
PETITIONER'S APPENDIX

2024 WL 4404042

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

UNITED STATES of America, Appellee,
v.
Christian GENAO, Defendant-Appellant.

23-6710-cr

|

October 4, 2024

Appeal from a judgment of the United States District Court for the Eastern District of New York ([Allyne R. Ross, District Judge](#)).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Attorneys and Law Firms

For Appellee: [Rebecca M. Urquiola](#) ([Breon Peace](#), on the brief), United States Attorney's Office, Eastern District of New York, Brooklyn, NY

For Defendant-Appellant: Allegra Glashausser, Federal Defenders of New York, Brooklyn, NY

Present: [Reena Raggi](#), [William J. Nardini](#), Circuit Judges,
[Natasha C. Merle](#), District Judge.*

SUMMARY ORDER

*1 Defendant-Appellant Christian Genao appeals from a judgment of the United States District Court for the Eastern District of New York ([Allyne R. Ross, District Judge](#)), entered on June 15, 2023, and amended on June 30, 2023, sentencing him to a year and a day of imprisonment and two years of supervised release following his guilty plea to one count of importation of cocaine in violation of 21 U.S.C. §§ 952(a), 960(a)(1), 960(b)(2)(B). In its written judgment, the district court prohibited Genao from consuming alcohol while on supervised release. Genao now challenges that condition, contending that the district court improperly omitted it from the oral pronouncement of his sentence and that the condition is not “reasonably related” to his sentencing factors. We assume the parties’ familiarity with the case.

“This Court generally reviews the imposition of supervised release conditions for abuse of discretion.” [United States v. Oliveras](#), 96 F.4th 298, 304 (2d Cir. 2024).¹ “Whether the spoken and written terms of a defendant’s sentence differ impermissibly presents a question of law that we review *de novo*.” [United States v. Rosado](#), 109 F.4th 120, 123–24 (2d Cir. 2024).

Federal Rule of Criminal Procedure 43(a)(3) requires that a defendant be present at sentencing. In view of this rule, we have held that “it is the oral sentence which constitutes the judgment of the court, and which is authority for the execution of the court’s sentence. The written commitment is mere evidence of such authority.” [United States v. Asuncion-Pimental](#), 290 F.3d 91, 93 (2d Cir. 2002). “[I]n the event of variation between an oral pronouncement of sentence and a subsequent written judgment, the oral pronouncement controls, and any burdensome punishments or restrictions added in the written judgment must be removed.” [Rosado](#), 109 F.4th at 124.

Nevertheless, “we have not rigidly disregarded all conditions of supervised release later included in a judgment but omitted from the oral pronouncement of sentence.” [United States v. Handakas](#), 329 F.3d 115, 117 (2d Cir. 2003). For example, “explicit reference to each and every standard condition of supervision” set forth in § 5D1.3(c) of the United States Sentencing Guidelines (“Guidelines”) “is not essential to the defendant’s right to be present at sentencing.” [United States v. Truscello](#), 168 F.3d 61, 63 (2d Cir. 1999). Rather, “even the most general allusion to the ‘standard conditions’ of supervised release” during the oral imposition of sentence “is a sufficient basis on which to predicate the imposition of each of the conditions normally regarded as standard.” *Id.* Under certain circumstances, this principle applies to the “special” conditions in § 5D1.3(d) of the Guidelines as well.

*2 “While the ‘standard’ conditions provided in § 5D1.3(c) are presumed suitable in all cases, the suitability of the conditions provided in § 5D1.3(d) may be contingent on the presence of specific factors in each case.” [Asuncion-Pimental](#), 290 F.3d at 94. “Where these factors are present, however, these ‘special’ conditions are no different in practical terms from ‘standard’ conditions, that is, they are generally recommended.” *Id.* In such circumstances, the district court’s “failure to articulate [the recommended special conditions] orally is irrelevant.” [United States v. Thomas](#), 299 F.3d 150, 154 (2d Cir. 2002). As pertinent here, § 5D1.3(d)(4) recommends the following “special” conditions “[i]f the

court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol”:

(A) a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; and (B) a condition specifying that the defendant shall not use or possess alcohol.

Thus, the alcohol prohibition in § 5D1.3(d)(4)(B) is “generally recommended” as a condition of supervised release when the district court has reason to believe the defendant abuses drugs or alcohol. *See Asuncion-Pimental*, 290 F.3d at 94.

Based on facts Genao introduced into the record, the district court had reason to believe all three factors were present: that he abused narcotics, other controlled substances, and alcohol. First, Genao's sentencing memorandum stated that, at some point, “[h]is family realized that he was becoming reliant on alcohol and drugs.” Defendant's Sent’g Mem. at 4, *United States v. Genao*, No. 21-CR-579-ARR-1 (E.D.N.Y. Dec. 22, 2022), ECF No. 25. In support of this statement, Genao submitted a letter from his aunt that mentioned his dependence on both alcohol and drugs. *Id.* at 13. Then, at sentencing, defense counsel acknowledged on the record that Genao “has struggles with … drug abuse,” App’x at 34, had been testing positive for marijuana, and tested positive for cocaine at the time of his arrest, *id.* at 37–38. Under these circumstances, the Guidelines generally recommend that the district court prohibit the defendant from using or possessing alcohol as a condition of supervised release. It is therefore “irrelevant” that the Guidelines label the condition “special”; in this case, the condition is “no different in practical terms” from the standard conditions in § 5D1.3(c), which the district court need not orally pronounce. *Asuncion-Pimental*, 290 F.3d at 94.

Genao contends that § 5D1.3(d)(4) is more logically read to recommend the alcohol prohibition condition only when the defendant is receiving alcohol treatment, not when he is receiving drug treatment. But this argument has no basis in the text of the Guidelines. *Section 5D1.3(d)(4)* plainly recommends that the conditions in both subsections (A) and (B) be imposed “[i]f the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol.” In recommending the alcohol prohibition in subsection (B), the Guidelines draw no distinction between defendants receiving drug treatment and those receiving alcohol treatment. Thus, the fact that the district court required Genao to participate in an outpatient drug treatment program without specifically mentioning alcohol treatment makes no difference.

Because the Guidelines generally recommended that the district court prohibit Genao from using or possessing alcohol while on supervised release, it was permissible for the district court to impose the alcohol prohibition as a condition in its written judgment without pronouncing it orally at sentencing. Accordingly, we need not reach Genao's argument that the district court did not have authority to pronounce the condition orally at a later hearing, which followed the entry of the written judgment in this case. Nor must we reach Genao's argument, based on § 5D1.3(b), that the condition is not reasonably related to the sentencing factors applicable to his case. *Section 5D1.3(b)* provides that the district court may impose certain “discretionary” conditions if, among other things, the conditions are “reasonably related” to the defendant's “history and characteristics.” That section does not apply here, given that the Guidelines recommend the alcohol prohibition as a “special” condition under § 5D1.3(d).

*3

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We have considered Genao's remaining arguments and find them to be unpersuasive. Accordingly, we **AFFIRM** the judgment of the district court.

All Citations

Not Reported in Fed. Rptr., 2024 WL 4404042

Footnotes

- * Judge Natasha C. Merle, of the United States District Court for the Eastern District of New York, sitting by designation.
- 1 Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

2-----x 21-CR-579 (ARR)

3 UNITED STATES OF AMERICA

4 United States Courthouse
5 Brooklyn, New York

6 CHRISTIAN GENAO,

7 Defendant.

8-----x June 12, 2023
9 2:00 p.m.

10 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
11 BEFORE THE HONORABLE ALLYNE R. ROSS
12 UNITED STATES SENIOR DISTRICT JUDGE

13 APPEARANCES

14 For the Government: UNITED STATES ATTORNEY'S OFFICE
15 Eastern District of New York
16 271 Cadman Plaza East
17 Brooklyn, New York 11201
18 BY: JOY MARGARET LURINSKY, ESQ.
19 Assistant United States Attorney

20 For the Defendant: FEDERAL DEFENDERS OF NEW YORK
21 One Pierrepont Plaza
22 Brooklyn, New York 11201
23 BY: ALLEGRA W. GLASHAUSSER, ESQ.

24 Also Present: FRANK NIKOLAIDIS, USPO

25 Court Reporter: LINDA D. DANELECZYK, RPR, CSR, CCR
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29 Proceedings recorded by mechanical stenography. Transcript
30 produced by computer-aided transcription.

LINDA D. DANELECZYK, RPR, CSR, CCR
Official Court Reporter

1 (In open court.)

2 (All rise.)

3 THE COURT: You may be seated.

4 THE COURTROOM DEPUTY: United States of America
5 versus Genao, Docket Number 21-CR-579.

6 For the government, please state your name for the
7 record.

8 MS. LURINSKY: Joy Lurinsky for the United States.

9 Good afternoon.

10 THE COURT: Good afternoon.

11 MS. GLASHAUSSER: Good afternoon, Your Honor.

12 Allegra Glashausser representing Mr. Genao, who is seated next
13 to me.

14 THE COURT: Good afternoon.

15 THE DEFENDANT: Good afternoon.

16 THE COURT: I have reviewed the presentence report.
17 Two addenda to the presentence report. The defense submission
18 with multiple addenda. And the government's submission of
19 January 5th of this year. And also pretrial services reports
20 of May 27th of last year and January 24th and April 25th of
21 this year.

22 Is that a complete sentencing record?

23 MS. LURINSKY: Your Honor, I believe there was an
24 additional pretrial memoranda from November of 2021.

25 THE COURT: From November?

1 MS. LURINSKY: Yes. Of 2021.

2 THE COURTROOM DEPUTY: 2021?

3 MS. LURINSKY: Yes.

4 THE COURTROOM DEPUTY: The PSR came out October
5 2022, so November 2021...

6 MS. LURINSKY: Yes, it was the same time that he was
7 arrested. The report just documented a positive drug test
8 from that day.

9 THE COURT: I'm sorry, do you have a copy of the
10 report?

11 MS. LURINSKY: I do not have a copy of the report.
12 In the subsequent report, that report is referenced. At that
13 time --

14 Do you have a copy of the report?

15 THE COURT: Oh, you're talking about the pretrial?

16 MS. LURINSKY: Yes.

17 THE COURT: Okay.

18 THE COURTROOM DEPUTY: Oh, okay.

19 THE COURT: They eventually all come together in the
20 end. But basically what that reported was a positive drug
21 test.

22 MS. LURINSKY: Yes.

23 THE COURT: Okay, yes. Well, the same drug test was
24 reported, I think, in the next one; wasn't it?

25 MS. LURINSKY: Yes, it was referenced.

1 THE COURT: Okay, that's fine.

2 Okay. Ms. Glashausser, from your perspective, is
3 that a complete sentencing record?

4 MS. GLASHAUSSER: Yes, Your Honor.

5 THE COURT: Okay.

6 I'm sure you've had an opportunity to review all of
7 that with your client; is that correct?

8 MS. GLASHAUSSER: Yes, Your Honor.

9 THE COURT: Okay.

10 Mr. Genao, have you had plenty of time to discuss
11 with Ms. Glashausser all the documents to which I just
12 referred and everything else that you believe relates to your
13 sentence?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay.

16 The government and the defendant are in agreement
17 that the advisory guidelines range calculation I should adopt
18 is 30 to 37 months' imprisonment. I concur in their agreement
19 for purposes of this sentence.

20 With that, let me hear from you, Ms. Glashausser.

21 MS. GLASHAUSSER: Thank you, Your Honor.

22 Mr. Genao is his family's emotional center. He
23 gives frequent hugs. He calls his father, who is here in the
24 courtroom today, almost every day to say I love you. He wakes
25 up his sister, who is also here in court today, with freshly

1 brewed coffee each morning. He makes Sunday family dinner.

2 He's famous for his lasagna.

3 It's a good detail, but it's a source of comfort for
4 his family, which really lasagna exemplifies for me, and I
5 think for them. He's somebody that brings people together. A
6 childhood friend is also here in his support. His mother is
7 only not here due to trouble with her passport. She was
8 unable to fly here today.

9 His father wrote to the Court about how everybody in
10 the family wants to be with him. But at the same time, they
11 are all also worried about him. His sister wrote to the Court
12 about how his bright light has dimmed. He has struggles with
13 suicidal thoughts, depression, drug abuse, and he is ashamed
14 of himself for being here today because of his actions and
15 also the stress that he has put his family through.

16 I know Your Honor has seen many cases like
17 Mr. Genao's and the circumstances that led him here are common
18 to other cases. He had about ten dollars in his bank account
19 when he faced a large bill after having a car crash. When the
20 company, the rental car company, had someone working there who
21 suggested he bring drugs to the United States, he made the
22 terrible decision to say yes.

23 THE COURT: He went to quite a rental car company,
24 too. Anyway.

25 MS. GLASHAUSSER: We wish it was a different one,

1 right? And he deeply regrets that decision, and I think he
2 wrote a really heartfelt letter to the Court.

3 THE COURT: Yes.

4 MS. GLASHAUSSER: And he came to that decision after
5 a troubled background. He has unresolved childhood trauma
6 from attempted sexual abuse, to beatings, to getting pushed
7 off a balcony by someone who was meant to be his friend.

8 When he turned 18, he was in a coma. And when he
9 woke up, he became a father almost immediately. His son
10 turned out to be severely autistic. That combination of
11 circumstances for such a young man is undoubtedly stressful,
12 and it was very stressful for Mr. Genao.

13 He became addicted to drugs, eventually serving a
14 full year in prison for two misdemeanor drug convictions.

15 THE COURT: As I understand it, there are -- it was
16 two years. It was consecutive.

17 MS. GLASHAUSSER: Oh, I apologize. He's saying
18 that's correct. So that's even worse, Your Honor, to serve
19 two years for misdemeanor --

20 THE COURT: No, I just wanted to make sure I have my
21 facts right.

22 MS. GLASHAUSSER: You do. It's my fault.

23 For misdemeanor drug convictions that are clearly
24 driven by his own drug abuse himself.

25 And his guideline range today is driven by two

1 things, largely. One is those two misdemeanor drug
2 convictions, which make his criminal history inflated. I
3 think more than it should be when recognizing those things are
4 related to drug abuse.

5 And the second reason his guidelines are what they
6 are is just because of the amount of drugs he took in, which I
7 know the Court knows is not something that Mr. Genao had any
8 control over.

9 So that range is much too high. But more
10 importantly, prison will not serve the goals of sentencing. I
11 know we submitted a lot of cases in our brief where other
12 judges, and Your Honor, too, have found that no prison time is
13 appropriate for cases like Mr. Genao's. And I think those
14 sentences are a good assessment that a non-prison sentence can
15 still serve the goals of promoting respect for the law, just
16 punishment, showing serious -- recognizing the seriousness of
17 the offense. There are many cases that support that.

18 And turning to Mr. Genao, he also has been
19 specifically deterred. From the moment he realized he had a
20 federal drug case, that has had a real impact on him and how
21 he has lived his life. He got a job immediately after his
22 arrest, maybe two weeks later he got his first job. And while
23 he lost that one, he then got another job, which he has kept
24 for about 16 months.

25 Both of his employers wrote to the Court talking

1 about what a good employee he was -- he is, excuse me, his
2 levelheadedness, his grace, his hard work. And pretrial
3 mentioned something about his job. Both of his employers have
4 written to the Court confirming his job that he has worked
5 there consistently.

6 And for Mr. Genao, that 16 months is significant,
7 because it's the longest time of consistent employment that he
8 has had in his life. And while working there, he has tried to
9 get better employment. He got an offer that he was really
10 excited about working for a cable company, and then lost it
11 after a background check found this open case. But it
12 indicates that he's really been making a big effort to be a
13 responsible employee and somebody that can provide for himself
14 and his family without ever resorting to his criminal actions
15 again.

16 Also, since his arrest, he has stopped using cocaine
17 and MDMA. The government mentioned that first report from
18 back in November of 2021. That report was noting that he had
19 tested -- I believe, I don't have it in front of me, but that
20 he had tested positive for cocaine at his arrest, and he had
21 told them he also used a Molly right around that time. So he
22 was abusing drugs right up to the time of his arrest and very
23 serious drugs.

24 He has through therapy, drug treatment not relapsed
25 for those drugs. Now I recognize, of course, he is still

1 testing positive for marijuana, and that is something that he
2 is working on and that has not -- he has not been able to
3 conquer that during this time. But I do think it is
4 significant that he has stopped his use of cocaine and MDMA.
5 I think that is something that cannot be overlooked.

6 He has also consistently engaged with his therapy
7 over the past approximately 20 months on supervised release,
8 and he benefits from it. And that's not always true with my
9 clients. They don't always feel the benefit from their
10 court-ordered therapy, but Mr. Genao does and he recently got
11 a new therapist, he's been engaging with her, and he thinks
12 they have a productive relationship. He really wants to
13 continue with that therapy.

14 In this context, additional deterrence that Your
15 Honor believes is appropriate can be served with home
16 confinement, so limiting his movements while still allowing
17 him to do the good things that he is doing and has been doing
18 for the past 20 months.

19 Mr. Genao is someone who has a huge amount of
20 potential, and today Your Honor can help brighten his light
21 that has dimmed. Your Honor can recognize his advances on
22 pretrial, recognize his hard work at his job. His hard work
23 at therapy. His hard work on conquering the most serious of
24 his drug addictions, and recognizing that prison will dim all
25 of those advances he's made while not serving another

1 countervailing purpose.

2 So I'm asking Your Honor to sentence him to time
3 served and supervised release with a term of home confinement,
4 if Your Honor believes that's appropriate.

5 THE COURT: Thank you.

6 Mr. Genao, is there anything that you would like to
7 say?

8 THE DEFENDANT: Um, yes.

9 THE COURT: Dennis is going to bring you a
10 microphone.

11 THE DEFENDANT: I said, yes, I would like to take
12 the time to acknowledge that, you know, my mistakes.

13 THE COURT: I'm sorry, could you speak more loudly?

14 THE DEFENDANT: To acknowledge my mistakes and my
15 errors. You know, it's cost me a lot, a lot of grief in
16 between the family. You know, I'm ashamed that I'm -- you
17 know, I'm putting my family through this again and, you know,
18 it's -- it's almost like unbearable to know that, you know,
19 I've jeopardized a lot, and I could still be jeopardizing, you
20 know, my future with all the mistakes that I've made,
21 especially this one.

22 And I'm terribly sorry for it and, you know, I want
23 to take the time out to just apologize for my actions.

24 THE COURT: Thank you.

25 Ms. Lurinsky?

1

2 MS. LURINSKY: The government agrees that a below
3 guideline sentence could be appropriate in this case, however,
4 the government does not agree that a non-incarceratory
5 sentence is appropriate.

6 First, going back to the seriousness of the
7 defendant's crime. He had approximately 3 kilograms of
8 cocaine sewn in to a vest that he was wearing when he left
9 from the Dominican Republic.

10 THE COURT: I'm sorry, would you...

11 MS. LURINSKY: When he left from the Dominican
12 Republic and he flew to JFK.

13 Also, he talked about, you know, his desperation,
14 and the government, of course, doesn't have any evidence that
15 he was not desperate and is not disputing that. However, he
16 agreed, and he confessed that he agreed to do this for
17 \$10,000, which is well more than what we could imagine the
18 cost of preparing a car after a car accident costs.

19 In addition, what is, I think, very relevant here
20 and was touched upon by defense, and what makes this case
21 different than some other career cases, is both the
22 defendant's past mental history and, as we have just been
23 discussing, the defendant's history on pretrial release.

24 The defendant's past criminal history includes both
25 the two drug crimes that Your Honor noted where he was

1 sentenced to consecutive terms of one year in prison serving a
2 total of two years in prison.

3 One thing I want to note about those is he was
4 convicted in 2018. This crime that we are talking about today
5 occurred in October 2021. So that was very close in time to
6 when he would have been released, you know, within a year or
7 two of when he would have been released from those previous
8 sentences. So that indicates that those sentences did not, in
9 fact, serve a deterrent effect.

10 And turning now to the pretrial memoranda, total of
11 four pretrial memoranda documenting at least eight positive
12 drug tests and one arrest.

13 Your Honor, I think this weighs very strongly in
14 favor of some kind of incarceratory sentence, because if the
15 defendant simply served a sentence of supervised release, it
16 would be very similar to his pretrial conditions now, which he
17 has not been able to abide by.

18 I also want to note that in the last pretrial
19 memoranda it says that the defendant had stopped or slowed
20 down in his participation of his therapy and was not attending
21 the therapy sessions. So it kind of indicates that the
22 defendant is over time being less compliant with his
23 conditions rather than more compliant, and I think that's a
24 troubling fact for Your Honor.

25 So for those reasons, the government recommends that

1 an incarceratory sentence is appropriate, while acknowledging
2 that there are certain factors in this case which would call
3 for perhaps a below guidelines incarceratory sentence.

4 THE COURT: Thank you very much.

5 As indicated, I have calculated and considered the
6 advisory guideline range in this case.

7 As to the nature and seriousness of the defendant's
8 crime of conviction, it cannot be doubted that the defendant's
9 importation of over 3 kilograms of cocaine from the Dominican
10 Republic is a serious one.

11 The only record evidence suggesting circumstances
12 mitigating the seriousness of that crime is defendant's
13 limited role in the offense as a courier and his qualification
14 for the statutory safety valve, but not the two-level
15 guideline deduction.

16 As to the defendant's history and characteristics, I
17 conclude that there are both aggravating and mitigating
18 factors.

19 Turning first to the mitigating factors, defendant
20 experienced an extremely difficult childhood. At age 12, he
21 was sexually abused by the maintenance manager of the building
22 where he lived. Also at a young age, he was pushed off a
23 second story fire escape, and a close cousin of defendant's
24 committed suicide as a result of which defendant experienced
25 suicidal ideations and spent three weeks in a psychiatrist

1 hospital followed by a year in therapy.

2 Defendant's parents divorced when he was in his
3 early teens. His father, who remained in the United States,
4 was extremely strict with the defendant meting as corporal
5 punishment. Defendant's mother remarried and now lives in the
6 Dominican Republic.

7 Defendant is separated from his wife with whom he
8 has two children; one 13 years old with severe autism, and one
9 10 years old. His family now lives in Ohio. The defendant
10 has apparently made some effort to remain a part of this
11 children's lives.

12 When arrested at the airport with drugs, defendant
13 immediately admitted his guilt, and he has also expressed
14 genuine remorse for his conduct.

15 Defendant's Criminal History Category III, does not
16 overstate the seriousness of his criminal history, and in my
17 view is an aggravating factor.

18 His first conviction for the felony of attempted
19 burglary resulted in a lenient probationary sentence, and
20 although his next two convictions were for misdemeanor
21 controlled substance offenses, it's clear from the facts set
22 forth in the presentence report that both involved sales of
23 drugs, not mere possession for personal use. Moreover the
24 real nature of these two drug convictions is confirmed by the
25 length of the sentences defendant received. For each,

1 defendant was sentenced to a full year incarceration to run
2 consecutively to each other, thus they resulted in a two-year
3 sentence.

4 In light of all of these facts, I am in agreement
5 with the government that notwithstanding the mitigating
6 factors that I have discussed, the aggravating factor that a
7 two-year incarcerated sentence did not deter defendant from
8 committing the instant, more serious drug crime is a
9 considerable significance.

10 Taking all of these matters into consideration and
11 balancing them against each other, with a view toward
12 selecting a sentence that will best advance the goals of
13 sentence, I'm satisfied that a carceratory sentence of a year
14 and a day is sufficient but not unduly severe to accomplish
15 the statutory goals of sentencing.

16 In this regard, I note, finally, that although drug
17 treatment has been available to defendant throughout the
18 almost two years since his release, he has either been late
19 for or missed a substantial number of treatment sessions,
20 despite treatment being conducted by telehealth.

21 I therefore sentence the defendant to the custody of
22 the Attorney General for a period of a year and a day to be
23 followed by two years of supervised release with special
24 conditions.

25 First, the defendant shall submit his person,

1 property, house, residence, vehicle, papers, electronic
2 devices to a search conducted by the United States Probation
3 Officer. Failure to submit to a search may be grounds for
4 revocation of release.

5 The defendant shall warn any other occupants that
6 the premises may be subject to the searches pursuant to this
7 to condition. An officer may conduct a search pursuant to
8 this condition only when reasonable suspicion exists that the
9 defendant has violated a condition of his supervision, and
10 that the areas to be searched contain evidence of this
11 violation. Any search must be conducted at a reasonable time
12 and in a reasonable manner.

13 Also, as a condition of his supervised release, the
14 defendant must attend any outpatient drug treatment
15 recommended by the Probation Department.

16 I make a finding that he is unable to pay a fine,
17 but I will impose the \$100 special assessment.

18 I also recommend that during service of his
19 sentence, he be permitted to participate in any available drug
20 treatment.

21 Are there any outstanding counts?

22 MS. LURINSKY: Yes, Your Honor. One count, which
23 the government now moves to dismiss.

24 THE COURT: Okay.

25 Mr. Genao, there are circumstances in which a

1 defendant may appeal his sentence. I don't know whether it
2 will apply in your case, but you discuss that with
3 Ms. Glashausser.

4 If you chose to appeal, a notice of appeal must be
5 filed within 14 days, and a lawyer will be appointed to
6 represent you on appeal.

7 Is there any requested designation?

8 MS. GLASHAUSSER: Near New York City, Your Honor.

9 THE COURT: Okay. Any -- it may be that because
10 this turns out to be a very short sentence it's going to be
11 the MDC, but I can recommend something else that's near New
12 York City, if you want me to.

13 MS. GLASHAUSSER: I don't know if Your Honor can
14 recommend a lot at the MDC, if that's a possibility, or
15 otherwise I guess I would say Fort Dix, although I'm not
16 sure -- I think Fort Dix will be appropriate on a security
17 level, but really anywhere by the MDC would be my request.

18 THE COURT: Do you want me to write that?

19 MS. GLASHAUSSER: If you think it will work.

20 THE COURT: I don't know. It might not work, but
21 I'll do it.

22 MS. GLASHAUSSER: Could I reach out to your deputy
23 later today after consulting with Mr. Genao.

24 THE COURT: Yes, that's fine.

25 MS. GLASHAUSSER: I still have one objection to the

1 conditions of supervised release.

2 THE COURT: Yes.

3 MS. GLASHAUSSER: With respect to the search
4 condition of everything as I understood it, all electronic
5 devices, I think there are other things in the list.

6 That is a condition that the guidelines recommends
7 with respect to sex offenses, not with respect to drug
8 offenses, and I don't believe it's appropriate here. That's
9 an exceedingly broad search condition, particularly for the
10 electronics as it covers all electronic devices, and I don't
11 think there's anything here that merits that.

12 Mr. Genao has been on supervised release for 20
13 months without indication that any type of search of
14 electronics, or indeed any type of search was necessary. The
15 circumstances of his crime were not complicated ones. He got
16 on an airplane with drugs, and so I don't think that that
17 condition is appropriate here.

18 THE COURT: One moment, let me just see what the
19 Probation Department says with that.

20 Let me ask the Probation Department to respond to
21 that.

22 THE PROBATION OFFICER: Your Honor, I don't think it
23 truly addressed it, beyond the fact of just the nature of the
24 circumstances of the instant offense. But I will just say
25 that, you know, drugs were found on defendant's person, so

1 that's probably our part of support for that condition.

2 MS. LURINSKY: Your Honor, if I could just add a
3 piece of fact about the defendant's original crime that I
4 think might be relevant here.

5 THE COURT: Yes.

6 MS. LURINSKY: So his phone was seized as part of
7 this investigation and was searched. And on his phone were
8 some messages between him and the individuals with whom he was
9 participating in this drug conspiracy. So I can't speak to
10 exactly why probation put in various conditions, but that
11 could be --

12 THE COURT: Which of the search conditions do you
13 consider necessary in light of his particular circumstances?

14 MS. LURINSKY: Your Honor, certainly the search
15 conditions for home and person. And I don't understand
16 defense counsel to be objecting to those.

17 MS. GLASHAUSSER: No, I am, Your Honor.

18 MS. LURINSKY: You're objecting to all of them?

19 MS. GLASHAUSSER: Yes, it falls under the guidelines
20 under 5D1.3(7)(c), which is for sex offenses. If his offense
21 of conviction is a sex offense, and then it has the language
22 which is the search condition.

23 But I guess probation recommended, I didn't see that
24 recommendation that Your Honor read, I just don't think
25 there's a reason it's appropriate here.

1 THE COURT: That's what I'm trying to decide right
2 now as to whether or not there's a reason that it's
3 appropriate; and, if so, exactly what the scope of that reason
4 would permit.

5 MS. LURINSKY: Understood, Your Honor. Now I
6 understand. I first misunderstood defense counsel's objection
7 just to the electronic surveillance.

8 So I think at a minimum here, Your Honor, the
9 condition that allows a search of his home and his person is
10 appropriate, given that drugs were indeed found on his person,
11 and the past history of drug use and drug dealing which, you
12 know, also involves --

13 THE COURT: Certainly drug use and drug dealing --

14 MS. LURINSKY: Yes.

15 THE COURT: -- is problematic.

16 MS. LURINSKY: Yes. And these all involve
17 possession of drugs, right, and possession of drugs on his
18 person. Presumably at some point he got those drugs at his
19 place of residence, so the government believes that a search
20 condition of his person and place of residence is appropriate.

21 In terms of the electronics, the government was
22 simply proffering the additional fact that he used electronic
23 devices in the instant offense, specifically texting with
24 co-conspirators about picking up the drugs and notified them
25 of when the drugs were coming in, and also texting beforehand

1 about procedures he would use to get the drugs, et cetera.

2 And so I --

3 THE COURT: I think it's appropriate for his home
4 and his person, and sort of bolstering that, explicitly
5 states, and I will include, that there can be a search
6 pursuant to the condition only when a reasonable suspicion
7 exists that defendant violated a condition of his supervision
8 and that areas to be searched contained evidence of the
9 violation.

10 So I think the combination of those would warrant a
11 search condition of that breadth and will cut down the breadth
12 as originally stated.

13 MS. GLASHAUSSER: I apologize, Your Honor, so you
14 said it would just be the home and the person?

15 THE COURT: Yes.

16 MS. GLASHAUSSER: Understood. I appreciate that,
17 but just to -- I do want to --

18 THE COURT: No, I understand. Your objection to the
19 whole thing exists and --

20 MS. GLASHAUSSER: And I just want to explain just
21 one more line about why I'm objecting to the home and the
22 person.

23 It is a constitutional right, of course, that you
24 have not to be searched at your home without probable cause
25 and a warrant. So this is a significant reduction in

1 somebody's constitutional --

2 THE COURT: I understand. I understand. I agree.

3 But I think under the circumstances where he is using and
4 dealing and importing, that this would be appropriate.

5 MS. GLASHAUSSER: Just so the record is clear, Your
6 Honor, I'm not sure where the dealing came in right now but --

7 THE COURT: Well, if you read the presentence
8 report, it's in there. It doesn't say "dealing," but it does
9 talk about what he's got.

10 MS. GLASHAUSSER: I believe those things were also
11 in a car.

12 THE COURT: I'm sorry?

13 MS. GLASHAUSSER: I believe the Court is relying on
14 allegations in the presentence report about prior crimes where
15 he was convicted of misdemeanor drug possession.

16 My understanding, from my memory, is that those
17 drugs were in a car, rather than at the home. So still there
18 doesn't seem to be a link.

19 Mr. Genao lives with his sister.

20 THE COURT: Maybe I should include the car.

21 MS. GLASHAUSSER: I don't believe he has a car right
22 now, Your Honor. But I don't think there's any allegation
23 that there have been any of those types of issues at his home
24 where he has lived for the past 20 months.

25 THE COURT: Okay, the first one is in a vehicle, the

1 officer recovered 15 Ziploc bags containing a weight of
2 500 milligrams or more of cocaine from the defendant's jacket
3 pocket, as well as ten capsules of MDMA, and seven Ziploc bags
4 containing 25 grams or more of marijuana.

5 And the second one was also in a car, but it's
6 not -- the thing is if he had them in his car, he probably
7 also had them in his house before he went to his car.

8 MS. GLASHAUSSER: Your Honor, I think we're --

9 THE COURT: Your argument, I know, obviously his
10 right's in a pinch.

11 (Pause in the proceedings.)

12 THE PROBATION OFFICER: Your Honor, may I say
13 regarding the search condition in general, they're not
14 strictly for sex offender cases. In firearms cases, if a
15 defendant possesses a firearm, we're recommencing a search
16 condition. In more intense drug cases, we're recommencing a
17 search condition.

18 And also everything at 5D1.3 in the guideline, these
19 are all policy statements, so they are not necessarily like
20 restricted to just this type of case, therefore, you use that
21 condition. It's just a recommendation. I just wanted to make
22 that...

23 THE COURT: No, no I understand that. There's no
24 reason to make it broader then it has to be.

25 THE PROBATION OFFICER: Right, I understand.

1 THE COURT: So I wanted to limit it to what I think
2 is appropriate, and it's clear that the defense doesn't and
3 the Circuit will decide.

4 THE PROBATION OFFICER: All right. Thank you, Your
5 Honor.

6 THE COURT: Is there any property issue here?

7 MS. LURINSKY: Your Honor, I think we have the
8 defendant's phone.

9 THE COURT: You've taken care of it?

10 MS. LURINSKY: Yes, we have to give him back his
11 phone. But I think other than that, we don't have anything.

12 MS. GLASHAUSSER: That's right. And pretrial has
13 his passport, which I imagine we'll take care of later, when
14 he is on supervised release.

15 THE COURT: Okay.

16 MS. GLASHAUSSER: Your Honor, should we set a
17 surrender date or how would Your Honor --

18 THE COURT: We should set a surrender date.

19 MS. GLASHAUSSER: The government and I discussed
20 approximately six weeks, if that works.

21 THE COURT: That's fine.

22 THE PROBATION OFFICER: Your Honor, may I just make
23 it clear, I guess, what the actual condition is.

24 THE COURT: Yes.

25 THE PROBATION OFFICER: So we're striking the words

1 "computers" as defined in 18 United States Code,
2 Subsection 1030(e) (1), other electronic communications or data
3 storage devices or media. That's all to be stricken and the
4 rest --

5 THE COURT: I don't have it right in front of me.

6 THE PROBATION OFFICER: I can read the rest of it.

7 THE COURT: I think the only thing that we're
8 leaving in is vehicle, person, premises.

9 THE PROBATION OFFICER: Right.

10 THE COURT: Okay?

11 THE PROBATION OFFICER: Yes, Your Honor.

12 THE COURT: Okay.

13 THE COURTROOM DEPUTY: So July 24th.

14 MS. GLASHAUSSER: That's fine. Thank you.

15

16 (Whereupon, the matter was concluded.)

17

18 * * * *

19

20

21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23

s/ Linda D. Danelczyk

June 21, 2023

24

LINDA D. DANELCZYK

DATE

25

TRANSCRIPT OF CRIMINAL CAUSE FOR HEARING
BEFORE THE HONORABLE ALLYNE ROSS
UNITED STATES SENIOR DISTRICT JUDGE

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Proceedings recorded by computerized stenography. Transcript produced by Computer-Aided Transcription.

1 (In open court.)

2 THE COURTROOM DEPUTY: United States of America
3 against Genao, docket number CR-21-579.

4 For the Government, please state your name for the
5 record.

6 MS. LURINSKY: Joy Lurinsky.

7 Good afternoon.

8 THE COURT: Good afternoon.

9 OFFICER BRYANT: Shayna Bryant.

10 Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MS. GLASHAUSSER: Good afternoon, Your Honor.

13 Allegra Glashausser representing Mr. Genao, who is
14 seated next to me.

15 THE COURT: Okay. Good afternoon.

16 I think we should think of this as a continued
17 sentencing proceeding to resolve some final issues that were
18 raised by Ms. Glashausser in her letter.

19 I did receive from Officer Bryant a second
20 addendum to the Presentence Report, setting forth the
21 Probation Department's position with respect to the
22 inclusion of a prohibition of use of alcohol in connection
23 with drug treatment.

24 Anything from you?

25 MS. GLASHAUSSER: Yes, Your Honor.

1 First of all, there is no provision in the
2 statutes to have a continued sentencing proceeding. The
3 only --

4 THE COURT: Well, we'll call it that I'm
5 responding to your request for an amended judgment. I
6 really don't care what we call it.

7 MS. GLASHAUSSER: Well, it's important because the
8 only way to amend a judgment after the sentencing in this
9 way is to correct errors under Rule 35, which is why I
10 fashioned my letter that way. There's not a provision
11 allowing for additional discussion of whether a portion of
12 the supervised release condition that was not orally
13 presented at sentencing is, nonetheless, appropriate.

14 The remedy, when there is something included in
15 the judgment that was not mentioned orally, is to strike
16 that portion of the judgment. And I have a case citation
17 for that, although I believe there are many cases on this
18 issue. An example is United States v. Washington in the
19 Second Circuit, of which I have copies of that case.

20 It's a similar sort of situation in Washington,
21 where there was a treatment condition ordered. Different
22 type of treatment; it was about sex offender treatment. But
23 the written judgment had an inclusion of polygraph testing
24 during that treatment. That was not mentioned orally. The
25 Second Circuit said the appropriate remedy is to strike that

1 additional part of polygraph testing that wasn't ordered by
2 the Court initially.

3 The same thing is true here. The Court ordered
4 drug treatment. We didn't object and we wouldn't object.
5 We don't object. But then the written judgment included an
6 additional burdensome requirement, which is abstention from
7 alcohol for the entirety of his supervision. So the only
8 remedy for that inclusion of that burdensome condition at
9 this point is to strike it, because it wasn't done orally
10 and was not discussed at the sentencing.

11 THE COURT: I understand what you're saying, but I
12 think there is an almost conclusive basis for including,
13 naturally, an alcohol prohibition, because it's essential
14 for the purposes of effective drug treatment. I thought
15 your concern was you didn't see why it would be, because
16 alcohol is not otherwise illegal, and I understand that.

17 But I did, last night, do an internet search
18 relating to whether or not it is shown, it has been
19 demonstrated that this is necessary, meaning that the
20 Probation Department has need for this in order to
21 effectively have drug treatment. I'll just go through a few
22 of these with you.

23 This is Recovery Research Institute: "The authors
24 found support for the hypothesis that drinking alcohol is
25 associated with greater use of primary drug and greater

1 likelihood of relapse to the primary drug use disorder for
2 which they received treatment. Drinking was shown to be
3 related to subsequent cocaine and other drug use both during
4 and after treatment for the drug use disorder."

5 The Hackensack Meridian Health site says: "If you
6 or a loved one is in recovery, you may have asked yourself,
7 can you drink alcohol while in recovery from drug addiction?
8 The addiction psychiatrist and Chief of Addiction Services
9 and Blake Recovery Center at Carrier Clinic, Joseph Verret,
10 M.D., P.M.H. answers: No. In general, you should not drink
11 any alcohol while you're in recovery. While using drugs,
12 you get a dopamine high that creates a sense of euphoria, a
13 loss of inhibitions, and diminished control of impulses and
14 urges, and that's exactly what alcohol also does. It
15 creates a loss of control of impulsive behavior and urges,
16 which can lead to relapse and other risky behavior. With
17 any rule, there can be exceptions, but just because one
18 person is able to get through an occasional drink while in
19 recovery does not mean another person can, Dr. Verret notes.
20 It's an exception and very rare for someone to be able to
21 have even one drink and it does not lead to a relapse."

22 There's an article that's abstracted by the
23 Society of the Study of Addiction that writes: "The data
24 from the study revealed consistent support for the
25 hypothesis that alcohol use increases relapse to drug use."

1 And this is a substance abuse treatment site:
2 "Alcohol intoxication undercuts focus, compromises your
3 better judgment, and weakens your inhibition, instead of
4 helping relieve your stress and calm your body and mind.
5 Alcohol may push you into relapsing at the cost of so much
6 time, energy, and emotion."

7 The Carolina Center For Recovery: "If you drink
8 alcohol in recovery from drug addiction, you could
9 experience an alcohol-induced relapse, which occurs when
10 drinking alcohol triggers drug use. When you drink alcohol,
11 you are more likely to make choices that you wouldn't when
12 you are sober. This can be incredibly dangerous for someone
13 recovering from drug addiction because you could become
14 tempted to abuse drugs."

15 The Office of Justice Programs, Drug Court
16 Clearinghouse and Technical Assistance Project at American
17 University, authored by John Marr, M-A-R-R, an MS in
18 psychology from University of Nevada. He heads Choices
19 Unlimited of Las Vegas, Nevada, a private organization that
20 provides the treatment services for most of Nevada's adult,
21 juvenile, and family drug courts. Mr. Marr lectures
22 frequently on pharmacological issues relevant to drug
23 treatment programs. And it's done as a question and answer.
24 For example:

25 Question: "Does consumption of alcohol lead to

1 use of any drugs?"

2 Response: "The introduction of alcohol into the
3 frontal lobe of the brain affects reasoning, judgment, and
4 self control. When under the influence of alcohol, persons
5 who would normally have enough invested in their recovery
6 not to partake controlled substances experienced mild
7 euphoria and loss of inhibition, which often result
8 necessary behaviors that would not occur if the individual
9 were sober. Clients regularly indicate that drug use
10 episodes after a period of sobriety occur after alcohol
11 consumption."

12 Another portion reads: "Why do most treatment
13 programs require that drug users not use alcohol?

14 "Psychologically, addicts do not drink simply
15 because they like the taste of alcohol any more than they
16 use cocaine because it is refreshing. Despite any argument
17 to the contrary, drinking by an addict is simply a form of
18 drug-seeking behavior, with the depressant effect of alcohol
19 being far more significant than the taste. If this were not
20 true, addicts would choose to drink nonalcoholic beer or
21 wine. The psychological urge of an addict to take something
22 to help relax or to feel different is a red flag that
23 relapse is underway, and without intervention, further drug
24 use will occur."

25 Question: "Upon what basis do drug courts require

1 that drug court participants a person's court ordered into
2 treatment also abstain from a legal substance such as
3 alcohol?"

4 Response: "Legal precedent has been established
5 supporting the required abstinence from alcohol by persons
6 who had a documented history of substance abuse. In People
7 v. Smith, that's the California Court of Appeals, Fourth
8 Appellate District, issued a leading decision in this
9 regard, maintaining," I think this was in 1983, "that
10 alcohol consumption lessened self control, and thus may
11 facilitate a reduction of the drug user's ability to abstain
12 from further drug use. In issuing the opinion, the Court
13 cited Pollack Drug Use and Narcotic Addiction, University of
14 Southern California Institute of Psychiatry and the Law for
15 the Judiciary. More recently, the California Court of
16 Appeals upheld the prohibition regarding alcohol use for a
17 probationer convicted of cocaine possession. Persons
18 entering treatment courts or drug courts are required to
19 sign petitions to participate and voluntarily place
20 themselves into treatment programs that operate under the
21 jurisdiction of the court. These petitions generally
22 contain a statement acknowledging the required restriction
23 on alcohol use. For the reasons stated in the response to
24 the previous question and in a statement acknowledging that
25 a violation of this rule could result in the application of

1 criminal sanctions under the Court's contempt powers."

2 And there are many more.

3 But I think the bottom line is that it has been
4 well established that drug treatment, effective drug
5 treatment requires abstinence from alcohol, and I think the
6 Probation Department is entitled to demand that, whether or
7 not I set it originally.

8 I am saying it now and I am telling Mr. Genao that
9 one of the special conditions of your supervised release is
10 that you participate in an outpatient drug treatment program
11 approved by the United States Probation Department. You
12 shall contribute to the costs of such treatment, not to
13 exceed an amount determined reasonable by the Probation
14 Department sliding scale for substance abuse services and
15 shall cooperate in securing any applicable third-party
16 payment, such as insurance or Medicaid. You shall disclose
17 all financial information and documents to the Probation
18 Department to assess your ability to pay.

19 You shall not consume any alcohol or other
20 intoxicants during and after treatment unless granted a
21 prescription by a licensed physician, and proof of same is
22 provided to the Probation Department. The defendant shall
23 submit to testing during and after treatment to ensure
24 abstinence from drugs and alcohol.

25 In addition to that, I also indicated that I will

1 eliminate from the written special conditions, in the first
2 one, regarding the search condition, I will eliminate the
3 word "property."

4 MS. GLASHAUSSER: Your Honor, may I? Is it my
5 turn now?

6 THE COURT: Yes.

7 MS. GLASHAUSSER: So, first of all, I do want to
8 make it clear that Your Honor does not have the authority to
9 make substantive changes to the sentencing today. The
10 sentencing was final --

11 THE COURT: I don't really consider this
12 substantive under the circumstances. All I am saying is
13 that in order to effectuate the condition that I did impose,
14 this is necessary. To the extent that the defendant did not
15 hear this at the time of sentencing, he has now heard it.

16 MS. GLASHAUSSER: Just to make my record here, the
17 case that I was citing earlier is United States v.
18 Washington, 904 F3d --

19 THE COURT: It's really unfortunate that you
20 didn't tell me about that before, or bring it. I don't know
21 why you waited until now. Why didn't you give me a copy of
22 that case before?

23 MS. GLASHAUSSER: As I mentioned at the beginning,
24 I do have some copies of cases --

25 THE COURT: Well, you may have some copies now,

1 but this was not anything that I had an opportunity to
2 review, that the Government had an opportunity to review.

3 MS. GLASHAUSSER: Your Honor, I submitted a letter
4 very recently, and this was set very recently in preparation
5 for today's proceeding --

6 THE COURT: The letter that you submitted only
7 stated --

8 MS. GLASHAUSSER: I understand. I have additional
9 research that I did today in preparation for our proceeding
10 today.

11 THE COURT: Well, you should have given it to me
12 before.

13 MS. GLASHAUSSER: I did not have it until I did
14 the research today, and I --

15 THE COURT: You submitted a letter in which you
16 said that "The restrictions on alcohol use during and after
17 treatment, which seemingly implies to the entire length of
18 supervision, I would have objected, as Mr. Genao does not
19 have a history of alcohol, and this condition does not
20 appear to have a nexus to the sentencing factors."

21 It does have a nexus.

22 MS. GLASHAUSSER: I'd like to address that, as
23 well, Your Honor.

24 But first, my letter, as explained in the last
25 paragraph, notes that the oral pronouncement at sentencing

1 controls, not things that are added to the written judgment.
2 Having received Your Honor's subsequent order, I did further
3 research. This case, Washington, bolsters what I wrote in
4 the letter, that it needs to be the oral pronouncement, not
5 the written judgment --

6 THE COURT: What was it in Washington that wasn't
7 said during the oral pronouncement?

8 MS. GLASHAUSSER: It was that during the sex
9 offender treatment, polygraph testing would be required. So
10 the Court struck the additional condition. That is very
11 similar to here.

12 Moving to the nexus, there are also Second Circuit
13 cases explaining that when there is not an individual nexus
14 between the person's drug use or the crime to the
15 prohibition on alcohol, that prohibition is not appropriate.
16 So the Second Circuit has not found the same link that Your
17 Honor is pointing to from your research that Your Honor just
18 read out from the internet.

19 For example, in United States v. Betts, B-E-T-T-S,
20 in 2018, the Second Circuit struck the portion of the
21 supervised release condition requiring a total ban on the
22 consumption of alcohol while leaving the section in the
23 supervised release condition requiring the drug testing. It
24 notes that there was no nexus between the alcohol that --

25 THE COURT: I'd like to read that.

1 MS. GLASHAUSSER: Yes, Your Honor. I have it
2 here. I have three copies.

3 THE COURT: I would also like the Government to
4 read it.

5 MS. GLASHAUSSER: Yes, I have a copy for the
6 Government as well.

7 Perhaps before Your Honor --

8 THE COURT: I'm sorry, may I read?

9 MS. GLASHAUSSER: Just to preface it before you
10 start to read it, I didn't print out every case on this
11 issue, but there are other cases like Betts finding that the
12 alcohol ban is not appropriate, and then there's some on the
13 other side finding that it is. For example, one where the
14 defendant had been arrested with a DUI during the terms of
15 the pretrial release, because that showed the nexus, as
16 opposed to Betts, where there --

17 THE COURT: As I understand it, it was during
18 pretrial release that he was testing positive for marijuana.

19 MS. GLASHAUSSER: Right, Your Honor. That's
20 not -- we're talking about alcohol now, though. That's not
21 what we're discussing here today.

22 And just finally, one other case I have with me, I
23 don't have copies, there's United States v. Thomas, which is
24 an Eastern District of New York case from Judge Weinstein,
25 where Judge Weinstein ultimately ended the person's

1 supervision when the person was only violating by drinking
2 alcohol in small amounts, not in a problematic way.

3 And the interesting thing to note for our purposes
4 in Thomas is that person originally just had a drug
5 treatment provision, and supervision had later been modified
6 to add the prohibition on alcohol due to the circumstances
7 of that person's case.

8 But it's just another example of a case where the
9 two things are not linked. Treatment can be ordered, and
10 the prohibition on alcohol sometimes can be ordered when
11 connected to the individual, but the two are not married
12 together. It's not one condition that all courts just see
13 as one. They are separate conditions.

14 And now --

15 THE COURT: It's not clear to me that they are
16 separate conditions. I'm permitted to tell you my reaction
17 to your argument, right?

18 MS. GLASHAUSSER: Of course, Your Honor. I'm just
19 saying that other courts have both ordered them separately,
20 and then the Circuit has considered them separately. And so
21 for Your Honor to be suggesting that they're so linked, that
22 it's just obvious that they're linked, I don't think that
23 the case law shows that.

24 THE COURT: This is a case in which the Court said
25 that the District Court provided no reason for imposing the

1 special condition beyond a clearly-stated displeasure with
2 defendant's performance while on supervised release, where
3 he was driving without a license. That's the Betts case.

4 MS. GLASHAUSSER: Yes, Your Honor.

5 And before you turn to Washington, just another
6 Second Circuit case in the line of Betts which I have
7 printed the entire case, it's Pellistri, and it noted that
8 the underlying crime didn't involve the use of alcohol
9 and --

10 THE COURT: Let me see that case.

11 MS. GLASHAUSSER: I only copied one paragraph,
12 Your Honor.

13 THE COURT: Well, I want to see the whole case.

14 MS. GLASHAUSSER: I don't have it on me. It notes
15 that the District Court was not presented with, quote, "Any
16 evidence suggesting the defendant ever seriously abused
17 alcohol and then found that it wasn't reasonably related. I
18 can give Your Honor the case citation. I did not print this
19 entire case.

20 THE COURT: Is there any way we can get the case?

21 THE COURTRoom DEPUTY: I'll call up.

22 THE COURT: Thank you.

23 THE COURTRoom DEPUTY: Let me get the citation.

24 THE COURT: Ms. Lurinsky, I would like to hear
25 from you on this, also.

1 MS. LURINSKY: Yes, Your Honor.

2 As to the last case, we agree with Your Honor and
3 specifically note toward the end of the case on the drug
4 testing, the defendant noted that there was -- he claims the
5 condition constituted a complete ban --

6 THE COURT: Sorry, I can't hear you.

7 MS. LURINSKY: Sorry. I'm trying to both read and
8 talk at the same time, Your Honor. I'm having a little
9 trouble reading the printing here.

10 The point that I was attempting to make, and now
11 I've lost where it describes it in the opinion, is that in
12 addition to what Your Honor said about the reasons for this
13 being imposed being, you know, completely unrelated to the
14 defendant's drug abuse, it also seems just from this case,
15 and I don't have the full background on this case, that the
16 defendant in that case didn't even have a documented drug
17 abuse problem of any kind, at least not as it appeared from
18 my quick skimming of this case. So that is an important
19 distinguishing factor here.

20 THE COURT: Yes.

21 MS. GLASHAUSSER: Your Honor, and candidly, one
22 reason I didn't do this research about alcohol in particular
23 until today is because the sentencing is closed. So this
24 whole conversation we're having is one that could have
25 happened on the day of sentencing. But today, it's too

1 late, so it's only --

2 THE COURT: Well, frankly, I could impose it now,
3 I assume.

4 MS. GLASHAUSSER: I looked for a provision that
5 would allow Your Honor to do that. I don't believe there is
6 one.

7 THE COURT: The Probation Department couldn't
8 request it?

9 MS. GLASHAUSSER: If there is some sort of
10 modification of supervised release proceeding when Mr. Genao
11 is on supervised release, probation could request it, and
12 they would need to point to something necessitating it. To
13 get to that stage, we look first in the statute book at
14 3582(b), which explains sentences are final except for
15 Rule 35, which is how I fashioned my letter.

16 And then if we look to the supervised release
17 section to see if there's something different there, it only
18 mentions modifications of supervised release that are
19 governed by the Federal Rules of Criminal Procedure 32.1,
20 which is the section that we look to when we're dealing with
21 hearings for violations of supervised release, and it
22 discusses the different options that the Court has in that
23 situation, and modification is one of them.

24 But that posture comes up when the person is on
25 supervised release and something is happening that prompts

1 probation to come to the Court with a request, which
2 certainly could happen in this case, but it can't happen
3 today because the facts are not there today. He is not on
4 supervised release. There is no violation proceeding or any
5 sort of problem with the supervised release.

6 THE COURT: I understand.

7 What was the portion of this that you were
8 quoting?

9 MS. GLASHAUSSER: It was from the last page of the
10 printout. I was quoting from section C, Use of Alcohol, but
11 I believe section B, substance abuse --

12 THE COURT: Use of Alcohol, I've got it. C?

13 MS. GLASHAUSSER: C is Use of Alcohol. But the
14 section immediately preceding it is upholding the substance
15 abuse program for the same individual, while not upholding
16 the one for use of alcohol.

17 THE COURT: Well, I mean, obviously one difference
18 here is that this was lifetime. It was banning use of
19 alcohol for a lifetime.

20 Ms. Lurinsky, were you able to read it?

21 MS. LURINSKY: Your Honor, I was able to read the
22 Washington case. I haven't fully read the Pellistri case
23 yet..

24 Your Honor, I have now looked at the Pellistri
25 case, and would like to note in addition to Your Honor's

1 comment the lifelong sentence, it notes that no proceeding
2 was held on the record to --

3 THE COURT: I'm sorry?

4 MS. LURINSKY: In addition to Your Honor's initial
5 statement about the lifelong prohibition on alcohol that was
6 imposed in that case, there is also the fact that there was
7 no proceeding held like this one where the Court could
8 explain the rationale for that alcohol, and the Second
9 Circuit found that in that instance, because there had been
10 no explanation and no understanding of why it was imposed
11 there and it wasn't self evident, the Court overturned that
12 portion of the sentence. That's not the case here.

13 Also in this case on this particular defendant, he
14 was testing positive for marijuana, and he also had a
15 history of cocaine use. And I know in one of the things
16 that Your Honor had read, it talks specifically about the
17 link between alcohol use and cocaine relapse. So I wanted
18 to --

19 THE COURT: There are also lots of articles that
20 mention marijuana, any kind of substance abuse addiction.

21 MS. GLASHAUSSER: Yes. So I wanted to just note
22 those couple of things.

23 THE COURT: Okay.

24 Anything else that you want to say?

25 MS. LURINSKY: Well, just on the Washington case

1 briefly, in that case the Court did strike the portion of
2 the judgment that dealt with that particular condition. But
3 in that instance there was, again, no opportunity like this
4 for the defendant to be advised, for the objection to be
5 heard, and so the Court said at that point the appropriate
6 remedy was to strike it.

7 But this is a different instance because we're not
8 at that point where this is in front of the Second Circuit.
9 We're at the point where this is in front of Your Honor and
10 we can make those necessary factual determinations.

11 The other thing about the Washington case is that
12 it noted that where a condition is necessary -- basically
13 where a portion of a condition is necessary to effectuate
14 the whole condition, then it's understood that that can be a
15 part of the sentence even if it is not explicitly orally
16 proposed. So that's kind of an exception to that general
17 rule. You know, and as I think we've been discussing here
18 in depth, that that alcohol condition is an important part
19 of that drug treatment, a necessary part of that drug
20 treatment.

21 That's all I have to say, Your Honor.

22 THE COURT: Okay.

23 I'm going to impose it. Obviously you have an
24 opportunity to appeal it.

25 MS. GLASHAUSSER: Yes, Your Honor, I understand

1 that. I'm trying to avoid that. That's why we came to this
2 court --

3 THE COURT: I'm sorry, but you're not going to
4 avoid it. I don't think you're right. You will avoid it if
5 you successfully appeal it.

6 MS. GLASHAUSSER: I didn't mean -- I just meant
7 avoiding an appeal when the case law clearly says that the
8 Court cannot modify the sentencing --

9 THE COURT: You just keep saying the same thing
10 over and over.

11 MS. GLASHAUSSER: I'm not sure what basis Your
12 Honor sees for it to be different, that we're able to
13 have --

14 THE COURT: Either it's part of this record or
15 it's not. Okay?

16 MS. GLASHAUSSER: There's one unrelated matter I'd
17 just like to apply for the Court, if I may.

18 THE COURT: Yes.

19 MS. GLASHAUSSER: So Mr. Genao was designated to
20 MDC. We had hoped that he would be designated to Fort Dix.

21 I spoke to the U.S. Marshal Service, and they said
22 that sometimes if I submit a letter to the Court asking in a
23 separate letter that the Court recommend designation to Fort
24 Dix, or to somewhere else, in this case it would be Fort
25 Dix, and the Court so orders it and the marshal forwards it

1 on, sometimes they can make the designation change.

2 I've spoken to the Government, they have no
3 objection, so I'm planning to submit that letter to Your
4 Honor.

5 THE COURT: I can't remember, did you ask for this
6 before?

7 MS. GLASHAUSSER: So in the judgment, Your Honor
8 did write Fort Dix and specifically not MDC. So I did ask
9 for it and Your Honor granted it in that way. But now that
10 we know that was not followed, I reached out to the U.S.
11 Marshals and they said sometimes having a separate letter
12 just with that information in it can be helpful --

13 THE COURT: That's fine, that's fine. You can
14 submit it.

15 MS. GLASHAUSSER: Thank you, Your Honor.

16 (Matter concluded.)

17 * * * * *

18
19
20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above-entitled matter.

22 /s/ Kristi Cruz

23 KRISTI CRUZ

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

Christian Genao

JUDGMENT IN A CRIMINAL CASE

Case Number: 21 CR 579 (ARR)

USM Number: 83950-053

Allegro W. Glashausser, Esq.

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 952(a),	Importation of Cocaine.	10/21/2021	one
21 U.S.C. § 960(a)(1) &			
21 U.S.C. § 960(b)(2)(B)			

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) two 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.

6/12/2023

Date of Imposition of Judgment

s/Allyne R. Ross

Signature of Judge

Allyne R. Ross, U.S.D.J.

Name and Title of Judge

6/12/2023

Date

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
(ii)			

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
A year and a day.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be housed at the Fort Dix facility and not the MDC in Brooklyn. The court also recommends that while in custody that the defendant be allowed to participate in any drug treatment programs.

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 7/24/2023
 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: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Two (2) years.

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 the location where 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 other conditions on the attached page.

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

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 based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk to another person (including an organization), the probation officer, with prior approval of the Court, 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.

Defendant's Signature

Date

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

SPECIAL CONDITIONS OF SUPERVISION

- 1) Defendant shall submit his or her person, property, residence and vehicle, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
- 2) Defendant shall participate in an outpatient drug treatment program approved by the U.S. Probation Department. The defendant shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the Probation Department's Sliding Scale for Substance Abuse Treatment Services, and shall cooperate in securing any applicable third party payment, such as insurance or Medicaid. The defendant shall disclose all financial information and documents to the Probation Department to assess his or her ability to pay. The defendant shall not consume any alcohol or other intoxicants during and after treatment, unless granted a prescription by a licensed physician and proof of same is provided to the Probation Department. The defendant shall submit to testing during and after treatment to ensure abstinence from drugs and alcohol.

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 100.00	\$	\$	\$	\$

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 column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>	

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:

* 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.

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

Christian Genao

Date of Original Judgment: 6/12/2023

(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

) **AMENDED JUDGMENT IN A CRIMINAL CASE**

) Case Number: 21 CR 579 (ARR)

) USM Number: 83950-053

) Allegra W. Glashauser, esq.

) Defendant's Attorney

-) 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 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
-) Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) one 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 952(a),	Importation of Cocaine	10/21/2021	ONE
21 U.S.C. § 960(a)(1) &			
21 U.S.C. § 960(b)(2)(B)			

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) two 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.

6/29/2023

Date of Imposition of Judgment

/s/(ARR)

Signature of Judge

Allyne R. Ross, U.S.D.J

Name and Title of Judge

6/29/2023

Date

DEFENDANT: Christian Genao

CASE NUMBER: 21 CR 579 (ARR)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
(ii)			

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

IMPRISONMENT

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

A year and a day.

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

That the defendant be housed at the Fort Dix facility and not the MDC in Brooklyn. The court also recommends that while in custody that the defendant be allowed to participate in any drug treatment programs.

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 7/24/2023

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

Pet. App. 060

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Two (2) years.

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 (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 the location where 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 other conditions on the attached page.

DEFENDANT: Christian Genao

CASE NUMBER: 21 CR 579 (ARR)

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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: Christian Genao
CASE NUMBER: 21 CR 579 (ARR)

SPECIAL CONDITIONS OF SUPERVISION

- 1) Defendant shall submit his or her person, residence and vehicle, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
- 2) Defendant shall participate in an outpatient drug treatment program approved by the U.S. Probation Department. The defendant shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the Probation Department's Sliding Scale for Substance Abuse Treatment Services, and shall cooperate in securing any applicable third party payment, such as insurance or Medicaid. The defendant shall disclose all financial information and documents to the Probation Department to assess his or her ability to pay. The defendant shall not consume any alcohol or other intoxicants during and after treatment, unless granted a prescription by a licensed physician and proof of same is provided to the Probation Department. The defendant shall submit to testing during and after treatment to ensure abstinence from drugs and alcohol.

DEFENDANT: Christian Genao

CASE NUMBER: 21 CR 579 (ARR)

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$	\$

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

The defendant shall 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 column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS \$ 0.00 \$ 0.00

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 fine restitution.

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

* 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.