

---

---

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

**In the  
Supreme Court of the United States**

---

---

Johnny Nunez Garcia,  
*Petitioner,*  
v.  
United States of America,  
*Respondent.*

---

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

---

---

**PETITION FOR A WRIT OF CERTIORARI**

---

---

ROBIN C. SMITH, ESQ.  
*Counsel of Record*  
100 Shoreline Hwy, Suite 100B  
Mill Valley, CA 94941  
rcs@robinsmithesq.com  
(415) 726-8000  
*Attorney for Petitioner*

**QUESTION PRESENTED**

Whether the term of supervised release prohibiting possession of firearms violates the Second Amendment?

**LIST OF PARTIES IN THE COURT OF APPEALS**

United States of America

Johnny Garcia

**STATEMENT PURSUANT TO RULE 14(1)(b)(iii)**

*United States v. Garcia*, 1:19-cr-00766, is the trial court docket in the Southern District of New York, from which this case originates.

*United States v. Garcia*, 22-749, is the appeals court docket in the Second Circuit Court of Appeals to which petitioner seeks certiorari.

## TABLE OF CONTENTS

	<b>Page(s)</b>
QUESTION PRESENTED .....	i
LIST OF PARTIES IN THE COURT OF APPEALS .....	ii
STATEMENT PURSUANT TO RULE 14(1)(b)(iii).....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES .....	iv
OPINIONS BELOW .....	1
JURISDICTIONAL STATEMENT .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR THE GRANTING OF THE WRIT .....	2
I.    THE TERM OF SUPERVISED RELEASE PROHIBITING GARCIA FROM POSSESSING A FIREARM VIOLATES THE SECOND AMENDMENT .....	2
a.    De Novo Review Applies .....	2
b.    Standard Conditions of Supervised Release Are Discretionary .....	2
c.    Standard Condition 10 Violates the Second Amendment.....	3
CONCLUSION.....	5
<b>APPENDIX TABLE OF CONTENTS</b>	
OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED OCTOBER 17, 2024.....	1a
JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED MARCH 25, 2022.....	6a
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	13a

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases:</b>	
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	4, 5
<i>Monasky v. Taglieri</i> , 589 U.S. 68 (2020) .....	2
<i>New York State Rifle &amp; Pistol Assn., Inc. v. Bruen</i> , 597 U. S. 1 (2022) .....	3, 4
<i>United States v. Johnson</i> , 529 U.S. 53 (2000) .....	3
<i>United States v. Johnson</i> , 529 U.S. 694 (2000) .....	3
<i>United States v. Rahimi</i> , ___ U.S. ___, 144 S.Ct. 1889 (June 21, 2024) .....	3, 4
<b>Statutes &amp; Other Authorities:</b>	
U.S. Const. amend. II .....	2, 3, 4, 5
18 U.S.C. § 3553(a) .....	3
18 U.S.C. § 3583(d)(2) .....	4
18 U.S.C. § 3583(e)(3) .....	3
28 U.S.C. § 1254(1) .....	1
USSG § 5D1.3(a)-(e).....	3

**OPINIONS BELOW**

The Summary Order of the Court of Appeals for the Second Circuit is reproduced in the appendix bound herewith. (A. 1-5).<sup>1</sup> The summary order is unpublished and can be located at 2024 U.S. App. LEXIS 26210 (2d Cir. October 17, 2024). There are no opinions from the district court at issue.

**JURISDICTIONAL STATEMENT**

The judgment of the Court of Appeals was entered on October 17, 2024. (A. 1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Relevant Constitutional and statutory provisions are located in the Appendix to this Petition. (A. 13-15).

---

<sup>1</sup> Numerical References preceded by “A.” refer to the pages of the Appendix filed herewith.

## STATEMENT OF THE CASE

Petitioner seeks review of the Second Circuit's determination that he has been deprived of his Second Amendment protections by virtue of the condition of supervised release prohibiting him from possessing a firearm during his supervised release term.

### REASONS FOR THE GRANTING OF THE WRIT

#### I. THE TERM OF SUPERVISED RELEASE PROHIBITING GARCIA FROM POSSESSING A FIREARM VIOLATES THE SECOND AMENDMENT

##### *a. De Novo Review Applies*

When a challenge to a condition of supervised release presents an issue of law, the condition is reviewed *de novo*. Generally, questions of law are reviewed *de novo*. *Monasky v. Taglieri*, 589 U.S. 68, 83 (2020). The question of whether the condition of supervised release prohibiting petitioner, *inter alia*, from owning, possessing and having access to firearms and ammunition is unconstitutional is a question of law.

##### *b. Standard Conditions of Supervised Release Are Discretionary*

Sentencing courts, in determining the conditions of a defendant's supervised release, are required to consider, among other factors, "the nature and circumstances of the offense and the history and characteristics of the defendant," "the need . . . to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed

education or vocational training, medical care, or other correctional treatment.” 18 U.S.C. § 3553(a). *United States v. Johnson*, 529 U.S. 53, 59-60 (2000).

Pursuant to Guideline 5D1.3, there are four different types of supervised release: mandatory, discretionary, standard and special. USSG § 5D1.3(a)-(e). Although the Guideline merely “recommend[s]” a total of thirteen conditions, the judgment form used by all district courts in sentencing lists twelve standard conditions of supervision as if they are a required. It is from the boilerplate discretionary standard conditions of supervision that appellant has been subject to an absolute bar on his Second Amendment rights. Upon violation of a condition, 18 U.S.C. § 3583(e)(3) (1988 ed., Supp. V) authorizes the court to “revoke a term of supervised release and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision . . . .” *United States v. Johnson*, 529 U.S. 694, 697 (2000).

***c. Standard Condition 10 Violates the Second Amendment***

As recently elucidated in *United States v. Rahimi*, \_\_\_ U.S. \_\_\_, 144 S.Ct. 1889 (June 21, 2024), the right to keep and bear arms is among the “fundamental rights necessary to our system of ordered liberty.” *Rahimi*, 144 S.Ct. at 1897 citing, *McDonald v. Chicago*, 561 U. S. 742, 778 (2010). Derived from English practice and codified in the Second Amendment, the right secures for Americans a means of self-defense. *Rahimi*, 144 S.Ct. at 1897, citing *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. 1, 17 (2022). Following *Bruen*, for a restriction on a person’s Second Amendment rights to survive scrutiny, the restriction must be analyzed



“considering whether it is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 144 S.Ct. at 1898, quoting *Bruen*, 597 U. S., at 26-31.

*Rahimi* dictates that this “court must ascertain whether [a prohibition] is “relevantly similar” to laws that our tradition is understood to permit, “apply[ing] faithfully the balance struck by the founding generation to modern circumstances.” *Rahimi*, 144 S.Ct. at 1898, quoting *Bruen*, 597 U. S. at 29, and n. 7.

Where, as here, the blanket prohibition on the possession of firearms by persons with a felony conviction extends beyond our Nation’s historical tradition of firearm regulation, the condition of supervised release must be declared unconstitutional, even under plain error review, which the Court of Appeal applied in rejecting petitioner’s claim. *Rahimi*, 144 S.Ct. at 1898 (“even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding.”)

In this case, the government does not overcome the “strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.” *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008).

Alternatively, because the firearm bar in Garcia’s case does not distinguish between possession of any firearm at his home versus in public, it is unconstitutionally overbroad and violates the requirement that conditions of supervised release must “involve no greater deprivation of liberty than is reasonably necessary for the purposes” of sentencing. 18 U.S.C. § 3583(d)(2).

Garcia's right to protect his home should not be trammled. *Heller*, 554 U.S. at 628-629, 636.

### CONCLUSION

In sum, the condition of supervised release forbidding Garcia from owning or possessing any firearms violates the Second Amendment. This Court should grant certiorari and order the government to demonstrate that the firearms prohibition condition of supervised release fits within our Nation's historical tradition of firearm regulation.

Dated: November 26, 2024  
Mill Valley, California



/s/ Robin C. Smith  
ROBIN C. SMITH, ESQ.  
*Counsel of Record*  
100 Shoreline Hwy, Suite 100B  
Mill Valley, CA 94941  
rcs@robinsmithesq.com  
(415) 726-8000  
*Attorney for Petitioner*

## **APPENDIX**

**TABLE OF CONTENTS**

*Page*

OPINION OF THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT, FILED  
OCTOBER 17, 2024 .....1a

JUDGMENT OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW  
YORK, FILED MARCH 25, 2022 .....6a

CONSTITUTIONAL AND STATUTORY PROVISIONS  
INVOLVED.....13a

22-749

*United States v. Garcia*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17<sup>th</sup> day of October, two thousand twenty-four.

PRESENT:

GUIDO CALABRESI,  
JOSÉ A. CABRANES,  
RICHARD J. SULLIVAN,  
*Circuit Judges.*

---

UNITED STATES OF AMERICA,

*Appellee,*

v.

No. 22-749

JOHNNY NUNEZ GARCIA,

*Defendant-Appellant.\**

---

\* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

**For Defendant-Appellant:** ROBIN C. SMITH, Law Office of Robin C. Smith, Esq., P.C., Mill Valley, CA.

**For Appellee:** NATHAN REHN, (Frank Balsamello, Adam S. Hobson, *on the brief*), Assistant United States Attorneys, *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Andrew L. Carter, Jr., *Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the March 29, 2022 judgment of the district court is **AFFIRMED**.

Johnny Nunez Garcia appeals from his sentence following his guilty plea to one count of committing a crime of violence in furtherance of a racketeering enterprise that resulted in death, in violation of 18 U.S.C. §§ 1952 and 2, for which he received a sentence of 200 months' imprisonment. Specifically, Garcia contends that the district court violated his rights under the Second Amendment by imposing a standard condition of supervised release that prohibits him from "own[ing], possess[ing], or hav[ing] access to a firearm, ammunition, destructive device, or dangerous weapon." App'x at 169. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

Where a defendant fails to raise a challenge to the conditions of supervised release before the district court at sentencing, we review the new challenge for plain error. *See United States v. Dupes*, 513 F.3d 338, 343 (2d Cir. 2008); *see also United States v. Le*, 902 F.3d 104, 109 (2d Cir. 2018) (reviewing unpreserved argument that statute was unconstitutional for plain error). Under the plain error standard, the appellant must show that there has been “(1) an error, (2) that is plain[,] and (3) that affects substantial rights.” *Dupes*, 513 F.3d at 343; *see also United States v. Dussard*, 967 F.3d 149, 156 (2d Cir. 2020) (“The burden is on the appellant to meet this [plain-error] standard.”). A district court does not plainly err “where the operative legal question is unsettled, including where there is no binding precedent from the Supreme Court or this Court.” *United States v. Whab*, 355 F.3d 155, 158 (2d Cir. 2004) (internal quotation marks omitted). We thus reverse for plain error “sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.” *United States v. Villafuerte*, 502 F.3d 204, 209 (2d Cir. 2007) (internal quotation marks omitted).

Although Garcia did not object to any of the conditions of supervised release at his sentencing, he now argues for the first time on appeal that the district court improperly imposed the standard condition of supervision that bars him from

“own[ing], possess[ing], or hav[ing] access to a firearm, ammunition, destructive device, or dangerous weapon.” Garcia Br. at 9; App’x at 169. According to Garcia, this condition, which mirrors the prohibition codified in 18 U.S.C. § 922(g)(1), does not align with the “plain text” of the Second Amendment or “the historical tradition that delimits the outer bounds of the right to keep and bear arms.” Garcia Br. at 10 (internal quotation marks omitted).

Whatever the merits of this argument, we need not resolve it here. That is because Garcia’s failure to object to this condition at sentencing requires him to demonstrate plain error, *see Dupes*, 513 F.3d at 343; *see also Dussard*, 967 F.3d at 156, which Garcia cannot do given that neither this Court nor the Supreme Court has addressed whether the imposition of a standard condition prohibiting a supervisee from possessing a firearm violates the Second Amendment. Nor has either court decided the constitutionality of section 922(g)(1) in the wake of the Supreme Court’s decisions in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 144 S. Ct. 1889 (2024). Absent such clear and binding precedent, we cannot say that the district court plainly erred by imposing the standard condition of supervised release that prohibits Garcia from owning or possessing a firearm.



\* \* \*

We have considered Garcia's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

ORIGINAL

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

JOHNNY NUNEZ GARCIA

JUDGMENT IN A CRIMINAL CASE

Case Number: 19-CR-766-01 (ALC)

USM Number: 63417-054

Aaron J. Mysliwicz and Christopher P. Madiou

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) Count 1 of the Superceding Information
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:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Row 1: 18 USC 1952, Violation of the Travel Act in Aid of Racketeering, 11/9/2019, 001. Row 2: Resulting in Death.

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) in the underlying indictment 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.

3/10/2022

Date of Imposition of Judgment

Signature of Judge

Andrew L. Carter, Jr., U.S. District Judge

Name and Title of Judge

3/25/2022

Date

USDC SDNY DOCUMENT ELECTRONICALLY FILED

DOC#: DATE FILED: 3-29-22

DEFENDANT: JOHNNY NUNEZ GARCIA  
CASE NUMBER: 19-CR-766-01 (ALC)

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
200 Months (two hundred) to run concurrently with the sentence in S3 10-CR-367

The court makes the following recommendations to the Bureau of Prisons:  
If consistent with the Bureau of Prisons, policies, practices and guidelines, the Court recommends designation to FCI-Allenwood located in Allenwood, PA.

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

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

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_ .

as notified by the United States Marshal.

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

before 2 p.m. on \_\_\_\_\_ .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

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

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHNNY NUNEZ GARCIA  
CASE NUMBER: 19-CR-766-01 (ALC)

### SUPERVISED RELEASE

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

3 Years (three)

### 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: JOHNNY NUNEZ GARCIA  
CASE NUMBER: 19-CR-766-01 (ALC)

### 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. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

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

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

Date \_\_\_\_\_

DEFENDANT: JOHNNY NUNEZ GARCIA  
CASE NUMBER: 19-CR-766-01 (ALC)

### **SPECIAL CONDITIONS OF SUPERVISION**

The Defendant shall be supervised by the district of residence.

The Defendant shall participate in an outpatient treatment program approved by the United States Probation Office, which program may include testing to determine whether he has reverted to using drugs or alcohol. The Defendant shall contribute to the cost of services rendered based on his ability to pay and the availability of third-party payments. The Court authorizes the release of available drug treatment evaluations and reports, including the pre-sentence investigation report, to the substance use disorder treatment provider.

The Defendant shall participate in an outpatient mental health program approved by the United States Probation Office. The Defendant shall continue to take any prescribed medications unless otherwise instructed by the health care provider. The Defendant shall contribute to the cost of services rendered based on his ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the pre-sentence investigation report, to the health care provider.

DEFENDANT: JOHNNY NUNEZ GARCIA  
 CASE NUMBER: 19-CR-766-01 (ALC)

**CRIMINAL MONETARY PENALTIES**

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

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

<b>TOTALS</b>	\$	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  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.

DEFENDANT: JOHNNY NUNEZ GARCIA  
CASE NUMBER: 19-CR-766-01 (ALC)

### 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 \$ 100.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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:

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



## Constitutional and Statutory Provisions Involved

### Amendment 2 Right to bear arms

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.

### United States Sentencing Guideline § 5D1.3

#### Conditions of Supervised Release

##### (a) Mandatory Conditions

(1) The defendant shall not commit another federal, state or local offense (see [18 U.S.C. § 3583\(d\)](#)).

(2) The defendant shall not unlawfully possess a controlled substance (see [18 U.S.C. § 3583\(d\)](#)).

(3) The defendant who is convicted for a domestic violence crime as defined in [18 U.S.C. § 3561\(b\)](#) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (see [18 U.S.C. § 3583\(d\)](#)).

(4) The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (see [18 U.S.C. § 3583\(d\)](#)).

(5) If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (see [18 U.S.C. § 3624\(e\)](#)).

(6) The defendant shall (A) make restitution in accordance with [18 U.S.C. §§ 3663](#) and [3663A](#), or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with [18 U.S.C. § 3013](#). If there is a court-established payment schedule for making restitution or paying the assessment (see [18 U.S.C. § 3572\(d\)](#)), the defendant shall adhere to the schedule.

(7) If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (see [18 U.S.C. § 3583\(d\)](#)).

(8) The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample

is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 ([34 U.S.C. § 40702](#)).

**(b) Discretionary Conditions**

The court may impose other conditions of supervised release to the extent that such conditions (1) are reasonably related to (A) the nature and circumstances of the offense and the history and characteristics of the defendant; (B) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (C) the need to protect the public from further crimes of the defendant; and (D) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (2) involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth above and are consistent with any pertinent policy statements issued by the Sentencing Commission.

**(c) “Standard” Conditions (Policy Statement)**

The following “standard” conditions are recommended for supervised release. Several of the conditions are expansions of the conditions required by statute:

**(1)** The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

**(2)** After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

**(3)** The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

**(4)** The defendant shall answer truthfully the questions asked by the probation officer.

**(5)** The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

**(6)** The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant’s supervision that he or she observes in plain view.

**(7)** The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

**(8)** The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

**(9)** If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

**(10)** The defendant shall 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)** The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

**(13)** The defendant shall follow the instructions of the probation officer related to the conditions of supervision.