NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

ANDERSON JEAN,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Timothy Cone
Counsel for Petitioner Anderson Jean
1615 New Hampshire Avenue N.W.
4th floor (North)
Washington, D.C. 20009
Tel. (202) 862-4333

QUESTION PRESENTED FOR REVIEW

In the wake of *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), and *Rehaif v. United States*, 139 S.Ct. 2191 (2019), jurists continue to disagree whether, when the word "knowingly" introduces the text of a criminal statute, it applies to all the subsequently listed elements of the crime, or only applies when proof of knowledge is necessary to separate wrongful from innocent acts. *Compare United States v. Collazo*, 984 F.3d 1308, 1325 (9th Cir. 2021) (en banc) ("absent statutory language suggesting otherwise, the scienter presumption does not apply to elements that do not separate innocent from wrongful conduct."), *with id.* at 1342 (Fletcher, J., dissenting) ("The Supreme Court has never held that the presumption of *mens rea* protects only the entirely innocent."). Petitioner submits that this question ought to be resolved by requiring proof of *mens rea* when the element at issue results in "dramatically more severe" punishment. *See United States v. Burwell*, 690 F.3d 500, 548 (D.C. Cir. 2012) (en banc) (Kavanaugh, J., dissenting). Here, therefore, to convict a defendant under 8 U.S.C. § 1327 for "knowingly" smuggling into the United States an alien who is an aggravated felon, the government must prove that the defendant knew that the alien was an aggravated felon, because the 10-year maximum penalty for this offense is twice as severe as the five-year maximum of § 1324, for smuggling an alien who was undocumented, but not an aggravated felon.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

Statutes and other authorities:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020

No:

ANDERSON JEAN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Anderson Jean respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case No. 19-13989 in that court on December 1, 2020, in *United States v. Anderson Jean*, which affirmed the judgment of the United States District Court for the Southern District of Florida. On January 26, 2021, the Eleventh Circuit denied Jean's petition for rehearing. A-7.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Jean*, ___ Fed. Appx ___, 2020 WL 7039042 (11th Cir. Dec. 1, 2020) (unpublished), rehearing denied (11th Cir. Jan. 26, 2021), which affirmed the judgment and commitment of the district court, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The Court of Appeals' decision was entered on December 1, 2020; the Court of Appeals denied panel rehearing and rehearing en banc on January 26, 2021. This petition is timely filed pursuant to SUP. CT. R. 13.1. The District Court had jurisdiction because petitioner was charged with violating federal criminal laws. The Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

8 U.S.C. § 1327:

> Any person who knowingly aids or assists any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under Title 18, or imprisoned not more than 10 years, or both.

8 U.S.C. §§ 1324(a)(1)(A)(iv) & 1324(a)(1)(B)(ii):

> Any person who . . . encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law . . . [shall be fined under Title 18, imprisoned not more than 5 years, or both.

STATEMENT OF THE CASE

1. Course of Proceedings; Statement of Facts.

The thirteen-count Indictment charged Jean with twelve counts of violating 8 U.S.C. § 1324(a)(1)(A)(iv) by encouraging and inducing aliens to enter the United States, and with one count of violating 8 U.S.C. § 1327 by aiding an alien who was inadmissible insofar as he had been convicted of an aggravated felony. *United States v. Jean*, 2020 WL 7039042 at * 1 (11th Cir. Dec. 1, 2020) (unpublished). Jean pled

guilty to Count 1, which charged a violation of § 1324, and to Count 13, which charged the sole § 1327 violation; the government agreed to dismiss the remaining counts. *Id.* Counts 1 and 13 involved the same alien: Christoval Reece. *Id.*

The offense charged in Count 1 involved encouraging an alien to enter the United States "knowing that [such entry] is or will be in violation of law," a crime punishable by a five-year maximum term of incarceration. 8 U.S.C. §§ 1324(a)(1)(A)(iv) & 1324(a)(1)(B)(ii). The offense charged in Count 13 involved knowingly smuggling an alien who has committed an aggravated felony, a crime that carries a ten-year maximum. 8 U.S.C. § 1327.

"At the plea colloquy, Jean told the district court that he did not know any of the people he was transporting, and the district court did not follow up to ask if he knew of their inadmissible status." *Jean*, 2020 WL 7039042, at * 4. The district court accepted Jean's plea of guilt to Counts 1 and 13. *Id.* At sentencing, the district court imposed a 60-month sentence on Count 1, and a concurrent 84-month sentence on Count 13. *Id.* at *2

On appeal, Jean argued that the factual basis for his § 1327 conviction was insufficient, because there was no evidence that he knew that Reece was inadmissible due to Reece's status as an aggravated felon. *Id.* Jean argued that "had he understood the knowledge requirement correctly, he would not have pled guilty to Count 13 and

would have been subject to only the 60 month statutory maximum in Count 1, making his prison term at least two years lighter." *Id.* at * 5. Jean conceded that "plain error" review applied, and recognized that *United States v. Lopez*, 590 F.3d 1238, 1254 (11th Cir. 2009), held that to obtain a § 1327 conviction, the government need not prove that a defendant knew an alien was inadmissible due to a prior aggravated felony conviction – it need only prove that the defendant "knew the alien was inadmissible for any reason." *Id.* at 3. Jean argued that *Lopez* is no longer good law in light of *Rehaif v. United States*, __U.S.__, 139 S.Ct. 2191 (2019), *McFadden v. United States*, 576 U.S. 186 (2015), and *Flores-Figueroa v. United States*, 556 U.S. 646, 652 (2009) – cases that interpreted the word "knowingly" to require proof of "every material element" of the criminal statute in question. Br. 11-12; *Jean*, 2020 WL 7039042 at * 3.

The Eleventh Circuit rejected Jean's argument, holding that it was "bound by *Lopez* until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc." *Id.* at * 3. The Eleventh Circuit found that neither *Rehaif* nor *McFadden* was "clearly on point, as the statutes they interpret come from different parts of the criminal code and differ in structure from § 1327." *Id.*

Jean filed a petition for rehearing en banc, urging the Eleventh Circuit to overrule *Lopez*, and to return the case to the panel for reconsideration of Jean' s appeal in light of *Lopez*' overruling. *See Henderson v. United States*, 568 U.S. 266 (2013) (error is "plain" as long as the error was plain at the time of appellate review). The Eleventh Circuit denied Jean's petition for rehearing en banc. A-6.

REASONS FOR GRANTING THE WRIT

1. Jurists disagree whether, when the word "knowingly" introduces the text of a criminal statute, it applies to all the subsequently listed elements of the crime, or only applies when proof of the defendant's knowledge of an element of the offense is necessary to separate wrongful from innocent acts.

In *Flores-Figueroa v. United States*, this Court explained its holding that to prove the offense of aggravated identity theft, the Government must show that the defendant knew that the means of identification at issue belonged to another person, by reasoning that "as a matter of ordinary English grammar," the word "knowingly" at the beginning of the text of 18 U.S.C. § 1028(a)(1) is naturally read as applying to all the subsequently listed elements of the crime. 556 U.S. 646, 650 (2009)

In *McFadden v. United States*, 576 U.S. 186 (2015), this Court addressed the requisite *mens rea* of 21 U.S.C. § 841(a)(1), which makes it "unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with

intent to manufacture, distribute, or dispense, a controlled substance." 576 U.S. at 191. The government argued that it "may prove that a defendant knew that he distributed a regulated or illegal substance even if he did not know which substance it was or why the substance was illegal." *See McFadden*, 2015 WL 1501654 at Brief for the United States at * 14-15 (cited at *McFadden*, 576 U.S. at 195). Citing *Flores-Figueroa*, 556 U.S. at 650, *McFadden* rejected this approach, stating: "Under the most natural reading of [§ 841(a)(1)], the word 'knowingly' applies not just to the statute's verbs but also to the object of those verbs – '*a* controlled substance.'" 576 U.S. at 191.

More recently, in *Rehaif v. United States*, __U.S. __, 139 S.Ct. 2191 (2019), this Court addressed the requisite *mens rea* of two statutes read together, 18 U.S.C. §§ 922(g) and 924(a), which prohibit nine categories of persons from possessing firearms, and subject such persons to imprisonment if they "knowingly violate[]" this firearm-possession prohibition. 139 S.Ct. at 2194. *Rehaif* held that the term "knowingly" in § 924(a)(1) applies not only to a defendant's possession of a firearm, but also to his status as a person prohibited from possessing a firearm. *Id.* at 2194. *Rehaif* noted the "ordinary presumption in favor of scienter," and found that "[t]he statutory text supports the presumption." *Id.* at 2195.

In addition, *Rehaif* noted that "the cases in which we have emphasized scienter's importance in separating wrongful from innocent acts are legion." 139 S.Ct. at 2196. *Rehaif* added that "[a]pplying the word 'knowingly' to the defendant's status in § 922(g) helps advance the purpose of scienter, for it helps to separate wrongful from innocent acts." *Id.* at 2197 ("Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful. His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach.").

In the wake of these precedents, jurists continue to disagree whether, when the word "knowingly" introduces the text of a criminal statute, it applies to all the subsequently listed elements of the crime, or only applies when proof of the defendant's knowledge of an element of the offense is necessary to separate wrongful from innocent acts. *Compare United States v. Collazo*, 984 F.3d 1308, 1325 (9th Cir. 2021) (en banc) ("absent statutory language suggesting otherwise, the scienter presumption does not apply to elements that do not separate innocent from wrongful conduct."), *with id.* at 1342 (Fletcher, J., dissenting) ("The Supreme Court has never held that the presumption of *mens rea* protects only the entirely innocent."); *compare United States v. Price*, 980 F.3d 1211,1219-22 (9th Cir. 2019) (en banc) (analyzing *Flores-Figueroa* and *Rehaif* and concluding that the word "knowingly" in 18 U.S.C.

§ 2244(b) does not require proof of knowledge of the age of a victim, because a defendant who transports a person for purposes of prostitution is "not engaged in 'entirely innocent' conduct"), *with id.* at 1259-60 (Collins, J., dissenting) (also analyzing *Flores-Figueroa* and *Rehaif,* and concluding that the statute's "'knowingly' requirement presumptively extends to [the age of the victim]."); *United States v. Brooks*, 681 F.3d 678, 703-04 (5th Cir. 2012) (analyzing this Court's precedents addressing when the term "knowingly" applies, including *Flores-Figueroa*, 556 U.S. 646, and concluding: "Overall, it is not clear whether knowledge applies to the [element at issue]," and resolving the issue on harmless error grounds).

In *United States v. Burwell*, 690 F.3d 500, 512-514 (D.C. Cir. 2012) (en banc), the majority concluded that 18 U.S.C. § 924(c)(1)(B)(ii), which imposes a mandatory thirty-year sentence on any person who carries a machine-gun while committing a crime of violence, does not require the government to prove that the defendant knew the weapon he was carrying was capable of firing automatically. Dissenting, then-judge Kavanaugh pointed out that in *Flores-Figueroa* "[n]o Justice on the Court accepted the Government's argument that the presumption of *mens rea* applies only when necessary to avoid criminalizing apparently innocent conduct." 690 F.3d at 544 (Kavanaugh, J., dissenting). The dissenting opinion noted that *Flores-Figueroa* held that the word "knowingly" required the government to prove knowledge of an

additional element of the offense "even though the defendant was *already* committing two other crimes – the predicate crime and the use of a fake ID card." *Id.* at 545 (Kavanaugh, J., dissenting) (emphasis in original) (citing *Flores-Figueroa*, 556 U.S. at 650). The dissenting opinion emphasized that the "dramatically more severe" punishment – a mandatory thirty-year term – triggered by the machine-gun element of the offense "strongly reinforces the presumption of *mens rea*." *Id.* at 528. *See id.* at 547-48 ("the severe penalties at issue here support requiring proof of the defendant's *mens rea*."); *see id.* at 526 (Rogers, J., dissenting) ("the mandated thirty-year consecutive term of imprisonment . . . is so severe that it outweighs the fact that conduct prohibited is not otherwise totally innocent.").

Petitioner submits that the significantly increased severity of punishment associated with an element of an offense should be the test for determining whether a statute requires proof a defendant's *mens rea* with respect to this element. This approach is consistent with Justice Alito's concurring opinion in *Flores-Figueroa*, which recognized that "it is fair to begin with a general presumption that the specified *mens rea* applies to all the elements of an offense," but that there may be instances "in which context may well rebut that presumption." 556 U.S. at 660 (Alito, J., concurring) (discussing two cases interpreting 8 U.S.C. § 1327 (the statute at issue here): *United States v. Flores-Garcia*, 198 F.3d 119 (9th Cir. 2000), and *United States*

v. Figueroa, 165 F.3d 111 (2d Cir. 1998). The *Flores-Figueroa* majority agreed that "the inquiry into a sentence's meaning is a contextual one." *Id.* at 652 (citing Alito, J., concurring).

Petitioner submits that the severity of punishment associated with an element of an offense constitutes "context" that confirms that the specified *mens rea* applies to this element. *See Staples v. United States*, 511 U.S. 600, 616 (1994) ("the penalty imposed under a statute has been a significant consideration in determining whether a statute should be construed as dispensing with *mens rea*."); *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994) (the "concern with harsh penalties looms equally large" in interpreting the statute's *mens rea*); *United States .v U.S. Gypsum Co.*, 438 U.S. 422, 442, n. 18 (1978) ("The severity of these sanctions provides further support for our conclusion that the Sherman Act should not be construed as creating strict-liability crimes."); *but see United States v. Lacy*, 904 F.3d 889, 897-98 (10th Cir. 2018) (for 18 U.S.C. § 2423(a), the age of the victim was not an element as to which the government had to prove the defendant's knowledge, because Congress intended to impose "a greater penalty" on persons who transport underage victims for the purpose of prostitution) (citation omitted).

2. The Eleventh Circuit's approach fails to take account of the significantly more severe punishment associated with the element of the offense at issue – smuggling an alien convicted of an aggravated felony, not just an undocumented alien.

In the present case, the Eleventh Circuit held that it was bound to follow its precedent in *United States v. Lopez*, 590 F.3d 1238 (11th Cir. 2009). *Jean*, 2020 WL 7039042, at * 3. As *Lopez* noted, the elements of a § 1327 violation are: "(1) the defendant knowingly aided or assisted an alien to enter the United States; (2) the defendant knew that the alien was inadmissible; and (3) the alien was inadmissible under 8 U.S.C. § 1182(a)(2) for having been convicted of an aggravated felony." *Jean*, 2020 WL 7039042, at * 3 (citing *Lopez*, 590 F.3d at 1254). However, "[*Lopez*] held that it was sufficient that the defendant knew his passengers were seeking to enter the United States without valid entry documents, which made them inadmissible *under 8 U.S.C. § 1182(a)(7)*." *Jean*, 2020 WL 7039042, at * 3 (emphasis added).

But aliens are inadmissible under § 1182(a)(7) when they are "undocumented," *Lopez*, 590 F.3d at 1255, without regard to whether "under 8 U.S.C. *§ 1182(a)(2)* . . . [they have] been convicted of an aggravated felony." 8 U.S.C. § 1327 (emphasis added). *Lopez*, by failing to connect the word "knowingly" to the phrase "insofar as an alien . . . has been convicted of an aggravated felony," significantly altered the meaning of § 1327, because it treated defendants who only had the *mens rea* to

smuggle "undocumented" aliens as though they violated § 1327 by smuggling aggravated felons.

Lopez reasoned that § 1327 placed "persons who would otherwise violate § 1324 at an increased risk if they happen to aid an alien who is excludable because of a conviction for an aggravated felony." 590 F.3d at 1255 (quoting *Figueroa*, 165 F.3d at 119). But, a fact that increases the maximum sentence – here, from the five-year maximum of § 1324 to the ten-year maximum of § 1327 – does not merely place a defendant at an "increased risk" at sentencing; it constitutes an offense element that must be proved in order to establish a valid conviction. *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

In support of its holding, *Lopez* noted that, previously, the Second Circuit had "concluded that 'defendants can be found guilty under § 1327 provided that they have sufficient knowledge to recognize that they have done *something culpable*.'" *Id.* (emphasis added) (quoting *United States v. Figueroa*, 165 F.3d at 114). *Lopez* agreed with this Second Circuit view that a defendant's knowledge that an alien was excludable "should put any reasonable person on notice that it would be illegal to aid [the alien's entry]," and that a defendant therefore can be convicted of aiding an aggravated felon enter the United States even "if the defendant knows only that the alien is excludable." *Id.* (citing *Figueroa*, 165 F.3d at 114).

Lopez also relied on the Ninth Circuit decision in *United States v. Flores-Garcia*, 198 F.3d 1119. 590 F.3d at 1255. Like the Second Circuit in *Figueroa*, the Ninth Circuit in *Flores-Garcia* concluded: "Provided the defendant recognizes *he is doing something culpable* . . . he need not be aware of the particular circumstances that result in greater punishment." 198 F.3d at 1121-22 (emphasis added). *Flores-Garcia* determined that 8 U.S.C. § 1324 "represents the baseline statute that governs the entry of illegal aliens and alien smuggling," and that 8 U.S.C. § 1327 "provide[d] enhanced penalties for those who aid and assist particular classes of aliens to enter the United States." 198 F.3d at 1122. *Flores-Garcia* reasoned that because §§ 1326 and 1327 were merely "aggravated versions" of § 1324, a defendant's "knowledge of an alien's prior felony conviction is not an element of the [§1327] offense." *Id.*

Again, *Apprendi* (decided six months after the Ninth Circuit decided *Flores-Garcia*) implicitly rejected the premise that § 1327 could be viewed as an aggravated sentencing version of § 1324: *Apprendi* held that any fact that increases punishment above the statutory maximum is not a sentencing factor, but an element of an offense that must be proved beyond a reasonable doubt. 530 U.S. 466.

In a recent appeal of a § 1327 conviction, the Ninth Circuit's majority opinion did not even *mention* its precedent in *Flores-Garcia*, or this case's holding that a § 1327 defendant's knowledge that an alien is an aggravated felon is not an element of

this offense. *See United States v. Cisneros*, 825 Fed. Appx. 429, 432 (9th Cir. Aug. 31, 2020) (2-1) (unpublished). *Cisneros* affirmed the § 1327 conviction based on a finding that there was sufficient evidence to support the jury's "conclusion" that the defendant "believed that [the alien] was an aggravated felon at the time he agreed to assist [the alien]'s entry into the United States." *Id.* at 432. *Cisneros* in effect treated a defendant's belief that an alien was an aggravated felon as an essential element of the offense.

The reasoning of the Eleventh, Second, and Ninth Circuits in *Lopez*, *Figueroa*, and *Flores-Garcia*, respectively, that the word "knowingly" does not modify an element of the offense so long as the defendant was already up to "something culpable" is "in significant tension" with *Flores-Figueroa*'s implicit rejection of the government's argument that no *mens rea* applied to an element because the defendant "was not completely innocent." *See* Leonid Traps, *"Knowingly" Ignorant: Mens Rea Distribution in Federal Criminal Law After Flores-Figueroa*, 112 Colum. L. Rev. 628, 642-43, 654-655 & nn. 162 & 171 (2012) (noting that *Flores-Figueroa* ruled "based on an altogether different consideration: text.").

In this case, the government argued in its brief to the Eleventh Circuit that *Rehaif*'s holding rested "in large part" on the "presumption that an intent element should 'separate wrongful from innocent acts.'" Gov't Br. 18, n. 1 (citing *Rehaif*, 139

S.Ct. at 2197). The government argued that this presumption "supports *Lopez'* holding because aiding an alien known to be inadmissible is wrongful rather than innocent conduct, even if the defendant is ignorant of the specific reason for the alien's inadmissibility." *Id.* Petitioner does not agree that *Rehaif* held that, once courts find that a defendant has done "something [else] culpable," the introductory word "knowingly" can be detached from a material element of a criminal statute.

But the government was correct that the *Rehaif* opinion, after adopting the holding of *Flores-Figueroa* that as "matter of ordinary English grammar" the term "knowingly" applies "to all subsequently listed elements of the crime," then looked "[b]eyond the text," noted "scienter's importance in separating wrongful from innocent acts" – and relied on this "basic principle" in further support of its interpretation. *Id.* at 2196-97 (citations omitted). Moreover, *Rehaif* pointed out that the word "knowingly" preceded the statute's "jurisdictional element," and concluded that "[b]ecause jurisdictional elements *normally have nothing to do with the wrongfulness of the defendant's conduct*, such elements are not subject to the presumption in favor of scienter." *Id.* (emphasis added; citations omitted).

Yet, even if the wrongfulness of the conduct at issue is relevant to the analysis, here an alien's status as an aggravated felon *is* related to the wrongfulness of the defendant-smuggler's conduct. This § 1327 element subjects a defendant-smuggler

to a ten-year maximum, twice what his maximum would be if the alien were not an aggravated felon, but just an undocumented alien, in violation of 8 U.S.C. § 1324. This significant increase in the severity of punishment indicates that the government must prove the defendant's knowledge of this significantly aggravating element of the defendant's conduct.

Rehaif cited Justice Alito's observation in *Flores-Figueroa* in support of its conclusion that *Rehaif* was "not a case where the modifier 'knowingly' introduces a long statutory phrase, such that questions may reasonably arise about how far into the statute the modifier extends." 139 S.Ct. at 2196 (citing *Flores-Figueroa*, 556 U.S. at 659 (Alito, J., concurring)). Petitioner submits that a focus on the increased severity of punishment, proposed above, is a fairer, and more easily applied test for determining *mens rea* than a test that focuses on the length of the statutory text. For example, if, without regard to the length of statutory text, this test were applied in the recent *Collazo* case, the Ninth Circuit dissent would be correct that, in light of the "dramatically" increased sentences for violations of 21 U.S.C. §§ 841(b)(1)(A), 841(b)(1)(B)(i), *mens rea* should apply as to drug type. 984 F.3d at 1337-38 (Fletcher, J., dissenting). On the other hand, when proof of an element such as a jurisdictional element does not trigger a more severe sentence, the government would not be required to prove a defendant's knowledge with respect to this jurisdictional

element (*see Rehaif*, 139 S.Ct. at 2196) – regardless of the brevity or the length of the statutory text.

If the extent the length of a statutory text nonetheless governs the analysis, here, the modifier "knowingly" in § 1327 does not introduce the kind of "long statutory phrase" that raises questions about how far into the statute this modifier extends. The word "knowingly" *immediately precedes* the phrase "aids or assists any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) . . ." In context, the word "knowingly" directly modifies the element of the offense that immediately follows – including the fact that an alien is "inadmissible [for having] been convicted of an aggravated felony." *Compare Flores-Figueroa*, 556 U.S. at 652 (noting, and rejecting, the government's argument that the word "knowingly" " does not modify the statute's last phrase ('a means of identification of another person') or, at the least, it does not modify the last three words of that phrase ('of another person').").

The next phrase in § 1327 refers to an alien "inadmissible . . . under 1182(a)(3) (other than subparagraph (E) thereof)." This next phrase is not at issue in the present case. But it bears noting that its context makes it natural to read it as modified by the word "knowingly." The list of seven classes of persons whose status makes them "inadmissible" under § 1182(a)(3) is structurally akin to the list of nine categories of

persons whose status prohibits them from possessing firearms under 18 U.S.C. § 922(g) – and for which scienter is required. *Rehaif*, 139 S.Ct. 2191. And, unlike the § 922(g) categories, the § 1182(a)(3) categories do not involve a defendant's *own* status, which he could be assumed to know, *see Rehaif*, 139 S.Ct. at 2209 (Alito, J., dissenting), but, instead the status of *another* person (a smuggled alien), which one would not assume a defendant would know. *Cf. Jean*, 2020 WL 7039042 at *4 ("At the plea colloquy, Jean told the district court that he did not know any of the people he was transporting").

The final portion of the statute (beginning with the words "or connives or conspires") makes it unlawful for a person to *conspire* to allow "any such alien" to enter the United States. This phrase is also not at issue in the present case. But it bears noting that the same *mens rea* would apply to this offense. To be guilty of a § 1327 conspiracy, a co-conspirator must share his co-conspirators' knowledge or belief specific to the substantive offense, since this shared knowledge is essential to their conspiratorial "agreement." *See Cisneros*, 825 Fed. Appx. at 433.

In sum, even when read all the way to the end, § 1327 does not present the kind of unusually long statutory phrase where questions arise how far into the statute the word "knowingly" extends.

The Eleventh Circuit stated that it could not find that the error at Jean's plea colloquy was "plain," because the statutes at issue in this Court's cases on which Jean relied – *Flores-Figueroa*, *McFadden*, and *Rehaif* – "come from different parts of the criminal code and differ in structure from § 1327." *Jean*, 2020 WL 7039042 at * 3. But *Jean*'s argument relies, in part, on ordinary English grammar. Just as the word-limits of Rule 33 of the Rule of this Court predictably keep within specified word-limitations all parties' briefs and petitions, including, now, the present certiorari petition, rules of ordinary English grammar plainly and predictably apply to different parts of the criminal code — including, here, to the text at issue, 8 U.S.C. § 1327.

CONCLUSION

Anderson Jean respectfully requests that this Court grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

By: _____

Timothy Cone
Counsel for Petitioner

Washington, D.C.
April, 2021

APPENDIX

2020 WL 7039042
Only the Westlaw citation is currently available.
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of
America, Plaintiff-Appellee,
v.
Anderson JEAN, Defendant-Appellant.

No. 19-13989
|
Non-Argument Calendar
|
(December 1, 2020)

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:15-cr-20914-UU-1

Before ROSENBAUM, LAGOA, and BRASHER, Circuit Judges.

Opinion

PER CURIAM:

***1** Anderson Jean is a federal prisoner who is serving an 84-month total sentence after pleading guilty to two immigration offenses. In this direct appeal, he seeks to vacate one of his guilty pleas, arguing that the district court violated Rule 11, Fed R. Crim. P., by failing to ensure that an adequate factual basis supported his plea or that he understood the nature of the charge against him. After careful review, we affirm.

I.

In November 2015, Jean was charged with twelve counts of knowingly encouraging and inducing an alien to enter the United States, 8 U.S.C. § 1324(a)(1)(A)(iv) (Counts 1-12), and one count of aiding an inadmissible alien who had been convicted of an aggravated felony to enter the United States, 8 U.S.C. § 1327 (Count 13). Specifically, Count 13 charged that Jean

> Did knowingly aid and assist an alien, CHRISTOVAL REECE, to enter the United States, said alien being inadmissible under Title 8, United States Code, Section 1182(a)(2), as an alien who had been convicted of an aggravated felony.

Jean agreed to plead guilty to Counts 1 and 13 in a written plea agreement. In exchange, the government agreed to move to drop the remaining counts after sentencing, to recommend a three-level acceptance-of-responsibility reduction be applied in Jean's guidelines calculations, and to recommend that his sentences run concurrently with those imposed in two other, unrelated criminal cases. The plea agreement contained an appeal waiver, in which Jean agreed to waive his right to "assert any claim that ... the admitted conduct does not fall within the scope of the statute of conviction."

In a written factual proffer that accompanied the plea agreement, the parties stipulated that the government could prove the following facts if the case proceeded to trial. In March 2015, the U.S. Coast Guard sent a small law-enforcement vessel to intercept a suspicious vessel that was traveling in international waters toward Miami without navigational lights. The vessel did not stop immediately when the law-enforcement vessel activated its lights and sirens, but eventually it did. By the time it had stopped, Jean, who was the master of the vessel, had stepped away from the helm. Officers found approximately $6,000 in Jean's possession.

Thirteen people, including Jean, were onboard, and none had permission to enter the United States. Jean and four other Haitian nationals were transferred to another Coast Guard boat and taken back to Haiti. The remaining individuals were brought ashore for processing by U.S. Border Patrol, which determined that Reece had previously been removed from the United States and had previously been convicted of an aggravated felony. In interviews, several individuals, including Reece, identified Jean as the operator of the vessel and said they had paid money to a smuggler in the Bahamas to be brought to the United States.

At the plea colloquy, Jean was placed under oath and testified as follows. He dropped out of school in the sixth grade and was able to read and write in English with some difficulty. He had received psychiatric treatment while in prison because he had been shot in the head, which had resulted in some nerve problems. Specifically, he sometimes could not sleep at night

because he would hear voices and have bad dreams. He was not taking any medication for his condition, but he was not hearing voices at the hearing.

*2 When asked if he understood what his attorney had explained to him about his case, Jean stated "I understand everything." However, when the court asked if he had any difficulty explaining the facts of his case to his attorney, Jean became confused and explained that he was "kind of slow" and "had special classes in school." The court stated that it wanted to know if he had been able to discuss the facts of his case with his attorney, and Jean said he had. The court asked Jean's attorney if he had any reason to doubt Jean's competence, and Jean's attorney said he did not.

When the court asked Jean if he was fully satisfied with his counsel's representation, Jean responded, "Yes, Ma'am. I just want to get this over with." Jean further remarked, "I just ... want to put it behind me because I can't live at peace in here to know that I got cases on me."

The court turned to the plea agreement and began to explain the charges against Jean. The following exchange occurred:

> THE COURT: Listen, Mr. Jean, you know that in this case, the case from 2015, you're charged with having encouraged and induced several aliens to come into the United States, including at least one inadmissible alien.
>
> Do you know that?
>
> THE DEFENDANT: I understand the case, but I do not know those people.
>
> THE COURT: Well, I don't care whether you know them or not. Do you understand those are the charges against you?
>
> THE DEFENDANT: Yes, ma'am.

The court turned to the factual proffer, and Jean confirmed that he signed it after reviewing it with his attorney. He confirmed that he agreed with every fact in the proffer. Jean pled guilty to Counts 1 and 13. The district court found that Jean was aware of the nature of the charges, that his pleas were knowing and voluntary, and that his pleas were supported by an independent basis in fact containing each of the essential elements of the offenses. It accepted his pleas and adjudged him guilty. Jean did not object.

The district court sentenced Jean to 60 months' imprisonment as to Count 1 and 84 months' imprisonment as to Count 13, to run concurrently. It imposed his 84-month total sentence to run concurrently with the sentences for his two unrelated convictions. Upon the government's motion, it dismissed Counts 2 through 12 of the indictment. Jean now appeals.

II.

Jean contends that the district court violated Rule 11(b)(3), Fed. R. Crim. P., by failing to ensure that his plea of guilty to Count 13 was supported by a sufficient factual basis. He further contends that, because the record contains no evidence as to an essential element of the offense, his guilty plea could not have been knowing and voluntary, in violation of Rule 11(b)(1)(G).

Because he did not object to the plea colloquy below, we review for plain error.[1] *See United States v. Rodriguez*, 751 F.3d 1244, 1251 (11th Cir. 2014) ("We review for plain error when a defendant ... fails to object in the district court to a claimed Rule 11 violation, including a claim that there was an insufficient factual basis for a guilty plea."). Under plain-error review, Jean bears the burden of showing (1) an error (2) that is plain and (3) that affects substantial rights. *Id.* To meet the third prong, the defendant "must show a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Dominguez Benitez*, 542 U.S. 74, 83, 124 S.Ct. 2333, 159 L.Ed.2d 157 (2004). We may "consult the whole record when considering the effect of any error on substantial rights." *United States v. Vonn*, 535 U.S. 55, 59, 122 S.Ct. 1043, 152 L.Ed.2d 90 (2002).

A.

*3 First, the factual basis: Ordinarily, "[t]he standard for evaluating challenges to the factual basis for a guilty plea is whether the trial court was presented with evidence from which it could reasonably find that the defendant was guilty." *United States v. Frye*, 402 F.3d 1123, 1128 (11th Cir. 2005) (quotation marks omitted). The purpose of the factual-basis requirement is "to protect a defendant who mistakenly believes that his conduct constitutes the criminal offense to which he is pleading." *Id.* (quotation marks omitted).

i.

Before we turn to Jean's claim that his guilty plea lacked a sufficient factual basis, we must resolve the parties' dispute as to what the government needed to prove to convict Jean of violating § 1327.

Section 1327 makes it a crime to "knowingly aid[ ] or assist[ ] any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) ... of this title to enter the United States." 8 U.S.C. § 1327. We have held that, to convict a defendant of violating § 1327, the government must prove beyond a reasonable doubt that (1) the defendant knowingly aided or assisted an alien to enter the United States; (2) the defendant knew that the alien was inadmissible; and (3) the alien was inadmissible under 8 U.S.C. § 1182(a)(2) for having been convicted of an aggravated felony. *United States v. Lopez*, 590 F.3d 1238, 1254 (11th Cir. 2009). The government may satisfy the second element by proving that the defendant knew the alien was inadmissible for any reason —it does not have to prove that the defendant knew the alien was inadmissible due to a prior aggravated felony conviction. *Id.* at 1254-55. In *Lopez*, we held that it was sufficient that the defendant knew his passengers were seeking to enter the United States without valid entry documents, which made them inadmissible under 8 U.S.C. 1182(a)(7). *See id.*

Jean concedes that *Lopez* is controlling as to the elements of § 1327 but argues that it was wrongly decided and is no longer good law in light of *Rehaif v. United States*, —— U.S. ——, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019), and *McFadden v. United States*, 576 U.S. 186, 135 S.Ct. 2298, 192 L.Ed.2d 260 (2015). In *Rehaif*, the Supreme Court interpreted 18 U.S.C. § 924(a)(2), which imposes criminal penalties on "whoever knowingly violates" 18 U.S.C. § 922(g), and held that the word "knowingly" applied to every material element of § 922(g). *Rehaif*, 139 S. Ct. at 2200. In *McFadden*, the Supreme Court held that 21 U.S.C. § 841(a)(1), which makes it unlawful "for any person knowingly or intentionally to manufacture, distribute, or dispense ... a controlled substance," required the government to prove that the defendant knew he was dealing with a controlled substance. *McFadden*, 576 U.S. at 188-89, 135 S.Ct. 2298. Jean argues that, because the word "knowingly" in § 1327 introduces the elements of the crime, it applies to all three of those elements, and the government should be required to prove that he knew that Reece was inadmissible because he had committed an aggravated felony. *See Rehaif*, 139 S. Ct. at 2196.

But under our prior-panel precedent rule, we are bound by *Lopez* until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc. *United States v. Gillis*, 938 F.3d 1181, 1197 (11th Cir. 2019). To overrule or abrogate a prior panel's decision, the subsequent Supreme Court or en banc decision "must be clearly on point and must actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel." *Id.* (quotation marks omitted). *Rehaif* and *McFadden* do not meet that mark. Neither case is clearly on point, as the statutes they interpret come from different parts of the criminal code and differ in structure from § 1327. *See* 18 U.S.C. §§ 922(g); 924(a)(2); 21 U.S.C. § 841(a)(1). Further, nether case mentions *Lopez* or § 1327, meaning they do not actually abrogate or directly conflict with our holding. Accordingly, we remain bound by our prior precedent.

***4** Next, Jean argues that, regardless of our holding in *Lopez*, the government was required to prove that he knew Reece was inadmissible as an aggravated felon because his indictment alleged such knowledge in Count 13. But the indictment tracked the language of the statute, which requires only that the government prove that Jean knew Reece was inadmissible. *See Lopez*, 590 F.3d at 1254-55.

Accordingly, before accepting Jean's guilty plea, the district court was required to ensure that a sufficient factual basis supported these essential elements: (1) Jean knowingly aided or assisted Reece to enter the United States; (2) Jean knew that Reece was inadmissible; and (3) Reece was inadmissible under 8 U.S.C. § 1182(a)(2) for having been convicted of an aggravated felony. *Id.*; Fed. R. Crim. P. 11(b)(3). Jean argues that the court plainly erred by failing to do so. We address this argument now.

ii.

The government concedes that the record contained no direct evidence to support the second element of § 1327—that Jean knew Reece was inadmissible. At the plea colloquy, Jean told the district court that he did not know any of the people he was transporting, and the district court did not follow up to ask if he knew of their inadmissible status. In addition, the factual proffer stated that the individuals interviewed by Border Patrol said that they paid a smuggler, not Jean himself, to be taken to the United States. This distinguishes Jean's case from *Lopez*, in which it was "undisputed that Lopez knew ...

that his passengers were undocumented aliens seeking entry to the United States." *Lopez*, 590 F.3d at 1255.

Jean argues that, because his knowledge that Reece was inadmissible was an essential element of the offense, it must have been expressly established in the plea agreement, factual proffer, or plea colloquy, not silently inferred by the district court based on circumstantial evidence.

But our review of the district court's determination that a plea is supported by sufficient facts is deferential, even when we are not reviewing for plain error. *See Frye*, 402 F.3d at 1129 (evaluating the appellant's Rule 11(b)(3) challenge for an abuse of discretion). And under plain-error review, we have upheld a defendant's guilty plea based on circumstantial evidence. In *Puentes Hurtado*, the defendant stated that he agreed to "most" of the government's factual proffer, including that he had transported money to El Paso, Texas, but the district court did not question him further as to which parts he disagreed with before accepting his guilty plea on a drug-trafficking conspiracy charge. *Puentes Hurtado*, 794 F.3d at 1282-83, 1286. We held that, even if he admitted only to transporting drug proceeds, that action furthered the purpose of the conspiracy and, therefore, provided circumstantial evidence of his knowing participation in the conspiracy. *Id.* at 1287.

Here, Jean admitted in the factual proffer that he was the master of a vessel transporting twelve individuals, including Reece, who had paid a smuggler for passage to the United States. When the Coast Guard attempted to stop his vessel, he did not immediately stop. Jean had $6,000 on his person, and none of the twelve individuals, nor Jean, was admissible to the United States. Although the evidence is circumstantial, the district court could reasonably find, based on the proffer, that Jean knew Reece was inadmissible. *See Frye*, 402 F.3d at 1128; *Lopez*, 590 F.3d at 1254-55. Accordingly, it did not plainly err in finding that a sufficient factual basis supported his guilty plea to Count 13.

B.

***5** Next, Jean argues that his plea to Count 13 was not knowing and voluntary because the district court did not explain the essential elements of § 1327 at the plea colloquy, and he did not otherwise understand them.

Rule 11 mandates that courts inform the defendant of, and determine that he understand, "the nature of each charge to which the defendant is pleading." Fed. R. Crim. P. 11(b)(1)(G). There is no specific way that a district court is required to inform the defendant of the nature of the charges. *Puentes-Hurtado*, 794 F.3d at 1286. The adequacy of the colloquy depends on various factors, including the complexity of the charges and the defendant's intelligence and sophistication. *Id.*

Here, Jean cannot show that any error the district court may have made in failing to explain the elements of his § 1327 charge affected his substantial rights. *See Dominguez Benitez*, 542 U.S. at 83, 124 S.Ct. 2333. He argues that, had he understood the knowledge requirement correctly, he would not have pled guilty to Count 13 and would have been subject to only the 60-month statutory maximum in Count 1, making his prison term at least two years lighter. But as we concluded above, the record reasonably supports a finding that Jean knew Reece was inadmissible. And Jean did receive significant benefits by pleading guilty: the government moved to drop eleven of the thirteen counts against him, recommended a three-level acceptance-of-responsibility reduction in his guideline calculation, and recommended that his sentences in this case and his two other, unrelated cases all run concurrently. Plus, Jean received the benefit of having his sentence in this case run concurrently with his sentences in two separate cases against him for illegal reentry after deportation and for being a felon in possession of a firearm. The record also contains no indication that the government would have been willing to allow Jean to plead guilty to only Count 1. In addition, at the plea colloquy, Jean stated numerous times that he "just want[ed] to get this over with." Jean has not met his burden to show that he would not have pled guilty if the district court had more fully explained the essential elements of § 1327. *See Dominguez Benitez*, 542 U.S. at 83, 124 S.Ct. 2333.

III.

For the reasons stated, we reject Jean's request to vacate his guilty plea as to Count 13, and we affirm his convictions and sentences.

AFFIRMED.

All Citations

--- Fed.Appx. ----, 2020 WL 7039042

Footnotes

1 The government contends that Jean has waived his factual-sufficiency claim through the appeal waiver in his plea agreement. However, we have held that an appeal waiver does not bar a Rule 11 claim of an insufficient factual basis to support a guilty plea. *See United States v. Puentes-Hurtado*, 794 F.3d 1278, 1284 (11th Cir. 2015). We also reject the government's contention that Jean waived this claim by pleading guilty. *See id.* at 1286-87.

End of Document

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13989-CC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANDERSON JEAN,

Defendant - Appellant.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: ROSENBAUM, LAGOA and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

United States District Court

Southern District of Florida

MIAMI DIVISION

UNITED STATES OF AMERICA

v.

ANDERSON JEAN

JUDGMENT IN A CRIMINAL CASE

Case Number - 1:15-20914-CR-UNGARO-

USM Number: 19891-104

Counsel For Defendant: Arthur Wallace, Esq.
Counsel For The United States: Thomas Lanigan, AUSA
Court Reporter: William Romanishin

The defendant pleaded guilty to Count(s) One and Thirteen of the Indictment.
The defendant is adjudicated guilty of the following offense(s):

TITLE/SECTION NUMBER	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
Title 8 USC 1324(a)(1)(A)(iv)	Encouraging and inducing aliens to enter the United States	3/19/15	One
Title 8 USC 1327	Aiding and assisting certain aliens to enter the United States	3/19/15	Thirteen

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

Count(s) All remaining Count(s) 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 any material changes in economic circumstances.

Date of Imposition of Sentence:
9/23/2019

URSULA UNGARO
United States District Judge

September 25, 2019

DEFENDANT: ANDERSON JEAN
CASE NUMBER: 1:15-20914-CR-UNGARO-

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **SIXTY (60) MONTHS as to Count One and EIGHTY-FOUR (84) MONTHS as to Count Thirteen to be served CONCURRENTLY. The sentence imposed in this case shall run CONCURRENTLY to the sentence imposed in case numbers 19-60092-CR-UU and 19-60191-CR-UU.**

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

S. Fla.

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

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

DEFENDANT: ANDERSON JEAN
CASE NUMBER: 1:15-20914-CR-UNGARO-

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **TWO (2) YEARS as to Counts One and Thirteen to be served CONCURRENTLY.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

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

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

If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

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

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

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. the defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ANDERSON JEAN
CASE NUMBER: 1:15-20914-CR-UNGARO-

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

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

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

DEFENDANT: ANDERSON JEAN
CASE NUMBER: 1:15-20914-CR-UNGARO-

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment	Total Fine	Total Restitution
$200.00	$	$

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

DEFENDANT: ANDERSON JEAN
CASE NUMBER: 1:15-20914-CR-UNGARO-

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of **$** due immediately, balance due

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

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

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

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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

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