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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
FEB 20 2018
JUDGE JORGE LUIS ALONSO
United States District Court

UNITED STATES OF AMERICA

v.

FERNANDO GODINEZ

No. 16 CR 554-2

Judge Jorge L. Alonso

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant FERNANDO GODINEZ, and his attorney, JOSEPH LOPEZ, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The superseding indictment in this case charges defendant with conspiracy to possess with intent to distribute and distribute a controlled substance, namely, 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 846 (Count One), possession with intent to distribute a controlled substance, namely, 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 846 (Count Two), possession of a firearm in furtherance of a drug trafficking crime, namely, Counts One and Two, in

violation of Title 18, United States Code, Section 924(c)(1)(A)(i) (Count Four), unlawful possession of a firearm after having been convicted of a crime punishable by a term of imprisonment exceeding one year, in violation of Title 18, United States Code, Section 922(g)(1) (Count Seven), illegal reentry into the United States after having been removed, in violation of Title 8, United States Code, Section 1326(a) (Count Eight), and unlawful possession of a firearm by an alien, in violation of Title 18, United States Code, Section 922(g)(5) (Count Nine).

3. Defendant has read the charges against him contained in the superseding indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the superseding indictment: Count One, which charges defendant with conspiracy to possess with intent to distribute and distribute a controlled substance, namely, 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 846; and Count Four, which charges defendant with possession of a firearm in furtherance of a drug trafficking crime, namely, Count One, in violation of Title 18, United States Code, Section

924(c)(1)(A)(i). In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Four of the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

a. With respect to Count One of the superseding indictment:

From on or about August 23, 2016, to on or about August 30, 2016, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant FERNANDO GODINEZ ("FERNANDO") did conspire with co-defendant Adan Godinez ("Adan") to knowingly and intentionally possess with intent to distribute and distribute a controlled substance, namely, 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1), in violation of Title 21, United States Code, Section 846.

Specifically, on or about August 23, 2016, Adan began negotiating the sale of cocaine with an individual who, unbeknownst to him, was an undercover DEA Task Force Office (the "UC"). Adan met with the UC on August 23, 2016, after which meeting Adan called FERNANDO to discuss the sale of cocaine. Over the ensuing

25 JN
F.6 JN

days, Adan continued to talk with the UC about the sale of cocaine and informed FERNANDO regarding the negotiations.

On or about August 29, 2016, Adan talked with the UC about the sale of cocaine and the UC indicated that he could purchase the cocaine that day. Adan told the UC that he had to make a phone call before agreeing to sell the cocaine that day and called FERNANDO to discuss the sale. After talking with FERNANDO, Adan called the UC back and set the sale for August 30, 2016. Later that night, FERNANDO sent a text message to Adan asking: "brother, how many chickens will the guy want?" By chickens, FERNANDO meant kilograms of cocaine. On the morning of August 30, 2016, at approximately 4:59 a.m., Adan responded to FERNANDO: "2," meaning two kilograms of cocaine.

On or about August 30, 2016, the UC and Adan agreed to meet later in the day at the Louis Joliet Mall to complete the sale of cocaine. Throughout the course of the day, FERNANDO and Adan exchanged several phone calls discussing the sale. At approximately 5:07 p.m., FERNANDO arrived at the Louis Joliet Mall in a Chevrolet Trailblazer, following Adan, who was driving a silver Impala. Upon arriving at the mall, FERNANDO and Adan parked their respective cars and Adan got into FERNANDO's Trailblazer. Soon after, the UC called Adan and told him to meet near a specific restaurant. FERNANDO drove the Trailblazer near the UC's car. Adan retrieved the cocaine that FERNANDO brought and stored in the Trailblazer and went to the UC's vehicle. In total, the cocaine that FERNANDO had brought for

the transaction and that Adan had attempted to sell to the UC weighed approximately 1.996 kilograms.

b. With respect to Count Four of the superseding indictment:

On or about August 30, 2016, at Joliet, in the Northern District of Illinois, Eastern Division, defendant FERNANDO GODINEZ knowingly possessed a firearm, namely a Smith & Wesson, Model SW9VE, 9mm pistol bearing serial number PDJ4005, in furtherance of a drug trafficking crime, namely, conspiracy to possess with intent to distribute and distribute a controlled substance, in violation of Title 21, United States Code, Section 846, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

Specifically, as part of the meeting on August 30, 2016 described above, at the Louis Joliet Mall, Adan and FERNANDO conspired to sell two kilograms of cocaine to the UC. During the attempted sale of the cocaine to the UC, FERNANDO possessed a Smith & Wesson, Model SW9VE, 9mm pistol bearing serial number PDJ4005 (the "Smith & Wesson") in the rear waistband of defendant's pants. The Smith & Wesson was loaded with a bullet in the chamber. In addition, FERNANDO possessed an additional loaded magazine clip in his front right pants' pocket.

FERNANDO acknowledges that he possessed the loaded firearm during and in furtherance of the intended sale of cocaine to the UC and that one of the reasons he did so was to protect the cocaine and ensure that he and Adan were paid \$72,000 for the cocaine.

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count One carries a maximum sentence of life imprisonment, and a statutory mandatory minimum sentence of 10 years. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation on this count. Count One also carries a maximum fine of \$8,000,000. Defendant further understands that with respect to Count One the judge also must impose a term of supervised release of at least eight years, and up to any number of years, including life.

b. Count Four carries a maximum sentence of life imprisonment, and a statutory mandatory minimum sentence of 5 years. The sentence of imprisonment on Count Four is required to be consecutive to any other sentence imposed. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation on this count. Count Four also carries a maximum fine of \$250,000. Defendant further understands that with respect to Count Four, the judge also may impose a term of supervised release of not more than five years.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty imposed.

d. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is life imprisonment, and the minimum sentence is 15 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$8,250,000, a period of supervised release, and special assessments totaling \$200.

Sentencing Guidelines Calculations

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2016 Guidelines Manual.

b. **Offense Level Calculations.**

Count One

i. The base offense level is 24, pursuant to Guideline §§ 2D1.1(a)(5) and 2D1.1(c)(8), because the offense involved at least 500 grams, but less than 2 kilograms of cocaine.

ii. Pursuant to application note 4 to Guideline § 2K2.4, Guideline §§ 2D1.1(b)(1) and (b)(2) do not apply because a sentence was also imposed under Guideline § 2K2.4 (Count Four).

iii. The total offense level for Count One is 24.

Count Four

iv. Pursuant to Guideline § 2K2.4, the guideline sentence for Count Four is the term of imprisonment required by statute, which is required to run consecutive to any term of imprisonment imposed on defendant. The term of imprisonment required by statute for Count Four is a five-year mandatory minimum term under Title 18, United States Code, Section 924(c)(1)(A)(i).

v. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

vi. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal 5 and defendant's criminal history category is III:

i. On or about April 25, 2008, defendant was convicted of possession of a firearm by a fugitive in the Northern District of Indiana, and was sentenced to ten months' imprisonment. Pursuant to Guideline § 4A1.1(b), defendant receives two criminal history points for this conviction.

ii. On or about December 4, 2008, defendant was convicted of possession of cocaine in the Common Pleas Court of Lucas County, Ohio, and was sentenced to a term of imprisonment of 7 years. Pursuant to Guideline § 4A1.1(a), defendant receives three points for this sentence.

d. Anticipated Advisory Sentencing Guidelines Range.

Therefore, based on the facts now known to the government, it is the government's position that the anticipated offense level is 24, which, when combined with the anticipated criminal history category of III, results in an anticipated advisory sentencing guidelines range of 63 to 78 months' imprisonment, in addition to any supervised release and fine the Court may impose. It is defendant's position that his offense level is 21, which, when combined with the anticipated criminal history category of III, results in an anticipated advisory sentencing guideline range of 46 to 57 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Defendant acknowledges that he is subject to statutory minimum sentences of ten years' imprisonment on Count One and five years' imprisonment on Count Four. Defendant further acknowledges that the statutory

minimum sentence of five years' imprisonment on Count Four must be consecutive, for a total statutory minimum sentence of fifteen years' imprisonment.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by

such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

14. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the superseding indictment as to defendant.

Forfeiture

15. Defendant understands that by pleading guilty, he will subject to forfeiture to the United States all right, title, and interest that he has in any property any property involved in the offense.

16. Defendant agrees to forfeiture of the following specific property to the United States: a Smith & Wesson, Model SW9VE, 9mm pistol bearing serial number PDJ4005 and associated ammunition. In doing so, defendant admits that the property described above was property involved in the offense, as alleged in the superseding indictment. Defendant consents to the immediate entry of a preliminary order of forfeiture as to this specific property, thereby extinguishing any right, title, or interest defendant has in it. If any of the specific property is not yet in the custody of the United States, defendant agrees to seizure of that property so that it may be disposed of according to law.

17. Defendant understands that forfeiture shall not be treated as satisfaction of any fine, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

18. Defendant agrees to waive all constitutional, statutory, and equitable challenges in any manner, including but not limited to direct appeal or a motion brought under Title 28, United States Code, Section 2255, to any forfeiture carried out in accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

19. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 16 CR 554-2.

20. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

21. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge

sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the superseding indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant.

Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

22. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights

specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

23. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

24. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

25. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release to which defendant is

sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

26. Defendant agrees to assist with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

27. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including one or more offenses to which defendant is pleading guilty. Indeed, because defendant is pleading guilty to an offense that is an "aggravated felony" as that term is defined in Title 8, United States Code, Section 1101(a)(43), removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney

or the Court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States.

Conclusion

28. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

29. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of

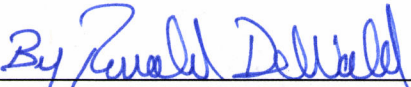
limitations between the signing of this Agreement and the commencement of such prosecutions.

30. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

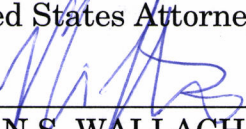
31. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

32. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

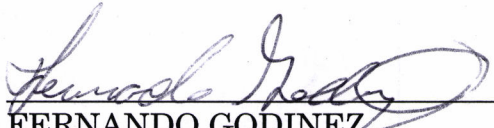
AGREED THIS DATE: 2/20/18




JOHN R. LAUSCH, JR.
United States Attorney



BRIAN S. WALLACH
RICHARD M. ROTHBLATT
Assistant U.S. Attorneys



FERNANDO GODINEZ
Defendant



JOSEPH LOPEZ
Attorney for Defendant