

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

2019 JAN -6 PM 12:39

APPEAL NUMBER 18-1393

UNITED STATES OF AMERICA,
Appellee,

v.

DAVID MORILLO CRUZ,
Appellant.

APPEAL FROM THE FEBRUARY 14, 2018 JUDGMENT OF CONVICTION
AND SENTENCE ENTERED IN THE U.S. DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY AT CRIMINAL NUMBER 13-CR-197

APPENDIX FOR THE BRIEF OF THE APPELLANT

José Luis Ongay, Esquire
Attorney for Appellant

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Plymouth Meeting, PA 19462
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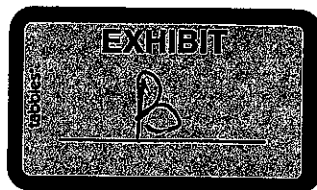


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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

DAVID MORILLO CRUZ,

Defendant.

Docket Number

13-cr-000197-PD

PRO SE NOTICE OF APPEAL

Please take notice that on this day, DAVID MORILLO CRUZ, appeals the
Judgment entered by this Honorable Court on February 14, 2018.

/s/ David Morillo Cruz

David Morillo Cruz

Date: February 24, 2018

CERTIFICATE OF SERVICE

I certify that on this date I served a copy of this Notice of Appeal upon the assigned AUSA via the ECF filing system.

/s/ David Morillo Cruz

David Morillo Cruz

Date: February 24, 2018

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA

v.

DAVID MORILLO CRUZ

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:13CR000197-02

USM Number: 69067-066

Louis T. Savino, Jr.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment on November 19, 2013, by an Open Plea.

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

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC 846 and	Attempted possession with intent to distribute 1 kilogram or more of heroin	3/27/2013	One

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) _____ ☐ 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.

1/31/2018

Date of Imposition of Judgment

Paul S. Diamond, U.S.D.C.J.

Signature of Judge

Paul S. Diamond
Name and Title of Judge

2/13/18
Date

DEFENDANT: DAVID MORILLO CRUZ
CASE NUMBER: DPAE2:13CR000197-02

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
120 Months on Count 1 to run consecutively to any term of imprisonment imposed in the New York sentence.

☒ The court makes the following recommendations to the Bureau of Prisons:
It is recommended that the Defendant receive vocational training.
It is also recommended that the Defendant be designated to a facility close to Philadelphia.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DAVID MORILLO CRUZ
CASE NUMBER: DPAE2:13CR000197-02

SUPERVISED RELEASE

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

Five Years on Count 1 of the Indictment.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: DAVID MORILLO CRUZ
CASE NUMBER: DPAE2:13CR000197-02

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: DAVID MORILLO CRUZ
CASE NUMBER: DPAE2:13CR000197-02

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall cooperate with Immigration and Customs Enforcement to resolve any problems with his/her status in the United States. The defendant shall provide truthful information and abide by the rules and regulations of the Bureau of Immigration and Customs Enforcement. If deported, the defendant shall not re-enter the United States without the written permission of the Attorney General. If the defendant re-enters the United States, he/she shall report in person to the nearest U. S. Probation Office within 48 hours.

DEFENDANT: DAVID MORILLO CRUZ
 CASE NUMBER: DPAE2:13CR000197-02

CRIMINAL MONETARY PENALTIES

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

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

☐ 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>
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TOTALS \$ _____ \$ _____

☐ 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:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DAVID MORILLO CRUZ
CASE NUMBER: DPAA2:13CR000197-02

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall make payments from any wages he may earn in prison in accordance with The Bureau of Prisons' Inmate Financial Responsibility Program. Any portion of the fine or assessment that is not paid in full at the time of release from imprisonment shall become a condition of Supervised Release and shall be paid at the rate of \$100.00 per month to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

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) JVT assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

CLOSED,APPEAL,INTERP,INDI

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CRIMINAL DOCKET FOR CASE #: 2:13-cr-00197-PD-2**

Case title: USA v. PENA DIAZ et al
Magistrate judge case number: 2:13-mj-
00394

Date Filed: 04/24/2013
Date Terminated: 02/14/2018

Assigned to: HONORABLE
PAUL S. DIAMOND

Appeals court case number:
18-1393 USCA FOR THE
THIRD CIRCUIT

Defendant (2)

DAVID MORILLO CRUZ represented by **DAVID MORILLO CRUZ**

TERMINATED: 02/14/2018

69067-066
PHILADELPHIA
FEDERAL DETENTION
CENTER
Inmate Mail/Parcels
P.O. BOX 562
PHILADELPHIA, PA 19106
PRO SE

JOSE LUIS ONGAY
600 WEST GERMANTOWN
PIKE
SUITE 400
PLYMOUTH MEETING, PA
19462
484-681-1117

(10)

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

LOUIS T. SAVINO , JR.

LOUIS T. SAVINO AND

ASSOCIATES

SUITE 1516

TWO PENN CENTER PLAZA

15TH AND JOHN

FITZGERALD KENNEDY

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Louistsavino@yahoo.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: Retained

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Authority

1234 Market Street

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PHILADELPHIA, PA 19107

215-580-3154

Email: bsmith@septa.org

Designation: CJA Appointment

ELLIOT M. COHEN

SAVINO, LOUIS T. &

ASSOC.

11

15TH & JFK BLVD.
TWO PENN CENTER SUITE
1516
PHILADELPHIA, PA 19102
215-568-1300
Email:
elliottcohenesquire@yahoo.com

ATTORNEY TO BE NOTICED

Designation: Retained

Pending Counts

21:846 ATTEMPTED
POSSESSION WITH
INTENT TO DISTRIBUTE
1 KILOGRAM OR MORE
OF HEROIN; 18:2 AIDING
AND ABETTING
(1)

Disposition

IMPRISONMENT: 120
MONTHS; SUPERVISED
RELEASE: 5 YEARS;
SPECIAL ASSESSMENT:
\$100

Highest Offense Level
(Opening)

Felony

Terminated Counts

None

Highest Offense Level
(Terminated)

None

Complaints

Disposition

12

KNOWINGLY AND
INTENTIONALLY
ATTEMPTED TO
POSSESS, AND AIDED
AND ABETTED IN THE
ATTEMPT TO POSSESS, 1
KILOGRAM OR MORE,
THAT IS
APPROXIMATELY 2
KILOGRAMS OF A
MIXTURE AND
SUBSTANCE
CONTAINING A
DETECTABLE AMOUNT
OF HEROIN, A
SCHEDULE I
CONTROLLED
SUBSTANCE, IN
VIOLATION OF TITLE
21:846 AND TITLE 18:2

Plaintiff

USA

represented by **ANDREA N. PHILLIPS**
U.S. ATTORNEY'S OFFICE
ONE INDEPENDENCE
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PHILADELPHIA, PA 19106-
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andrea.phillips@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE

13

NOTICED

ANDREA N. PHILLIPS

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE

NOTICED

Designation: Assistant US
Attorney

Date Filed	#	Docket Text
03/27/2013	<u>1</u>	COMPLAINT as to LUIS LUGO SALAZAR (1), FERNANDO GUZMAN (2), JOSE RAFAEL MARCANO (3). (mac,) [2:13-mj-00394] (Entered: 03/28/2013)
03/28/2013		Arrest of LUIS LUGO SALAZAR, FERNANDO GUZMAN, JOSE RAFAEL MARCANO (mac,) [2:13-mj-00394] (Entered: 03/28/2013)
03/28/2013	<u>6</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE LINDA K. CARACAPPA: Initial Appearance/AC as to JOSE RAFAEL MARCANO held on 3/28/13. The Government's Motion for Temporary Detention is Granted. Continued to April 1, 2013 for detention hearing ATTORNEY BILLY J. SMITH for JOSE RAFAEL MARCANO ADDED IN CASE. Signed by Judge Linda K. Caracappa.Court Reporter ESR.(mac,) [2:13-mj-00394] (Entered: 03/28/2013)
03/28/2013	<u>7</u>	CJA 23 Financial Affidavit by JOSE RAFAEL MARCANO (mac,) [2:13-mj-00394] (Entered: 03/28/2013)
04/02/2013	<u>12</u>	Minute Entry for proceedings held before

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		MAGISTRATE JUDGE TIMOTHY R. RICE;PE/PTD Hearing as to JOSE RAFAEL MARCANO held on 4/1/2013. THE DEFENDANT STIPULATED TO DETENTION. PROBABLE CAUSE Hearing CONTINUE TO 4/3/2012 AT 01:30 PM in COURTROOM 5-A before MAGISTRATE JUDGE TIMOTHY R. RICE.SIGNED BY JUDGE TIMOTHY R. RICE Court Reporter ESR.(mac,) [2:13-mj-00394] (Entered: 04/03/2013)
04/04/2013	<u>13</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE TIMOTHY R. RICE;Probable Cause Hearing as to JOSE RAFAEL MARCANO held on 4/3/2013. THE DEFENDANT STIPULATED TO PRETRIAL DETENTION. AFTER A HEARING, PROBABLE CAUSE WAS FOUND BY THE COURT. SIGNED BY JUDGE TIMOTHY R. RICE. Court Reporter ESR.(kk,) [2:13-mj-00394] (Entered: 04/04/2013)
04/10/2013	<u>18</u>	Arrest Warrant Returned Executed on 3/27/13 in case as to JOSE RAFAEL MARCANO. (mac,) [2:13-mj-00394] (Entered: 04/11/2013)
04/24/2013	<u>21</u>	SEALED INDICTMENT as to WILHER ALEXANDER PENA DIAZ (1) count(s) 1, 2, DAVID MORILLO CRUZ (2) count(s) 1, FERNANDO GUZMAN (3) count (s) 1. (tjsl,) (Additional attachment(s) added on 5/7/2013: # <u>1</u> DESIGNATION FORM) (kesl,). (Entered: 04/24/2013)
04/24/2013	<u>22</u>	MOTION AND ORDER TO SEAL INDICTMENT AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN.. Signed by MAGISTRATE JUDGE HENRY S. PERKIN on 4/24/13.4/24/13 Entered and Copies E-Mailed. (tjsl,) (kesl,). (Entered: 04/24/2013)
05/06/2013	<u>24</u>	Letter from AUSA Unsealing Indictment as to WILHER

		ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN (kesl) (Entered: 05/07/2013)
05/07/2013	<u>27</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Arraignment is set for 5/9/2013 at 10:30 AM in COURTROOM 5-A before MAGISTRATE JUDGE ELIZABETH T. HEY. (ea,) (Entered: 05/07/2013)
05/13/2013	<u>31</u>	Minute Entryfor proceedings held before MAGISTRATE JUDGE ELIZABETH T. HEYArraignment as to DAVID MORILLO CRUZ (2) Count 1 held on 5/10/13. Plea entered by DAVID MORILLO CRUZ Not Guilty on count 1. Counsel have 14 days to file pretrial motions.Court Reporter ESR.(ke) (Entered: 05/13/2013)
05/14/2013	<u>33</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ JURY TRIAL IS SET FOR 6/12/2013 AT 9:30 AM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 05/14/2013)
05/15/2013	<u>37</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ A CONTINUANCE/SCHEDULING HEARING IS SET FOR 6/4/2013 AT 4:00 PM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 05/15/2013)
05/15/2013	<u>40</u>	REPORT OF SPEEDY TRIAL DELAY AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ THAT THE CALENDERING OF PROCEDURES AS TO THE ABOVE DEFTS. IN THE WITHIN ACTION PURSUANT TO THE COURT'S PLAN ADOPTED PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 50(b) AND IN CONFORMITY WITH THE PROVISIONS OF THE SPEEDY TRIAL ACT OF 1974 AND THE FEDERAL JUVENILE DELINQUENCY ACT, HAS BEEN DELAYED FOR THE REASON THAT THE DEFTS.

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		ARE AWAITING THE TRIAL OF CO-DEFT. WHERE NO SEVERANCE HAS BEEN GRANTED. Signed by HONORABLE STEWART DALZELL on 5/15/13.5/15/13 Entered and Copies E-Mailed. (ke) (Entered: 05/15/2013)
06/05/2013	<u>46</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ JURY TRIAL IS RESCHEDULED TO 9/9/2013 AT 9:30 AM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 06/05/2013)
06/05/2013	48	Minute Entryfor proceedings held before HONORABLE STEWART DALZELLHearing Sur: as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN held on 6/4/13. Motion of Deft. Guzman to continue trial (#35) and motion of Deft. Diaz for extension of time to file pretrial motions (#41). Mr. Cohen advises that Deft. Cruz joins the motions. AUSA addresses the Court. Gov't. shall deliver all discovery to the Defts. by 6/10/13. Defts. sworn and agree that a continuance of trial is in their best interests. Motions #35 and 41 are GRANTED. All pretrial motions shall be filed by 7/15/13 with responses due by 7/29/13. Trial is specially listed to commence on 9/9/13 at 9:30 am.Court Reporter K. FELDMAN.(ke) (Entered: 06/05/2013)
06/05/2013	<u>49</u>	ORDER AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN THAT 35 MOTION TO CONTINUE TRIAL DATE FILED BY FERNANDO GUZMAN AND 41 MOTION FOR EXTENSION OF TIME TO FILE PRETRIAL MOTIONS FILED BY WILHER ALEXANDER PENA DIAZ ARE GRANTED; THE GOV'T. SHALL DELIVER ITS DISCOVERY TO DEFENSE COUNSEL BY 5:00 PM ON 6/10/2013; ANY PRETRIAL MOTIONS SHALL BE FILED BY NOON ON 7/15/13,

		ETC. A HEARING ON ANY UNRESOLVED PRETRIAL MOTIONS SHALL COMMENCE AT A MUTUALLY CONVENIENT TIME TO BE SET AFTER REVIEW OF THE PARTIES' SUBMISSIONS; AND TRIAL IN THIS MATTER, NOT TO EXCEED 2 DAYS FOR THE GOVTS'. CASE IN CHIEF, IS SPECIALLY LISTED TO COMMENCE ON 9/9/2013 AT 09:30 AM IN COURTROOM 15-B. Signed by HONORABLE STEWART DALZELL on 6/5/13.6/5/13 Entered and Copies E-Mailed. (ke) (Entered: 06/05/2013)
08/14/2013	<u>58</u>	First MOTION to Continue of <i>Trial</i> by DAVID MORILLO CRUZ. (SAVINO, LOUIS) (Entered: 08/14/2013)
08/14/2013	<u>59</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ A CONTINUANCE/SCHEDULING HEARING IS SET FOR 9/9/2013 AT 10:00 AM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 08/14/2013)
09/09/2013	<u>62</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ THE CONTINUANCE/SCHEDULING HEARING IS SET FOR 9/11/2013 AT 10:00 AM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 09/09/2013)
09/11/2013	<u>68</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ JURY TRIAL IS RESCHEDULED TO 11/18/2013 AT 9:30 AM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 09/11/2013)
09/11/2013	69	Minute Entryfor proceedings held before HONORABLE STEWART DALZELLHearing Sur: as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ held on 9/11/13. Deft. Cruz' motion to continue trial (#58). Mr. Cooper advises that Deft. diaz does not oppose motion. AUSA addresses Court. Court advises

		that wants a written explanation from Nicole Phillips, AUSA, as to how Deft. Cruz was transferred to Brooklyn without Court being made aware of transfer. Counsel addresses Court. Mr. Cooper advises that his client indicated that his family is retaining Counsel. Court advises that Mr. Cooper is the Attorney until someone else enters an appearance and that Attorney who enters case at this time will be required to accept the dates set at this hearing. No further continuances will be granted. Deft. Diaz sworn and agrees that continuance is in his best interest. Deft. Cruz sworn and agrees that continuance is in his best interest. Deft's. motion (#58) is GRANTED. All pretrial motions shall be filed by 10/10/13 with responses due 10/24/13. Trial listed to commence on 11/18/13 at 9:30 am. Court Reporter K. FELDMAN.(ke) (Entered: 09/11/2013)
09/11/2013	<u>70</u>	ORDER AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ THAT <u>58</u> FIRST MOTION TO CONTINUE TRIAL FILED BY DAVID MORILLO CRUZ IS GRANTED; ANY PRETRIAL MOTIONS SHALL BE FILED BY NOON ON 10/10/2013, WITH RESPONSES THERETO DUE BY NOON ON 10/24/2013, ETC. Signed by HONORABLE STEWART DALZELL on 9/11/13.9/11/13 Entered and Copies E-Mailed. (ke) (Entered: 09/11/2013)
09/11/2013	<u>71</u>	ORDER AS TO DAVID MORILLO CRUZ THAT BY NOON ON 9/18/13 THAT ASSIGNED AUSA SHALL EXPLAIN IN DETAIL THE REASON FOR HER IMPERTINENCE IN FAILING TO ADVISE THE COURT OF THE GOVT'S. UNILATERAL DECISION TO MAKE THIS DEFT. ABSENT ON THE DAY HIS TRIAL WAS SCHEDULED TO COMMENCE. Signed by HONORABLE STEWART DALZELL on 9/11/13.9/11/13 Entered and Copies E-Mailed. (ke) (Entered: 09/11/2013)

10/15/2013	<u>81</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZA HEARING ON ALL OUTSTANDING PRETRIAL MOTIONS IS SET FOR 11/5/2013 AT 9:30 AM IN COURTROOM 15-B BEFORE THE HONORABLE STEWART DALZELL. (ea,) (Entered: 10/15/2013)
11/01/2013	<u>90</u>	MOTION TO JOIN AND ADOPT MOTIONS FILED BY CO-DEFENDANT WILHER ALEXANDER PENA DIAZ by DAVID MORILLO CRUZ. (SAVINO, LOUIS) (Entered: 11/01/2013)
11/05/2013	<u>93</u>	Minute Entryfor proceedings held before HONORABLE STEWART DALZELLEvidentiary Hearing as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ held on 11/5/13. Motions of Deft. Diaz for a hearing 74 , to compel discovery 77 and for disclosure of confidential informants and cooperating Witnesses 78 are DENIED AS MOOT. Motion of Deft. Cruz for joinder <u>90</u> is GRANTED. Defts. motion to suppress 75 : Govt's. Witness sworn. Court's finding of fact and conclusions of law - motion to suppress 75 is DENIED. Defts. motion to compel compliance with department policy of charging mandatory minimum sentences is drug cases 79 Counsel argues motion 79 is DENIED.Court Reporter K. FELDMAN.(ke) (Entered: 11/05/2013)
11/05/2013	<u>94</u>	ORDER THAT 75 MOTION TO SUPPRESS FILED BY WILHER ALEXANDER PENA DIAZ AND 79 MOTION TO COMPEL FILED BY WILHER ALEXANDER PENA DIAZ ARE DENIED AND AS TO DOCKET NUMBERS 74 MOTION FOR HEARING FILED BY WILHER ALEXANDER PENA DIAZ, 77 MOTION TO COMPEL FILED BY WILHER ALEXANDER PENA DIAZ, 78 MOTION FOR DISCLOSURE FILED BY WILHER ALEXANDER PENA DIAZ ARE DENIED AS MOOT. Signed by

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		HONORABLE STEWART DALZELL on 11/5/13.11/5/13 ENTERED AND COPIES E-MAILED. (ke) (Entered: 11/05/2013)
11/05/2013	<u>95</u>	ORDER GRANTING <u>90</u> MOTION TO JOIN AND ADOPT MOTIONS FILED BY CO-DEFENDANT WILHER ALEXANDER PENA DIAZ FILED BY DAVID MORILLO CRUZ. Signed by HONORABLE STEWART DALZELL on 11/5/13.11/5/13 ENTERED AND COPIES E-MAILED.(ke) (Entered: 11/05/2013)
11/12/2013	<u>96</u>	ORDER AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ THAT BY NOON ON 11/14/2013, THE PARTIES SHALL FILE PROPOSED JURY INSTRUCITONS, VERDICT SHEETS, AND ANY PRETRIAL MEMORANDA. Signed by HONORABLE STEWART DALZELL on 11/12/13.11/12/13 Entered and Copies E-Mailed. (ke) (Entered: 11/12/2013)
11/14/2013	<u>98</u>	TRIAL MEMORANDUM by USA as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN CERTIFICATE OF SERVICE(PHILLIPS, ANDREA) (Entered: 11/14/2013)
11/14/2013	<u>99</u>	Proposed Voir Dire by USA as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN CERTIFICATE OF SERVICE(PHILLIPS, ANDREA) (Entered: 11/14/2013)
11/14/2013	<u>100</u>	Jury Verdict Sheet as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN. CERTIFICATE OF SERVICE(PHILLIPS, ANDREA) (Entered: 11/14/2013)
11/14/2013	<u>101</u>	Proposed Jury Instructions by USA as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN CERTIFICATE OF SERVICE(PHILLIPS, ANDREA) (Entered: 11/14/2013)

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11/14/2013	<u>102</u>	SEALED MOTION FILED BYB USA AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, CERTIFICATE OF SERVICE. (FILED UNDER SEAL). (ke) (Entered: 11/14/2013)
11/14/2013	<u>103</u>	SEALED ORDER AS TO WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ. (FILED UNDER SEAL). Signed by HONORABLE STEWART DALZELL on 11/14/13.11/14/13 ENTERED AND COPIES MAILED.(ke) (Entered: 11/14/2013)
11/15/2013	<u>105</u>	ORDER AS TO DAVID MORILLO CRUZ THAT THE MOTION TO ADMIT CO-CONSPIRATOR STATEMENTS, EVIDENCE OF CONSCIOUSNESS OF GUILT, CONCEALMENT OF EVIDENCE, CONSTRUCTIVE POSSESSION AND THE USE OF EXPERT TESTIMONY (DOC. #98) IS GRANTED AS UNOPPOSED. Signed by HONORABLE STEWART DALZELL on 11/15/2013.11/15/2013 Entered and Copies E-Mailed. (tomg,) (Entered: 11/15/2013)
11/18/2013	<u>109</u>	ORDER AS TO DAVID MORILLO CRUZ THAT THE U.S. MARSHAL'S SERVICE SHALL DELIVER THE BODY OF WILHER ALEXANDER PENA DIAZ, CURRENTLY AT THE FDC AT 7th AND ARCH STREETS, TO APPEAR AS A WITNESS STARTING AT 9:30 AM ON 11/19/13. Signed by HONORABLE STEWART DALZELL on 11/18/13.11/18/13 Entered and Copies E-Mailed. (ke) (Entered: 11/18/2013)
11/19/2013	<u>113</u>	WAIVER of Presence of Court Stenographer or Electronic Sound Recording Operator and Defendant(s) at Drawing of Jury Panel Members in Criminal Trials as to DAVID MORILLO CRUZ (ke) (Entered: 11/19/2013)
11/19/2013	<u>114</u>	Minute Entryfor proceedings held before HONORABLE STEWART DALZELLCriminal Jury Trial (DAY 1) held on 11/18/13 as to DAVID MORILLO CRUZ.Voir Dire - Jurors called. Jury sworn and Court gives preliminary

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		instructions to Jury. Counsels opening statements. Govt's. Witnesses sworn. Court Reporter K. FELDMAN.(ke) (Entered: 11/19/2013)
11/19/2013	<u>115</u>	Minute Entryfor proceedings held before HONORABLE STEWART DALZELLCriminal Jury Trial (DAY 2) as to DAVID MORILLO CRUZ held on 11/19/13.Govt's. case resumes: Witnesses sworn. Brief conference in Chambers with Counsel at request of Mr. Cohen. Mr. Cohen advises that Deft. would like to enter a guilty plea. Jurors excused. Deft. sworn. Court's colloquy with Deft. AUSA summarizes chareg and penalties. Further colloquy by Court. Court finds Deft. competent to plead guilty; that the plea is voluntary; that there is a factual basis for the plea, and that Deft. understands his rights and the charges against him. Deft. enters plea of guilty to Count 1. PSI Ordered. Sentencing set for 2/21/2014 at 11:00 AM. Deft. to remain in custody pending sentencing.Court Reporter ESR.(ke) (Entered: 11/19/2013)
11/19/2013		Minute Entryfor proceedings held before HONORABLE STEWART DALZELLTrial Completed held on 11/19/13.(ke,) (Entered: 11/19/2013)
11/20/2013	<u>116</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is set for 2/21/2014 at 11:00 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 11/20/2013)
12/03/2013	<u>118</u>	TRANSCRIPT: Testimony of Postal Inspector Paul Zavorski held on 11/18/13, before Judge STEWART DALZELL. Court Reporter/Transcriber Kathleen Feldman. 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 12/24/2013.

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		Redacted Transcript Deadline set for 1/3/2014. Release of Transcript Restriction set for 3/3/2014. (mac,) (Entered: 12/03/2013)
12/03/2013	<u>119</u>	Notice of Filing of Official Transcript with Certificate of Service re <u>118</u> Transcript - PDF,, 12/3/13 Entered and Copies Emailed. (mac,) (Entered: 12/03/2013)
02/04/2014	<u>122</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 4/16/2014 at 11:00 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 02/04/2014)
04/14/2014	<u>131</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 7/10/2014 at 11:00 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 04/14/2014)
07/08/2014	<u>133</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 10/10/2014 at 9:30 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 07/08/2014)
10/07/2014	<u>151</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 1/9/2015 at 11:00 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 10/07/2014)
01/08/2015	<u>153</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 3/6/2015 at 9:30 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 01/08/2015)
02/27/2015	<u>159</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 5/8/2015 at 9:30 AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 02/27/2015)
05/01/2015	<u>160</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing is rescheduled to 7/10/2015 at 11:00

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		AM in COURTROOM 15-B before the HONORABLE STEWART DALZELL. (ea,) (Entered: 05/01/2015)
07/07/2015	<u>166</u>	First MOTION to Continue Sentence by DAVID MORILLO CRUZ.CERTIFICATE OF SERVICE. (SAVINO, LOUIS) Modified on 7/8/2015 (ap,). (Entered: 07/07/2015)
07/10/2015	<u>167</u>	Minute Entry for proceedings held before HONORABLE STEWART DALZELL : HEARING held on 7/10/2015 for DAVID MORILLO CRUZ for 1. Defendant's motion to continue sentencing. Conference is held in chambers with counsel. Open court. Interpreter sworn. Defendant's motion to continue sentencing granted. Govenment shall, by noon on 7/17, advise the court as to the Government's response to the proposals made in Chambers. Defendant shall remain in the FDC Philadelphia until further order of this court. Court Reporter K FELDMAN.(ap,) (Entered: 07/10/2015)
07/10/2015	<u>168</u>	ORDER AS TO DAVID MORILLO CRUZ THAT THE DEFENDANT'S MOTION FOR CONTINUANCE IS GRANTED, SUBJECT TO THE FOLLOWING TWO CONDITIONS AS OUTLINED HEREIN. Signed by HONORABLE STEWART DALZELL on 7/10/2015.7/10/2015 Entered and Copies E-Mailed. (ap,) (Entered: 07/10/2015)
07/20/2015	<u>169</u>	SEALED ORDER AS TO DAVID MORILLO CRUZ. Signed by HONORABLE STEWART DALZELL on 7/17/2015.7/20/2015 Entered and Copies Mailed. (FILED UNDER SEAL)(ap,) (Entered: 07/20/2015)
09/30/2015	<u>172</u>	TRANSCRIPT SUPPRESSION HEARING held on 11/5/2013, before Judge STEWART DALZELL. Court Reporter/Transcriber K. FELDMAN. 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

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		be obtained through PACER. Redaction Request due 10/21/2015. Redacted Transcript Deadline set for 11/2/2015. Release of Transcript Restriction set for 12/29/2015. (ap,) (Entered: 09/30/2015)
10/30/2015	<u>175</u>	ORDER REASSIGNING CASE. CASE REASSIGNED TO JUDGE HONORABLE L. FELIPE RESTREPO as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN FOR ALL FURTHER PROCEEDINGS. JUDGE HONORABLE STEWART DALZELL NO LONGER ASSIGNED TO CASE. Signed by CHIEF JUDGE PETRESE B. TUCKER on 10/30/2015.11/2/2015 Entered and Copies E-Mailed. (ap,) (Entered: 11/02/2015)
11/30/2015	<u>178</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 12/17/2015 at 02:00 PM in COURTROOM 8-B before HONORABLE L. FELIPE RESTREPO. (nm,) (Entered: 11/30/2015)
12/01/2015	<u>179</u>	ORDER AS TO DAVID MORILLO CRUZ THAT SENTENCING IN THIS MATTER IS SCHEDULED FOR 12/17/2015 AT 2 PM IN COURTROOM 8B. IT IS FURTHER ORDERD THAT THE US ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NY MUST FILE ANY PAPERS PURSUANT TO THIS MATTER AND DEFENDANT BY 12/10/2015, ETC.. Signed by HONORABLE L. FELIPE RESTREPO on 11/30/2015.12/2/2015 Entered and Copies E-Mailed. (ap,) (Entered: 12/02/2015)
12/11/2015	<u>180</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 1/7/2016 at 11:00 AM in COURTROOM 8-B before HONORABLE L. FELIPE RESTREPO. (nm,) (Entered: 12/11/2015)
01/05/2016	<u>181</u>	ORDER AS TO DAVID MORILLO CRUZ THE MOTION FOR CONTINUANCE OF SENTENCE IS GRANTED. DEFENDNAT MUST SUBMIT NEW

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		BRIEFING BY 1/25/2016. GOVERNMENT MUST RESPOND NO LATER THAN 2/8/2016. A NEW SENTENCING DATE WILL BE SCHEDULED THEREAFTER. Signed by HONORABLE L. FELIPE RESTREPO on 1/4/2016.1/5/2016 Entered and Copies E-Mailed. (ap,) (Entered: 01/05/2016)
01/19/2016	<u>182</u>	ORDER REASSIGNING CASE TO JUDGE HONORABLE PAUL S. DIAMOND as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN FOR ALL FURTHER PROCEEDINGS. JUDGE HONORABLE L. FELIPE RESTREPO NO LONGER ASSIGNED TO CASE. Signed by HONORABLE L. FELIPE RESTREPO on 1/19/2016. 1/20/2016 Entered and Copies Mailed, E-Mailed and Faxed. (ap,) (Entered: 01/20/2016)
01/20/2016	<u>183</u>	NOTICE OF HEARING as to WILHER ALEXANDER PENA DIAZ, DAVID MORILLO CRUZ, FERNANDO GUZMAN Sentencing Re: David Morillo-Cruz is set for 2/23/2016 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 01/20/2016)
02/22/2016	<u>184</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 2/23/2016 has been postponed until 4/21/2016 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 02/22/2016)
04/21/2016	<u>185</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 4/21/2016 has been postponed until 6/21/2016 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 04/21/2016)
06/10/2016	<u>186</u>	ORDER AS TO DAVID MORILLO CRUZ THAT ANY MOTIONS, FILINGS OR MEMORANDA RELATED TO THE SENTENCING OF THE ABOVE CAPTIONED DEFENDANT BE SUBMITTED TO THE COURT NO LATER THAN 6/15/2016 OR ONE WEEK BEFORE THE SENTENCING DATE, ETC.

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		Signed by HONORABLE PAUL S. DIAMOND on 6/10/2016.6/10/2016 Entered and Copies E-Mailed. (ap,) (Entered: 06/10/2016)
06/16/2016	<u>187</u>	SEALED AMENDED SENTENCING DOCUMENT as to DAVID MORILLO CRUZ, CERTIFICATE OF SERVICE (FILED UNDER SEAL) (eibo,) (Entered: 06/16/2016)
06/16/2016	<u>188</u>	Sentencing Document by USA as to DAVID MORILLO CRUZ. (eibo,) (Entered: 06/16/2016)
06/16/2016	<u>189</u>	JUDICIAL DOCUMENT AS TO DAVID MORILLO CRUZ. Signed by HONORABLE PAUL S. DIAMOND on 6/16/2016.6/17/2016 ENTERED AND COPIES MAILED. (FILED UNDER SEAL)(kk,) (Entered: 06/17/2016)
06/20/2016	<u>190</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 6/21/2016 has been postponed until 8/30/2016 at 3:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 06/20/2016)
08/24/2016	<u>191</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 8/30/2016 has been postponed until 9/30/2016 at 11:00 AM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 08/24/2016)
09/29/2016	<u>192</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 9/30/2016 has been postponed until 10/3/2016 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 09/29/2016)
10/04/2016	<u>193</u>	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND : Sentencing held on 10/3/2016 for DAVID MORILLO CRUZ. Brian Piskai, USPO, present. Armando Hasbun, Interpreter, sworn. Sentencing will be postponed. Defendant to be brought back to Philadelphia after his sentencing in New York. Court Reporter B JOHNSON.(ap,) (Main Document 193 replaced on

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		10/4/2016) (ap,). (Entered: 10/04/2016)
11/16/2016	<u>194</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 11/30/2016 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 11/16/2016)
11/17/2016	<u>195</u>	NOTICE OF ATTORNEY APPEARANCE JOSE LUIS ONGAY appearing for DAVID MORILLO CRUZ (ONGAY, JOSE) (Entered: 11/17/2016)
11/23/2016	<u>196</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 11/30/2016 has been postponed until 1/19/2017 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 11/23/2016)
01/13/2017	<u>197</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 1/19/2017 has been postponed until 3/27/2017 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 01/13/2017)
01/13/2017	<u>198</u>	SEALED Letter as to DAVID MORILLO CRUZ (FILED UNDER SEAL) (ap,) (ap,). (Entered: 01/13/2017)
01/13/2017	<u>199</u>	SEALED ORDER TO SEAL AS TO DAVID MORILLO CRUZ.. Signed by HONORABLE PAUL S. DIAMOND on 1/12/2017.1/13/2017 Entered and Copies Mailed. (FILED UNDER SEAL)(ap,) (ap,). (Entered: 01/13/2017)
03/08/2017	<u>203</u>	ORDER AS TO DAVID MORILLO CRUZ THAT ANY MOTIONS, FILINGS OR MEMORANDA RELATED TO SENTENCING OF THE ABOVE CAPTIONED DEFENDANT BE SUBMITTED TO THE COURT NO LATER THAN 3/20/2017, ETC.. Signed by HONORABLE PAUL S. DIAMOND on 3/7/2017.3/8/2017 Entered and Copies E-Mailed. (ap,) (Entered: 03/08/2017)
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03/08/2017		***Set/Reset Deadlines as to DAVID MORILLO CRUZ: MOTIONS DUE BY 3/20/2017. (ap,) (Entered: 03/08/2017)
03/10/2017	<u>204</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 3/27/2017 has been postponed until 5/17/2017 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 03/10/2017)
03/10/2017	<u>205</u>	SEALED LETTER AND ORDER AS TO DAVID MORILLO CRUZ. Signed by HONORABLE PAUL S. DIAMOND on 3/10/2017.3/10/2017 Entered and Copies Mailed. (FILED UNDER SEAL)(ap,) (ap,). (Entered: 03/10/2017)
05/04/2017	<u>208</u>	SEALED LETTER AND ORDER AS TO DAVID MORILLO CRUZ. Signed by HONORABLE PAUL S. DIAMOND on 5/4/2017.5/4/2017 Entered and Copies Mailed. (FILED UNDER SEAL)(ap,) (ap,). (Entered: 05/04/2017)
05/05/2017	<u>209</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 5/17/2017 has been postponed until 7/27/2017 at 2:00 PM before HONORABLE PAUL S. DIAMOND. Courtroom 14A.(lk,) (Entered: 05/05/2017)
07/13/2017	<u>214</u>	ORDER AS TO DAVID MORILLO CRUZ THAT ANY MOTIONS, FILINGS, OR MEMORANDA RELATED TO THE SENTENCING OF THE ABOVE CAPTIONED DEFENDANT BE SUBMITTED TO THE COURT NO LATER THAN JULY 20, 2017, OR ONE WEEK BEFORE THE SENTENCING DATE. SENTENCING IS SCHEDULED TO TAKE PLACE ON JULY 27, 2017 AT 2:00 P.M., ETC. Signed by HONORABLE PAUL S. DIAMOND on 7/13/2017. 7/13/2017 Entered and Copies E-Mailed. (ems) (Entered: 07/13/2017)

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07/21/2017	<u>216</u>	Letter as to DAVID MORILLO CRUZ dated 7/19/2017 re: 45-day continuance. (ems) (Entered: 07/21/2017)
07/25/2017	<u>217</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 7/27/2017 has been postponed until 9/26/2017 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 07/25/2017)
09/25/2017	<u>221</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 9/26/2017 has been postponed until 11/14/2017 at 11:00 AM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 09/25/2017)
11/15/2017	<u>222</u>	Letter as to DAVID MORILLO CRUZ dated 11/13/2017. (ems) (Entered: 11/15/2017)
12/05/2017	<u>223</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 11/14/2017 has been postponed to 12/13/2017 09:30 AM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 12/05/2017)
12/06/2017	<u>224</u>	SENTENCING DOCUMENT WITH CERTIFICATE OF SERVICE by USA as to DAVID MORILLO CRUZ. (FILED UNDER SEAL) (ems) (ems). (Entered: 12/07/2017)
12/06/2017	<u>225</u>	Sentencing Document by USA as to DAVID MORILLO CRUZ. (FILED UNDER SEAL) (ems) (ems). (Entered: 12/07/2017)
12/07/2017	<u>226</u>	JUDICIAL DOCUMENT AS TO DAVID MORILLO CRUZ (2). Signed by HONORABLE PAUL S. DIAMOND on 12/7/2017. 12/7/2017 ENTERED AND COPIES MAILED. (FILED UNDER SEAL) (ems) (ems). (Entered: 12/07/2017)
12/11/2017	<u>229</u>	SEALED PRO SE Letter as to DAVID MORILLO CRUZ. (FILED UNDER SEAL) (eibo,) (eibo,). (Entered: 12/12/2017)
12/12/2017	<u>227</u>	CORRECTED SENTENCING DOCUMENT WITH

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		CERTIFICCATE OF SERVICE by DAVID MORILLO CRUZ. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 12/12/2017)
12/12/2017	<u>228</u>	Sentencing Document with Certificate of Service by DAVID MORILLO CRUZ. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 12/12/2017)
12/12/2017	<u>230</u>	SEALED ORDER AS TO DAVID MORILLO CRUZ RE <u>229</u> . (FILED UNDER SEAL) Signed by HONORABLE PAUL S. DIAMOND on 12/12/17.12/12/17 Entered and Copies Mailed. (eibo,) (eibo,). (Entered: 12/12/2017)
12/13/2017	<u>231</u>	JUDICIAL DOCUMENT AS TO DAVID MORILLO CRUZ. (FILED UNDER SEAL). Signed by HONORABLE PAUL S. DIAMOND on 12/12/17.12/13/17 ENTERED AND COPIES MAILED. (ke) (ke,). (Entered: 12/13/2017)
12/20/2017	<u>232</u>	Minute Entry for proceedings Sentencing held on 12/13/17 before HONORABLE PAUL S. DIAMOND in Courtroom 6-B: Interpreter and USPO present. Court orders matter postponed to a date to be determined. Court Reporter ESR.(eibo,) Modified on 12/21/2017 (ke,). (Entered: 12/20/2017)
12/21/2017	<u>233</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 12/13/2017 has been continued to 1/18/2018 at 9:30 AM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 12/21/2017)
01/22/2018	<u>234</u>	NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 1/18/2018 has been postponed to 1/31/2018 at 2:00 PM before HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 01/22/2018)
01/22/2018	<u>235</u>	***NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 1/24/2018 has been postponed to 3/2/2018 at 9:30 AM before HONORABLE PAUL S.

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		DIAMOND. (lk,) (**FILED IN ERROR - INCORRECT CASE NUMBER**) Modified on 1/22/2018 (ap,). (Entered: 01/22/2018)
01/22/2018		***Terminate Deadlines and Hearings as to DAVID MORILLO CRUZ: (ap,) (Entered: 01/22/2018)
01/25/2018	<u>236</u>	***NOTICE OF HEARING as to DAVID MORILLO CRUZ Sentencing set for 1/24/2018 has been postponed to 3/2/2018 at 9:30 AM before HONORABLE PAUL S. DIAMOND. (lk,) (**FILED IN ERROR - INCORRECT CASE NUMBER**) Modified on 2/9/2018 (eibo,). (Entered: 01/25/2018)
02/09/2018	<u>237</u>	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Sentencing held on 1/31/2018 for DAVID MORILLO CRUZ (2), Count(s) 1, IMPRISONMENT: 120 MONTHS; SUPERVISED RELEASE: 5 YEARS; SPECIAL ASSESSMENT: \$100. Court Reporter: ESR. (ems) (Entered: 02/09/2018)
02/14/2018	<u>238</u>	JUDGMENT AS TO DAVID MORILLO CRUZ (2), Count(s) 1, IMPRISONMENT: 120 MONTHS; SUPERVISED RELEASE: 5 YEARS; SPECIAL ASSESSMENT: \$100. Signed by HONORABLE PAUL S. DIAMOND on 2/13/2018. 2/14/2018 Entered and Copies E-Mailed. (ems) (Entered: 02/14/2018)
02/24/2018	<u>239</u>	(PRO SE) NOTICE OF APPEAL by DAVID MORILLO CRUZ Filing fee \$ 505. . (ONGAY, JOSE) Modified on 2/27/2018 (ap,). (Entered: 02/24/2018)
02/27/2018		***Appeal fee letter mailed to pro se, DAVID MORILLO CRUZ (ap,) (Entered: 02/27/2018)
02/27/2018	<u>240</u>	NOTICE of Docketing Record on Appeal from USCA as to DAVID MORILLO CRUZ re <u>239</u> Notice of Appeal - Final Judgment filed by DAVID MORILLO CRUZ. USCA Case Number 18-1393 (ems) (Entered: 02/27/2018)

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		02/27/2018)
04/04/2018	<u>242</u>	ORDER AS TO DAVID MORILLO CRUZ THAT JOSE ONGAY, ESQUIRE, IS APPOINTED TO REPRESENT THE DEFENDANT, PURSUANT TO THE CRIMINAL JUSTICE ACT. Signed by HONORABLE PAUL S. DIAMOND on 4/4/2018. 4/4/2018 Entered and Copies E-Mailed. (ems) (Entered: 04/04/2018)
04/04/2018	<u>243</u>	Letter as to DAVID MORILLO CRUZ dated 3/28/2018. (ems) (Entered: 04/04/2018)
04/10/2018	<u>244</u>	Copy of TPO Form re <u>239</u> Notice of Appeal - Final Judgment : (ems) (Entered: 04/10/2018)
06/15/2018	<u>249</u>	MOTION to Unseal Document by DAVID MORILLO CRUZ. (ONGAY, JOSE) (Entered: 06/15/2018)
06/18/2018	<u>251</u>	ORDER AS TO DAVID MORILLO CRUZ (2) THAT DEFENDANT'S MOTION TO UNSEAL (DOC. NO. 249) IS GRANTED. THE CLERK OF COURT SHALL UNSEAL AND UNIMPOUND THE JANUARY 31, 2018 SENTENCING HEARING (DOC. NO. 237) AND ANY RELATED TRANSCRIPTS. Signed by HONORABLE PAUL S. DIAMOND on 6/18/2018. 6/19/2018 ENTERED AND COPIES E-MAILED. (ems) (Entered: 06/19/2018)
06/20/2018	253	TRANSCRIPT of CHANGE OF PLEA HEARING as to DAVID MORILLO CRUZ held on 11/19/2013, before Judge STEWART DALZELL. (ems) (Entered: 06/21/2018)
07/20/2018	257	SEALED TRANSCRIPT as to DAVID MORILLO CRUZ held on 1/31/18, before Judge DIAMOND. ZANARAS TRANSCRIPTION SERVICE. (FILED UNDER SEAL). (ke) (Entered: 07/20/2018)

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JUN 10

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

MONETARY SPECIAL AWARD RECOMMENDATION - INMATE

Institution FDC PHILADELPHIA	Unit 4N	Date 12/12/2016
Inmate's Name MORILLO, DAVID	Register No. 69067-066	Work Assignment 4N UNASSG

Recommend Monetary Special Award in the amount of \$75.00
In recognition of the following special act:

- ☐ An act of heroism.
☐ Voluntary acceptance and satisfactory performance of an unusually hazardous assignment.
☒ An act which protects the lives of employees or inmates, or the property of the United States.
☐ Suggestions which result in substantial improvements or cost-savings in institutional programs or operations.
☐ Other exceptionally meritorious or outstanding services.

Justification

On December 10, 2016, during an altercation on 4 North, inmate Morillo acted in a way which assisted the unit officer.

Submitted by

Printed Name and Signature

J. Frith/

Title

Unit Manager

Approved by

Department Head

Date

Chief Executive Officer

Regional Director (Awards Exceeding \$150.00)

Award Date

Approved Award Amount\$

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, : Case No. 2:13-cr-00197-PD-2
 :
 Plaintiff(s), : Philadelphia, Pennsylvania
 : January 31, 2018
 v. : 2:04 p.m.
 :
 DAVID MORILLO CRUZ, :
 :
 Defendant(s). :

SEALED TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE PAUL S. DIAMOND
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff(s): Andrea N. Phillips, Esquire
U.S. Attorney's Office
615 Chestnut Street
Suite 1250
One Independence Mall
Philadelphia, PA 19106

For the Defendant(s): Jose Luis Ongay, Esquire
600 West Germantown Pike
Suite 400
Plymouth Meeting, PA 19462

Court Recorder: Chris Kurek
Clerk's Office
U.S. District Court

Transcription Service: Zanaras Reporting & Video
1845 Walnut Street
Suite 938
Philadelphia, PA 19103
(215) 790-7857

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 (Call to Order of the Court.)

2 THE COURT: Please be seated, everybody.

3 ALL: Good afternoon, Your Honor.

4 THE COURT: Ms. Phillips, Mr. Ongay, Mr. McConnie,
5 Mr. White, nice to see you all. Please be seated. And could
6 we swear Mr. McConnie?

7 RAYMOND J. MCCONNIE SWORN TO TRANSLATE BETWEEN
8 ENGLISH AND SPANISH

9 THE CLERK: Can you state your full name for the
10 record?

11 MR. MCCONNIE: Raymond J. McConnie.

12 THE CLERK: Thank you.

13 THE COURT: Welcome, Mr. McConnie.

14 MR. MCCONNIE: Your Honor, a pleasure.

15 THE COURT: We're here for sentencing in this
16 matter. The sentencing is on the basis of a guilty plea to
17 the Indictment that charged the Defendant with one count of
18 attempted possession with intent to distribute 1 kilogram or
19 more of heroin and aiding and abetting, and one count of
20 illegal reentry. On November 19th, 2013, on the second day
21 of his trial, Mr. Cruz entered an open guilty plea before
22 Judge Dalzell to whom this matter was then assigned, to Count
23 1, the attempted possession count. Judge Dalzell conducted
24 the plea colloquy and accepted the plea.

25 I've received a revised Pre-Sentence Investigation Report

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1 dated June 21st, 2016, an addendum dated June 23rd, 2016, the
2 Government's Sentencing Memorandum and the Defendant's
3 Sentencing Memorandum. Are there any other materials that
4 have been submitted that I've not just referred to, Mr.
5 Ongay?

6 MR. ONGAY: No, Your Honor.

7 THE COURT: Ms. Phillips?

8 MS. PHILLIPS: No, Your Honor.

9 THE COURT: Are there any additional materials
10 anyone would like to submit now, Mr. Ongay?

11 MR. ONGAY: No, Your Honor.

12 THE COURT: Ms. Phillips?

13 MS. PHILLIPS: No, Your Honor.

14 THE COURT: Mr. Cruz, have you received the revised
15 Pre-Sentence Investigation Report?

16 MR. CRUZ: Yes, Your Honor.

17 THE COURT: Have you had full and ample opportunity
18 to review it and have you, in fact, done so?

19 MR. CRUZ: Yes, Your Honor.

20 THE COURT: Mr. Ongay, have you reviewed the revised
21 Pre-Sentence Investigation Report?

22 MR. ONGAY: Yes, Your Honor.

23 THE COURT: Ms. Phillips, have you reviewed the
24 revised Pre-Sentence Investigation Report?

25 MS. PHILLIPS: Yes, Your Honor.

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1 THE COURT: Does anyone have any objections to the
2 report that he or she has not previously made but would like
3 to make now?

4 MS. PHILLIPS: No, Your Honor.

5 MR. ONGAY: No, Your Honor.

6 THE COURT: I understand that on November 10th,
7 2016, after Probation completed the revised PSR, the
8 Defendant was sentenced in the Southern District of New York
9 to 72 months' imprisonment followed by 5 years of supervision
10 and a \$200 special assessment for the conviction described in
11 paragraph 33 of the revised PSR. Mr. Ongay, is that correct?

12 MR. ONGAY: That is correct, Your Honor.

13 THE COURT: Is your client still serving that
14 sentence?

15 MR. ONGAY: Yes, Your Honor.

16 THE COURT: Okay. I will accept the facts -- excuse
17 me, I will accept and adopt the facts and conclusions as set
18 out in the revised PSR for purposes of this sentencing.
19 Accordingly, I conclude that under the Sentencing Guidelines,
20 the offense level is 28, Criminal History Category is III and
21 the Guideline sentence is between 97 and 121 months'
22 imprisonment; however, there's a mandatory minimum sentence
23 of 120 months' imprisonment on Count 1 of the Indictment, so
24 the Guideline sentence is between 120 and 121 months'
25 imprisonment.

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1 Are there any other issues in dispute, Mr. Ongay?

2 MR. ONGAY: No, Your Honor.

3 THE COURT: Ms. Phillips?

4 MS. PHILLIPS: No, Your Honor.

5 THE COURT: Mr. Ongay, do you have any remarks you'd
6 like to make, any evidence you'd like to present, any
7 witnesses you would like to call?

8 MR. ONGAY: Before I go on, Your Honor, let me
9 introduce to the Court the several members of Mr. Morillo's
10 family that are present. Jackie Ujoia (ph) is his current
11 wife. She's present. Elva Carvella (ph) is also present.
12 She is Mr. Morillo's niece. Joseph Mahia is married to Mr.
13 Morillo's niece, but it's a different niece, Ms. Carvella.
14 Ms. Mary Morillo is also Mr. Morillo's niece. And Jayden
15 David Morillo, the young boy, is Mr. Morillo's son. And
16 they're present in the courtroom.

17 Your Honor, the first thing I'd like to address is just
18 for the record so that the matter is clear as to the incident
19 where Mr. Morillo did come to the aid and assistance of a
20 correctional officer who was being assaulted by an inmate. I
21 received the videotape from the Government. I've reviewed
22 it. I reviewed the videotape with my client. The videotape
23 shows another inmate, not my client, literally assaulting an
24 officer. The video shows the assault goes on for quite some
25 time. No one aids the officer. Then someone who was very

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1 close to where the assault was taking place, as my client is
2 coming down from the second floor with another inmate,
3 intervenes and takes away -- the aggressor away from the
4 officer. (Indiscernible) almost simultaneously my client and
5 the other gentleman get to the bottom of the steps, which the
6 assault ended up at the bottom of the steps, grabs the
7 officer, takes him away. The officer was semi unconscious.
8 I wouldn't say -- not unconscious but affected. Clearly, he
9 was not in all completely working in (indiscernible).
10 Anyway, my client then returns to the scene after he takes
11 the officer to a different location, grabs the officer's
12 radio and returns the radio to the officer so the officer
13 could radio for assistance.

14 I also discussed with the Government that Jeff Whit, a
15 former Assistant United States Attorney who recently retired,
16 handled the case against the aggressor in the prison. The
17 inmate and Mr. Whit did not have to go to trial. The inmate
18 who assaulted the officer pled guilty. He had not
19 interviewed my client -- or had not selected my client as a
20 potential witness. He selected two other individuals as
21 potential witnesses; however, because the Defendant -- the
22 person who assaulted pled, no 5K Motions or 3553(e) Motions
23 were made on behalf of anyone. And so my client was not
24 technically treated differently since no one got any benefit
25 as --

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1 that the New York sentence has a year left because he was --

2 THE COURT: So if I impose concurrent sentences and

3 --

4 MR. ONGAY: He will have around 40 something months

5 left in total. That's my computation, I may be wrong. I

6 explained to him that the Bureau of Prisons --

7 THE COURT: The minimum sentence I can impose is 120

8 months.

9 MR. ONGAY: Correct. You can (indiscernible) impose
10 concurrent.

11 THE COURT: And --

12 MR. ONGAY: Not -- I didn't mean a 60 months'

13 sentence. I meant 120 months' sentence to be served

14 concurrent to whatever he's serving now.

15 THE COURT: Got it. Okay, understood. Okay. Sorry

16 I was a little slow there.

17 MR. ONGAY: That's okay, Judge.

18 THE COURT: Mr. Cruz, you have what we call the
19 right to allocution. That means you have the right to speak
20 to me on your own behalf and you may do so now if you choose
21 to exercise that right. Just speak to Mr. McConnie and he
22 will interpret.

23 MR. CRUZ: Your Honor, I have spent a fair amount of
24 time in jail and it has changed my life around. I am sorry
25 and I want to ask amends from the Government of the United

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1 States and I put my family to shame and I wish to beg their
2 pardon for that. I am regretful for the crimes that I have
3 committed. My family who's back here are very close to my
4 heart and it's extremely difficult for me. Excuse me, Your
5 Honor.

6 THE COURT: Certainly. Why don't we take a short
7 break?

8 MR. CRUZ: I beg your pardon, Your Honor.

9 MR. ONGAY: Thank you, Your Honor.

10 (Recess from 2:15 p.m. to 2:19 p.m.)

11 THE COURT: Please be seated. Mr. Ongay, your
12 client was in the middle of his allocution.

13 MR. ONGAY: My client has advised me, Your Honor,
14 that he completed his allocution.

15 THE COURT: Very well.

16 MR. ONGAY: Thank you, Your Honor.

17 THE COURT: Ms. Phillips?

18 MS. PHILLIPS: Yes, Your Honor. Thank you. We have
19 largely laid out our arguments in the Second Amended
20 Sentencing Memorandum, including the issue of cooperation. I
21 just want to make a couple of points on the record beyond
22 that, Your Honor, just to -- as we said in the Sentencing
23 Memo and even beyond, this Defendant was given multiple
24 opportunities prior to trial and subsequent to trial to
25 substantially assist the Government and provide information.

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1 He made a certain choice. The Government is not even sure
2 why. It could have been whatever reasons that he has and we
3 don't argue with that; however, he was given, which is why
4 we're here five years later still trying to get to the point
5 of sentencing and we're finally here today, because of all
6 the opportunities that were given. However, they were not
7 given for several -- without going too far into the reason
8 that even when sitting down with the Government, he made
9 certain decisions not to provide information.

10 However, he did do that in New York and he was given the
11 consideration in New York appropriately. He, I believe, was
12 also facing a ten-year mandatory minimum sentence there and
13 the Southern District of New York, AUSAs there, gave the 5K.
14 He was the lead defendant in that case. I think it's also
15 noteworthy that in that case which is charged a conspiracy of
16 more than 5 kilograms of cocaine being distributed by that
17 conspiracy, the Defendant was the lead defendant in that
18 case. However, he did cooperate upon arrest there and gave
19 substantial information according to what I understand from
20 the AUSAs and appropriately was given the 5K there. He did
21 not make that choice here in the Eastern District of
22 Pennsylvania for whatever reason that was. And so for that
23 reason, Your Honor, he still stands at this point facing the
24 mandatory minimum even after all the opportunities that were
25 given.

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1 The Government appreciates what the Defendant has said
2 before the Court today; however, we are where we are after
3 several years, the trial being in November of 2013, so over
4 four and a half years later. And so for that reason and all
5 the other reasons that are stated in the Sentencing Memo,
6 which I will not belabor, regarding his prior history,
7 regarding the aliases, regarding his immigration status, his
8 having the open warrants from 1999, I believe it was, at the
9 time of committing this crime, and as we know, being involved
10 in two conspiracies, one he did here and one in New York. We
11 did some investigation to learn these were two separate.
12 They were not intertwined which we thought they might have
13 been so it would have been one case in one place or the
14 other, but they were two distinct conspiracies. This
15 involving almost 2 kilograms of heroin; there upwards of 5
16 kilograms of cocaine.

17 So for all of those reasons, Your Honor, the Government
18 would ask the Court to impose the mandatory minimum which is
19 (indiscernible) in this case.

20 THE COURT: Does the Government have a view on
21 whether it should be concurrent or consecutive?

22 MS. PHILLIPS: I do not take a position. Whatever
23 Your Honor decides, I respect that.

24 THE COURT: In reviewing the Pre-Sentence
25 Investigation Report, I've considered the Guideline range

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1 sentence in the report. It's just one of several factors
2 including the following: The nature and circumstances of the
3 offense and the history and characteristics of the Defendant.
4 On March 26, 2013, U.S. Postal Inspectors intercepted a
5 parcel containing two bricks of heroin weighing approximately
6 1.8 kilograms in total. The inspectors replaced the heroin
7 with a fake product and delivered the parcel to its intended
8 recipient, Mr. Cruz's Co-Defendant, Mr. Diaz, to its intended
9 recipient, if I -- Mr. Cruz's Co-Defendant, Mr. Diaz,
10 accepted the package. Mr. Cruz then arrived at the scene two
11 minutes later and electronic signal indicated that Mr. Cruz
12 and his Co-Defendants opened the package shortly thereafter.
13 Postal Inspectors apprehended Mr. Cruz.

14 He is a 41-year-old man. He has six children, five of
15 whom are minors. His second youngest child has a learning
16 disability and suffers from a heart murmur and asthma.
17 Obviously, Mr. Cruz's incarceration would work a great
18 difficulty on his family. According to the Pre-Sentence
19 Report, Mr. Cruz has reported no history of mental or
20 emotional problems and no history of drug use or substance
21 abuse and has no physical infirmities.

22 Mr. Cruz is a citizen of the Dominican Republic and is in
23 this country illegally. Mr. Cruz first entered the United
24 States legally in 1998. After a drug trafficking arrest in
25 1999, he was ordered deported. A warrant for removal was

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1 issued and remained outstanding. Mr. Cruz left the United
2 States voluntarily, but entered the United States illegally
3 eight months before his arrest in this case. I mention the
4 arrests only in reference. I do not base my sentence on an
5 arrest record in any way. Mr. Cruz has three prior
6 convictions. In 2002, he pled guilty to aggravated assault
7 at a Philadelphia Common Pleas Court. The trial evidence
8 show that the Defendant had attacked his victim with a broken
9 bottle. In 2012, a jury found him guilty of theft in
10 Houston, Texas. In 2014, he pled guilty, as Ms. Phillips
11 just indicated, to conspiracy to distribute 5 kilograms of
12 cocaine and 1 kilogram of heroin in the Southern District of
13 New York.

14 I have considered the need for the sentence imposed to
15 reflect the seriousness of the offense, to promote respect
16 for the law, to provide just punishment, to afford adequate
17 deterrence to criminal conduct and to protect the public from
18 further crimes the Defendant might commit. I've heard the
19 Defendant's statement of remorse. I think the Defendant is
20 sorry he was caught. I've considered the need to provide the
21 Defendant with educational, vocational training and medical
22 care. Mr. Cruz is one of ten siblings. He withdrew from
23 school in the 6th grade to help support his family. He has
24 reported limited employment and in construction, automobile
25 repair and automobile sales. He reported no employment in

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1 the United States. Other than a hernia repair, Mr. Cruz
2 reported no history of health issues and I'm unaware of any.
3 I have considered the need to avoid unwarranted sentencing
4 disparities and the need to provide restitution to victims.
5 Restitution is not an issue in this case. I have considered
6 everything submitted to me by Mr. Ongay in his brief. All
7 the written materials he has submitted to me. And with your
8 agreement, Mr. Ongay, I will discuss here in court only the
9 points you have raised here in court.

10 MR. ONGAY: Certainly, Your Honor.

11 THE COURT: I have considered the support of the
12 Defendant's family and friends. I have considered the
13 Defendant's assistance to a prison guard who was being
14 assaulted. I have considered that the Defendant has already
15 spent a fair amount of time in prison on this case. I have
16 considered Mr. Ongay's statement that the Defendant attempted
17 to cooperate. I have considered also Ms. Phillips' counter
18 that the Defendant chose to cooperate only in New York, not
19 here, and that the amount of time the Defendant has spent in
20 prison is a reflection in part on his abortive attempts to
21 cooperate. I have considered the Defendant's statement that
22 jail has changed him which I do not accept and that he wants
23 to be with his family which I believe. I deem the sentencing
24 recommendation and the revised Pre-Sentence Investigation
25 Report as advisory. It made sufficient findings to fashion

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1 and impose the sentence.

2 We come now to the sentencing. I'm going to state the
3 sentence that I intend to impose and then I will ask counsel
4 whether there are any objections with respect to the
5 accuracy, the regularity of the sentence. If there are
6 objections, I will deal with them. If there are no
7 objections, then I will impose sentence. Right now I'm not
8 imposing sentence, I'm simply stating the sentence I intend
9 to impose.

10 Mr. Cruz, I intend to impose the following sentence: You
11 will serve a term of 120 months' incarceration on Count 1 of
12 the Indictment to run consecutive to the term of imprisonment
13 imposed upon you in the Southern District of New York. I
14 will impose a term of supervised release. Because you are
15 likely to be deported and a term of supervised release is
16 needed to deter you again from entering the country illegally
17 because you will be committing a crime in entering the
18 country illegally should you choose to do so, and you will be
19 violating a condition of supervision. After you are released
20 from prison, you'll participate in the supervised release
21 program of this court for five additional years on Count 1.
22 Upon release, you need to observe the standard conditions of
23 supervision.

24 Mr. Ongay, do you know of any reason why this sentence
25 that I just imposed should not be -- that I just have stated

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1 should not be imposed?

2 MR. ONGAY: No, Your Honor.

3 THE COURT: Ms. Phillips?

4 MS. PHILLIPS: No, Your Honor.

5 THE COURT: Mr. White?

6 MR. WHITE: No, Your Honor.

7 THE COURT: Mr. White, I assume that any term of
8 supervision I impose would necessarily, even if the prison
9 sentence runs consecutive, the term of supervision would run
10 -- he's been apparently sentenced to five years of
11 supervision in Manhattan. That five years and my five years
12 of supervision would run concurrently?

13 MR. WHITE: Yes, whatever is left on the New York --

14 THE COURT: There'd be no term of supervision on the
15 New York.

16 MR. WHITE: Okay.

17 THE COURT: He wouldn't have started his supervision
18 because that's when he'll to serve my sentence.

19 MR. WHITE: That's correct.

20 THE COURT: Okay.

21 MR. WHITE: That's correct, Your Honor.

22 THE COURT: Mr. Cruz, it is the judgment of this
23 Court that you'll be committed to the custody of the Bureau
24 of Prisons to be imprisoned for a term of 120 months'
25 incarceration on Count 1 of the Indictment to run consecutive

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1 to the term of imprisonment imposed upon you in the Southern
2 District of New York. After you're released from prison,
3 you'll participate on the supervised release program of this
4 court for five additional years on Count 1 of the Indictment.

5 Within 72 hours of release from the custody of the Bureau
6 of Prisons, you shall report, in person, to the Probation
7 Office in the district to which you are released. During
8 your period of supervision, you shall not commit another
9 federal, state or local crime. You'll be prohibited from
10 possessing a firearm or other dangerous device. You shall
11 not possess an illegal controlled substance and shall comply
12 with the other standard conditions of supervision in this
13 court. You must submit to one drug test within 15 days of
14 commencement of supervision and at least two tests thereafter
15 as determined by Probation.

16 In addition, you shall comply with the following special
17 conditions. You shall cooperate with U.S. Immigration and
18 Customs Enforcement to resolve any problems with your status
19 in the United States. You shall provide truthful information
20 and abide by the rules and regulations of the Bureau of
21 Immigration and Customs Enforcement. If deported, you shall
22 not reenter the United States without the written permission
23 of the Attorney General. If you reenter the United States,
24 you shall report, in person, to the nearest U.S. Probation
25 Office within 48 hours.

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1 Is there any need to impose drug treatment as a special
2 condition of supervision, Mr. Ongay? Your client does not
3 have a drug problem I believe.

4 MR. ONGAY: That is correct.

5 THE COURT: Okay. You shall cooperate in the
6 collection of DNA as directed by Probation. I will not
7 impose a fine because I find that you don't have the ability
8 to pay a fine. And it is ordered that you shall pay the
9 special assessment of \$100 which shall be due immediately.
10 You've heard me state that you are to observe the standard
11 conditions of supervision as adopted by this Court. I will
12 emphasis one thing to you and it is that you, Mr. Cruz, not
13 possess any firearms or dangerous weapons.

14 There being no further submissions or objections, I order
15 that the sentence be imposed as I've just stated it to be.
16 Mr. Cruz, I've now formally imposed sentence and that you
17 have now been sentenced. The criminal process from the
18 Court's standpoint is over, but from your standpoint it is
19 not over. As you know, you have many obligations as a result
20 of this sentence. Mr. Cruz, I advise you that you have the
21 right to appeal, including the right to appeal the sentence
22 that I just imposed on you. You have 14 days in which to
23 appeal. I advise you that if you're unable to pay the cost
24 of an appeal, you may apply for leave to appeal in forma
25 pauperis and if that leave is granted for you to appeal in

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1 forma pauperis, then there won't be any cost that would be
2 imposed upon you to take such an appeal. If you so request,
3 the Clerk of Court shall prepare and immediately file a
4 Notice of Appeal on your behalf.

5 Now, do you understand what I've just said with respect
6 to your ability to appeal?

7 MR. CRUZ: Yes.

8 THE COURT: Anything further, Mr. Ongay?

9 MR. ONGAY: Yes, Your Honor. If the Court could
10 recommend that the sentence be served as close as possible to
11 his family in Philadelphia.

12 THE COURT: Certainly. Anything else?

13 MR. ONGAY: That will be all, Your Honor.

14 THE COURT: And I certainly think the Bureau of
15 Prisons should make whatever vocational training it has
16 available to this Defendant because if he doesn't find a
17 legitimate way to make a living whether here or in the
18 Dominican Republic, he will get himself into trouble again.

19 UNIDENTIFIED SPEAKER: I understand, Your Honor.

20 THE COURT: Anything further, Ms. Ongay -- Ms.
21 Phillips?

22 MS. PHILLIPS: No, Your Honor.

23 THE COURT: Mr. --

24 MS. PHILLIPS: Oh, yes, I'm sorry. There is a
25 Motion to Impound all the documents and the transcript of the

54

1 proceedings.

2 THE COURT: Very well. I'll certainly grant that.

3 MR. ONGAY: No objection, Your Honor.

4 THE COURT: Okay. Anything further, Ms. Phillips?

5 MS. PHILLIPS: No.

6 THE COURT: Mr. White?

7 MR. WHITE: No, Your Honor.

8 THE COURT: Very well. My thanks to counsel, to
9 Probation, to Mr. McConnie and to our marshals.

10 ALL: Thank you, Your Honor.

11 THE CLERK: All rise.

12 (Court adjourned at 2:34 p.m.)

13 CERTIFICATE

14 I certify that the foregoing is a correct transcript from the
15 electronic sound recording of the proceedings in the above-entitled
16 matter.

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18 /s/April J. Foga

July 18, 2018

19 April J. Foga, CET, CCR, CRCR

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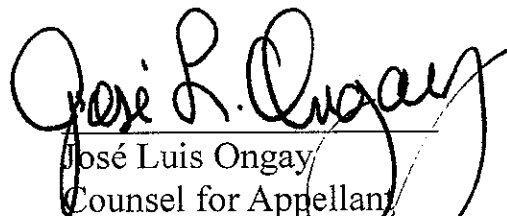
CERTIFICATE OF SERVICE

Service on the Assistant United States Attorney

I, José Luis Ongay, certify that I served two copies of the Appendix to the Brief for Appellant upon Assistant United States Attorney Andrea Nicole Phillips, via first class mail at 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106.

Service on Mr. David Morillo Cruz

I also certify that I served Mr. David Morillo Cruz, 69067-066, a copy of the Appendix to the Brief via first class mail to David Morillo Cruz, FCI McKean, Federal Correctional Institution, P.O. Box 8000, Bradford, PA 16701.


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Date: December 30, 2018