

United States Court of Appeals For the First Circuit

No. 18-2112

UNITED STATES,

Appellee,

v.

ISRAEL SANTIAGO-LUGO, a/k/a El Doctor,

Defendant - Appellant.

Before

Howard, Chief Judge,
Thompson and Kayatta, Circuit Judges.

JUDGMENT

Entered: October 1, 2019

Pro se appellant Israel Santiago-Lugo appeals from the district court's denial of 1) his motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c) and guidelines amendment 782, and 2) his "Motion to Correct Preliminary and Final Orders of Forfeiture." The government has filed a motion for summary affirmance which Santiago-Lugo opposes. We summarily affirm.

I. Denial of § 3582(c) Motion for Sentence Reduction

We review de novo the district court's determination that Santiago-Lugo was ineligible for sentence reduction on the ground that the life sentence imposed on Count 2 was statutorily mandated under 21 U.S.C. § 848(b). We have previously denied Santiago-Lugo's motions for reduction of sentence, under prior guidelines amendments, on the ground that he was ineligible because he is serving a statutorily mandated life sentence. See Appeal Nos. 14-2230 & 08-1782. That ground for denial applies here as well. See United States v. Ganun, 547 F.3d 46, 47 (1st Cir. 2008) ("Section 3582(c)(2) 'confers no power on the district court to reduce a minimum sentence mandated by statute.' "(citations omitted)).¹

¹ We do not reach Santiago-Lugo's argument, raised for the first time in his Motion in Opposition to the government's Motion for Summary Dismissal, that he is eligible for a reduction of sentence pursuant to § 3582(c)(2) and the First Step Act, which took effect on December 21, 2018, after

II. Denial of Motion to Correct Forfeiture Orders

Santiago-Lugo appeals from the district court's denial of his motion seeking relief from the order of forfeiture entered in his criminal case in 1996. With the motion, Santiago-Lugo sought, *inter alia*, relief under Honeycutt v. United States, ___ U.S. ___, 137 S. Ct. 1626 (2017) (holding that 21 U.S.C. §853 does not permit the entry of a forfeiture order holding a defendant "jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire"). Assuming, without deciding, that the reasoning of Honeycutt is relevant at all to the challenged forfeiture order, Santiago-Lugo has not identified a procedural vehicle for challenging the forfeiture order at this late date.

Santiago-Lugo relies upon the fact that no amended judgment expressly incorporating the 1996 order of forfeiture has yet entered, despite the district court's 2005 order granting the government's Fed.R.Crim.P. 36 motion to correct the amended judgment to incorporate the forfeiture order. Review of the district court docket confirms that, even after our 2006 affirmance of the district court's order granting the government's Rule 36 motion, see United States v. Santiago-Lugo, Appeal Nos. 05-2254 and 06-1107, no amended judgment including that correction has yet been entered.

That omission, however, does not make the forfeiture order susceptible to substantive challenge at this time. See Fed.R.Crim.P. 32.2(b)(4)(B)(court's failure to include forfeiture order in the judgment "may be corrected at any time under Rule 36"). A correction of judgment pursuant to Rule 36 is non-substantive. See Marmolejos v. United States, 789 F.3d 66, 71 (2d Cir. 2015). "The settled rule is that the non-substantive revision of a previously entered judgment does not restart or otherwise affect the period within which appellate review must be sought." Air Line Pilots Ass'n v. Precision Valley Aviation, Inc., 26 F.3d 220, 223 n.2 (1st Cir. 1994).

The government's motion for summary disposition is granted; the judgment of the district court is affirmed.

Consistent with our June 15, 2006 Judgment in United States v. Santiago-Lugo, Appeal Nos. 05-2254 and 06-1107, we hereby direct the district court to conform with Fed.R.Crim.P. 32.2(b)(4)(B), by amending the 1996 judgment to include the final order of forfeiture, *nunc pro tunc*.

By the Court:

Maria R. Hamilton, Clerk

entry of the district court's denial of his motion for reduction of sentence. See United States v. Flores-Rivera, 787 F.3d 1, 33 (1st Cir. 2015).

United States Court of Appeals For the First Circuit

No. 18-2112

UNITED STATES,

Appellee,

v.

ISRAEL SANTIAGO-LUGO, a/k/a El Doctor,

Defendant - Appellant.

Before

Howard, Chief Judge,
Lynch,* Thompson, Kayatta
and Barron, Circuit Judges.

ORDER OF COURT

Entered: November 10, 2020

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel.

The petition for panel rehearing is denied.

As it appears that there may be no quorum of circuit judges in regular active service who are not recused who may vote on appellant's request for rehearing en banc, the request for rehearing en banc is also denied. See 28 U.S.C. § 46(d); 1st Cir. Loc. R. 35.0(a)(1). In any event, as none of the voting judges sees a basis to grant the petition, a majority of judges in regular active service do not favor en banc review.

By the Court:

Maria R. Hamilton, Clerk

* Judge Lynch is recused and did not participate in the determination of this matter.

* Judge Barron is recused and did not participate in the determination of this matter.

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF PUERTO RICO

4 UNITED STATES OF AMERICA,)
 5 Plaintiff,) CR No. 95-029-1 (JAF)
 6 vs.) SENTENCE
 7 ISRAEL SANTIAGO LUGO, A/K/A) San Juan, Puerto Rico
 "EL DOCTOR",)
 8 Defendant.)

11 TRANSCRIPT OF PROCEEDINGS

13 BEFORE THE HONORABLE JOSE A. FUSTE

14 APRIL 17, 1996

16 APPEARANCES:

17 FOR THE PLAINTIFF: BRUCE PAGEL,
18 FRANCISCO REBOLLO,
ASSISTANT U.S. ATTORNEYS19 FOR THE DEFENDANT: ERICK MORALES, ESQ.
20 HUMBERTO RAMIREZ, ESQ.21 COURT REPORTER: Mary C. Cochran, CSR, RPR
22 Federal Building - RM G50F
23 Carlos Chardon Avenue
Hato Rey, PR 00918
(809) 758-0019

25 ORIGINAL

29598

Appendix E

1 WEDNESDAY, APRIL 17, 1996 HATO REY PUERTO RICO

2 1 OF 6

-00-

3 THE MARSHAL: All rise.

4 THE CLERK: The Court. Please be seated.

5 THE COURT: Please call the case.

6 THE CLERK: Yes, your Honor. For sentence, criminal
7 95-029, United States of America versus Israel Santiago Lugo.
8 On behalf of the Government, trial attorneys Francisco Rebollo
9 and Bruce Pagel. And appearing on behalf of the defendant,
10 attorneys Eric Morales and Humberto Ramirez. The defendant is
11 present in court and he will be provided with the services of
12 the court's interpreter.13 MR. MORALES: Good morning, your Honor, attorney Eric
14 Morales representing Israel Santiago Lugo.15 THE COURT: I see from the presentence report and
16 from the addendum that there are no objections to the
17 presentence report. Is that the case?18 MR. MORALES: Well, we just got the presentence, your
19 Honor.

20 THE COURT: What do you mean?

21 MR. RAMIREZ: It's the amended --

22 THE COURT: Wait.

23 MR. MORALES: We just got it.

24 THE COURT: Minor amendments, minor corrections, is a
25 different story. You have had this presentence report since

1 2/23/96.

2 MR. MORALES: 2/23.

3 THE COURT: '96.

4 MR. MORALES: You're talking about the first?

5 THE COURT: The fact that perhaps a correction has
6 been made, some minor things have been corrected, you have had
7 this presentence report since at least 2/23/96.

8 MR. MORALES: That is true, the first one.

9 THE COURT: The report is in their hands since 2/23,
10 Mr. Feliciano?11 MR. FELICIANO: That's correct, your Honor, the
12 original report was given to them on February 23rd, 1996.13 THE COURT: So what is the difference between the
14 original and what we have here now today?15 MR. FELICIANO: The only things changed, I explained
16 to the attorneys this morning, calculations readjusted removal
17 of the five-year consecutive and the introduction of plus two
18 for the use of a firearm. That's the only correction that was
19 made on the report.

20 THE COURT: Counsel?

21 MR. MORALES: I have no problem with the gentleman's
22 statement, the thing is we haven't read it, we have not read
23 the new -- the new presentence report, that's the problem. We
24 have not read it. And in all fairness, I think we should be
25 given time to read it.1 THE COURT: Let me ask you something. You read the
2 original report?

3 MR. MORALES: Yes.

4 MR. RAMIREZ: Yes, sir.

5 THE COURT: Let's take a look at the report that you
6 have.7 MR. MORALES: But, your Honor, are we going to read
8 this report now?9 THE COURT: Let me say this: You cannot come here
10 today, the day of sentencing after it has been rescheduled and
11 tell me that you have not read the presentence report, because
12 you had presentence report.

13 MR. MORALES: Original one.

14 THE COURT: The only thing that you have not read is
15 perhaps a little paragraph that changes -- a little paragraph
16 that changes a five-year consecutive recommendation because he
17 was originally convicted of 924(c)(1) count, and that has been
18 dismissed at your request and the request of the government,
19 for a two-point enhancement for guns, that's under the Bailey
20 case you have to give, no matter how you look at it. That is
21 the only change. Is that the only change?

22 MR. FELICIANO: That's correct, your Honor.

23 THE COURT: So how can you say that you have not read
24 the presentence report?

25 MR. MORALES: Your Honor, I understand what you're

Appendix E

1 saying and I understand what the gentleman is saying. The
 2 thing is, what I'm telling you is, I came here a few minutes
 3 ago, I was given this report. I haven't read the entire
 4 report. This -- and compared it with the first one.

5 THE COURT: Well, I'm going to grant you some
 6 minutes --

7 MR. MORALES: That's what I'm saying.

8 THE COURT: -- for you to do this. Because it took
 9 me less than five minutes -- it took me less than five minutes
 10 to compare the corrected copy with the original copy, because
 11 it's exactly the same report, other than -- other than the fact
 12 that the five-year consecutive statutory mandated term of
 13 imprisonment is now not in the report anymore and there is a
 14 two point enhancement under 2D1.1 because of the fact that guns
 15 were involved.

16 MR. MORALES: Would you be so kind and give me five
 17 minutes --

18 THE COURT: I'll give you more than five minutes,
 19 I'll give you 15 minutes.

20 MR. MORALES: -- so I can talk to brother --

21 THE COURT: I'll give you 15 minutes.

22 MR. MORALES: That's fair, 15 minutes.

23 MR. RAMIREZ: 15 minutes. That's fine.

24 (Recess.)

25 THE CLERK: All rise.

1 THE MARSHAL: All rise.
 2 THE CLERK: The court is in session, please be
 3 seated.

4 MR. MORALES: Your Honor, brother counsel and I
 5 myself revised [sic] the -- we compared the PSI. And we do
 6 have an objection to -- on page 28.

7 THE COURT: Page 28?

8 MR. MORALES: Specifically where it says "other
 9 criminal conduct."

10 THE COURT: Let me read it.

11 What's wrong with that?

12 MR. MORALES: Okay, first of all, it states here on
 13 the next page, page 29, paragraph number two, and I quote, on
 14 October 28th, 1994, Mr. Santiago appeared before the Superior
 15 Court of Bayamon, Puerto Rico, charged with violation Puerto
 16 Rico weapons law to include Articles 6 and 9. On February 3rd,
 17 1994, the charges were dismissed under the provision of Rule
 18 247 A of the Puerto Rico Rules of Criminal Procedure. This
 19 pertains to the acts -- the alleged acts that occurred in
 20 Levittown. I was personally present and so was brother counsel
 21 for what they call the first appearance for authorization of
 22 arrest. There was no probable cause. There was no subsequent
 23 charges.

24 THE COURT: And?

25 MR. MORALES: This is a mistake.

1 THE COURT: Well, I don't think it's a mistake. I
 2 think the -- the charges were dismissed under Rule 247 A. 247
 3 A is an "in the interest of justice," that's the rule that
 4 says -- local rule of criminal procedure that says that the
 5 charges were not further prosecuted in the interest of justice.

6 MR. MORALES: But what I'm saying, your Honor, that
 7 it never reached the preliminary stage.

8 THE COURT: I understand that.

9 MR. MORALES: And if -- if for whatever reason, which
 10 I don't know why this happened, because once there is a no
 11 probable cause determination, it doesn't have to go further,
 12 unless the -- the charging instrument is amended, which it
 13 didn't happen in this case.

14 THE COURT: He is not getting any points of criminal
 15 history for that incident, but this incident occurred and that
 16 incident is part of the evidence in this case. And for me, I
 17 think up to this moment and perhaps forever, it will be like a
 18 question mark in my mind as to how in the world with that
 19 evidence those charges were dismissed in the interest of
 20 justice. But in any event, it's just other criminal conduct
 21 that he engaged in that is presented in the presentence report
 22 which has a bearing, which has a bearing on the issues of this
 23 case. And I do think that it should remain there. No criminal
 24 history is going to be given to him as a result of that.

25 MR. MORALES: Okay. Your Honor, I accept your

1 statement. I respectfully disagree with the Honorable Court's
 2 analysis, we reserve the right in the future --
 3 THE COURT: Of course.

4 MR. MORALES: -- if he so desires, to question in
 5 appeal.

6 THE COURT: I have no intent of striking that part
 7 from the presentence report.

8 MR. MORALES: Now, the other one is a minor, minor
 9 thing which is on page 43. Basically, on paragraph one
 10 referring to the property and assets?

11 THE COURT: Yes.

12 MR. MORALES: Basically, I just want to inform the
 13 Court and for purposes of the record that these are gross
 14 amounts. No considerations are being taken or have not been --
 15 have not been included to include the liens of the different
 16 properties?

17 THE COURT: I understand that and the record should
 18 reflect that.

19 MR. MORALES: Okay. Other than that we have no
 20 further objections --

21 THE COURT: Very well.

22 MR. MORALES: -- to the PSI.

23 THE COURT: Very well.

24 Mr. Santiago, did you discuss this presentence report
 25 with your lawyers?

1 THE DEFENDANT: That's correct.

2 THE COURT: And do you have, in addition to the
3 objections that he -- that your lawyer has expressed on the
4 record, do you have any other objections?

5 THE DEFENDANT: Well, I had told my attorneys that
6 there were some appraisals there that were included in several
7 counts or something.

8 THE COURT: Are you referring to the matter that he
9 just brought before me now, the values of these properties?

10 THE DEFENDANT: It was Count 4 to 45.

11 THE COURT: What is your complaint as to that?

12 THE DEFENDANT: I had inquired from my attorneys
13 whether the government had placed a global amount in Count 6.
14 Why is it that in the other counts they list more or less the
15 same amount but separately in details?

16 THE COURT: Let me take a look at Count 6.

17 Count 6 is the one that pertains to?

18 MR. MORALES: It pertains to the Texaco.

19 THE COURT: Yes, to the March 12, 1992, transaction
20 over the Texaco gasoline station at Contorno Ward in Toa Alta
21 Puerto Rico for \$900,000, where you made a down payment of
22 \$600,000. And you agreed to pay the balance of 300,000 in 12
23 month installments of \$25,000 each. Is that the one you are
24 referring to?

25 THE DEFENDANT: That's correct.

1 THE COURT: What is your concern about that
2 particular count?

3 THE DEFENDANT: My point is, that if that count has a
4 global amount, what is the point of then in another count
5 detailing it separately, the same amount, the \$600,000 but
6 listing it in separate amounts?

7 THE COURT: I don't seem to understand the concern,
8 Counsel, perhaps you can help.

9 MR. RAMIREZ: May it please the Court, your Honor.

10 THE COURT: Yes.

11 MR. RAMIREZ: What I think he refers to is -- for the
12 record, attorney Humberto Ramirez -- I think he refers he gave
13 \$600,000 as a down payment, it appears there. But then in the
14 other money laundering counts, it seems that the deposits or
15 the withdrawals that he made of that \$600,000 also appear in
16 other counts.

17 THE COURT: Well, because the charge is to the effect
18 that the down payment that was utilized, as well as the monies
19 that were eventually utilized to pay for the installment were
20 all tainted by the drug business. That is the reason.

21 Do you have any other objection yourself to the
22 presentence report?

23 THE DEFENDANT: There is a count there, Count 43,
24 which is a certification for a manager's check, which is a
25 certification for check number 435, and it was an amount of

1 \$100,000 [sic] which was --

2 THE COURT: He said 99,000.

3 THE DEFENDANT: -- part of the \$900,000, which is the
4 same as in Count 38.

5 THE COURT: Count 38 pertains to deposit of \$99,000.

6 THE DEFENDANT: But it's the same, out of the same
7 amount.

8 THE COURT: I understand but it's two different
9 transactions. You deposited first 99,000 on 3/5/92, and then
10 on 3/9 you withdrew 100,000.

11 THE DEFENDANT: In a check. Well, my point of view
12 it's still the same.

13 THE COURT: So what you're saying is that in your --
14 in your view the -- it's the same transaction in the sense that
15 you deposited the cash on 3/5.

16 THE DEFENDANT: And it was withdrawn later.

17 THE COURT: And you withdrew it later, therefore you
18 only committed one offense?

19 THE DEFENDANT: That's correct.

20 THE COURT: Well, let me hear Mr. Pagel as to that.

21 MR. PAGEL: Your Honor, my understanding based on the
22 colloquy here that those are different offenses. They are
23 different transactions, different elements for those offenses.
24 They were tried and argued to the jury as different offenses or
25 at least different examples of the same offense, but at

1 different times, different places and, therefore, the
2 convictions are perfectly proper.

3 THE COURT: Yes, but the question perhaps he has a
4 right to know the answer, I think is, if you deposit today
5 \$99,000 in cash and you commit an offense by so doing and you
6 withdraw that money tomorrow in excess \$1,000 over the amount
7 that you deposit, you take it in a manager's check, what is
8 the -- what is the offense there in the second one? Assuming
9 that it's the same account and the same money?

10 MR. PAGEL: If those were 1956 or 1957 offenses those
11 are different transactions under the law. If they occurred at
12 different times at different places involving --
13 notwithstanding they involve the same money -- they are
14 different elements, they could be charged separately and
15 convictions could be obtained separately. Defendant could be
16 punished separately for those offenses -- different
17 transactions.

18 THE COURT: Let's take a look at something here.

19 The second transaction would be that Andres Colon
20 Miranda brought over to the bank some cash to complete -- to
21 complete the manager's check for 100,007 that he took with him
22 that day. Is that what happened?

23 THE DEFENDANT: Yes. But the one I'm making
24 reference to is the transaction by Nelson Ortiz.

25 THE COURT: Well, according to the indictment, Count

1 38, which is deposit of the \$99,000 --

2 THE DEFENDANT: Has to do -- it's the same as Count
3 43.

4 THE COURT: Well, only God knows. There was no
5 evidence explained in this count other than the government
6 proposed, and there is no -- nothing on the cross-examination
7 on this transaction that will allow me to -- to determine
8 whether Mr. Santiago's assertion is correct or not. The truth
9 of the matter is, that even if we decide to eliminate for the
10 purposes of the calculations, calculation of the amount in
11 controversy and under the money table for sentencing purposes
12 the \$100,000 that appears to him to be a double count, if you
13 will or the \$99,000 that appear to be double counted, the --
14 that will not affect the sentence under the guidelines.
15 Because his sentence is regulated by the fact that he was found
16 to be the principal administrator of this continuing criminal
17 enterprise. So, although perhaps he is correct -- even
18 assuming that he is correct as to that -- if we were to deduct
19 \$100,000 from the money amount, that would not grant him any
20 relief under the guidelines. Because his sentence, as I said
21 before, is not going to be imposed necessarily upon -- upon
22 making reference to the money table. Because his sentence is
23 regulated by the fact that he was found to be the principal
24 administrator in a continuing criminal enterprise. So,
25 therefore, I am willing to grant for the purposes of the

Appendix E

1 arguments that we should reduce the money amount by \$100,000,
2 but that doesn't have any effect on the sentence. That's as
3 much as I can say.

4 THE DEFENDANT: There are other additional things
5 that right now I can't recall, although I had written them
6 down.

7 THE COURT: Let me ask you something. The general
8 information about yourself, all that information of the
9 presentence report that talks about yourself, about your --
10 about your past, about your personal circumstances, that is
11 correct -- is all correct, basically?

12 THE DEFENDANT: It's correct. Except for the
13 portions that the counsel here had already specified.

14 THE COURT: But all that -- all that information
15 regarding, for example, the offense conduct charged, that is
16 correct, appears to be correct, is that so?

17 THE DEFENDANT: That's correct.

18 THE COURT: And even though there is an objection,
19 the details about the other criminal conduct, La Peseta
20 incidents, is correct, the details as to when it happened and
21 how it happened, correct? In other words, I'm aware that your
22 lawyer has objected to that, but those facts as expressed there
23 are correct?

24 THE DEFENDANT: If I am not mistaken, I believe they
25 are.

1 THE COURT: And the section that is entitled Family
2 Ties, Family Responsibilities and Community Ties, that is
3 correct?

4 THE DEFENDANT: That's correct.

5 THE COURT: Very well.

6 The section about your mental and emotional status,
7 your physical condition, your employment record, appears to be
8 correct?

9 THE DEFENDANT: Correct.

10 THE COURT: Very well.

11 So there is no other objection that you can think of
12 right now?

13 THE DEFENDANT: I have a doubt and that is regarding
14 the deposits and the checks cashed. Because I don't understand
15 the fact that a check cashed is a withdrawal from the same act.
16 If the money as such was deposited, and then withdrawn, it's my
17 understanding that then the charges for check cashed would be
18 included in the deposit counts.

19 THE COURT: Well, that is a matter that is not before
20 me at the time of sentencing. That is a matter of whether --
21 whether the government proved beyond a reasonable doubt the
22 elements of the various offenses. But as I said before, the
23 money amount, even if I were to discount all of that, the money
24 table doesn't affect your sentence because your sentence is
25 regulated by the fact that you were found to be the principal

1 administrator of the continuing criminal enterprise.

2 Very well.

3 Do you want to say something on behalf --
4 MR. PAGEL: Your Honor, for the record we have no
5 objections to the PSI... I would note, however, that since the
6 presentence report was prepared your Honor has granted the
7 government's motion with respect to preliminary order for
8 forfeiture, that's the only thing that's different.

9 THE COURT: Not only that, the record should reflect
10 the issue of adjustments that were made and dismissal of
11 Count 3 have been discussed with counsel in a hearing that we
12 had before today. And also -- and also the adjustments under
13 2D1.1 for weapons was discussed -- or was advised to all
14 concerned defendants through an order that I put out.

15 Very well... Do you want to say something on behalf of
16 your client before I impose sentence, Counsel?

17 MR. MORALES: Well, we have seen the level offense,
18 base offense levels. I don't know what the Honorable Court
19 will determine at any rate.

20 THE COURT: Well, you have a pretty good idea what I
21 have to do.

22 MR. MORALES: Yes.

23 THE COURT: There is nothing I can do even if I give
24 you the guideline manual and ask you to craft the sentence
25 yourself. You know what the answer is going to be.

1 MR. MORALES: Yes, sir.

2 THE COURT: Mandatory sentence.

3 MR. MORALES: According to the latest -- latest
4 jurisprudence from the supreme court and I would like you to
5 state for the record what you're going to do pertaining to
6 Rutledge, as far as the sentence is concerned, just for the
7 record, so that I can -- we can have something on the record on
8 that.

9 THE COURT: Well, it's very simple, Rutledge tells us
10 that the proper thing to do in a case like this one is sentence
11 your client under the continuing criminal enterprise of which a
12 conspiracy in which he was also convicted is a lesser included
13 offense.

14 In the event -- in the event that -- in the event
15 that for some reason on appeal the conviction for the
16 continuing criminal enterprise falls through the cracks or is
17 reversed, there is no -- there is no impediment, as a matter of
18 law, allowing the court of appeals to mandate the case back to
19 me for resentencing on the conspiracy count, in which case the
20 conspiracy conviction will be reinstated without the need of a
21 new trial. That is what basically Rutledge says.

22 MR. MORALES: And also for purposes of the record, I
23 want brother counsel from the government to state what is it,
24 you know, pursuant to Rutledge, what is the charge that he is
25 pursuing, just for the record, your Honor.

1 THE COURT: I don't understand the question.

2 MR. MORALES: Is he being charged on CCE and
3 conspiracy?

4 THE COURT: He has been charged, he has been
5 convicted on both.

6 MR. MORALES: That's correct. My question is that
7 for the record that counsel for the government state for the
8 record what is the -- what is the charge.

9 THE COURT: Well, Mr. Pagel, do you disagree with the
10 analysis that I made of Rutledge --

11 MR. PAGEL: In this case.

12 THE COURT: -- in this case? That Mr. Santiago must
13 be sentenced under the CCE and, of course, Rutledge mandates
14 that if the conspiracy charge be -- conviction be vacated, he
15 remains -- some sort of lingo thereafter -- the court of
16 appeals looks at this whole matter, if they affirm the
17 conviction on the CCE, well, that's it. If they decide to
18 reverse the conviction on the CCE, the court of appeals can
19 always send the case back through mandate for this court to
20 reinstate the conspiracy conviction and have him sentenced
21 accordingly.

22 MR. PAGEL: Your Honor, as to this defendant we agree
23 entirely. For the record, we maybe made a different request as
24 to other defendants but as to Israel Santiago Lugo, I think the
25 Court is exactly correct.

1 whose alias is El Doctor, was found guilty as to Count 1
2 through 45 and Counts 48 through 50 of the superseding
3 indictment in this case 95-29, charging violations to 21 U.S.
4 Code sections 841(a)(1), 846, 848, and 853, and Title 18 of the
5 U.S. Code section 924(c)(1), 1957, 902, all in the context of
6 also Section 2 of Title 18.

7 On April the 2nd of this year, 1996, the Court
8 dismissed Count 3 of the indictment pursuant to the recent
9 supreme court decision in Bailey versus United States. This
10 matter was the object of Rule 29 motions, which the Court
11 denied originally and of a renewed motion after Bailey by the
12 government. And there was no objection that the count be
13 dismissed.

14 The instant case involved a continuing criminal
15 enterprise to facilitate drug trafficking activities. And
16 under the provisions of USSG Section 2D1.5, the applicable
17 offense level must be four levels higher than that of the
18 underlying trafficking offense. The base offence level under
19 2D1.1 is 38. Since the commission involved -- the commission
20 of the offense involved the use of firearms, a two-level
21 increase is authorized by USSG Section 2D1.1(b)(1).

22 Additionally, the offense conduct charged in
23 Counts 1, 2 and Counts 4 through 45, is groupable under the
24 provisions of guideline section 3D1.2 (b), groups of closely
25 related counts, as the counts comprise similar and related

1 conduct. As monetary laundering is a type of statutory offense
2 that facilitates the completion of some other underlying
3 offense, it is appropriate to consider the money laundering
4 offense as closely intertwined and groupable with the
5 underlying offense. There are no other applicable guideline
6 adjustments.

7 The resulting total offense level is then 44, which
8 is 38, plus two for weapons, for a total of 40 under 2D1.1,
9 plus four under 2D1.5, the commentary section to Chapter 5, the
10 sentencing table directs that an offense level greater than 43
11 be treated as a 43 level, which is the highest level in the --
12 in the sentencing table.

13 Based on the total offense level of 43, and criminal
14 history category of one, the guideline imprisonment range in
15 this particular -- there is no guideline imprisonment range, as
16 a matter of fact. As I was saying, based on the offense level
17 of 43 and criminal history category of one, there is no
18 guideline imprisonment range and life sentence is mandatory
19 with a fine range of 25,000 to \$4 million, plus supervised
20 release of five years as to Count 2 and two to three years as
21 to each remaining count.

22 The Court also notes that under the provisions of
23 Title 21 of the U.S. code section 848, I think it's Section B,
24 since he was found to be the principal administrator of this
25 continuing criminal enterprise, the Court is also required to

1 impose a life sentence as to Count 2.

2 Therefore, it is the judgment of the Court that the
 3 defendant is hereby committed to the custody of the bureau of
 4 prisons to be imprisoned for life as to Count 2 and ten years
 5 as to each of the Counts 4 through 45. Said terms to be served
 6 concurrently with each other.

7 Pursuant to Rutledge versus United States, the
 8 citation is known to all of you, the court sets aside the
 9 conviction under the conspiracy count. One, subject to
 10 reinstatement in the event that through appeal or otherwise the
 11 CCE conviction is vacated, at this point in time I am going to
 12 also make for the record an analysis of what the sentence would
 13 have been had he been sentenced on -- under the conspiracy
 14 count.

15 Base offense level would have been 38. He would have
 16 received a role adjustment of four points. He would have also
 17 received a two point adjustment for weapons for a total of 44.
 18 It would have been exactly the same as now and he would have
 19 been treated as a level 43.

20 Having considered the defendant's financial
 21 condition, a fine is not imposed. If ever release from
 22 confinement, the defendant shall be placed on supervised
 23 release for term of five years as to Count 2 and three years as
 24 to each of the remaining counts, said terms to be served
 25 concurrently with each other under the following terms and

1 conditions:

Appendix E

6 OG 6

2 First, the defendant shall not commit another
 3 federal, state or local crime, and shall observe the standard
 4 conditions of supervised release recommended by the United
 5 States sentencing commission and adopted by this court.

6 Number two, the defendant shall not possess any
 7 controlled substances, firearms, or other dangerous weapons.

8 Number three, the defendant shall refrain from any
 9 unlawful use of a controlled substance and shall submit to one
 10 drug test within 15 days of release on supervised release and
 11 at least two periodic tests thereafter, whenever so requested
 12 by the U.S. probation officer. If any such samples detect
 13 substance abuse, defendant shall participate in a substance
 14 abuse treatment program arranged and approved by the U.S.
 15 probation officer until duly discharged by authorized program
 16 personnel with approval of the probation officer.

17 The next condition will be the following: The
 18 defendant shall provide the U.S. probation officer access to
 19 any financial information upon request.

20 Lastly, the defendant shall produce evidence to the
 21 U.S. probation officer to the effect that the income tax
 22 returns and any other lawful obligations to the commonwealth
 23 have been met as required by law. Special monetary assessments
 24 of \$50 per count, for a total of \$2,250 is imposed.

25 The defendant is advised that even though he was

1 found guilty and has been sentenced according to what the law
 2 requires, he is entitled to appeal his judgment of conviction
 3 and his sentence by filing a notice of appeal within 10 days
 4 from today, under Federal Rules of Appellate Procedure 4B.

5 He has also the right to an appeal after making an
 6 application for leave to appeal *in forma pauperis*, if he is
 7 unable to pay the costs of the appeal. If he is represented --
 8 if he satisfies before the court of appeals that he cannot pay
 9 the costs of an attorney on appeal, then, of course, he will
 10 have the benefits of the Criminal Justice Act, which means
 11 court-appointed attorneys, so that the court-appointed attorney
 12 will continue his representation through the appeal under
 13 whatever disposition the court of appeals may make.

14 Any time that he has served in pretrial detention up
 15 to this moment shall be credited toward his sentence.

16 Anything else at this time?

17 MR. PAGEL: No, your Honor.

18 THE COURT: Anything else?

19 MR. MORALES: Nothing else, your Honor.

20 THE COURT: Thank you very much. You're now excused.

21 MR. MORALES: Good day, your Honor.

22 (Proceedings concluded.)

1 REPORTER'S CERTIFICATE

2
 3 I, MARY C. COCHRAN, Official Court Reporter for the
 4 United States District Court for the District of Puerto Rico,
 5 appointed pursuant to the provisions of Title 28, United States
 6 Code, Section 753, do hereby certify that the foregoing is a
 7 true and correct computer-aided transcript of proceedings had
 8 in the within-entitled and numbered cause on the date herein
 9 set forth; and I do further certify that the foregoing
 10 transcript has been prepared by me or under my direction.

Mary C. Cochran
 11
 12
 13
 14
 15
 16
 17
 18 MARY C. COCHRAN
 19 Official Court Reporter

DEFENDANT: ISRAEL SANTIAGO LUGO AKA "EL DOCTOR"
CASE NUMBER: 3:95CR00029-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set on Sheet 5, Part B.*

	Assessment	Fine	Restitution
Totals:	\$ 2,250.00	\$	\$
If applicable, restitution amount ordered pursuant to plea agreement		\$	

FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$ _____.

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency 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.
 The interest requirement is modified as follows:

RESTITUTION

The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Payee	Priority Order or Percentage of Payment	Amount of Loss	Amount of Restitution Ordered
-------	---	-------------------	----------------------------------

Totals: \$ _____ \$ _____

** 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.

DEFENDANT: ISRAEL SANTIAGO LUGO AKA "EL DOCTOR"
CASE NUMBER: 3:95CR00029-001

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 13

Criminal History Category: I

Imprisonment Range: _____ to _____ months (LIFE IMPRISONMENT)

Supervised Release Range: 2 to 5 years AS TO COUNT 2.

Fine Range: \$ 25,000.00 to \$ 3,000,000.00 years AS TO THE REMAINING COUNTS.

Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ _____

Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

Partial restitution is ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.

for the following specific reason(s):

Appendix F
Part 2

ADDITIONAL SUPERVISED RELEASE TERMS

- THE DEFENDANT SHALL NOT COMMIT ANOTHER FEDERAL, STATE, OR LOCAL CRIME, AND SHALL OBSERVE THE STANDARD CONDITIONS OF SUPERVISED RELEASE RECOMMENDED BY THE UNITED STATES SENTENCING COMMISSION AND ADOPTED BY THIS COURT.
- THE DEFENDANT SHALL NOT POSSESS ANY CONTROLLED SUBSTANCES, FIREARMS OR OTHER DANGEROUS WEAPONS.
- THE DEFENDANT SHALL REFRAIN FROM ANY UNLAWFUL USE OF A CONTROLLED SUBSTANCE AND SHALL SUBMIT TO ONE DRUG TEST WITHIN FIFTEEN DAYS OF RELEASE ON SUPERVISED RELEASE AND ON AT LEAST TWO OTHER OCCASIONS AS DIRECTED BY THE PROBATION OFFICER. IF ANY SAMPLES DETECT SUBSTANCE ABUSE, THE DEFENDANT SHALL PARTICIPATE IN A TREATMENT PROGRAM ARRANGED AND APPROVED BY THE PROBATION OFFICER UNTIL DULY DISCHARGED BY PROGRAM PERSONNEL AND WITH THE APPROVAL OF THE PROBATION OFFICER.
- THE DEFENDANT SHALL PROVIDE THE PROBATION OFFICER ACCESS TO ANY FINANCIAL INFORMATION UPON REQUEST.
- THE DEFENDANT SHALL PROVIDE TO THE PROBATION OFFICER EVIDENCE TO THE EFFECT THAT INCOME TAX RETURNS HAVE BEEN DULY FILED WITH THE COMMONWEALTH OF PUERTO RICO DEPARTMENT OF THE TREASURY AS REQUIRED BY LAW.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	\$ 2,100.00	\$	\$

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

FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency 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.

The interest requirement is modified as follows:

RESTITUTION

The determination of restitution is deferred until _____ An Amended Judgment in a Criminal Case

will be entered after such a determination.

The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	* Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
---------------	------------------------	-------------------------------	---

Totals: \$

\$

* 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.

Judgment Sheet 1 of 1

Judgment Page 3 of 5

DEFENDANT: ISRAEL SANTIAGO LUGO AKA "EL DOCTOR"
CASE NUMBER: 3:95CR00029-001

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 43

Criminal History Category: I

Imprisonment Range: _____ to _____ months (LIFE IMPRISONMENT)

Supervised Release Range: _____ to _____ years AS TO COUNT 2. & _____ to _____ YEARS AS TO THE REMAINING COUNTS.

Fine Range: \$ 25,000.00 to \$ 4,000,000.00

Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ _____

Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

Partial restitution is ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.

for the following specific reason(s):

MIME-Version:1.0
From:prd_docketing@prd.uscourts.gov
To:prd_docketing@prd.uscourts.gov
Bcc:prd_pretrial@prd.uscourts.gov, Mildred_Ward@fd.org, Ruth_Sein@fd.org
Message-Id:<599007@prd.uscourts.gov>
Subject:Activity in Case 3:95-cr-00029-JAF USA v. Santiago-Lugo, et al

/PreTrial" Content-Type: text/html

NOTE TO PUBLIC ACCESS USERS You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.

United States District Court

District of Puerto Rico

Notice of Electronic Filing

The following transaction was received from ft, entered on 7/18/2005 at 10:41 AM AST and filed on 7/18/2005

Case Name: USA v. Santiago-Lugo, et al
Case Number: 3:95-cr-29

Filer:
Document Number: 3064

Docket Text:

ORDER denying [3062] Motion for Return of Property/PreTrial as to Israel Santiago-Lugo (1). Signed by Judge Jose A Fuste on 7/18/05. (ft,)

The following document(s) are associated with this transaction:

3:95-cr-29-1 Notice will be electronically mailed to:

Jose R. Aguayo joseraguayo@cs.com, jracauasade@aol.com
A. J. Bennazar-Zequeira bennazar@microjuris.com,
Alberto G. Estrella agestrella@welo.net, agestrella@hotmail.com
Ramon Garcia-Garcia rmgsm@coqui.net,
Ismael H. Herrero-Jr. ismael.herrero@lawpr.com, herrerioishjr@microjuris.com

https://ecf.prd.circ1.dcn/cgi-bin/DisplayReceipt.pl?688910394850544-L_339_0-1

9/20/2005

MIME-Version:1.
From:prd_docketing@prd.uscourts.gov
To:prd_docketing@prd.uscourts.gov
Bcc:Mildred_Ward@fd.org, Ruth_Sein@fd.org, PRD_JAF@prd.uscourts.gov, ages
Message-Id:<614679@prd.uscourts.gov>
Subject:Activity in Case 3:95-cr-00029-JAF USA v. Santiago-Lugo, et al

Content-Type: text/html

NOTE TO PUBLIC ACCESS USERS You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.

United States District Court

District of Puerto Rico

Notice of Electronic Filing

The following transaction was received from mj, entered on 8/4/2005 at 4:10 PM AST and filed on 8/4/2005

Case Name: USA v. Santiago-Lugo, et al
Case Number: 3:95-cr-29
Filer:
Document Number: 3070

Docket Text:

ORDER as to Israel Santiago-Lugo denying [3068] Memorandum in support filed by Israel Santiago-Lugo . Signed by Judge Jose A Fuste on 8/4/05. (mj,)

The following document(s) are associated with this transaction:

3:95-cr-29-1 Notice will be electronically mailed to:

Jose R. Aguayo joseraguayo@cs.com, jracauasade@aol.com
A. J. Bennazar-Zequeira bennazar@microjuris.com,
Alberto G. Estrella agestrella@welo.net, agestrella@hotmail.com
Ramon Garcia-Garcia rmgsm@coqui.net,
Ismael H. Herrero-Jr. ismael.herrero@lawpr.com, herrerioishjr@microjuris.com

https://ecf.prd.circ1.dcn/cgi-bin/DisplayReceipt.pl?643578187746455-L_339_0-1

9/20/2005

United States Court of Appeals
For the First Circuit

Nos. 05-2254
06-1107

UNITED STATES,
Appellee,

v.

ISRAEL SANTIAGO-LUGO,
Defendant, Appellant.

Before

Boudin, Chief Judge,
Selya and Lipez, Circuit Judges.

JUDGMENT

Entered: June 15, 2006

Israel Santiago-Lugo seeks amendment of his judgment of conviction to remove reference to forfeiture counts and the return of his forfeited property, on the ground that the sentencing court failed to comply with Fed. R. Crim. P. 32.2, which requires that a forfeiture order "be made part of the sentence and included in the judgment." Rule 32.2(b)(3).¹ He appeals from the district court's denial of his motions to amend and for return of forfeited property and from the district court's order granting the government's Fed. R. Crim. P. 36 motion to correct the amended judgment to include the preliminary forfeiture order which had issued prior to sentencing but was not announced as part of the sentence nor included as part of the written judgment or amended judgment.

The parties agree that the forfeiture order was not announced as part of the sentence nor contained in the original or amended judgment and that, therefore, there was a violation of Rule 32.2(b)(3). The parties disagree about what the proper remedy is

for the failure to comply with that aspect of Rule 32.2. The government maintains that the district court properly granted its motion to correct the omission pursuant to Fed. R. Crim. P. 36, which provides in relevant part that "[a]fter giving any notice that it considers appropriate, the court may at any time correct a clerical error in a judgment." Santiago-Lugo maintains that the omission of the forfeiture order from the sentence and judgment is not a mere clerical error, and that the amendment to add the forfeiture order is a substantive change that cannot be made pursuant to Rule 36. He argues that he is entitled to have the forfeiture order vacated. We disagree.

Santiago-Lugo relies upon a statement made in dicta by this court, that "[w]e assume, without deciding, the correctness of the Eleventh Circuit's rule that failure to make forfeiture a part of the judgment provides grounds for vacating a prior or subsequent order." *United States v. Ferrario-Pozzi*, 368 F.3d 5, 8 (1st Cir. 2004). More recently, however, we held that "the appropriate remedy for violation of the Rule depends on context." *United States v. Yele-Cabrera*, 430 F.3d 1, 14 (1st Cir. 2005). Where the violation of Rule 32.2 has not caused a lack of notice and opportunity for the defendant and third parties to object to the proposed forfeiture, we held that reversal of the forfeiture order is not warranted. *Id.* Instead, we ordered amendment of the judgment *nunc pro tunc* to include an order of forfeiture which had been inadvertently omitted from the judgment. We also noted that Rule 36 would have been an appropriate means for correcting the error if a motion had been presented to the sentencing court. See *id.* at 14 & n.6.

In this case, as in *Yele-Cabrera*, Santiago-Lugo had notice of the forfeiture order and an opportunity to object. The forfeiture claims were contained in the indictment and the jury returned a Special Forfeiture Verdict, specifically finding the identified items to be forfeitable. Several months after the verdict, the government's motion for a preliminary order of forfeiture was granted, prior to sentencing. The motion specifically referred to the properties, funds and accounts identified in the Special Forfeiture Verdict. At the sentencing hearing, the government specifically noted, and the sentencing judge acknowledged, that the court had previously granted its motion for a preliminary order of forfeiture. The written judgment referred to the fact that defendant had been found guilty of the criminal forfeiture counts but failed to incorporate the preliminary order of forfeiture which had issued.

In this context, as in *Yele-Cabrera*, "the portion of Rule 32.2 which was violated here is largely a housekeeping rule and does not itself go to any fundamental rights of defendants." *Id.* at 15. Therefore, the district court did not err in granting the

¹ Although the version of the Rule in effect in 1996, when petitioner was sentenced, did not contain that exact wording, it has also been interpreted as requiring that "a finding of forfeitability must be embodied in a judgment." *Libretti v. United States*, 516 U.S. 29, 40 (1995).

government's motion pursuant to Rule 36 to correct the amended judgment to include the forfeiture order. See United States v. Bennett, 423 F.3d 271, 281 (3d Cir. 2005); United States v. Hatcher, 323 F.3d 666, 673 (8th Cir. 2003). The violation of Rule 32.2 in this case did not entitle Santiago-Lugo to have the forfeiture order vacated.

Because the amendment to the judgment constituted the correction of a clerical error, rather than a substantive change, Santiago-Lugo's claim that he had a constitutional right to have the amendment made in his presence is unavailing. See United States v. Portillo, 363 F.3d 1161, 1166 (11th Cir. 2004) (holding that due process clause does not require that Rule 36 correction of a sentence occur in the presence of defendant). Also unavailing are Santiago-Lugo's challenges in this appeal to his continuing criminal enterprise and money laundering convictions, some of which arguments were raised in his § 2255 motion which was denied in 2001. None of those arguments was presented to the district court in the motions that are the subject of this appeal. Therefore, we do not address their merits.

The district court's order entered on July 18, 2005, denying Santiago-Lugo's Motion for Return of Property, and its order entered on August 13, 2005, granting the government's Rule 36 motion, and denying Santiago-Lugo's Rule 36 motion, are affirmed.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

[cc: Israel Santiago-Lugo, Ernesto Gonzalez-Morales, Esq., Francisco M. Lopez-Romo, Esq., Alberto G. Estrella, Esq., David C. Indiana-Vicic, Esq., Elfrick Mendez Morales, Esq., A.J. Bennazar-Zequeira, Esq., Ronald M. McNeil, Esq]

United States Court of Appeals

For the First Circuit

No. 05-2254

UNITED STATES OF AMERICA
Appellee,

Appendix H
2 of 2

v.
ISRAEL SANTIAGO-LUGO,
Defendant, Appellant.

Before

Boudin, Chief Judge,
Selya, Lipez, and Howard Circuit Judges.

ORDER OF COURT

Entered: August 7, 2006

Petitioner seeks rehearing and rehearing en banc of this court's judgment affirming the district court's denial of his Fed. R. Crim. P. 41 motion for return of property. The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing, and a majority of the judges in regular active service not having voted to rehear the case en banc, it is ordered that the petition for rehearing and suggestion for rehearing en banc be denied. The denial is without prejudice to petitioner's right to bring a separate civil action for the return of seized property which was not identified in the Special Forfeiture Verdict returned by the jury or included in the preliminary forfeiture order issued by the district court.

By the Court:
Richard Cushing Donovan, Clerk.

MARGARET CARTER
By: _____
Chief Deputy Clerk.

Judges Torruella and Lynch were recused.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

October 30, 2006

William K. Suter
Clerk of the Court
(202) 479-3011

Mr. Israel Santiago-Lugo
Prisoner ID 10947-069
WP: UCC 1207 (or 308)
U.S.M. 10947-069
PO Box 1033
Coleman, FL 33521

Re: Israel Santiago-Lugo
v. United States
No. 06-6681

Dear Mr. Santiago-Lugo:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing *en banc* having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard *en banc*, it is ordered that the petition for rehearing and petition for rehearing *en banc* be denied.

By the Court:

/s/ Richard Cushing Donovan, Clerk.

cc:
A.J. Bennazar-Zequiera
Alberto G. Estrella
Ismael H. Herrero
David C. Indiana-Vicic
Francisco M. Lopez-Romo
Elfrick Mendez Morales
German Rieckhoff
Israel Santiago-Lugo

Federal Court of the United States
Office of the Clerk
Washington, DC 20543-0001

May 18, 2008

Appendix I
OF 2

Mr. Israel Santiago-Lugo
Prisoner ID 10947-069
WP: UCC 1207 (or 308)
U.S.M. 10947-069
PO Box 1083
Coleman 1, FL 33521

Re: Israel Santiago-Lugo
v. United States
No. 08-9842

Dear Mr. Santiago-Lugo:

The Court today entered the following order in the above-entitled case:
The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter
William K. Suter, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Order re Crack Cocaine Administrative Directive
Criminal Case No. 95-029-1 (JAF)

Appendix J
1 of 3

UNITED STATES OF AMERICA, Plaintiff	CRIMINAL NO. 95-029-1 (JAF)
v. ISRAEL SANTIAGO-LUGO Defendant	

ORDER

In keeping with this Court's Administrative Directive, Misc. 11-437 (ADC), the Clerk has notified defendant's pro-se Motion for Reduction of Sentence to:

- the U.S. Attorney's Office - by CM/ECF notification to the Chief of the Narcotics Unit AUSA Timothy Henwood (timothy.henwood@usdoj.gov)
- the U.S. Probation Office - by CM/ECF notification to USPO Zulma Basora (zulma.basora@prp.uscourts.gov) and USPO Belinda Zayas (belinda.zayas@prp.uscourts.gov).

Because the motion was filed pro se, AFDP Héctor L. Ramos-Vega, (Hector.Ramos@fd.org) from the Federal Public Defender's Office, has been appointed and duly notified to appear on defendant's behalf in this matter.

The attorneys are reminded that the Court's Administrative Order establishes the following timetable:

Filer	Deadline
U.S. Probation Office	Within 30 days from receipt of notice of filing of motion seeking a reduction, the USPO shall file a "Retroactivity Package" which consists of a short recommendation and the following attachments: PSR, J&C Order, Plea Agreement, Indictment, and Sentencing Transcript.
Federal Public Defender United States Attorney	Within 20 days after filing of the "Retroactivity Package": they shall file a Stipulation recommending disposition of the reduction of sentence petition or simultaneous Disagreement Memoranda - not to exceed 4 pages.

BY ORDER OF THE COURT.

In San Juan, Puerto Rico, on July 31, 2014.

FRANCES RIOS DE MORAN, ESQ.
CLERK OF COURT

SI Helen Serrano
Deputy Clerk

-2-

Case 3:95-cr-00029-JAF Document 3715 Filed 10/21/14 Page 1 of 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

THE UNITED STATES OF AMERICA *

Plaintiff *

vs. * Cr. No. 95-00029-001(JAF)

ISRAEL SANTIAGO-LUGO *

Defendant *

RECOMMENDATION IN RE: Motion for sentence reduction pursuant to
USSG § 1B1.10, as amended, and 18 U.S.C. § 3582(c)(2)

TO THE HONORABLE JOSE A. FUSTE
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

COMES NOW, FRANCISCO J. LLOVET-AYALA, U.S. PROBATION OFFICER OF
THIS HONORABLE COURT, providing the following information pursuant to the Administrative
Directive filed under Misc. No. 11-437(ADC).

On December 13, 1995, the defendant was found guilty by jury trial as to Counts One thru Forty-Five of the Indictment rendered under Criminal Case No. 95-029, charging violations of Title 21, U.S.C., §§ 846 (a) and (b) and 848, Title 13, U.S.C. §§ 1957 and 2; and forty-eight thru fifty (criminal forfeiture). On April 2, 1996, the court dismissed Count Three of the Indictment pursuant to the Supreme Court decision in *Bailey v. United States*, 516 U.S. 137, 116 S.Ct 501 (1995). On April 17, 1996, the defendant was sentenced to life imprisonment as to count two, and ten (10) years as to counts four through fourteen, sixteen thru thirty, thirty-two thru thirty-six and thirty-eight thru forty-five, to be served concurrently with each other. The Court found that the instant case involved a continuing criminal enterprise to facilitate drug trafficking activities, and pursuant to Guideline §2D1.5 the applicable level was established to be four (4) levels higher than that of the underlying drug trafficking

Case 3:95-cr-00029-JAF Document 3715 Filed 10/21/14 Page 2 of 4

offense, which based on the amount of controlled substances involved was determined to be 38. As the commission of the offense involved the use of firearms, a two (2) level increase was authorized under the provisions of Guideline §2D1.1(b)(1). Additionally, the offense conduct charged in counts one, two, and counts four thru forty-five was grouped together pursuant to the provisions of Guideline § 3D1.2(b). The monetary laundering was considered as closely intertwined and groupable with the underlying offense. The resulting total offense level was established at 44, which was treated as level 43 based on Commentary Section to Chapter Five Sentencing table.

Based on a total offense level of 43 and a criminal history category of I, the guideline imprisonment range in this particular offense is life. The court further found that the statutory provisions of Title 21, U.S. Code §848(b) also required the imposition of a life sentence as to count two.

After a careful consideration of the request made by the defendant, it is the position of the probation officer that Mr. Santiago-Lugo is not eligible for a sentence reduction, as the defendant is subject to guideline and statutory mandatory life sentence. Furthermore, on May 16, 2008, this Honorable Court denied a previous motion requesting a sentence reduction based on the same grounds asserted in this motion (docket No.3270). In addition, on June 24, 2008, the United States Court of Appeals for the First Circuit affirmed this court's denial (docket 3387, 3293).

At present, the inmate is being housed at FCI, Talladega, and has a life sentence.

WHEREFORE, we submit the information herein and further enclose a "retroactivity package" pursuant to the Administrative Directive filed under Misc. No. 11-437(ADC).

In San Juan, Puerto Rico, this 21st day of October, 2014.

Respectfully submitted,

**EUSTAQUIO BABILONIA, CHIEF
U.S. PROBATION OFFICER**

Francisco J. Llovet-Ayala
United States Probation Officer
150 Carlos Chardón Avenue
Federal Office Building Rm. 400
Hato Rey, PR 00918
Tel: (787) 766-5596
Fax: (787) 771-4063
Email: francisco_llovet@prp.uscourts.gov

Appendix J

CERTIFICATE OF SERVICE

I HEREBY certify that on July 1, 2013, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the U.S. Attorney's Office and to AFDL Héctor L. Ramos, Esq.

In San Juan, Puerto Rico, this 21st day of October, 2014.

Francisco J. Llovet-Ayala
United States Probation Officer
150 Carlos Chardón Avenue
Federal Office Building Rm. 400
Hato Rey, PR 00918
Tel. (787) 766-5596
Fax: (787) 771-4063
Email: francisco_llovet@pr.uscourts.gov

Case 3:95-cr-00029-JAF Document 3719 Filed 10/30/14 Page 1 of 1

AO 247 (Rev. 11/11) Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2) Page 1 of 2 (Page 2 Not for Public Disclosure)

UNITED STATES DISTRICT COURT
for the

District of Puerto Rico

United States of America,)
v.)
ISRAEL SANTIAGO-LUGO) Case No: 95-0029-001 (JAF)
)
) USM No: 10947-069

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of the defendant the Director of the Bureau of Prisons the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is: DENIED. GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

Journal of Oral Rehabilitation 2003; 30: 1030–1036

Except as otherwise provided, all provisions of the judgment dated 17.10.2007 shall remain in effect.

IT IS SO ORDERED.

Order Date: 10/30/2014

S/JOSE ANTONIO FUSTE
Judge's signature

United States Court of Appeals
For the First Circuit

No. 14-2230

UNITED STATES,
Appellee,
v.
ISRAEL SANTIAGO-LUGO, a/k/a El Doctor,
Defendant, Appellant.

Before

Howard, Chief Judge,
Thompson and Kayatta, Circuit Judges.

JUDGMENT

Entered: November 23, 2015

Israel Santiago-Lugo is serving a life sentence for conviction of engaging in a continuing criminal enterprise (CCE), in violation of 18 U.S.C. § 2 and 21 U.S.C. § 848 (Count Two). In July 2014, Santiago-Lugo filed a second motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. Amendments 748 and 750, which modified the Drug Quantity Table, U.S.S.G. § 2D1.1(e), to increase the amounts of crack cocaine required to trigger certain sequential base offense levels, and lowered guideline ranges for crack cocaine offenses accordingly. The district court summarily denied the motion on the ground that Santiago-Lugo was ineligible for the reduction as he was serving a "statutorily mandatory life sentence," pursuant to § 848(b).

Having carefully examined the record and considered the parties' briefs, we agree that the district court lacked authority to grant Santiago-Lugo the requested sentencing reduction pursuant to § 3582(c)(2) because he is serving a statutorily mandated sentence. See United States v. Canun, 547 F.3d 46, 47 (1st Cir. 2008). To the extent that Santiago-Lugo seeks to challenge the drug quantity determinations underlying the application of the statutory life sentence imposed pursuant to § 848(b), that challenge is beyond the scope of § 3582(c)(2). This court has previously denied Santiago-Lugo's request to file a second or successive § 2255 motion in partial reliance upon United States v. Candelaria-Silva, 714 F.3d 651 (1st Cir. 2013). See Appeal No. 13-1500.

The denial of the motion for sentence reduction is affirmed.

United States Court of Appeals
For the First Circuit

No. 14-2230

UNITED STATES,
Appellee,
v.
ISRAEL SANTIAGO-LUGO, a/k/a El Doctor,
Defendant, Appellant.

Before

Howard, Chief Judge,
Torruella, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: January 4, 2016

Petitioner's motion for leave to file an attached addendum to this petition is granted.

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

/s/ Margaret Carter, Clerk

Appellant's Motion for Leave to Supplement the Record is denied.

Appendix J
3 of 3

cc:

Israel Santiago-Lugo
Francisco M. Lopez-Romo
Alberto G. Estrella
David C. Indiana-Vicic
Antonio Juan Bennazar-Zequeira
Carmen Milagros Marquez-Marin
Timothy R. Henwood
Nelson Jose Perez-Sosa
Tiffany Veronica Monroe
Elfrick Mendez Morales

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 470-3011

March 21, 2016

Mr. Israel Santiago-Lugo
Prisoner ID #10947-069
FCC Talladega
P.M.B. 1000
Talladega, AL 35160

Re: Israel Santiago-Lugo
v. United States
No. 15-8261

Dear Mr. Santiago-Lugo:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

Sincerely,

Scott S. Harris
Scott S. Harris, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ISRAEL SANTIAGO-LUGO (01);
NELSON ORTIZ-BAEZ (04);
WILFREDO MARTINEZ-MATTA (05);
DAVID MARTINEZ-MATTA (06);
ANGEL M. ANDRADES-MARRERO (08);
JOSE A. ROSADO-ROSADO (10);
RAUL ORTIZ-MIRANDA (11);
CELENIA REYES-PADILLA (13);
ROSA MORALES-SANTIAGO (14);
EULALIO CANDELARIA-SILVA (15);
and MOISES CANDELARIA-SILVA (16),

Defendants.

VERDICT ON COUNTS ONE TO FORTY-SEVEN

We, the Jury, find as follows:

Count One (Conspiracy Count)

(01) Israel Santiago-Lugo, a/k/a El Doctor:

GUILTY NOT GUILTY

(04) Nelson Ortiz-Baez, a/k/a Mickey Mouse, a/k/a Yabó:

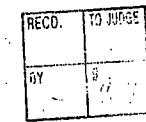
GUILTY NOT GUILTY

(05) Wilfredo Martinez-Matta, a/k/a Willy:

GUILTY NOT GUILTY

(06) David Martinez-Matta, a/k/a Bo:

GUILTY NOT GUILTY



Criminal No. 95-029 (JAF)

Appendix K
of 2

(08) Angel M. Andrades-Marrero:

GUILTY NOT GUILTY

(10) José A. Rosado-Rosado, a/k/a Hormiguita:

GUILTY NOT GUILTY

(11) Raúl Ortiz-Miranda, a/k/a Cano Beeper:

GUILTY NOT GUILTY

(13) Celenia Reyes-Padilla:

GUILTY NOT GUILTY

(14) Rosa Morales-Santiago:

GUILTY NOT GUILTY

(15) Eulalio Candelaria-Silva, a/k/a Macho Gatillo:

GUILTY NOT GUILTY

(16) Moisés Candelaria-Silva:

GUILTY NOT GUILTY

Count Two (Continuing Criminal Enterprise Count)

(01) Israel Santiago-Lugo, a/k/a El Doctor:

GUILTY NOT GUILTY

(04) Nelson Ortiz-Baez, a/k/a Mickey Mouse,

GUILTY NOT GUILTY

(06) David Martinez-Matta, a/k/a Bo:

GUILTY NOT GUILTY

AO 72
(Rev 8/82)

AO 72
(Rev 8/82)

Criminal No. 95-029 (JAF)

-3-

Criminal No. 95-029 (JAF)

-4-

(10) José A. Rosado-Rosado, a/k/a Hormiguita:

GUILTY NOT GUILTY

(15) Eulalio Candelaria-Silva, a/k/a Macho Gatillo:

GUILTY NOT GUILTY

(16) Moisés Candelaria-Silva:

GUILTY NOT GUILTY

INSTRUCTION: Please answer the following question only if you found co-defendant Israel Santiago-Lugo guilty of the conduct charged in Count Two, paragraph A, and Count Two, Paragraph B, of the Indictment.

(1) Was defendant Israel Santiago-Lugo the principal administrator, organizer, or leader of the continuing criminal enterprise or one of several such principal administrators or leaders?

YES NO

Count Three (Using or Carrying Firearms in Commission of Drug Trafficking Crime)

(01) Israel Santiago-Lugo, a/k/a El Doctor:

GUILTY NOT GUILTY

(04) Nelson Ortiz-Baez, a/k/a Mickey Mouse, a/k/a Yabó:

GUILTY NOT GUILTY

(05) Wilfredo Martinez-Matta, a/k/a Willy:

GUILTY NOT GUILTY

(08) Angel M. Andrades-Marrero:

GUILTY NOT GUILTY

(10) José A. Rosado-Rosado, a/k/a Hormiguita:

GUILTY NOT GUILTY

(11) Raúl Ortiz-Miranda, a/k/a Cano Beeper:

GUILTY NOT GUILTY

Counts Four to Forty-Five (Monetary Transactions in Property Derived From Specified Unlawful Activity)

Count Four - Israel Santiago-Lugo (aided and abetted by Orlando Santiago-Pérez): GUILTY NOT GUILTY

Count Five - Israel Santiago-Lugo (aided and abetted by Orlando Santiago-Pérez): GUILTY NOT GUILTY

Count Six - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Seven - Israel Santiago-Lugo (aided and abetted by Orlando Santiago-Pérez): GUILTY NOT GUILTY

Count Eight - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Nine - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Ten - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Eleven - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Twelve - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Thirteen - Israel Santiago Lugo: GUILTY NOT GUILTY

Count Fourteen - Israel Santiago Lugo: GUILTY NOT GUILTY

AO 72
(Rev 8/82)

AO 72
(Rev 8/82)

1 Count Fifteen - This count has been disposed of by the court.
 2 There is no need for you to decide this count.

3 Count Sixteen - Israel Santiago-Lugo (aided and abetted by
 4 Orlando Santiago-Pérez): GUILTY NOT GUILTY

5 Count Seventeen - Israel Santiago-Lugo (aided and abetted by
 6 Orlando Santiago-Pérez): GUILTY NOT GUILTY

7 Count Eighteen - Israel Santiago-Lugo (aided and abetted by
 8 Orlando Santiago-Pérez): GUILTY NOT GUILTY

9 Count Nineteen - Israel Santiago-Lugo (aided and abetted by
 10 Orlando Santiago-Pérez): GUILTY NOT GUILTY

11 Count Twenty - Israel Santiago-Lugo (aided and abetted by
 12 Orlando Santiago-Pérez): GUILTY NOT GUILTY

13 Count Twenty-One - Israel Santiago-Lugo (aided and abetted by
 14 Orlando Santiago-Pérez): GUILTY NOT GUILTY

15 Count Twenty-Two - Israel Santiago-Lugo (aided and abetted by
 16 Orlando Santiago-Pérez): GUILTY NOT GUILTY

17 Count Twenty-Three - Israel Santiago-Lugo (aided and abetted by
 18 Orlando Santiago-Pérez): GUILTY NOT GUILTY

19 Count Twenty-Four - Israel Santiago-Lugo (aided and abetted by
 20 Orlando Santiago-Pérez): GUILTY NOT GUILTY

21 Count Twenty-Five - Wilfredo Martínez-Matta,
 22 GUILTY NOT GUILTY

23 Israel Santiago-Lugo,
 24 GUILTY NOT GUILTY

25 (aiding and abetting each other).
Count Thirty-Six - Wilfredo Martínez-Matta,
 26 GUILTY NOT GUILTY

27 Israel Santiago-Lugo,
 28 GUILTY NOT GUILTY

29 (aiding and abetting each other).
Count Thirty-Seven - This count has been disposed of by the
 30 court. There is no need for you to decide this count.

31 Count Thirty-Eight - Israel Santiago-Lugo (aided and abetted by
 32 José Robles-Cepero): GUILTY NOT GUILTY

33 Count Thirty-Nine - Israel Santiago-Lugo (aided and abetted by
 34 José Robles-Cepero): GUILTY NOT GUILTY

35 Count Forty - Israel Santiago-Lugo (aided and abetted by
 36 Andrés Colón-Miranda): GUILTY NOT GUILTY

37 Count Forty-One - Israel Santiago-Lugo (aided and abetted by
 38 Andrés Colón-Miranda): GUILTY NOT GUILTY

1 Count Twenty-Five - Israel Santiago-Lugo (aided and abetted by
 2 Orlando Santiago-Pérez): GUILTY NOT GUILTY

3 Count Twenty-Six - Israel Santiago-Lugo (aided and abetted by
 4 Orlando Santiago-Pérez): GUILTY NOT GUILTY

5 Count Twenty-Seven - Israel Santiago-Lugo (aided and abetted by
 6 Orlando Santiago-Pérez): GUILTY NOT GUILTY

7 Count Twenty-Eight - Israel Santiago-Lugo (aided and abetted by
 8 Orlando Santiago-Pérez): GUILTY NOT GUILTY

9 Count Twenty-Nine - Israel Santiago-Lugo (aided and abetted by
 10 Orlando Santiago-Pérez): GUILTY NOT GUILTY

11 Count Thirty - Israel Santiago-Lugo (aided and abetted by
 12 Orlando Santiago-Pérez): GUILTY NOT GUILTY

13 Count Thirty-One - This count has been disposed of by the court.
 14 There is no need for you to decide this count.

15 Count Thirty-Two - Israel Santiago-Lugo (aided and abetted by
 16 Orlando Santiago-Pérez): GUILTY NOT GUILTY

17 Count Thirty-Three - Israel Santiago-Lugo (aided and abetted by
 18 Orlando Santiago-Pérez): GUILTY NOT GUILTY

19 Count Thirty-Four - Israel Santiago-Lugo (aided and abetted by
 20 Orlando Santiago-Pérez): GUILTY NOT GUILTY

1 Count Forty-Two - Israel Santiago-Lugo (aided and abetted by
 2 Andrés Colón-Miranda): GUILTY NOT GUILTY

3 Count Forty-Three - Nelson Ortiz-Báez,
 4 GUILTY NOT GUILTY

5 Israel Santiago-Lugo,
 6 GUILTY NOT GUILTY

7 (aiding and abetting each other).
Count Forty-Four - Israel Santiago-Lugo (aided and abetted by
 8 Billy Ramos): GUILTY NOT GUILTY

9 Count Forty-Five - Israel Santiago-Lugo (aided and abetted by
 10 Billy Ramos): GUILTY NOT GUILTY

11 Count Forty-Six - Eulalio Candelaria-Silva:
 12 GUILTY NOT GUILTY

13 Moisés Candelaria-Silva:
 14 GUILTY NOT GUILTY

15 Count Forty-Seven - Eulalio Candelaria-Silva:
 16 GUILTY NOT GUILTY

17 Moisés Candelaria-Silva:
 18 GUILTY NOT GUILTY

1 Count Forty-Two - Israel Santiago-Lugo (aided and abetted by
 2 Andrés Colón-Miranda): GUILTY NOT GUILTY

3 Count Forty-Three - Nelson Ortiz-Báez,
 4 GUILTY NOT GUILTY

5 Israel Santiago-Lugo,
 6 GUILTY NOT GUILTY

7 (aiding and abetting each other).
Count Forty-Four - Israel Santiago-Lugo (aided and abetted by
 8 Billy Ramos): GUILTY NOT GUILTY

9 Count Forty-Five - Israel Santiago-Lugo (aided and abetted by
 10 Billy Ramos): GUILTY NOT GUILTY

11 Count Forty-Six - Eulalio Candelaria-Silva:
 12 GUILTY NOT GUILTY

13 Moisés Candelaria-Silva:
 14 GUILTY NOT GUILTY

15 Count Forty-Seven - Eulalio Candelaria-Silva:
 16 GUILTY NOT GUILTY

17 Moisés Candelaria-Silva:
 18 GUILTY NOT GUILTY

19 DATED in San Juan, Puerto Rico, December 13, 1995.

UNITED STATES DISTRICT COURT

District of Puerto Rico

UNITED STATES OF AMERICA

v.

ISRAEL SANTIAGO-LUGO

Date of Original Judgment: 8/1/1998

(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- Correction of Sentence for Order of Forfeiture and Money Judgment

-) **SECOND**
-) **AMENDED JUDGMENT IN A CRIMINAL CASE**
-) Case Number: 3: CR. 95-0029-01 (ADC)
-) USM Number: 10947-069
-) **ERIC MORALES & HUMBERTO RAMIREZ, ESQS.**
-) Defendant's Attorney
-) Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
-) Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
-) Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
-) Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
-) Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) Two (2), Four (4) through Forty-five (45), Forty-eight (48) through Fifty (50). after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 848(a)(b)(c) & 18 USC § 2	Engaging in a continuing criminal enterprise, and aiding and abetting	06/07/1995	2
18: USC § 1957 & § 2	Engaging in monetary transactions in property derived from specified unlawful activity, and aiding and abetting	05/27/1993	2, 4-14, 16-30
18: USC § 1957 & § 2	from specified unlawful activity, and aiding and abetting	5/27/1993	32-36, 38-45

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) One (1) & Three (3) 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.

10/10/2019 Nunc Pro Tunc to 4/17/1996.

Date of Imposition of Judgment

S/Aida M. Delgado-Colón

Signature of Judge

Aida M. Delgado-Colón

U.S. District Judge

Name and Title of Judge

10/10/2019

Date

Appendix L

DEFENDANT: ISRAEL SANTIAGO-LUGO

CASE NUMBER: 3: CR. 95-0029-01 (ADC)

IMPRISONMENT

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

Life sentence, as to Count Two (2) and ten (10) years as to Counts 4-14, 16-30, 32-36, 38-45, to be served concurrently with each other.

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

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: ISRAEL SANTIAGO-LUGO

CASE NUMBER: 3: CR. 95-0029-01 (ADC)

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: ISRAEL SANTIAGO-LUGO

CASE NUMBER: 3: CR. 95-0029-01 (ADC)

CRIMINAL MONETARY PENALTIES

The defendant must pay the following 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	\$ 2,100.00	\$ 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 shall make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

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 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.

UNITED STATES DISTRICT COURT

for the

District of Puerto Rico

United States of America

v.)

ISRAEL SANTIAGO-LUGO)

Case No: CR. 95-0029-01(ADC)

USM No: 10947-069

Date of Original Judgment: 04/17/1996

Date of Previous Amended Judgment: 08/01/1998

(Use Date of Last Amended Judgment if Any)

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of the defendant the Director of the Bureau of Prisons the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

DENIED. GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____

(Complete Parts I and II of Page 2 when motion is granted)

Except as otherwise provided, all provisions of the judgment dated 08/01/1998 shall remain in effect.
IT IS SO ORDERED.

Order Date: 10/11/2018

S/AIDA M. DELGADO-COLON

Judge's signature

Effective Date: (if different from order date)

AIDA M. DELGADO-COLON, U.S. DISTRICT JUDGE

Printed name and title

reduction because he was sentenced in accordance with a statutorily mandated term of life imprisonment. ECF No. 3873 at 1.

For the reasons explained below, the Court hereby ADOPTS the Amended R&R at ECF No. 3873; finds MOOT the initial R&R at ECF No. 3870; DENIES defendant's motion requesting recusal of the Magistrate Judge at ECF No. 3858; finds MOOT the motions at ECF Nos. 3813, 3814, 3835, 3851; NOTES the motions at ECF Nos. 3849, 3853, 3863; 3881; and GRANTS the motion at ECF No. 3859.

I. Background

The government brought fifty charges against defendant and forty-nine other individuals for their involvement in a continuing criminal enterprise involving drug trafficking and money laundering. ECF No. 3268-3. The jury convicted defendant of Counts 2, 4-14, 16-30, 32-36, and 38-50. ECF No. 2379. Defendant's Amendment 782 motion turns on his conviction of Count 2. In convicting defendant of Count 2, the jury found that defendant was the "principal administrator, organizer, or leader of the continuing criminal enterprise, or one of several such principal administrators or leaders," and that the continuing criminal enterprise "involved in excess of one hundred fifty (150) kilograms of cocaine, fifteen hundred (1500) grams of cocaine base ('crack') and thirty (30) kilograms of heroin," in violation of 21 U.S.C. § 848(a)-(c) and 18 U.S.C. § 2. ECF Nos. 875 at 24 (jury instruction); 917 at 3 (verdict form); 2379 (amended judgment). The sentencing court held that 21 U.S.C. § 848(b) imposes a mandatory life sentence

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Appendix B

UNITED STATES OF AMERICA,

v.

[1] ISRAEL SANTIAGO-LUGO,

Crim. No. 95-29 (ADC)

Defendant.

ORDER

Defendant Israel Santiago-Lugo ("defendant") moved to amend his sentence in light of Amendment 782 to the United States Sentencing Guidelines ("Amendment 782 motion").¹ ECF No. 3811. Pursuant to Miscellaneous Order No. 14-426, the Court referred the motion to a Magistrate Judge for a Report and Recommendation ("R&R"). ECF No. 3828. The Magistrate Judge issued an initial R&R on July 3, 2018, ECF No. 3870, and an Amended R&R on July 25, 2018, ECF No. 3873, in which she recommended defendant be found ineligible for a sentence

¹ Defendant filed several other documents and motions in support of his Amendment 782 motion. See, e.g., ECF Nos. 3813 (motion for an order to be present at re-sentencing), 3814 (motion requesting withdrawal of Federal Public Defender's ("FPD") office), 3817 (declaration by José García in support of defendant's Amendment 782 motion), 3823 (memorandum in support of Amendment 782 motion), 3837 (memorandum in support of request to be present for resentencing), 3849 (informative motion in support of Amendment 782 motion), 3851 (motion for evidentiary hearing on Amendment 782 motion), 3853 (informative motion in support of Amendment 782 motion), 3855 (memorandum in support of motion for evidentiary hearing on Amendment 782 motion), 3857 (memorandum in support of FPD withdrawal request), 3858 (motion requesting recusal of Magistrate Judge), 3859 (motion to clarify titling of docket entries 3823 and 3837), 3863 (information motion in support of Amendment 782 motion), 3877 (objection to the Magistrate's Amended Report & Recommendation), and 3881 (informative motion noting this objection). The FPD also filed a motion to withdraw in relation to the Amendment 782 motion. ECF No. 3835.

for defendant's conviction on Count 2. The Court sentenced defendant accordingly. ECF Nos. 3268-3 at 21-22 (sentencing transcript); 2379.

II. Analysis

"If a defendant is sentenced to a prison term based on a sentencing range that the Sentencing Commission later lowers, a district court may reduce the defendant's sentence if such a reduction is consistent with the Commission's policy statements." *United States v. Alvira-Sánchez*, 804 F.3d 488, 495-96 (1st Cir. 2015) (citing 18 U.S.C. § 3582(c)(2)). Amendment 782 "reduced by two levels the base offense level for many drug offenses." *United States v. Vaughn*, 806 F.3d 640, 643 (1st Cir. 2015). District courts may apply the reduction retroactively. *Id.* Whether such a reduction is warranted, however, "is a matter committed to the sentencing court's sound discretion." *Id.* (citation and internal quotation marks omitted). The Court agrees with the Amended R&R that defendant is ineligible for a sentence reduction in accordance with Amendment 782 because his sentence reflects a statutorily mandated term of life imprisonment. See ECF No. 3873.

Defendant timely objected to the Amended R&R. ECF No. 3877. He argues that the Amended R&R is premature because his motion requesting the Magistrate Judge to recuse herself remains pending. ECF Nos. 3877 at 1-2; 3858. Defendant's motion requesting recusal is based on an alleged conspiracy between the Magistrate Judge and an attorney engaged in civil forfeiture proceedings involving defendant's properties that is borne entirely out of defendant's assertion that the Magistrate Judge and forfeiture attorney know each other. ECF No. 3858 at 1-

4, 8. Defendant asserts that the Magistrate Judge and forfeiture attorney conspired to improperly seize his properties and delay the Magistrate Judge's ruling on his Amendment 782 motion in furtherance of executing the improper forfeiture actions. *Id.* at 8. These are lofty accusations that defendant casually strings together with the "gossamer threads of speculation, suspicion, and surmise." *See Massachusetts Eye & Ear Infirmary v. QLT Phototherapeutics, Inc.*, 412 F.3d 215, 240 (1st Cir. 2005) (citation and internal quotation marks omitted). Accordingly, the Court finds the motion for recusal meritless.

Defendant also argues that the evidence presented at trial does not support the findings that he was involved as a ringleader in the continuing criminal enterprise or that the enterprise trafficked in the quantity of drugs described, thereby negating the applicability of the mandatory life sentence under 21 U.S.C. § 848(b). ECF No. 3877 at 5-8. He also suggests that the sentencing court failed to make the proper findings on the record before sentencing him to life under 21 U.S.C. § 848. These arguments challenge the factual underpinnings of his conviction and the adequacy of the sentencing hearing. They are not properly before the court on a motion for a sentence reduction under Amendment 782. *See Dillon v. United States*, 560 U.S. 817, 828-29 (2010) (construing 18 U.S.C. § 3582(c)(2) as providing "a narrow exception to the rule of finality" and noting that the statute's sentence-modification procedures "are not constitutionally compelled").

III. Conclusion

The Court hereby:

1. ADOPTS the Amended R&R at ECF No. 3873;
2. MOOTS the initial R&R at ECF No. 3870;
3. DENIES defendant's Amendment 782 motion at ECF No. 3811;
4. DENIES defendant's motion requesting recusal of the Magistrate Judge at ECF No. 3858;
5. MOOTS the informative motions, FPD withdrawal motions, and evidentiary hearing motions, at ECF Nos. 3813, 3814, 3835, 3851;
6. NOTES the motions at ECF Nos. 3849, 3853, 3863; 3881; and
7. GRANTS the motion at ECF No. 3859 to clarify the titles of certain docket entries.

IT SO ORDERED.

At San Juan, Puerto Rico, on this 11th day of October, 2018.

S/AIDA M. DELGADO-COLÓN
United States District Judge

Appendix B
2 OF 2

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

v.

[1] ISRAEL SANTIAGO-LUGO,
[4] NELSON ORTIZ-BAEZ,

Defendants.

Crim. No. 95-29 (ADC)

ORDER

Defendant Israel Santiago-Lugo ("Santiago") moved to correct the preliminary and final orders of forfeiture and submitted several motions and documents in conjunction.¹ ECF Nos. 3839, 3847, 3848, 3850, 3851.² Defendant Nelson Ortiz-Baez ("Ortiz," collectively "defendants") moved to join Santiago's motions.³ ECF No. 3868.

Ortiz's request to join Santiago's motions is GRANTED. ECF No. 3868. The motion at ECF No. 3839, is DENIED, and the related motions are MOOT. ECF Nos. 3848; 3850; 3851.

I. Legal Standard

"Criminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity." *Honeycutt v. United States*, 137 S. Ct. 1626, 1631 (2017).

¹ This Santiago's first attempt to challenge the forfeiture order. See, e.g., ECF Nos. 2272; 2541; 3027; 3062; 3113.
² The document at ECF No. 3851 is titled as though it pertains to a separate issue, but its contents address forfeiture.
³ Prior to Ortiz's motion to join, Santiago filed a petition for writ of mandamus with the First Circuit Court of Appeals. On March 20, 2018, the Court of Appeals denied the petition without prejudice, inviting Santiago to renew the petition if there is "no activity" within "the next five months." ECF No. 3860. On July 27, 2018, the Court entered an order noting that its request for the voluminous paper record in this case remained pending. ECF No. 3874.

Crim. No. 95-29 (ADC)

Appendix C

Page 2

"[F]orfeiture is part of the sanction or penalty and not an independent offense." *United States v. Rogers*, 102 F.3d 641, 647 (1st Cir. 1996) (citing *Libretti v. United States*, 516 U.S. 29, 40 (1995)). "[C]riminal forfeiture is akin to a jail sentence or a fine and lacks the historical and moral roots that have led to a higher proof requirement for a finding of criminal guilt." *Id.* at 648. A preliminary forfeiture order becomes final as to the defendant at sentencing. Fed. R. Crim. P. 32.2(b)(4)(A). The 14-day window that a defendant has to file a notice of appeal from a forfeiture order "begins to run when judgment is entered." *Id.* R. 32.2(b)(4)(C); Fed. R. App. P. 4(b)(1)(A). And, "[i]f the court later amends or declines to amend a forfeiture order to include additional property" the parties "may file an appeal regarding that property" pursuant to Fed. R. App. P. 4(b), the time for which begins running "from the date when the order granting or denying the amendment becomes final." Fed. R. Crim. P. 32.2(b)(4)(C).

II. Analysis

Defendants raise several arguments in support of their motion. First, they assert that the forfeiture orders are not final and, as a result, remain unappealable and susceptible to substantive challenges in this Court. ECF No. 3839 at 1-2. They argue that the forfeiture orders are unsupported by the evidence, reflect incorrect appraisals and double counting, involve properties owned by companies, constitute an unavailable punishment for the offenses convicted, violate their Eighth and Fifth Amendment rights, and must be retroactively amended to remove joint and several liability pursuant to *Honeycutt v. United States*, 137 S.Ct. 1626 (2017). ECF Nos. 3839; 3847 at 4-5, 7.

Crim. No. 95-29 (ADC)

Page 3

These challenges to the propriety of the forfeiture orders are untimely.⁴ The forfeiture order is final and has been filed since the Court sentenced each defendant and issued the final order of forfeiture against them more than twenty years ago. ECF Nos. 1441; 1203; 2379. Neither defendant raised any challenges to the forfeiture orders in their direct appeals. See *United States v. Candelaria-Silva*, 166 F.3d 19, 26, 43-45 (1st Cir. 1999) (ruling on a joint appeal filed by Ortiz and six other codefendants from this case in which only one defendant/appellant, Celenia Reyes-Padilla, raised a challenge to the forfeiture order as it applied to her); *United States v. Santiago-Lugo*, 167 F.3d 81 (1st Cir. 1999) (rejecting all of Santiago's arguments, which pertained exclusively to (1) the anonymity of the jury; (2) jury selection; (3) placement of a marshal near the defense table during a certain witness's testimony; (4) ruling on a conflict of interest involving his attorney and; (4) the adequacy of his legal representation).

Even assuming arguendo that the appeal clock restarted for either defendant upon the Court's 2005 order permitting a clerical amendment to Santiago's judgment, ECF Nos. 3074; 3066, any renewed time to appeal expired in 2005. See Fed. R. Crim. P. 32.2(b)(4)(C) (explaining that an amendment to a forfeiture can be appealed when the amendment pertains to additional property); *United States v. Zorrilla-Echevarria*, 671 F.3d 1, 8-9 (1st Cir. 2011) (holding that a clerical amendment to a forfeiture order does not permit a defendant to raise a challenge that could

Crim. No. 95-29 (ADC)

Page 4

have been brought in the first appeal). Santiago did appeal that ruling, at which time the Court of Appeals held that the amendment at issue was clerical and that Santiago's arguments regarding the finality of the forfeiture orders were meritless. ECF No. 3113.

III. Conclusion

Defendants' challenges the propriety of the forfeiture orders are untimely. Ortiz's request to join Santiago's motion is GRANTED. ECF No. 3868. The motion at ECF No. 3839 is DENIED and the related motions at ECF Nos. 3848, 3850, 3851, are MOOT.

IT SO ORDERED.

At San Juan, Puerto Rico, on this 11th day of October, 2018.S/AIDA M. DELGADO-COLÓN
United States District Judge

⁴ The Supreme Court in *Honeycutt* did not make its ruling retroactive. And, to the extent the rule announced in *Honeycutt* may be "new," it does not constitute a "substantive" or "watershed rule"; rather, it merely clarifies the interpretation of a criminal forfeiture statute and would therefore not apply retroactively. See *Tengue v. Lane*, 489 U.S. 288, 301, 311 (1989); *Moore v. United States*, 871 F.3d 72, 76 (1st Cir. 2017); *United States v. Ortiz*, 2018 WL 3304522, at *7-8 (E.D. Pa. July 5, 2018) (slip copy) (holding that *Honeycutt* does not apply retroactively); *United States v. Filice*, 2018 WL 2326616, at *2-3 (E.D. Ky. May 22, 2018) (slip copy) (same).