

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALJ HILTON ,
Petitioner,
v.
UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

APPENDIX

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APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

ALJ HILTON

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CRIMINAL NO. 17-00165-WS

PLEA AGREEMENT

The defendant, ALJ HILTON, represented by his counsel, and the United States of America have reached a plea agreement in this case, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the terms and conditions of which are as follows:

RIGHTS OF THE DEFENDANT

1. The defendant understands his rights as follows:
 - a. To be represented by an attorney;
 - b. To plead not guilty;
 - c. To have a trial by an impartial jury;
 - d. To confront and cross-examine witnesses and to call witnesses and produce other evidence in his defense; and
 - e. To not be compelled to incriminate himself.

WAIVER OF RIGHTS AND PLEA OF GUILTY

2. The defendant waives rights b through e, listed above, and pleads guilty to Count One of the indictment, charging a violation of Title 21, United States Code, Section 841(a)(1), Possession with the intent to Distribute Methamphetamine.
3. The defendant understands that the statements he makes under oath in the plea of guilty must be completely truthful and that he can be prosecuted for making false

Rec 2/4

- statements or perjury, or receive a perjury enhancement at sentencing, for any false statements he makes intentionally in this plea of guilty.
4. The defendant expects the Court to rely upon his statements here and his response to any questions that he may be asked during the guilty plea hearing.
 5. The defendant is not under the influence of alcohol, drugs, or narcotics. He is certain that he is in full possession of his senses and is mentally competent to understand this Plea Agreement and the guilty plea hearing which will follow.
 6. The defendant has had the benefit of legal counsel in negotiating this Plea Agreement. He has discussed the facts of the case with his attorney, and his attorney has explained to the defendant the essential legal elements of the criminal charge which has been brought against him. The defendant's attorney has also explained to the defendant his understanding of the United States' evidence and the law as it relates to the facts of his offense.
 7. The defendant understands that the United States has the burden of proving each of the legal elements of the criminal charge beyond a reasonable doubt. The defendant and his counsel have discussed possible defenses to the charge. The defendant believes that his attorney has represented him faithfully, skillfully, and diligently, and he is completely satisfied with the legal advice of his attorney.
 8. Defendant recognizes that pleading guilty may have consequences with respect to immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which he is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no

one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United States.

9. A separate document, entitled Factual Resume, will be submitted to the Court as evidence at the guilty plea hearing. The Factual Resume is incorporated by reference into this Plea Agreement. The defendant and the United States agree that the Factual Resume is true and correct. Alterations to the Plea Agreement or Factual Resume initialed only by the defendant and his counsel are not part of this agreement and are not agreed to by the United States.
10. This plea of guilty is freely and voluntarily made and is not the result of force, threats, promises, or representations, apart from those representations set forth in this Plea Agreement. There have been no promises from anyone as to the particular sentence that the Court will impose. The defendant is pleading guilty because he is guilty.
11. The defendant also knowingly and voluntarily waives all rights, whether asserted directly or through a representative, to receive from the United States after sentencing any further records, reports, or documents pertaining to the investigation or prosecution of this matter. This waiver includes, but is not limited to, rights under the Freedom of Information Act and the Privacy Act of 1974.

PENALTIES

12. The maximum penalty the Court could impose as to Count One of the Indictment is:
- a. 10 years mandatory minimum to life imprisonment;
 - b. A fine not to exceed \$10,000,000.00;
 - c. A term of supervised release of 5 years, which would follow any term of imprisonment. If the defendant violates the conditions of supervised release, he could be imprisoned for the entire term of supervised release;
 - d. A mandatory special assessment of \$100.00; and
 - e. Such restitution as may be ordered by the Court.

SENTENCING

13. The Court will impose the sentence in this case. The United States Sentencing Guidelines are advisory and do not bind the Court. The defendant has reviewed the application of the Guidelines with his attorney and understands that no one can predict with certainty what the sentencing range will be in this case until after a pre-sentence investigation has been completed and the Court has ruled on the results of that investigation. The defendant understands that at sentencing, the Court may not necessarily sentence the defendant in accordance with the Guidelines. The defendant understands that he will not be allowed to withdraw his guilty plea if the advisory guideline range is higher than expected, or if the Court departs or varies from the advisory guideline range.
14. The defendant understands that this Plea Agreement does not create any right to be sentenced in accordance with the Sentencing Guidelines, or below or within

any particular guideline range, and fully understands that determination of the sentencing range or guideline level, or the actual sentence imposed, is solely the discretion of the Court.

15. The United States will provide all relevant sentencing information to the Probation Office for purposes of the pre-sentence investigation. Relevant sentencing information includes, but is not limited to, all facts and circumstances of this case and information concerning the defendant's conduct and background.
16. Both the defendant and the United States are free to allocute fully at the time of sentencing.
17. The defendant agrees to tender \$100.00 to the U.S. District Court Clerk in satisfaction of the mandatory special assessment in this case. The United States reserves the right to withdraw any favorable recommendations it may agree to within this document if the defendant fails to pay the special assessment prior to or at the time of his sentencing.

RESTITUTION

18. Pursuant to 18 U.S.C. §§ 3556 and 3663(A), restitution is mandatory. The defendant agrees to make full restitution in an amount to be determined by the Court at sentencing as to all relevant conduct regardless of whether it relates to the count of conviction.

FORFEITURE

19. The defendant agrees to confess the forfeiture to the United States of all properties which represent proceeds of his criminal activities or which facilitated any aspect of these illegal activities.

FINANCIAL OBLIGATIONS

20. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees to disclose fully all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party.

UNITED STATES' OBLIGATIONS

21. The United States will not bring any additional charges against the defendant related to the facts underlying the Indictment and will move to dismiss any remaining charges against the defendant once sentence is imposed in this case. This agreement is limited to the United States Attorney's Office for the Southern District of Alabama and does not bind any other federal, state, or local prosecuting authorities.
22. The United States will recommend to the Court that the defendant be sentenced at the low end of the advisory sentencing guideline range per count of conviction as determined by the Court.

APPLICATION OF USSG § 5K1.1 AND/OR FED. R. CRIM. P. 35

23. The defendant understands and agrees that he has no right to cooperate, and that the decision whether to allow him to cooperate is reserved solely to the United States in the exercise of its discretion. If the United States agrees to allow the

defendant to cooperate, and if the defendant agrees to cooperate, the following terms and conditions apply:

- a. The defendant shall fully, completely, and truthfully respond to all questions put to him by law enforcement authorities regarding the underlying facts of the offense(s) with which he is charged, as well as the underlying facts of any criminal offense(s), state or federal, of which he has information or knowledge.
- b. The defendant acknowledges that he understands that he shall provide truthful and complete information regarding any offense about which he has knowledge or information regardless of whether law enforcement authorities question him specifically about any such offense. This provision requires the defendant to divulge all information available to him even when law enforcement authorities do not know about the defendant's involvement, knowledge or information relating to any particular offense. This requirement extends to any and all persons about whom the defendant has such knowledge or information.
- c. The defendant agrees to cooperate completely with all law enforcement authorities in any matters to which his cooperation may be deemed relevant by any law enforcement authority. The defendant agrees to fully comply with all instructions from law enforcement authorities regarding the specific assistance he shall provide. This includes, but is not limited to, consenting to monitored and/or recorded telephone conversations, participating in undercover operations, testifying completely and truthfully

before any grand jury, at any pre-trial proceeding, during any trial, and any post-trial proceeding.

- d. If the United States deems it necessary, the defendant may be required to take a polygraph examination(s) which will be administered by a government polygrapher. The defendant agrees that the results of any polygraph examination may be used by the United States in its evaluation of whether there has been substantial assistance, and are admissible at sentencing to rebut an assertion by the defendant of bad faith or unconstitutional motive on the part of the United States.
- e. The defendant agrees to turn over to the United States any and all documents, tapes and other tangible objects which are in his possession or under his control and which are relevant to his participation in and knowledge of criminal activities, regardless of whether it relates to the charged offense. This obligation is a continuing one and includes materials that the defendant may acquire, obtain or have access to after the execution of this agreement.
- f. The defendant also agrees to identify the assets of any other person which were obtained through or facilitated the defendant's illegal activities or the illegal activities of another.
- g. If the defendant provides full, complete, truthful and substantial cooperation to the United States, which results in substantial assistance to the United States in the investigation or prosecution of another criminal offense, a decision specifically reserved by the United States in the

exercise of its sole discretion, then the United States agrees to move for a downward departure in accordance with Section 5K1.1 of the United States Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, whichever the United States deems applicable. The United States specifically reserves the right to make the decision relating to the extent of any such departure request made under this agreement based upon its evaluation of the nature and extent of the defendant's cooperation. The defendant understands that the United States will make no representation or promise with regard to the exact amount of reduction, if any, the United States might make in the event that it determines that the defendant has provided substantial assistance. The defendant understands that a mere interview with law enforcement authorities does not constitute substantial assistance. The defendant also understands that, should he provide untruthful information to the United States at any time, or fail to disclose material facts to the United States at any time, or commits a new criminal offense, the United States will not make a motion for downward departure. If the defendant's effort to cooperate with the United States does not amount to substantial assistance as determined solely by the United States, the United States agrees to recommend that the defendant receive a sentence at the low end of the advisory guideline range.

h. The United States and the defendant agree that any breach of this agreement by the defendant, including but not limited to committing a new offense, failing to cooperate, intentionally withholding information, giving

false information, committing perjury, failing to identify assets obtained by him from his illegal activities or obtained by others associated with him or of which he has knowledge, refusing to take a polygraph examination, failing a polygraph examination, or refusing to testify before the grand jury or at any judicial proceeding, would:

- (1) permit the United States to reinstate and proceed with prosecution on any other charges arising from the matters underlying the Indictment; and
- (2) permit the United States to initiate and proceed with the prosecution on any other charges arising from a breach of this agreement. The United States will not be limited, in any respect, in the use it may make against the defendant of any information provided by the defendant during his breached cooperation. Such breach will constitute a waiver of any claim the defendant could make under the United States Constitution, the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, or any statute or case law by which the defendant seeks to suppress the use of such information or any evidence derived from such information.

1. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement, including perjury, false declaration, false statement, and obstruction of

justice, should the defendant commit any of these offenses during his cooperation. The defendant acknowledges and agrees that the information that he discloses to the United States pursuant to this agreement may be used against him in any such prosecution.

- j. The United States and the defendant agree that the defendant will continue his cooperation even after he is sentenced in the instant matter. His failure to continue his cooperation will constitute a breach of this agreement, and the defendant agrees that under such conditions, the United States will be free to reinstate the charges and the prosecution of the charges in the Indictment, which are to be dismissed in accordance with this agreement. Under these circumstances, the defendant expressly waives any rights he may have under the statute of limitations and the speedy trial provisions.

**LIMITED WAIVER OF RIGHT TO APPEAL AND
WAIVER OF COLLATERAL ATTACK**

24. As part of the bargained-for exchange represented in this plea agreement, and subject to the limited exceptions below, the defendant knowingly and voluntarily waives the right to file any direct appeal or any collateral attack, including a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Accordingly, the defendant will not challenge his guilty plea, conviction, or sentence in any district court or appellate court proceedings.

- a. **EXCEPTIONS.** The defendant reserves the right to timely file a direct appeal challenging:

- (1) any sentence imposed in excess of the statutory maximum;
- (2) any sentence which constitutes an upward departure or variance from the advisory guideline range.

The defendant also reserves the right to claim ineffective assistance of counsel in a direct appeal or § 2255 motion.

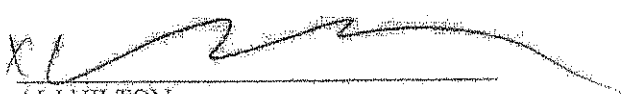
- 25. If the United States files a notice of appeal and such appeal is authorized by the Solicitor General, the defendant is released from the appellate waiver.
- 26. The defendant further reserves the right to timely move the district court for an amended sentence under 18 U.S.C. § 3582 in the event of a future retroactive amendment to the Sentencing Guidelines which would affect the sentence.
- 27. If the defendant receives a sentence within or below the advisory guideline range, this plea agreement shall serve as the defendant's express directive to defense counsel to timely file a "Notice of Non-Appeal" following sentencing, signed by the defendant.

VIOLATION OF AGREEMENT

- 28. The defendant understands that if he breaches any provision of this Plea Agreement, the United States will be free from any obligations imposed by this agreement, but all provisions of the agreement remain enforceable against the defendant. In the exercise of its discretion, the United States will be free to prosecute the defendant on any charges of which it has knowledge. In such event, the defendant agrees not to assert any objections to prosecution that he might have under the Sixth Amendment and/or Speedy Trial Act.

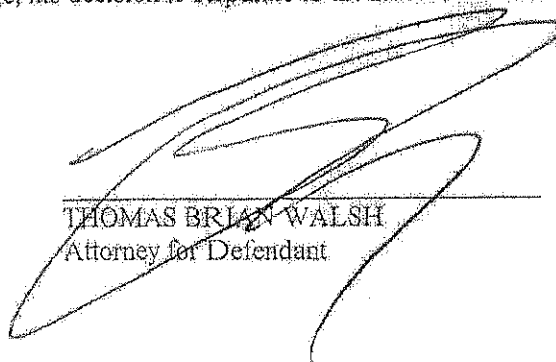
and accurate in every respect, and that had the matter proceeded to trial, the United States could have proved the same beyond a reasonable doubt.

Date: 11/15/17


ALJ HILTON
Defendant

I am the attorney for the defendant. I have fully explained his rights to him with respect to the offense(s) charged in the Indictment in this matter. I have carefully reviewed every part of this Plea Agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one. I have carefully reviewed the Factual Resume, incorporated herein, with the defendant and to my knowledge, his decision to stipulate to the facts is an informed, intelligent and voluntary one.

Date: 11/15/17


THOMAS BRIAN WALSH
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

ALJ HILTON

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*
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CRIMINAL NO. 17-CR-00165-WS

FACTUAL RESUME

The defendant, ALJ HILTON, admits the allegation of Count One of the Indictment.

ELEMENTS OF THE OFFENSE

ALJ HILTON, understands that in order to prove violation of Title 21, United States Code, Section 841(a)(1), as charged in Count One of the Indictment, the United States must prove:

1. That the defendant knowingly and willfully possessed methamphetamine;
2. That he possessed methamphetamine with the intent to distribute it or he distributed it.

OFFENSE CONDUCT

Defendant, ALJ HILTON, admits in open court and under oath that the following statement is true and correct and constitutes evidence in this case. This statement of facts is provided solely to assist the Court in determining whether a factual basis exists for ALJ HILTON's plea of guilty. The statement of facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's involvement in the charges set forth in the plea agreement.

On February 20, 2017 a Mobile County Street Enforcement Narcotics Team (MCSENT) confidential informant (CI) called the defendant several times to make an undercover buy of


methamphetamine from the defendant. The defendant then drove from Mississippi to the Tillman's corner area of Mobile County to deliver the methamphetamine to the CI. The defendant parked his vehicle at an auto parts store. When the CI arrived at the location the defendant approached the CI in the CI's vehicle. At that time officers converged on the defendant. In the bed of the defendant's truck officers found approximately 453.4 grams of methamphetamine (actual) and the defendant's work identification card, co-located with the methamphetamine. Text messages were captured from the CI's telephone to the defendant's telephone before the delivery using code talk consistent with the drug deal.

Respectfully submitted,

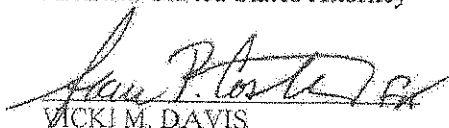
AGREED TO AND SIGNED:

RICHARD W. MOORE
UNITED STATES ATTORNEY

Date: November 1, 2017


GEORGE P. MAY
Assistant United States Attorney

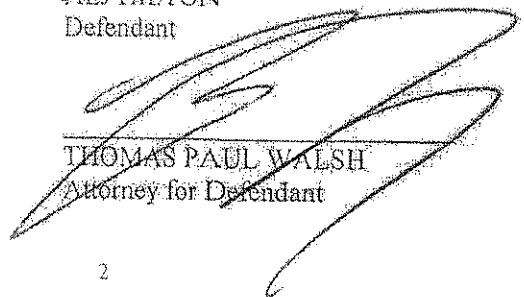
Date: 11/1/2017


VICKI M. DAVIS
Assistant United States Attorney
Chief, Criminal Division

Date: 11/15/17


ALJ HILTON
Defendant

Date: 11/15/17


THOMAS PAUL WALSH
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, *
Plaintiff, * 17-cr-165
vs. * March 15, 2018
* Mobile, Alabama
* 9:32 a.m.
ALJ HILTON, *
Defendant. *

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE WILLIAM H. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:

MR. GEORGE F. MAY, ESQ.
U.S. Attorney's Office
63 S. Royal Street
Room 600
Mobile, AL 36602
251-441-5845

FOR THE DEFENDANT:

MR. THOMAS BRIAN WALSH, ESQ.
P O Box 1562
Mobile, AL 36633
251-654-1506

COURTROOM DEPUTY: MS. MELANIE PAULK

PROBATION OFFICER: MS. ELIZABETH P. MEADOWS

COURT REPORTER: CHERYL K. POWELL, CCR, RPR, FCRR

Proceedings recorded by OFFICIAL COURT REPORTER, Qualified
pursuant to 28 U.S.C. 753(a) & Guide to Judiciary Policies
and Procedures Vol. VI, Chapter III, D.2. Transcript
produced by computerized stenotype.

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P R O C E E D I N G S

(In open court. Defendant present.)

THE COURT: Good morning.

MR. MAY: Good morning, Judge.

09:32:42 COURTROOM DEPUTY: Case set for a sentencing hearing
in Criminal Action 17-165, United States of America versus
Alj Hilton.

What says the United States?

MR. MAY: The United States is ready, Your Honor.

09:32:53 COURTROOM DEPUTY: What says the defendant?

MR. WALSH: The defendant is ready.

THE COURT: Mr. Hilton, if you would, come forward
and let me get you to stand in front of that microphone;
raise your right hand; and take an oath.

09:33:10 (Defendant sworn.)

THE COURT: Would you state your name for the
record, please?

THE DEFENDANT: Alj Hilton.

THE COURT: Mr. Hilton, we're here today for a
09:33:21 sentencing hearing following entry of a guilty plea on
November 16 of 2017 to Count One of an indictment, charging
possession with intent to distribute methamphetamine. The
plea was entered subject to a written plea agreement. The
presentence report has been published in this case.

09:33:40 Mr. Walsh, I assume that you received a copy of the

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1 report and had a chance to discuss it with Mr. Hilton.

2 MR. WALSH: I have.

3 THE COURT: Mr. Hilton, do you understand what's
4 contained in the presentence report?

09:33:50 5 THE DEFENDANT: Yes, sir.

6 MR. WALSH: Speak up.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I note there is an objection to the
9 guidelines calculations.

09:33:57 10 Mr. Walsh, do you want to be heard on that?

11 MR. WALSH: I do, Your Honor. There is -- well, two
12 points of it.

13 One, Your Honor, the original Paragraph 15, there
14 was a two-point increase for possession of a firearm during a
09:34:17 15 drug crime. The -- as I stated in our position, defendant
16 was not in possession of the gun. Nowhere in the discovery
17 is he in possession of the gun. In fact, the gun was
18 attributed to the passenger of his car who apparently went in
19 O'Reilly Auto Parts Store and left it -- it is a pistol.
09:34:43 20 Left it on a shelf or somewhere.

21 There's no indication that my client knew the man
22 had a gun. It's not a long rifle, a shotgun, anything like
23 that where it would be obvious that he would have a weapon on
24 him. And nowhere is he -- has Mr. Hilton claimed that he had
09:35:04 25 knowledge of that gun.

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1 The only thing that really the report says or the
2 addendum to it is that it's -- in a lot of these cases --
3 that in drug crimes, it's assumed somebody has a weapon.
4 Well, I mean, I could say that -- anything in Alabama or
09:35:22 5 Mississippi that may be -- probably somebody in a room has a
6 weapon on them. It doesn't make it a crime simply or
7 shouldn't make it relevant conduct to -- for Mr. Hilton just
8 simply because someone he is with had a weapon he had no
9 knowledge of.

09:35:40 10 Now, I have one other objection but it was to the
11 recent final recalculation, Judge. The range of punishment
12 in this most recent probation officer's report of March 15
13 jumped that range of punishment from 210 to 262 months and
14 that is because the probation office is taking away the
09:36:10 15 acceptance of responsibility points.

16 Mr. Hilton did accept responsibility for the crime
17 that we're here on today. He did step up. Understands what
18 he had done. Understood his guilt and what it means to
19 accept responsibility; however, he did get arrested a week or
09:36:33 20 so ago or a couple of weeks ago for a DUI in Mississippi.
21 Not good, obviously. Not good. He's not supposed to be
22 arrested for anything, have any contact with law enforcement.
23 But he -- but it doesn't have anything to do with accepting
24 responsibility for the crime at hand. He wasn't busted for
09:36:59 25 drugs. He hasn't failed drug tests.

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1 In fact, he's been working for a company for a long
2 time called Fire PG who is -- they put in fire protection in
3 buildings. And they know about these cases. And they've
4 taken him to Iowa, Washington State, Oregon, Tennessee, and
09:37:19 5 Colorado, knowing that he's got these charges out here. He
6 is a good worker. And I would say that he certainly accepted
7 responsibility for his actions and put himself or kept
8 himself working legitimately throughout the course of this.

9 I do have one more thing to say, Your Honor, but it
09:37:39 10 might be a sidebar issue. I believe somewhat relates.

11 THE COURT: Does it relate to the guideline
12 calculations or is it an issue for sentencing under 3553(a)
13 or some other matter?

14 MR. WALSH: I would say it relates, I believe, to
09:38:01 15 the guidelines and his acceptance of responsibility points.
16 Indirectly if not directly. But it's something that probably
17 does not need to be said in open court. And I'll keep it
18 brief.

19 THE COURT: Okay. Let me see you at sidebar, then.

09:38:19 20 (Bench discussion.)

21 MR. WALSH: Judge, I would just say he -- although
22 he probably hasn't done enough on his 5K in the cooperation
23 to warrant a downward departure, he has met -- in fact, as
24 recently as yesterday at lunchtime -- with the DEA. And I
09:38:52 25 think that still goes into -- at least indirectly into the

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1 acceptance of responsibility. He's at least trying to give
2 information. I don't think he worked like he probably should
3 have. But I think he still deserves the acceptance of
4 responsibility deduction. That's all.

09:39:12 5 THE COURT: Okay. Mr. May?

6 MR. MAY: On the just acceptance?

7 THE COURT: Well, Mr. Walsh is trying to get his two
8 points back based on his now cooperation with the Government
9 as of yesterday. So --

09:39:34 10 MR. MAY: The problem with this defendant is he was
11 released for a long time and he really made no efforts to
12 meet with the agents. He was out of town, working. And he
13 was entitled to work out of town, but he's got to earn the
14 5K. And then finally at the last minute, he's looking at the
09:39:53 15 sentencing so he did meet and provided some information that
16 could possibly be a Rule 35 down the road. It's not a
17 situation where he's absolutely refused to talk to the
18 agents. He just really hasn't made himself available. I'm
19 not sure he's fully appreciated the situation.

09:40:11 20 MR. WALSH: He met back in November. He met back in
21 November and he's been in some other communication. He just
22 hasn't -- he just -- he worked out of town a bunch and didn't
23 follow up like he should have. I don't have any excuse for
24 that.

09:40:25 25 THE COURT: This whole thing may be better rolled up

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1 into the Rule 35 if what he does is significant. Mr. May is
2 pretty good about filing Rule 35 if there's a reason to do
3 so. And he may get the benefit of that which would probably
4 help him out with regard to the loss of acceptance of
09:40:46 5 responsibility today.

6 MR. WALSH: Yes, sir.

7 THE COURT: Thank you.

8 MR. WALSH: Thank you, Judge.

9 (End of bench discussion.)

09:41:19 10 (In open court.)

11 THE COURT: All right. Mr. Walsh, anything further
12 with regard to the presentence report and the objections
13 thereto?

14 MR. WALSH: No further objections, Your Honor.

09:41:32 15 THE COURT: Mr. May, do you want to be heard on the
16 two issues, the two-point enhancement for possession of the
17 firearm by co-defendant and then the request that the
18 acceptance of responsibility adjustment be reinstated?

19 MR. MAY: Yes, Your Honor.

09:41:45 20 Concerning the weapon, you know, it is important to
21 understand the facts of this case. And the facts are rather
22 simple.

23 C.I. in Mobile contacted the defendant who was in
24 Mississippi to deliver him a pound of methamphetamine. The
09:42:02 25 defendant drove from Mississippi with another man in the car,

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1 and they met the C.I. down in Tillman's Corner area of
2 Mobile. And when -- I believe the defendant got out of his
3 vehicle and approached the C.I. Officers converged on the
4 defendant at that point. The C.I. gave the signal which is
09:42:24 5 often the case. And the passenger ran into the store they
6 were in front of and tossed the weapon.

7 So you have a situation, Judge, where, you know, the
8 weapon is in the vehicle that the defendant is driving to
9 deliver the methamphetamine to the C.I. A large amount of
09:42:43 10 methamphetamine. A valuable amount of methamphetamine.

11 And this is a case where if we were trying to defend
12 a 924(c) charge, it might be different. But the law in this
13 area is that the enhancement applies unless it's clearly
14 improbable that the weapon was connected to the offense. And
09:43:03 15 given these facts, it's almost a reverse burden, Your Honor,
16 even though we don't have facts to tell the Court that we can
17 say, yes; specifically the defendant saw that weapon at this
18 particular time.

19 Given those facts and the circumstantial evidence, I
09:43:21 20 think it's -- it doesn't meet the standard of clearly
21 improbable that the weapon is connected with the offense.

22 As far as the three points for acceptance, Your
23 Honor, Mr. Walsh is correct that it involved other criminal
24 activity. The defendant has been largely compliant. I think
09:43:45 25 the probation officer is -- can rightly deny the acceptance.

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1 And I'll just leave that decision to the Court's discretion
2 in looking at the offense charged and the other criminal
3 activity. I would just leave that to the Court's discretion,
4 that determination.

09:44:07 5 THE COURT: All right, Mr. Walsh. Anything further?

6 MR. WALSH: Nothing further, Your Honor.

7 THE COURT: All right. With regard to the firearm
8 enhancement, the adjustment is made pursuant to Section 2D1.1
9 of the sentencing guidelines. And I think Mr. May has
09:44:25 10 appropriately quoted the application note from the
11 guidelines. And -- which says that the enhancement should be
12 applied if the weapon was present unless it is clearly
13 improbable that the weapon was connected to the offense. So
14 the standard is clearly improbable.

09:44:48 15 I accept the facts as stated. There's no objection
16 to the facts of this case, and I accept them as stated in the
17 presentence report as well as articulated by Mr. May.

18 And when I do that, the standard of clear
19 improbability applies and, you know, the weapon was there.
09:45:08 20 It was in the car in a rather large drug transaction even
21 though it was possessed by a co-defendant. I think it's
22 reasonably foreseeable to Mr. Hilton that the weapon was
23 present. And therefore, the objection is overruled. The
24 two-level enhancement applies.

09:45:30 25 With regard to the acceptance of responsibility

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1 adjustment, it's clear that Mr. Hilton has -- has come before
2 the Court and pled guilty. And initially, that adjustment
3 would apply. However, while on pretrial release -- well, as
4 a condition of pretrial release, Mr. Hilton is obligated to
09:45:50 5 not only remain compliant with all of the conditions but to
6 stay out of trouble. And this event which occurred here
7 recently was not just a DUI. It was a DUI with obstructing a
8 highway, disorderly conduct, resisting arrest. Apparently it
9 was a rather aggravated situation that required the attention
09:46:20 10 of numerous law enforcement officers to bring it under
11 control.

12 It's a clear violation of the conditions of pretrial
13 release. And it's a violation of the, if you will, the tenor
14 of the provisions of the sentencing guidelines in order for
09:46:46 15 Mr. Hilton to receive acceptance of responsibility. It's
16 clear to me that his actions in getting arrested and bringing
17 himself into a position where he has now to defend multiple
18 charges for his indiscretions indicates to the Court that he
19 has failed to qualify for the acceptance of responsibility
09:47:15 20 adjustment.

21 I find that the guidelines, as calculated, are
22 appropriate under the circumstances. That being the case,
23 the Court finds that the guideline adjustments as well as
24 calculation of the guidelines are accurate in the presentence
09:47:31 25 report, starting with a base offense level of 32. There's a

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1 two-level enhancement for the possession of a firearm. That
2 creates an adjusted offense level of 34. Mr. Hilton has
3 eight criminal history points, placing him in Criminal
4 History Category IV. And that generates a guideline range of
09:47:49 5 210 to 262 months.

6 All right. Mr. Walsh, do you have anything else you
7 want to present on Mr. Hilton's behalf before sentence is
8 imposed?

9 MR. WALSH: Your Honor, if that -- with the Court's
09:48:02 10 calculation of -- the determination, I would simply ask he be
11 sentenced at the low end of that range at 210.

12 THE COURT: All right. Mr. Hilton, do you have
13 anything you want to say before sentence is imposed?

14 THE DEFENDANT: No, sir.

09:48:17 15 THE COURT: Mr. May?

16 MR. MAY: Yes, Your Honor. Pursuant to the plea
17 agreement, the United States would recommend a sentence at
18 the low end of the guidelines in this case, which is 210
19 months.

09:48:30 20 The United States would note that the defendant has
21 two prior felony drug convictions. We could have enhanced
22 the defendant -- I'm trying to remember now why we didn't.
23 One of those we could have enhanced him to a mandatory
24 minimum 20 years confinement. With both of them, I could
09:48:54 25 have filed an enhancement where he was looking at a mandatory

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1 life sentence.

2 I just note that because -- while the 210 looks like
3 a lot of time -- and it is -- it could have been much worse
4 for this defendant. But that is our recommendation, Your
09:49:08 5 Honor, low end of the guidelines.

6 THE COURT: All right. Mr. Hilton, I have
7 considered all of the information available to me, that which
8 is contained in the presentence report as well as what I've
9 heard here in court today. I have considered all of the
09:49:23 10 sentencing factors and objectives of Section 3553(a) of Title
11 18. I have considered application of the sentencing
12 guidelines to your sentence.

13 And when I do so, it is the judgment of this Court
14 that a sentence at the low end of the guidelines will satisfy
09:49:42 15 the sentencing objectives of the statute and that a sentence
16 of 210 months is sufficient but not more than necessary to
17 accomplish the sentencing objectives set forth in the
18 statute.

19 I think Mr. May is right. Again, there could have
09:49:57 20 been other enhancements based on your prior convictions.
21 These two prior drug convictions could have put you in a
22 range that is much, much higher than the sentence that's
23 being imposed here today. So it is what it is. And again, I
24 find that the sentence that I'm imposing is a fair and
09:50:17 25 reasonable sentence under all of the circumstances that I

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1 consider.

2 It's my hope that you will figure this out. There's
3 some things going on with your life that needs some change.
4 And the fact that you lost acceptance of responsibility for a
09:50:33 5 recent arrest indicates to me that you need to get a handle
6 on addiction problems -- whether it's alcohol, drugs,
7 whatever it is -- and fix that. Because you've got some
8 other DUI convictions in your record. This latest event, you
9 know, has resulted in increased punishment in your case.

09:50:53 10 So I'm hopeful that you will figure that out and you
11 can take advantage of any of the opportunities that are
12 offered to you while you're incarcerated, the drug treatment
13 programs, anything else that comes your way, and make those
14 adjustments in your life so that you can come out of
09:51:10 15 incarceration with, you know, an opportunity to do better and
16 to overcome any of the addiction problems that you have.

17 Accordingly and pursuant to the Sentencing Reform
18 Act of 1984, it is the judgment of this Court that you're
19 hereby committed to the custody of the United States Bureau
09:51:27 20 of Prisons for imprisonment for a term of 210 months as to
21 Count One.

22 I recommend that you be imprisoned at an institution
23 where a residential comprehensive substance abuse treatment
24 program is available.

09:51:38 25 Upon release from imprisonment, you shall be placed

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1 on supervised release for a term of five years as to Count
2 One.

3 Within 72 hours of release from the custody of the
4 Bureau of Prisons, you are to report in person to the
09:51:49 5 probation office in the district to which you are released.

6 While on supervised release, you shall not commit
7 any federal, state, or local crimes; you shall be prohibited
8 from possessing a firearm or other dangerous device; and
9 shall not possess a controlled substances.

09:52:06 10 In addition, you shall comply with the standard
11 conditions of supervised release as recommended by the
12 sentencing commission and on record with this court.

13 It's also ordered that you comply with the following
14 special conditions of supervised release as referenced in
09:52:18 15 Part F of the presentence report; that is, that you are to
16 undergo urine surveillance and submit to the model search
17 condition.

18 The Court finds that you do not have the ability to
19 pay a fine; therefore, no fine is imposed.

09:52:32 20 For the reasons given, the Court finds that the
21 sentence imposed addresses the seriousness of the offense and
22 the sentencing objectives of punishment, deterrence, and
23 incapacitation.

24 It is ordered that you pay a special assessment in
09:52:44 25 the amount of \$100 on Count One which is due immediately.

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1 You can appeal your conviction if you believe that
2 your guilty plea was somehow unlawful or involuntary or if
3 there's some other fundamental defect in the proceedings not
4 waived by your guilty plea or your plea agreement. You have
09:53:01 5 the right to apply for leave to appeal in forma pauperis, and
6 the clerk of court will prepare and file notice of appeal
7 upon your request. With few exceptions, any notice of appeal
8 must be filed within 14 days of the date of judgment.

9 Is there anything further from the United States at
09:53:16 10 this time?

11 MR. MAY: No, Your Honor.

12 THE COURT: From probation, anything further?

13 PROBATION OFFICER: No, sir.

14 THE COURT: Mr. Walsh, any objections or other
09:53:22 15 matters we need to put on the record at this time?

16 MR. WALSH: Not at this time.

17 THE COURT: Good luck to you, Mr. Hilton.

18 MR. WALSH: Thank you.

19 THE COURT: That's all.

09:53:30 20 MR. WALSH: Judge, I actually do have something.

21 There was a truck that was involved. It is a 1993
22 truck. We would ask that it be released. Ford Ranger. It
23 belongs to his father.

24 THE COURT: Has that been subject to condemnation
09:53:47 25 proceedings, forfeiture proceedings?

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1 MR. MAY: Not federally, but a lot of times, we
2 adopt these local cases. They'll go through that process on
3 the state side. So I don't know. I can check and let
4 Mr. Walsh know.

09:54:02 5 THE COURT: Okay. Y'all work that out. I don't
6 think it's in the purview of this Court. If it is, let me
7 know. I'll make whatever adjustment is appropriate under the
8 circumstances.

9 Good luck to you, Mr. Hilton.

09:54:12 10 (The Proceedings were concluded at approximately
11 9:54 a.m. on March 15, 2018.)
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C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 21st day of March of 2018.

Cheryl K Powell

Cheryl K. Powell, CCR, RPR, FCRR
Federal Certified Realtime Reporter

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA

v.

ALJ HILTON

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: **1:17-CR-00165-WS-N(1)**

§ USM Number: **44320-013**

§ **Robert A. Ratliff**

§ Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) **One of the Indictment.**
☐ pleaded nolo contendere to count(s) which was accepted by the court
☐ was found guilty on count(s) after a plea of not guilty

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841A=Nd.F Possession With Intent To Distribute Methamphetamine	02/20/2017	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

March 15, 2018

Date of Imposition of Judgment

s/WILLIAM H. STEELE

Signature of Judge

WILLIAM H. STEELE

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

March 20, 2018

Date

DEFENDANT: ALJ HILTON
CASE NUMBER: 1:17-CR-00165-WS-N(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
210 MONTHS as to Count One.

☒ The court makes the following recommendations to the Bureau of Prisons: **that the defendant be allowed to participate in residential, comprehensive, substance abuse treatment while incarcerated.**

☒ 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 [REDACTED] to _____

at [REDACTED], with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALJ HILTON
CASE NUMBER: 1:17-CR-00165-WS-N(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : five (5) years.

☒ Special Conditions:

- 1) the defendant shall submit to periodic urine surveillance and/or breath, saliva and skin tests for the detection of drug abuse as directed by the probation officer. The defendant may incur costs associated with such detection efforts, based upon ability to pay as determined by the probation officer.
- 2) the defendant shall submit his person, house, residence, vehicle(s), papers, [computers (as defined by 18 U.S.C. Section 1030(e)(1)) or other electronic communications or data storage devices of media], business or place of employment, and any other property under the defendant's control to a search, 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 a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

For offenses committed on or after September 13, 1994: The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.
The defendant shall not illegally possess a controlled substance.
The defendant shall comply with the standard conditions that have been adopted by this court.
The defendant shall also comply with the additional conditions on the attached page.

See Page 4 for the
"STANDARD CONDITIONS OF SUPERVISION"

DEFENDANT: ALJ HILTON
CASE NUMBER: 1:17-CR-00165-WS-N(1)

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. the defendant shall cooperate, as directed by the probation officer, in the collection of DNA, if applicable, under the provisions of 18 U.S.C. §§ 3563(a)(9) and 3583(d) for those defendants convicted of qualifying offenses.

AO 245B (ALSD 01/16) Judgment in a Criminal Case

Judgment -- Page 5 of 6

DEFENDANT: ALJ HILTON
CASE NUMBER: 1:17-CR-00165-WS-N(1)

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

☐ If applicable, restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on any fine or restitution 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 Page 6 may be subject to penalties for 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:

* 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: ALJ HILTON
CASE NUMBER: 1:17-CR-00165-WS-N(1)

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payments 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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

- ☐ Joint and Several
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11116
Non-Argument Calendar

D.C. Docket No. 1:17-cr-00165-WS-N-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALJ HILTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(July 18, 2018)

Before TJOFLAT, WILSON and NEWSOM Circuit Judges.

PER CURIAM:

The Government's motion to dismiss this appeal pursuant to the appeal waiver in Appellant's plea agreement is GRANTED. *See United States v. Bushert*,

997 F.2d 1343, 1350-51 (11th Cir. 1993) (sentence appeal waiver will be enforced if it was made knowingly and voluntarily).