

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** \* **CRIMINAL NO. 13-152**

**v.** \* **SECTION: "E"**

**MAXIMO STIVEN BERNABEL-PENA** \*

\* \* \*

**FACTUAL BASIS**

Should this case proceed to trial the government would prove all of the following through competent and admissible evidence and prove each element of the charged offense discussed below beyond a reasonable doubt.

**I. OVERVIEW**

The evidence supporting the indictment, a one count charge of possession with the intent to distribute five kilograms or more of cocaine hydrochloride, is supported by the lawful vehicle stop and subsequent search and seizure of 6.48 kilograms of cocaine hydrochloride from the vehicle driven by the defendant Maximo **BERNABEL-PENA** and in the possession of the defendant. This offense was committed entirely in the Eastern District of Louisiana. The defendant Maximo **BERNABEL-PENA** possessed and intended to distribute this quantity of cocaine hydrochloride to others.

**II. LAW ENFORCEMENT SEIZURE OF COCAINE HYDROCHLORIDE FROM THE DEFENDANT'S POSSESSION**

At approximately 2235 hours, on April 8, 2013, Trooper First Class (TFC) Scottie Mannino of the Louisiana State Police (LSP) Troop L Uniform Patrol Division conducted a traffic stop in

Tangipahoa Parish, Louisiana on Interstate 12 eastbound on a 2011 Dodge Caliber vehicle bearing Florida license plate BVMM81 in Tangipahoa Parish. The stop was based on a traffick violation. TFC Mannino identified the driver and sole occupant of the vehicle as Maximo **BERNABEL-PENA** (DOB 12/15/1989). During questioning by TFC Mannino, **BERNABEL-PENA** exhibited nervous behavior. TFC Mannino asked to search the vehicle and was refused consent by the defendant **BERNABEL-PENA**.

Shortly after the traffic stop TFC Mannino deployed his trained and qualified K-9 drug detection dog, which was present with him in his vehicle, to perform a free air sniff test on the exterior of **BERNABEL-PENA**'s vehicle. The K-9 alerted to the presence of narcotics in the vehicle. A subsequent search of the vehicle resulted in the discovery of approximately 6.48 kilograms of a white powdery substance that field tested positive for the presence of cocaine in a non-factory manufactured compartment found beneath the flooring of the vehicle.

In addition to the 6.48 kilograms of cocaine hydrochloride, LSP troopers seized \$2,921 in U.S. currency from **BERNABEL-PENA**'s personal effects and this money was the proceeds of illegal drug activity by the defendant.

The defendant agrees that: (1) cocaine hydrochloride is a controlled substance within the meaning of the law, (2) the defendant either directly or constructively possessed this controlled substance in the vehicle he was driving, (3) the substance seized by law enforcement agents in this investigation was in fact cocaine hydrochloride, a Schedule II narcotic controlled substance, (4) the defendant possessed the seized controlled substance with the intent to distribute it to others, and (5) the quantity listed in this factual basis accurately reflects the forensic drug

quantity weight. By the defendant possessing this cocaine hydrochloride he agrees that he possessed it with the intent to deliver or transfer possession of this controlled substance to another person, with or without any financial interest in the transaction.

**VI. DRUG QUANTITY ASSESSMENT BASED ON THE REASONABLY FORSEEABILITY OF DRUGS INVOLVED FOR DEFENDANT**

The undersigned prosecutor, Department of Homeland Security Special Agents, and Task Force Agents assigned to this investigation have done a thorough review of all drug types and quantities provable during the entire course of the charge. The charged offense involving cocaine hydrochloride for the defendant in this case includes a total quantity of 6.48 kilograms of cocaine hydrochloride and there are no other drug quantities or drug type attributable to this defendant in this case.

This assessment was arrived at through the seizure of cocaine hydrochloride from the defendant on April 8, 2013 and further investigation.

**VII. LIMITED NATURE OF THIS FACTUAL BASIS**

This proffer of evidence is not intended to constitute a complete statement of all facts known by the defendant, and described by the defendant to the government, but rather is a minimum statement of facts intended to prove the necessary factual predicate for the guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for the defendant to plead guilty to the charged offenses.

**VIII. CONCLUSION:**

Should this case proceed to trial, the government would prove all of the forgoing by calling as witnesses Department of Homeland Security Special Agents, and LSP State Troopers

Finally, the government would offer the testimony of a forensic chemist who would establish the fact that the substance seized was in fact cocaine hydrochloride, a Schedule II narcotic drug controlled substance.

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Maximo Stiven Bernabel-Pena      Date  
Defendant

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Attorney for Defendant      Date

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JOHN F. MURPHY      Date  
Assistant United States Attorney