No. ___________

In the Supreme Court of the United States

JUAN MARTIN TORRES,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May a district court admit evidence of prior bad acts to show intent where the intent sought to be shown is not an element of the crime charged?

2. May a district court admit evidence of prior bad acts regarding modus operandi where the modus operandi sought to be shown is not the modus operandi used in the crime charged?

PARTIES TO THE PROCEEDINGS

The parties are Petitioner, Juan Martin Torres, and respondent, United States of America. All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, AND SENTENCING GUIDELINES:

UNITED STATES CONSTITUTION

FEDERAL STATUTES

FEDERAL RULES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Juan Martin Torres, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on November 3, 2017, Ninth Circuit Court of Appeal № 16-10209.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum decision in this matter. App. 1a. See United States v. Torres, 700 Fed. Appx. 751 (9th Cir. 2017)(unpublished). The district court order from which Mr. Torres appealed is also unpublished. App. 4a. See United States v. Torres, U.S. District Court, Eastern District of California № 13-cr-00390-AWI.

STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its memorandum in the instant matter was November 3, 2017. 2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

A. Mr. Torres's Personal History

The petitioner, 29-year-old Juan Martin Torres, came from a humble but loving family. ER[1] 946-947. His mother, Sara Avila, had to work hard to support Juan and his two older sisters because Juan's father had abandoned the family when Juan was young. ER 947, 965. After his father left, Juan only saw him on two occasions. ER 947.

Despite the loving and supportive nature of Juan's childhood home, it could not protect him from becoming a victim of repeated sexual abuse. Juan was first sexually abused by a neighbor when he was six or seven years. ER 808. At around the same time, he was also abused by a different perpetrator. ER 808. Juan told no one of the abuse. ER 808. When he was 10 or 11 years old, Juan was sexually abused once again by a neighbor. The neighbor touched Juan's penis and then forced him to perform sexual acts. When Ms. Avila learned of her son's abuse, she went to the police, her priest, and the school counselor. ER 965. Despite her efforts, no charges were ever filed against the perpetrator. ER. 965. Ms. Avila was

[1]"ER" refers to the Excerpts of Record filed in the Ninth Circuit Court of Appeals.

never able to get the support and counseling for Juan that is offered today. ER 965.

Juan's sexual abuse took place before a backdrop of familial sexual abuse. At the age of five, Juan's mother was raped. ER 965. As with Juan's perpetrators, nothing was ever done to hers. ER 965. Juan's sisters were also apparently victims of abuse effected by perpetrators outside of the home. ER 947, 965. Not surprisingly, depression and anxiety run in Juan's family in that his mother and other family members suffer from these conditions. ER 947.

Shortly before his incarceration, Juan sought and began receiving counseling services, but those came to an end once he became confined. ER 947. While incarcerated, Juan asked to see a counselor due to feelings of depression and anxiety, but he was seen only once. ER 47.

Despite the family's history of challenges, Juan, and his family, thrived in many ways. Juan was such a sweetly dispositioned child that his mother nicknamed him "Happy." ER 965. He was an active student and named "Senior of the Month" while in high school. ER. 965. He enjoyed building model cars, video games, and football. ER 965. Juan was also a helpful young man. His elderly aunt is confined to a wheelchair, and Juan took it upon himself to take of her yard and run errands for her. ER 965.

Everyone in Juan's immediate family is gainfully employed. Juan's mother has worked at a local college for 18 years in student services. ER. 947. His oldest sister works in medical transport and his other sister is an assistant executive director at the Boys and Girls Club. ER 947. Juan also has a long history of employment. ER 948, 951. His employment was supported by the receipt of a high school diploma, an Associate of Arts degree in Liberal Arts, an Associate of Science degree in Computer Information Systems, and a Certificate of Achievement in Computer Information Systems from West Hills College. ER 948.

B. The Facts Giving Rise to Mr. Torres's Conviction

On July 1, 2013, a fourteen-year-old male (hereinafter referred to as "CV"), along with two other young men, began to light fireworks near a building next to the Boys and Girls Club in Firebaugh. ER 118-119, 310. The young men proceeded to throw the fireworks into the building, which caused it to catch fire. ER 118-119. The police arrested CV who ultimately was convicted for the arson. ER 100. As part of his sentence, the court allowed CV to do 120 hours of community service. ER 100-101, 311. CV was a patron of the Boys and Girls Club and was acquainted with its Unit Director, Juan Torres. ER 119, 948. Consequently, CV applied to work at the Boys and Girls Club to get his community service hours and was accepted to do so. ER 101-104, 311. Mr. Torres became CV's supervisor. ER 312, 914.

On October 3, 2013, CV contacted the Firebaugh Police Department and complained that he and Mr. Torres were having sexually-based chats via Facebook Messenger. ER 328-329, 914. In these chats, Mr. Torres allegedly offered CV additional community service hours if he would allow Mr. Torres to give him a "wedgie." ER 914. Mr. Torres also allegedly offered CV additional community service hours if CV allowed him to "jack him off." ER 914. Although CV refused the offers, Mr. Torres allegedly continued to make them. ER 914.

With the consent of CV's parents, the Firebaugh Police Department had CV initiate a Facebook Chat with Mr. Torres. ER 915. At one point during the chat, CV became uncomfortable and a police officer assumed CV's identity and continued the chat with Mr. Torres. ER 915. The officer then arranged for a meeting with Mr. Torres claiming that CV was willing to engage in the previously discussed sexual activity. ER 916-918.

Following the chat, the Firebaugh Police Department obtained a warrant to search Mr. Torres's home and the Firebaugh Boys and Girls Club. ER 918. The Department contacted Homeland Security Investigations (HSI) which also began an investigation of CV's allegations. ER 913.

On October 9, 2013, the Firebaugh Police Department and Homeland Security executed the search warrant on Mr. Torres's home. ER 18. Mr. Torres was present, and thus, during the search, the police and HSI interviewed him. ER 295, 306, 316, 918-922. The interview was audio taped. ER 127-133, 316. In response to the authorities questions, Mr. Torres explained that he essentially sent CV messages and chatted with him as a "joke." ER 919, 341-342. Mr. Torres stated that he wanted to get an answer and see what CV would say. ER 919. Mr. Torres denied having any intention of having sex with CV. ER 920. At the conclusion of the interview, the HSI arrested Mr. Torres for coercion/enticement. ER 922.

During the search of Mr. Torres's home, several computers and phones were seized. ER 922. As a result of these seizures, the authorities discovered a video allegedly depicting Mr. Torres having sex with a 15-year-old male. ER 54, 945-946. The event depicted took place in June 2012. ER 849.

C. Mr. Torres's Indictment, Arraignment, and Bail

On October 11, 2013, the federal government filed a complaint against Mr. Torres alleging a single count of Coercion/Enticement of a Minor under 18 U.S.C. 2422(b). ER 911. On October 25, 2013, the government filed an indictment against Mr. Torres making the same charge. ER 882.

The district court issued a warrant for Mr. Torres, and he was arrested on October 9, 2013. ER 910. A week later, the court released him on a personal recognizance bond, under the supervision of his mother. ER 894-895, 905-906,908. At his October 23, 2013 arraignment/detention hearing, Mr. Torres pleaded not guilty. ER 879.

Pre-Trial Services supervised Mr. Torres from October 17, 2013, to December 13, 2013. ER 938. During that time, he called on a weekly basis as directed, appeared in court as required, complied with the rules of home detention and electronic monitoring, and provided verification for all his leaves. ER 941.

On December 13, 2013, Fresno County, California filed charges against Mr. Torres which including Sodomy with a Person Under 16 Years of Age. ER 941, 945-946. These charges arose from the video seized during the Firebaugh Police Department and HSI's search of Mr. Torres's home. ER 941.

As a result of the State arrest, the district court ordered Mr. Torres detained. ER 876, 938. He remained, however, in the physical custody of the State. ER 876, 938, 946.

D. Motions in Limine and Fed. R. Evid. 404(b) Notice

On April 22, 2015, the government filed a motion in limine which included a notice of intent to offer evidence under Fed. R. Evid. 404(b). ER 835, 842. In this regard, the government requested that the district court admit as evidence information arising from the videotape obtained as a result of the October 9, 2013 search of Mr. Torres's home. ER 845. The videotape allegedly depicted a sexual encounter between Mr. Torres and a fifteen-year-old young man who was a patron of the Boys and Girls Club. ER 845. Although the government initially sought admission of this evidence under both Fed. R. Evid. 404(b) and Fed. R. Evid. 413, it later sought admission only under Fed. R. Evid. 404(b). ER 44-45, 47, 52-53, 568, 846.

In response to the government's 404(b) notice, Mr. Torres filed a motion in limine requesting that the district court refuse admission of information about the alleged sexual encounter. ER 52, 53, 776, 836. The district court denied Mr. Torres's motion in limine on this issue. ER 55-60, 567. Throughout the proceeding, Mr. Torres continued to object to the admission of the 404(b) evidence. ER 44-45, 52, 325. In so objecting, Mr. Torres asserted Fed. R. Evid. 404(b) and Fed. R. Evid. 403. ER 325.

E. The Trial and Verdict

Mr. Torres's trial began on February 2, 2016 and concluded on February 4, 2016. ER 237, 401. The alleged victim, CV, testified. ER 309. The district court ultimately allowed in the 404(b) evidence requested by the government. ER 325. Consequently, the young man seen in the seized videotape testified, and the jury viewed the video. ER 275-277, 333. At the time the jury heard the young man's testimony, the district court gave the jury a 404(b) instruction. ER 245-246, 281. The government also submitted, and the district court accepted, the audiotape of Mr. Torres's statement given at the time the authorities searched his home, to which the jury listened. ER 319.

Mr. Torres did not testify nor did he put on an affirmative defense. ER 327. On February 4, 2016,the jury found Mr. Torres guilty of the single count of the indictment charging Coercion/Enticement of a Minor in violation of 18 U.S.C. § 2422(b). ER 421-422.

F. The Sentencing Hearing and Appeal

The district court conducted Mr. Torres's sentencing hearing on May 9, 2016, sentencing him to 151 months of incarceration to be followed by 180 months of supervised release. ER 2-3, 16, 22-26. In so doing, the district court imposed 15 special conditions of supervision. ER 4-5, 27-32. Although the district read each of the special conditions imposed, it did not provide an explanation in support of the special conditions.

On May 13, 2016, Mr. Torres filed a timely notice of appeal challenging his conviction and sentence. ER 193. In his opening brief, Mr. Torres presented, inter alia, the following question:

> Whether the district court abused its discretion when it admitted, under Fed. R. Evid. 404(b), evidence of prior alleged sexual contact between Mr. Torres and a 15-year-old male who was not the alleged victim in this matter where:
>
> a. the evidence admitted did not prove a material point nor was it similar to the offense charged; and,
>
> b. The district court failed to properly evaluate whether the probative value of the alleged prior conduct was substantially outweighed

by its prejudicial effect and by the needless presentation of cumulative evidence.

On the basis of the above question, Mr. Torres requested that the Ninth Circuit Court of Appeals reverse his conviction. On November 3, 2017, the Court of Appeals issued a memorandum affirming the conviction and in so doing stated:

> Torres challenges the admission of a short video depicting his prior sexual assault of a minor and the victim's corroborating testimony. . . . We hold the admission was permissible and not unfairly prejudicial because it related to Torres' intent and modus operandi in targeting minors in his care and the district court provided multiple limiting instructions. United States v. Cherer, 513 F.3d 1150, 1157–59 (9th Cir. 2008).

App. 3a.

REASONS FOR GRANTING THE WRIT

I. THE DECISION IN THIS MATTER IS CONTRARY TO DUE PROCESS AND CONFLICTS WITH THE DECISIONS OF SISTER CIRCUITS ON AN IMPORTANT ISSUE OF LAW; THUS, THERE ARE COMPELLING REASONS TO GRANT CERTIORARI.

A. The Memorandum in this Matter Violates Due Process Because it Allows a Conviction Based on the Defendant's Character Rather than on Whether the Defendant Has Committed Each Element of the Crime Charged.

Fundamental to our system of justice is the notion that the guilt or innocence of an accused must be established by evidence relevant to the particular offense being tried, not by showing that the defendant has engaged in other acts of wrongdoing. *United States v. Bradley*, 5 F.3d 1317, 1320 (9th Cir. 1993) citing *United States v. Hodges*, 770 F.2d 1475, 1479 (9th Cir. 1985); see also *Johnson v. United States*, 318 U.S. 189, 195 (1943). For this reason, evidence designed to show that a person has a propensity to act a certain way is generally inadmissible. Fed. R. Evid. 404(b)(1) codifies this prohibition, making inadmissible evidence of other crimes, wrongs, or acts where that evidence proves only criminal disposition. United *States v. Cruz-Garcia*, 344 F.3d 951, 954 (9th Cir. 2003) citing *United States v. Rocha*, 553 F.2d 615, 616 (9th Cir. 1977). Rule 404(b)(1) thus protects a defendant from being tried for who he is, as opposed to being properly tried for what he did. *Bradley*, 5 F.3d 1317, 1320 citing *Hodges*, 770 F.2d at 1479.

The companion to Rule 404(b)(1) is Fed. R. Evid. 404(b)(2) which allows the introduction of prior bad acts if evidence of the prior acts bears on other relevant issues. Rule 404(b) states in full:

> b) Crimes, Wrongs, or Other Acts.
>
> (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) Permitted Uses; Notice in a Criminal Case. This

> evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. . . .

Fed. R. Evid. 404(b).

In determining whether a prior bad act is admissible under Fed. R. Evid. 404(b)(2), a court must look to the relevant statute. The statute under which Mr. Torres was convicted states:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

18 U.S.C. § 2422(b).

As the government stated in this matter, 18 U.S.C. § 2422(b) does not require the government prove that a defendant intended to commit the underlying sexual act. Rather, it only requires that the defendant have attempted to persuade or entice the minor. ER 219, 349. See *United States v. Goetzke*, 494 F.3d 1231, 1236 (9th Cir. 2007) citing *United States v. Dhingra*, 371 F.3d 557, 562 (9th Cir. 2004) which emphasized that the statute focuses on the actor and the intent of his actions to persuade, induce, or entice.

Given that the requirements of 18 U.S.C. § 2422(b) are limited to inducement and the like, Mr. Torres's alleged sexual encounter with a 15-year-old male was not material to proving any element of the crime charged. Additionally, the modus operandi involved in the instant matter, chatting through Facebook, was not at all an issue in the encounter with the 15-year-old male. ER 328-329, 914. No modus operandi testimony was elicited regarding the 15-year-old male. Rather, the 15-year-old's testimony, and the video admitted into evidence were limited to the asserted sexual act. ER 275-281.

The decision issued in this matter allows the government to present prior bad acts evidence that shows intent even where the particular intent the evidence shows is not an element of the crime with which the defendant has been charged. Similarly, the decision allows the government to present prior bad acts evidence regarding modus operandi even where the modus operandi sought to be shown is dissimilar to the modus operandi of the crime charged. App. 3a. The Court of Appeals' decision in this matter thus violates due process in that it allows a defendant to be convicted for who he is, rather than for committing the crime with which he was charged. This is contrary to the intent of Fed. R. Evid. 404(b). The due process violation embodied in the Memorandum issued in the instant matter is a basis for the grant of this petition for a writ of certiorari.

B. The Ninth Circuit Decision in this Matter Conflicts with the Decisions of Sister Circuits.

As discussed above, the Ninth Circuit's decision was a due process violation. It is also in conflict with the decisions of sister circuits.

Fed. R. Evid. 404(b)(2) allows the admission of prior bad acts evidence for the purpose of proving such things as "intent" and "plan[ning]." Id. Ninth Circuit case law notes that evidence of a prior bad act may be admitted under to Fed. R. Evid. 404(b)(2) if, inter alia, the evidence tends to prove a material point. United States v. Cherer, 513 F.3d 1150, 1157 (9th Cir. 2008).

Through the issuance of the instant Memorandum, the Ninth Circuit implicitly defined "intent" as listed in Fed. R. Evid. 404(b)(2) and "material point," as discussed in case law (Cherer, 513 F.3d at 1157), infinitely broader than the corresponding definitions in sister circuits. In this regard, the Memorandum in this matter essentially defines "intent" and "material point" to include not just the intent demanded by the relevant statute, but also to include broader intentions that are not required to be proved by the statute. App. 3a. Similarly, the Memorandum in this matter defines "plan" as listed in Fed. R. Evid. 404(b)(2) to include not just the plan alleged in the crime charged, but broader actions as well. These definitions are contrary to those of sister circuits.

With respect to "intent," the following circuits allow the admission of prior bad acts only where the evidence tends to prove an essential element of the crime charged:

Fifth Circuit: United States v. Moree, 897 F.2d 1329, 1335 (5th Cir. 1990) holding that " . . . the intent required to make the previous activity illegal must be the same intent required to convict the defendant of the offense charged. . . ."; United States v. Turquitt, 557 F.2d 464, 468 (5^{th} Cir. 1977) holding that prior bad acts " . . . may be admissible if offered to prove an essential element of the charged offense. . . .";

Seventh Circuit: United States v. Arnold, 773 F.2d 823, 832 (7^{th} Cir. 1985) holding that, "The Government may submit evidence of other acts to establish specific intent when specific intent is an element of the crime charged and when the other requirements of Rules 404(b) and 403 are satisfied;

Eighth Circuit: Kebede v. Hilton, 580 F.3d 714, 717 (8^{th} Cir. 2009) holding that the plaintiff had not shown the prior bad act entailed the intent required to be shown in the action in question; and,

Eleventh Circuit: United States v. Pessefall, 27 F.3d 511, 516 (11^{th} Cir. 1994) holding that "Prior offenses may be admitted to prove intent if: (1) the extrinsic offense requires the same intent as the charged offense. . . ."

As listed, the Fifth, Seventh, Eighth and Eleventh Circuits require that the prior bad acts evidence must tend to prove an essential element of the crime charged to be admissible whereas the Memorandum in the instant matter has no such limitation. App. 3a.

With respect to modus operandi, or “plan” as referenced in Fed. R. Evid. 404(b)(2), the following circuits allow the admission of prior bad acts only where the evidence tends to prove some ultimate issue in the case:

First Circuit: United States v. Barrett, 539 F.2d 244, 248 (1st Cir. 1976) holding that when separate offenses form parts of a common scheme, uncharged offenses may be shown for their bearing on the offenses charged;

Fourth Circuit: United States v. Billups, 692 F.2d 320, 328 (4th Cir. 1982) wherein evidence of other bribes was admissible to show common plan or scheme in bribery prosecution; United States v. Powell, 407 F.2d 582, 585 (4th Cir. 1969) holding that in a counterfeiting prosecution, evidence of prior instances where the defendant passed counterfeit bills was admissible to show common plan or scheme; and,

Fifth Circuit: United States v. West, 22 F.3d 586, 594 (5th Cir.

1994) holding that, “Evidence of prior extrinsic acts is admissible to prove ‘plan’ where the existence of a plan is relevant to some ultimate issue in the case.

Unlike the First, Fourth, and Fifth Circuits, the Memorandum in the instant matter allows prior bad acts under the “plan” exception even where the prior bad acts do not evidence a plan that is connected to the plan involved in the crime charged.

The conflicts in instant Memorandum and the sister circuits regarding Fed. R. Evid. 404(b)(2) are deep and important. Under these circumstances, this Court should grant the instant petition.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: January 24, 2018

Respectfully submitted,

Andrea St. Julian

Andrea Renee St. Julian
Counsel of Record for Petitioner,
Juan Martin Torres

APPENDICES

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 3 2017

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

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JUAN MARTIN TORRES, Defendant-Appellant.	No. 16-10209 D.C. No. 1:13-cr-00390-AWI-BAM-1 MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted October 19, 2017[**]
San Francisco, California

Before: W. FLETCHER and TALLMAN, Circuit Judges, and HOYT,[***] District Judge.

Following his conviction for use of the internet in an effort to entice and coerce a minor into illegal sexual activity, Juan Torres appeals his conviction and

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

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Kenneth M. Hoyt, United States District Judge for the Southern District of Texas, sitting by designation.

sentence. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We affirm in part and reverse in part.

1. Torres challenges the admission of a short video depicting his prior sexual assault of a minor and the victim's corroborating testimony. We review a district court's admission of prior bad acts for abuse of discretion. *United States v. Hardrick*, 766 F.3d 1051, 1055 (9th Cir. 2014). We hold the admission was permissible and not unfairly prejudicial because it related to Torres' intent and modus operandi in targeting minors in his care and the district court provided multiple limiting instructions. *United States v. Cherer*, 513 F.3d 1150, 1157–59 (9th Cir. 2008).

2. Torres appeals discretionary supervision conditions imposed by the district court relating to alcohol, contact with minors, and residency requirements. We ordinarily review conditions of supervised release for abuse of discretion, but where as here, the defendant fails to object to the conditions, we review for plain error. *United States v. Wolf Child*, 699 F.3d 1089, 1090 (9th Cir. 2012). We affirm the district court's imposition of supervisory conditions relating to contact with minors and certain residency requirements because they relate to the court's goal in protecting the public from further crimes and contributing to Torres' rehabilitation. *See United States v. Daniels*, 541 F.3d 915, 928 (9th Cir. 2008); *United States v. Carter*, 159 F.3d 397, 400–01 (9th Cir. 1998). There is no plain

error in requiring those conditions because any possible error or prejudice caused by the district court's decision "did not seriously affect the fairness, integrity, or public reputation of the judicial proceedings." *United States v. Maciel-Vasquez*, 458 F.3d 994, 996 (9th Cir. 2006).

As to the alcohol restrictions involving outpatient treatment, testing, and abstinence from alcohol use or frequenting establishments that primarily sell alcoholic substances, we reverse and remand to the district court to strike Torres' alcohol-related conditions. Because there were no allegations of any inappropriate alcohol or drug use, that a drinking establishment played a role in the crime, or any indication of a prior history of substance abuse recited in the Pre-Sentence Report, we hold that the district court's imposition of alcohol-related supervisory conditions constituted plain error. *See United States v. Betts*, 511 F.3d 872, 877–81 (9th Cir. 2007); *United States v. Napier*, 463 F.3d 1040, 1044–45 (9th Cir. 2006).

The Judgment & Commitment Order should be amended to strike the alcohol-related supervisory conditions.

AFFIRMED in part and REVERSED in part and REMANDED with instructions.

APPENDIX B

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA
v.
JUAN MARTIN TORRES

Date of Original Judgment: **May 09, 2016**
(Or Date of Last Amended Judgment)

FIRST AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: **1:13CR00390-001**

Defendant's Attorney: Marc Days, Appointed

Reason for Amendment:

[ ] Correction of Sentence on Remand (Fed R. Crim. P. 35(a))
[ ] Reduction of Sentence for Changed Circumstances (Fed R. Crim. P. 35(b))
[ ] Correction of Sentence by Sentencing Court (Fed R. Crim. P. 35(c))
[✓] Correction of Sentence for Clerical Mistake (Fed R. Crim. P. 36)
[ ] Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))
[ ] Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
[ ] Modification of Imposed Term of Imprisonment for Retroactive Amendment (s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
[ ] Direct Motion to District Court Pursuant to [ ] 28 U.S.C. §2255, [ ] 18 U.S.C. §3559(c)(7), [ ] Modification of Restitution Order

THE DEFENDANT:

[ ] pleaded guilty to count(s) ___ .
[ ] pleaded nolo contendere to count(s) ___ which was accepted by the court.
[✓] was found guilty on Count One after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	**Nature Of Offense**	**Date Offense Concluded**	**Count Number**
18 U. S. C § 2422(b)	Coercion and Enticement	Between August 2013 and October 9, 2013	One

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) ___ and is discharged as to such count(s).
[ ] Count (s) ___ 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 FURTHER ORDERED that the defendant shall 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.

5/9/2016
Date of Imposition of Judgment

/s/ Anthony W. Ishii
Signature of Judicial Officer

Anthony W. Ishii, United States District Judge
Name & Title of Judicial Officer

5/23/2016
Date

DEFENDANT:**JUAN MARTIN TORRES**
CASE NUMBER:**1:13CR00390-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 151 months.

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

[ ] The court makes the following recommendations to the Bureau of Prisons:

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

[ ] The defendant shall surrender to the United States Marshal for this district
- [ ] at ___ on ___.
- [ ] as notified by the United States Marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- [ ] before ___ on ___.
- [ ] as notified by the United States Marshal.
- [ ] as notified by the Probation or Pretrial Services Officer.

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

RETURN

I have executed this judgment as follows:

____

____

____

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

____
United States Marshal

____
By Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
180 months.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse.

[✓] The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

[✓] The defendant shall cooperate in the collection of DNA as directed by the probation officer.

[✓] The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.), as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of qualifying offense.

[ ] The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
6. the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
2. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
3. The defendant shall not possess or have access to any cellular phone without the advance permission of the probation officer. The defendant shall provide all billing records for such devices, whether used for business or personal, to the probation officer upon request.
4. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
5. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
6. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to $25 per month.
7. The defendant shall submit to the search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer in the lawful discharge of the officer's supervision functions with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. 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.
8. The defendant shall not possess or use a computer or any device that has access to any "on-line computer service" unless approved by the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private computer network.
9. The defendant shall have no contact with known children under the age of 18, unless approved by the probation officer in advance. The defendant is not to loiter within 100 feet of school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18. This shall include that the defendant is not to engage in any occupation, either paid or volunteer, that causes him to regularly contact known persons under the age of 18.
10. The defendant shall consent to the probation officer and/or probation service representative conducting periodic unannounced examinations of (a) any computer, or (b) computer-related device, or (c) equipment that has an internal or external modem which is in the possession or control of the defendant. The defendant consents to retrieval and copying of all data from any such computer, computer-related device, or equipment as well as any internal or external peripherals to ensure compliance with conditions. The defendant consents to removal of such computer, computer-related device, and equipment for purposes of conducting a more thorough inspection and analysis.

    The defendant consents to having installed on any computer, computer-related device, and equipment, at the defendant's expense, any hardware or software systems to monitor the use of such computer, computer-related device, and equipment at the direction of the probation officer, and agrees not to tamper with such hardware or software and not install or use any software programs designated to hide, alter, or delete his computer activities. The defendant consents to not installing new hardware without the prior approval of the probation officer.
11. The defendant shall not possess, own, use, view, or read any material depicting and/or describing sexually explicit conduct involving children, including computer images, pictures, photographs, books, writings, drawings, videos, or video games. "Sexually explicit conduct" as defined in 18 U.S.C. § 2256(2) means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person.

    In addition, the defendant shall not possess, own, use, view, or read any material depicting and/or describing sexually explicit conduct involving adults, defined as sexually stimulating depictions of adult sexual conduct that are deemed inappropriate by the defendant's probation officer, including computer images, pictures, photographs, books, writings, drawings, videos, or video games depicting such conduct. Furthermore, the defendant shall not frequent any place whose primary purpose is to sell, rent, show, display, or give other forms of access to, material depicting and/or describing sexually explicit conduct.
12. The defendant shall provide all requested business/personal phone records to the probation officer. The defendant shall disclose to the probation officer any existing contracts with telephone line/cable service providers. The defendant shall provide the probation officer with written authorization to request a record of all outgoing or incoming phone calls from any service provider.

DEFENDANT:**JUAN MARTIN TORRES**
CASE NUMBER:**1:13CR00390-001**

13. The defendant shall consent to third-party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon him. This includes any activities in which you are acting as a technician, advisor, or consultant with or without any monetary gain or other compensation.
14. The defendant shall attend, cooperate with, and actively participate in a sex offender treatment and therapy program [which may include, but is not limited to, risk assessment, polygraph examination, and/or Visual Reaction Treatment] as approved and directed by the probation officer and as recommended by the assigned treatment provider.
15. The defendant's residence shall be pre-approved by the probation officer. The defendant shall not reside in direct view of places such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.

DEFENDANT:**JUAN MARTIN TORRES**
CASE NUMBER:**1:13CR00390-001**

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$100.00	$Waived	$N/A

[ ] The determination of restitution is deferred until ___ . An Amended Judgment in a Criminal Case (AO 245C) 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, unless specified otherwise in the priority order or percentage payment colunm below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals	$____	$____	

[ ] 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 penalities for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

[ ] The interest requirement is waived for the [ ] fine [ ] restitution

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

[ ] If incarcerated, payment of the fine is due during imprisonment at the rate of not less than $25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

[ ] If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than $25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

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

DEFENDANT:**JUAN MARTIN TORRES**
CASE NUMBER:**1:13CR00390-001**

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A. [✓] Lump sum payment of $ 100.00 due immediately, balance due

[ ] Not later than ___, or

[ ] in accordance [ ] C, [ ] D, [ ] E,or [ ] F below; or

B. [ ] Payment to begin immediately (may be combined with [ ] C, [ ] D, or [ ] F below); or

C. [ ] Payment in equal ___ (e.g. weekly, monthly, quarterly) installments of $ ___ over a period of ___ (e.g. months or years), to commence ___ (e.g. 30 or 60 days) after the date of this judgment; or

D. [ ] Payment in equal ___ (e.g. weekly, monthly, quarterly) installments of $ ___ over a period of ___ (e.g. months or years), to commence ___ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or

E. [ ] Payment during the term of supervised release/probation will commence within ___ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or

F. [ ] Special instructions regarding the payment of crimimal monetary penalties:

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

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

[ ] Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall pay the following court cost(s):

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

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