

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

NAREY PEREZ-QUIBUS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

HECTOR A. DOPICO
Federal Public Defender
Brenda G. Bryn
Assistant Federal Public Defender
Counsel of Record for Petitioner
1 E. Broward Boulevard, Suite 1100
Ft. Lauderdale, Florida 33301
Telephone No. (954) 356-7436

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2024 WL 4524712

Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Narey PEREZ-QUIBUS, Defendant-Appellant.

No. 23-10465

|

Non-Argument Calendar

|

Filed: 10/18/2024

Appeal from the United States District Court for the Southern
District of Florida, D.C. Docket No. 1:22-cr-20243-BB-1

Attorneys and Law Firms

Shahrzad Daneshvar, DOJ-USAO, Miami, FL, [Daniel Matzkin](#), [Lisa Tobin Rubio](#), [Jason Wu](#), U.S. Attorney Service - SFL, Miami, FL, U.S. Attorney Service Southern District of Florida, Miami, FL, for Plaintiff-Appellee.

[Brenda Greenberg Bryn](#), Federal Public Defender's Office, Fort Lauderdale, FL, [Aimee Ferrer](#), Grossman Roth Yaffa Cohen, PA, Coral Gables, FL, [Michael Caruso](#), Federal Public Defender's Office, Miami, FL, for Defendant-Appellant.

Before [William Pryor](#), Chief Judge, and [Rosenbaum](#) and [Abudu](#), Circuit Judges.

Opinion

PER CURIAM:

*1 Narey Perez-Quibus appeals his convictions for possession of a firearm and ammunition as a convicted felon. 18 U.S.C. § 922(g)(1). He argues that section 922(g)(1) facially violates the Second Amendment based on *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). We affirm.

We review the constitutionality of a statute *de novo*. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). But challenges raised for the first time on appeal are reviewed for plain error. *Id.* To establish plain error, a defendant must show an error, that was plain, that affected his substantial rights, and that seriously affected the fairness, integrity, or

public reputation of judicial proceedings. *Id.* An error is plain if it is contrary to precedent from this Court or the Supreme Court. *United States v. Hoffman*, 710 F.3d 1228, 1232 (11th Cir. 2013).

The prior-precedent rule requires us to follow our precedent unless it is overruled by this Court en banc or by the Supreme Court. *United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016). Under this rule, an intervening Supreme Court decision “must be clearly on point” and must “actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel.” *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (citations and internal quotation marks omitted). And to do so, “the later Supreme Court decision must ‘demolish’ and ‘eviscerate’ ” each of the prior precedent’s “fundamental props.” *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024) (internal quotation marks omitted).

Perez-Quibus argues we should review his conviction *de novo* because he raises a jurisdictional issue. But we have rejected this kind of attempt to reframe a constitutional attack as jurisdictional. See *United States v. Alfonso*, 104 F.4th 815, 829 n.18 (11th Cir. 2024). Because Perez-Quibus did not raise his Second Amendment challenge in the district court, we review his argument for plain error. See *Wright*, 607 F.3d at 715.

Our precedent forecloses Perez-Quibus’s argument. In *United States v. Dubois*, we reaffirmed that, under *District of Columbia v. Heller*, 554 U.S. 570 (2008), section 922(g)(1) does not violate the Second Amendment. 94 F.4th at 1291–93 (citing *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010)). We rejected the argument that *Bruen* abrogated *Rozier* because *Bruen* “repeatedly stated that its decision was faithful to *Heller*.” *Id.* at 1293. And the recent decision in *United States v. Rahimi*, does not change our analysis. 144 S. Ct. 1889 (2024). *Rahimi* did not “demolish” or “eviscerate” the “fundamental props” of *Rozier* or *Dubois*. *Dubois*, 94 F.4th at 1293. To the contrary, *Rahimi* reiterated that prohibitions on the “possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’ ” *Rahimi*, 144 S. Ct. at 1902 (quoting *Heller*, 554 U.S. at 626, 627 n.26).

We **AFFIRM** Perez-Quibus’s convictions.

All Citations

Not Reported in Fed. Rptr., 2024 WL 4524712

End of Document

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Jun 7, 2022

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
22-20243-CR-BLOOM/OTAZO-REYES

CASE NO. _____

18 U.S.C. § 922(g)(1)

18 U.S.C. § 924(d)(1)

UNITED STATES OF AMERICA

v.

NAREY PEREZ-QUIBUS,

Defendant.

_____ /

INDICTMENT

The Grand Jury charges that:

COUNT 1

**Possession of a Firearm and Ammunition by a Convicted Felon
(18 U.S.C. § 922(g)(1))**

On or about April 8, 2022, in Miami-Dade County, in the Southern District of Florida, the
defendant,

NAREY PEREZ-QUIBUS,

knowingly possessed a firearm and ammunition in and affecting interstate and foreign commerce,
knowing that he had previously been convicted of a crime punishable by imprisonment for a term
exceeding one year, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

It is further alleged that said firearm and ammunition are:

- a. One (1) Glock, model 22, caliber 40, serial number FPG128; and
- b. Thirteen (13) .40 caliber rounds of ammunition.

COUNT 2
Possession of Ammunition by a Convicted Felon
(18 U.S.C. § 922(g)(1))

On or about April 8, 2022, in Miami-Dade County, in the Southern District of Florida, the defendant,

NAREY PEREZ-QUIBUS,

knowingly possessed ammunition in and affecting interstate and foreign commerce, knowing that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

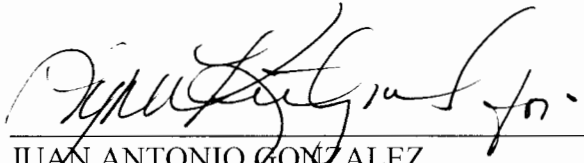
It is further alleged that said ammunition is twenty-two (22) .40 caliber rounds of ammunition.

FORFEITURE ALLEGATIONS


1. The allegations of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **NAREY PEREZ-QUIBUS**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 922(g), or any other criminal law of the United States, as alleged in this Indictment, the defendant shall forfeit to the United States any firearm and ammunition involved in or used in the commission of such offense, pursuant to Title 18, United States Code, Section 924(d)(1).

All pursuant to Title 18, United States Code, Sections 924(d)(1) and the procedures set forth at Title 21, United States Code, Section 853, as incorporated by Title 28, United States Code, Section 2461(c).



JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY



WILL J. ROSENZWEIG
ASSISTANT UNITED STATES ATTORNEY

A TRUE BILL

FOREPERSON



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO.:

v.

NAREY PEREZ-QUIBUS,

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division (select one)

- ☒ Miami ☐ Key West ☐ FTP
☐ FTL ☐ WPB

New Defendant(s) (Yes or No)

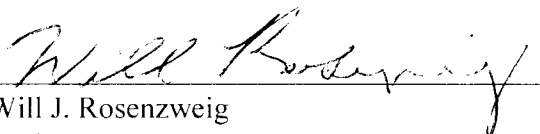
Number of New Defendants

Total number of New Counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. §3161.
3. Interpreter: (Yes or No) Yes
List language and/or dialect: Spanish
4. This case will take 2 days for the parties to try.
5. Please check appropriate category and type of offense listed below:
(Check only one) (Check only one)
I ☒ 0 to 5 days ☐ Petty
II ☐ 6 to 10 days ☐ Minor
III ☐ 11 to 20 days ☐ Misdemeanor
IV ☐ 21 to 60 days ☒ Felony
V ☐ 61 days and over
6. Has this case been previously filed in this District Court? (Yes or No) No
If yes, Judge Case No.
7. Has a complaint been filed in this matter? (Yes or No) No
If yes, Magistrate Case No.
8. Does this case relate to a previously filed matter in this District Court? (Yes or No) No
If yes, Judge Case No.
9. Defendant(s) in federal custody as of
10. Defendant(s) in state custody as of April 8, 2022
11. Rule 20 from the District of
12. Is this a potential death penalty case? (Yes or No) No
13. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard? (Yes or No) No
14. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss? (Yes or No) No

By:


Will J. Rosenzweig

Assistant United States Attorney

Court ID No. A5502698

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Narey Perez-Quibus

Case No: _____

Count #: 1

Possession of a Firearm and Ammunition by a Convicted Felon

Title 18, United States Code, Section 922(g)(1)

*** Max. Term of Imprisonment: 10 years**

*** Max. Supervised Release: 3 years**

*** Max. Fine: \$250,000**

Count #: 2

Possession of Ammunition by a Convicted Felon

Title 18, United States Code, Section 922(g)(1)

*** Max. Term of Imprisonment: 10 years**

*** Max. Supervised Release: 3 years**

*** Max. Fine: \$250,000**

***Refers only to possible term of incarceration, supervised release and fines. It does not include restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

NAREY PEREZ-QUIBUS

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **1:22-CR-20243-BB(1)**§ USM Number: **06778-510**

§

§ Counsel for Defendant: **Aimee Allegra Ferrer**

§

Counsel for United States: **Will Rosenzweig****THE DEFENDANT:**

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	One and two of the indictment.
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	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

18§922 (g) (1) Possession Of A Firearm and Ammunition By A Convicted Felon

18§922 (g)(1) Possession Of Ammunition By A Convicted Felon

Offense Ended

04/08/2022

04/08/2022

Count

1

2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

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, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

January 27, 2023

Date of Imposition of Judgment



Signature of Judge

BETH BLOOM**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

January 27, 2023

Date

DEFENDANT: NAREY PEREZ-QUIBUS
CASE NUMBER: 1:22-CR-20243-BB(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

45 months total. Term consists of 45 months as to Count 1 & 45 months as to Count 2; terms to run consecutively. Defendant to receive credit from time of arrest as of April 8, 2022. Sentence to run concurrent with sentence in State Case No. F22-6476.

- ☒ The Court makes the following recommendations to the Bureau of Prisons: That the Defendant be designated to a South Florida facility due to family ties.
- ☐ 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 ☐ a.m. ☐ p.m. 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 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

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: NAREY PEREZ-QUIBUS
CASE NUMBER: 1:22-CR-20243-BB(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years as to each of Counts 1 & 2; terms to run concurrent.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ 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 which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: NAREY PEREZ-QUIBUS
CASE NUMBER: 1:22-CR-20243-BB(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 your 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 your 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. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: NAREY PEREZ-QUIBUS
CASE NUMBER: 1:22-CR-20243-BB(1)

SPECIAL CONDITIONS OF SUPERVISION

Anger Control / Domestic Violence: The defendant shall participate in an approved treatment program for anger control/domestic violence. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Surrendering to Immigration for Removal After Imprisonment: At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: NAREY PEREZ-QUIBUS
CASE NUMBER: 1:22-CR-20243-BB(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$.00	\$.00		

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. 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 the schedule of payments page 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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** 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: NAREY PEREZ-QUIBUS
CASE NUMBER: 1:22-CR-20243-BB(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 payments of \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 2 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.