APPENDIX

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A: Order Denying Petition for Rehearing and Rehearing En Banc, *United States* v. *Martinez*, No. 23-432 (9th Cir. July 23, 2026) 1a

APPENDIX B: Opinion, *United States* v. *Martinez*, No. 23-432 (9th Cir. Mar. 18, 2026) 3a

APPENDIX C: Judgment in a Criminal Case, *United States* v. *Martinez*, No. 17-cr-00257 (N.D. Cal. Dec. 14, 2018) 22a

APPENDIX D: Memorandum, *United States* v. *Martinez*, 18-10498 (9th Cir. Apr. 20, 2020).... 30a

APPENDIX E: Order Denying Motion to Suppress, *United States* v. *Martinez*, No. 17-cr-00257 (N.D. Cal. Oct. 5, 2022) 38a

APPENDIX F: Order Denying Motion to Dismiss, *United States* v. *Martinez*, No. 17-cr-00257 (N.D. Cal. Feb. 2, 2023) 43a

APPENDIX G: Amended Judgment in a Criminal Case, *United States* v. *Martinez*, No. 17-cr-00257 (N.D. Cal. Mar. 15, 2023)..... 44a

APPENDIX H: Defendant's Notice of Appeal, *United States* v. *Martinez*, No. 17-cr-00257 (N.D. Cal. Mar. 17, 2023) 52a

APPENDIX A

FILED

JUL 23 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DAVID PAUL MARTINEZ, Defendant - Appellant.	No. 23-432 D.C. No. 3:17-cr-00257-VC-1 Northern District of California, San Francisco ORDER
UNITED STATES OF AMERICA, Plaintiff - Appellee, v. ALEX LEON PADGETT, Defendant - Appellant.	No. 23-2417 D.C. No. 1:23-cr-00006-TMB-MMS-1 District of Alaska, Juneau
UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JOEL MICHAEL RYNO, Defendant - Appellant.	No. 23-3426 D.C. No. 3:22-cr-00045-JMK-MMS-1 District of Alaska, Anchorage

Before: W. FLETCHER and DE ALBA, Circuit Judges, and PITMAN, District Judge.*

The panel has unanimously voted to deny Appellants' petition for panel rehearing. Judge de Alba has voted to deny the petition for rehearing en banc, and Judge W. Fletcher and Judge Pitman have so recommended.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and rehearing en banc (Dkt. 90) is DENIED.

* The Honorable Robert Pitman, United States District Judge for the Western District of Texas, sitting by designation.

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff - Appellee*, v. DAVID PAUL MARTINEZ, *Defendant - Appellant*.	No. 23-432 D.C. No. 3:17-cr-00257-VC-1 OPINION

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

UNITED STATES OF AMERICA, *Plaintiff - Appellee*, v. ALEX LEON PADGETT, *Defendant - Appellant*.	No. 23-2417 D.C. No. 1:23-cr-00006-TMB-MMS-1

Appeal from the United States District Court
for the District of Alaska

Timothy M. Burgess, District Judge, Presiding

UNITED STATES OF AMERICA, *Plaintiff - Appellee*, v. JOEL MICHAEL RYNO, *Defendant - Appellant*.	No. 23-3426 D.C. No. 3:22-cr-00045- JMK-MMS-1

Appeal from the United States District Court
for the District of Alaska
Joshua M. Kindred, District Judge, Presiding

Argued and Submitted September 19, 2025
Seattle, Washington

Filed March 18, 2026

Before: William A. Fletcher and Ana de Alba, Circuit Judges, and Robert Pitman, District Judge.*

Opinion by Judge W. Fletcher

* The Honorable Robert Pitman, United States District Judge for the Western District of Texas, sitting by designation.

SUMMARY**

Criminal Law / Second Amendment

The panel affirmed three appellants' convictions under 18 U.S.C. § 922(g)(9), which prohibits a person who has been convicted of a misdemeanor crime of domestic violence from possessing a firearm or ammunition.

Appellants argued that § 922(g)(9) violates the Second Amendment facially and as applied.

Rejecting the facial challenge, the panel applied the two-step framework established by *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). The panel held that the Second Amendment's plain text presumptively protects domestic violence misdemeanants, but that the Government has overcome that presumption by demonstrating that § 922(g)(9) is consistent with our historical tradition of firearm regulation. The panel concluded that § 922(g)(9) may be constitutionally applied to individuals who have been previously convicted of misdemeanors based on them having used criminal force against their domestic partners.

Rejecting the as-applied challenge, the panel held that § 922(g)(9) categorically disarms individuals convicted of a misdemeanor crime of domestic violence, reflecting Congress's determination that members of a class of convicted criminals are dangerous. The panel therefore held that it need not engage in a misdemeanor-by-misdemeanor

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

inquiry under § 922(g)(9). Section 922(g)(9) is constitutional as applied to Appellants, each of whom was convicted of a misdemeanor crime of domestic violence.

COUNSEL

Merry J. Chan (argued), Assistant United States Attorney, Chief, Appellate Section, Criminal Division; Ismail J. Ramsey, United States Attorney; Office of the United States Attorney, United States Department of Justice, San Francisco, California; Seth Brickey, Stephen Corso and Christopher D. Schroeder, Assistant United States Attorneys; S. Lane Tucker, United States Attorney; Office of the United States Attorney, United States Department of Justice, Anchorage, Alaska; for Plaintiffs-Appellees.

Carmen A. Smarandoiu (argued), Chief, Appellate Unit; Lara S. Vinnard and Varell L. Fuller, Assistant Federal Public Defenders; Jodi Linker, Federal Public Defender; Federal Public Defenders Office, San Jose, California; Daniel F. Poulson (argued) and Gretchen L. Staft, Assistant Federal Public Defenders; Office of the Federal Public Defender, Anchorage, Alaska; for Defendants-Appellants.

OPINION

W. FLETCHER, Circuit Judge:

Under 18 U.S.C. § 922(g)(9), a person "who has been convicted in any court of a misdemeanor crime of domestic violence" may not possess a firearm or ammunition. Congress enacted § 922(g)(9) in 1996 to fill a lacuna in federal gun control laws. Although federal law had long prohibited felons from possessing firearms, those prohibitions did not apply to domestic abusers convicted only of misdemeanors, despite the dangerousness evidenced by their abuse.

Joel Michael Ryno, Alex Leon Padgett, and David Paul Martinez (collectively, "Appellants") were convicted of misdemeanor crimes of domestic violence under state law and were later convicted of possessing firearms in violation of § 922(g)(9). Relying on *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), they argue that § 922(g)(9) violates the Second Amendment.

We hold that 18 U.S.C. § 922(g)(9) is constitutional.

I. Background

Ryno told his girlfriend he was going to kill her, held her against the garage door with a gun and a screwdriver while she held their infant child, hit her on the head, pointed a knife at her, and twice stabbed her bedroom door. He was convicted of assault in the fourth degree for "recklessly caus[ing] physical injury" to his girlfriend, in violation of Alaska Statute § 11.41.230(a)(1), a misdemeanor. Two years later, Ryno flipped over a table that hit his girlfriend's thigh, causing pain, abrasion, and bruising. Ryno told her

not to call the police or he would kill himself. He was again convicted of assault in the fourth degree.

After his first domestic violence conviction, a police officer stopped Ryno's vehicle and seized a rifle and ammunition in his possession. After his second conviction, officers seized another firearm. Two months later, after officers found Ryno sleeping behind the wheel of a car parked along a public highway, they seized two additional handguns. Ryno was convicted of one count of possessing firearms in violation of 18 U.S.C. § 922(g)(9).

Padgett pushed his wife into a dresser and hit her in front of her two young children, ages six and nine. One of the children told officers that he hid during the assault because he feared Padgett. Padgett had been consuming alcohol "heavily" for the previous three or four days. He was convicted of assault in the fourth degree, in violation of Alaska Statute § 11.41.230(a)(1). This was Padgett's fourth domestic violence conviction. Previously, Padgett had grabbed his girlfriend by her throat and pulled her over the back of a couch; had pushed a woman to the ground and strangled her until she could not breathe; and had strangled his girlfriend while she sat on a couch with her infant child.

In 2021, after Padgett shot and killed a bear near his home in Alaska, law enforcement seized a rifle and a handgun from his home. He was convicted of one count of possessing firearms in violation of 18 U.S.C. § 922(g)(9).

Martinez pushed his girlfriend into a door during an argument while he held their infant child. Concerned for her safety, his girlfriend called the police. Officers found Martinez running from the couple's home. He told the officers, "I'll sit if you want, but if you put your hands on me then it's on." Martinez was convicted of violating

California's misdemeanor domestic battery statute, Cal. Pen. Code § 243(e)(1).

In 2017, a police officer stopped Martinez for traffic violations. During a consensual search of Martinez's vehicle, the officer found a loaded semiautomatic handgun hidden in the center console. Officers then searched Martinez's home and found several additional firearms, including an AR-15 rifle, as well as ammunition and high-capacity magazines. Martinez was convicted of two counts of possessing firearms in violation of 18 U.S.C. § 922(g)(9).

Appellants argue that 18 U.S.C. § 922(g)(9) violates the Second Amendment. They bring both facial and as-applied challenges.

II. Standard of Review

We have jurisdiction under 28 U.S.C. § 1291. We review the constitutionality of a statute de novo. *United States v. Alaniz*, 69 F.4th 1124, 1127 (9th Cir. 2023).

III. Discussion

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The amendment "confer[s] an individual right to keep and bear arms," *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), and is incorporated against the states through the Due Process Clause of the Fourteenth Amendment, *McDonald v. City of Chicago*, 561 U.S. 742, 750, 778 (2010). The Supreme Court has written that certain longstanding prohibitions, including but not limited to "prohibitions on the possession of firearms by felons and the mentally ill," are

"presumptively lawful." *Heller*, 554 U.S. at 626, 627 n.26; *Rahimi*, 602 U.S. at 698–99.

Section 922(g)(9) prohibits any person previously convicted of a misdemeanor crime of domestic violence from possessing firearms or ammunition. 18 U.S.C. § 922(g)(9). The prior conviction must be a misdemeanor under federal, state, or tribal law that "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former" member of a domestic relationship. 18 U.S.C. § 921(a)(33)(A). Use of force includes "the knowing or intentional application of force," *United States v. Castleman*, 572 U.S. 157, 170 (2014), as well as "reckless assaults," *Voisine v. United States*, 579 U.S. 686, 692 (2016). Section 922(g)(9) adopts the common-law definition of "force." *Castleman*, 572 U.S. at 162–63, 168.

A prior conviction counts as a misdemeanor crime of domestic violence under § 922(g)(9) only if the defendant was represented by counsel and tried by a jury, unless the defendant validly waived those requirements. 18 U.S.C. § 921(a)(33)(B)(i). In many circumstances, a prior misdemeanor conviction of domestic violence results in a lifetime ban on possession of firearms and ammunition under § 922(g)(9). However, if an individual has a single prior domestic violence misdemeanor conviction from a dating relationship and does not share a child with the victim, the prohibition lasts five years from the later of the judgment of conviction or completion of the sentence, provided the individual is not convicted of another disqualifying offense. 18 U.S.C. § 921(a)(33)(C). The prohibition also generally ends if the "conviction has been expunged or set aside, or is an offense for which the person

has been pardoned or has had civil rights restored." *Id.* § 921(a)(33)(B)(ii).

Before the Supreme Court decided *Bruen*, we held that § 922(g)(9) was consistent with the Second Amendment. *United States v. Chovan*, 735 F.3d 1127, 1130 (9th Cir. 2013), *abrogated on other grounds by Bruen*, 597 U.S. at 17. Now, post-*Bruen*, we join every circuit that has applied *Bruen* and upheld § 922(g)(9) against Second Amendment challenges. *See United States v. Simmons*, 150 F.4th 126 (2d Cir. 2025); *United States v. Jackson*, 138 F.4th 1244 (10th Cir. 2025); *United States v. Nutter*, 137 F.4th 224 (4th Cir. 2025), *cert. denied*, 146 S. Ct. 270 (2025); *United States v. Bernard*, 136 F.4th 762 (8th Cir. 2025), *cert. denied*, 146 S. Ct. 254 (2025); *United States v. Gailes*, 118 F.4th 822 (6th Cir. 2024). Consistent with the holdings of our sister circuits, we hold that § 922(g)(9) is facially constitutional and constitutional as applied to Appellants.

A. Facial Challenge

To succeed in a facial challenge, Appellants must show § 922(g)(9) is unconstitutional in all its applications. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). In other words, in order to prevail, "the Government need only demonstrate that [the law] is constitutional in some of its applications." *Id.*

Bruen established a two-step historical framework to determine whether a firearm regulation violates the Second Amendment. *Bruen*, 597 U.S. at 17, 24. At step one, we must determine whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 24. If it does, then the amendment "presumptively protects that conduct." *Id.* The government can overcome the presumption at step

two by demonstrating that the regulation is consistent with "the Nation's historical tradition of firearm regulation." *Id.*

1. Plain Text of the Constitution

The Second Amendment protects "the right of 'the people' to keep and bear arms." *United States v. Duarte*, 137 F.4th 743, 752 (9th Cir. 2025) (en banc) (quoting U.S. Const. amend. II). "The people" includes those "who are part of [the] national community." *Heller*, 554 U.S. at 580 (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)); *Duarte*, 137 F.4th at 752–53 (citing *Heller*, 554 U.S. at 580). All three appellants are members of the "national community."

Appellants' status as domestic violence misdemeanants does not remove them from the ambit of the Second Amendment's text. In *Duarte*, we held en banc that felons are "people" who come within the scope of the Second Amendment. *Duarte*, 137 F.4th at 753–55. In *Perez-Garcia*, we repeated our pre-*Bruen* conclusion that "at least one group of misdemeanants—specifically, domestic violence misdemeanants—is 'entitled to some measure of Second Amendment protection.'" *United States v. Perez-Garcia*, 96 F.4th 1166, 1180 (9th Cir. 2024) (quoting *Chovan*, 735 F.3d at 1137), *cert. denied*, 145 S. Ct. 2707 (2025).

2. Historical Tradition of Firearm Regulation

Although the Second Amendment's plain text presumptively protects Appellants, the Government may overcome the presumption by demonstrating that § 922(g)(9) is consistent with our "historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

Bruen allows "reasoning by analogy" to determine whether a modern firearm regulation is "relevantly similar" to historical traditions of firearm regulation. *Id.* at 28–29. Central to this inquiry is "how" and "why" the regulation burdens the Second Amendment right. *Rahimi*, 602 U.S. at 692. The "how" considers "whether modern and historical regulations impose a comparable burden on the right of armed self-defense," and the "why" considers "whether that burden is comparably justified." *Duarte*, 137 F.4th at 755 (quoting *Bruen*, 597 U.S. at 29). "[W]hen a challenged regulation does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster.'" *Rahimi*, 602 U.S. 692 (quoting *Bruen*, 597 U.S. at 30). A modern regulation "must comport with the principles underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin.'" *Id.* We primarily look to historical regulations extant in 1791 and 1868 when the Second and Fourteenth Amendments were adopted, though "we may consider pre-and post-ratification history to the extent that it does not contravene founding-era evidence." *Duarte*, 137 F.4th at 755 (citing *Bruen*, 597 U.S. at 35–36, 39).

In *Rahimi*, the Supreme Court recently analyzed historical firearm regulations and rejected a facial challenge to a provision closely related to § 922(g)(9). The Court upheld the constitutionality of § 922(g)(8), which prohibits a person subject to a domestic violence restraining order from possessing a firearm if the order includes a finding that the person "'represents a credible threat to the physical safety of [an] intimate partner' or a child." *Rahimi*, 602 U.S. at 684–85, 690 (quoting 18 U.S.C. § 922(g)(8)(C)(i)). The Court held that § 922(g)(8) fits within the historical tradition of disarming those who "pose[] a clear threat of physical

violence to another." *Id.* at 698. It characterized this tradition as derived from two sets of historical regulations, surety and "going armed" laws. *Id.*

Surety laws "authorized magistrates to require individuals suspected of future misbehavior to post a bond." *Rahimi*, 602 U.S. at 695. As a "form of preventive justice," surety laws "could be invoked to prevent all forms of violence, including spousal abuse" and "targeted the misuse of firearms." *Id.* at 695–96 (internal quotations omitted) (citing 4 William Blackstone, Commentaries *251–53). "Going armed" laws prohibited "riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land." *Id.* at 697 (quoting 4 William Blackstone, Commentaries *149). The laws "punish[ed] those who had menaced others with firearms" with "forfeiture of the arms . . . and imprisonment." *Id.* (citation omitted).

Section 922(g)(9) is analogous to the surety and going armed laws identified in *Rahimi*. Like those laws, § 922(g)(9) targets people deemed dangerous to the physical safety of others. As noted above, § 922(g)(9) disarms those convicted of a misdemeanor crime of domestic violence that involved "the use or attempted use of physical force, or the threatened use of a deadly weapon." 18 U.S.C. § 921(a)(33)(A). It offers procedural protections, providing that, absent waiver, a defendant must have been represented by counsel and tried by a jury for his state conviction to be disqualifying. 18 U.S.C. § 921(a)(33)(B)(i). Section 922(g)(9) "matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Cf. Rahimi*, 602 U.S. at 699. Further, going armed laws punished those whose past conduct—menacing others with firearms—demonstrated a "threat of physical

violence." *See Rahimi*, 602 U.S. at 698. In much the same way, § 922(g)(9) disarms domestic violence misdemeanants whose past conduct resulting in a conviction demonstrates the same threat. Finally, § 922(g)(9) prevents further violence by domestic violence misdemeanants, much like the surety laws prevented violence, including spousal abuse. *See id.* at 695–97.

Appellants recognize the similarities between § 922(g)(9) and the surety and going armed laws that led the Court to uphold the constitutionality of § 922(g)(8) in *Rahimi*. However, they propose two distinctions between § 922(g)(8) and § 922(g)(9) that, in their view, place § 922(g)(9) outside *Rahimi*'s identified tradition of disarming individuals who pose a clear threat of physical violence. First, they point out that § 922(g)(8) is a temporary ban on firearm possession, while in many circumstances § 922(g)(9) is a permanent ban. Second, they emphasize that § 922(g)(8) requires an individualized judicial determination of future dangerousness. They argue that because § 922(g)(9) disarms individuals convicted of misdemeanors requiring only reckless conduct or common law force, the failure of § 922(g)(9) to require individualized findings of future dangerousness would result in disarming individuals who do not pose a clear threat of physical violence.

These distinctions are unconvincing. The burden on the presumptive Second Amendment right imposed by § 922(g)(9) is roughly comparable to that of § 922(g)(8), and to the degree § 922(g)(9)'s burden is greater, that burden is justified by the past behavior of the defendant. As Appellants concede, in at least some cases § 922(g)(9), like § 922(g)(8), operates as only a temporary ban on firearm possession. 18 U.S.C. §§ 921(a)(33)(B)(ii), (C); *see also Jackson*, 138 F.4th at 1254; *Nutter*, 137 F.4th at 231–32;

Bernard, 136 F.4th at 766; *Gailes*, 118 F.4th at 829. Further, § 922(g)(8) applies to those found to threaten domestic violence and subjected to civil restraining orders but convicted of nothing, whereas § 922(g)(9) applies to those criminally convicted of prior domestic violence. *Nutter*, 137 F.4th at 232; *Gailes*, 118 F.4th at 829 ("[I]f someone who is merely accused of committing domestic violence can be disarmed without offending the Second Amendment, then *a fortiori* someone with a valid conviction can also be disarmed."). Finally, § 922(g)(9) disarms individuals who present a clear threat of physical violence, *Nutter*, 137 F.4th at 233; *Gailes*, 118 F.4th at 829, given their past conduct and the likelihood that they will repeat their abuse in the future, *Bernard*, 135 F.4th at 765 (citing *Gailes*, 118 F.4th at 829).

Our decision is reinforced by our decision in *Duarte*, where we rejected a Second Amendment challenge to 18 U.S.C. § 922(g)(1), which permanently disarms convicted felons. *Duarte*, 137 F.4th at 748, 761. Duarte argued under *Bruen* that § 922(g)(1) was unconstitutional as applied to nonviolent felons. *Id.* at 749. We identified two historical traditions that each independently justified § 922(g)(1): first, "legislatures may disarm those who have committed the most serious crimes," and second, "legislatures may categorically disarm those they deem dangerous, without an individualized determination of dangerousness." *Id.* at 755; *see also id.* at 761. Discussing the second tradition, we wrote, "[F]our centuries of unbroken Anglo-American history show[] that legislatures consistently disarmed entire categories of people who were presumed to pose a special risk of misusing firearms," even though "[n]ot all persons disarmed under historical precedents . . . were violent or dangerous persons." *Id.* at 761 (first quoting *Range v. Att'y Gen.*, 124 F.4th 218, 273 (3d Cir. 2024) (en banc) (Krause,

J., concurring); then quoting *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024)). "Indeed, every categorical disarmament law was overbroad—sweeping in law-abiding people who were not dangerous, violent, untrustworthy, or unstable—yet they comported with the Second Amendment." *Id.* (internal quotations omitted) (quoting *Range*, 124 F.4th at 267 (Krause, J., concurring)).

The historical evidence supporting permanent, categorical disarmament of convicted felons under § 922(g)(1) applies equally to § 922(g)(9). We reject Appellants' argument that *Duarte*'s second tradition applies only to felonies. *Duarte* made clear that legislatures historically could "disarm on a categorical basis those who present a 'special danger of misuse' of firearms." 137 F.4th at 761 (quoting *Rahimi*, 602 U.S. at 698). Like § 922(g)(1), § 922(g)(9) permanently disarms a group Congress deemed dangerous—the members of which Congress had ample reason to consider dangerous. Convicted domestic abusers are "especially dangerous and require special attention" in part because "[d]omestic violence . . . leads to more domestic violence." 142 Cong. Rec. 22986 (1996) (statement of Sen. Lautenberg). "[A]ll too often, the only difference between a battered woman and a dead woman is the presence of a gun." 142 Cong. Rec. 22986 (1996) (statement of Sen. Wellstone). Section 922(g)(9) disarms domestic violence misdemeanants without an individualized judicial finding of future dangerousness because § 922(g)(9) reflects Congress's conclusion that "[t]here is no margin of error when it comes to domestic abuse and guns." 142 Cong. Rec. 22986 (1996) (statement of Sen. Lautenberg).

Section 922(g)(9) filled a dangerous gap in gun control laws. *Voisine*, 579 U.S. at 689 (quoting *Castleman*, 572 U.S. at 160). Domestic violence rarely results in a felony

conviction. *See id.* Indeed, felony prosecutions are rarely pursued. *United States v. Hayes*, 555 U.S. 415, 426 (2009). It is often difficult to obtain even a misdemeanor conviction. First, the abuse must be reported. Victims often do not report domestic violence because of fear, a desire to restore the relationship, embarrassment, or a belief that reporting is unhelpful. Michelle Fugate et al., *Barriers to Domestic Violence Help Seeking*, 11 Violence Against Women 290, 298–301 (2003); *see also* Susannah N. Tapp & Emilie J. Coen, U.S. DOJ Bureau of Just. Stat., *Criminal Victimization, 2024*, at 7 (2025) (documenting report rates). Second, a prosecutor must be persuaded to bring charges. Carol E. Jordan, *Intimate Partner Violence and the Justice System*, 19 J. Interpersonal Violence 1412, 1420 (2004) ("There is evidence that victims of domestic violence face low rates of prosecution . . . ."). Third, the prosecution must obtain a conviction, which is often difficult given the evidentiary issues in domestic violence cases. Lauren Bennett et al., *Systemic Obstacles to the Criminal Prosecution of a Battering Partner*, 14 J. Interpersonal Violence 761, 762 (1999) ("Victims' reluctance to cooperate with the prosecution . . . . can make successful prosecution difficult or impossible, especially in cases where there is little physical evidence of the assault." (citation omitted)); Lois A. Ventura & Gabrielle Davis, *Domestic Violence: Court Case Conviction and Recidivism*, 11 Violence Against Women 255, 265 (2005) ("[T]he most common reason a judge dismissed a domestic violence case was that at some point in the process, the victim failed to appear." (internal quotations omitted)).

A history of domestic violence is highly predictive of future violence. *Gailes*, 118 F.4th at 829 (collecting studies); *see United States v. Skoien*, 614 F.3d 638, 644 (7th

Cir. 2010). Domestic violence has a uniquely high recidivism rate. *See* Thomas P. George, *Domestic Violence Sentencing Conditions and Recidivism* 1, 17 (2016) (finding that 55% of individuals jailed for a domestic violence offense in Washington committed another domestic violence offense within five years); Carla Smith Stover, *Domestic Violence Research*, 20 J. Interpersonal Violence 448, 450 (2005) ("Studies have suggested that recidivism rates in domestic violence cases are high with studies estimating 40% to 80% or more of repeat violence . . . ."); Ventura & Davis, *supra*, at 268 (finding that 32.6% of individuals charged with domestic abuse were arrested for another domestic violence offense within one year). Recurring domestic violence is likely to become deadly when a firearm is present. *See* Aaron J. Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 J. Am. Acad. Psychiatry & L. 26 (2020) (concluding that domestic violence victims are five times more likely to be murdered if there is a firearm in the home and that over half of domestic homicides are committed with firearms); Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA 3043, 3044 (1992) (finding that domestic violence involving firearms is 12 times more likely to be deadly than domestic violence without firearms).

Appellants' facial challenge to § 922(g)(9) therefore fails. We conclude that § 922(g)(9) may be constitutionally applied to individuals who have been previously convicted of misdemeanors based on them having used criminal force against their domestic partners.

B. As-Applied Challenges

Appellants also argue that § 922(g)(9) is unconstitutional as applied to them. A statute is unconstitutional "as applied," when "by its own terms, [it] infringe[s] constitutional freedoms in the circumstances of the particular case." *United States v. Christian Echoes Nat'l Ministry, Inc.*, 404 U.S. 561, 565 (1972); *see also Perez-Garcia*, 96 F.4th at 1177.

Not every firearm regulation is susceptible to an as-applied challenge. In *Duarte*, we held that § 922(g)(1) categorically applied to all felons, regardless of whether a particular underlying felony was violent. *Duarte*, 137 F.4th at 755, 761. We rejected "felony-by-felony litigation" for challenges to § 922(g)(1) because history established that "the government is empowered to regulate guns through categorical restrictions." *Id.* at 761 (internal quotations omitted) (quoting *Atkinson v. Garland*, 70 F.4th 1018, 1038 (7th Cir. 2023) (Wood, J., dissenting)).

We similarly hold here that § 922(g)(9) categorically disarms individuals convicted of a misdemeanor crime of domestic violence. Like § 922(g)(1), § 922(g)(9) reflects Congress's determination that members of a class of convicted criminals are dangerous. Therefore, we hold that we need not engage in a misdemeanor-by-misdemeanor inquiry under § 922(g)(9). We are not alone in so holding. As we do here, the Second Circuit rejected a defendant's as-applied challenge to § 922(g)(9) based on Congress's power to disarm groups of people without distinguishing between the nature of the offense underlying particular convictions. *See Simmons*, 150 F.4th at 133–34 ("[W]e conclude that the statute is constitutional both facially and as applied to Simmons, who has undisputedly been convicted of a

misdemeanor crime of domestic violence."). Section 922(g)(9) is constitutional as applied to Appellants, each of whom was convicted of a misdemeanor crime of domestic violence.

IV. Conclusion

Congress enacted § 922(g)(9) to close a dangerous loophole in our gun control laws. In doing so, it legislated against a background of historical traditions of firearm regulation. Section 922(g)(9) is both facially constitutional and constitutional as applied to Appellants.

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
Northern District of California

UNITED STATES OF AMERICA
v.
David Paul Martinez

) **JUDGMENT IN A CRIMINAL CASE**
)
) USDC Case Number: CR-17-00257-001 LHK
) BOP Case Number: DCAN517CR00257-001
) USM Number: 24262-111
) Defendant's Attorney: Varell L. Fuller (AFPD)

THE DEFENDANT:

☐ pleaded guilty to count(s):

☐ pleaded nolo contendere to count(s): which was accepted by the court.

☑ was found guilty on count(s): One and Two of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(9)	Prohibited Person in Possession of a Firearm	1/23/2017	One
18 U.S.C. § 922(g)(9)	Prohibited Person in Possession of a Firearm	2/10/2017	Two

The defendant is sentenced as provided in pages 2 through 8 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) 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.

12/12/2018
Date of Imposition of Judgment

Lucy H. Koh
Signature of Judge
The Honorable Lucy H. Koh
United States District Judge
Name & Title of Judge

12/14/2018
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 39 months. This term consists of terms of 39 months on each of Counts One and Two, all counts to be served concurrently.

The appearance bond is hereby exonerated, or upon surrender of the defendant as noted below. Any cash bail plus interest shall be returned to the owner(s) listed on the Affidavit of Owner of Cash Security form on file in the Clerk's Office.

☑ The Court makes the following recommendations to the Bureau of Prisons:
1) The defendant participate in the Bureau of Prisons Residential Drug Abuse Treatment Program
2) The defendant be designated to a Bureau of Prisons facility as close as possible to Hollister, California, to facilitate family visits.

☐ 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 (no later than 2:00 pm).
- ☐ as notified by the United States Marshal.

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

- ☑ on 2/6/2019 (no later than 2:00 pm).
- ☐ 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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Three (3) Years. This term consists of terms of three years on each of Counts One and Two, all such terms to run concurrently.

MANDATORY CONDITIONS OF SUPERVISION

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance.
3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4) ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5) ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

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, and bring about improvements in your conduct and condition.

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of RELEASE, 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 follow the instructions of the probation officer related to the conditions of supervision.
5) You must answer truthfully the questions asked by your probation officer.
6) 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, for example), 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.
7) 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 these and the special conditions of your supervision that he or she observes in plain view.
8) You must work at least part-time (defined as 20 hours per week) at a lawful type of employment unless excused from doing so by the probation officer for schooling, training, community service or other acceptable activities. 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.
9) You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.
10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
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) 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).

☐ If the probation officer determines that you pose a risk to a third party, 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. *(check if applicable)*

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision upon a finding of a violation of probation or supervised release.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

SPECIAL CONDITIONS OF SUPERVISION

1. You must pay any special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

2. You must participate in a mental health treatment program, as directed by the probation officer. You are to pay part or all cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the total cost of mental health counseling. The actual co-payment schedule shall be determined by the probation officer.

3. You must participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as you are released from treatment by the probation officer. You are to pay part or all of the cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the total cost of urinalysis and counseling. The actual co-payment schedule shall be determined by the probation officer.

4. You must abstain from the use of all alcoholic beverages.

5. You must cooperate in the collection of DNA as directed by the probation officer.

6. You must submit your person, residence, office, vehicle, or any property under your control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; you must warn any residents that the premises may be subject to searches.

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$200	N/A	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 column 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	$ 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 the .
- ☐ the interest requirement is waived for the 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.

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $200 due immediately, balance due

☐ not later than , or
☑ in accordance with ☐ C, ☐ D, or ☐ E, and/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 will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
When incarcerated, payment of criminal monetary penalties are 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. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

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

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	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:
1) Beretta, model 96, .40 caliber pistol bearing serial number BER104256;
2) Bushmaster AR-15, .223 caliber firearm bearing serial number L517356;
3) Winchester, model 37A, 20 gauge shotgun bearing serial number C774354;
4) Winchester, model 290, .22 caliber rifle bearing an obliterated serial number;
5) Eleven rounds of hollow point .40 caliber Smith & Wesson ammunition;
6) Sixteen rounds of .40 caliber Winchester ammunition;
7) Five rounds of .40 caliber Federal ammunition;

* 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.

8) Three 11-round .40 caliber pistol magazines;
9) Ninety rounds of Remington .223 caliber ammunition;
10) Three 30-round .223 caliber magazines;
11) One 60-round Magpul drum magazine;
12) One 30-round Magpul magazine;
13) One 30-round magazine;
14) Boxes of Winchester 20 gauge shotgun shells;
15) Rounds of 9mm, 20 gauge, .22 caliber, 10 mm, .38 special, .45 caliber, .380 caliber, .40 caliber, 12 gauge, and 17mm ammunition found in a red duffel bag.

☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect the defendant's responsibility for the full amount of the restitution ordered.**

APPENDIX D

NOT FOR PUBLICATION

FILED

APR 20 2020

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DAVID PAUL MARTINEZ, Defendant-Appellant.	No. 18-10498 D.C. No. 5:17-cr-00257-LHK-1 MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

Argued and Submitted March 3, 2020
San Francisco, California

Before: SILER,** WARDLAW, and M. SMITH, Circuit Judges.

David Martinez appeals the district court's denial of his motion to suppress and his conviction at a stipulated facts bench trial for being a domestic violence misdemeanant in possession of a firearm, in violation of 18 U.S.C. § 922(g)(9). We have jurisdiction under 28 U.S.C. § 1291. We vacate in part and remand for

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

** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

further proceedings.

1. In denying Martinez's motion to suppress evidence found during the search of his car, the district court erred by relying on pre-Proposition 64 cases that held that the odor of marijuana alone provides probable cause to search for violations of state marijuana laws. *See, e.g.*, *United States v. Solomon*, 528 F.2d 88, 91 (9th Cir. 1975); *United States v. Barron*, 472 F.2d 1215, 1217 (9th Cir. 1973); *United States v. Newman*, 563 F. App'x 539, 541 (9th Cir. 2014). These cases were decided at a time when possession of any quantity of marijuana was unlawful under state law. But that is no longer true in California after the passage of Proposition 64, which legalized the possession of 28.5 grams or less of marijuana, Cal. Health & Safety Code § 11362.1(a). Accordingly, these cases do not control whether Deputy Creager had probable cause to search for violations of California law.

We therefore vacate the denial of the motion to suppress and remand for further consideration of the search of Martinez's car. On remand, the district court should first address the factual question of whether Martinez consented to the search of his car. If the district court must reach the probable cause issue, it should determine whether the facts known to Deputy Creager supported probable cause to believe that Martinez's car contained evidence of a crime for which the Fourth Amendment permitted Deputy Creager to search. Such crimes might include

violations of California's remaining laws that restrict the possession and use of marijuana. *See, e.g.*, Cal. Health & Safety Code § 11362.3(a)(4) (prohibiting the possession of an open container of marijuana while operating a motor vehicle). As the district court did not address whether, in light of the fact that Deputy Creager is a state officer, it would be consistent with the Fourth Amendment to consider whether there was probable cause to believe the car contained evidence of a violation of *federal* marijuana laws, we decline to decide that issue in the first instance. *See Haskell v. Harris*, 745 F.3d 1269, 1271 (9th Cir. 2014) (en banc) (per curiam) ("[W]e are a court of review, not first view . . . .").

Because the remaining issues on appeal will remain relevant if the district court again denies the motion to suppress evidence from the car, we decide them here.

2. The district court correctly rejected Martinez's argument that the evidence found in his apartment should be suppressed because the search warrant was invalid.[1]

a. It was not improper for the warrant affidavit to include Martinez's statement that he had previously been housed in "B" pod of the county jail, which

[1] Of course, if the district court concludes that the evidence from the car should be suppressed, the evidence found in the apartment should likewise be suppressed because the search warrant affidavit relied heavily on the evidence found in the car.

was relevant because "B" pod was where the jail had housed members of the Norteño gang. Even assuming that Martinez should have been read *Miranda* warnings before he was asked about his previous jail housing, un-*Mirandized* but otherwise voluntary statements may be used in a warrant affidavit to establish probable cause. *United States v. Patterson*, 812 F.2d 1188, 1193 (9th Cir. 1987).

b. The district court correctly denied a *Franks* hearing. *See Franks v. Delaware*, 438 U.S. 154 (1978). "To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing that: (1) the affiant officer intentionally or recklessly made false or misleading statements or omissions in support of the warrant, and (2) the false or misleading statement or omission was material, *i.e.*, necessary to finding probable cause." *United States v. Norris*, 942 F.3d 902, 909–10 (9th Cir. 2019) (internal quotation marks omitted), *cert. petition docketed*, No. 19-8178. Martinez failed to make that showing.

First, contrary to Martinez's argument, the information in the warrant affidavit about common Norteño gang symbols did not misleadingly suggest that Martinez himself had used all of these symbols. In context, it is clear that this section of the affidavit served only to demonstrate Deputy Creager's expertise in matters relating to the Norteño gang.

Nor was it false or misleading for Deputy Creager's affidavit to say that he knew from his experience that "'B' pod is where Norteno gang members are

housed'" and that he had "confirmed that 'B' pod was still a pod where Nortenos were being housed with jail staff on the day Martinez was booked." These statements were factually true and would not mislead a reasonable reader into thinking that *every* person housed in "B" pod was a member of the Norteño gang. Moreover, even assuming the affidavit could be read that way, Martinez failed to make a substantial preliminary showing that Deputy Creager acted intentionally or recklessly in his choice of language. *Id.*

Finally, Martinez argues that the affidavit falsely stated that two of his tattoos were gang-related. The affidavit described the tattoos as "money symbols"—that is, the letter "S with lines through it"—and noted that "[t]he letter 'S' with lines through it is a sign of disrespect to the Sureno criminal street gang." In the district court, Martinez presented a written report from Joshua Mason, an expert on "urban, prison, and gang culture." Mason agreed with the affidavit's statement that the letter "S" with lines through it is a sign of disrespect to the Sureño gang. He opined, however, that in Norteño tattoos, "the S is crossed out with a single line or by writing a K over it . . . or an X, and not a double vertical line as found on Mr. Martinez's tattoos," and that Martinez's tattoos therefore did not indicate Norteño membership.

However, even if Mason's report were credited, the most it shows is that Deputy Creager mistook one type of crossed-out "S" tattoo for another. A mistake

of this nature, on its own, is not enough to make a substantial showing of intentional or reckless falsity. *Id.*

c. The district court correctly concluded that the affidavit established "at least a colorable argument for probable cause" and that the officers conducting the search relied on the warrant "in an objectively reasonable manner." *United States v. Krupa*, 658 F.3d 1174, 1179 (9th Cir. 2011) (standard of review for a warrant issued by a neutral magistrate). The affidavit stated that a stolen firearm had been found concealed in Martinez's car and described various indicia of affiliation with the Norteño gang, including Martinez's statement about 'B' pod, the aforementioned tattoos, and various apparel and belongings that were consistent with Norteño membership. It also said that Deputy Creager knew, based on his training and experience, that "gang members often possess weapons such as firearms, knives, bats etc." These facts, taken together, were enough to create at least a "colorable argument" for probable cause to believe that Martinez's apartment would contain additional firearms or evidence of gang affiliation. *See id.*; *cf. Messerschmidt v. Millender*, 565 U.S. 535, 549 (2012).

3. The district court did not plainly err by finding Martinez guilty without direct evidence that Martinez knew he had a prior misdemeanor domestic violence conviction at the time he possessed the firearm. *See Rehaif v. United States*, 139 S. Ct. 2191, 2194 (2019) (holding that another provision of 18 U.S.C.

§ 922(g) requires proof that the defendant had knowledge of the status that rendered the possession of the firearm unlawful); *United States v. Benamor*, 937 F.3d 1182, 1188 (9th Cir. 2019) (reviewing a *Rehaif* claim for plain error when the defendant did not raise it in the district court).

To prevail on plain error review, Martinez must show "(1) an error (2) that was obvious and (3) that affected [his] substantial rights and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Benamor*, 937 F.3d at 1188 (citing *United States v. Olano*, 507 U.S. 725, 734, 736 (1993)). While the decision in *Rehaif* establishes that the district court made an obvious error in failing to address whether Martinez knew of his domestic violence conviction, *id.*, the third and fourth prongs of the plain error test are not satisfied because Martinez has not shown a "probability that, but for the error, the outcome of the proceeding would have been different." *Id.* at 1189.

Martinez stipulated to the domestic violence conviction, which occurred less than five years before he was caught with the firearm. "[K]nowledge can be inferred from circumstantial evidence," *Rehaif*, 139 S. Ct. at 2198 (quoting *Staples v. United States*, 511 U.S. 600, 615 n.11 (1994)), and the short period of time between Martinez's conviction and his possession of the firearm is strong evidence that he knew of the conviction at the time of possession. Accordingly, Martinez cannot show that the district court's failure to find knowledge of his status affected

his "substantial rights or the fairness, integrity, or public reputation of the trial." *Benamor*, 937 F.3d at 1189.

VACATED; REMANDED.

APPENDIX E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MARTINEZ, Defendant.	Case No. 17-cr-00257-VC-1 **ORDER DENYING MOTION TO SUPPRESS** Re: Dkt. Nos. 98, 99

Because Martinez consented to the search of his car, and the officers did not unconstitutionally prolong the preceding traffic stop, the motion to suppress is denied. This ruling assumes that the reader is familiar with the record and the arguments made by the parties.

I.

To establish the validity of consent to search, "the government bears the heavy burden of demonstrating that the consent was freely and voluntarily given." *United States v. Chan-Jimenez*, 125 F.3d 1324, 1327 (9th Cir. 1997). "Among the factors that tend to show a lack of voluntariness are: (1) the person was in custody; (2) the officer had his weapon drawn; (3) the officer failed to administer *Miranda* warnings; (4) the officer did not inform the person of his right to refuse to consent; and (5) the person was told that a search warrant could be obtained." *Id.* These factors, however, are not dispositive: "[w]hether consent to search was voluntarily given or not is 'to be determined from the totality of all the circumstances.'" *Id.* (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973)).

Although courts must account for "subtly coercive police questions" and the "substantial anxiety" that may come with a traffic stop, the video belies the argument that Martinez did not freely and voluntarily consent to the search. *Schneckloth*, 412 U.S. at 227. Deputy Creager did not ask to search the car; Martinez offered. The video shows both Deputy Creager and Martinez having a relatively casual conversation, Deputy Creager's questioning is not accusatory, there is no indication that the search was a foregone conclusion, and Martinez's offer regarding the search seems genuine.

Applying the *Chan-Jimenez* factors confirms this conclusion. Martinez was not in custody at the time of the stop, and no Miranda warnings were required. *United States v. Butler*, 249 F.3d 1094, 1098 (9th Cir. 2001) ("The case books are full of scenarios in which a person is detained by law enforcement officers, is not free to go, but is not 'in custody' for *Miranda* purposes. A traffic stop is not custody."). *See also Berkemer v. McCarty*, 468 U.S. 420, 436–42 (1984). The officers' weapons were not drawn, and Martinez was not told a search warrant could be obtained. Although the officers did not tell Martinez that consent could be refused, this factor is "inapposite" because Martinez offered his consent "without any prompting." *United States v. Brown*, 563 F.3d 410, 416 (9th Cir. 2009). Based on the totality of the circumstances, Martinez's consent was voluntarily given.

II.

Martinez argues that any possible consent was tainted because the police unlawfully prolonged the traffic stop prior to the search. The "evidence derived from a consensual search is only admissible if 'the consent was both voluntary and not an exploitation of the prior illegality.'" *United States v. Washington*, 490 F.3d 765, 775 (9th Cir. 2007) (quoting Wayne R. LaFave, 4 *Search and Seizure* § 8.2(d)). Contrary to the government's argument, it is not outside

the scope of the Ninth Circuit's remand to consider the constitutionality of the preceding traffic stop.

During a lawful traffic stop, an officer "may conduct certain…checks" unrelated to the "traffic mission," but they "may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Rodriguez v. United States*, 575 U.S. 348, 355–56 (2015). Here, Martinez argues that the officers unlawfully prolonged the stop by asking dispatch for Martinez's probation status, patting him down, asking about the smell of marijuana, and asking if there was anything illegal in the car.

Probation Status. Inquiries into a driver's probation status go "beyond the 'ordinary inquiries incident to [a traffic] stop" because such inquiries are "wholly unrelated" to the officers' mission of "ensuring that vehicles on the road are operated safely and responsibly." *United States v. Ward*, No. 16-CR-00485-JST-1, 2017 WL 1549474, at *3 (N.D. Cal. May 1, 2017) (quoting *Rodriguez*, 575 U.S. at 355). But Deputy Creager asked dispatch about Martinez's probation status at the same moment that he asked about Martinez's driver's license "status" and any outstanding warrants. As such, the inquiry into Martinez's probation status did not unconstitutionally prolong the stop.

Pat Down. "To justify a patdown of the driver or a passenger during a traffic stop…the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). The officers had that reasonable suspicion here.

Based on Deputy Creager's experience, drivers "often use paper plates" to conceal stolen cars. Dkt. No. 98-3 at 8. The tinted windows also posed a risk because Deputy Creager could not tell if "the person or person(s) inside of the vehicle [had] any weapons, dogs etc." *Id. See also,*

e.g., United States v. Stanfield, 109 F.3d 976, 981 (4th Cir. 1997) ("When, during already dangerous traffic stops, officers must approach vehicles whose occupants and interiors are blocked from view by tinted windows, the potential harm to which the officers are exposed increases exponentially…"). Although that safety risk was lessened when Martinez exited the car, the presence of the windows provided some support for the inference that Martinez was dangerous. When the officers spoke to Martinez, he told them it was not his car, but his girlfriend's. Martinez was also wearing a "Cincinnati Reds baseball hat with red letter 'C' and a red bill." Dkt. No. 98-3 at 7. Based on "hundreds of gang[-]related arrests and investigations," Deputy Creager knew this hat could show affiliation to the Norteno criminal street gang. *Id.* Finally, Martinez's "large, oversized and baggy sweatshirt…covered his waist band," and so Deputy Creager could not see if "he had any weapons on his person." *Id.* at 8. Based on the totality of these facts, the officers had reasonable suspicion that Martinez was armed and dangerous, justifying the pat down.

Questions About Marijuana. Martinez next argues that "the Fourth Amendment did not permit Deputy Creager…to consider the smell of marijuana, because the possession and transportation of personal use amounts of marijuana was not illegal under state law at the time of the stop." Because Deputy Creager could not "consider the smell of marijuana," Martinez argues, his questions about the smell unconstitutionally prolonged the stop.

Martinez takes this argument one step too far: it is true that, following California's Proposition 64, the smell of marijuana alone may not provide probable cause to search for violations of state marijuana laws. *See United States v. Martinez*, 811 F. App'x 396, 397 (9th Cir. 2020). That does not mean Deputy Creager was forbidden from even asking Martinez about the smell. California law still prohibits the use of marijuana while driving, and it also prohibits

driving with an "open container" of marijuana. *See* Cal. Health & Safety Code §§ 11362.3(a)(4), (a)(7).[1] After smelling the "strong" odor of marijuana, Deputy Creager was permitted to "conduct[] a further inquiry, including asking [Martinez] about the amount of marijuana, whether it was in a container, where it was located, when he last smoked, etc." *People v. Shumake*, 45 Cal. App. 5th Supp. 1, 8 (Cal. App. Dep't Super. Ct. 2019). These questions are "consistent with the type of reasonable inquiry officers use when they smell alcohol in a car." *Id.* And they are consistent with the officers' "mission" of ensuring that vehicles are operated safely and responsibly. *See Rodriguez*, 575 U.S. at 355. As such, Deputy Creager's questions about the smell did not unconstitutionally prolong the stop.

Questions About Illegal Items in the Car. Based on the factors above—including, the possibility that the car was stolen, the tinted windows, and Martinez's hat—Deputy Creager's questions about whether there was anything illegal in the car were based on reasonable suspicion and did not unconstitutionally prolong the stop.

IT IS SO ORDERED.

Dated: October 5, 2022

VINCE CHHABRIA
United States District Judge

[1] Admittedly, in contrast to alcohol, it's not clear what it means to have an "open container" of marijuana, nor is it obvious that the distinction between an "open" and "closed" container makes sense in the context of marijuana.

APPENDIX F

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MARTINEZ, Defendant.	Case No. 17-cr-00257-VC-1 **ORDER DENYING MOTION TO DISMISS** Re: Dkt. No. 113

The motion to dismiss is denied. The Court adopts the analyses provided by Judge Berger in *United States v. Nutter*, No. 2:21-CR-00142, 2022 WL 3718518 (S.D. W. Va. Aug. 29, 2022), and Judge DeGiusti in *United States v. Jackson*, No. CR-22-59-D, 2022 WL 3582504 (W.D. Okla. Aug. 19, 2022).[1] Given those analyses, Martinez's as-applied challenge is also rejected. Monday's hearing on the motion to dismiss is converted to a status conference.

IT IS SO ORDERED.

Dated: February 2, 2023

VINCE CHHABRIA
United States District Judge

[1] It is not outside the scope of the Ninth Circuit's mandate to consider Martinez's arguments. *United States v. Kellington*, 217 F.3d 1084, 1094 (9th Cir. 2000); *see also Class v. United States*, 138 S. Ct. 798, 805–06 (2018).

APPENDIX G

UNITED STATES DISTRICT COURT
Northern District of California

UNITED STATES OF AMERICA
v.
David Paul Martinez

AMENDED JUDGMENT IN A CRIMINAL CASE

USDC Case Number: CR-17-00257-001 VC
BOP Case Number: DCAN517CR00257-001
USM Number: 24262-111
Defendant's Attorney: Varell L. Fuller (AFPD)

Date of Original Judgment: 12/14/2018
(or Date of Last Amended Judgment)

THE DEFENDANT:

☐ pleaded guilty to count(s):
☐ pleaded nolo contendere to count(s): which was accepted by the court.
☑ was found guilty on counts: One and Two of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(9)	Prohibited Person in Possession of a Firearm	1/23/2017	One
18 U.S.C. § 922(g)(9)	Prohibited Person in Possession of a Firearm	2/10/2017	Two

The defendant is sentenced as provided in pages 2 through 8 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) 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.

12/12/2018
Date of Imposition of Judgment



Signature of Judge
The Honorable Vince Chhabria
United States District Judge
Name & Title of Judge

March 15, 2023
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
39 months. This term consists of terms of39 months on each of Counts One and Two, all counts to be served concurrently.

The appearance bond is hereby exonerated, or upon surrender of the defendant as noted below. Any cash bail plus interest shall be returned to the owner(s) listed on the Affidavit of Owner of Cash Security form on file in the Clerk's Office.

☑ The Court makes the following recommendations to the Bureau of Prisons:
1) The defendant participate in the Bureau of Prisons Residential Drug Abuse Treatment Program
2) The defendant be designated to a Bureau of Prison facility as close as possible to Hollister, California, to facilitate family visits.

☐ 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 (no later than 2:00 pm).

☐ as notified by the United States Marshal.

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

☑ on 5/8/2023 (no later than 2:00 pm).

☐ 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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Three (3) years. This term consists of terms of three years on each of Counts One and Two, all such terms to run concurrently.

MANDATORY CONDITIONS OF SUPERVISION

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance.
3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4) ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5) ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

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, and bring about improvements in your conduct and condition.

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of RELEASE, 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 follow the instructions of the probation officer related to the conditions of supervision.
5) You must answer truthfully the questions asked by your probation officer.
6) 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, for example), 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.
7) 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 these and the special conditions of your supervision that he or she observes in plain view.
8) You must work at least part-time (defined as 20 hours per week) at a lawful type of employment unless excused from doing so by the probation officer for schooling, training, community service or other acceptable activities. 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.
9) You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.
10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
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) 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).

☐ If the probation officer determines that you pose a risk to a third party, 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. *(check if applicable)*

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision upon a finding of a violation of probation or supervised release.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

SPECIAL CONDITIONS OF SUPERVISION

1. You must pay any special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

2. You must participate in a mental health treatment program, as directed by the probation officer. You are to pay part or all cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the total cost of mental health counseling. The actual co-payment schedule shall be determined by the probation officer.

3. You must participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as you are released from treatment by the probation officer. You are to pay part or all of the cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the total cost of urinalysis and counseling. The actual co-payment schedule shall be determined by the probation officer.

4. You must abstain from the use of all alcoholic beverages.

5. You must cooperate in the collection of DNA as directed by the probation officer.

6. You must submit your person, residence, office, vehicle, or any property under your control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; you must warn any residents that the premises may be subject to searches.

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200	Waived	N/A	N/A	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 column 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	$ 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 the.

☐ the interest requirement is waived for the 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.

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of _____ due immediately, balance due

☐ not later than , or
☐ in accordance with ☐ C, ☐ D, or ☐ E, and/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 will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
A $200 Special Assessment is due. When incarcerated, payment of criminal monetary penalties are 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. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

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

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	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:
1) Beretta, model 96, .40 caliber pistol bearing serial number BER104256;
2) Bushmaster AR-15, .223 caliber firearm bearing serial number L517356;
3) Winchester, model 37A, 20 gauge shotgun bearing serial number C774354;
4) Winchester, model 290, .22 caliber rifle bearing an obliterated serial number;
5) Eleven rounds of hollow point .40 caliber Smith & Wesson ammunition;
6) Sixteen rounds of .40 caliber Winchester ammunition;

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

7) Five rounds of .40 caliber Federal ammunition;
8) Three 11-round .40 caliber pistol magazines;
9) Ninety rounds of Remington .223 caliber ammunition;
10) Three 30-round .223 caliber magazines;
11) One 60-round Magpul drum magazine;
12) One 30-round Magpul magazine;
13) One 30-round magazine;
14) Boxes of Winchester 20 gauge shotgun shells;
15) Rounds of 9mm, 20 gauge, .22 caliber, 10 mm, .38 special, .45 caliber, .380 caliber, .40 caliber, 12 gauge, and 17mm ammunition found in a red duffel bag.

☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect the defendant's responsibility for the full amount of the restitution ordered.**

APPENDIX H

JODI LINKER
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Northern District of California
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Counsel for Defendant Martinez

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAVID PAUL MARTINEZ, Defendant.	**Case No.:** CR 17–00257 VC **DEFENDANT'S NOTICE OF APPEAL**

Defendant David Paul Martinez hereby gives notice of his intent to appeal the judgment of conviction and sentence in the Amended Judgment entered on the docket on March 15, 2023.

Dated: March 17, 2023

Respectfully submitted,

JODI LINKER
Federal Public Defender
Northern District of California

/S/
VARELL FULLER
Assistant Federal Public Defender