NO.:_______________________

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

FLORWER CARLIN LIZANO, JR.

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MICHAEL A. MEETZE
ASSISTANT FEDERAL PUBLIC DEFENDER
COURT-APPOINTED COUNSEL
IN THE COURTS BELOW
FOR FLORWER CARLIN LIZANO, JR.
401 W. EVANS STREET, SUITE 105
FLORENCE, SOUTH CAROLINA 29501
TELEPHONE: (843)662-1510

QUESTION PRESENTED

Since this Court has recognized the Sixth Amendment right to counsel as unique, *Custis v. United States*, 511 U.S. 485, 487(1994), should this Court lessen the defendant's burden of proof required to overcome the presumption of regularity when the defendant collaterally attacks a prior conviction based on a violation of his Sixth Amendment right to counsel.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Florwer Carlin Lizano, Jr., respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit in Case No.: 17-4411, entered on December 21, 2017.

OPINION BELOW

The Fourth Circuit panel issued its unpublished opinion on December 21, 2017, affirming the judgement of the United States District Court for the District of South Carolina, Florence Division. This opinion is reported as *United States v. Lizano*, 706 Fed. Appx. 804(4th Cir. 2017). (App. A1-A3).

JURISDICTION

The Fourth Circuit Court of Appeals issued its opinion and entered its judgment on December 21, 2017. (App. A1-A3). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

S.C. Code Ann. §17-3-10 (Law. Coop. 1976):

> Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. The fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel.

S.C. Code Ann. § 17-281 (1969) Former Statute:

> Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto.

STATEMENT OF THE CASE

Petitioner, Florwer Carlin Lizano, Jr., pled guilty to the unlawful possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Petitioner faced a maximum sentence of 10 years of imprisonment pursuant to 18 U.S.C. § 924(a)(2). The basis for jurisdiction in the district court is 18 U.S.C. § 3231, which provides in pertinent part that the district courts shall have original jurisdiction, exclusive of the state courts, of all offenses against the laws of the United States.

Petitioner objected to paragraphs 21 and 27 of his presentence report which assigned a criminal history point for two of Petitioner's prior misdemeanor convictions. Those convictions were obtained in violation of Petitioner's Sixth Amendment right to counsel. (JA at 57). To support this objection, Petitioner submitted the only documents available from the court of conviction. The submitted documents did not contain any reference to Petitioner waiving his right to counsel. (JA Vol II at 117-120). Petitioner further argued that recent studies and reports by the American Civil Liberties Union, "ACLU," and the National Association of Criminal Defense Lawyers, "NACDL," showed that summary courts in South Carolina routinely fail to adequately inform criminal defendants of their right to counsel and fail to obtain valid waivers of the defendant's right to counsel. (JA at

58). Finally, petitioner pointed to an error committed by the South Carolina Court of General Session set forth in paragraph 28 of the presentence report as an example of the highest trial court in the state not following proper procedure by accepting a jurisdictionally deficient guilty plea. (JA at 60).

The district court overruled Petitioner's objections. (JA 63) In so doing, the district court relied on S.C. Code Ann. § 17-3-10 and the presumption of regularity which attaches to final judgments. The district court determined that Petitioner had not met his burden to prove that he did not make a valid waiver of his right to counsel. (JA at 63, 64). Based on the district court's rulings, petitioner's advisory guideline range was 57-71 months in prison. The district court granted petitioner a downward variance and sentenced petitioner to 48 months to serve in prison with a one to three-year term of supervised release to follow. (JA at 65)

Petitioner appealed pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. In his reply brief, petitioner attached the memorandum from South Carolina Supreme Court Chief Justice, Donald W. Beatty, directed to all magistrates and municipal judges concerning defendants being sentenced to prison who were neither represented by counsel nor had waived counsel. Chief Justice Beatty issued the memorandum on September 15, 2017, while petitioner's case was on appeal.

The Fourth Circuit affirmed the district court by deciding that petitioner had not met his burden to show the irregularity of his prior plea as required by the presumption of regularity that attaches to final judgments. In making this decision, the Fourth Circuit indicated that their decision follows this Court's decision in *Parke v. Raley*, 506 U.S. 20, 28-34, 113 S.Ct. 517, 121 L. Ed. 2d 391 (1992). *U.S. v. Lizano* 706 Fed. Appx. 804, 805 (4th Cir. 2017). In so deciding, the court stated that petitioner submitted neither documentary evidence nor testimony at the sentencing hearing to establish that he was convicted, in either instance, in a manner that violated his constitutional right to counsel. *Lizano* at 805.

This petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to address and determine what level of proof is required of this petitioner to successfully shift the burden of proof back to the government when the defendant is collaterally attacking a prior conviction based on a denial of his right to counsel. The right to counsel is unique. In collateral challenges to prior convictions, this Court has set the denial of the right to counsel apart from other challenges, such as whether a guilty plea was knowingly and voluntarily entered and whether or not counsel was effective. The Court envisioned being able to resolve whether counsel was waived easily, because "the failure to appoint counsel should appear from the judgment roll." *Custis v. United States*, 511 U.S. 485, 487 (1994). Instead, the Fourth Circuit has applied the presumption of regularity too strictly when the right to counsel is at issue. The Fourth Circuit upheld the presumption of regularity regarding S.C. Code Ann. § 17-3-10 which requires all judges in South Carolina to advise all entitled persons of their right to counsel, and to appoint counsel to indigent defendant unless the defendant voluntarily and intelligently waives his right to counsel. This is exactly the type of information that the Court envisioned being available from the "judgment roll or minute order." However, no records exist from petitioner's case concerning the appointment of counsel or the waiver of counsel. In addition, there are studies and a memorandum from the Chief Justice of the South Carolina Supreme Court which show that magistrate judges and city judges across South Carolina are not complying with the requirements of S.C. Code Ann. § 17-3-10. The application of the presumption of regularity in a right to counsel challenge erodes the holding and principles from *Gideon v. Wainwright*, 372 U.S. 335 (1963). Since this case bears directly on petitioner's Sixth Amendment right to counsel, this is an important question that should be settled by this Court.

THE FOURTH CIRCUIT INCORRECTLY HELD THAT THE PRESUMPTION OF REGULARITY APPLIED TO S.C. CODE ANN. § 17-3-10 WHEN IT IS A FACT THAT SOUTH CAROLINA MAGISTRATE AND MUNCIPAL COURTS HAVE ROUTINELY FAILED TO FOLLOW S.C. CODE ANN. § 17-3-10.

This Court should grant certiorari, because the Fourth Circuit Court of Appeals has erroneously applied *Parke v. Raley*, 506 U.S. 20 (1992) to petitioner's case and, as a result, violated petitioner's Sixth Amendment right to counsel.

The Sixth Amendment guarantees a criminal defendant the right to the assistance of counsel at trial, and this right extends to state court proceedings through the Fourteenth Amendment. *Johnson v. Zerbst*, 58 S. Ct. 1019 (1938); *Gideon v. Wainwright,* 373 U.S. 335 (1963). A defendant may represent himself when he intelligently and voluntarily elects to do so. *See Faretta v. California*, 422 U.S. 806, 807 (1975). As noted in *Faretta*, part of a knowing and intelligent waiver is that the defendant should be made aware of the dangers and disadvantages of self-representation. *Id.* At 835.

The accused must be offered counsel and intelligently and knowingly waive it to satisfy the Sixth Amendment. *Carnley v. Cochran*, 369 U.S. 506, 515 (1962). There is a strong presumption against waiver of the constitutional right to counsel. *Von Moltke v. Gillies*, 332 U.S. 708, 723 (1948); *Carnley*, 369 U.S. at 515 (1962). "Presuming waiver from a silent record is impermissible." *Id.* At 516.

This Court has set the right to counsel apart as unique. For example, the Court has held that the only collateral attack on convictions used for enhancement purposes under the Armed Career Criminal Act is a challenge that the conviction was obtained in violation of the right to counsel. *Custis v. United States*, 511 U.S. 485, 487 (1994). "To permit a conviction obtained in violation of *Gideon v. Wainwright* to be used against a person either to support guilt or enhance punishment for another offense. . . is to erode the principle of that case." *Burgett v. Texas*, 389 U.S. 109, 115 (1967).

The Fourth Circuit's decision to apply the presumption of regularity as it did in petitioner's case is an erosion of *Gideon v. Wainwright*.

In order to reach its decision, the Fourth Circuit applied the presumption of regularity to the procedural statute S.C. Code Ann. § 17-3-10, which originated in the 1962 Code of South Carolina under the former number 17-281. This statute was amended in 1969 and included all of the operative language that it contains today which is relevant to petitioner's case. The point here is that this South Carolina statute pre-dates *Faretta* which this Court decided in 1975.

S.C. Code Ann. § 17-3-10 provides, in relevant part that:

> "Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto."

For a purely technical standpoint, an argument exists that since S.C. Code Ann. § 17-3-10 predates *Faretta*, and the requirement to warn of the dangers of self-representation, the statute is itself unconstitutional. Courts can technically comply with S.C. Code Ann. § 17-3-10 and not obtain an effective waiver of the right to counsel.

More importantly, however, the Fourth Circuit has misapplied *Parke v. Raley* by placing too high of a bar on defendants like petitioner who cannot present any court records which can shed light on whether or not the court obtained a valid waiver of the defendant's right to counsel. It is important to keep in mind that *Parke v. Raley* did not involve the right to counsel. That defendant had a lawyer for the prior convictions at issue in that case. 506 U.S. at 24. That defendant claimed that he could not remember whether he was specifically told about the rights he waived by pleading guilty, and that the pleas were not knowing and voluntary based on *Boykin v. Alabama*, 395 U.S. 238 (1969). *Id* at 24. In the case of such a collateral challenge, this Court recognized that if the entire burden of proof was on the government, the government would frequently have to "expend considerable effort and expense attempting to reconstruct records from farflung States where procedures are unfamiliar and memories unreliable." *Id* at 32.

The situation in petitioner's case is very different. The issue in petitioner's case is whether or not the South Carolina Magistrate Court improperly denied petitioner the right to counsel. This Court has viewed that specific issue differently. Specifically, this Court recognized in *Custis v. United States*, that "failure to appoint counsel will generally appear from the judgment roll itself, or from an accompanying minute order. But determinations of claims of ineffective assistance of counsel, and failure to assure that a guilty plea was voluntary, would require sentencing courts to rummage through frequently nonexistent or difficult to obtain state-court transcripts or records that may date from another era, and may come from any one of the 50 states." *Custis* at 496.

In Petitioner's case, there was no such judgment roll or minute order which could shed light on this issue. The only record of the proceedings from the City of Dillon Municipal Court was silent on this issue. (JA Vol II at 117-120).

There was no court record for petitioner to present. Petitioner did call the court's attention to studies from the ACLU and the National Association of Criminal Defense Attorneys which show that South Carolina's summary court routinely fail to protect a defendant's Sixth Amendment right to counsel. https://www.nacdl.org/RushToJudgmentRelease/. While petitioner's case was on appeal, Chief Justice of the South Carolina Supreme Court issued a memorandum to all magistrates and municipal judges in which Chief Justice Judge Beatty explained that these courts were sentencing defendants' to prison in violation of their right to counsel.

Obviously, these courts were not following the requirements of S.C. Code Ann. § 17-3-10, and in this situation, the presumption of regularity should not apply. When defendants like petitioner cannot avail themselves of the most basic court records in order to prove that they were denied the right to counsel, and when the Chief Justice of the South Carolina Supreme notes in no mistaken terms that South Carolina courts are currently not complying with the procedural statute at issue, courts should suspend the presumption of regularity, or lessen the defendant's burden of proof, in favor of guaranteeing a defendant's Sixth Amendment right to counsel. Holding otherwise impermissibly erodes and contravenes the spirit of *Gideon* and renders the Sixth Amendment hollow. Therefore, petitioner asks this Court to grant his petition to answer the important legal question on whether the Supreme Court presumption of regularity statute should yield to the Sixth Amendment of the United States Constitution and *Gideon v. Wainwright* when there are no records that the court in the prior proceeding obtained a valid waiver of the defendants right to counsel.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Allen Meetze, Esquire
Assistant Federal Public Defender
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Florence, South Carolina 29501
Telephone: (843)662-1510
Attorney for Petitioner

Florence, South Carolina

March 16, 2018

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4411

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FLORWER CARLIN LIZANO, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. R. Bryan Harwell, District Judge. (4:16-cr-00649-RBH-1)

Submitted: December 19, 2017 Decided: December 21, 2017

Before SHEDD, AGEE, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael A. Meetze, Assistant Federal Public Defender, Florence, South Carolina, for Appellant. Beth Drake, United States Attorney, Alfred W. Bethea, Jr., Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Florwer Carlin Lizano, Jr., pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (2012). The district court imposed a 48-month sentence, which was a downward variance from Lizano's Sentencing Guidelines range of 57 to 71 months' imprisonment. Lizano timely appeals, challenging the district court's computation of his criminal history score. For the reasons that follow, we affirm.

Lizano asserts that his prior South Carolina convictions for driving under the influence should not have been counted in the computation of his criminal history score because the record does not show that, at the time of those convictions, he was afforded his Sixth Amendment right to counsel. The presentence report indicated with respect to those convictions that Lizano waived attorney representation and that no further information was available.

While a defendant may challenge the validity of a prior conviction on the ground that he was denied counsel, *see Custis v. United States*, 511 U.S. 485, 495-96 (1994), Lizano bears the "heavy burden" of showing that the prior conviction is invalid on this basis. *United States v. Jones*, 977 F.2d 105, 110-11 (4th Cir. 1992); *see United States v. Hondo*, 366 F.3d 363, 365 (4th Cir. 2004) ("[E]ven when an arguable *Custis* challenge is raised, the defendant bears an especially difficult burden of proving that the conviction was invalid."). The determination of whether counsel has been waived is reviewed de novo. *Hondo*, 366 F.3d at 365.

Specifically, Lizano bore the burden of overcoming the presumption that the state court informed him of his right to counsel, as it was required by statute to do, and that, if he was not represented, it was because he waived his right to counsel.[*] *See Parke v. Raley*, 506 U.S. 20, 28-34 (1992) (holding "presumption of regularity that attaches to final judgments makes it appropriate" for defendant to have burden of showing irregularity of prior plea). Lizano clearly did not meet this burden in this case. He submitted neither documentary evidence nor testimony at the sentencing hearing to establish that he was convicted, in either instance, in a manner that violated his constitutional right to counsel. *Cf. Jones*, 977 F.2d at 110-11 (explaining why defendant's "vague [and] inconclusive testimony" about distant events was insufficient to carry his burden of showing invalidity of prior conviction). We conclude that, in the absence of any contrary evidence, the district court properly rejected Lizano's claim based on the presumption that the relevant South Carolina law was followed in the challenged cases.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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[*] A criminal defendant's right to counsel is protected by the Sixth Amendment to the United States Constitution. South Carolina law also has codified the specific mandatory process that must be employed before a defendant is permitted to waive his right to counsel. *See* S.C. Code Ann. § 17-3-10 (2014) ("Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto.").

RECEIVED

AUG 2 3 2016

FLORENCE, S.C.

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA) CRIMINAL NO.: 4:16-649

18 U.S.C. § 922(g)(1)
18 U.S.C. § 924(a)(2)
18 U.S.C. § 924(e)

vs.

FLORWER CARLIN LIZANO, JR.

INDICTMENT

COUNT 1

THE GRAND JURY CHARGES:

That on or about August 5, 2016, in the District of South Carolina, the defendant, **FLORWER CARLIN LIZANO, JR.**, having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in and affecting commerce, a firearm, that is, a Jimenez Arms Inc. Model JA 9 9mm pistol, and 9mm ammunition, all of which had been shipped and transported in interstate commerce;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2) and 924(e).

A TRUE BILL

FOREPERSON

BETH DRAKE (CDT)
ACTING UNITED STATES ATTORNEY

RECEIVED
AUG 23 2016
FLORENCE, S.C.

RECORD OF GRAND JURY BALLOT

C/ R 4:16-649

THE UNITED STATES OF AMERICA v. FLORWER CARLIN LIZANO, JR.

(SEALED UNTIL FURTHER ORDER OF THE COURT)

AO 245B (SCDC Rev.11/16) Judgment in a Criminal Case Sheet 1

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

vs.

FLORWER CARLIN LIZANO, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: **4:16CR00649-RBH (1)**

USM Number: 31684-171

Michael Meetze, AFPD
Defendant's Attorney

THE DEFENDANT:

- ■ pleaded guilty to count one (1) on February 27, 2017 .
- ☐ pleaded nolo contendere to count(s) _______which was accepted by the court.
- ☐ was found guilty on count(s) __after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:922(g)(1) and 924(a)(2)	Please see indictment	08/05/16	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)______.

☐ Count(s) __ ☐ is ☐are dismissed on the motion of the United States.

☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

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.

June 22, 2017
Date of Imposition of Judgment

s/ R. Bryan Harwell
Signature of Judge

Hon. R. Bryan Harwell, U.S. District Judge
Name and Title of Judge

June 22, 2017
Date

DEFENDANT: Florwer Carlin Lizano, Jr.
CASE NUMBER: 4:16CR00649-RBH (1)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **forty-eight (48) months**.

■ The court makes the following recommendations to the Bureau of Prisons: 1. Defendant serve his sentence at Bennettsville, S.C., facility. 2. Defendant be allowed to participate in the Residential Drug Treatment Program.

☐ 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 **12:00 p.m.**on **June 23, 2017** at Marshal's office, Florence, S.C. .
☐ 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: Florwer Carlin Lizano, Jr.
CASE NUMBER: 4:16CR00649-RBH (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) years**.
While on supervised release, the defendant shall comply with the mandatory and standard conditions of supervision outlined in 18 U.S.C. § 3583(d) and the following special condition:

The defendant shall satisfactorily participate in a drug testing program as approved by the U.S. Probation Office. The defendant shall contribute to the costs of such program not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

MANDATORY CONDITIONS

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

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

DEFENDANT: Florwer Carlin Lizano, Jr.
CASE NUMBER: 4:16CR00649-RBH (1)

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 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 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: Florwer Carlin Lizano, Jr.
CASE NUMBER: 4:16CR00649-RBH (1)

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 100.00			

☐ The determination of restitution is deferred until ____________. An *Amended Judgment in a Criminal Case(AO245C)* will be entered after such determination.

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

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$__________	$__________	

☐ Restitution amount ordered pursuant to plea agreement $____________

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

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Florwer Carlin Lizano, Jr.
CASE NUMBER: 4:16CR00649-RBH (1)

SCHEDULE OF PAYMENTS

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

A ■ Lump sum payment of **$100.00 (special assessment)** due immediately, balance due

☐ not later than ______________________, or

☐ in accordance with ☐ C, ☐ D, or ☐ E, or ☐ F below: or

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

C ☐ Payment in equal ________(weekly, monthly, quarterly) installments of $____________over a period of__________ (*e.g., months or years*), to commence __________ (*e.g., 30 or 60 days*) after the date of this judgment; or

D ☐ Payment in equal __________________(*e.g., weekly, monthly, quarterly*) installments of $____________over a period of ________(*e.g., months or years*), to commence ___________ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed ________ and the said order is incorporated herein as part of this judgment.

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.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

UNITED STATES OF AMERICA	)	CR. NO.: 4:16CR00649-RBH(1)
	)	
	)	
-vs-	)	
	)	
FLORWER CARLIN LIZANO, JR.	)	

NOTICE OF APPEAL

Notice is hereby given that, **FLORWER CARLIN LIZANO, JR.,** defendant named above, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the judgment and sentence entered in this action before the Honorable R. Bryan Harwell, United States District Judge, on the 22ND day of June, 2017.

/s/ MICHAEL A. MEETZE,
Assistant Federal Public Defender
Attorney for Defendant
c/o McMillan Federal Building
401 W. Evans Street, Suite 105
Florence, South Carolina 29501
Telephone: (843) 662-1510
Attorney ID #: 6662

Florence, South Carolina

June 26, 2017

FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land of naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

SUPREME COURT RULES - 10(a)

Jurisdiction on Writ of Certiorari:

Review on writ of certiorari is not a matter of right, but the jurisdictional discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate that character of the reasons the Court considers:

(a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with the decision by a state court of last resort; or has no far departed from the accepted and usual course of judicial proceedings, or sanctioned such as a departure by a lower court, as to call for an exercise of this Court's supervisory power.

SUPREME COURT RULES - 10(c)

Considerations Governing Review on Certiorari:

Review on writ of certiorari is not a matter of right, but the jurisdictional discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate that character of the reasons the Court considers:

(c) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.