

No. 19-_____

IN THE
Supreme Court of the United States

JOSE MUÑOZ,
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

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the definition of “crime of violence” in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague.
2. Whether a Hobbs Act robbery is a “crime of violence” under the “force clause” in 18 U.S.C. 924(c)(3)(A).
3. Whether (1) the imposition of sentences on 18 U.S.C. 924(c) and 18 U.S.C. 924(j) violates the Double Jeopardy Clause of the Fifth Amendment; and (2) the requirements in 18 U.S.C. 924(c) of a mandatory minimum term of imprisonment and consecutive sentencing are incorporated into 18 U.S.C. 924(j).
4. Whether entering permitting the Government to enter into evidence the self-serving written cooperation agreements between it and its own witnesses and to which the defendant is not a party violates Confrontation Clause.

Petitioner, Jose Munoz, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit dated March 19, 2019.

ORDERS AND OPINIONS BELOW

The Summary Order and Opinion of the United States Court of Appeals for the Second Circuit is unpublished, but may be found at ____ Fed. Appx. ___, 2019 WL 1277531 (2d. Cir. March 19, 2019), and is located in the appendix at page A-001. The Judgment of the United States District Court for the Southern District of New York is located in the Appendix at A-007. The Transcript of Petitioner's Sentencing Proceeding, including the district court's oral pronouncement of judgment, is located in the Appendix at A-014.

JURISDICTION

The United States Court of Appeals for the Second Circuit entered its Order affirming the judgment of the United States District Court for the Southern District of New York on March 19, 2019. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides, in pertinent part: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . nor be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend V.

The Sixth Amendment to the United States Constitution provides that “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. Amend. VI.

STATEMENT OF THE CASE

Petitioner respectfully requests this Court grant his petition for writ of certiorari to the United States Court of Appeals for the Second Circuit, so that this Court can determine whether the definition of “crime of violence” in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague; whether Hobbs Act robbery is categorically a “crime of violence” under 18 U.S.C. 924(c)(3)(A)’s “force clause”; whether the imposition of sentences under 18 U.S.C. 924(c) and 924(j) violates the Double Jeopardy Clause of the Fifth Amendment; whether the requirements of a mandatory minimum sentence and consecutive sentences contained in 18 U.S.C. 924(c) are incorporated into 18 U.S.C. 924(j); and whether the introduction into evidence by the Government of its self-serving cooperation agreements with its own witnesses violate the Confrontation Clause of the Sixth Amendment.

Jose Munoz, along with his co-defendant at trial, Armani Cummings, were two of more than 60 defendants indicted in connection with a narcotics distribution conspiracy alleged to exist between 2006 and 2012 in the Allerton section of The Bronx, including the Parkside Projects, the Allerton Avenue Cooperatives (“the Coops”), and 2802 Olinville (“the Carter”). In addition to the narcotics conspiracy, Munoz was charged with firearms violations, murder, and robbery.

The Government's evidence against Munoz consisted almost exclusively of the testimony of cooperating witnesses Bruce Houston (a.k.a. "Face"), Jose Nicole (a.k.a. "Bo"), Clyde Jones, Jim Volcy (a.k.a. "Bear"), Justin Freytes, and Joshua Yorro (a.k.a. "Trey"). Each of them faced significant prison time based on the charges against them and testified after entering into cooperation agreements with the Government, hoping their testimony against Munoz and Cummings would result in substantially lower sentences than they would otherwise receive.

All of the cooperating witnesses admitted to selling crack in and around Allerton. The primary supplier was Captain McFarland (a.k.a. Captain), who supplied Cummings, Jones, Volcy, and Freytes. Furthermore, while Yorro testified that Munoz received his crack from McFarland, 1416-17, Freytes testified that Munoz purchased his crack on the Lower East Side of Manhattan and in the Tremont section of the Bronx, Tr. 1200, and Munoz testified that he purchased his crack in Brooklyn, Tr. 1904.

Shakeem Young (a.k.a. Boom) and Jesse McCollum (a.k.a. Shoddy) were from the Pelham area of The Bronx and controlled the narcotics distribution there. Young and McCollum were high ranking members of a gang in Pelham and were known to be violent, carry guns, and shoot people. Tr. 414-15; 1352; 1497-1500. Importantly, that reputation was known to Munoz before their encounter at the party on December 30, 2011, where Petitioner killed Young. Tr. 1907-08. For reasons none of the cooperators or any other witnesses knew, there had been problems between the Pelham area and the Allerton area going back many years, at least to 2004. Tr. 416-17; 657-59. One of the apparent consequences of that dispute was that, absent a pass, People from Pelham

were not allowed to sell drugs in Allerton and vice versa. Tr.439; 466; 483. According to Nicole, Cummings and Munoz were responsible for making sure people from Pelham did not sell drugs in Allerton without a pass, Tr.142; 483, though Jones said that it was Cummings and McFarland who decided who could sell in the Coops, Tr.840, Freytes testified that to sell in the Coops, a dealer need the permission of Sean, CJ, Travis, Fatts, Captain, or Cummings, but not Munoz, Tr.1170, and Yorro testified that only Munoz and Corey Y could give permission to sell in the Coops, Tr.1409. Munoz's method of keeping outsiders from selling in Allerton, according to Jones and Freytes, was to rob unauthorized sellers in Allerton himself or through friends. Tr.848-49; 1202-1210.

Although Houston and Yorro testified that Munoz sold regularly in the Coops in 2010, Tr.133; 163; 164; 438-39, Volcy did not mention Munoz when asked who he saw selling in the Coops, even though Volcy himself regularly sold in the Coops, Tr.908; 931-32, and Munoz denied selling in Allerton in 2010, but admitted selling by himself throughout Allerton for about three months in 2011, Tr.1903-04. Munoz denied selling outside, testifying that either his buyers went to his building or he went to theirs. Tr. 1905-06.

On one unspecified date, Yorro supposedly spotted Young and McCollum selling drugs in Allerton, having received a pass from a drug dealer in Allerton. Tr.1421-23. Freytes, however, never saw Pelham guys selling in Allerton. Tr.1210. On some unspecified date thereafter, Young and other people from Pelham went to Allerton and fired off several shots in the direction of people standing in the Coops, including

Munoz. Tr.1434. At least one of those bullets narrowly missed hitting Munoz in the head. Tr.419-20; 1434.

On December 30, 2011, Munoz, went to a party in the Bronx. He was hanging out with Yorro. While Munoz stood in the crowded hallway outside the apartment where the party was being held, Yorro stepped outside to make a call, all the while looking up and down the block. Tr.1515-18. Although he denied being in contact with Young's group or even knowing they would be attending the party, Tr.1514, Young and McCollum arrived from the direction in which Yorro had been looking and entered the building less than one minute after Yorro re-entered the building, Tr.1518, and Yorro testified that when McCollum called him shortly after the gunfight at the party, McCollum supposedly asked Yorro why he didn't tell them that Munoz would be there, Tr.1455. Yorro was friends with Young and McCollum, Tr.1495. They were in the same gang and greeted each other using the gang handshake even as Yorro stood next to Munoz at the party. Tr.1446; 1496-97. Indeed, Yorro even had a pass from Young to sell drugs in Pelham. Tr.1420; 1499. And Yorro was the one McCollum called on his cell phone minutes after the gunfight at the party. Tr.1454.

As McCollum walked past Munoz, he looked at him and then the rest of his group looked at him. Tr.1523. Most of McCollum's and Young's actions after that were in dispute, with Yorro (Young and McCollum's friend and fellow gang member) painting Young and McCollum as unwitting victims, and Munoz testifying that they drew their weapons first. Unfortunately for Munoz, McCollum and Young were out of range of the surveillance camera when the altercation began. As it went on, however,

McCollum could clearly be seen firing at Munoz. Young and Munoz were both shot four times, but Young died from his wounds while Munoz eventually recovered after receiving medical attention.

At trial, during the direct-examination of each cooperating witness, and over the hearsay objection by Munoz's counsel, the Government was allowed to introduce into evidence the entire written cooperation agreement to which it and its own witness were the only parties. Tr.174-75; 485-86; 851-52; 936; 1220; 1468. Neither, the Government nor the trial court cited a federal statute, a Federal Rule of Evidence, or a rule promulgated by the Supreme Court that allowed the agreement to be entered into evidence. Moreover, Petitioner was afforded no opportunity to cross-examine any of the Government representatives who were parties to the agreement. Furthermore, in its summation, the Government urged the jurors to review the cooperation agreements and pointed out that the agreements the Government had with its witnesses required the witnesses to tell the truth. Tr.2157-58; 2235-36. The Government told the jury that if the witnesses lie on the stand, then the witnesses do not get the benefits of the agreement. Notably, the Government's pointed out that it had not "ripped up" the agreements.

Munoz was convicted of all eight counts with which he was charged.

SENTENCING

Munoz was sentenced on November 4, 2016. In his sentencing submission and orally at sentencing, Defense counsel raised numerous objections to the PSR's sentencing calculations and recommendation. A.182-86. The court adopted over

defense objection the factual recitation and guidelines calculation contained in the Pre-Sentence report. A.188-89. Although the sentencing guidelines called for, and probation recommended a life sentence, A.11, Munoz was sentenced to a total of 75 years prison. The court imposed sentences on Counts Two, which charged Petitioner with violating 18 U.S.C. 924(c)(1)(A)(i) for using a firearm in relation to a drug trafficking crime, Count Ten, which charged Petitioner with violating 18 U.S.C. 924(c)(1)(A)(iii) for using a firearm in relation to a crime of violence, and Count Eleven, which charged Petitioner with violating 18 U.S.C. 924(j) for murder through use of a firearm during and in relation to a drug trafficking crime, even though counts Two and Ten were both lesser included offenses of Count Eleven. On Count Two, the court imposed a sentence of 5 years to run consecutively to all other sentences. On Counts Ten and Eleven, the court imposed sentences of 25 years, but ruled that they would merge with each other and run consecutively to all other sentences. A-009; A-024-25.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT THE PETITION ON THE FIRST QUESTION PRESENTED TO RESOLVE A SPLIT BETWEEN THE COURT OF APPEAL AS TO WHETHER THE DEFINITION OF “CRIME OF VIOLENCE” IN 18 U.S.C. 924(c)(3)(B) IS UNCONSTITUTIONALLY VAGUE.

This question presents the same question currently before the this Court in United States v. Davis, 18-431. This court heard oral argument in Davis on April 17, 2019. In Sessions v. Dimaya, 138 S. Ct. 1204 (2018), this Court held unconstitutionally

vague language in 18 U.S.C. 16(b) that is identical to the language in the residual clause in 18 U.S.C. 924(c)(3)(B).

In United States v. Barrett, 903 F.3d 166, 178 (2d Cir. 2018), the Second Circuit held that the residual clause in §924(c) is not unconstitutionally vague, despite the fact that its wording is materially identical to the residual clause invalidated in Dimaya. There is a circuit split regarding the constitutionality of §924's residual clause. Compare Ovalles v. United States, 2018 WL 4830079 at *1-*2 (11th Cir. Oct. 4, 2018) (En banc) (holding the residual clause constitutional so long as a conduct-based approach is employed); and Barrett, 2018 WL 4288566 at *9-*14 (same) with United States v. Davis, 2018 WL 4268432 at *3 (5th Cir. Sept. 7, 2018) (holding the residual clause unconstitutional in light of Dimaya's holding as to identical language); United States v. Eshetu, 898 F.3d 36, 37 (D.C. Cir. 2018) (same); United States v. Salas, 889 F.3d 681, 686 (10th Cir. 2018).

For the extensive and well-articulated reasons stated in Salas, 889, F.3d at 684-86, the residual clause contained in §924(c)(3)(B) is unconstitutionally vague and the Second Circuit's conclusion to the contrary is in error. First, because the wording of §924(c)(3)(B)'s residual clause is identical to the wording of §16(b)'s unconstitutional residual clause, it necessarily suffers from the same failings: “an ordinary-case requirement and an ill-defined risk threshold.” Dimaya, 138 S. Ct. at 1207; see Salas, 889 F.3d at 685. In doing so, §924(c)(3)(B), like the residual clauses in §16(b) and the ACCA, produces “more unpredictability and arbitrariness than the Due Process Clause tolerates.” Dimaya, 138 S. Ct. at 1216 (quoting Johnson, 135 S. Ct. at 2558). Indeed,

the use of the words “by its nature” in both §16(b) and §924(c)(3)(B) to describe the underlying criminal conduct supports the view that it refers to “what an offense normally – or, as [the Court has] repeatedly said, ‘ordinarily’ – entails, not what happened to occur on one occasion.” Dimaya, 138 S. Ct. at 1217-18. Thus, this Court rejected the dissent’s invitation to interpret the language of §16(b) as requiring it to utilize a conduct-based approach. See id. 1216-18.

Moreover, the Second Circuit’s reasoning in Barrett that allowing a jury determine whether the defendant’s real world conduct solves the vagueness problem, see 903 F.3d 178-184, is misplaced. As pointed out by the Tenth Circuit in Salas, the mere fact that the jury, rather than the judge, must make the factual determination regarding the “not-well-specified-yet-sufficiently-large-degree of risk,” id. at 1216, does not mean that the language necessarily ceases to be vague. See Salas, 889 F.3d at 686 (citing Papachristou v. City of Jacksonville, 405 U.S. 156, 171 [1972]). The language in question still runs the risk that separate juries presented with evidence of the identical conduct may reach different conclusions regarding the degree of risk posed by that conduct.

In light of the circuit split on this issue, and in light of the fact that this issue is currently before the Court, this Court should grant the petition on the first question presented.

II. THIS COURT SHOULD GRANT THE PETITION ON THE SECOND QUESTION TO DETERMINE WHETHER A HOBBS ACT ROBBERY IS CATEGORICALLY A “CRIME OF VIOLENCE” UNDER U.S.C. 924(c)(3)(A).

Hobbs Act robbery is not categorically a “crime of violence” under 924(c)(3)(A) because it may be achieved despite the absence of a use, threatened use, attempted use of force or violence by a defendant. Moreover, because it may be achieved through non-violent force incapable of causing pain or injury, it does not qualify as a “crime of violence.”

A. Hobbs Act Robbery May Be Satisfied by the Victim’s Subjective Fear of Injury Despite the Absence of a Use, Threatened Use, or Attempted Use of Force or Violence

Hobbs Act robbery under §1951 may be proved by the victim’s subjective fear of injury, even in the absence of the use, threatened use, or attempted use of force or violence by the defendant or the defendant’s accomplice and, therefore, fails the categorical approach. Under §1951, “robbery” is “the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property . . .” 18 U.S.C. §1951(b)(1) (emphasis added). The “force clause” in §924(c)(3)(A), however, requires that the underlying “crime of violence” have “as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. §924(c)(3)(A). Because Hobbs Act robbery may occur without the defendant’s use, threatened use, or attempted use of force against another’s person or property, it fails the categorical approach.

As this Court has explained, using the categorical approach requires the court to “compare the elements of the statute forming the basis of the defendant’s conviction with the elements of the ‘generic’ crime.” United States v. Descamps, 133 S. Ct. 2276, 2281 (2013). That is, the court is required “to look to the elements and nature of the offense of conviction, rather than to the particular facts relating to petitioner’s crime.” Leocal v. Ashcroft, 543 U.S. 1, 7 (2004); see Taylor v. United States, 495 U.S. 575, 600 (1990). Under the categorical approach, therefore, the court is not permitted to consider the facts of the Hobbs Act robbery underlying Count Fourteen. Rather, the court’s analysis must be limited to a comparison of the definitions of “robbery” in §1951(b)(1) and “crime of violence” in §924(c)(3)(A). That comparison leads to the conclusion that “robbery” under §1951 does not qualify as a “crime of violence” under §924(c)(3)(A), because the robbery may be proved by the victim’s fear of injury even in the absence of the defendant’s use, threatened use, or attempted use of physical force.

This Court has held that the word “use,” as that term is employed in 18 U.S.C. §16(a), which contains language identical to that found in §924(c)(3)(A), “requires active employment.” Leocal, 543 U.S. at 9 (quoting Bailey v. United States, 516 U.S. 137, 145 [1995]). Thus, the Court held that “[t]he key phrase in § 16(a)—the “use” . . . of physical force against the person or property of another”—most naturally suggests a higher degree of intent than negligent or merely accidental conduct.” Leocal, 543 U.S. at 9. The same words ought to be given the same meaning, then, in §924(c)(3)(A). Nothing in §1951(b)(1), however, requires that the victim’s fear of injury result from anything more than the defendant’s negligent or accidental conduct. Notably, while

the words “actual or threatened force, or violence” as used in §1951(b)(1) clearly are directed at the defendant’s conduct and state of mind, the words “fear of injury” in that same section refer to the victim’s subjective feelings and state of mind.

Interpreting “fear of injury” as necessarily resulting from a threat of violence renders the statute’s words superfluous, because the immediately preceding words in §1951(b)(1) already include “threatened force, or violence.” In fact, such an interpretation would add an element by requiring that a threat of force or violence actually result in the fear of injury. Given that “threatened force, or injury, or fear of injury” is drafted in the disjunctive, such an interpretation would make little sense. This Court has explained that the “ordinary use [of the word “or”] is almost always disjunctive, that is, the words it connects are to be given separate meanings.” Loughrin v. United States, 134 S. Ct. 2384, 2390 (2014) (quoting United States v. Woods, 134 S. Ct. 557, 567 [2013]). Thus interpreting the “fear of injury” element as necessarily requiring a threat of force or violence by the defendant, consequently, “runs afoul of the ‘cardinal principle’ of interpretation that courts ‘must give effect, if possible, to every clause and word of a statute.’” Loughrin, 134 S. Ct. at 2390 (quoting Williams v. Taylor, 529 U.S. 362, 404 [2000]).

B. Hobbs Act Robbery Does Not Require the Use, Attempted Use, or Threatened Use, of Violent Physical Force, as Opposed to Ordinary Physical Force.

Hobbs Act robbery does not qualify as a crime of violence under §924(c)(3)’s “force clause,” because, while the “physical force” required under §924(c)(3)(A) must be

interpreted to mean violent physical force, Hobbs Act robbery may be accomplished through the use, attempted use, or threatened use of ordinary force.

First, §924(c)(3)(A) must be interpreted as requiring violent physical force, as opposed to ordinary physical force. In Leocal v. Ashcroft, the Supreme Court, in interpreting language in 18 U.S.C. §16 that is virtually identical to the language in §924(c)(3)(A), cautioned that “we cannot forget that we ultimately are determining the meaning of the term ‘crime of violence.’ The ordinary meaning of this term, combined with § 16's emphasis on the use of physical force against another (or the risk of having to use such force in committing a crime), suggests a category of violent, active crimes.” 543 U.S. 1, 11 (2004). Similarly, in Johnson v. United States, this Court interpreted the term “physical force” as used elsewhere in 18 U.S.C. §924, specifically, in 18 U.S.C. §924(e)(2)(B)(I). See 559 U.S. 133, 138 (2010). As it did in Leocal, the Court relied on the fact that the term “physical force” in Johnson case was used in the definition of “violent felony” to interpret it as meaning “violent force—that is, force capable of causing physical pain or injury to another person.” Johnson, 559 U.S. at 140 (emphasis in original); see Stokeling v. United States, 139 S. Ct. 544, 554 (2019). Indeed, the Court noted that “[e]ven by itself, the word ‘violent’ in § 924(e)(2)(B) connotes a substantial degree of force.” Id. Given this Court’s holdings and analyses in Leocal, Johnson, and Stokeling, there can be little doubt that the physical force required under §924(c)(3)(A) is likewise “violent force—that is, force capable of causing physical pain or injury to another person”— requiring a “substantial degree of force.”

Hobbs Act robbery, as defined in §1951(b)(1), however, unlike “crimes of violence,” may be accomplished without the use, attempted use, or threatened use of violent physical force—that is, a substantial degree of force or force that is capable of causing physical pain or injury. Indeed, it can be accomplished through threatened injury to property, as opposed to a person. See 18 U.S.C. § 1951(b)(1). The definition of “robbery” included in the Hobbs Act itself distinguishes between force and violence, listing “force” or “violence,” in the disjunctive. See 18 U.S.C. §1951(b)(1). As noted above, the Supreme Court has stated that in interpreting a statute, words connected by “or” “are to be given separate meanings.” Loughrin, 134 S. Ct. at 2390 (quoting Woods, 134 S. Ct. at 567). So, under the Hobbs Act, “force” does not by itself connote violent force, lest either “force” or “violence” be rendered superfluous. Hobbs Act robbery, accordingly, does not qualify as a crime of violence under 18 U.S.C. §924(c)(3)(A).

III. THIS COURT SHOULD GRANT THE PETITION ON THE THIRD QUESTION TO RESOLVE A SPLIT IN THE CIRCUIT COURTS OF APPEAL ON THE RELATED ISSUES OF (1) WHETHER SENTENCING A DEFENDANT UNDER 924(c) AND 924(j) FOR THE SAME CONDUCT VIOLATES THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT AND (2) WHETHER 924(j) INCORPORATES 924(c)’S REQUIREMENTS OF MANDATORY MINIMUM AND CONSECUTIVE SENTENCES.

It is clear that 18 U.S.C. § 924(c)(1)(A)(iii), as charged in Count Ten of the indictment, is a lesser included offense of 18 U.S.C. § 924(j), as charged in Count Eleven of the indictment, as 924(j) has as an element of the that subsection that the defendant caused the death while violating 924(c). Counts Two and Ten, therefore,

should have been dismissed, or at least sentence withheld, as sentencing Petitioner on all three Counts subjected him to double jeopardy in violation of the Fifth Amendment. See Rutledge v. United States, 517 U.S. 292, 301-02 (1996); United States v. García-Ortiz, 657 F.3d 25, 28-29 (1st Cir. 2011).

Moreover, unlike 18 U.S.C. § 924(c), 18 U.S.C. § 924(j) itself contains no mandatory minimum or any requirement that a sentence imposed under 924(j) run consecutive to any other sentence. See United States v. Julian, 633 F.3d 1250, 1252 (11th Cir. 2011); United States v. García-Ortiz, 792 F.3d 184, 194 n.14 (1st Cir. 2015). But see United States v. Bran, 776 F.3d 276, 281-82 (4th Cir. 2015); United States v. Berrios, 676 F.3d 118, 139 (3d Cir. 2012).

By its plain wording, 924(j) does not require a mandatory minimum sentence. See 18 U.S.C. § 924(j). Given that 924(j) contains its own sentencing provision, that it is plainly worded, and that it contains no mandatory minimum and does not by its terms incorporate the sentencing structure or requirements in 924(c), there is no need to look anywhere else in order to “interpret” it. See Deal v. United States, 508 U.S. 129, 136 (1993).

Moreover, at the time 924(j) was enacted in 1994 (it was subsection (i) at that time and changed to subsection (j) in 1996) the current incarnation of 924(c) did not exist, having been enacted in 1998, see Abbott v. United States, 562 U.S. 8, 15-18 (2010). Thus, when Congress enacted 924(j) it could not have intended that it incorporate the current version of 924(c)’s sentencing requirements. Furthermore, it

is notable that when Congress did pass the current version of 924(c) in 1998, it did not alter the language of 924(j) to incorporate it.

Indeed, the language and elements in 924(j) are very similar to those in 18 U.S.C. § 36(b)(2)(A). Thus, 924(j) would not be the anomaly the Government claims by not requiring a mandatory minimum despite the use of a firearm to cause death in a major drug-related crime. Compare 18 U.S.C. § 924(j) with 18 U.S.C. § 36(b)(2)(A).

Finally, to the extent the court finds the language of 18 U.S.C. § 924(j) ambiguous, then the rule of lenity requires that it be interpreted in the way more favorable to Petitioner.

IV. THIS COURT SHOULD GRANT CERTIORARI ON THE FOURTH QUESTION BECAUSE IT PRESENTS IMPORTANT AND RECURRING FEDERAL EVIDENTIARY AND CONSTITUTIONAL QUESTIONS REGARDING WHETHER THE ADMISSION OF THE GOVERNMENT'S SELF-SERVING COOPERATION AGREEMENTS WITH ITS OWN WITNESSES AS EVIDENCE AT TRIAL AGAINST A DEFENDANT WHO IS NOT A PARTY TO THE AGREEMENT VIOLATES THE RULE AGAINST HEARSAY AND THE CONFRONTATION CLAUSE.

In this case, as in most tried in the Southern and Eastern Districts of New York, the trial court allowed the Government to introduce in evidence the self-serving cooperation agreements between it and its own witnesses. The agreements clearly constituted out-of-court statements by both the witness and the Government that were offered for the truth of the matters asserted therein. Accordingly, there were not admissible, therefore, "unless allowed by a federal statute, the Federal Rules of Evidence, or rules promulgated by the Supreme Court." See Fed. R. Evid. 802. Neither, the Government nor the trial court cited a federal statute, a Federal Rule of

Evidence, or a rule promulgated by the Supreme Court that allowed the agreement to be entered into evidence. The written cooperation agreements were inadmissible hearsay. Their admission into evidence also violated Munoz's Sixth Amendment right to confrontation, as he was afforded no opportunity to cross-examine any of the Government representatives who were parties to the agreement.

The Second Circuit has stated numerous times that a written cooperation agreement is admissible in its entirety following defense counsel's attack on the witness's credibility. See, e.g., United States v. Cosentino, 844 F.2d 30, 32-35 (2d Cir. 1988). Notably missing from the court's decisions, however is citation to the federal statute, Federal Rule of Evidence, or Supreme Court rule that rendered the written cooperation agreements admissible. Indeed, the court's reasoning in Cosentino, is flawed in at least two respects.

First, in Cosentino, the Second Circuit reasoned that there was "no reason to distinguish between the written text of the agreement and testimony about it." 844 F.2d at 34. In fact, however, there is a big reason to distinguish between them and that reason bears directly on why the witness's testimony would be admissible but the written text inadmissible. It is the difference between a witness's testimony about his own understanding of potential benefits and pitfalls of testifying for the Government, which is admissible, not for the truth of the matters asserted in the agreement, but for the witness's subjective understanding of its terms, as his subjective understanding might influence his testimony. Whether his subjective understanding is correct is beside the point. The written text, on the other hand, is admitted for the truth of its

contents, which is irrelevant to the witness's motives to color his testimony insofar as he is unaware of them or misunderstands them. Likewise, what matters is not what the Government, in fact, has promised the witness or what the witness, in fact, is obligated to do, but what the witness believes the Government has promised him and what he believes he is obligated to do. Moreover, there is rarely, if ever, a dispute about the actual terms of the cooperation agreements, further rendering unnecessary the admission of those agreements into evidence. Thus, whereas the written text may be used to refresh the witness's recollection regarding the respective parties' obligations under the agreement, the written text is itself inadmissible hearsay.

Second, in Cosentino, the court wrongly stated that “[t]he decision about the form of evidence of the agreement should take lies within the trial judge's discretion under Fed. R. Evid. 403.” This statement is wrong because the evidence is inadmissible under Fed. R. Evid. 802 and the Sixth Amendments Confrontation Clause. Thus, the trial court should never reach the balancing test required under Rule 403 and the trial court lacks discretion to allow the written agreement into evidence.

Even if Rule 403 were applicable, the written agreement would be inadmissible because it is misleading and confuses the issues, insofar as it would lead the jury to focus on the actual terms of the agreement as opposed to the witness's understanding of the agreement. It also gives the jury the impression that the Government somehow knows the “truth” independent of what the cooperators have stated. After all, a reasonable juror would wonder how else the Government could possibly know whether

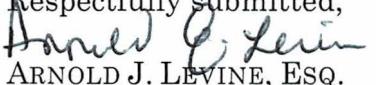
the witness is complying with his obligation under the agreement to tell the truth, especially given that the agreement provides that the Government alone determines whether the witness has been truthful and, therefore, whether to provide the 5K1 letter. This amounts to improper vouching by the Government. Indeed, in summation and rebuttal-summation, the Government brought the jury's attention to the truth-telling language in each of the agreements and invited the jury to read each of the written agreements. Tr.2157-58; 2235-36.

Moreover, the introduction of the written cooperation agreements into evidence violated Petitioner's Sixth Amendment right to confront and cross-examine the witnesses against him. At trial, during the direct-examination of each cooperating witness, the Government was allowed to introduce into evidence the entire written cooperation agreement to which it and its own witness were the only parties. Tr.174-75; 485-86; 851-52; 936; 1220; 1468. The Government regularly introduces into evidence the cooperation agreements of its cooperating witnesses at trial. Although the defendants are permitted cross-examine the testifying cooperator, they are not afforded opportunity to cross-examine any of the Government representatives who were parties to the agreement. Because the Government enters into such agreements with cooperators it expects to testify at a trial and because the Government routinely presents the agreements themselves as evidence at trial, the Government's statements in those agreements clearly are testimonial. See Crawford v. Washington, 541 U.S. 36, 67 (2004).

This case is the perfect example. In its summation, the Government urged the jurors to review the cooperation agreements and pointed out that the agreements the Government had with its witnesses required the witnesses to tell the truth. Tr.2157-58; 2235-36. The Government told the jury that if the witnesses lie on the stand, then the witnesses do not get the benefits of the agreement. Importantly, the Government pointed out that it had not “ripped up” the agreements. Because Petitioner was not permitted to cross-examine any of the Government parties to the agreement, its admission into evidence violated Petitioner’s Sixth Amendment right to confront and cross examine the witnesses against him.

CONCLUSION

For the aforementioned reasons, Petitioner respectfully requests that this Court grant her Petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

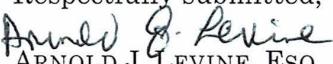
Respectfully submitted,

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CERTIFICATION

As required by Supreme Court Rule 33.1(h), I certify that the document contains 5,373 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 17, 2019

Respectfully submitted,

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APPENDIX

16-3890-cr
United States v. Munoz

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 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 19th day of March, two thousand nineteen.

Present: RALPH K. WINTER,
 ROSEMARY S. POOLER,
 Circuit Judges.
 RONNIE ABRAMS,¹
 District Judge.

UNITED STATES OF AMERICA,

Appellee,

v.

16-3890-cr

JOSE MUNOZ, FAHEEM TAYLOR,

*Defendants-Appellants.*²

Appearing for Appellant: Arnold J. Levine, New York, N.Y., *for Appellant Jose Munoz.*
Appearing for Appellee: Michael K. Krouse, Assistant United States Attorney (Won S. Shin, Daniel B. Tehrani, Assistant United States Attorneys, *on the*

¹ Judge Ronnie Abrams, United States District Court for the Southern District of New York, sitting by designation.

² The Clerk of Court is directed to amend the caption as above.

brief), for Geoffrey S. Berman, United States Attorney for the Southern District of New York, New York, N.Y.

Appeal from the United States District Court for the Southern District of New York (Marrero, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

Appellant Jose Munoz appeals from the November 7, 2016, judgment of the United States District Court for the Southern District of New York (Marrero, J.), sentencing him principally to seventy-five years of imprisonment following his conviction, after trial, of conspiracy to distribute and possess with intent to distribute crack cocaine, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846, possessing, using, and carrying a firearm during and in relation to a drug trafficking crime, 18 U.S.C. §§ 924(c)(1)(A)(i) and 2, murder in connection with a drug trafficking crime, 21 U.S.C. § 848(e)(1)(A); 18 U.S.C. § 2, using and carrying a firearm that was brandished and discharged during and in relation to a crime of violence (i.e., murder), 18 U.S.C. §§ 924(c)(1)(A)(iii), 924(c)(1)(C)(i) and 2, murder through the use of a firearm during and in relation to a drug trafficking crime, *id.* §§ 924(j) and 2, conspiracy to commit Hobbs Act robbery, *id.* § 1951, Hobbs Act robbery, *id.* §§ 1951 and 2, and using and brandishing a firearm in relation to a crime of violence (i.e., Hobbs Act robbery), *id.* §§ 924(c)(1)(A)(ii), 924(c)(1)(C)(i) and 2. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

Munoz attacks several of the district court's evidentiary rulings. "We review a district court's evidentiary rulings for abuse of discretion and will reverse only for manifest error." *Manley v. AmBase Corp.*, 337 F.3d 237, 247 (2d Cir. 2003) (citations omitted). "In conducting our review, we are mindful of the wide latitude that traditionally has been afforded to district courts both in determining whether evidence is admissible and in controlling the mode and order of its presentation to promote the effective ascertainment of the truth." *SR Int'l Bus. Ins. Co., Ltd. v. World Trade Ctr. Props., LLC*, 467 F.3d 107, 119 (2d Cir. 2006) (citations and internal quotation marks omitted). Moreover, we only disturb erroneous evidentiary rulings if they are not harmless. Fed. R. Crim. P. 52(a). "In order to uphold a verdict in the face of an evidentiary error, it must be 'highly probable' that the error did not affect the verdict. Reversal is necessary only if the error had a substantial and injurious effect or influence in determining the jury's verdict." *United States v. Dukagjini*, 326 F.3d 45, 61-62 (2d Cir. 2003) (citation and internal quotation marks omitted).

Munoz argues that the government elicited impermissible hearsay testimony from a cooperating witness, Joshua Yorro, in which Yorro recounted how Munoz twice asked him not to testify—once through a jailhouse ventilation system and a second time through an intermediary. The first instance is not hearsay. Statements by an opposing party are excluded from the definition of hearsay. Fed. R. Evid. 801(d)(2)(A). That Yorro relied on a third party to tell him it was Munoz talking to him through the vents is of no moment. The third party's statements related to a preliminary foundational question—i.e., whether it was actually Munoz talking to

Yorro such that the statements were non-hearsay—to which the rules of evidence did not apply. *See* Fed. R. Evid. 104(a); *id.* 1101(d)(1).

Yorro’s testimony regarding Munoz’s second request for Yorro not to testify presents a double-hearsay question because it involves Munoz’s out-of-court statements to an unnamed intermediary, as well as that intermediary’s out-of-court statements to Yorro. *See* Fed. R. Evid. 805. As explained above, the first layer—Munoz’s out-of-court statement—was admissible. Fed. R. Evid. 801(d)(2)(A). The government justifies the second layer—the statement by the intermediary to Yorro—on the theory that Munoz and the intermediary were part of an uncharged conspiracy to obstruct justice; therefore, the statement was admissible as a co-conspirator statement made in furtherance of that conspiracy. Fed. R. Evid. 801(d)(2)(E). Although we are skeptical that the government laid the proper foundation that the unnamed third-party intermediary conspired with Munoz to obstruct justice, we do not linger any longer on this issue because any error was harmless. Munoz himself testified on cross-examination that he did not want people to cooperate with the government and that he wanted to hurt cooperating witnesses. We are thus persuaded that Yorro’s testimony in this regard did not have a “substantial and injurious effect or influence in determining the jury’s verdict.” *See Dukagjini*, 326 F.3d at 62 (internal quotation marks omitted).

Munoz further contends that the district court erred by allowing Yorro to testify about a telephone call he had with Jesse McCollum, a witness to Shameek Young’s murder, shortly after the murder took place. Yorro testified that McCollum told him, in sum, that McCollum had recovered the gun Munoz used in the shooting, which Munoz had discarded, and that the entire incident could have been avoided if McCollum and Young had been warned that Munoz would be at the party where the murder took place. These statements were admissible as statements against McCollum’s penal interest. Fed. R. Evid. 804(b)(3). “A statement may be admitted under Rule 804(b)(3)’s hearsay exception for statements against penal interest only if the district court determines that a reasonable person in the declarant’s shoes would perceive the statement as detrimental to his or her own penal interest.” *United States v. Saget*, 377 F.3d 223, 231 (2d Cir. 2004). Here, while McCollum’s statements could be understood as trying to place blame on Munoz, his statements also indicated that he was involved in a violent, drug-related dispute and that he possessed a firearm that had just been used as a murder weapon. Thus, they would clearly “be probative in a trial against” him. *See United States v. Persico*, 645 F.3d 85, 102 (2d Cir. 2011) (internal quotation marks omitted).

Munoz also challenges the admission of several post-arrest death threats the government introduced at trial to show Munoz’s consciousness of guilt. Munoz relies heavily on our analysis in *United States v. Cummings*, in which we held that the admission of death threats made by one of Munoz’s codefendants with whom Munoz was tried was sufficiently prejudicial to warrant a new trial. 858 F.3d 763, 779 (2d Cir. 2017). The statements at issue in *Cummings*, however, involved a hearsay problem not present in this case. *See id.* at 774. The analysis on which Munoz relies is our harmless error analysis, which we only undertook once we determined that the district court erred by admitting the hearsay testimony. *Id.* at 774-79. Here, Munoz’s claim must rise or fall with our deferential review of the district court’s balancing under Federal Rule of Evidence 403. We regard this as a close case but conclude that Munoz’s claim falls.

“Evidence of threats by a defendant against a potential witness against him . . . be used to show guilty knowledge” under Federal Rule of Evidence 404(b), so long as Rule 403’s balancing test is satisfied. *United States v. Bein*, 728 F.2d 107, 114-15 (2d Cir. 1984). Under Rule 403, a district “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of” unfair prejudice. Fed. R. Evid. 403. “Ordinarily, unrelated death-threat testimony is kept from a jury because its potential for causing unfair prejudice outweighs its probative value with respect to a defendant’s guilt.” *United States v. Panebianco*, 543 F.2d 447, 455 (2d Cir. 1976). Because “the potential prejudice from death threats may be great,” we require the government to “have an important purpose for the evidence in order to satisfy the Rule 403 balancing test.” *United States v. Qamar*, 671 F.2d 732, 736 (2d Cir. 1982); *see also* *United States v. Morgan*, 786 F.3d 227, 232 (2d Cir. 2015).

The reason we regard this as a close case is because the only permissible purpose the government offered was to prove Munoz’s consciousness of guilt. The threats “bore no relation to the offenses for which [Munoz] was being tried,” were not “inextricably intertwined with the evidence regarding the charged offense,” and were not “offered as evidence regarding a witness’s credibility.” *Cummings*, 858 F.3d at 778 (internal quotation marks omitted); *see also* *Morgan*, 786 F.3d at 232.

Moreover, in conducting the Rule 403 balancing, the district court reasoned that “the potential for unfair prejudice by presenting the threats at issue here [was] mitigated by the severity of the crimes alleged in the indictment.” *United States v. Cummings*, 60 F. Supp. 3d 434, 440 (S.D.N.Y. 2014). However, the risk of prejudice here was not that the death threat evidence would be “inflammatory.” *Id.* Rather, it was that the evidence would “lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief v. United States*, 519 U.S. 172, 180 (1997). In other words, the risk was that the jury would misconstrue the death threats as evidence of murderous propensity. The district court’s balancing did not seem to take that risk into consideration.

Nevertheless, we do not ordinarily require district courts to “articulate the relevant considerations” related to its evidentiary rulings “on the record.” *Leopold v. Baccarat, Inc.*, 174 F.3d 261, 269 n.11 (2d Cir. 1999). “[W]e ordinarily assume that such due consideration was given.” *Morgan*, 786 F.3d at 232. Moreover, “[d]istrict courts have broad discretion to balance probative value against possible prejudice, and we will not disturb that balancing unless there is a clear showing of abuse of discretion or that the decision was arbitrary or irrational.” *United States v. Bermudez*, 529 F.3d 158, 161-62 (2d Cir. 2008) (citations and internal quotation marks omitted). Here, in light of these deferential standards, we will not disturb the district court’s ruling. On that score, the death threat testimony was arguably important to rebut Munoz’s theory that he acted in self-defense—a purpose the government articulated to us at oral argument. We do not hold that rebutting a theory of self-defense is necessarily a purpose sufficiently important to overcome the significant prejudice that death threat testimony introduces into a criminal trial; instead, we conclude that this consideration weighs against finding that the district court abused its discretion in this case. Finally, unlike in *Cummings*, the prejudice from admitting this testimony was lessened by Munoz’s own testimony that he wanted to hurt cooperating witnesses.

We do, however, urge district courts to continue to carefully scrutinize the necessity and purpose of such toxic death threat evidence before allowing it in to a criminal trial. And we likewise admonish the government to consider whether such testimony is truly needed to secure a conviction. The government may view this type of evidence as one more nail in the defendant's coffin, but by needlessly introducing it, the government invites the risk of reversal on appeal, requiring it to reconstruct its entire case—an outcome it has narrowly avoided in this case.

Munoz also argues that the district court impermissibly instructed the jury that he had a motive to testify falsely. "We generally review challenged jury instructions *de novo*, reversing only if the charge, taken as a whole, was prejudicial." *United States v. Brutus*, 505 F.3d 80, 85 (2d Cir. 2007). Moreover, we will find that an erroneous jury charge is harmless error "if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *United States v. Silver*, 864 F.3d 102, 119 (2d Cir. 2017) (internal quotation marks omitted).

A "trial court's jury instructions about a defendant's testimony must not assume that he is guilty." *United States v. Gaines*, 457 F.3d 238, 246 (2d Cir. 2006). Thus, a trial court may not "tell[] a jury that a testifying defendant's interest in the outcome of the case creates a motive to testify falsely." *Id.* Because "[t]he critical defect in a jury instruction that says the defendant has a motive to lie is its assumption that the defendant is guilty," *id.* at 247, prejudicial language that runs afoul of our prophylactic rule cannot be cured "by other, more favorable language," *Brutus*, 505 F.3d at 87; *see also Gaines*, 457 F.3d at 246-47. We have therefore directed district courts to include any instruction about "a witness's interest in the outcome of the case . . . in the court's general charge concerning witness credibility," modifying the charge as necessary to "tell the jury to evaluate the defendant's testimony in the same way it judges the testimony of other witnesses." *Gaines*, 457 F.3d at 249.

Here, the district court instructed the jury, as part of its general jury instructions, "In evaluating credibility of the witnesses, you should take into account any evidence that any witness who testified may benefit in some way from the outcome of the case. *Such an interest in the outcome creates a motive to testify falsely* and may sway a witness to testify in a way that advances his or her own interests." Trial Tr. 2290:14-19 (emphasis added). It continued, "You should not disregard or disbelieve that testimony simply because a witness had or has such an interest, but if you accept it, you should do so with great care." Trial Tr. 2290:22-25. The district court further instructed that "Defendant Jose Munoz chose to testify in this case. You should examine or evaluate the his [sic] testimony *just as you would the testimony of any witness with an interest in the outcome of the case.*" Trial Tr. 2294:7-10 (emphasis added).

The logical implication of the district court's instructions is that Munoz had a motive to testify falsely: if "an interest in the outcome creates a motive to testify falsely," Trial Tr. 2290:16-17, and jurors should assess Munoz's testimony as a "witness with an interest in the outcome of the case," Trial Tr. 2294:8-10, then Munoz had an interest in the outcome of the case that created a motive to testify falsely. Thus, the district court did indirectly what we said in *Brutus* and *Gaines*: district courts cannot do directly: tell the jury that a criminal defendant who testifies has a motive to testify falsely. While the district court did heed our admonition to discuss a "a witness's interest in the outcome of the case . . . in the court's general charge

concerning witness credibility,” *Gaines*, 457 F.3d at 249, the instruction also skirted the spirit of *Brutus* and *Gaines*. Nevertheless, because the interested witness instruction and the instruction regarding Munoz’s testimony were separated in the overall charge, we are hesitant to say that the jury “charge, taken as a whole, was prejudicial.” *Brutus*, 505 F.3d at 85. Moreover, any error here was harmless. We are convinced that the evidence that Munoz intentionally killed Young—including, for example, the medical examiner’s testimony that Young was shot in the back and the video footage showing Munoz shooting Young—was so substantial that the jury would have convicted him absent any error in the jury charge.

The lack of reversible error in this case notwithstanding, we renew our direction to district courts to excise from jury charges any instruction indicating that a criminal defendant who testifies has a motive to testify falsely. We again refer district courts to the language we approved in footnotes in *Brutus* and *Gaines*. *Brutus*, 505 F.3d at 88 nn.6 & 7; *Gaines*, 457 F.3d at 249 nn.8 & 9.

We have considered the remainder of Munoz’s arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk

A handwritten signature in black ink, appearing to read "Catherine O'Hagan Wolfe", is placed over a circular official seal. The seal is divided into four quadrants by a cross. The top-left quadrant is red, the top-right is blue, the bottom-left is yellow, and the bottom-right is green. The text "UNITED STATES" is at the top, "SECOND CIRCUIT" is in the center, and "COURT OF APPEALS" is at the bottom.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :
- v. - : SUPERSEDING
INDICTMENT
ARMANI CUMMINGS, : S10 12 Cr. 31 (VM)
a/k/a "Al," and
JOSE MUNOZ, :
a/k/a "Rico," :
Defendants.
- - - - - ' - x

COUNT ONE

The Grand Jury charges:

1. From at least in or about 2006, up to and including in or about 2012, in the Southern District of New York and elsewhere, ARMANI CUMMINGS, a/k/a "Al," and JOSE MUNOZ, a/k/a "Rico," the defendants, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that ARMANI CUMMINGS, a/k/a "Al," and JOSE MUNOZ, a/k/a "Rico," the defendants, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that ARMANI CUMMINGS, a/k/a "Al," and JOSE MUNOZ, a/k/a "Rico," the defendants, conspired to distribute and possess with intent to distribute was 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack," in violation of Title 21, United States Code, Section 841(b) (1) (A) .

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

4. From at least in or about 2006, up to and including in or about 2012, on occasions other than (i) the fatal shooting of Laquan Jones, a/k/a "Bills," that occurred on or about January 14, 2010, as charged in Counts Three and Five of this Indictment; (ii) the fatal shooting of Carl Copeland, a/k/a "Giovanni," that occurred on or about June 9, 2010, as charged in Counts Six and Eight of this Indictment; and (iii) the fatal shooting of Shameek Young, a/k/a "Little Boom," that occurred on or about December 31, 2011, as charged in Counts Nine and Eleven of this Indictment, in the Southern District of New York and elsewhere, ARMANI CUMMINGS, a/k/a "Al," and JOSE MUNOZ, a/k/a "Rico," the defendants, and others known and unknown, during and in relation to a drug trafficking crime for

which they may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, knowingly did use and carry firearms, and, in furtherance of such crime, did possess firearms, and did aid and abet the use, carrying, and possession of firearms.

(Title 18, United States Code, Sections 924(c)(1)(A)(i) and 2.)

COUNT THREE

The Grand Jury further charges:

5. On or about January 14, 2010, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack," ARMANI CUMMINGS, a/k/a "A1," the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Laquan Jones, a/k/a "Bills," and did aid and abet the intentional killing of Laquan Jones, a/k/a "Bills," in the vicinity of 650 Adey Avenue, in the Bronx, New York.

(Title 21, United States Code, Section 848(e)(1)(A); and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

6. On or about January 14, 2010, in the Southern District of New York, ARMANI CUMMINGS, a/k/a "A1," the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the murder charged in Count Three of this Indictment, knowingly did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying, and possession of a firearm, which was brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(iii), 924(c)(1)(C)(i), and 2.)

COUNT FIVE

The Grand Jury further charges:

7. On or about January 14, 2010, in the Southern District of New York, ARMANI CUMMINGS, a/k/a "A1," the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying, and possession of a firearm, and in the course of that crime did cause the death of a person

through the use of a firearm, which killing is murder as defined in Title 18, United States Code, Section 1111(a), to wit, CUMMINGS shot and killed Laquan Jones, a/k/a "Bills," in the vicinity of 650 Adee Avenue, in the Bronx, New York.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT SIX

The Grand Jury further charges:

8. On or about June 9, 2010, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack," ARMANI CUMMINGS, a/k/a "A1," the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Carl Copeland, a/k/a "Giovanni," and did aid and abet the intentional killing of Carl Copeland, a/k/a "Giovanni," in the vicinity of Britton Street and Olinville Avenue, in the Bronx, New York.

(Title 21, United States Code, Section 848(e)(1)(A); and Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

9. On or about June 9, 2010, in the Southern District of New York, ARMANI CUMMINGS, a/k/a "A1," the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the murder charged in Count Six of this Indictment, knowingly did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying, and possession of a firearm, which was brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(iii), 924(c)(1)(C)(i), and 2.)

COUNT EIGHT

The Grand Jury further charges:

10. On or about June 9, 2010, in the Southern District of New York, ARMANI CUMMINGS, a/k/a "A1," the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry firearms, and, in furtherance of such crime, did possess firearms, and did aid and abet the use, carrying, and possession of firearms, and in the course of that crime did cause the death of a person

through the use of firearms, which killing is murder as defined in Title 18, United States Code, Section 1111(a), to wit, CUMMINGS shot and killed Carl Copeland, a/k/a "Giovanni," in the vicinity of Britton Street and Olinville Avenue, in the Bronx, New York.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT NINE

The Grand Jury further charges:

11. On or about December 31, 2011, in the Southern District of New York, while engaged in an offense punishable under Section 841(b) (1) (A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack," JOSE MUNOZ, a/k/a "Rico," the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Shameek Young, a/k/a "Little Boom," and did aid and abet the intentional killing of Shameek Young, a/k/a "Little Boom," in the vicinity of 2366 Webster Avenue, in the Bronx, New York.

(Title 21, United States Code, Section 848(e)(1)(A); and Title 18, United States Code, Section 2.)

COUNT TEN

The Grand Jury further charges:

12. On or about December 31, 2011, in the Southern District of New York, JOSE MUNOZ, a/k/a "Rico," the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the murder charged in Count Nine of this Indictment, knowingly did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying, and possession of a firearm, which was brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(iii), 924(c)(1)(C)(i), and 2.)

COUNT ELEVEN

The Grand Jury further charges:

13. On or about December 31, 2011 in the Southern District of New York, JOSE MUNOZ, a/k/a "Rico," the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying, and possession of a firearm, and in the course of that crime did cause the death of a person through

the use of a firearm, which killing is murder as defined in Title 18, United States Code, Section 1111(a), to wit, MUNOZ shot and killed Shameek Young, a/k/a "Little Boom," in the vicinity of 2366 Webster Avenue, in the Bronx, New York.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT TWELVE

14. In or about the late summer of 2010, in the Southern District of New York and elsewhere, JOSE MUNOZ, a/k/a "Rico," the defendant, and others known and unknown, unlawfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and would and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), to wit, MUNOZ agreed with others to commit robberies of suspected narcotics traffickers in the Bronx, New York.

(Title 18, United States Code, Section 1951.)

COUNT THIRTEEN

The Grand Jury further charges:

15. In or about the late summer of 2010, in the Southern District of New York, JOSE MUNOZ, a/k/a "Rico," the defendant, and others known and unknown, unlawfully and knowingly did commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), to wit, MUNOZ and others robbed an individual of narcotics and narcotics proceeds, and did aid and abet the robbery of narcotics and narcotics proceeds, in and around the vicinity of 660 Arnow Avenue, Bronx, New York.

(Title 18, United States Code, Sections 1951 and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

16. In or about the late summer of 2010, in the Southern District of New York, JOSE MUNOZ, a/k/a "Rico," the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the robbery charged in Count Thirteen of this Indictment, knowingly did use and carry a firearm, and, in

A-0017

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furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying and possession of a firearm, which was brandished.

(Title 18, United States Code, Sections 924(c)(1)(A)(ii), (c)(1)(C)(i) and 2.)

Kelvin Moreaux

FOREPERSON

11/7/14

Preet Bharara

PREET BHARARA *hjs*
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

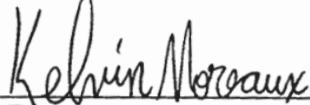
ARMANI CUMMINGS, a/k/a "A1," JOSE MUNOZ,
a/k/a "Rico,"

Defendants.

SUPERSEDING INDICTMENT

S10 12 Cr. 31 (VM)

(18 U.S.C. §§ 924, 1951 and 2; 21 U.S.C.
§§ 846 and 848)


Kelvin Moraux
Foreperson

PREET BHARARA
United States Attorney.

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
v.)
JOSE MUNOZ)
Case Number: 12 CR 31
USM Number: 66788-054
Arnold Levine
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

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

was found guilty on count(s) 1, 2, 9, 10, 11, 12, 13, and 14 of superseding indictment S10 12 CR 31 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21USC846, 841(b)(1)(A)	Consp. to dist. and possess with intent to dist. cocaine base		1
18USC924(c)(1)(A)(i)	Using and carrying firearms during and in relation to a drug		2
& 2	trafficking crime		

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) all open counts for defendant is are dismissed on the motion of the United States.

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

11/4/2016

Date of Imposition of Judgment



Signature of Judge

Hon. Victor Marrero, U.S.D.J.

Name and Title of Judge

11/4/2016

Date

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>11.7.16</u>

DEFENDANT: JOSE MUNOZ
CASE NUMBER: 12 CR 31

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC 848(e)(1)(A) &	Murder in connection with a drug trafficking crime		9
18 USC 2			
18 USC924(c)(1)(A)(iii), 924(c)(1)(C)(i) & 2	Using and carrying a firearm which was brandished and discharged during/in relation to a crime of violence		10
18 USC 924(j) & 2	Murder through use of a firearm during and in relation to a drug trafficking crime		11
18 USC 1951	Conspiracy to commit Hobbs Act Robberies		12
18 USC 1951 & 2	Hobbs Act Robberies		13
18USC924(c)(1)(A)(ii), 924(c)(1)(C)(i) & 2	Using and brandishing a firearm in relation to a crime of violence		14

DEFENDANT: JOSE MUNOZ
CASE NUMBER: 12 CR 31

IMPRISONMENT

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

Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts.

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

The Court recommends that the Bureau of Prisons designate a facility in the vicinity of Tampa, Florida.

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 _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE MUNOZ
CASE NUMBER: 12 CR 31

SUPERVISED RELEASE

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

A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

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 unlawfully possess a controlled substance. 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 determined by the court.

- 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 not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

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

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

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without 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; and
- 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.

DEFENDANT: JOSE MUNOZ
CASE NUMBER: 12 CR 31

SPECIAL CONDITIONS OF SUPERVISION

(1) DEFENDANT WILL PARTICIPATE IN A PROGRAM APPROVED BY THE UNITED STATES PROBATION OFFICE, WHICH PROGRAM MAY INCLUDE TESTING TO DETERMINE WHETHER THE DEFENDANT HAS REVERTED TO USING DRUGS OR ALCOHOL. THE COURT AUTHORIZES THE RELEASE OF AVAILABLE DRUG TREATMENT EVALUATIONS AND REPORTS TO THE SUBSTANCE ABUSE TREATMENT PROVIDER, AS APPROVED BY THE PROBATION OFFICER. DEFENDANT WILL BE REQUIRED TO CONTRIBUTE TO THE COSTS OF SERVICES RENDERED (CO-PAYMENT), IN AN AMOUNT DETERMINED BY THE PROBATION OFFICER, BASED ON ABILITY TO PAY OR AVAILABILITY OF THE THIRD-PARTY PAYMENT.

(2) DEFENDANT SHALL PARTICIPATE IN A MENTAL HEALTH PROGRAM APPROVED BY THE U.S. PROBATION OFFICE. DEFENDANT SHALL CONTINUE TO TAKE ANY PRESCRIBED MEDICATIONS UNLESS OTHERWISE INSTRUCTED BY THE HEALTH PROVIDER. DEFENDANT SHALL CONTRIBUTE TO THE COSTS OF SERVICES RENDERED NOT COVERED BY THIRD-PARTY PAYMENT, IF DEFENDANT HAS THE ABILITY TO PAY. THE COURT AUTHORIZES THE RELEASE OF AVAILABLE PSYCHOLOGICAL AND PSYCHIATRIC EVALUATIONS AND REPORTS TO THE HEALTH CARE PROVIDER.

(3) DEFENDANT SHALL SUBMIT HIS PERSON, RESIDENCE, PLACE OF BUSINESS, VEHICLE, OR ANY OTHER PREMISES UNDER DEFENDANT'S CONTROL TO A SEARCH ON THE BASIS THAT THE PROBATION OFFICER HAS REASONABLE BELIEF THAT CONTRABAND OR EVIDENCE OF A VIOLATION OF THE CONDITIONS OF THE RELEASE MAY BE FOUND. THE SEARCH MUST BE CONDUCTED AT A REASONABLE TIME AND IN A REASONABLE MANNER. FAILURE TO SUBMIT TO A SEARCH MAY BE GROUNDS FOR REVOCATION. DEFENDANT SHALL INFORM ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO SEARCH PURSUANT TO THIS CONDITION.

DEFENDANT: JOSE MUNOZ
CASE NUMBER: 12 CR 31

CRIMINAL MONETARY PENALTIES

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

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS \$ 800.00	\$	\$

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

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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

* 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: JOSE MUNOZ
CASE NUMBER: 12 CR 31

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 \$ 800.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

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

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

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

E Payment during the term of supervised release 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 imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

Joint and Several

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

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

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

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 UNITED STATES OF AMERICA,

4 v. 12 CR 31 (VM)

5 JOSE MUNOZ,

6 Defendant.
7 -----x

8 New York, N.Y.
9 November 4, 2016
4:30 p.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

14 APPEARANCES

15 PREET BHARARA,
16 United States Attorney for the
17 Southern District of New York
18 HADASSA WAXMAN
19 Assistant United States Attorney

20 ARNOLD LEVINE
21 Attorney for Defendant

22
23
24
25

1 (Case called)

2 THE COURT: This is a proceeding in the matter of
3 United States versus Munoz, Docket 12 CR 0031.

4 Counsel, please enter your appearances for the record.

5 MS. WAXMAN: Good afternoon, your Honor. Hadassa
6 Waxman, appearing for the United States.

7 MR. LEVINE: Arnold Levine, 233 Broadway, Suite 901,
8 for Mr. Munoz. Good afternoon, your Honor.

9 THE COURT: Thank you.

10 The Court notes that the defendant is present in the
11 courtroom seated next to his attorney.

12 The Court scheduled this proceeding as the sentencing
13 of the defendant in this matter. I have read and reviewed the
14 presentence investigation report dated August 6, 2015, which
15 was prepared in connection with today's sentencing of
16 Mr. Munoz. I have also read the submission from defense
17 counsel filed on April 12, 2016, and the submission from the
18 government dated November 3rd, 2016.

19 Ms. Waxman, has the government read and reviewed the
20 presentence report?

21 MS. WAXMAN: Yes, we have, your Honor.

22 THE COURT: Does the government have any additional --
23 any objections to the report to raise at this point?

24 MS. WAXMAN: No, your Honor, we don't.

25 THE COURT: Thank you.

1 Mr. Levine, have you read and reviewed the presentence
2 report?

3 MR. LEVINE: Your Honor, the sentencing calculations
4 that I have in my sentencing memorandum, they're different than
5 what the probation had, so I stand by those objections to the
6 presentencing memo. Also, factually, there's something in the
7 memo that says my client had an association with Cal, and he
8 denies that association.

9 THE COURT: All right. The objections and
10 representation have been noted.

11 Mr. Munoz, please rise.

12 Have you read and reviewed the presentence report?

13 THE DEFENDANT: Yes, I have, your Honor.

14 THE COURT: Did you discuss it with your attorney?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Thank you. You may be seated.

17 On December 11, 2014, Mr. Munoz was found guilty by a
18 jury of Counts One, Two, Nine, ten, eleven, twelve, thirteen,
19 and fourteen of Superseding Indictment No. S1012 CR 0031.

20 Ms. Waxman, does the government have any additional
21 comments for the Court's consideration in connection with
22 sentencing?

23 MS. WAXMAN: Your Honor, briefly. Whether your Honor
24 imposes a guideline sentence today or the mandatory minimum
25 sentence, Mr. Munoz is going to spend an extraordinary amount

1 of time behind bars. This is a sad day for the government, for
2 Mr. Munoz, and I can assure the Court that the government takes
3 no pleasure in asking the Court to impose sentence today.

4 But I also have to note that this is a very tragic day
5 for Shameek Young's family, whose mother is here in the
6 courtroom, and she is mourning not only the loss of Shameek,
7 who was murdered by Mr. Munoz, but also the murder of her older
8 son, who was killed in 2001 under very similar circumstances.

9 The Young family and families all over the Bronx and
10 all over this country have been devastated by drugs, and gangs,
11 and the associated violence. And whatever sentence your Honor
12 imposes today, it obviously won't bring back Shameek Young to
13 his mother, but it's my deepest hope that this sentence will
14 send a message to other would-be gang members and, hopefully,
15 spare some other families from the pain that is suffered by the
16 Young family.

17 THE COURT: All right. Thank you.

18 Mr. Levine, do you have any additional comments in
19 connection with sentencing for the Court's consideration?

20 MR. LEVINE: Just a few, your Honor.

21 A couple things I'd like to point out regarding the
22 government's memorandum, which I received yesterday afternoon.
23 One, first, is that in my sentencing memorandum, I had
24 requested or argued for a sentencing departure -- downward
25 departure under 5K2.10 based on provocation. And I find it

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1 interesting that even though the government actually did not
2 respond specifically to that argument, on page 2 of its
3 sentencing memorandum, on the second paragraph, it says, "Young
4 continued to provoke Munoz and fired shots at Munoz while in
5 Parkside." And then it says that Munoz felt the need,
6 basically, to respond to that, and ended up killing Mr. Young
7 after that. So I think, actually, that lends support to my
8 argument for a downward departure under 5K2.10, the
9 provocation.

10 Second, I would point out that the government also
11 relies on United States against Young in its arguments about
12 the 924(c) and the 924(j) arguments that they make, I believe,
13 on page 8 of their sentencing memoranda. I would just point
14 out that the United States against Young was a summary order
15 in -- the cite is 561 F. App'x 85, and, by Second Circuit rule,
16 a summary order does not have precedential effect. So I don't
17 think that actually is binding on your Honor for that purpose.

18 Also, your Honor, even if your Honor disagrees with my
19 calculation of 27 as the actual mandatory minimum, given the
20 different mergers and lesser included offenses, I think that
21 the worst-case scenario for Mr. Munoz would be that his mandatory
22 minimum is 50 years, not 75, again, because of the 924(c) and
23 924(j), and that the 924(c) being a lesser included in the
24 924(j), that 924(j) controls, and there's no mandatory minimum.

25 And, again, the Second Circuit in Young is not

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1 binding. The Supreme Court has not ruled on it. There does
2 seem to be a split in the circuits regarding the effect of
3 924(j)'s reference to 924(c) and how much, therefore, of 924(c)
4 is actually incorporated, whether it's simply the elements of
5 924(c) or also the sentencing enhancements. And I submit that,
6 from the plain reading of it, somebody does not commit
7 sentencing enhancements, somebody commits acts, conduct and
8 elements of crimes. So, even the wording in 924(j) should lead
9 one to believe that its reference to 924(c) is only to the
10 conduct prohibited by 924(c) and not to the sentencing
11 enhancements that are asserted in 924(c).

12 Obviously, I'm not going to rehash what's in my
13 sentencing memo about my client's history and background. I
14 just want to point out, though, that the government did point
15 out that how things are affected, how the various neighborhoods
16 in this city and the Bronx, in particular, have been affected
17 by drugs and violence. I think it's important to note that my
18 client actually grew up in that exact environment, that he's a
19 product of it. And I think it's no coincidence that, for the
20 most part, the indictments that come before your Honor and
21 every other judge in this courthouse, as well as the Eastern
22 District courthouse, are full of people like my client who grew
23 up in similar environments like my client, in poor
24 neighborhoods, poorly educated, don't necessarily have the
25 strongest families surrounding them, they're surrounded by

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1 violence, peer pressure, peers who are getting them into
2 violent acts, they feel pressured to get into violence, engage
3 in drug trafficking, and they come in before -- literally they
4 get indicted by the score. There are indictments pending in
5 this courthouse with a hundred defendants from one project.

6 So, it's no coincidence that the environmental factors
7 that the government wants to sort of blame Mr. Munoz for is,
8 actually, I think, the cause and effect of the opposite.
9 Mr. Munoz, instead of really being the root cause of those
10 things, is actually the result of those things. He was born
11 into very difficult circumstances, as detailed in my
12 memorandum. The family to which he was born, the place in
13 which he was born, the time he was born, and then the like
14 circumstances after that all led him to where he is today
15 before your Honor.

16 Finally, I would note that one thing your Honor should
17 be considering, according to the statute, is the potential
18 disparity in sentencing. Mr. Cummings was before your Honor a
19 long time ago, but he was Mr. Munoz's codefendant at trial. He
20 was sentenced a while back. He was convicted of two murders,
21 two separate murders at two different times, and he received a
22 sentence of 75 years.

23 So I think that given that my calculation is that
24 Mr. Munoz's mandatory minimum is 27, or at most 50, I think in
25 light of what Mr. Cummings received for two murders, I think

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1 that to avoid the unwanted -- I guess not unwarranted
2 disparity, but the unwarranted same sentence for different
3 types of crimes and different seriousness, that Mr. Munoz's
4 conduct warrants less than what Mr. Cummings got.

5 So, your Honor, again, I'd ask you to impose the
6 statutory minimum on Mr. Munoz.

7 One other thing was that Mr. Munoz would like me to
8 make a record regarding the except clause of 924(c). I
9 understand that that's been ruled upon and decided, but,
10 nevertheless, he would like me to make that argument. It was
11 advanced by Mr. Cummings, so I adopt that, I make it again,
12 that the except clause applies here, and that there is -- as
13 far as the other mandatory minimums, that should override the
14 924(c) mandatory minimum.

15 THE COURT: All right. Thank you.

16 Mr. Munoz, please rise.

17 Is there anything you would like to say on your own
18 behalf before the Court imposes sentence?

19 THE DEFENDANT: Yes, your Honor. Thank you.

20 Your Honor, I would like to give my deepest apologies
21 to the family of Shameek Young. And I know there's nothing I
22 can really say today that would mend the grieving hearts, but,
23 hopefully, one day, they can forgive me because despite the
24 verdict and the government's theory, it was never my intention
25 to cause the death of Shameek Young, and my actions were

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1 provoked by fear and necessity. And there's no drug war/drug
2 dispute and there's no way do I believe that Shameek's life, or
3 any life for that matter, is equal to drugs or money.

4 I would also like to apologize to my community and
5 anyone who was directly affected by my negative actions. And
6 the fact that I was always blinded by poverty and need, I never
7 realized how my actions affected my community and the people
8 until now. So I would like to apologize for being part of the
9 problem and not the solution.

10 I also would like to make it clear, your Honor, for
11 the record that it's undisputed that my actions caused the
12 death of Shameek Young or that I was involved in low-level drug
13 distribution. I didn't mean to make a mockery out of the
14 court's time and resources. It was solely to dispute the
15 elements of my charges.

16 I also understand, your Honor, there's nothing I can
17 really say here today to persuade you or convince you to not
18 sentence me to a substantial amount of time because of these
19 dramatic mandatory minimums regarding my charges, but as the
20 victim's circumstances, I'm asking for you to do otherwise
21 because there's plenty of mitigating evidence on the record to
22 support a sentence pursuant to the United States Sentencing
23 Guidelines 2A1.2, second degree murder, and instead of a
24 sentence pursuant to United States Sentencing Guidelines 2A1.1,
25 first degree murder, like, for example, voluntary intoxication,

1 lack of crimination, and provocation. So, in your good grace
2 and faith, a downward departure from the guidelines should
3 apply.

4 And before I end, your Honor, I would like to
5 personally apologize to the mother of the deceased. I'm sorry.
6 I wish things was different. I really mean that to the heart.
7 I know there's nothing I can really say today that can mend a
8 grieving heart, but I'm sorry.

9 Your Honor, thank you for giving me a chance to
10 address myself. Have a good day.

11 THE COURT: Thank you.

12 In accordance with the decision by the United States
13 Supreme Court in United States versus Booker, while the United
14 States Sentencing Guidelines are not mandatory, the Court,
15 nonetheless, must consult those guidelines and take them into
16 account when sentencing. Therefore, the Court has considered
17 the findings of fact stated in the presentence report, as well
18 as the guidelines analysis and the recommendations contained
19 therein. The Court has weighed this information along with the
20 factors listed in 18, U.S.C., Section 3553(a) in coming to its
21 final sentencing decision in this case.

22 The Court adopts the factual recitation in the
23 presentence investigation report. It has noted the objections
24 that have been raised by defense counsel and by defendant.
25 Nonetheless, the Court finds that the guidelines, as set forth

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1 by the PSR, are appropriate.

2 Mr. Munoz's offense level amounts to 43, and his
3 criminal history category falls into Category VI. The
4 statutory range of imprisonment for Count One is ten years'
5 imprisonment to life; Count Two, a mandatory and consecutive
6 five years' imprisonment and maximum life; Count Nine, a
7 mandatory minimum of 20 years' imprisonment with a maximum of
8 life; Count Ten is a mandatory and consecutive 25 years'
9 imprisonment; Count Eleven is a maximum of life; Count Twelve,
10 a maximum of 20 years' imprisonment; Count Thirteen, a maximum
11 of 20 years' imprisonment; Count Fourteen is a mandatory and
12 consecutive 25 years' imprisonment.

13 The guidelines provision range of imprisonment is life
14 plus a mandatory consecutive five years on Count two and 25
15 years on each of Counts Ten and Fourteen. The probation
16 department has recommended that the Court impose the following
17 sentence regarding Counts One, Nine and Eleven: Probation
18 recommends life on each count; regarding Counts Twelve and
19 Thirteen, probation recommends 20 years of imprisonment
20 concurrent with Counts One, Nine and Eleven; regarding Count
21 Two, the probation department recommends five years consecutive
22 to all other counts; regarding Counts Ten and Fourteen,
23 probation recommends 25 years on each count consecutive to all
24 other counts.

25 Subsection (a)(1) of Section 3553 require that courts

1 take into consideration the nature and circumstances of the
2 offense and the history and characteristics of the defendant.
3 Subsection (a)(2) of 18 U.S.C. Section 3553 requires that the
4 Court consider the need for the sentence to promote certain
5 objectives of the criminal justice system; namely, punishment,
6 and specific and general deterrence, and rehabilitation.
7 Pursuant to Section 3553(a)(6), the Court is also directed to
8 consider the need to avoid unwarranted sentencing disparities
9 among defendants with similar records and similar offenses in
10 other cases as well as in connection with the case at hand.

11 Mr. Munoz, please rise.

12 Taking into account the nature and circumstances of
13 the offense and the history and characteristics of the
14 defendant and considering all of the factors listed in
15 18 U.S.C. Section 3553(a), the Court finds that a sentence of
16 75 years, which is the mandatory minimum, is reasonable and
17 appropriate in that such a term is sufficient, but not greater
18 than necessary to promote the proper objectives of sentencing.

19 75 years consists of the 20 years on Count One and
20 Nine, followed by five years from Count Two, followed by 25
21 years on Count Ten and Eleven, followed by 25 years on Count
22 Fourteen, for a total of 75.

23 The sentence on Counts Twelve and Thirteen -- Counts
24 Twelve and Thirteen, there is no mandatory minimum. The Court
25 will impose a sentence of five years to run concurrent with the

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1 other counts.

2 Upon release from imprisonment, Mr. Munoz, you shall
3 be placed on supervised release for a term of five years on
4 each of Counts One, Two, Nine, Ten, Eleven, and Fourteen, to
5 run concurrently, and three years on each of Counts Twelve and
6 Thirteen, to run concurrently with the other counts that I have
7 indicated.

8 I will not impose a fine because the Court has
9 determined that you do not have the ability to pay such a fine.
10 However, you are ordered to pay to the United States a special
11 assessment of \$800, which shall be due immediately.

12 Ms. Waxman, is there a forfeiture in this case?

13 MS. WAXMAN: There is not, your Honor.

14 THE COURT: Mr. Munoz, you must comply with standard
15 conditions 1 through 13 of supervised release and the following
16 mandatory conditions: You shall not commit another federal,
17 state or local crime; you shall not illegally possess a
18 controlled substance; you shall not possess a firearm or
19 destructive device; you shall cooperate in the collection of
20 DNA, as directed by the probation office. The mandatory drug
21 testing condition is suspended due to the imposition of a
22 special condition requiring treatment and testing.

23 In addition, you shall obey the follow special
24 conditions: You shall participate in a program approved by the
25 United States Probation Office, which program may include

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1 testing to determine whether the defendant has reverted to
2 using any drugs or alcohol. The Court authorizes the release
3 of available drug treatment evaluations and reports to the
4 substance abuse treatment provider as approved by the probation
5 officer. You will be required to contribute to the cost of
6 services rendered in an amount determined by the probation
7 officer based on ability to pay or the availability of
8 third-party payment.

9 You shall participate in a program of mental health
10 approved by the probation office. You shall continue to take
11 any prescribed medications unless otherwise instructed by the
12 health care provider. You shall contribute to the cost of
13 services rendered not covered by third-party payment if you
14 have the ability to pay. The Court authorizes the release of
15 available psychological and psychiatric evaluations and reports
16 to the health care provider. You shall submit your person,
17 residence, place of business, vehicle, or any other premises
18 under your control to a search on the basis that the probation
19 officer has reasonable belief that contraband or evidence of a
20 violation of the conditions of release may be found. The
21 search must be conducted at a reasonable time and in a
22 reasonable manner. Failure to submit to a search may be
23 grounds for revocation. You shall inform any other residents
24 that the premises may be subject to search pursuant to this
25 condition.

1 Mr. Munoz, do you understand each of these conditions?

2 THE DEFENDANT: Yes.

3 THE COURT: You shall report to the nearest probation
4 office within 72 hours of release from custody. The Court
5 recommends that you be supervised by the district of residence.

6 The sentence as stated is imposed. Mr. Munoz, to the
7 extent that you have the right to appeal your sentence, and you
8 are unable to pay the costs of an appeal, you have the right to
9 apply for leave to appeal in forma pauperis, meaning as a poor
10 person. If you make such a request, the Clerk of Court must
11 immediately prepare and file a notice of appeal on your behalf.

12 Do you understand your right to appeal, to the extent
13 that it may exist?

14 THE DEFENDANT: Yes.

15 THE COURT: Ms. Waxman, are there any remaining counts
16 or underlying documents that might to be removed at this time?

17 MS. WAXMAN: There are, your Honor. The government
18 respectfully moves to dismiss all underlying indictments and
19 any open counts.

20 THE COURT: That will be so ordered.

21 MS. WAXMAN: Thank you.

22 THE COURT: Is there anything else from defendant,
23 Mr. Levine?

24 MR. LEVINE: Your Honor, Mr. Munoz asks your Honor to
25 recommend that he placed as close to Tampa, Florida, as

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1 possible. He has family and friends there. Actually, the last
2 address the BOP has for him is from Tampa, Florida.

3 THE COURT: The Court will so recommend.

4 If there's nothing else, I thank you. Have a good day
5 and a good weekend.

6 MS. WAXMAN: Thank you very much, your Honor.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA

12 Cr 31 (VM)

-against-

**DEFENDANT'S MOTION TO
DISMISS COUNT FOURTEEN**

JOSE MUNOZ,

Defendant.

-----X

Comes now the defendant, Jose Munoz, by and through his undersigned counsel, Arnold J. Levine, and hereby moves this Court, pursuant to Federal Rules of Criminal Procedure 12(b)(3)(B) to dismiss Count Fourteen of the indictment for failure to state an offense, as the charged violation of the Hobbs Act contained in Count Thirteen does not qualify as a “crime of violence” as defined in 18 U.S.C. §924(c)(3).

INTRODUCTION

Count Fourteen of the Indictment charges Mr. Munoz with using and brandishing a firearm in relation to a crime of violence under 18 U.S.C. §§ 924(c)(1)(A)(ii), 924(c)(1)(C)(I). The indictment further specifies in Count Fourteen that the “crime of violence” referred to therein is the Hobbs Act robbery charged in Count Thirteen under 18 U.S.C. §1951(b). Because a robbery in violation of the Hobbs Act does not necessarily qualify as a “crime of violence” as that term is defined in 18 U.S.C. §924(c)(3), however, Count Fourteen fails to state an offense and, consequently, must be dismissed.

A Hobbs Act robbery does not qualify as a “crime of violence” under §924(c)(3). First, because a Hobbs Act robbery as defined in §1951(b) does not necessarily require “the use, attempted

use, or threatened use of physical force against the person or property of another,” it fails to satisfy the so-called “force clause” contained in §924(c)(3)(A). Second, because §1951(b)(1) does not require the use, attempted use, or threatened use of *violent* physical force, it fails to meet the requirements of §924(c)(3)’s “force clause.” Finally, because the so-called “residual clause” contained in §924(c)(3)(B) is unconstitutionally vague in violation of the Fifth Amendment’s Due Process Clause, it cannot provide the basis for a conviction. Count Fourteen, therefore, must be dismissed for failure to state an offense.

STATUTES INVOLVED

The two statutes at issue in this motion are:

1. 18 U.S.C. §1951(b)

According to §1951(b)(1), “the term ‘robbery’ means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.”

2. 18 U.S.C. §924(c)

According to §924(c)(1)(A), “any person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence . . .

· (i) be sentenced to a term of imprisonment not less than 5 years;

· (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

· (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

According to §924(c)(3), “the term ‘crime of violence’ means an offense that is a felony and—

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

ARGUMENT

Count Fourteen, charging Mr. Munoz with violating 18 U.S.C. §924(c) by brandishing a firearm while committing a Hobbs Act robbery, must be dismissed, because the crime of robbery as defined in the Hobbs Act does not qualify as a “crime of violence” under §924(c)(3). The term “crime of violence” is defined in §924(c)(3)(A), commonly referred to as the “force clause,” as “an offense that is a felony and . . . has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” Section 924(c)(3)(B), commonly referred to as the “residual clause,” on the other hand, defines a “crime of violence as “an offense that is a felony and . . . that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

Count Fourteen cannot survive under either clause. Under the categorical approach, Hobbs Act robberies are not “crimes of violence” under the “force clause,” for two reasons. First, the victim’s subjective fear of injury does not necessarily have to result from the “use, attempted use, or threatened use of physical force” by the defendant or an accomplice; second, §1951, defining “robbery” under the Hobbs Act, does not require the use of *violent* physical force. Moreover, because the “residual clause” suffers from the same infirmities as the residual clause held unconstitutionally vague by the United States Supreme Court in Johnson v. United States, 135 S. Ct.

2551 (2015), that clause cannot be the basis for the charge and conviction under Count Fourteen. Count Fourteen, therefore, must be dismissed for failure to state an offense.

I. HOBBS ACT ROBBERY UNDER §1951 IS NOT A “CRIME OF VIOLENCE” UNDER THE “FORCE CLAUSE” OF 18 U.S.C. §924(c)(3).

“Robbery” as defined in §1951 is not a “crime of violence” under the “force clause,” for two reasons. First, because the victim’s subjective fear of injury referenced in §1951 need not necessarily arise from a use, threatened use, or attempted use of force by the defendant or the defendant’s accomplice, it fails the categorical approach. Second, because §924(c)(3)(A) defines a crime of *violence*, and because §1951 does not require the use, threatened use, or attempted use of *violent* physical force, §1951 is not a “crime of violence” under §924(c)(3)(A).

A. Hobbs Act Robbery May Be Satisfied by the Victim’s Subjective Fear of Injury Despite the Absence of a Use, Threatened Use, or Attempted Use of Force or Violence

Hobbs Act robbery under §1951 may be proved by the victim’s subjective fear of injury, even in the absence of the use, threatened use, or attempted use of force or violence by the defendant or the defendant’s accomplice and, therefore, fails the categorical approach. Under §1951, “robbery” is “the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, *or fear of injury*, immediate or future, to his person or property . . .” 18 U.S.C. §1951(b)(1) (emphasis added). The “force clause” in §924(c)(3)(A), however, requires that the underlying “crime of violence” have “as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. §924(c)(3)(A). Because Hobbs Act robbery may occur without the

defendant's use, threatened use, or attempted use of force against another's person or property, it fails the categorical approach.

As the Supreme Court has explained, using the categorical approach requires the court to "compare the elements of the statute forming the basis of the defendant's conviction with the elements of the 'generic' crime." United States v. Descamps, 133 S. Ct. 2276, 2281 (2013). That is, the court is required "to look to the elements and nature of the offense of conviction, rather than to the particular facts relating to petitioner's crime." Leocal v. Ashcroft, 543 U.S. 1, 7 (2004); see Taylor v. United States, 495 U.S. 575, 600 (1990). Under the categorical approach, therefore, the court is not permitted to consider the facts of the Hobbs Act robbery underlying Count Fourteen. Rather, the court's analysis must be limited to a comparison of the definitions of "robbery" in §1951(b)(1) and "crime of violence" in §924(c)(3)(A). That comparison leads to the conclusion that "robbery" under §1951 does not qualify as a "crime of violence" under §924(c)(3)(A), because the robbery may be proved by the victim's fear of injury even in the absence of the defendant's use, threatened use, or attempted use of physical force.

By its own terms, Hobbs Act robbery does not necessarily require the use, attempted use, or threatened use of force by the defendant, as the victim's mere subjective *fear* of injury would suffice. The Supreme Court has held that the word "use," as that term is employed in 18 U.S.C. §16(a), which contains language identical to that found in §924(c)(3)(A), "'requires active employment.'" Leocal, 543 U.S. at 9 (quoting Bailey v. United States, 516 U.S. 137, 145 [1995]). Thus, the Court held that "[t]he key phrase in § 16(a)—the "use" . . . of physical force against the person or property of another"—most naturally suggests a higher degree of intent than negligent or merely accidental conduct." Leocal, 543 U.S. at 9. The same words ought to be given the same meaning, then, in

§924(c)(3)(A). Nothing in §1951(b)(1), however, requires that the victim’s fear of injury result from anything more than the defendant’s negligent or accidental conduct. Notably, while the words “actual or threatened force, or violence” as used in §1951(b)(1) clearly are directed at the defendant’s conduct and state of mind, the words “fear of injury” in that same section refer to the victim’s subjective feelings and state of mind.

Judge Nathan’s attempt in United States v. Pena, 2016WL690746 at *8, 15-Cr.551 (AJN) (S.D.N.Y. February 11, 2016), to interpret the words “fear of injury” as requiring a threat by the defendant is without merit and should not be followed by this Court. With all due respect to Judge Nathan, her interpretation of “fear of injury” necessarily resulting from a threat of violence renders the very words she was interpreting superfluous. This is because the immediately preceding words in §1951(b)(1) already include “threatened force, or violence.” Judge Nathan’s interpretation, therefore, renders the words “fear of injury” superfluous. In fact, her interpretation would add an element by requiring that a threat of force or violence actually result in the fear of injury. Given that “threatened force, or injury, or fear of injury” is drafted in the disjunctive, her interpretation would make little sense. The Supreme Court has explained that the “‘ordinary use [of the word “or”] is almost always disjunctive, that is, the words it connects are to be given separate meanings.’” Loughrin v. United States, 134 S. Ct. 2384, 2390 (2014) (quoting United States v. Woods, 134 S. Ct. 557, 567 [2013]). Judge Nathan’s interpretation, consequently, “runs afoul of the ‘cardinal principle’ of interpretation that courts ‘must give effect, if possible, to every clause and word of a statute.’” Loughrin, 134 S. Ct. at 2390 (quoting Williams v. Taylor, 529 U.S. 362, 404 [2000]).

Moreover, the example provided by Judge Nathan in Pena supports the defense position that “fear of injury” does not necessarily require the use, attempted use, or threatened use of physical

force by the defendant. In Pena, the court reasoned that “the ‘fear of injury’ language enables the Hobbs Act to reach robberies where the defendant did not make a threat, but nonetheless intentionally instilled or exploited the victim’s fear of injury from the use of force.” Pena, 2016WL690746 at *8. The court cited United States v. Santos, 449 F.3d 93, 100-101 & n.12 (2d Cir. 2005), for the proposition “that defendant could use violent reputation in criminal underworld to commit robbery through fear of injury.” See Pena, 2016WL690746 at *8. The problem in the court’s reasoning, however, is that it concedes in that scenario the absence of a threat; but where the defendant did not threaten to use physical force, use physical force, or attempt to use physical force, there is no crime of violence under the plain wording of §924(c)(3)(A). Thus, Judge Nathan’s example proves that “fear of injury” does not require the use, attempted use, or threatened use of physical force. Hobbs Act robbery, consequently fails under the categorical approach to qualify as a crime of violence under §924(c)(3).

B. Hobbs Act Robbery Does Not Require the Use, Attempted Use, or Threatened Use, of Violent Physical Force, as Opposed to Ordinary Physical Force.

Hobbs Act robbery does not qualify as a crime of violence under §924(c)(3)’s “force clause,” because, while the “physical force” required under §924(c)(3)(A) must be interpreted to mean *violent* physical force, Hobbs Act robbery may be accomplished through the use, attempted use, or threatened use of ordinary force.

First, §924(c)(3)(A) must be interpreted as requiring *violent* physical force, as opposed to ordinary physical force. In Leocal v. Ashcroft, the Supreme Court, in interpreting language in 18 U.S.C. §16 that is virtually identical to the language in §924(c)(3)(A), cautioned that “we cannot

forget that we ultimately are determining the meaning of the term ‘crime of violence.’ The ordinary meaning of this term, combined with § 16’s emphasis on the use of physical force against another (or the risk of having to use such force in committing a crime), suggests a category of violent, active crimes.” 543 U.S. 1, 11 (2004). Similarly, in Johnson v. United States, the Supreme Court interpreted the term “physical force” as used elsewhere in 18 U.S.C. §924, specifically, in 18 U.S.C. §924(e)(2)(B)(I). See 559 U.S. 133, 138 (2010). As it did in Leocal, the Court relied on the fact that the term “physical force” in Johnson case was used in the definition of “violent felony” to interpret it as meaning “*violent* force—that is, force capable of causing physical pain or injury to another person.” Johnson, 559 U.S. at 140 (emphasis in original). Indeed, the Court noted that “[e]ven by itself, the word ‘violent’ in § 924(e)(2)(B) connotes a substantial degree of force.” Id. Given the Supreme Court’s holdings and analyses in Leocal and Johnson, there can be little doubt that the physical force required under §924(c)(3)(A) is likewise “*violent* force—that is, force capable of causing physical pain or injury to another person”—requiring a “substantial degree of force.”

Hobbs Act robbery, as defined in §1951(b)(1), however, unlike “crimes of violence,” may be accomplished without the use, attempted use, or threatened use of *violent* physical force—that is, a substantial degree of force or force that is capable of causing physical pain or injury. The definition of “robbery” included in the Hobbs Act itself distinguishes between force and violence, listing “force” or “violence,” in the disjunctive. See 18 U.S.C. §1951(b)(1). As noted above, the Supreme Court has stated that in interpreting a statute, words connected by “or” “‘are to be given separate meanings.’” Loughrin, 134 S. Ct. at 2390 (quoting Woods, 134 S. Ct. at 567). So, under the Hobbs Act, “force” does not by itself connote *violent* force, lest either “force” or “violence” be rendered superfluous. Thus, one may commit a Hobbs Act robbery without using, attempting to use,

or threatening to use *violent* physical force. Hobbs Act robbery, accordingly, does not qualify as a crime of violence under 18 U.S.C. §924(c)(3)(A).

Because Hobbs Act robbery may be accomplished in at least two ways, i.e. by means of the victim’s “fear of injury” even in the absence of the use, attempted use, or threatened use of physical force, and by the use, attempted use, or threatened use of force not rising to the level of *violent* physical force, that do not qualify as a “crime of violence” under §924(c)(3)’s “force clause,” it cannot serve as the underlying “crime of violence” required for a conviction under 18 U.S.C. §924(c).

II. THE “RESIDUAL CLAUSE” IN §924(c)(3)(B) IS UNCONSTITUTIONALLY VAGUE AND, THEREFORE, CANNOT BE THE BASIS FOR CONVICTION UNDER §924(c).

Hobbs Act robbery cannot qualify as a “crime of violence” under §924(c)(3)’s “residual clause,” because that clause is unconstitutionally vague under the Due Process Clause of the Fifth Amendment to the United States Constitution. In Johnson v. United States, 135 S. Ct. 2551 (2015), the Supreme Court held the residual clause of the Armed Career Criminal Act unconstitutionally vague under the Fifth Amendment’s Due Process Clause. The language the Court held unconstitutionally vague in Johnson was “or otherwise involves conduct that presents a serious potential risk of physical injury to another.” 135 S. Ct. at 2557. The Court held that “[t]wo features of the residual clause conspire to make it unconstitutionally vague.” Id. The first flaw identified by the Court was that “the residual clause leaves grave uncertainty about how to estimate the risk posed by a crime. It ties the judicial assessment of risk to a judicially imagined ‘ordinary case’ of a crime, not to real-world facts or statutory elements.” Id. The second flaw was that “the residual clause

leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony. It is one thing to apply an imprecise ‘serious potential risk’ standard to real-world facts; it is quite another to apply it to a judge-imagined abstraction.” Id. at 2558. The Court concluded that those two flaws were insurmountable and declared the residual clause unconstitutionally vague.

The residual clause in §924(c)(3) suffers from the same unconstitutional vagueness. Under §924(c)(3)(B), a crime of violence is “an offense that is a felony and . . . that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” This language is identical to the language in 18 U.S.C. §16(b). Applying Johnson’s analysis, the United States Court of Appeals for the Seventh Circuit held the language in §§16(b) and 924(c)(3)(B) to be unconstitutionally vague. See United States v. Vivas-Ceja, 808 F.3d 719, 723 (7th Cir. 2015). The Seventh Circuit noted that in Leocal the Supreme Court interpreted the language in §16(b) in a way that “is indistinguishable from Johnson’s interpretation of the residual clause” in the Armed Career Criminal Act. Id. at 722. In comparing the term “substantial risk” as used in §16(b) with the term “serious potential risk” as used in the ACCA, the court concluded that “[a]ny difference between these two phrases is superficial.” Id. The court explained that “[j]ust like the residual clause [in the ACCA], §16(b) offers courts no guidance to determine when the risk involved in the ordinary case of a crime qualifies as ‘substantial.’” Id. The Seventh Circuit held, consequently, that “[b]ecause §16(b) requires the identical indeterminate two-step approach, it too is unconstitutionally vague.” Id. at 723. The Court of Appeals for the Ninth Circuit reached the same conclusion in Dimaya v. Lynch, 803 F.3d 1110, 1120 (9th Cir. 2015), as did the Fifth Circuit in United States v. Gonzalez-Longoria, 813 F.3d 225, 234-35 (5th Cir. 2016) (rehearing en banc Ordered February 26, 2016). Because the language in §924(c)(3)(B) is identical

to the language in §16(b), both the analysis and the conclusion must be the same: it also is unconstitutionally vague.

Although the Sixth Circuit has held that §924(c)(3)(B) is sufficiently distinguishable from the ACCA’s residual clause to render it constitutional, see United States v. Taylor, 814 F.3d 340, 375-79 (6th Cir. 2016), it is respectfully submitted that Judge’s White’s dissent on that point has the better argument, see id. at 393-98 (White, J., concurring in part and dissenting in part). Indeed, at least four circuits, including the Second Circuit, have granted defendants permission to file successive §2255 petitions, finding there to be a colorable claim that §924(c)(3)(B) may be unconstitutionally vague. See In re Pinder, 2016WL3081954 at *2, No. 16-12084-J (11th Cir. June 1, 2016); In re Chapman, No. 16-246 (4th Cir. May 3, 2016); Ruiz v. United States, No. 16-1193 (7th Cir. Feb. 19, 2016); Freeman v. United States, No. 15-3687 (2d Cir. Jan. 26, 2016); see also In re Hubbard, 2016WL3181417, No. 15-276 (4th Cir. June 8, 2016). Because §924(c)(3)(B) suffers from the same infirmities as §16(b) and the ACCA’s residual clause, it, too, is unconstitutionally vague under the Due Process Clause of the Fifth Amendment. Consequently, it cannot be the basis for finding Hobbs Act robbery to be a “crime of violence” under §924(c).

CONCLUSION

For these reasons, neither a Hobbs Act robbery nor a conspiracy to commit Hobbs Act robberies is a “crime of violence” under 18 U.S.C. §924(c). Count Fourteen, therefore, must be dismissed for failure to state an offense.

Respectfully submitted,

/s/ Arnold J. Levine
Arnold Levine (AL6819)
Counsel for Jose Munoz

**U.S. Department of Justice***United States Attorney
Southern District of New York*

United States District Courthouse
300 Quarropas Street
White Plains, New York 10601

October 13, 2016

BY FAX

The Honorable Victor Marrero
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

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Re: *United States v. Jose Munoz, S10 12 Cr. 31 (VM)*

Dear Judge Marrero:

The Government respectfully submits this letter in response to defendant Jose Munoz's motion to dismiss the fourteenth count of conviction set forth in the above referenced Indictment which charges Munoz with brandishing a firearm in furtherance of a Hobbs Act robbery, in violation of 18 U.S.C. § 924(c). In light of the Second Circuit's holding in *United States v. Hill*, — F.3d —, Docket No. 14-3872 (2d Cir. Aug. 3, 2016), Munoz's motion must be dismissed.

In *Hill*, the Circuit decided that a Hobbs Act robbery is, categorically, a predicate "crime of violence" for a Section 924(c)(j) conviction for two reasons: (1) it qualifies as a crime of violence under the so-called "force" or "elements" clause, 18 U.S.C. § 924(c)(3)(A); and (2) the so-called "risk-of-force" clause, 18 U.S.C. § 924(c)(3)(B), is not void for vagueness.

First, the Circuit found "that Hobbs Act robbery 'has as an element the use, attempted use, or threatened use of physical force against the person or property of another.'" *Hill*, Slip Op. at 21 (quoting 18 U.S.C. § 924(c)(3)(A)). In doing so, this Court also affirmed the validity of its holding in *United States v. DiSomma*, 951 F.2d 494, 496 (2d Cir. 1991), that a Hobbs Act robbery conspiracy has as an element "actual or threatened use of force," and the applicability of *DiSomma* to an analysis of Section 924(c). *Hill*, Slip Op. at 11-12, 20.

Second, this Court found that, even if a Hobbs Act robbery were not a crime of violence under the force clause, it is indisputably one under the risk-of-force clause, and the residual clause is not void for vagueness, in spite of the Supreme Court's holding regarding the ACCA's residual clause in *Johnson v. United States*, 135 S. Ct. 2551 (2015), noting that "the Supreme Court's explanation for its conclusion in *Johnson* . . . renders that case inapplicable to the risk-of-force clause here." *Hill*, Slip Op. at 25.

Hon. Victor Marrero
October 13, 2016
Page 2 of 2

Following *Hill*, a Hobbs Act robbery conspiracy is also a crime of violence, both under the force clause, following *DiSomma*, and under the risk-of-force clause, the survival of which is no longer in doubt. Accordingly, this Court must deny Munoz's motion to dismiss the fourteenth count of conviction because it was predicated on a Hobbs Act robbery.

The Government further requests that the Court set a sentence date at the Court's earliest convenience.

Respectfully submitted,

PREET BHARARA
United States Attorney

By: /s/ Hadassa Waxman
Hadassa Waxman
Assistant United States Attorney
Tel: (212) 637-2277

cc: Arnold Levine, Esq. (via email)

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by <u>the Government</u> .	
SO ORDERED.	
10-14-16 DATE	 VICTOR MARRERO, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

- against -

JOSE MUNOZ,

Defendant.

-----X
VICTOR MARRERO, United States District Judge.

On December 11, 2014, defendant Jose Munoz ("Munoz") was found guilty by a jury of counts one, two, nine, ten, eleven, twelve, thirteen and fourteen of superseding indictment number s10 12-CR-31 ("Indictment"). (See Dkt. Minute Entry dated December 11, 2014.)

Munoz filed the instant motion ("Motion," Dkt. No. 1316) seeking to dismiss count fourteen of the Indictment ("Count Fourteen"), which charged Munoz with using and brandishing a firearm in relation to a crime of violence pursuant to 18 U.S.C. Sections 924(c)(1)(A)(ii) and 924(c)(1)(C)(I). Munoz argues that Count Fourteen "fails to state an offense" because the predicate "crime of violence" in the Indictment, Hobbs Act Robbery, 18 U.S.C. Section 1951(b), does not qualify as a "crime of violence" as defined in 18 U.S.C. Section 924(c)(3). (Id.) Specifically, Munoz argues that: (1) Hobbs Act Robbery "as defined in 18 U.S.C. Section 1951(b) does not necessarily require 'the use, attempted use, or threatened

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use of physical force against the person or property of another" ("Force Clause") and (2) the "residual clause" contained in 18 U.S.C. Section 924(c)(3)(B) is unconstitutionally vague in violation of the Fifth Amendment's Due Process Clause and therefore cannot provide a basis for conviction ("Residual Clause"). (Id.) Munoz bases his motion to dismiss Count Fourteen on Johnson v. United States, 135 S. Ct. 2551 (2015), the United States Supreme Court decision that voided the residual clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. Section 924(e)(2)(B)(ii), as unconstitutionally vague.

In its opposition to the Motion, the Government argues that the Second Circuit's holding in United States v. Hill, 832 F.3d 135 (2d Cir. 2016), squarely disposes of Munoz's Motion and, accordingly, the Motion should be denied. ("Opposition," Dkt. No. 1373.) The Government contends that in Hill, the Second Circuit held that Hobbs Act Robbery "is, categorically, a predicate 'crime of violence' for a Section 924(c)(j) conviction for two reasons: (1) it qualifies as a crime of violence under the so-called 'force' or 'elements' clause, 18 U.S.C. Section 924(c)(3)(A); and (2) the so-called 'risk-of-force' clause, 18 U.S.C. Section 924(c)(3)(B), is not void for vagueness." (Id.)

For the reasons set forth below, Munoz's Motion is DENIED.

I. DISCUSSION

A. FORCE CLAUSE: CRIME OF VIOLENCE

In Hill, the Second Circuit held that Hobbs Act Robbery "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Hill, 832 F.3d at 135 (quoting 18 U.S.C. Section 924(c)(3)(A)). In arriving at its conclusion, the Second Circuit relied on its holding in United States v. DiSomma, 951 F.2d 494, 496 (2d Cir. 1991), which held that Hobbs Act Robbery conspiracy has as "one of the elements of the offense '[] actual or threatened use of force.'" Hill, 832 F.3d at 135. The Second Circuit went on to state that "[e]ven if Hobbs Act [R]obbery did not qualify as a crime of violence pursuant to Section 924(c)(3)(A), such a robbery unequivocally qualifies as a crime of violence pursuant to Section 924(c)(3)(B) because it, 'by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.'" Id. (quoting 18 U.S.C. Section 924(c)(3)(B)).

Accordingly, the Court finds that Munoz's first argument, that brandishing a firearm while committing Hobbs Act Robbery should be dismissed because Hobbs Act Robbery

does not qualify as a "crime of violence," fails as a matter of law.

B. RESIDUAL CLAUSE: VOID FOR VAGUENESS

In Johnson, the Supreme Court held that the residual clause in ACCA was unconstitutional. See 135 S. Ct. 2551 (2015). Under ACCA, a defendant convicted of being a felon in possession of a firearm, a violation pursuant to Section 922(g) of ACCA, faces a sentencing enhancement if he has three or more previous convictions for a "violent felony." 18 U.S.C. Section 924(e)(1). A violent felony, as defined in ACCA's residual clause, "involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. Section 924(e)(2)(B). Johnson voided this residual clause as unconstitutionally vague because the clause "leaves grave uncertainty about how to estimate the risk posed by a crime," Johnson, 135 S. Ct. at 2557, and "leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony[,"] id. at 2558.

Munoz argues that the residual clause of 18 U.S.C. Section 924(c)(3)(B) "suffers from the same infirmities as the residual clause held unconstitutionally vague" in Johnson. (Dkt. No. 1316.) In Hill, the Second Circuit considered whether the risk-of-force clause, 18 U.S.C. Section 924(c)(3)(B), was void for vagueness in light of

Johnson. The Second Circuit held that "the Supreme Court's explanation for its conclusion in Johnson [] renders that case inapplicable to the risk-of-force clause at issue Section 924(c)(3)(B) does not involve the double-layered uncertainty present in Johnson []." Hill, 832 F.3d at 135. The Second Circuit went on to state that Section 924(c)(3)(B) "is a far narrower and simpler undertaking than divining whether a felony . . . 'otherwise involves conduct that presents a serious potential risk of physical injury to another.' A straightforward comparison of the texts of the two provisions – analyzed in light of the reasoning in Johnson [] and other case law – makes clear that [the defendant] is mistaken in suggesting that the provisions are materially indistinguishable." Id.

In light of the Second Circuit's decision in Hill, Munoz's second argument, that the 'residual clause' in Section 924(c)(3)(B) is unconstitutionally vague and therefore cannot be a basis for conviction, fails as a matter of law.

Accordingly, Munoz's Motion to dismiss Count Fourteen of the Indictment is DENIED.

II. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion of defendant Jose Munoz

("Munoz") (Dkt. No. 1316) to dismiss count fourteen of superseding indictment s10 12-CR-31, is **DENIED**.

It is hereby ordered that the sentencing of Munoz before Judge Marrero, currently scheduled to be held on Friday, October 21, 2016 at 10:00 a.m., shall be rescheduled to Friday, October 21, 2016 at 2:30 p.m.

SO ORDERED.

Dated: New York, New York
17 October 2016



VICTOR MARRERO
U.S.D.J.

ARNOLD J. LEVINE
ATTORNEY-AT-LAW

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April 8, 2016

VIA ECF

The Honorable Victor Marrero
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 20B
New York, NY 10007

Re: United States v. Jose Muñoz
12 Cr 31 (VM)

Judge Marrero:

This letter is submitted on behalf of Jose Muñoz in advance of his sentencing on April 15, 2016. Jose was convicted after trial of Conspiracy to Distribute and Possess with Intent to Distribute Cocaine Base, under 21 U.S.C. §§ 846/841(b)(1)(A) (Count One); Using and Carrying Firearms During and In Relation to Drug Trafficking Crimes, under 18 U.S.C. § 924(c)(1)(A)(I) (Count Two); Murder Through Use of a Firearm During and In Relation to a Drug Trafficking Crime, under 21 U.S.C. § 848(e)(1)(A) (Count Nine); Use and Carrying a Firearm which was Brandished and Discharged in Relation to a Crime of Violence, 18 U.S.C. 924(c)(1)(A)(iii)/(c)(1)(C)(I) (Count Ten); Murder Through Use of a Firearm During and in Relation to a Drug Trafficking Crime, under 18 U.S.C. § 924(j) (Count Eleven); Conspiracy to Commit Hobbs Act Robberies, under 18 U.S.C. § 1951 (Count Twelve); Hobbs Act Robberies, under 18 U.S.C. § 1951 (Count Thirteen); and Using and Brandishing a Firearm in Relation to a Crime of Violence, under 18 U.S.C. §§ 924(c)(1)(A)(ii), 18 U.S.C. § 924(c)(1)(C)(I) (Count Fourteen).

Jose's life story reads like a textbook on mitigating circumstances. From the death of his mother before Jose had reached his first birthday, to being introduced to the drug trade by his uncle; from spending much of his childhood in the care of psychiatric hospitals and Residential treatment Facilities, to the death of his uncle at the hands of the police on a Bronx highway; from his apparent inability to learn in school, to his growing up in one of the most impoverished and crime-ridden

communities in the nation, one thing is clear: it actually would be more surprising had Jose never sold drugs, possessed a gun, been shot at, been arrested, or been incarcerated. Jose, however, is still a young man, not incorrigible or beyond redemption, and with hope for his future. We respectfully urge this Court not to sentence Jose Munoz to die in prison.

We believe that the statutory and guidelines calculations in the Pre-Sentence Report prepared by Probation are not correct. It is respectfully submitted that the statutory minimum sentence permitted for the crimes of conviction in this case is twenty-seven years. It is further respectfully submitted that a sentence of twenty-seven years, considering all the circumstances, would be sufficient, but not greater than necessary, to accomplish the goals of sentencing.

History, Background, and Characteristics of Jose Munoz

Jose's life and opportunities took a negative turn even before he was born. According to records from Four Winds Hospital, a private psychiatric facility where Jose was evaluated when he was only ten years old, Jose's mother was a 17-year-old crack addict who abused the drug while she was pregnant with him. His mother's abuse of crack no doubt contributed significantly to Jose's premature birth. See National Institute on Drug Abuse, Research Report Series: *Cocaine*, www.drugabuse.gov/publications/research-reports/cocaine/what-are-effects-maternal-cocaine-use. Jose has no information regarding the identity of his father.

According to the records from Four Winds Hospital, before Jose's first birthday, his mother was raped and murdered, thrown from the roof of a building. Four Winds Hospital also documented that following his mother's death, Jose went to live with his alcoholic uncle, Luis "Cano" Santos. Luis was granted legal custody of Jose following the murder of Jose's mother. Luis resided with his grandmother, Jose's great grandmother at the time. Records from Child Protective Services (CPS) indicate that, given Luis's work schedule and the great grandmother's fragility, Jose was basically unsupervised for much of his childhood until age seven, when he eventually went to live with his Aunt, Elizabeth Selles. Jose was already on Ritalin before living with his aunt, but was not taking the full dosage prescribed because, as documented by CPS, his great grandmother was unable to get to the hospital and therefore was giving Jose smaller doses in order to make the medicine last longer. After his great grandmother was hospitalized, and after CPS substantiated complaints against Jose's great grandmother and uncle for Lack of Medical Care and Lack of Supervision, Jose's Aunt Elizabeth Selles gained custody of Jose. So, at age seven, already onto his third legal guardian, Jose went to live with Ms. Selles and her son in the Allerton Section of the Bronx. See Ex. A.

According to the records, Jose's family had an extensive history with mental health professionals. Records from Children's Village indicate that Jose's mother had emotional problems and his family had a history of depression. The Four Winds records reveal that Jose was able to disclose feelings regarding issues of abandonment by his mother and great grandmother, both of whom died during his lifetime. In addition to losing his mother and great grandmother, Jose also lost his Uncle Luis to brain cancer in approximately 2009, and his Uncle Orlando in 2011. Orlando

was shot to death by the police following a car chase on the Major Deegan Expressway. Orlando, who had fourteen prior arrests for crimes including gun possession, assault, drug dealing, and auto theft, apparently was the subject of a bench warrant and had three open drug cases at the time of his death. See Ex. B. Jose has “credited” Orlando with introducing Jose to crack selling. According to Ms. Selles, the death of Orlando, the fourth close relative Jose had die by the time Jose had reached his early twenties, resulted in a serious case of depression for Jose, who felt as though everybody he loved was dying.

Jose was enrolled in special education starting at age eight due to emotional and behavioral problems, according to the Four Winds records. Ms. Selles had Jose admitted to Four Winds twice because of Jose’s emotional and behavioral problems at home and in school. Jose’s first stay at Four Winds lasted about two weeks, but his second stint at the hospital lasted approximately eight months. Ms. Selles tried to have Jose admitted to Four Winds a third time, but the hospital instead referred Jose to Devereaux Kanner Center, a Residential Treatment Facility in Pennsylvania. Jose remained at Devereaux for four years. After returning from Devereaux, Jose again resided with Ms. Selles and her son. He attended the Greenburgh Eleven School in Greenburgh, New York, which was basically a day school/program. Eventually, Ms. Selles became aware that Jose had not been getting on the bus to school, when CPS informed her that the school had reported her to Child Protective Services. Ms. Selles then had Jose admitted to Children’s Village, a residential school serviced by Greenburgh Eleven U.F.S.D. in Dobbs Ferry, New York. Jose was at Children’s Village for a few months at the beginning of 2005 before going AWOL and returning to his aunt’s house in the Bronx. Jose’s criminal activities seem to have begun soon thereafter, with two felony arrests, one for robbery and one for selling crack to an undercover police officer, in 2005 when he was sixteen years old. He was arrested again in 2006, while still only seventeen years old, for again selling crack to an undercover police officer.

The notes from Jose’s evaluation at Four Winds Hospital when he was ten years old listed the following observations: psychomotor retardation, affect inappropriate, suicidal ideation, auditory hallucinations, attention and concentration impaired, abstract thinking impaired, and insight poor. He was diagnosed at that time as having a psychosis NOS. The inpatient treatment plan reflected in the Four Winds Hospital records included pharmacotherapy, individual therapy, group therapy, family therapy, milieu therapy, therapeutic activities, and therapeutic school. The records also indicate that Jose was taken to Jacobi Hospital in the Bronx twice in one day in 1998 because he threatened to hurt himself with a knife. He also tried twice to jump out of a window at school. Before he turned eleven years old, Jose had already been prescribed antipsychotic medications CPZ, Mellaril, and Thorazine, antidepressant Paxil, and ADHD medications Adderall and Ritalin, having received an AXIS I diagnosis by that time of Psychotic NOS; Depressive NOS; Rule out ADHD. The Adderall, Mellaril, and Ritalin were discontinued because they were not effective. When Jose was still ten years old, he was admitted to Four Winds Hospital for the second time, due to non-compliance with his medication regimen, AHS, and misbehavior at school. It was also noted that Jose was then living with his aunt, under medicaid, and already in a gang, and, importantly, that he “Responds well to nurturance” and is “Interested in learning.”

The Four Winds records from September 14, 1999, three months before Jose's eleventh birthday, also state that "With the aides of different treatment modalities that include psychodrama, group therapy, individual therapy, art therapy, and medication, Jose has been able to make tremendous improvements in all areas of the treatment plan. However, the clinical team feels that Jose is not ready to re-assimilate himself into an environment that does not provide structure nor safety. Hence, the team highly recommends that Jose be placed in a residential treatment center where he can continue to make improvements without the risk of endangering himself or others." A note in the Four Winds records from October 1999, two months before Jose turned eleven, states that "although patient has made improvements in the treatment plans, patient had continuously showed difficulties in understanding the ramifications for making judgments in situations that required morality." The note goes on to explain that "because patient had shown these difficulties, the clinical team and his aunt felt that it was in the best interest of the patient to live in a safe and structured environment where he could continue to learn how to make right decisions that would prevent him from facing any significant consequences." Jose, consequently, was admitted to the Devereaux Kanner Center, a Residential Treatment Facility in Pennsylvania.

Aside from the medical and psychiatric evaluations at Four Winds, Jose also received educational evaluations while at Four Winds. He was described in the records as a "wonderful student" who was "eager to learn and aimed to please." The records note that Jose took active part in all classes and completed all in-class homework assignments. They also state that "Jose appeared to understand the gift and meaning of true friendship." When Jose was ten years old, Jose had a verbal IQ score of 63, which placed him in the 1st percentile, Intellectually Deficient range. His performance IQ was little better at 79, placing him in the 8th percentile, Borderline range. His Full Scale IQ was measured at 69, placing him in the 2nd percentile, Intellectually Deficient range. It was noted that "These scores suggest that he is able to learn and perform cognitive and intellectual tasks at a level somewhat below that of same aged peers. Although Jose was in fifth grade at the time, his reading and arithmetic were second grade level and his spelling was first grade level.

After spending four years at Devereaux, in February 2004, at the age of fifteen, Jose was admitted to The Children's Village, a Residential Treatment Facility and Crisis Residence. He was referred to Children's Village by his aunt because he was repeatedly truant from school at Greenburgh Eleven, where he began as a day student in the Fall of 2003. The Greenburgh Eleven School is associated with The Children's Village. According to the Children's Village website, the Greenburgh Eleven School U.F.S.D., "Provides education for children residing on the Children's Village Dobbs Ferry campus . . . [and] admits day students who can benefit from the specialized instruction the school provides."

Jose explained to the counselors at Children's Village that his excessive truancy was the result of being too embarrassed to ride the school bus that took him from his home in the Bronx to the Greenburgh Eleven School in Dobbs Ferry. He viewed the school bus as a symbol of his special education status, making public his "stupidity" and it made him feel "retarded." The record from Children's Village state that "Jose's resentment of the school bus appeared to primarily reflect his frustration over past mistakes he made that resulted in his special education status, and feelings of

shame associated with his view of himself as emotionally and academically challenged. The results of previous cognitive, educational, and psychological testing suggest that he needs special education service.” The records also indicate that Jose “seems firmly to believe that he was incorrectly classified as a Special Ed. student because of ‘mistakes’ he made when he was younger and that if he had not made those mistakes, he would presently be in regular ed. This belief serves to protect him from acknowledging his cognitive limitations and accepting the academic services he truly needs.” In fact, on the Wechsler Abbreviated Scale of Intelligence (WASI), Jose scored a Verbal Score of 85 (Low Average range), Performance Score of 72 (Borderline range), and a Full Scale score of 79 (Borderline Range). Similarly, on the WISC-III test, Jose’s Verbal IQ Score was 80 (Low Average range), his Performance IQ score was 77 (Borderline range), and a Full Scale IQ score of 76 (Borderline range).

While at Children’s Village, Jose explained that the absence of a father or other positive male role model had a significant impact on his life. He lamented not having “somebody there to push him like a father when he was a little kid” and “never having a role model and that he had to learn things for himself.” Children’s Village records note that “At some level, this need for attachment to a male authority figure or leader was connected for him with gang membership and resulted in his sometimes following the crowd and being in the wrong place at the wrong time.” The gang functioned as a substitute family and “provided him with a sense of protection on the streets, supplied him with sought after role models of presumed ‘masculine’ behavior in the absence of a father, and compensated for unmet needs for closeness.” The counselors determined that “Jose’s behavioral difficulties are thus due in part to his undeveloped sense of self, reliance on negative social influences, and poor judgment.” They recommended, consequently, that Jose be admitted to a Residential Treatment Center “to provide Jose with the necessary external support, structure, and stability that he requires.” Additional recommendations by Children’s Village included:

- Individual therapy to explore and clarify issues affecting Jose’s self-perception, angry and dysphoric feelings underlying his passive-aggressive behavior and feelings of regret and loss related to his mother’s death and father’s absence.”
- Jose should be considered for the W.A.Y. program to build on his nascent sense of responsibility and to help him for trusting relationships with adults and peers.
- Jose would benefit from a trusting, appropriate and predictable relationship with a male mentor, as part of a mentoring program.

Jose then began attending Greenburgh Eleven UFSD, in Dobbs Ferry, N.Y. His Individualized Education Plan (IEP) from March 2005, when Jose was sixteen years old, noted that Jose had a emotional disability. It also noted that, although Jose was in the tenth grade, his Functional Reading Level was 6.5, his Functional Math Level was 6.8, and his Written Language Functional Level was 5.0. Thus, the IEP states that “The student continues to require a special education program to be provided for an extended school year, during the months of July and August, in order to prevent substantial regression.” Despite his disabilities and serious emotional issues, the IEP reported that Jose was respectful to both peers and staff, that he was planning to pursue competitive employment opportunities after graduation, and that he was interested in entering the work force in a position that offers on the job training.

Jose, however, went AWOL from Children's Village and returned to live with his aunt in the Bronx. Not long thereafter, in 2005, while still only sixteen years old, Jose was arrested for robbery and then for selling crack. Then in 2006, while still only seventeen years old, Jose was arrested a second time for selling crack to an undercover officer. While still only seventeen years old, Jose was sentenced on all three cases on the same date: on July 10, 2006. Jose was adjudicated a Youthful Offender on the robbery case, which meant that it did not qualify as a conviction under state law. His received a definite sentence on that case of one year, which by law merged with the determinate sentences of two years and three years on the two crack-sale cases. Jose was released from prison on September 12, 2008, when he was nineteen years old, placed on post-release supervision, and returned to the same old environment in the Bronx.

Jose then tried to find work while on post-release supervision. He found a job managing a laundromat in 2008, but his parole officer forced him to turn down that opportunity because it would have required him to work nights. Thus, the very system that was supposed to help him re-enter society, help him stay out of trouble, and support his efforts to obtain gainful employment and thereby void unlawful methods of supporting himself, seemed to work against him.

Although Mr. Munoz managed to avoid using cocaine, crack, or heroin, he started smoking marijuana when he was only twelve years old and began drinking when he was fourteen years old. At the age of fourteen, Jose also started using Ecstasy, which he used until his arrest in 2011.

The conspiracy charge in Count One in this case spans "From at least in or about 2006, up to and including in or about 2012. Jose was only seventeen years old at most when the conspiracy began. Although he was twenty-one years old at the time of the robbery charged in Counts Twelve, Thirteen, and Fourteen, and although he had just turned twenty-three years old by the time of the homicide charged in Counts Nine and Eleven, it is important to keep in mind that, as demonstrated by his various IQ tests and evaluations at Four Winds and Children's Village, his chronological age did not accurately reflect his cognitive abilities, his judgment, or his ability to adapt his behavior.

Given his relative youth, coupled with his borderline IQ, the Supreme Court's decisions in Atkins v. Virginia, 536 U.S. 304 (2002), Roper v. Simmons, 543 U.S. 551 (2005), Graham v. Florida, 560 U.S. 48 (2010), and Miller v. Alabama, 132 S. Ct. 2455 (2012), offer important insights into the court's sentencing determination in this case, in two ways. In Atkins, the Supreme Court held unconstitutional the execution of the mentally retarded. In Roper, Graham, and Miller the Supreme Court examined in depth the mental and emotional shortcomings of juveniles and ultimately declared unconstitutional either the death penalty or life imprisonment without the possibility of parole for defendants who commit their crimes when they are under eighteen years old. First, these cases bear on how this Court should consider the crimes of conviction in the instant case for sentencing purposes. Second, they bear on how much weight this Court should give Jose's prior Youthful Offender adjudication and felony convictions, all of which were for crimes committed when Jose was only sixteen and seventeen years old.

In Atkins, the Supreme Court recognized that although “[t]hose mentally retarded persons who meet the law’s requirements for criminal responsibility should be tried and punished when they commit crimes[,] [b]ecause of their disabilities in areas of reasoning, judgment, and control of their impulses . . . they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct.” 536 U.S. at 306. The defendant in Atkins was “mildly mentally retarded” and had a Full Scale IQ of 59. The Court recognized in Atkins, “clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that become manifest before age 18.” Id. at 318. The Court acknowledged that while the mentally retarded often know right from wrong, “[b]ecause of their impairments, . . . by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions to others.” Id. Particularly important when the purposes of sentencing are to be considered under 18 U.S.C. § 3553, the Court explained that “[w]ith respect to retribution—the interest in seeing that the offender gets his ‘just desserts’—the severity of the appropriate punishment necessarily depends on the culpability of the offender.” Id. at 319. The Court concluded, therefore, that, due to their diminished culpability, the mentally retarded can not be subject to the death penalty. The Court then turned to deterrence, concluding that the deterrence rationale fared no better than the retribution rationale. The Court reasoned that “it is the same cognitive and behavioral impairments that make these defendants less morally culpable—for example, the diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses—that also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based on this information.” Id. at 320. Although the death penalty is not one of the sentencing options available to the Court, this same diminished moral culpability should still be very relevant to the Court’s sentencing determination in this case.

In Roper, Graham, and Miller, the Supreme Court detailed the shortcomings associated with youth and how they bear on the purposes of sentencing and the prospects for rehabilitation. In Roper, the Court explained that “[t]hree general differences between juveniles under 18 and adults demonstrate that juveniles cannot with reliability be classified among the worst offenders” 543 U.S. at 569. As recognized by the Court, “[f]irst, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.’” Id. (quoting *Johnson v. Texas*, 509 U.S. 350, 367 [1993]). The Court then noted that “[t]he second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.” Id. The Court further recognized that “[t]his is explained in part by the prevailing circumstance that juveniles have less control over their own environment.” Id. Finally, the Court explained that “[t]he third broad difference is that the character of juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” Roper, 543 U.S. at 570. Accordingly, the Court concluded that “[t]he susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’” Id. (quoting Thompson

v. Oklahoma, 487 U.S. 815, 835 [1988]). Of particular importance, the Court concluded that

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, '[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that dominate in younger years can subside.

Id. (quoting Johnson, 509 U.S. at 368). Then, as it did in Atkins, the Court examined the sentencing purposes of retribution and deterrence as applied to juveniles. In doing so, the Court concluded that “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” Roper, 543 U.S. at 571. As for deterrence, the Court determined that “the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.” Id.

The Supreme Court’s decisions in Graham and Miller are significant for two reasons. First, the Court expanded on the analysis in Roper concerning the moral culpability of juveniles and the rehabilitative prospects for juveniles. Second, the Court seemingly recognized that a sentence of life in prison without the possibility of parole -- that is, to die in prison -- is not as different from a death sentence as it might appear. Although Graham struck down as unconstitutional a sentence of life without the possibility of parole for a nonhomicide crime committed while the offender was a juvenile, see Graham, 560 U.S. at 52, Miller applied the reasoning of Roper and Graham to declare unconstitutional a mandatory sentence of life without parole even for murder committed while the offender was a juvenile, see Miller, 132 S. Ct. at 2460.

In Graham, the Supreme Court cited Roper extensively when discussing the diminished culpability prevalent in juvenile offenders. See Graham, 560 U.S. at 68-69. Whereas in Roper and Atkins the Court examined the penological goals of retribution and deterrence only, in Graham, the Court analyzed the goals of retribution, deterrence, incapacitation, and rehabilitation, and concluded that none of them justified a sentence of life without parole for a juvenile convicted of a nonhomicide crime. See 560 U.S. at 71-75. In rejecting the goals of retribution and deterrence, the Court simply reiterated what is said in Roper. See 71-72. In rejecting the goal of incapacitation, the Court stated that “[t]o justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentences to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable.” Id. at 72-73. The Court then rejected the goal of rehabilitation, concluding that “[t]he penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes

an irrevocable judgment about that person's value and place in society." Id. at 74.

In addition to reiterating and expanding on the reasoning in Roper, the Court in Graham also drew on the similarities between a sentence of life without parole and a sentence of death. The Court explained that "life without parole sentences share some characteristics with death sentences that are shared by no other sentences." Graham, 560 U.S. at 69. The Court recognized that, like a death sentence, a sentence of life without parole "alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence." Id. at 69-70. That is, a sentence of life without parole "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." Id. at 70 (quoting Naovarath v. State, 779 P.2d 944 [Nev. 1989]). The Court further explained that "[l]ife without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." Graham, 560 U.S. at 70. In Miller, the Court then relied on its reasoning in Roper and Graham to hold that mandatory sentences of life without parole for juveniles are unconstitutional even if that juvenile is convicted of murder. See Miller, 132 S. Ct. at 2460.

These cases are highly relevant here, even though Jose Munoz's chronological age at the time he shot Shameek Young was two weeks after Jose turned twenty-three years old, for at least three reasons. First, the Supreme Court recognized in Roper that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." 543 U.S. at 574. Second, given Jose's long documented mental health, developmental, and educational issues, it would be fair to assume that not only had those qualities not disappeared when he turned 18, but that they were still prevalent. It seems clear that Jose has many, if not all, of the characteristics identified in Atkins as well as those identified in Roper, Graham, and Miller. Thus, at the time Jose shot Mr. Young, his moral culpability was doubly diminished. Third, Jose was only sixteen years and seventeen years old when he engaged in the conduct that resulted in his two prior felony convictions and his Youthful Offender adjudication. Failing to take into account the qualities and characteristics cited by the Court in Atkins, Roper, Graham, and Miller would result in the Court giving undue weight to the mere fact of those findings of guilt and even to the conduct underlying them when assessing Mr. Munoz's criminal history.

Indeed, many of the concerns the Court expressed about sentences of life without parole for juveniles are borne out here. The Court clearly was concerned about the absence of hope, the failure to take into account good behavior and character improvement, and the often assumption that the youthful defendant is incorrigible. Jose has already demonstrated that he is not incorrigible, a lost soul, or beyond redemption and rehabilitation. He has used his time in pre-trial incarceration being productive and trying to better himself. He has earned the following certificates, awards, and recognition while in the custody of the Bureau of Prisons, attached collectively as Ex. C:

- Certificate of Achievement dated May 22, 2013, “For the completion of the mold/Mold Clean-up Training;”
- Certificate of Completion dated July 24, 2013, from The Metropolitan Correction Center New York Education Department “For completion of the Tutor Training Course;”
- An award dated March 2015 from Getting Out By Going In as a Facilitator of GOGI Self Corrective Education Group;
- Certificate of Achievement dated May 22, 2013, “For the completion of the Globally Harmonized Systems (GHS);”
- Certificate For Outstanding Painting and Unit Sanitation dated May 4, 2015;
- Certificate of Completion for a course in Parenting, dated April 24, 2015; and
- A Certificate for participation in a course on Basic Financial Management, dated December 31, 2015.

Additionally, Jose’s work evaluation for his work assignment in the Sanitation Unit from December 28, 2013, to April 14, 2015, is nothing short of outstanding. Indeed, “outstanding” is exactly how the supervisor described him consistently in the evaluation. See Ex. D. Jose, accordingly, in the extremely trying, stressful, and difficult environment that is federal jail, has already demonstrated that not only does he have hope, but that this Court should likewise should have hope in him.

Given the similarities between a sentence of life without parole and a sentence of death, it is respectfully submitted that a sentence mandating that Jose Munoz die in prison would be both unconstitutional under the Eighth Amendment and certainly greater than necessary to accomplish the goals of sentencing.

Statutory Sentencing

First, 21 U.S.C. 841(b)(1)(A), as charged in Count One, is a lesser included offense of 21 U.S.C. § 848(e)(1)(A), as charged in Count Nine, Count One should be dismissed, or, at least sentencing withheld, as sentencing Mr. Munoz on both counts would violate the Double jeopardy Clause of the Fifth Amendment.

Second, the convictions under 18 U.S.C. § 924(c)(1)(A), as charged in Count Two and Count Ten must be considered a “single unit” as opposed to separate convictions. See United States v. Wallace, 447 F.3d 184, 188-89 (2006). Although the Government attempted in Count Two to parse out one particular date from the six-year conspiracy alleged in Count One, it is clear that it did so solely in an attempt to manipulate the statutory sentencing scheme. Indeed, in Count Nine, the Government alleged (and proved to the jury’s satisfaction) that the murder of Shameek Young on December 31, 2011, was committed while Mr. Munoz was engaged in the conspiracy charged in Count One. Thus, “the violations charged in [Count Two and Count Ten] are unauthorized multiple convictions for a single unit of prosecution because a defendant who commits two predicate offenses with a single use of a firearm may only be convicted of a single violation of § 924(c).” Wallace, 447

F.3d at 188. Otherwise, the Government could manipulate § 924(c) by charging separate counts of § 924(c) for every day of the conspiracy by charging in each 924(c) count only one particular day. Accordingly, because Count Two and Count Ten must be treated as a single unit of prosecution, the otherwise applicable five-year minimum under Count Two and the otherwise applicable twenty-five year minimum for a second conviction under Count Ten are inoperable. Instead, only the ten-year minimum under § 924(c)(1)(A)(iii) as charged in Count Ten would be applicable, except that in this case, both Counts Two and Ten are lesser included offenses of Count Eleven, charging Mr. Munoz with violating § 924(j).

It is clear that 18 U.S.C. § 924(c)(1)(A)(iii), as charged in Count Ten of the indictment, is a lesser included offense of 18 U.S.C. § 924(j), as charged in Count Eleven of the indictment, as 924(j) has as an element of the that subsection that the defendant caused the death while violating 924(c). Counts Two and Ten, therefore, should be dismissed, or at least sentence withheld, as sentencing Mr. Munoz on all three Counts would subject him to double jeopardy in violation of the Fifth Amendment. See United States v. García-Ortiz, 657 F.3d 25, 28-29 (1st Cir. 2011).

Moreover, unlike 18 U.S.C. § 924(c), 18 U.S.C. § 924(j) itself contains no mandatory minimum or any requirement that a sentence imposed under 924(j) run consecutive to any other sentence. See United States v. Julian, 633 F.3d 1250, 1252 (11th Cir. 2011); United States v. García-Ortiz, 792 F.3d 184, 194 n.14 (1st Cir. 2015). But see United States v. Bran, 776 F.3d 276, 281-82 (4th Cir. 2015); United States v. Berrios, 676 F.3d 118, 139 (3d Cir. 2012).

Thus, only two of the remaining counts require mandatory minimums sentences: twenty years under Count Nine (charging 21 U.S.C. § 848(e)) and seven years under Count Fourteen (charging 924(c)(1)(A)(ii) in relation to the Hobbs Act robbery), for a total mandatory minimum of twenty-seven years.

Guidelines Calculation

We respectfully object to the guidelines calculation by Probation on the following grounds:

Criminal History

Mr. Munoz is not a career offender

The PSR prepared by probation incorrectly states that Mr. Munoz qualifies as a Career Offender under §§4B1.1 and 4B1.2 of the Guidelines. Thus, the PSR concludes that Mr. Munoz's guidelines sentence should be calculated using Criminal History Category VI. This is error for at least two reasons. First, because at least two of the three cases used by Probation to conclude that Mr. Munoz is a Career Offender cannot be counted, he does not qualify as a Career Offender under the terms of the Guidelines. Second, even if he does qualify as a Career Offender, for the reasons stated earlier, Criminal History Category VI over-represents the seriousness of Mr. Munoz's

criminal history and thereby warrants a downward departure under §4A1.3(b).

The conclusion in the PSR that Mr. Munoz is a Career Offender is incorrect, because at least two of the cases used by Probation to reach that conclusion do not count for purposes of determining his criminal history. This is so for two reasons. First, Probation incorrectly counted Mr. Munoz's Youthful Offender adjudication for a crime committed when Mr. Munoz was only sixteen years old, even though that does not qualify as a conviction under the laws of New York State. Second, the two convictions for selling crack to an undercover police officer, once in 2005 and once in 2006, qualify as relevant conduct under §1B1.3 and therefore do not count toward Mr. Munoz's criminal history.

Mr. Munoz's New York State Youthful Offender adjudication in 2006 for the crime of Robbery in the Second Degree does not meet the definition of "prior felony conviction" under §4B1.2(c). The Application Note to §4B1.2(c) states that "A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted." Accordingly, whether Mr. Munoz's Youthful Offender adjudication qualifies as an "adult conviction," turns on whether the State of New York classifies it as such. A Youthful Offender adjudication under New York law does not qualify as an "adult conviction" because under New York law it is not a "conviction" at all, adult or otherwise. See C.P.L. § 720.20(3); People v. Rudolph, 21 N.Y.3d 497, 500 (2013). Moreover, as explained by the New York Court of Appeals, "[t]hat brings with it certain advantages, including a four-year limit on the maximum sentence that can be imposed in a felony case, . . . the sealing of records relating to the prosecution, and the avoidance of disabilities that might otherwise result from conviction, including disqualification from public office and public employment." Rudolph, 21 N.Y.3d at 500-01 (internal citations omitted). Moreover, under New York law, "a youthful offender adjudication may not be counted as a conviction for purposes of second offender status." People v. Lane, 60 N.Y.2d 748, 751 (1983). Accordingly, because New York State law does not classify a youthful offender adjudication as a conviction, it cannot be counted as a prior conviction under §§4B1.1 and 4B1.2.

We recognize that the Second Circuit has held time and again that New York State youthful offender adjudications do count as criminal convictions under the guidelines. See, e.g., United States v. Lesane, 579 Fed. Appx. 51, 52-53 (2d Cir. 2014) (Summary Order); United States v. Cuello, 357 F.3d 162, 170 (2d Cir. 2004); United States v. Matthews, 205 F.3d 544, 545 (2d Cir. 2000). The reasoning of those cases, however, is flawed and fails to recognize that the Application Notes themselves require that state law be determinative in classifying the prior adjudication as a conviction. See §4B1.2 Application Note 1. Indeed. Some of the reasoning employed in those decisions is misplaced as some of the arguments relied on apply equally to juvenile delinquency findings in Family Court and, therefore, shed no light on whether the youthful offender adjudication qualifies as an "adult conviction." For example, in Cuello, the Second Circuit thought it important that "[s]entencing judges in New York courts may take into account a prior youthful offender adjudication when evaluating a defendant's criminal history." 357 F.3d at 166. This argument loses its force, however, when one considers that under New York law sentencing judges can also take into

account a defendant's prior adjudications as a juvenile delinquent in Family Court. See People v. Miller, 88 A.D.3d 1015, 1016 (2d Dept. 2011); People v. Acevedo, 277 A.D.2d 504, 504 (3d Dept. 2000); People v. Bloom, 269 A.D.2d 838, 838 (4th Dept. 2000). Similarly, the court in Cuello also thought it significant that “[a] prior youthful offender adjudication in a defendant's criminal history may also be considered in parole and bail determinations under New York law.” Cuello, 357 F.3d at 166. But the bail statute governing criminal proceedings in New York expressly cites the defendant's “record of previous adjudication as a juvenile delinquent” as one of many factors to be considered in making a bail determination. See C.P.L. § 510.30(2)(a)(v). The decisions by the Second Circuit holding that prior New York State youthful offender adjudications count as prior felony convictions under the guidelines are incorrect and violate the Full Faith and Credit Clause of the U.S. Constitution and the Full Faith and Credit Act. See U.S. Const. Art. 4, § 1; 28 U.S.C. § 1738. But see United States v. Jones, 415 F.3d 256, 264-65 (2d Cir. 2005).

Regardless of whether Mr. Munoz's youthful offender adjudication can be used to qualify him as a career offender under the guidelines, Mr. Munoz nevertheless does not qualify as a career offender because his two felony convictions for selling crack cocaine to undercover police officers in the Bronx are relevant conduct under §1B1.3 and, consequently, cannot be used as prior convictions. As recognized by the Second Circuit, “[i]n order to count a 'prior sentence' towards a defendant's CHC, that sentence must have been imposed 'for conduct not part of the instant offense.' U.S.S.G. § 4A1.2(a)(1). 'Conduct that is part of the instant offense means conduct that is relevant conduct to the instant offense under the provisions of § 1B1.3 (Relevant Conduct).' U.S.S.G. § 4A1.2, cmt. n.1. That Guideline, in turn, encompasses acts 'that were part of the same course of conduct or common scheme or plan as the offense of conviction.' U.S.S.G. § 1B1.3(a)(2).” United States v. Fermin, 277 Fed. Appx. 28, 34-35 (2d Cir. 2008) (Summary Order). The same rule applies to the determination whether a prior conviction counts toward career offender status. See United States v. Brothers, 316 F.3d 120, 122 (2d Cir. 2003); United States v. Garecht, 183 F.3d 671, 673 (7th Cir. 1999).

Given the period of time covered by the indictment, the geographical proximity of the prior convictions to the instant offense conduct, and the similarity in the conduct, Mr. Munoz's 2005 and 2006 crack sales to undercover police officers in the Bronx are relevant conduct to the instant offense and, therefore, are not “prior convictions.” Count One of the instant indictment charged Mr. Munoz and others with conspiring to violate the narcotics laws of the United States by conspiring to distribute and possess with the intent to distribute more than 280 grams of crack cocaine. Importantly, the dates of this conspiracy as alleged in the indictment are “*From at least in or about 2006*, up to and including in or about 2012.” Superseding Indictment S10 (emphasis added). The crack sales that resulted in Mr. Munoz's two prior state-court felony convictions occurred in the Bronx on June 11, 2005, and April 22, 2006. According to the PSR, which in turn relied on the arrest reports, on June 11, 2005, Mr. Munoz, “acting in concert with two others sold a controlled substance to an undercover police officer.” According to the arrest report for the April 22, 2006, arrest, “the defendant sold a controlled substance to an undercover police officer.” The 2006 sale clearly is relevant conduct, as it is part of the same common scheme or plan or course of conduct and falls squarely within the time frame covered by the indictment. Furthermore, given that the

indictment effectively alleges that the conspiracy in Count One goes back to 2005, the 2005 conviction for selling crack to an undercover police officer in the Bronx while acting in concert with two others, clearly was part of the same common scheme or plan or course of conduct as the charges in this case and also falls within the rather loose time frame set by Count One. Both convictions, therefore, qualify as relevant conduct for the instant offense and, accordingly, do not constitute “prior convictions.” Mr. Munoz, consequently, cannot be sentenced as a career offender.

Mr. Munoz’s true criminal history calculation

Mr. Munoz’s true criminal history calculation results in a total of four points, as opposed to the twelve points calculated by Probation. To begin, for the reasons stated above, probation incorrectly included Mr. Munoz’s youthful offender adjudication and his 2005 and 2006 crack-sale convictions. That accounts for the eight-point difference in the true calculation and the one in the PSR. Even if this Court determines that Mr. Munoz’s youthful offender adjudication counts toward his criminal history category, his total would then be six points, instead of the twelve calculated by probation. Whether it be four or six, Mr. Munoz falls into Criminal History Category III.

It is important to note that the reference in the PSR to an open murder case in the Bronx is incorrect. In fact, Mr. Munoz had originally been arrested and was being prosecuted by the Bronx District Attorney’s Office for the murder of Shameek Young. The Federal Government, however, took over the prosecution of that matter, indicting, trying, and convicting Mr. Munoz in the instant case for that same murder. There was, and is, not other murder with which Mr. Munoz has been charged in the Bronx.

Downward Departure for Provocation is Warranted Under U.S.S.G. § 5K2.10

At offense level 43 and a Criminal History Category III, the guideline sentence is life. In fact, at offense level 43, the guideline sentence is life regardless of the Criminal History Category. In this case, however, a downward departure based on Shameek Young’s provocation is appropriate. In 1996, the Supreme Court has stated that “[v]ictim misconduct was an encouraged basis for departure under the 1992 Guidelines and is so now.” Koon v. United States, 518 U.S. 81, 100 (1996) (citing 1992 U.S.S.G. § 5K2.10; 1995 U.S.S.G. § 5K2.10). Provocation by the victim remains an encouraged ground for downward departure today. See 2015 U.S.S.G. § 5K2.10.

U.S.S.G. § 5K2.10 provides that “[i]f the victim’s wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense.” The Supreme Court stated in Koon that “[a] response need not immediately follow an action in order to be provoked by it.” 518 U.S. at 104. U.S.S.G. § 5K2.10 lists six factors the court should consider in determining the extent of the departure. That is, “[t]hese [six] factors need not be satisfied before a departure is given. Rather, once a court has decided that the departure is warranted, these factors should be considered in

deciding how much of a departure to give.” United States v. DeJesus, 75 F. Supp. 2d 141, 145 (S.D.N.Y. 1999) (Scheindlin, J.) In this case, Mr. Young’s own unlawful conduct played a significant role in provoking Mr. Munoz’s conduct. For example, in response to a question by the Government whether their own witness Josh Yorro was “aware of any violence between Rico [Munoz] and Boom [Young] before Boom was killed, the Government’s own witness recounted for the jury how Mr. Young “had came and shot up Allerton, and the gun almost hit Rico in the head.” (Trial at 1434, lines 11-16). Indeed, the Government’s witness made clear that Mr. Young’s shooting up of Allerton and nearly shooting Mr. Munoz in the head was the precipitating event ultimately leading to Mr. Young’s death. It is also clear from the trial testimony of multiple Government witnesses that Boom had a reputation for violence and for carrying and using guns. In addition, Mr. Munoz testified that in the days before the confrontation that led to Mr. Young’s death, Mr. Munoz was in the “chicken spot” when Mr. Young’s partner in crime, Shoddy, was talking about how Mr. Young was going to get Mr. Munoz, apparently not realizing he was standing only feet from Mr. Young’s target at the time. In fact, Mr. Munoz’s account of this threatening conversation was corroborated to a degree by cooperating witness [REDACTED] during a proffer with the Government on June 11, 2013, when [REDACTED] told the Government that “Do told [REDACTED] that one day Rico was in the chicken spot & Shoddy & them were talking about him w/o knowing he was there.” See Exhibit E. Finally, it is important to note that although the jury apparently rejected Mr. Munoz’s justification defense, that does not mean that the jury did not believe that Mr. Munoz subjectively feared for his life when he shot Mr. Young. In any case, the jury’s rejection of the justification defense does not diminish the appropriateness of a downward departure based on Mr. Young’s provocation. After all, the downward departure necessarily applies only to those who did not put forth a successful justification defense, for had the defense been successful, there would be no sentencing in the first place. Taking into consideration these six factors, this Court should grant a six-level downward departure to offense level 37, resulting in a guideline range of 262-327 months.

Conclusion

For the reasons stated herein, Mr. Munoz respectfully requests this Court sentence him to the minimum sentence allowed, which we submit is twenty-seven years.

Respectfully submitted,
/s/ Arnold J. Levine
Arnold J. Levine (AL6819)

U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:12-cr-00031-VM-61

Case title: USA v. Branch et al

Date Filed: 01/12/2012
Date Terminated: 11/07/2016

Assigned to: Judge Victor Marrero

Defendant (61)

Jose Munoz

TERMINATED: 11/07/2016

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Pending Counts

Disposition

21:841B=ND.F NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE
(1s)

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

18:924C.F VIOLENT
CRIME/DRUGS/MACHINE GUN
(2s)

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

21:848E.F CONTINUING CRIMINAL
ENTERPRISE (NARCOTICS RELATED
HOMICIDE)
(9s)

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

18:924C.F VIOLENT
CRIME/DRUGS/MACHINE GUN

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count

(10s)

Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively

VIOLENT CRIME/DRUGS/MACHINE GUN WHERE DEATH OCCURS

(11s)

18:1951.F INTERFERENCE WITH COMMERCE BY THREAT OR VIOLENCE (ROBBERY CONSPIRACY)

(12s)

18:1951.F INTERFERENCE WITH COMMERCE BY THREAT OR VIOLENCE (ROBBERY)

(13s)

18:924C.F VIOLENT
CRIME/DRUGS/MACHINE GUN
(14s)

to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently.

Highest Offense Level (Opening)

Felony

Terminated Counts

21:846=CD.F CONSPIRACY TO
DISTRIBUTE CONTROLLED
SUBSTANCE (280 GRAMS AND MORE
OF CRACK COCAINE AND A
QUANTITY OF MARIJUANA)
(1)

Disposition

Dismissed

18:924C.F VIOLENT
CRIME/DRUGS/MACHINE GUN (USE
OF A FIREARM IN CONNECTION
WITH, AND IN FURTHERANCE OF,
THE NARCOTICS CONSPIRACY
CHARGED IN COUNT ONE)
(2)

Dismissed

21:848E.F CONTINUING CRIMINAL
ENTERPRISE (MURDER IN

Dismissed

CONNECTION WITH A DRUG CRIME)
(9)

18:924C.F VIOLENT
CRIME/DRUGS/MACHINE GUN
(DISCHARGE OF FIREARM IN,
DURING AND IN RELATION TO, AND
POSSESSION OF FIREARM IN
FURTHERANCE OF CRIME OF
VIOLENCE

(10)

Dismissed

18:924J.F VIOLENT
CRIME/DRUGS/MACHINE GUN
WHERE DEATH OCCURS

(11)

Dismissed

INTERFERENCE WITH COMMERCE BY
THREAT OR VIOLENCE (HOBBS ACT
ROBBERY CONSPIRACY)

(15)

Dismissed

INTERFERENCE WITH COMMERCE BY
THREAT OR VIOLENCE (HOBBS ACT
ROBBERY)

(16)

Dismissed

VIOLENT CRIME/DRUGS/MACHINE
GUN (BRANDISHING FIREARM IN
FURTHERANCE OF HOBBS ACT
ROBBERY)

(17)

Dismissed

Highest Offense Level (Terminated)

Felony

Complaints

None

Disposition**Plaintiff**

USA

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*ATTORNEY TO BE NOTICED**Designation: Assistant US Attorney*

Date Filed	#	Docket Text
04/10/2013	522	(S7) SUPERSEDING INDICTMENT FILED as to Bernard Miles (2) count(s) 1ss, 2ss, Yackeem McFarlane (3) count(s) 1ss, 2ss, Armani Cummings (5) count(s) 1ss, 2ss, 3ss, 4ss, 5ss, 6ss, 7ss, 8ss, Christopher Nwanko (7) count(s) 1ss, 2ss, Bryan Rhodes (8) count(s) 1ss, 2ss, 6ss, 7ss, 8ss, Allen Colon (15) count(s) 1ss, 2ss, Charles Matthews (18) count(s) 1ss, 2ss, Victor Andrades (36) count(s) 1s, 2s, Jose Nicole (44) count(s) 1s, 2s, Jose Munoz (61) count(s) 1, 2, 9, 10, 11, 15, 16, 17, Anthony Martinez (62) count(s) 1, 2, Jesse McCollum (63) count(s) 12-13, 14. (jm) (Entered: 04/16/2013)
04/10/2013		Case Designated ECF as to Jose Munoz, Anthony Martinez, Jesse McCollum. (jm) (Entered: 04/16/2013)
04/12/2013		Minute Entry for proceedings held before Judge Victor Marrero: Initial Appearance as to Jose Munoz, Jesse McCollum held on 4/12/2013. (jbo) (Entered: 04/19/2013)
04/12/2013		Minute Entry for proceedings held before Judge Victor Marrero: Pretrial Conference as to Bernard Miles, Yackeem McFarlane, Armani Cummings, Christopher Nwanko, Allen Colon, Charles Matthews, Troy Owens, Joshua Perrington, Jose Nicole, Michael Thompson, Theodore Johnson, Shawn Lipscomb, Rodney Hines, Latasha Johnson, Jose Munoz, Jesse McCollum held on 4/12/2013. The following defendants were present with counsel: Bernard Miles (counsel Kafahni Nkrumah); Yackeem McFarlane (counsel Joanna Hendon); Armani Cummings (counsel Daniel Parker); Christopher Nwanko (counsel Patrick Watts); Allen Colon (counsel Gary Becker); Charles Matthews (counsel Janet Mace standing in for Lee Ginsberg); Troy Owens (counsel Stewart Leigh Orden); Joshua Perrington (counsel Gary Villanueva); Jose Nicole (counsel Steven Brill standing in for Peter Brill); Michael Thompson (counsel Bennett M. Epstein); Theodore Johnson (counsel Alan Nelson standing in for Frederick Cohn); Shawn Lipscomb (counsel Steven Brill); Rodney Hines (counsel Robert John Krakow); Latasha Johnson (counsel Melinda Marie Sarafa); Jose Munoz (counsel Mark DeMarco and Colleen Brady); Jessie McCollum (counsel Elizabeth Macedonio). Presence of defendants Juanita Tucker, Bryan Rhodes, and Anthony Washington waived. Defendant Richard Polite not produced by U.S. Marshals. Defendants Gregory Mills and Nicolas Mills refused to appear. Coordinating NOTE: This form should be submitted every (3) three days. If needed use additional page. discovery attorney Emma Greenwood present. AUSA Timothy Sini appeared for the Government. Court reporter present. Court arraigned the following defendants named in the superseding indictment S7 12 CR 031: Armani Cummings, Christopher Nwanko, Yackeem Macfarlane, Jose Munoz, Jose Nicole, Allen Colon, Charles Matthews, Bernard Miles, and Jessie McCollum entered pleas of not guilty. Anthony Martinez and Bryan Rhodes excused, and Victor Andrades not present. Next conference for the S1 indictment is scheduled for June 14, 2013 at 10:30 a.m. and next conference for the S7 indictment is scheduled for August 16, 2013 at 10:00 a.m. Upon motion from the Government, with no objection from defendants, the Court

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		granted the exclusion of time until June 14, 2013 for the S1 indictment and August 16, 2013 for the S7 indictment from speedy trial calculations in the interest of justice. (jbo) (Entered: 04/19/2013)
04/12/2013		Minute Entry for proceedings held before Judge Victor Marrero: Arraignment as to Bernard Miles (2) Count 1ss,2ss and Yackeem McFarlane (3) Count 1ss,2ss and Armani Cummings (5) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss,8ss and Christopher Nwanko (7) Count 1ss,2ss and Allen Colon (15) Count 1ss,2ss and Charles Matthews (18) Count 1ss,2ss and Jose Nicole (44) Count 1s,2s and Jose Munoz (61) Count 1,2,9,10,11,15,16,17 and Jesse McCollum (63) Count 12-13,14 held on 4/12/2013. Plea entered by Bernard Miles (2) Count 1ss,2ss and Yackeem McFarlane (3) Count 1ss,2ss and Armani Cummings (5) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss,8ss and Christopher Nwanko (7) Count 1ss,2ss and Allen Colon (15) Count 1ss,2ss and Charles Matthews (18) Count 1ss,2ss and Jose Nicole (44) Count 1s,2s and Jose Munoz (61) Count 1,2,9,10,11,15,16,17 and Jesse McCollum (63) Count 12-13,14 Not Guilty. (jbo) (Entered: 04/19/2013)
04/17/2013	523	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/17/2013)
04/18/2013	527	NOTICE OF ATTORNEY APPEARANCE: Colleen Quinn Brady appearing for Jose Munoz. Appearance Type: CJA Appointment. (Brady, Colleen) (Entered: 04/18/2013)
04/22/2013	532	NOTICE OF ATTORNEY APPEARANCE Timothy Donald Sini appearing for USA. (Sini, Timothy) (Entered: 04/22/2013)
05/07/2013	548	SEALED DOCUMENT placed in vault. (nm) (Entered: 05/07/2013)
05/10/2013	557	SEALED DOCUMENT placed in vault. (nm) (Entered: 05/10/2013)
05/10/2013	558	SEALED DOCUMENT placed in vault. (nm) (Entered: 05/10/2013)
05/10/2013	559	SEALED DOCUMENT placed in vault. (nm) (Entered: 05/10/2013)
05/10/2013	560	SEALED DOCUMENT placed in vault. (nm) (Entered: 05/10/2013)
05/20/2013	572	SEALED DOCUMENT placed in vault. (mps) (Entered: 05/20/2013)
06/03/2013	580	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/03/2013)
06/04/2013	581	NOTICE OF ATTORNEY APPEARANCE: Mark Steven DeMarco appearing for Jose Munoz. Appearance Type: CJA Appointment. (DeMarco, Mark) (Entered: 06/04/2013)
06/14/2013	594	ORDER as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum (Pretrial Conference set for 7/12/2013 at 11:15 AM before Judge Victor Marrero.) Time excluded from 6/14/13 until 7/12/2013. It is hereby ordered that the pretrial conference scheduled for June 14, 2013 will be adjourned until July 12, 2013 at 11:15 a.m. and the adjourned time shall be excluded from speedy trial calculations. This exclusion is designed to guarantee effectiveness of

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		counsel and prevent any possible miscarriage of justice. See 18 U.S.C. § 3161(h)(7)(B).. (Signed by Judge Victor Marrero on 6/13/2013)(jw) (Entered: 06/14/2013)
06/20/2013	602	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/21/2013)
07/03/2013	614	SEALED DOCUMENT placed in vault. (mps) (Entered: 07/03/2013)
07/03/2013	615	SEALED DOCUMENT placed in vault. (mps) (Entered: 07/03/2013)
07/11/2013	619	ORDER as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Voley, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum (Pretrial Conference set for 8/23/2013 at 03:00 PM before Judge Victor Marrero.). Time excluded from 7/12/2013 until 8/23/2013. It is hereby ordered that the pretrial conference scheduled for July 12, 2013 will be adjourned until August 23, 2013 at 3:00 p.m. and the adjourned time shall be excluded from speedy trial calculations. (Signed by Judge Victor Marrero on 7/10/2013)(jw) (Entered: 07/11/2013)
08/16/2013		Minute Entry for proceedings held before Judge Victor Marrero: Status Conference as to Bernard Miles, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Jose Nicole, Jose Munoz, Anthony Martinez, Jesse McCollum held on 8/16/2013. The Court held a subsequent conference for defendants named in the S7 indictment. The following defendants were present with counsel: Armani Cummings (counsel Avraham Moskowitz standing in for Daniel Parker); Bryan Rhodes (counsel Avraham Moskowitz standing in for Florian Miedel); Christopher Nwanko (counsel Patrick Watts); Jose Munoz (counsel Avraham Moskowitz standing in for Mark DeMarco and Colleen Brady); Jose Nicole (counsel Janet Mace standing in for Peter Brill); Allen Colon (counsel Janet Mace standing in for Gary Becker); Charles Matthews (counsel Janet Mace standing in for Lee Ginsberg); Bernard Miles (counsel Kafahni Nkrumah); Anthony Martinez (counsel Janet Mace standing in for Aaron Goldsmith); Jessie McCollum (counsel Carla Comisso standing in for Elizabeth Macedonio). Coordinating discovery attorney Emma Greenwood present. AUSA Hadassa Waxman appeared for the Government. Court reporter present. Victor Andrades not present. Parties discussed outstanding discovery issues. Next conference for the S7 indictment is scheduled for October 25, 2013 at 1:15 p.m. Upon motion from the Government, with no objection from defendants, the Court granted the exclusion of time until October 25, 2013 for the S7 indictment from speedy trial calculations in the interest of justice. (dnd) (Entered: 08/19/2013)
08/16/2013		Minute Entry for proceedings held before Judge Victor Marrero: As to Bernard Miles, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Jose Nicole, Jose Munoz, Anthony Martinez, Jesse McCollum Status Conference set for 10/25/2013 at 1:15 PM before Judge Victor Marrero. (dnd) (Entered: 08/19/2013)
08/23/2013	651	ORDER as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean

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		Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum (Pretrial Conference set for 10/11/2013 at 10:00 AM before Judge Victor Marrero.)It is hereby ordered that the pretrial conference scheduled for August 23, 2013 will be adjourned until October 11, 2013 at 10:00 a.m. and the adjourned time shall be excluded from speedy trial calculations (Signed by Judge Victor Marrero on 8/23/2013)(jw) (Entered: 08/23/2013)
08/26/2013	655	SEALED DOCUMENT placed in vault. (mps) (Entered: 08/26/2013)
10/07/2013	683	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/09/2013)
10/15/2013	688	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/16/2013)
10/25/2013	695	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/25/2013)
10/25/2013	696	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/25/2013)
11/22/2013		Minute Entry for proceedings held before Judge Victor Marrero: Pretrial Conference as to Bernard Miles, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Jose Munoz, Anthony Martinez, Jesse McCollum held on 11/22/2013. The Court held a subsequent conference for defendants named in the S7 indictment. The following defendants were present with counsel: Armani Cummings (counsel Chris Neff standing in for Daniel Parker and Avraham Moskowitz); Bryan Rhodes (counsel Florian Miedel and Russell Neufeld); Christopher Nwanko (counsel Patrick Watts); Jose Munoz (counsel Mark DeMarco and Colleen Brady); Allen Colon (counsel Gary Becker); Charles Matthews (counsel Janet Mace standing in for Lee Ginsberg); Bernard Miles (counsel Janet Mace standing in for Kafahni Nkrumah); Anthony Martinez (counsel Ronald Garnett); Jessie McCollum (counsel Mark DeMarco standing in for Elizabeth Macedonio). Coordinating discovery attorney Emma Greenwood present. AUSA Hadassa Waxman and FBI Special Agent Rachel Kolvek appeared for the Government. Court reporter present. Jose Nicole excused. Victor Andrades not present. NOTE: This form should be submitted every (3) three days. If needed use additional page. The Government has produced all discovery in this matter. The parties discussed scheduling issues. Next conference for the S7 indictment is scheduled for January 24, 2014 at 11:00 a.m. Upon motion from the Government, with no objection from defendants, the Court granted the exclusion of time until January 24, 2014 for the S7 indictment from speedy trial calculations in the interest of justice. (jbo) (Entered: 11/25/2013)
11/22/2013	724	ORDER as to Bernard Miles, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Jose Munoz, Anthony Martinez, Jesse McCollum. The Government (see attached letter) has requested that the pretrial conference in the above-captioned case, United States v. Branch, et al., SI 12 Cr. 031, scheduled for November 22, 2013 be adjourned until January 10, 2014 at 1:45 p.m., and further requested an exclusion of time from Speedy Trial Act calculations until January 10, 2014 to allow the parties additional time to discuss dispositions of the charges, and will allow the defendants to continue to review discovery. It is hereby ordered that the pretrial conference scheduled for November 22, 2013 will be adjourned until January 10, 2014

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		at 1:45 p.m. and the adjourned time shall be excluded from speedy trial calculations. This exclusion is designed to guarantee effectiveness of counsel and prevent any possible miscarriage of justice. See 18 U.S.C. § 3161(h) (7) (B). The value of this exclusion outweighs the best interests of the defendants and the public to a speedy trial. This order of exclusion of time is made pursuant to 18 U.S.C. § 3161 (h)(7)(A). (Signed by Judge Victor Marrero on 11/21/2013)(jw) (Entered: 11/27/2013)
11/22/2013	727	ORDER as to Bernard Miles, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Jose Munoz, Anthony Martinez, Jesse McCollum. The Government (see attached letter) has requested that the pretrial conference in the above-captioned case, United States v. Branch, et al., S1 12 Cr. 031, scheduled for November 22, 2013 be adjourned until January 10, 2014 at 1:45 p.m., and further requested an exclusion of time from Speedy Trial Act calculations until January 10, 2014 to allow the parties additional time to discuss dispositions of the charges, and will allow the defendants to continue to review discovery. It is hereby ordered that the pretrial conference scheduled for November 22, 2013 will be adjourned until January 10, 2014 at 1:45 p.m. and the adjourned time shall be excluded from speedy trial calculations. This exclusion is designed to guarantee effectiveness of counsel and prevent any possible miscarriage of justice. See 18 U.S.C. § 3161(h) (7) (B) The value of this exclusion outweighs the best interests of the defendants and the public to a speedy trial. This order of exclusion of time is made pursuant to 18 U.S.C. § 3161 (h) (7) (A). (Signed by Judge Victor Marrero on 11/21/2013)(jw) (Entered: 12/04/2013)
11/27/2013	725	SEALED DOCUMENT placed in vault. (mps) (Entered: 11/27/2013)
11/27/2013	726	SEALED DOCUMENT placed in vault. (mps) (Entered: 11/27/2013)
12/20/2013	752	SEALED DOCUMENT placed in vault. (mps) (Entered: 12/20/2013)
01/17/2014	764	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2014)
01/23/2014	769	ORDER EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT as to Bernard Miles, Yackeem McFarlane, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Victor Andrades, Jose Nicole, Jose Munoz, Anthony Martinez, Jesse McCollum. The Government (see attached letter) has requested that the pretrial conference in the above-captioned case scheduled for January 24, 2014 be adjourned until February 14, 2014 at 2:00 p.m., and further requested an exclusion of time from Speedy Trial Act calculations until February 14, 2014 to allow the parties additional time to discuss dispositions of the charges, and will allow the defendants to continue to review discovery. It is hereby ordered that the pretrial conference scheduled for January 24, 2014 for the defendants named in the S7 12 Cr. 31 superseding indictment will be adjourned until February 14, 2014 at 2:00 p.m. and the adjourned time shall be excluded from speedy trial calculations. This order of exclusion of time is made pursuant to 18 U.S.C. § 3161 (h)(7)(A). SO ORDERED. (Signed by Judge Victor Marrero on 1/23/2014)(dnd) (Entered: 01/23/2014)
02/14/2014		Minute Entry for proceedings held before Judge Victor Marrero: Pretrial Conference as to Armani Cummings, Christopher Nwanko, Bryan Rhodes, Jose Munoz, Anthony Martinez, Jesse McCollum held on 2/14/2014. The Court held a subsequent conference for defendants named in the S7 indictment. The following defendants were present with counsel: Armani Cummings (counsel Daniel Parker); Bryan Rhodes (counsel Florian Miedel); Christopher Nwanko (counsel Patrick Watts); Jose Munoz (counsel Mark DeMarco); counsel Aaron Sears on behalf of defendant Anthony Martinez; Jessie McCollum (counsel Elizabeth Macedonio). AUSA Hadassa Waxman and FBI Special Agent Rachel Kolvek appeared for the Government. Court reporter present. Victor Andrades not present. Anthony Martinezs appearance was waived. Trial date regarding a prospective three-week trial set for November 10, 2014. Parties to respond by April

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		11, 2014 by letter to the Court if they intend to file motions. Upon motion from the Government, with no objection from defendants, the Court granted the exclusion of time until NOTE: This form should be submitted every (3) three days. If needed use additional page. November 10, 2014 for the S7 indictment from speedy trial calculations in the interest of justice. (jbo) (Entered: 02/18/2014)
02/20/2014	786	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/20/2014)
04/11/2014	806	FIRST LETTER by Jose Munoz addressed to Judge Victor Marrero from Mark S. DeMarco dated April 11, 2014 re: US v. Jose Munoz (DeMarco, Mark) (Entered: 04/11/2014)
04/29/2014	813	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/29/2014)
05/02/2014		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference as to Armani Cummings, Bryan Rhodes, Jose Munoz, Jesse McCollum held on 5/2/2014. The Court held a telephone conference for defendants Armani Cummings, Bryan Rhodes, Jose Munoz, and Jessie McCollum. Present was counsel Daniel Parker (defendant Armani Cummings); counsel Florian Miedel (defendant Bryan Rhodes); counsel Mark DeMarco (defendant Jose Munoz); and counsel Elizabeth Macedonio (defendant Jessie McCollum). AUSA Hadassa Waxman was present on behalf of the Government. Court reporter present. Parties discussed filing various motions. Telephone conference will be held on June 18, 2014 at 11:30 to discuss status of the motions. (ajc) (Entered: 05/02/2014)
05/02/2014		As to Armani Cummings, Bryan Rhodes, Jose Munoz, Jesse McCollum: Telephone Conference set for 6/18/2014 at 11:30 AM before Judge Victor Marrero. (Signed by Judge Victor Marrero on 5/2/2014) (ajc) (Entered: 05/02/2014)
06/12/2014	843	SEALED DOCUMENT placed in vault. (nm) (Entered: 06/12/2014)
06/18/2014	846	ENDORSED LETTER as to Bernard Miles, Yackeem McFarlane, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Victor Andrades, Jose Nicole, Jose Munoz, Anthony Martinez, Jesse McCollum addressed to Judge Victor Marrero from Hadassa Waxman dated 6/17/2014 re: Adjournment of Conference. ENDORSEMENT: Request GRANTED. The pretrial motions conference herein is rescheduled to 7-8-14 at 11:00 a.m. Telephone Conference set for 7/8/2014 at 11:00 AM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 6/17/2014)(ft) (Entered: 06/18/2014)
07/08/2014	853	ENDORSED LETTER as to Bernard Miles, Yackeem McFarlane, Armani Cummings, Christopher Nwanko, Bryan Rhodes, Allen Colon, Charles Matthews, Victor Andrades, Jose Nicole, Jose Munoz, Anthony Martinez, Jesse McCollum addressed to Judge Victor Marrero from Hadassa Waxman dated 7/7/2014 re: Reschedule Telephone conference. ENDORSEMENT: Request GRANTED. The telephone conference herein is rescheduled to 7/23/14 at 4:30pm (Telephone Conference set for 7/23/2014 at 04:30 PM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 7/8/14)(jw) (Entered: 07/08/2014)
07/24/2014	867	SEALED DOCUMENT placed in vault. (rz) (Entered: 07/24/2014)
07/24/2014	868	SEALED DOCUMENT placed in vault. (rz) (Entered: 07/24/2014)
07/24/2014	869	SEALED DOCUMENT placed in vault. (rz) (Entered: 07/24/2014)
09/08/2014	886	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/08/2014)
09/18/2014	895	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/18/2014)

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09/18/2014	896	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/18/2014)
09/19/2014	898	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/19/2014)
09/29/2014	911	SEALED DOCUMENT placed in vault. (nm) (Entered: 09/30/2014)
10/09/2014	919	FIRST LETTER MOTION addressed to Judge Victor Marrero from Mark S. DeMarco dated October 9, 2014 re: Dismissal of Indictment . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (Attachments: # 1 Exhibit)(DeMarco, Mark) (Entered: 10/09/2014)
10/15/2014	922	ENDORSED LETTER as to (S7-12-Cr-31-61) Jose Munoz addressed to Judge Victor Marrero from Attorney Mark S. DeMarco dated October 9, 2014 re: Based on the above, it is respectfully requested that this Court conduct an in camera review of the instant grand jury presentation to determine whether dismissal of the indictment is warranted. ENDORSEMENT: The Government is directed to respond by 10-20-14, by letter not to exceed four (4) pages, to the matter set forth above by defendant Jose Munoz, showing cause why the relief requested should not be granted. SO ORDERED. (Signed by Judge Victor Marrero on 10/14/2014)(bw) (Entered: 10/15/2014)
10/15/2014	925	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Proposed Voir Dire Questions by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, David Griffin, Jeffrey Pressley, Leche Cornish, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) Modified on 10/16/2014 (ka). (Entered: 10/15/2014)
10/16/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Mark Steven DeMarco as to Jose Munoz: to RE-FILE Document 925 Proposed Voir Dire Questions. Use the document type Proposed Examination of Jurors found under the document list Trial Documents. (ka) (Entered: 10/16/2014)
10/20/2014	929	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated 10/20/2014 re: The Government respectfully submits this letter in opposition to defendant Jose Munoz's motion to dismiss the above referenced Superseding Indictment on the grounds of alleged prosecutorial misconduct during

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		<p>grand jury proceedings. The motion is frivolous, and should be denied.</p> <p>ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by the Government.SO ORDERED. (Signed by Judge Victor Marrero on 10/20/2014)(dnd) (Entered: 10/20/2014)</p>
10/21/2014	930	ORDER as to Jose Munoz. Upon the application of Mark S. DeMarco, attorney for the above referenced defendant/inmate, and upon all proceedings previously herein, the MCC is hereby ORDERED to accept the following clothing and to permit Mr. Munoz to wear this clothing during his trial which is scheduled to begin on November 17, 2014: 3 Pairs pants, 5 dress shirts, 1 leather belt, 5 pairs dress socks, 3 ties, 1 pair leather shoes. (Signed by Judge Victor Marrero on 10/21/14)(jw) (Entered: 10/21/2014)
10/27/2014	932	DECISION AND ORDER denying 919 LETTER MOTION. For the reasons stated above, it is hereby ORDERED that the motion of defendant Jose Munoz (Dkt. No. 919) requesting the Court to conduct an in camera review of the grand jury presentation and to dismiss the Indictment herein is DENIED as to Jose Munoz (61). (Signed by Judge Victor Marrero on 10/27/2014) (ft) (Entered: 10/27/2014)
10/27/2014	934	LETTER MOTION addressed to Judge Victor Marrero from Michael Gerber dated October 27, 2014 re: Motion in limine . Document filed by USA as to Armani Cummings, Christopher Nwanko, Jose Munoz. (Waxman, Hadassa) (Entered: 10/27/2014)
10/28/2014	935	NOTICE OF ATTORNEY APPEARANCE Michael Gerber appearing for USA. (Gerber, Michael) (Entered: 10/28/2014)
10/28/2014	940	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/29/2014)
10/28/2014	941	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/29/2014)
10/30/2014	946	ENDORSED LETTER as to Armani Cummings, Christopher Nwanko, Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman and Michael Gerber dated 10/29/14 re: The parties in the above referenced matter are scheduled to appear before your Honor on October 31, 2014 for a final pretrial conference..ENDORSEMENT: Request GRANTED. The final pretrial conference herein is rescheduled to 11/7/2014 at 1:30pm (Pretrial Conference set for 11/7/2014 at 01:30 PM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 10/30/14)(jw) (Entered: 10/30/2014)
10/31/2014	949	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - LETTER MOTION addressed to Judge Victor Marrero from Mark S. DeMarco dated October 31, 2014 re: Response to Government's MILs Dated October 27, 2014 . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) Modified on 11/3/2014 (ka). (Entered: 10/31/2014)
11/03/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE

		ERROR. Note to Attorney Mark Steven DeMarco as to Jose Munoz: to RE-FILE Document 949 LETTER MOTION addressed to Judge Victor Marrero from Mark S. DeMarco dated October 31, 2014 re: Response to Government's MILs Dated October 27, 2014. Use the document type Letter found under the document list Other Documents. (ka) (Entered: 11/03/2014)
11/03/2014	950	LETTER by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, David Griffin, Jeffrey Pressley, Leche Cornish, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum addressed to Judge Victor Marrero from Mark S. DeMarco dated October 31, 2014 re: Response to Government's MILs Dated October 27, 2014 Document filed by Jose Munoz. (DeMarco, Mark) (Entered: 11/03/2014)
11/05/2014	955	SEALED DOCUMENT placed in vault. (rz) (Entered: 11/05/2014)
11/05/2014	956	SEALED DOCUMENT placed in vault. (rz) (Entered: 11/05/2014)
11/05/2014	957	SEALED DOCUMENT placed in vault. (rz) (Entered: 11/05/2014)
11/05/2014	959	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Proposed Voir Dire Questions by USA as to Armani Cummings, Jose Munoz. (Waxman, Hadassa) Modified on 11/6/2014 (ka). (Entered: 11/05/2014)
11/06/2014	963	DECISION AND ORDER: as to (12-Cr-31-) Armani Cummings (5), Christopher Nwanko (7), Jose Munoz (61). Defendants Armani Cummings ("Cummings"), Jose Munoz ("Munoz"), and Christopher Nwanko ("Nwanko") (together, "Defendants") are charged with conspiracy to distribute and possess with intent to distribute 280 grams or more of crack cocaine, in violation of 21, U.S.C. §§ 846 and 841(b)(1)(A), and with possessing firearms in furtherance of the conspiracy, in violation of 18 U.S.C. § 924(c). Cummings is also charged with the narcotics-related homicides of Laquan Jones and Carl Copeland in violation of 21 U.S.C. § 848(e), and 18 U.S.C. §§ 924(c) and 924(j). Munoz is charged with the narcotics-related homicide of Shameck Young and with conspiring to commit and committing Hobbs Act robbery, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii), 924(c)(1)(C)(i) and 2. The Government now moves in limine seeking admission of certain evidence, specifically: (1) prior arrests and convictions of Munoz; (2) violent acts committed by Nwanko (* see Footnote 1 on this Order *); (3) gang membership of Cummings and Munoz; (4) threats made by Cummings and Munoz to cooperating witnesses; and (5) incarcerations of Cummings and Munoz. Cummings has also moved for a hearing pursuant to Massiah v. United States, 377 U.S. 201 (1964), to determine whether the Government's proposed cooperating witnesses were functioning as agents of the Government when Cummings made certain statements to them or in their presence that the Government seeks to introduce. For the reasons described below, the Government's motion is granted in part and denied in part, and Cummings's motion for a Massiah hearing is denied....[See this Decision And Order]... ORDER: For the reasons stated above, it is hereby ORDERED that the motion in limine of the Government (Docket No. 934) is GRANTED in part and DENIED in part as follows:

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		<p>GRANTED as to the prior arrests and convictions of defendant Jose Munoz ("Munoz"), to the extent the evidence is offered for an admissible purpose under Federal Rule of Evidence 404(b) that is in dispute, and subject to the Court's limiting instruction to the jury against considering the evidence for the purpose of showing Munoz's propensity to commit similar acts; GRANTED as to evidence that defendant Armani Cummings ("Cummings"), Munoz, and a number of cooperating witnesses were members of the same gang, except that the Government will not be allowed to present evidence indicating or suggesting that this gang is the Bloods; GRANTED as to threats made by Cummings and Munoz against cooperating witnesses, subject to a limiting instruction directing the jury to consider the threats only to show consciousness of guilt; GRANTED as to the incarceration of Cummings and Munoz during certain periods relevant to this case, subject to a limiting instruction directing the jury to draw no inferences of guilt from Defendants' time in jail; and it is further ORDERED that Cummings's request for a hearing pursuant to Massiah v. United States 377 U.S. 201 (1964), is DENIED. The Government is instructed, before presenting evidence of Defendants' alleged incriminating jailhouse statements to cooperators, to provide particulars explaining the relationship of the cooperating witnesses with the Government at the time of the statements, who initiated conversations, and their timing. SO ORDERED. (Signed by Judge Victor Marrero on 11/6/2014)(bw) (Entered: 11/06/2014)</p>
11/07/2014	966	(S10) SUPERSEDING INDICTMENT FILED as to Armani Cummings (5) count(s) 1sss, 2sss, 3sss, 4sss, 5sss, 6sss, 7sss, 8sss, Jose Munoz (61) count(s) 1s, 2s, 9s, 10s, 11s, 12s, 13s, 14s. (jm) (Main Document 966 replaced on 3/18/2015) (jw). (Entered: 11/07/2014)
11/07/2014	967	ORDER as to (12-Cr-31-61) Jose Munoz. Upon the ex parte application of Mark S. DeMarco, attorney for the above named defendant, for an order authorizing necessary expert and other services, pursuant to 18 USC § 3006A(e). IT IS HEREBY ORDERED that DON TAYLOR is appointed as paralegal in the above captioned case and such will be compensated in accordance with the Criminal Justice Act on an interim basis at the rate of \$50.00 per hour, plus expenses reasonably incurred. It is estimated that more than 100 hours of paralegal services will be required at this time. IT IS FURTHER ORDERED that the Metropolitan Correctional Center provide Don Taylor with reasonable access to perform discovery review with JOSE MUNOZ, Register Number 66788-054, who is presently in the custody of the Bureau of Prisons at the Metropolitan Correctional Center (MCC), at 150 Park Row, New York, New York. SO ORDERED: (Signed by Judge Victor Marrero on 11/7/2014)(bw) (Entered: 11/07/2014)
11/07/2014		Minute Entry for proceedings held before Judge Victor Marrero: Arraignment as to Armani Cummings (5) Count 1sss,2sss,3sss,4sss,5sss,6sss,7sss,8sss and Jose Munoz (61) Count 1s,2s,9s,10s,11s,12s,13s,14s held on 11/7/2014. Pretrial Conference as to Armani Cummings, Jose Munoz held on 11/7/2014. The Court held a pretrial conference. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government, along with FBI Special Agent Rachel Kolvek. Court reporter present. Defendants Armani Cummings and Jose Munoz arraigned on superseding indictment S10, waived detailed reading of the indictment, and pled not guilty. To the extent expert witnesses for the Defense disagree with conclusions made by the Government's expert witnesses, Defense shall submit those points of disagreement and the basis for those disagreements to the Government. Government gave Defense its exhibits and 3500 material, except for the 3500 material related to one witness. Parties shall prepare a list of exhibits for which there is no disagreement in advance of trial. The Court grants Mark DeMarco's request for the appointment of paralegal Don K. Taylor. (ajc) (Entered: 11/07/2014)

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11/10/2014	968	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Proposed Jury Instructions by USA as to Armani Cummings, Jose Munoz. (Waxman, Hadassa) Modified on 11/12/2014 (ka). (Entered: 11/10/2014)
11/12/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Hadassa Robyn Waxman as to Armani Cummings, Jose Munoz: to RE-FILE Document 968 Proposed Jury Instructions. Use the document type Request to Charge found under the document list Trial Documents. (ka) (Entered: 11/12/2014)
11/12/2014	974	SEALED DOCUMENT placed in vault. (nm) (Entered: 11/12/2014)
11/12/2014	975	SEALED DOCUMENT placed in vault. (nm) (Entered: 11/13/2014)
11/14/2014	977	SECOND MOTION in Limine . Document filed by USA as to Armani Cummings, Jose Munoz. (Waxman, Hadassa) (Entered: 11/14/2014)
11/14/2014	978	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - MEMORANDUM OF LAW in Support by USA as to Armani Cummings, Jose Munoz. (Waxman, Hadassa) Modified on 11/17/2014 (ka). (Entered: 11/14/2014)
11/17/2014		Minute Entry for proceedings held before Judge Victor Marrero: Voir Dire held on 11/17/2014 as to Armani Cummings, Jose Munoz. (ajc) (Entered: 11/18/2014)
11/17/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Selection as to Armani Cummings, Jose Munoz held on 11/17/2014. (ajc) (Entered: 11/18/2014)
11/17/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/17/2014. Trial commenced in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. (ajc) (Entered: 11/18/2014)
11/18/2014	984	ENDORSED LETTER as to (S10-12-Cr-31-) Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum addressed to Judge Victor Marrero from AUSAs Michael Gerber/ Hadassa Waxman dated November 16, 2014 re: The Government respectfully moves in limine for a ruling limiting cross examination with respect to certain cooperating witnesses. Specifically, defendants Armani Cummings and Jose Munoz should not be permitted to cross examine cooperating witnesses regarding (1) unsubstantiated allegations of two cooperating witnesses' involvement in homicides; (2) a cooperating witness's involvement in two incidents of domestic violence; and (3) the use by one cooperating witness of 14- and 15-year-olds to deliver crack cocaine to crack customers. For the reasons set forth below, each of these incidents (and alleged incidents) have no bearing on the witnesses' credibility, are

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		<p>collateral to the issues relevant at trial, have little or no probative value, and are highly prejudicial. Accordingly, the defendants should not be permitted to cross-examine the cooperating witnesses regarding these subjects.... For the foregoing reasons, the Government respectfully requests that the Court grant its motion in limine in its entirety. ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by the Government. SO ORDERED. (Signed by Judge Victor Marrero on 11/17/2014)(bw) (Entered: 11/18/2014)</p>
11/18/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/18/2014. Trial commenced in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Jury selection process resumed and concluded. Adjourned until 9:00 AM Thursday, November 20, 2014. (ajc) (Entered: 11/18/2014)</p>
11/20/2014	986	<p>SEALED DOCUMENT placed in vault. (mps) (Entered: 11/20/2014)</p>
11/20/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/20/2014. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:00 AM. Brief conference held with the parties. Court gave preliminary instructions to the jury. Opening statements delivered. Government began presenting its case. (jbo) (Entered: 11/21/2014)</p>
11/21/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/21/2014. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:00 AM. Government continued presenting its case. (jbo) (Entered: 11/21/2014)</p>
11/23/2014	992	<p>LETTER by USA as to Armani Cummings, Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated November 23, 2014 re: Cross-examination Document filed by USA. (Waxman, Hadassa) (Entered: 11/23/2014)</p>
11/24/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/24/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:30 AM. Brief preliminary discussion with the parties. Government continued presenting its case. Counsel for Armani Cummings moved for a mistrial based on the Courts refusal to admit Exhibit 3511-02 as a prior inconsistent statement. The Court denied the motion. (ajc) (Entered: 11/25/2014)</p>
11/25/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/25/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present.</p>

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		Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 2:12 PM. Government continued presenting its case. Defense counsel for Armani Cummings agrees to provide expert disclosures to the government on a rolling basis. (ajc) (Entered: 11/26/2014)
11/26/2014	997	SEALED DOCUMENT placed in vault. (rz) (Entered: 11/26/2014)
11/26/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 11/26/2014. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:10 AM. Preliminary issues discussed. Government continued presenting its case. Regarding the motions made by Armani Cummings in his letter dated November 25, 2014, for the reasons stated on the record, the Court DENIED Armani Cummings motion to admit excerpts of the grand jury testimony of witness Eric Jackson and DENIED Armani Cummings motion for a mistrial. (jbo) (Entered: 11/26/2014)
12/01/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/1/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:08 AM. Preliminary issues discussed. With regard to Defenses motion by letter dated November 30, 2014, and the Governments response on the same date, the Court DENIED the Defenses motion for the reasons stated on the record. Order to follow. Government continued presenting its case. (ajc) (Entered: 12/02/2014)
12/02/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/2/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:15 AM. Preliminary issues discussed. Defendant Armani Cummings (Cummings) moved for a mistrial on the record at the trial of this matter on December 1, 2014. He alleges a violation by the Government of its obligations under Brady v. Maryland, 373 U.S. 83 (1963), for failure to disclose certain information related to prior statements of Justin Freytes, a cooperating witness. The Government responded by letter dated December 1, 2014 (Government Letter) (Dkt. No. 1005). For the reasons stated on the record at the trial of this matter on December 2, 2014, the Court is not persuaded that the Governments actions challenged by Cummings constitute a Brady violation. The Court also finds that even if the Governments conduct at issue rose to the level of a Brady violation, it would not be sufficient to warrant a declaration of a mistrial in light of all the circumstances, manifest necessity, and the ends of public justice. Accordingly, the motion is DENIED. Order to follow. Government continued presenting its case. (jbo) (Entered: 12/04/2014)
12/03/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/3/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present.

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		Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:30 AM. Preliminary issues discussed. Government concluded its case. Armani Cummings began presenting his case. Both Defendants made motions pursuant to Rule 29. The Judge DENIED both motions for the reasons stated on the record. Jury Charge Conference held. (jbo) (Entered: 12/04/2014)
12/04/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/4/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:40 AM. Preliminary issues discussed. Armani Cummings continued presenting and concluded presenting his case. Jose Munoz began presenting his case. Armani Cummings moved in limine for a ruling preventing the Government from using prior consistent statements in its cross examination of Detective Spangenberg. The Court ruled that priorconsistent statements will be admitted or not admitted in accordance with rule 801(d)(1). (ajc) (Entered: 12/08/2014)
12/05/2014	1009	FIRST LETTER MOTION addressed to Judge Victor Marrero from Mark S. DeMarco dated December 5, 2014 re: Motion for Self Defense Jury Instruction . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) (Entered: 12/05/2014)
12/05/2014	1010	LETTER MOTION addressed to Judge Victor Marrero from Mark S. DeMarco dated December 5, 2014 re: Request for Buyer-Seller Jury Instruction . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) (Entered: 12/05/2014)
12/05/2014	1011	LETTER MOTION addressed to Judge Victor Marrero from Mark S. DeMarco dated December 5, 2014 re: To Amend the Court's Instruction on Evaluating Defendant's Testimony . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher

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		Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Biu, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) (Entered: 12/05/2014)
12/05/2014		Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/5/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Trial resumed at 9:20 AM. Preliminary issues discussed. Jose Munoz continued presenting his case. (ajc) (Entered: 12/08/2014)
12/08/2014	<u>1012</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Mark S. DeMarco dated 12/5/14 re: Accordingly, he requests that the Court charge the jury that, in order to convict him on Counts Nine and Eleven of the Indictment, the Government must prove beyond a reasonable doubt that he did not act in self-defense.ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by defendant Jose Munoz. (Signed by Judge Victor Marrero on 12/8/14)(jw) (Entered: 12/08/2014)
12/08/2014	<u>1013</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Mark S. DeMarco dated 12/5/14 re: Accordingly, it is respectfully requested that this Court include a "buyer-seller" instruction in its charge, such as the one recently utilized by the district court and affirmed by the Second Circuit, in United States v. Rojas...ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by defendant Jose Munoz. (Signed by Judge Victor Marrero on 12/8/14)(jw) (Entered: 12/08/2014)
12/08/2014	<u>1014</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Mark S. DeMarco dated 12/5/2014 re: Accordingly, pursuant to United States v. Mazza, <i>supra</i> , United States v. Brutus, 505 F.3d 80, 87 (2d Cir. 2007) and United States v. Gaines, 457 F.3d 238, 246 (2d Cir. 2006), it is respectfully requested that the Court's charge with respect to Mr. Munoz's testimony read as follows: "you should examine and evaluate Mr. Munoz's testimony just as you would the testimony of any other witness who testified in this case."....ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by defendant Jose Munoz. (Signed by Judge Victor Marrero on 12/8/14)(jw) (Entered: 12/08/2014)
12/08/2014		Minute Entry for proceedings held before Judge Victor Marrero: Status Conference as to Armani Cummings, Jose Munoz held on 12/8/2014. Conference held regarding the trial in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegal for the Government Joseph Rosenberg present. Court reporter present. Conference began at 10:15 AM. Trial-related issues discussed. Armani Cummings made a motion for reconsideration regarding the Courts earlier decision not

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		<p>to admit the prior federal grand jury testimony of Mr. Eric Jackson. Court DENIED the motion for reconsideration for the reasons stated on the record. By letter dated December 5, Jose Munoz moved for the Court to modify its intended jury instruction regarding the defendants testimony. Court DENIED the motion for the reasons stated on the record. By letter dated December 5, Jose Munoz moved for the Court to include a justification instruction in the jury charge. Court GRANTED the motion to the extent that the Sands justification instruction will be included. Government moves for a ruling on the admissibility of a potential rebuttal witness, a police officer, reading from his report regarding the statements made by another witness. The Court DENIED the Governments motion, finding the evidence inadmissible for the reasons stated on the record. (jbo) (Entered: 12/11/2014)</p>
12/09/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/9/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Court reporter present. Trial resumed at 9:15 AM. Jose Munoz concluded presentation of case. Both defendants made Rule 29 motions. The Court DENIED both motions. All parties delivered closing arguments. (jbo) (Entered: 12/11/2014)</p>
12/10/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/10/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Court reporter present. Trial resumed at 9:15 AM. Court addresses Defense letter-motion dated December 9, 2014, asking for a curative instruction based on allegedly objectionable comments in the Governments rebuttal. Court grants the motion in part as stated on the record. Jury instructions delivered. Jury deliberations begin. (jbo) (Entered: 12/11/2014)</p>
12/11/2014		<p>Minute Entry for proceedings held before Judge Victor Marrero: Jury Trial as to Armani Cummings, Jose Munoz held on 12/11/2014. Trial continued in this matter. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. FBI Special Agent Rachel Kolvek present. Paralegals for the Government Jennifer Hansma and Joseph Rosenberg present. Court reporter present. Jury deliberations resumed at 9:01 AM. Jury reached a verdict at 11:40 AM. Each Defendant found GUILTY of each applicable count. Specifically: Armani Cummings was found guilty of Counts 1 (and the jury found the conspiracy involved 280 grams or more of crack cocaine), 2, 3, 4 (and the jury found Cummings brandished and discharged the firearm), 5, 6, 7 (and the jury found Cummings brandished and discharged the firearm), and 8. Jose Munoz was found guilty of Counts 1 (and the jury found the conspiracy involved 280 grams or more of crack cocaine), 2, 9, 10 (and the jury found Munoz brandished and discharged the firearm), 11, 12, 13, and 14 (and the jury found Munoz brandished the firearm). (ajc) (Entered: 12/31/2014)</p>
12/11/2014		<p>JURY VERDICT as to Armani Cummings (5) Guilty on Counts 1sss,2sss,3sss,4sss,5sss,6sss,7sss,8sss and Jose Munoz (61) Guilty on Count 1s,2s,9s,10s,11s,12s,13s,14s. (ajc) (Entered: 12/31/2014)</p>
12/13/2014	1020	FILING ERROR - DEFICIENT DOCKET ENTRY - SIGNATURE ERROR -

		FIRST MOTION for Acquittal <i>pursuant to Rule 29, Fed. R. Crim. P.</i> , FIRST MOTION for New Trial <i>pursuant to Rule 33, Fed. R. Crim. P.</i> . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) Modified on 12/15/2014 (ka). (Entered: 12/13/2014)
12/13/2014	<u>1021</u>	DECLARATION of Mark S. DeMarco in Support by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum re: <u>1020</u> FIRST MOTION for Acquittal <i>pursuant to Rule 29, Fed. R. Crim. P.</i> .FIRST MOTION for New Trial <i>pursuant to Rule 33, Fed. R. Crim. P.</i> ... (DeMarco, Mark) (Entered: 12/13/2014)
12/15/2014		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Mark Steven DeMarco as to Jose Munoz: to RE-FILE Document <u>1020</u> FIRST MOTION for Acquittal <i>pursuant to Rule 29, Fed. R. Crim. P.</i>.FIRST MOTION for New Trial <i>pursuant to Rule 33, Fed. R. Crim. P.</i>. ERROR(S): Attorney s/signature missing from document. (ka) (Entered: 12/15/2014)
12/15/2014	<u>1022</u>	FIRST MOTION for Acquittal <i>Pursuant to Fed. R. Crim. P. 29</i> . Document filed by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum. (DeMarco, Mark) (Entered: 12/15/2014)

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12/15/2014	1023	DECLARATION of Mark S. DeMarco in Support by Jose Munoz as to Marquis Branch, Bernard Miles, Yackeem McFarlane, Elvin Skelton, Armani Cummings, Benny Monday, Christopher Nwanko, Bryan Rhodes, Dasean Rhodes, Joell Tomlinson, James Evans, Richard Polite, Faheem Taylor, Justin Freytes, Allen Colon, Jamel Wright, Christopher Polanco, Charles Matthews, Carlos Ponce, Richard Barnwell, Shawn Wedderburn, Jim Volcy, Carolin Perez, Iris Clase, Velma Harris, Karen Baxton, Verleria Thomas, Twiler Howard, Juanita Tucker, Donnell Harris, Rafael Rivera, Clyde Jones, Leche Cornish, David Griffin, Jeffrey Pressley, Victor Andrades, Troy Owens, Rasheed Binns, Joshua Perrington, Jerry Butler, Basil Jamison, Kenneth Ackles, Felipe Acevedo, Jose Nicole, Nicolas Mills, Michael Thompson, Dimitri Alvarado, Gregory Mills, Theodore Johnson, Anthony Washington, Shawn Lipscomb, Rodney Hines, Slaigan Baker, David Irizarry, Frederick Tomlinson, Dennis Bynum, Anita Garret, Wayne Lowery, Louis Carattini, Latasha Johnson, Jose Munoz, Anthony Martinez, Jesse McCollum re: 1022 FIRST MOTION for Acquittal <i>Pursuant to Fed. R. Crim. P. 29.</i> .. (DeMarco, Mark) (Entered: 12/15/2014)
12/15/2014	1024	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/16/2014)
12/19/2014	1028	ENDORSED LETTER as to Armani Cummings, Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated 12/18/2014 re: Request for Post Trial Conference. ENDORSEMENT: Request GRANTED. The Post-Trial conference herein is rescheduled to 1-9-15 at 12:00 P.M. (Post Trial Conference set for 1/9/2015 at 12:00 PM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 12/19/2014)(ft) (Entered: 12/19/2014)
12/23/2014	1030	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 11/17/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1031	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 11/17/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1032	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 11/20/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1033	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 11/20/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)

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12/23/2014	1034	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 11/21/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1035	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 11/21/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1036	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 11/24/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1037	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 11/24/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1038	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 11/25/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1039	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 11/25/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1040	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 11/26/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1041	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose

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		Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 11/26/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1042</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/1/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1043</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/1/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1044</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/2/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1045</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/2/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1046</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/3/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1047</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/3/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1048</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/4/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston,

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		(212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1049</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/4/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1050</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/5/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1051</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/5/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1052</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/8/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1053</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/8/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1054</u>	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/9/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	<u>1055</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/9/2014 has been filed by the court reporter/transcriber in the above-captioned matter.

		The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1056	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/10/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Ann Hairston, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1057	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/10/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1058	TRANSCRIPT of Proceedings as to Armani Cummings, Jose Munoz re: Trial held on 12/11/2014 before Judge Victor Marrero. Court Reporter/Transcriber: Patricia Nilsen, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/16/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1059	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Armani Cummings, Jose Munoz. Notice is hereby given that an official transcript of a Trial proceeding held on 12/11/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/23/2014)
12/23/2014	1060	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/23/2014)
12/23/2014	1061	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/23/2014)
01/09/2015		Minute Entry for proceedings held before Judge Victor Marrero: Status Conference as to Armani Cummings, Jose Munoz held on 1/9/2015. Status Conference. Defendant Armani Cummings present with counsel Daniel Parker and Diane Ferrone. Defendant Jose Munoz present with counsel Mark DeMarco. AUSAs Michael Gerber and Hadassa Waxman appeared for the Government. Counsel Arnold Levine present. Court reporter present. The Court granted defendant Munoz's request for new counsel. Arnold Levine replaced Mr. DeMarco going forward as new counsel for defendant Munoz. Court directed Mr. DeMarco to complete his Rule 29 motion work product and send it to Mr. Levine, along with any trial materials in his possession. By 1/30/15, Mr. Levine will notify the Court whether he intends to pursue post-trial motions. Mr. Parker shall inform the Court by 1/16/15 whether he intends to proceed with post-trial motions. (ajc) (Entered: 01/09/2015)
01/20/2015	1072	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Jose Munoz dated 1/10/2015 re: Request for polygraph. ENDORSEMENT: Request DENIED. The Court is not persuaded that the polygraph examination defendant

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		proposes would be appropriate of productive in this case. (Signed by Judge Victor Marrero on 1/20/2015)(ft) (Entered: 01/20/2015)
01/28/2015	1076	SEALED DOCUMENT placed in vault. (mps) (Entered: 01/28/2015)
02/05/2015	1078	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Arnold J. Levine dated 1/30/15 re: I was assigned on January 9, 2015, to represent Jose Munoz following his conviction after trial. Your Honor directed that I advise the Court by today whether I intend to file post trial motions on behalf of Mr Munoz. Although I have not completed reviewing the trial transcripts, based on my review of the transcripts thus far, consultation with Mr_ Mufioz, and my review of prior counsel's incomplete draft Rule 29 Motion, I am expecting to file a Rule 29/33 Motion on Mr. Munoz's behalf..ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by defendant Jose Munoz. (Signed by Judge Victor Marrero on 2/5/15)(jw) (Entered: 02/05/2015)
02/05/2015		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference as to Jose Munoz held on 2/5/2015. Telephone Conference with Arnold Levine (counsel for Jose Munoz). Call to address Mr. Levines letter, dated January 30, 2015 (Dkt. No. 1078), which requests approval of funding for a private investigator and requests scheduling for a motion. Oral argument scheduled for Defendants Rule 29 motion for March 13, 2015 at 1:30 PM. Mr. Levine will send to the Government a letter briefly setting forth the theories he will argue no later than February 19, 2015. (jbo) (Entered: 02/05/2015)
02/05/2015		Set/Reset Hearings as to Jose Munoz: Oral Argument set for 3/13/2015 at 01:30 PM before Judge Victor Marrero. (jbo) (Entered: 02/05/2015)
02/23/2015	1086	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/23/2015)
02/27/2015	1091	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from defense counsel Arnold Levine dated 2/26/15 re: I am writing to request that you approve Private Inverstigator Ralph Lafemina to conduct the investigation required for me to determine whether to pursue a claim of ineffective assistance of counsel on Mr. Munoz behalf. ENDORSEMENT: Request Granted. Defendant Jose Munoz is authorized to retain the services of Private Investigator Ralph Lafemina for the purposes set forth above at a rate \$95. per hour not to exceed a total of 50 hours. SO ORDERED. (Signed by Judge Victor Marrero on 2/27/15)(jbo) (Entered: 02/27/2015)
03/04/2015	1093	SEALED DOCUMENT placed in vault. (rz) (Entered: 03/04/2015)
03/04/2015	1094	MEMO ENDORSEMENT as to Jose Munoz: I am requesting permission to take a ploygraph examination regarding questions concerning my guilt surrounding all charges I was found guilty of and to support my claim under Rule 33 in Order to prevent a miscarriage of justice...ENDORSEMENT...The request for a polygraph examination is denied. The Court finds no circumstances in this case supporting defendant's arguments and warranting the relief he requests. (Signed by Judge Victor Marrero on 3/4/15)(jw) (Entered: 03/04/2015)
03/05/2015	1096	NOTICE OF ATTORNEY APPEARANCE: Arnold Jay Levine appearing for Jose Munoz. Appearance Type: CJA Appointment. (Levine, Arnold) (Entered: 03/05/2015)
03/10/2015	1099	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated 3/10/2015 re: The parties respectfully request that the Court schedule oral argument. ENDORSEMENT: SO ORDERED. (Signed by Judge Victor Marrero on 3/10/2015)(ft) (Entered: 03/10/2015)
03/10/2015		Set/Reset Deadlines/Hearings as to Jose Munoz: Oral Argument set for 3/13/2015 at

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		03:00 PM before Judge Victor Marrero. (ft) (Entered: 03/10/2015)
03/13/2015		Minute Entry for proceedings held before Judge Victor Marrero: Oral Argument as to Jose Munoz held on 3/13/2015 re: 1022 FIRST MOTION for Acquittal <i>Pursuant to Fed. R. Crim. P. 29</i> . filed by Jose Munoz. Oral argument held regarding Defendants Rule 29 motion. Defendant Jose Munoz present with counsel Arnold Levine. AUSAs Hadassa Waxman and Michael Gerber present for the Government. Court reporter present. For the reasons stated on the record, the Court DENIES the Defendants Rule 29 motion. (ajc) (Entered: 03/16/2015)
04/02/2015	1113	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/02/2015)
04/02/2015	1114	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/02/2015)
04/10/2015	1120	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/10/2015)
04/16/2015	1123	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/16/2015)
04/21/2015	1126	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/21/2015)
04/29/2015	1135	SEALED DOCUMENT placed in vault. (nm) (Entered: 04/29/2015)
04/29/2015	1136	SEALED DOCUMENT placed in vault. (nm) (Entered: 04/29/2015)
04/29/2015	1137	SEALED DOCUMENT placed in vault. (nm) (Entered: 04/29/2015)
04/29/2015	1138	SEALED DOCUMENT placed in vault. (nm) (Entered: 04/29/2015)
05/15/2015	1159	ORDER as to Jose Munoz. It is hereby ordered that the sentencing of the above named defendant before Judge Marrero shall be scheduled for August 14, 2015 at 10:30 a.m. SO ORDERED. (Sentencing set for 8/14/2015 at 10:30 AM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 5/15/2015)(ft) (Entered: 05/15/2015)
05/28/2015	1168	SEALED DOCUMENT placed in vault. (nm) (Entered: 05/28/2015)
06/02/2015	1170	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/02/2015)
06/05/2015	1172	SEALED DOCUMENT placed in vault. (nm) (Entered: 06/05/2015)
06/19/2015	1185	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/19/2015)
06/22/2015	1186	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/22/2015)
07/29/2015	1207	SEALED DOCUMENT placed in vault. (rz) (Entered: 07/29/2015)
08/07/2015	1209	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Arnold J. Levine dated 8/7/2015 re: Reschedule Sentencing....ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 9/18/15 at 3:30pm. (Signed by Judge Victor Marrero on 8/7/2015)(jw) (Entered: 08/07/2015)
08/27/2015	1212	SEALED DOCUMENT placed in vault. (mps) (Entered: 08/27/2015)
09/10/2015	1213	ENDORSED LETTER as to (12-Cr-31-61) Jose Munoz addressed to Judge Victor Marrero from Attorney Arnold J. Levine dated September 9, 2015 re: Mr. Munoz is scheduled to be sentenced by Your Honor, on Friday, September 18, 2015, at 3:30 p.m. I am writing to request an adjournment of sentencing. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 10-16-15 at 2:45 p.m. SO ORDERED. (Signed by Judge Victor Marrero on 9/10/2015)(bw) (Entered: 09/10/2015)
09/30/2015	1215	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/30/2015)

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10/09/2015	1216	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/09/2015)
10/09/2015	1217	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/09/2015)
10/14/2015	1218	SEALED DOCUMENT placed in vault. (rz) (Entered: 10/14/2015)
10/14/2015		Set/Reset Deadlines/Hearings as to Jose Munoz: Sentencing set for 12/4/2015 at 09:30 AM before Judge Victor Marrero. (ft) (Entered: 10/14/2015)
10/14/2015	<u>1220</u>	ENDORSED LETTER as to (12-Cr-31-61) Jose Munoz addressed to Judge Victor Marrero from Attorney Arnold J. Levine dated October 9, 2015 re: Mr. Munoz isscheduled to be sentenced by Your Honor on Friday, October 16, 2015, at 2:45 p.m. I respectfully request an adjournment of Mr. Munoz's sentencing. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 12-4-15 at 9:30 A.M. SO ORDERED. (Signed by Judge Victor Marrero on 10/14/2015) (bw) (Entered: 10/14/2015)
10/19/2015	1222	SEALED DOCUMENT placed in vault. (rz) (Entered: 10/19/2015)
10/19/2015	1223	SEALED DOCUMENT placed in vault. (rz) (Entered: 10/19/2015)
11/24/2015	<u>1228</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Arnold J. Levine dated 11/24/2015 re: Reschedule Sentencing...ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 12/18/15 at 1:00pm. SO ORDERED (Sentencing set for 12/18/2015 at 01:00 PM before Judge Victor Marrero) (Signed by Judge Victor Marrero on 11/24/15)(jw) (Entered: 11/25/2015)
12/09/2015	<u>1231</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Arnold J. Levine dated 12/8/2015 re: Reschedule Sentencing...ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 2/5/16 at 10:30(Sentencing set for 2/5/2016 at 10:30 AM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 12/9/2015)(jw) (Entered: 12/09/2015)
12/09/2015	1232	SEALED DOCUMENT placed in vault. (mps) (Entered: 12/09/2015)
12/22/2015	1239	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/22/2015)
02/01/2016	<u>1251</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Arnold J. Levine dated 2/1/2016 re: I need additional time to complete my sentencing submission. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 3-4-16 at 10:15 a.m. (Sentencing set for 3/4/2016 at 10:15 AM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 2/1/2016) (ft) (Entered: 02/01/2016)
02/25/2016	<u>1258</u>	CONSENT LETTER MOTION addressed to Judge Victor Marrero from Arnold J. Levine dated February 25, 2016 re: Adjournment of sentencing . Document filed by Jose Munoz. (Levine, Arnold) (Entered: 02/25/2016)
03/03/2016	<u>1262</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Amold J. Levine dated 3/1/2016 re: Adjournment of Sentencing. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 4-8-16 at 1:00 p.m. (Signed by Judge Victor Marrero on 3/3/2016)(ft) (Entered: 03/03/2016)
03/03/2016		Set/Reset Deadlines/Hearings as to Jose Munoz: Sentencing set for 4/8/2016 at 01:00 PM before Judge Victor Marrero. (ft) (Entered: 03/03/2016)
03/04/2016	1263	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/04/2016)

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03/04/2016	1264	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/04/2016)
03/11/2016	1265	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/11/2016)
03/24/2016	1272	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/24/2016)
04/01/2016	<u>1276</u>	ENDORSED LETTER as to (12-Cr-31-61) Jose Munoz addressed to Judge Victor Marrero from Attorney dated April 1, 2016 re: I am writing to request one final adjournment of sentencing for one week, until April 15, 2016, or a date thereafter convenient for the court. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 4-15-16 at 2:30 p.m. SO ORDERED. (Signed by Judge Victor Marrero on 4/1/2016)(bw) (Entered: 04/01/2016)
04/04/2016	1277	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/04/2016)
04/04/2016	1278	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/04/2016)
04/11/2016	1279	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/11/2016)
04/11/2016	1280	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/11/2016)
04/12/2016	<u>1281</u>	SENTENCING SUBMISSION by Jose Munoz. (Attachments: # <u>1</u> Exhibit Letter from Aunt, # <u>2</u> Exhibit News articles re defendant's uncle, # <u>3</u> Exhibit Awards and certificates, # <u>4</u> Exhibit BOP work evaluation, # <u>5</u> Exhibit Redacted proffer notes) (Levine, Arnold) (Entered: 04/12/2016)
04/15/2016	<u>1283</u>	ENDORSED LETTER as to (S10-12-Cr-31-61) Jose Munoz addressed to Judge Victor Marrero from AUSA Hadassa Waxman dated April 13, 2016 re: As such, with the defendant's consent, the Government respectfully requests that the sentencing be adjourned until May 13, or any time thereafter that is convenient for the Court. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 5-13-16 at 1:30 p.m. SO ORDERED. (Signed by Judge Victor Marrero on 4/15/2016)(bw) (Entered: 04/15/2016)
04/25/2016	1285	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/25/2016)
05/11/2016	<u>1290</u>	ENDORSED LETTER as to (12-Cr-31-61) Jose Munoz addressed to Judge Victor Marrero from AUSA Hadassa Waxman dated May 10, 2016 re: In connection with the above referenced matter, the parties are scheduled to appear before your Honor for sentencing on Friday, May 13, 2016. With the defendant's consent, the Government respectfully requests that the sentencing be adjourned until June 3, 2016, or any time thereafter convenient for the Court. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 6-3-16 at 3:30 p.m. SO ORDERED. (Signed by Judge Victor Marrero on 5/11/2016)(bw) (Entered: 05/11/2016)
05/11/2016	1292	SEALED DOCUMENT placed in vault. (rz) (Entered: 05/11/2016)
05/11/2016	1293	SEALED DOCUMENT placed in vault. (rz) (Entered: 05/11/2016)
05/11/2016	1294	SEALED DOCUMENT placed in vault. (rz) (Entered: 05/12/2016)
05/18/2016	1299	SEALED DOCUMENT placed in vault. (rz) (Entered: 05/18/2016)
05/18/2016	1300	SEALED DOCUMENT placed in vault. (rz) (Entered: 05/18/2016)
06/03/2016	<u>1306</u>	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Arnold J. Levine dated 6/1/2016 re: Adjournment of Sentencing. ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 7-15-16 at 11:30 a.m. (Sentencing set for 7/15/2016 at 11:30 AM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 6/3/2016)(ft) (Entered: 06/03/2016)

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06/03/2016		Set/Reset Deadlines/Hearings as to Jose Munoz: Sentencing set for 7/15/2016 at 11:30 AM before Judge Victor Marrero. (ft) (Entered: 06/03/2016)
06/03/2016	1307	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/03/2016)
06/03/2016	1308	ENDORSED LETTER as to (12-Cr-31-61) Jose Munoz addressed to Judge Loretta A. Preska from Defendant Jose Munoz, not dated re: It has come to my attention that the Court proceeding being used to adjudicate the pending case, what appears to be against me, or under statutory law. ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by defendant Jose Munoz. SO ORDERED. (Signed by Judge Victor Marrero on 6/3/2016)(bw) (Entered: 06/03/2016)
06/07/2016	1309	LETTER by Jose Munoz addressed to Judge Loretta A. Preska from Jose Munoz re: Letter from Jose Munoz (jw) (Entered: 06/13/2016)
06/20/2016	1312	SEALED DOCUMENT placed in vault. (mps) (Entered: 06/20/2016)
06/24/2016	1316	MOTION to Dismiss <i>Count Fourteen for Failure to State an Offense</i> . Document filed by Jose Munoz. (Levine, Arnold) (Entered: 06/24/2016)
07/07/2016	1321	SEALED DOCUMENT placed in vault. (mps) (Entered: 07/07/2016)
07/12/2016	1327	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated 7/11/2016 re: Reschedule Sentencing....ENDORSEMENT: Request GRANTED. The sentencing of defendant Jose Munoz herein is rescheduled to 9/16/16 at 3:30pm(Sentencing set for 9/16/2016 at 03:30 PM before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 7/11/2016)(jw) (Entered: 07/12/2016)
08/03/2016	1336	SEALED DOCUMENT placed in vault. (rz) (Entered: 08/03/2016)
09/08/2016	1352	ORDER as to Jose Munoz(Status Conference set for 9/23/2016 at 02:00 PM before Judge Victor Marrero)It is hereby ordered that a subsequent conference for the above-named defendant before Judge Marrero shall be scheduled for September 23, 2016 at 2:00 p.m. (Signed by Judge Victor Marrero on 9/8/2016)(jw) (Entered: 09/08/2016)
09/16/2016	1355	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated 9/15/2016 re: The Government requests that the sentencing be adjourned for a period of 45 days or any time thereafter convenient for the Court....ENDORSEMENT: SO ORDERED. (Signed by Judge Victor Marrero on 9/16/2016)(jw) (Entered: 09/16/2016)
09/16/2016	1356	ORDER as to Jose Munoz (Sentencing set for 10/14/2016 at 10:00 AM before Judge Victor Marrero.) In light of the subsequent conference scheduled for theabove-named defendant on September 23, 2016 at 2:00 p.m., it is hereby ordered that the sentencing of the defendant before Judge Marrero, currently scheduled to be held on Friday, September 16, 2016 at 3:30 p.m., shall be rescheduled to Friday, October 14, 2016 at 10:00 a.m. (Signed by Judge Victor Marrero on 9/16/2016)(jw) (Entered: 09/16/2016)
09/23/2016		Minute Entry for proceedings held before Judge Victor Marrero: Status Conference as to Jose Munoz held on 9/23/2016. Defense counsel Arnold Levine present with defendant. AUSA Michael Gerber present for the Government. Court reporter present. The Court denied Defendant's motions concerning the Court's jurisdiction over this case. Defendant indicated that it was up to the Court's discretion whether or not defendant should proceed pro se. The Court denied defendant's request. (jbo) (Entered: 09/26/2016)
09/26/2016	1362	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/26/2016)

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10/05/2016	1365	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Jose Munoz dated 9/28/2016 re: Requesting to be permitted on my own expense to conduct a polygraph examination and present the result at my own expense to conduct a...ENDORSEMENT: Request DENIED. The Court is not provided that the polygraph examination defendant requests in warranted under this circumstances of this case. (Signed by Judge Victor Marrero on 10/5/2016)(jw) (Entered: 10/05/2016)
10/14/2016	1373	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Hadassa Waxman dated 10/13/2016 re: this Court must deny Munoz's motion to dismiss. ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by the Government. (Signed by Judge Victor Marrero on 10/14/2016)(ft) (Entered: 10/14/2016)
10/18/2016	1376	DECISION AND ORDER denying 1316 Motion to Dismiss as to Jose Munoz (61). For the reasons stated above, it is hereby ORDERED that the motion of defendant Jose Munoz ("Munoz") (Dkt. No. 1316) to dismiss count fourteen of superseding indictment s10 12-CR-31, is DENIED. It is hereby ordered that the sentencing of Munoz before Judge Marrero, currently scheduled to be held on Friday, October 21, 2016 at 10:00 a.m., shall be rescheduled to Friday, October 21, 2016 at 2:30 p.m. SO ORDERED. (Signed by Judge Victor Marrero on 10/17/2016) (ft) (Entered: 10/18/2016)
10/18/2016		Set/Reset Deadlines/Hearings as to Jose Munoz: Sentencing set for 10/21/2016 at 02:30 PM before Judge Victor Marrero. (ft) (Entered: 10/18/2016)
10/18/2016	1378	ORDER as to Jose Munoz (Sentencing set for 10/28/2016 at 02:30 PM before Judge Victor Marrero.) It is hereby ordered that the sentencing of the above-named defendant before Judge Marrero, currently scheduled to be held on Friday, October 21, 2016 at 2:30 p.m., shall be rescheduled to Friday, October 28, 2016 at 2:30 p.m. (Signed by Judge Victor Marrero on 10/18/2016)(jw) (Entered: 10/18/2016)
10/21/2016	1381	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/21/2016)
10/25/2016	1383	ORDER as to Jose Munoz (Sentencing set for 11/4/2016 at 03:30 PM before Judge Victor Marrero.) It is hereby ordered that the sentencing of the above-named defendant before Judge Marrero, currently scheduled to be held on Friday, October 28, 2016 at 2:30 p.m., shall be rescheduled to Friday, November 4, 2016 at 3:30 p.m. (Signed by Judge Victor Marrero on 10/25/2016)(jw) (Entered: 10/26/2016)
10/27/2016	1384	ENDORSED LETTER as to Jose Munoz addressed to Judge Victor Marrero from Jose Munoz re: FATICO HEARING. ENDORSEMENT: Request DENIED. Defendant's stated reason for a hearing amount to a stantive challenge to essential elements of the entire crime that the jury found beyond a reasonable doubt. The Court finds no warrant for a hearing for the defendant to contest those factual findings. (Signed by Judge Victor Marrero on 10/27/2016)(ft) (Entered: 10/27/2016)
11/02/2016	1385	SEALED DOCUMENT placed in vault. (mps) (Entered: 11/02/2016)
11/04/2016		Minute Entry for proceedings held before Judge Victor Marrero: Sentencing held on 11/4/2016 for Jose Munoz (61) Count 1s,2s,9s,10s,11s,12s,13s,14s. Defense counsel Arnold Levine present with defendant. AUSA Hadassa Waxman present for the Government. Court reporter present. Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. To be follow by a total of five (5) years of supervised released: five (5) years on counts one, two,

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		nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently. The Government moved to dismiss the underlying indictments and any open counts in this case and the Court so ordered. (ft) Modified on 11/9/2016 (jbo). (Entered: 11/07/2016)
11/07/2016		DISMISSAL OF COUNTS on Government Motion as to Jose Munoz (61) Count 1,2,9,10,11,15,16,17. (ft) (Entered: 11/07/2016)
11/07/2016	1389	JUDGMENT as to Jose Munoz (61), Count(s) 1, 10, 11, 15, 16, 17, 2, 9, Dismissed; Count(s) 1s, 2s, 9s, 10s, 11s, 12s, 13s, 14s, Imprisonment: Seventy-Five (75) years total. Count One (twenty years) and Count Nine (twenty years) to run concurrently. Count Two (five years) to run consecutively to all other counts. Counts Ten (twenty-five years) and Count Eleven (twenty five years) merge and run consecutively to all other counts. Count Fourteen (twenty-five years) to run consecutively to all other counts. Count Twelve (five years) and Count Thirteen (five years) to run concurrently with all other counts. Supervised Release: A total of five (5) years of supervised released: five (5) years on counts one, two, nine, ten, eleven and fourteen to run concurrently and three (3) years on each of counts twelve and thirteen also to run concurrently. The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Bureau of Prisons designate a facility in the vicinity of Tampa, Florida. 1) DEFENDANT WILL PARTICIPATE IN A PROGRAM APPROVED BY THE UNITED STATES PROBATION OFFICE, WHICH PROGRAM MAY INCLUDE TESTING TO DETERMINE WHETHER THE DEFENDANT HAS REVERTED TO USING DRUGS OR ALCOHOL. THE COURT AUTHORIZES THE RELEASE OF AVAILABLE DRUG TREATMENT EVALUATIONS AND REPORTS TO THE SUBSTANCE ABUSE TREATMENT PROVIDER, AS APPROVED BY THE PROBATION OFFICER. DEFENDANT WILL BE REQUIRED TO CONTRIBUTE TO THE COSTS OF SERVICES RENDERED (CO-PAYMENT), IN AN AMOUNT DETERMINED BY THE PROBATION OFFICER, BASED ON ABILITY TO PAY OR AVAILABILITY OF THE THIRD-PARTY PAYMENT.(2) DEFENDANT SHALL PARTICIPATE IN A MENTAL HEALTH PROGRAM APPROVED BY THE U.S. PROBATION OFFICE. DEFENDANT SHALL CONTINUE TO TAKE ANY PRESCRIBED MEDICATIONS UNLESS OTHERWISE INSTRUCTED BY THE HEALTH PROVIDER. DEFENDANT SHALL CONTRIBUTE TO THE COSTS OF SERVICES RENDERED NOT COVERED BY THIRD-PARTY PAYMENT, IF DEFENDANT HAS THE ABILITY TO PAY. THE COURT AUTHORIZES THE RELEASE OF AVAILABLE PSYCHOLOGICAL AND PSYCHIATRIC EVALUATIONS AND REPORTS TO THE HEALTH CARE PROVIDER. (3) DEFENDANT SHALL SUBMIT HIS PERSON, RESIDENCE, PLACE OF BUSINESS, VEHICLE, OR ANY OTHER PREMISES UNDER DEFENDANT'S CONTROL TO A SEARCH ON THE BASIS THAT THE PROBATION OFFICER HAS REASONABLE BELIEF THAT CONTRABAND OR EVIDENCE OF A VIOLATION OF THE CONDITIONS OF THE RELEASE MAY BE FOUND. THE SEARCH MUST BE CONDUCTED AT A REASONABLE TIME AND IN A REASONABLE MANNER. FAILURE TO SUBMIT TO A SEARCH MAY BE GROUNDS FOR REVOCATION. DEFENDANT SHALL INFORM ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO SEARCH PURSUANT TO THIS CONDITION. The defendant shall pay the special assessment fee of \$800 as a lump sum payment due immediately. (Signed by Judge Victor Marrero on 11/4/2016)(ft) (Entered: 11/07/2016)
11/17/2016	1391	TRANSCRIPT REQUEST by Jose Munoz for a Trial proceeding held on 11/7/14, 11/17-12/11/14, 3/13/15, 11/4/16 before Judge Victor Marrero Transcript due by 12/1/2016. (Levine, Arnold) (Entered: 11/17/2016)

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11/17/2016	1392	NOTICE OF APPEAL by Jose Munoz from 1389 Judgment. (tp) (Entered: 11/18/2016)
11/17/2016		Appeal Remark as to Jose Munoz re: 1392 Notice of Appeal - Final Judgment. APPEAL FEE WAIVED. ATTORNEY CJA. (tp) (Entered: 11/18/2016)
11/18/2016		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Jose Munoz to US Court of Appeals re: 1392 Notice of Appeal - Final Judgment. (tp) (Entered: 11/18/2016)
11/18/2016		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Jose Munoz re: 1392 Notice of Appeal - Final Judgment were transmitted to the U.S. Court of Appeals. (tp) (Entered: 11/18/2016)
12/07/2016	1406	TRANSCRIPT of Proceedings as to Jose Munoz re: Sentence held on 11/4/16 before Judge Victor Marrero. Court Reporter/Transcriber: Andrew Walker, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/28/2016. Redacted Transcript Deadline set for 1/7/2017. Release of Transcript Restriction set for 3/7/2017. (McGuirk, Kelly) (Entered: 12/07/2016)
12/07/2016	1407	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Jose Munoz. Notice is hereby given that an official transcript of a Sentence proceeding held on 11/4/16 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/07/2016)
12/12/2016	1410	SEALED DOCUMENT placed in vault. (mps) (Entered: 12/12/2016)
12/13/2016	1412	NOTICE OF ATTORNEY APPEARANCE Timothy Vincent Capozzi appearing for USA. (Capozzi, Timothy) (Entered: 12/13/2016)
12/21/2016	1414	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/21/2016)
01/12/2017	1416	SEALED DOCUMENT placed in vault. (rz) (Entered: 01/12/2017)
01/23/2017	1419	SEALED DOCUMENT placed in vault. (mps) (Entered: 01/23/2017)
01/23/2017	1420	SEALED DOCUMENT placed in vault. (mps) (Entered: 01/23/2017)
01/31/2017	1425	SEALED DOCUMENT placed in vault. (rz) (Entered: 01/31/2017)
01/31/2017	1426	SEALED DOCUMENT placed in vault. (rz) (Entered: 01/31/2017)
02/10/2017	1429	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/10/2017)
02/15/2017	1431	SEALED DOCUMENT placed in vault. (rz) (Entered: 02/15/2017)
02/15/2017	1432	SEALED DOCUMENT placed in vault. (rz) (Entered: 02/15/2017)
04/13/2017	1444	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/13/2017)
04/13/2017	1445	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/13/2017)
04/13/2017	1446	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/13/2017)
04/21/2017	1448	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/21/2017)
04/21/2017	1449	SEALED DOCUMENT placed in vault. (mps) (Entered: 04/21/2017)

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05/18/2017	1465	SEALED DOCUMENT placed in vault. (mps) (Entered: 05/18/2017)
08/11/2017	1501	SEALED DOCUMENT placed in vault. (rz) (Entered: 08/11/2017)
08/28/2017	1513	SEALED DOCUMENT placed in vault. (mps) (Entered: 08/28/2017)
09/20/2017	1529	SEALED DOCUMENT placed in vault. (rz) (Entered: 09/20/2017)
09/20/2017	1530	SEALED DOCUMENT placed in vault. (rz) (Entered: 09/20/2017)
10/02/2017	1534	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/02/2017)
10/05/2017	1537	SEALED DOCUMENT placed in vault. (rz) (Entered: 10/05/2017)
11/15/2017	1558	SEALED DOCUMENT placed in vault. (rz) (Entered: 11/15/2017)
12/04/2017	1564	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/04/2017)
12/04/2017	1565	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/04/2017)
12/04/2017	1566	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/04/2017)
12/19/2017	1574	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/19/2017)
01/18/2018	1585	SEALED DOCUMENT placed in vault. (mps) (Entered: 01/18/2018)
01/29/2018	1588	SEALED DOCUMENT placed in vault. (mps) (Entered: 01/29/2018)
02/13/2018	1590	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/13/2018)
02/23/2018	1591	SEALED DOCUMENT placed in vault. (rz) (Entered: 02/23/2018)
02/23/2018	1592	SEALED DOCUMENT placed in vault. (rz) (Entered: 02/23/2018)
03/08/2018	1598	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/12/2018)
04/27/2018	1629	SEALED DOCUMENT placed in vault. (rz) (Entered: 04/27/2018)
05/11/2018	1634	SEALED DOCUMENT placed in vault. (mps) (Entered: 05/11/2018)
05/25/2018	1641	SEALED DOCUMENT placed in vault. (mps) (Entered: 05/25/2018)
06/27/2018	<u>1648</u>	NOTICE OF ATTORNEY APPEARANCE: James R DeVita appearing for Rasheed Binns. Appearance Type: CJA Appointment. (DeVita, James) Modified on 6/28/2018 (ka). (Entered: 06/27/2018)
08/03/2018	1658	SEALED DOCUMENT placed in vault. (rz) (Entered: 08/03/2018)
08/07/2018	1659	SEALED DOCUMENT placed in vault. (rz) (Entered: 08/07/2018)
09/07/2018	1671	SEALED DOCUMENT placed in vault. (mhe) (Entered: 09/07/2018)
11/27/2018	1690	SEALED DOCUMENT placed in vault. (rz) (Entered: 11/27/2018)
02/13/2019	1695	SEALED DOCUMENT placed in vault. (rz) (Entered: 02/13/2019)
02/26/2019	1696	SEALED DOCUMENT placed in vault. (rz) (Entered: 02/26/2019)
03/19/2019	1699	SEALED DOCUMENT placed in vault. (rz) (Entered: 03/19/2019)
04/09/2019	<u>1705</u>	MANDATE of USCA (Certified Copy) as to Jose Munoz re: <u>1392</u> Notice of Appeal - Final Judgment, USCA Case Number 16-3890-cr. ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is AFFIRMED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 4/9/2019. (tp) (Entered: 04/10/2019)

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04/10/2019		Transmission of USCA Mandate/Order to the District Judge re: 1705 USCA Mandate - Final Judgment Appeal. (tp) (Entered: 04/10/2019)
05/31/2019	1713	SEALED DOCUMENT placed in vault. (mhe) (Entered: 06/03/2019)

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