepaid, and sending it to the following address:

Hector Manuel Gomez Rodriguez  
Federal Inmate Register No. 78327-097  
USP Lompoc  
U.S. Penitentiary  
3901 Klein Blvd.  
Lompoc, CA 93436

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

Executed on March 26, 2024



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DAVID A. SCHLESINGER  
Declarant