

NO:

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IN THE  
SUPREME COURT OF THE UNITED STATES

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**EDWIN GONGORA,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**RICHARD A. MERLINO, JR., ESQ.  
Voluck & Merlino, P.L.  
101 N.E. Third Avenue, Suite 110  
Fort Lauderdale, FL 33301  
Tel. 954-745-7497  
Counsel for Petitioner**

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## **QUESTION PRESENTED FOR REVIEW**

In the interpretation of a sentencing guideline enhancement provision to determine whether it applies to extraterritorial or merely domestic criminal conduct, must a court employ the presumption against extraterritorial application and the rule of lenity?

## **INTERESTED PARTIES**

There parties interested in the proceeding other than those named in the caption of the case are:

Miguel Salas Vallecilla (co-defendant)

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# **PETITION FOR WRIT OF CERTIORARI**

Edwin Gongora respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit, entered in case number 19-11404 in that court on February 25, 2020, *United States v. Gongora*, unpublished.

## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit is contained in the Appendix (1a).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on February 25, 2020. This petition is timely filed pursuant to SUP. CT. R. 13.1.

## **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

### **U.S. Const., amend. V (Due Process Clause):**

No person shall ... be deprived of life, liberty, or property, without due process of law.

### **U.S.S.G. § 2D1.1(b)(3)(B):**

If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other

operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.

## **STATEMENT OF THE CASE**

Petitioner was indicted in Miami, Florida on charges of conspiracy to possess, and possession of, cocaine with intent to distribute, while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(b). Petitioner pled guilty to the conspiracy count and the government agreed to dismiss the possession count.

The factual basis for the plea was as follows: Petitioner was arrested in international waters, on board a semi-submersible vessel, approximately 218 nautical miles south of the border of Mexico and Guatemala. United States Coast Guard personnel gained control of the vessel and determined that it lacked nationality, making it subject to U.S. jurisdiction. A large amount of cocaine was found on the vessel, and petitioner was transferred to the Southern District of Florida for prosecution. Petitioner admitted that the vessel had traveled with the cocaine from Colombia.

At sentencing, the district court imposed, over defense objection, a two-level increase in the sentencing guideline offense level, pursuant to U.S.S.G. § 2D1.1(b)(3)(B), based on unlawful importation or exportation of cocaine utilizing a semi-submersible vessel. With the sentencing guideline enhancement, petitioner's guideline range was 168-210 months, and he was sentenced to 96 months imprisonment. App. 5a.

On appeal to the Eleventh Circuit, petitioner contended that enhancing offense under § 2D1.1(b)(3)(B), even though the guideline relevant conduct involved no importation into, or exportation from, the United States, impermissibly read into the guideline an extraterritorial application that was neither expressed by the text, nor warranted by the context of this generalized drug guideline enhancement, where the conduct addressed by the statute focuses on violations of

United States drug laws. Petitioner contended that there was no suggestion in the guideline that extraterritorial importations or exportations were covered, nor was there a basis for determining that such conduct was unlawful under United States law. Additionally, petitioner argued that extending the guideline to such foreign conduct ran afoul of the prohibitions against extraterritorial jurisdiction of criminal sanctions absent a sufficient nexus to the United States. Finally, petitioner contended that to the extent that the guideline did not clearly apply to extraterritorial conduct that violated no United States law, the rule of lenity barred the enhancement.

The Eleventh Circuit affirmed the sentencing guideline enhancement, stating that the dictionary definition of export applies to taking goods out of any country and that such a definition eliminated any claim of ambiguity or uncertainty about the whether the guideline was intended to apply to extraterritorial acts of exportation from foreign countries that did not violate United States law. The Eleventh Circuit ruled:

The Guidelines provide for a two-level increase in a base offense level “[i]f the defendant unlawfully imported or exported a controlled substance under circumstances in which ... a submersible vessel or semi-submersible vessel was used....” U.S.S.G. § 2D1.1(b)(3)(B). That provision plainly applies to Gongora and Salas. *United States v. Gordillo*, 920 F.3d 1292, 1297 (11th Cir.) (“When interpreting the Guidelines, a ‘guideline’s meaning is derived first from its plain language....’”), .... Gongora and Salas testified that they received large sums of money to perform specific jobs on a semi-submersible low-profile vessel that departed from Col[o]mbia loaded with cocaine to deliver to Guatemala. The Oxford English Dictionary defines “export” as “[t]o carry (things or persons) out of a place; to take away, carry off.” Export, The Oxford English Dictionary (online ed.). The two men exported or transported cocaine out of Col[o]mbia when the United States Coast Guard intercepted their vessel in international waters south of Guatemala. ... Gongora’s and Salas’s exportation of cocaine in furtherance of the conspiracy constituted relevant conduct that the district court could consider in determining their sentences. See U.S.S.G. § 1B1.3(a). The district court did not clearly err when it applied the two-level enhancement.

App. 2a–3a.

The Eleventh Circuit concluded that the rule of lenity has no application to this issue: “Even if we were to assume that the rule of lenity applies to the advisory Sentencing Guidelines, it does not apply to section 2D1.1(b)(3). … Because section 2D1.1(b)(3) is unambiguous, [petitioner] cannot establish that the district court erred.” App. 3a.

## REASONS FOR GRANTING THE WRIT

### **The Court should grant review to clarify the application of the rule of lenity in the interpretation of sentencing guideline enhancements for uncharged extraterritorial conduct.**

The Eleventh Circuit has not decided whether the rule of lenity applies to ambiguous sentencing guidelines. But in petitioner’s case, the court of appeals assumed its application, but concluded that the dictionary definition of the word “exported” rendered unambiguous the use of that word in sentencing guidelines for violations of federal drug laws, such that uncharged conduct of exportation *from* a foreign country, even though the exportation was not itself unlawful under federal law and did not involve the United States, warranted a two-offense-level increase. App. 3a.

This Court should review the Eleventh Circuit’s decision because it imposes on the guidelines a rote harshness untethered to statutory presumptions and because the decision diverges from traditional rules of statutory interpretation that look not merely to the words used but their relevance and purpose in context. *See Bond v. United States*, 572 U.S. 844, 857 (2014) (“Part of a fair reading of statutory text is recognizing that ‘Congress legislates against the backdrop’ of certain unexpressed presumptions. *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 … (1991). As Justice Frankfurter put it in his famous essay on statutory interpretation, correctly reading a statute “demands awareness of certain presuppositions.” *Some Reflections on the Reading of Statutes*, 47

Colum. L. Rev. 527, 537 (1947). ... [For] example, we presume, absent a clear statement from Congress, that federal statutes do not apply outside the United States. *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010).”). The presumption against extraterritorial meanings of criminal law proscriptions is well established. *See Small v. United States*, 544 U.S. 385, 388–89 (2005) (“In determining the scope of the statutory phrase we find help in the ‘commonsense notion that Congress generally legislates with domestic concerns in mind.’ *Smith v. United States*, 507 U.S. 197, 204, n. 5 ... (1993). This notion has led the Court to adopt the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, application.”).

The presumption against extraterritorial extension of criminal proscriptions addressed in *Bond* and *Small* applies with at least equal force where a court proposes to extend such liability to purely extraterritorial conduct without even a showing that committing the extraterritorial conduct (exporting drugs from a foreign country) otherwise violates any statute, foreign or domestic.

The Eleventh Circuit bypassed issues relating to the domestic-law meaning of the relevant sentencing guideline provision. Using merely a dictionary to read criminal prohibitions raises due process concerns. Although the guidelines are advisory and constitutional vagueness doctrines are generally inapplicable, *see Beckles v. United States*, 137 S. Ct. 886, 895 (2017) (holding that “the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause”), this should not lead courts to adopt definitions lacking a reasonable foundation in ordinary statutory interpretation presumptions or in a manner that ignores an equally valid interpretation of the statute that would follow the statutory presumption.

In the context of a federal sentencing guideline imposing an enhancement for a violation of federal law where a “defendant unlawfully imported or exported,” the proper resolution of the scope

of the statute requires more than presuming away any concern with extraterritorial application by reliance on a dictionary that makes no such distinctions. Absent reliance on the more rigorous statutory interpretation standards applicable to ordinary criminal statutes, including the rule of lenity, guideline interpretation would permit a dramatically more severe and arbitrary form of punishment than called for under this Court's precedents.

## **CONCLUSION**

The Court should grant the petition, vacate the judgment below, and remand for further consideration in light of ordinary statutory interpretation principles, even though only a guideline is at issue.

Respectfully submitted,

RICHARD A. MERLINO, JR.  
Counsel for Petitioner

Ft. Lauderdale, Florida  
July 2020

## **APPENDIX**

## APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Gongora</i> , No. 19-11404 (Feb. 25, 2020) .....	1a
Judgment and Commitment Order, United States District Court, S.D. Fla., <i>United States v. Gongora</i> , No. 18-cr-20912-CMA (Mar. 29, 2019) .....	5a

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-11404; 19-11406  
Non-Argument Calendar

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D.C. Docket Nos. 1:18-cr-20912-CMA-2; 1:18-cr-20912-CMA-4

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWIN DANIEL GONGORA BALTAN,  
MIGUEL SALAS VALLECILLA,

Defendants-Appellants.

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Appeals from the United States District Court  
for the Southern District of Florida

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(February 25, 2020)

Before WILLIAM PRYOR, MARTIN and BRANCH, Circuit Judges.

PER CURIAM:

Edwin Gongora Baltan and Miguel Salas Vallecilla appeal their respective below-guideline sentences of 96 months and 92 months of imprisonment for conspiring to possess with intent to distribute five kilograms or more of cocaine on a vessel subject to the jurisdiction of the United States. 46 U.S.C. § 70506(b). Gongora and Salas challenge the enhancement of their sentences for exporting cocaine, United States Sentencing Guideline Manual § 2D1.1(b)(3)(B) (Nov. 2018), and, for the first time, argue that the district court *sua sponte* should have both invoked the doctrine of judicial estoppel and applied the rule of lenity to bar application of the enhancement. Gongora and Salas also each argue that they are entitled to a reduction for their minor role. *Id.* § 3B1.2. We affirm Gongora's and Salas's sentences.

The district court did not clearly err by enhancing Gongora's and Salas's sentences for exporting cocaine. The Guidelines provide for a two-level increase in a base offense level “[i]f the defendant unlawfully imported or exported a controlled substance under circumstances in which . . . a submersible vessel or semi-submersible vessel was used . . .” U.S.S.G. § 2D1.1(b)(3)(B). That provision plainly applies to Gongora and Salas. *United States v. Gordillo*, 920 F.3d 1292, 1297 (11th Cir.) (“When interpreting the Guidelines, a ‘guideline’s meaning is derived first from its plain language . . .’”), *cert. denied*, 140 S. Ct. 294 (2019). Gongora and Salas testified that they received large sums of money to perform

specific jobs on a semi-submersible low-profile vessel that departed from Columbia loaded with cocaine to deliver to Guatemala. The Oxford English Dictionary defines “export” as “[t]o carry (things or persons) out of a place; to take away, carry off.” Export, *The Oxford English Dictionary* (online ed.). The two men exported or transported cocaine out of Columbia when the United States Coast Guard intercepted their vessel in international waters south of Guatemala. *See United States v. Chastain*, 198 F.3d 1338, 1353 (11th Cir. 1999) (“the language [in former section 2D1.1(b)(2)] of the guideline clearly contemplates a completed event”). Gongora’s and Salas’s exportation of cocaine in furtherance of the conspiracy constituted relevant conduct that the district court could consider in determining their sentences. *See* U.S.S.G. § 1B1.3(a). The district court did not clearly err when it applied the two-level enhancement.

The district court did not plainly err by failing *sua sponte* to invoke the doctrine of judicial estoppel to bar the government from requesting an exportation enhancement for Gongora and Salas. A district court may apply judicial estoppel to prevent a party from assuming contrary positions in different proceedings. *New Hampshire v. Maine*, 532 U.S. 742, 749–50 (2001). Gongora and Salas argue that judicial estoppel applied because, in an unrelated criminal case, the government had joined initially, but later disavowed, a defendant’s objection to applying the import/export enhancement to his sentence for conspiring to distribute cocaine on

the ground that no importation actually occurred. *United States v. Renteria Granados*, No. 1:13-cr-20801 (S.D. Fla.). Because the government reversed course in *Renteria Granados* and the district court “construe[d] the Government’s position to be that in any future sentencing, U.S.S.G. § 2D1.1(b)(3), may be applicable,” no “clear inconsistency” existed to apply the doctrine of judicial estoppel, *see New Hampshire*, 532 U.S. at 750. Gongora and Salas fail to prove that the district court committed an “error that . . . [is] clear and obvious” by applying the enhancement to them. *See United States v. Corbett*, 921 F.3d 1032, 1037 (11th Cir. 2019).

The district court also did not err by failing to apply the rule of lenity when interpreting section 2D1.1(b)(3). Even if we were to assume that the rule of lenity applies to the advisory Sentencing Guidelines, it does not apply to section 2D1.1(b)(3). *See United States v. Watts*, 896 F.3d 1245, 1255 (11th Cir. 2018) (“Whether the rule of lenity can be applied to the non-statutory advisory Sentencing Guidelines is an open question upon which this Court has cast doubt . . .”). “The rule of lenity is a canon of statutory construction that requires courts to construe ambiguous criminal statutes narrowly in favor of the accused.” *Id.* (quoting *United States v. Wright*, 607 F.3d 708, 716 (11th Cir. 2010) (William Pryor, J., joined by Fay, J., concurring)). Because section 2D1.1(b)(3) is unambiguous, Gongora and Salas cannot establish that the district court erred.

The district court did not clearly err by denying Gongora a two-level reduction for a minor role. For the reduction to apply, Gongora had to prove he was “less culpable than most other participants in the criminal activity, but [his] role could not be described as minimal,” U.S.S.G. § 3B1.2 cmt. n.5, by being “among the least culpable of those involved in the conduct of a group,” *id.* § 3B1.2 cmt. n.4. During a five-hour sentencing hearing, the district court received testimony from the four conspirators on the vessel. Gongora testified that he oversaw the service of and repairs to the vessel and navigated it when the captain required rest. That Gongora did not organize the conspiracy or plan the details of the trip does not mean his role was minor. His ability to perform essential functions on the vessel established that he served an indispensable role in the conspiracy.

The district court also did not clearly err by denying Salas a minor role reduction. *See id.* § 3B1.2 cmt. n.4 & 5. Salas served as lookout for law enforcement and pirates, assisted with repairing and maintaining the engine on the vessel, and periodically assumed Gongora’s role as supervising mechanic. Salas served a key role to ensure that the conspiracy delivered the cocaine.

We **AFFIRM** Gongora’s and Salas’s sentences.

**UNITED STATES DISTRICT COURT**  
**Southern District of Florida**  
**Miami Division**

**UNITED STATES OF AMERICA**

v.

**EDWIN DANIEL  
GONGORA-BALTAN**

**JUDGMENT IN A CRIMINAL CASE**

Case Number: **18-20912-CR-ALTONAGA-2**  
 USM Number: **17803-104**

Counsel for Defendant: **Richard Anthony Merlino, Jr., Esq.**  
 Counsel for The United States: **Yvonne Rodriguez-Schack**  
 Court Reporter: **Stephanie McCarn**

**The defendant pleaded guilty to Count 1 of the Indictment.**

The defendant is adjudicated guilty of this offense:

<b><u>TITLE &amp; SECTION</u></b>	<b><u>NATURE OF OFFENSE</u></b>	<b><u>OFFENSE ENDED</u></b>	<b><u>COUNT</u></b>
46 U.S.C. §70506(b)	Conspiracy to possess with intent to distribute cocaine on board a vessel subject to the jurisdiction of the United States	October 31, 2018	1

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

**All remaining counts are dismissed on the motion of the government.**

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.

Date of Imposition of Sentence: **March 29, 2019**

  
**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

Date: March 29, 2019

DEFENDANT: EDWIN DANIEL GONGORA-BALTAN  
CASE NUMBER: 18-20912-CR-ALTONAGA-2

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ninety-six (96) months**.

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

- Designation as near as possible to North Carolina.

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

## RETURN

I have executed this judgment as follows:

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

## UNITED STATES MARSHAL

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## DEPUTY UNITED STATES MARSHAL

**DEFENDANT: EDWIN DANIEL GONGORA-BALTAN**  
**CASE NUMBER: 18-20912-CR-ALTONAGA-2**

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **two (2) years**.

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 defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.**

**The defendant shall cooperate in the collection of DNA as directed by the probation officer.**

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 and shall submit a truthful and complete written report within the first fifteen days of each month;
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: EDWIN DANIEL GONGORA-BALTAN**  
**CASE NUMBER: 18-20912-CR-ALTONAGA-2**

**SPECIAL CONDITIONS OF SUPERVISION**

**Surrendering to Immigration for Removal After Imprisonment** - At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

**DEFENDANT: EDWIN DANIEL GONGORA-BALTAN**  
**CASE NUMBER: 18-20912-CR-ALTONAGA-2**

**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>
<b>TOTALS</b>	\$100.00	0	0

**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>
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\* 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.

\*\*Assessment due immediately unless otherwise ordered by the Court.

**DEFENDANT: EDWIN DANIEL GONGORA-BALTAN**  
**CASE NUMBER: 18-20912-CR-ALTONAGA-2**

### **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.**

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.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE**  
**ATTN: FINANCIAL SECTION**  
**400 NORTH MIAMI AVENUE, ROOM 08N09**  
**MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)</u>		

**The Government shall file a preliminary order of forfeiture within 3 days.**

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.