

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

EUGENE KLEIN

No. 11 CR 401

Judge John W. Darrah

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant EUGENE KLEIN, and his attorneys, THOMAS A. DURKIN and JOHN D. CLINE, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A) and Rule 11(a)(2), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with conspiring to defraud the United States, in violation of Title 18, United States Code, Section 371 (Count 1), and attempting to take action with respect to property for the purpose of preventing the government from taking custody of such property, in violation of Title 18, United States Code, Section 2232(a) and 2 (Count 2).

3. Defendant has read the charges against him contained in the 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 and has filed certain objections thereto as more fully set forth in paragraph 16 below.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary conditional plea of guilty to the following count of the indictment: Count 1, which charges defendant with conspiring to defraud the United States, in violation of Title 18, United States Code, Section 371.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 1 of the indictment, subject to the reservation of appellate rights in paragraph 16. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning no later than in or around March 2011, and continuing to in or around April 2011, at Barrington, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant did knowingly conspire with Frank Calabrese Sr. to defraud the United States and an agency thereof, to wit, to hamper, hinder, impede, and obstruct by deceit and dishonest means, the lawful and legitimate functions of the United States Department of Justice and its agency, the Bureau of Prisons, in the administration and enforcement of the Special Administrative Measures for inmate Frank Calabrese Sr.

Specifically, the Attorney General imposed Special Administrative Measures pursuant to federal regulation 28 C.F.R. § 501.3 upon Calabrese beginning in November 2008, and the Special Administrative Measures continued in effect throughout 2011. Pursuant to the Special Administrative Measures, Calabrese's communications were limited to immediate family members. All of Calabrese's communications with immediate family members were monitored by federal law enforcement.

Defendant Klein was employed as a chaplain at the United States Medical Center for Federal Prisoners in Springfield, Missouri (the "prison"). In or around March 2009, Calabrese was designated to serve a life sentence at the prison. In his capacity as a chaplain, Klein was permitted to meet with Calabrese on a regular basis to provide religious ministry. Because of his employment as chaplain, Klein was allowed to meet with Calabrese on a regular basis.

Calabrese and Defendant Klein were both advised of the imposition of the Special Administrative Measures upon Calabrese and both understood that they prohibited Klein from passing any information or messages to and from Calabrese, either orally or in writing. Defendant Klein was also aware that Individual A and Individual B, two of Calabrese's associates, were not immediate family members of Calabrese, and Klein knew the Special Administrative Measures prohibited him from passing any messages between Calabrese on the one hand and Individual A and Individual B on the other.

Sometime in early March 2011, Calabrese asked Defendant Klein to contact Individual A, Calabrese's friend in Chicago, Illinois. At first Defendant Klein refused

but then asked Calabrese what he wanted Defendant Klein to tell his friend. At that point, knowing that the Special Administrative Measures prohibited the passing of any messages to and from Calabrese, Calabrese and Klein agreed that Klein would contact Calabrese's associate, Individual A, for the purpose of passing messages back and forth between Calabrese and Individual A. Specifically, Calabrese provided Klein with a series of questions to ask Individual A about a house located in Williams Bay, Wisconsin, that had been seized for the government for sale. After receiving these questions from Calabrese, Klein contacted Individual A via a telephone number provided to him by Calabrese and Klein asked Individual A the questions Calabrese had provided him. Individual A stated there was no way they could get into the house in Wisconsin. Individual A then stated that maybe they could get together and talk about it someday.

Klein thereafter met with Calabrese at the prison and informed Calabrese of the response Klein had received from Individual A. Thereafter, Calabrese provided Klein with a letter that included directions on how to locate a violin hidden in the house in Williams Bay, Wisconsin. Calabrese provided this letter to Klein by concealing it within religious reading material and passing it to Klein through a slot in the door to Calabrese's prison cell. The letter began with the words "Things to ask [first name of Individual A] and [Individual B]. When they out by the house up north that is for sale." In addition to providing instructions on how to locate the violin and a plan to obtain entry to the residence in order to take the violin, the letter also included personal instructions and messages Klein was to give to Individual A and Individual B. On or

about April 3, 2011, Klein traveled to Barrington, Illinois. Klein did not bring the letter with him to Chicago. Klein did not show the letter to either Individual A or Individual B. Upon his arrival in Barrington, Klein met with Individual A and orally disclosed the portion of the letter concerning the violin.

Maximum Statutory Penalties

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

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

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

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence. The parties have no agreement whatsoever with respect to the application or interpretation of any of the sentencing guidelines.

9. 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

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

11. 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.

12. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

13. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining count of the indictment as to defendant subject to the provisions of paragraph 16.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

14. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 11 CR 401.

15. 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.

Conditional Plea of Guilty

16. The government agrees that defendant's plea of guilty is entered pursuant to Fed. R. Crim. P. 11(a)(2). Pursuant to that Rule, the parties agree that defendant, with the consent of the Court, may enter a conditional plea of guilty, reserving his right to appeal the Court's orders of January 14, 2013 [Docket #86] and September 5, 2013 [Docket #106], denying defendant's motions to dismiss Count One for failure to state an offense and as being unconstitutionally vague [Docket #35, 46, 96]. Only in the event of a reversal of that decision will defendant be permitted to withdraw his plea. The government does not consent to an appeal on any other pretrial issue, and defendant

reserves the right to appeal only the identified pretrial rulings and any and all issues relating to sentencing. Defendant acknowledges that in the event of a reversal of the Court's orders denying the motions to dismiss, the government may reinstate and prosecute charges against defendant without regard to the applicable statute of limitations, including but not limited to the charges contained in Count Two of the indictment. Defendant waives any defense to such prosecution on the ground that any delay operated to deny his rights under Fed. R. Crim. P. 48 and the Sixth Amendment to a speedy trial. Defendant understands that the Court decides whether or not to approve the entry of this conditional plea under Fed. R. Crim. P. 11(a)(2). If the Court refuses to accept the conditional term of this Agreement, this Agreement shall be null and void.

Waiver of Rights

17. 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 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.

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, the Court's orders of January 14, 2013 and September 5, 2013, referenced above, and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

18. 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

19. 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.

20. 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.

21. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation 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 or probation 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

22. Defendant agrees to cooperate 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.

23. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

24. 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.

25. 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.

26. 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.

27. 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.

28. 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: _____

ZACHARY T. FARDON
United States Attorney

EUGENE KLEIN
Defendant

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Assistant U.S. Attorney

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