

BENJAMIN B. WAGNER
United States Attorney
MELANIE L. ALSWORTH
DAWRENCE W. RICE, JR.
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

#7

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPHAEL GUZMAN,

Defendant.

CASE NO. 1:15-CR-00104 AWI SKO

MEMORANDUM OF PLEA AGREEMENT
PURSUANT TO RULE 11(C) OF THE FEDERAL
RULES OF CRIMINAL PROCEDURE

Date:
Time:
Courtroom 2, 8th Floor
Honorable Anthony W. Ishii

Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of America, by and through BENJAMIN B. WAGNER, the United States Attorney for the Eastern District of California, and MELANIE L. ALSWORTH and DAWRENCE W. RICE, JR., Assistant United States Attorneys, and the defendant, RAPHAEL GUZMAN, and his attorney, SALVATORE SCIANDRA, have agreed as follows:

1. Charges.

The defendant acknowledges that he has been charged by Indictment, 1:15-CR-00104 AWI SKO, in the Eastern District of California as follows:

Count Eleven:

Conspiracy to Distribute and/or Possess with Intent to Distribute Heroin, in violation of Title 21, United States Code, §§ 846 and 841(a)(1)

Count Twenty-Five:

Conspiracy to Distribution and/or Possess with Intent to Distribute Methamphetamine, Cocaine and Heroin, in violation of Title 21, U.S.C. § 841(a)(1)

Count Twenty-Eight:

Use of a Communication Facility to Facilitate Commission of a Felony, in violation of Title 21, U.S.C. § 843(b).

2. Agreements by Defendant.

(a) The defendant agrees that this plea agreement shall be filed with the court and become part of the record in the case.

(b) The defendant agrees to enter a plea of guilty to Count Eleven which charges him with conspiracy to distribute and/or possess with intent to distribute heroin. The defendant agrees that he is in fact guilty of this charge and that the facts set forth in the factual basis of this agreement are true and accurate. Defendant further agrees to admit the forfeiture allegation contained in the indictment.

(c) Stipulations Affecting Guideline Calculation:

The defendant stipulates and agrees that there is no material dispute as to the following sentencing guidelines variables and therefore stipulates to the following:

1. Base Offense Level. The defendant stipulates and agrees that the weight of marijuana attributable to his conduct is approximately 117.6 kg.¹ The base offense level for conspiracy to distribute and/or possess with intent to distribute 117.6 kg of marijuana is 24 pursuant to U.S.S.G. § 2D1.1(a)(5).
2. Acceptance of Responsibility. The offense level should be reduced by 3 levels for acceptance of responsibility under U.S.S.G. § 3E1.1.
3. Total Offense Level. The total offense level is 21.

¹Defendant's relevant conduct involved the following: two (2) ounces of heroin, one (1) ounce of methamphetamine, and one (1) ounce of cocaine. Application Note 8(B) requires that multiple substances be converted to a marijuana equivalent to determine the offense level. The marijuana equivalency table is set forth in Application Note 8(D). Two (2) ounces of heroin has a marijuana equivalency of 56kg; one (1) ounce of methamphetamine has a marijuana equivalency of 56kg, and one (1) ounce of cocaine has a marijuana equivalency of 5,600g.

4. Advisory Guideline Range. The guideline range for offense level 21, criminal history category III, is 46 - 57 months imprisonment.

(d) Forfeiture: The defendant agrees to forfeit to the United States voluntarily and immediately all of his right, title, and interest to any and all assets seized in connection to the criminal charges and events giving rise to the Indictment.

Defendant agrees that any assets seized or found to be connected to the criminal events and charges giving rise to the Indictment constitute property subject to forfeiture pursuant to 21 U.S.C. § 853.

Defendant agrees to fully assist the government in the forfeiture of any seized assets or assets later determined to be forfeitable pursuant to the Indictment and to take whatever steps are necessary to pass clear title to the United States. Defendant shall not sell, transfer, convey, or otherwise dispose of any assets found to be connected to the criminal events charged in the Indictment.

Defendant agrees not to file any claim to any of the seized property in any civil proceeding, administrative or judicial, which may be initiated. Defendant agrees to waive his right to notice of any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a claim in that forfeiture proceeding.

The defendant waives the notice provisions of Fed. R. Crim. P. 7(c)(2) and 32.2(a), waives oral pronouncement of forfeiture at the time of sentencing and any defects in such pronouncement that pertain to forfeiture, and waives any defenses to forfeiture, including any defense predicated on the Ex Post Facto, Double Jeopardy, and Excessive Fines Clauses of the United States Constitution. The defendant knowingly and voluntarily waives any right to jury trial in any criminal or civil forfeiture proceeding.

(e) The defendant understands and agrees that the court is not a party to this agreement, that sentencing is a matter solely within the discretion of the court, the court is under no obligation to accept any recommendations made by the government, and the court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this Plea Agreement. If the court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations

1 under this Agreement. The defendant understands that neither the prosecutor, defense counsel, nor the
2 court can make a binding prediction or promise regarding the sentence he will receive.

3 (f) The defendant is aware that Title 18, United States Code, Section 3742 affords a
4 defendant the right to appeal the sentence imposed. Acknowledging this, the defendant knowingly
5 waives the right to appeal his conviction or any sentence (or the manner in which that sentence was
6 determined) which is in accordance with the maximum provided in Title 21, United States Code,
7 Sections 841(a)(1) and (b)(1)(C), on the grounds set forth in Title 18, United States Code, Section 3742
8 or on any ground whatever, in exchange for the concessions made by the United States in this plea
9 agreement. The defendant also waives his right to challenge his conviction, sentence or the manner in
10 which it was determined in any post-conviction attack, including but not limited to a motion brought
11 under Title 18, United States Code, Section 3582 and/or Title 28, United States Code, Sections 2241 or
12 2255, except for non-waivable claims.

13 (g) If the defendant's conviction on the count to which he is pleading guilty is ever vacated at
14 the defendant's request, or his sentence is ever reduced at his request, or if the defendant violates the
15 Plea Agreement, he shall thereafter be subject to prosecution for any federal criminal violation of which
16 the government has knowledge, including but not limited to perjury, false statements, and obstruction of
17 justice. Because disclosures pursuant to this Agreement will constitute a waiver of the Fifth
18 Amendment privilege against compulsory self-incrimination, any such prosecution may be premised on
19 statements and/or information provided by the defendant. The government shall have the right (1) to
20 prosecute the defendant on the count to which he pleaded guilty; and (2) to file any new charges that
21 would otherwise be barred by this Agreement. The decision to pursue any or all of these options will be
22 solely within the discretion of the United States Attorney's Office. By signing this agreement, the
23 defendant agrees to waive any objections, motions, and defenses he might have to the government's
24 decision, including Double Jeopardy. In particular, he agrees not to raise any objections based on the
25 passage of time with respect to such counts including, but not limited to, any statutes of limitation or any
26 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

27 If it is determined that the defendant has violated any provision of this Agreement or if the
28 defendant successfully moves to withdraw his plea: (1) all statements made by the defendant to the

1 government or other designated law enforcement agents, or any testimony given by the defendant before
2 a grand jury or other tribunal, whether before or after this Agreement, shall be admissible in evidence in
3 any criminal, civil, or administrative proceedings hereafter brought against the defendant; and (2) the
4 defendant shall assert no claim under the United States Constitution, any statute, the Federal Rules of
5 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that
6 statements made by the defendant before or after this Agreement, or any leads derived therefrom, should
7 be suppressed. By signing this Agreement, the defendant waives any and all rights in the foregoing
8 respects.

9 (h) The defendant agrees to waive all rights under the "Hyde Amendment", Section 617, P.L.
10 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
11 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
12 (including without limitation any charges to be dismissed pursuant to this Agreement and any charges
13 previously dismissed).

14 (i) The defendant understands that the court must consult the Federal Sentencing Guidelines
15 and must take them into account when determining a final sentence. Defendant understands that the
16 court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
17 Sentencing Guidelines. Defendant further understands that the court will consider whether there is a
18 basis for departure from the guideline sentencing range (either above or below the guideline sentencing
19 range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not
20 adequately taken into consideration by the Sentencing Commission in formulating the Guidelines.
21 Defendant further understands that the court, after consultation and consideration of the Sentencing
22 Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. §
23 3553(a).

24 (k) The defendant understands that pleading guilty may have consequences with respect to
25 his immigration status if he is not a citizen of the United States. Under federal law, a broad range of
26 crimes are removable offenses, including the offense to which defendant is pleading guilty. Indeed,
27 because defendant is pleading guilty to a controlled substance offense, removal is presumptively
28 mandatory. Removal and other immigration consequences are the subjects of a separate proceeding,

1 however, and defendant understands that no one, including his attorney or the district court, can predict
2 to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that
3 he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the
4 consequence is his automatic removal from the United States.

5 3. Agreements by the Government.

6 (a) Stipulations Affecting Guideline Calculation:

7 The government stipulates and agrees that there is no material dispute as to the following
8 sentencing guidelines variables and therefore stipulates to the following:

- 9 1. Base Offense Level. The defendant stipulates and agrees that the weight of
10 marijuana attributable to his conduct is approximately 117.6 kg.² The base
11 offense level for conspiracy to distribute and/or possess with intent to distribute
12 117.6 kg of marijuana is 24 pursuant to U.S.S.G. § 2D1.1(a)(5).
- 13 2. Acceptance of Responsibility. The adjusted offense level should be reduced by 3
14 levels for acceptance of responsibility under U.S.S.G. § 3E1.1.
- 15 3. Total Offense Level. The total offense level is 21.
- 16 4. Advisory Guideline Range. The guideline range for offense level 21, criminal
17 history category III, is 46 – 57 months imprisonment.

18 (b) The government will recommend a sentence at the low end of the advisory guideline
19 range. The government agrees a sentence of 46 months imprisonment is reasonable and takes into
20 consideration the factors set forth in 18 U.S.C. § 3553.

21 (c) If the defendant enters a plea of guilty to Count Eleven, the government agrees to dismiss
22 all remaining counts against the defendant at the time of sentencing.

23 4. Nature, Elements, Possible Defenses, and Factual Basis.

24 (a) The defendant has read the charge contained in Count Eleven of the Indictment, and that
25

26 ²Defendant's relevant conduct involved the following: two (2) ounces of heroin, one (1) ounce
27 of methamphetamine, and one (1) ounce of cocaine. Application Note 8(B) requires that multiple
28 substances be converted to a marijuana equivalent to determine the offense level. The marijuana
equivalency table is set forth in Application Note 8(D). Two (2) ounces of heroin has a marijuana
equivalency of 56kg; one (1) ounce of methamphetamine has a marijuana equivalency of 56kg, and one
(1) ounce of cocaine has a marijuana equivalency of 5,600g.

1 charge has been fully explained to him by his attorney.

2 (b) The defendant fully understands the nature and elements of the crime with which he has
3 been charged, together with the possible defenses, and has discussed them with his attorney. To convict
4 the defendant of the crime of conspiracy to distribute and possess with intent to distribute heroin, the
5 government would have to establish the following beyond a reasonable doubt:

6 First: that beginning at a time unknown but no later than December 23, 2014 and
7 ending on or about February 2, 2015, there was an agreement between
8 defendant and at least one other person to knowingly and intentionally
9 distribute and possess with intent to distribute heroin; and

10 Second: that defendant joined in the agreement knowing of its purpose and
11 intending to help accomplish that purpose.

12 The elements of distribution of heroin are as follows:

13 First: the defendant knowingly distributed a controlled substance, to wit: heroin;
14 and

15 Second: at all times, defendant knew that heroin is a controlled substance.

16 The elements of possession with intent to distribute heroin are as follows:

17 First: the defendant knowingly possessed heroin;

18 Second: the defendant possessed heroin with the intent to distribute it to
19 another person; and

20 Third: at all times, defendant knew that heroin is a controlled substance.

21 (c) The defendant will plead guilty because he is in fact guilty of the crime set forth in Count
22 Eleven. The defendant also agrees that the following are the facts of this case, although he
23 acknowledges that, as to other facts, the parties may disagree:
24
25
26
27
28

1 Beginning at a time unknown but no later than December 23, 2014, and
2 continuing to no later than February 2, 2015, in the County of Fresno,
3 State and Eastern District of California, the defendant and at least one
4 other person entered into an agreement to distribute heroin.

5 Specifically, on December 24, 2014, Keith Foster contacted the defendant
6 to acquire heroin on behalf of a third party. Defendant Guzman agreed to
7 acquire the heroin and asked if Keith Foster wanted "one," and Keith
8 Foster said that he did. Defendant Guzman asked what quality Keith
9 Foster wanted to purchase. Keith Foster told defendant "the very best."
10 Defendant told Keith Foster "the very best" is "China white." Defendant
11 told Keith Foster that he would provide the heroin after the holiday.

12 Defendant and Keith Foster discussed the heroin deal again on January 8,
13 2015. Defendant assured Keith Foster that "it's a green light" and that
14 defendant was working "the numbers." On January 13, 2015, defendant
15 told Keith Foster that he needed someone to pick up the heroin for him,
16 and Keith Foster said he and the defendant should meet and talk in person.

17 On February 2, 2015, Keith Foster contacted the third party for whom he
18 was acquiring the heroin. He/She told Keith Foster the heroin was no
19 longer needed because someone else sold it cheaper than the price Keith
20 Foster was offering to sell the heroin.

21 At all relevant times, the defendant knew that heroin is a controlled
22 substance.

23
24
25
26
27
28
5. Potential Sentence.

The defendant understands that an advisory sentencing guideline range for this case will be determined by the Court. The defendant further understands that the Court will impose a sentence within that guideline range, unless the Court finds that there is a basis for departure (either above or below the range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.

The following is the maximum potential sentence which the defendant faces:

(a) Imprisonment.

Mandatory Minimum: None.

Maximum: 20 years.

(b) Fine. Maximum: \$1,000,000.00.

(c) Fine and/or Imprisonment.

(d) Supervised Release.

Maximum: 3 years.

(Should the defendant violate the conditions of supervised release, he could be subject to a term of imprisonment up to the term of supervised release imposed.)

(e) Penalty Assessment. Mandatory: One Hundred Dollars (\$100.00.).

(f) Pursuant to 21 U.S.C. § 862, the defendant may become temporarily or permanently ineligible for any and all federal benefits³ and, pursuant to 21 U.S.C.

§ 862a, shall be ineligible for the following government benefits:

(1) assistance under any State program funded under part A of title IV of the Social Security Act (42 U.S.C. § 601 et seq.);

(2) benefits under the food stamp program (as defined in section 3h of the Food Stamp Act) (7 U.S.C. § 2012(h)) or any State program carried out under the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.).

6. Waiver of Rights.

The defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) The defendant is entitled to the continued representation of an attorney at any trial in this case and, if the defendant is unable to afford an attorney, one would be appointed by the Court.

(b) If the defendant persisted in a plea of not guilty to the charge(s) against him, he would have the right to a public and speedy trial and the assistance of an attorney at that trial. If the defendant could not afford an attorney, one would be appointed for him. The trial could be either a jury trial or a

³The term "federal benefits" does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility, but refers to the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency or appropriated funds of the United States. 21 U.S.C. § 862(d)(1).

1 trial by a judge sitting without a jury. The defendant has a right to a jury trial. However, in order that
2 the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge
3 must all agree that the trial be conducted by the judge without a jury.

4 (c) If the trial were a jury trial, the jury would be composed of twelve lay persons selected at
5 random. The defendant and his attorney would have a say in who the jurors would be by removing
6 prospective jurors for cause where actual bias or other disqualification is shown, or without cause by
7 exercising peremptory challenges. The jury would have to agree unanimously before it could return a
8 verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed
9 innocent and that it could not convict him unless, after hearing all the evidence, it was persuaded of his
10 guilt beyond a reasonable doubt.

12 (d) If the trial were held before a judge without a jury, the judge would find the facts and
13 determine, after hearing all the evidence, whether or not she was persuaded of the defendant's guilt
14 beyond a reasonable doubt.

16 (e) At a trial, whether by a jury or a judge, the government would be required to present its
17 witnesses and other evidence against the defendant. The defendant would be able to confront those
18 government witnesses and his attorney would be able to cross-examine them. In turn, the defendant
19 could present witnesses and other evidence on his own behalf. If the witnesses for the defendant would
20 not appear voluntarily, he could require their attendance through the subpoena power of the court.

22 (f) At a trial, the defendant would have a privilege against self-incrimination so that he could
23 decline to testify, and no inference of guilt could be drawn from this refusal to testify.

24 The defendant understands that by pleading guilty he is waiving all of the rights set forth above
25 and the defendant's attorney has explained those rights to him and the consequences of his waiver of
26 those rights.

1 7. Entire Agreement.

2 Other than this plea agreement, no agreement, understanding, promise, or condition between the
3 government and the defendant exists, nor will such agreement, understanding, promise, or condition
4 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
5 counsel for the United States.

6 8. Presentence Report.

7 The defendant understands that the United States Probation Office is not a party to this
8 Agreement and will conduct an independent investigation of the defendant's activities and his
9 background and prepare a presentence report which it will submit to the Court as its own sentencing
10 recommendation. In addition, the government will fully apprise the Probation Office, as well as the
11 Court of the full and true nature, scope and extent of the defendant's criminal activities concerning the
12 charge to which the defendant is entering a plea of guilty, including activities which may not have been
13 charged in the Indictment, or were the subject of dismissed counts.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

9. Approvals and Signatures

A. Defense Counsel

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur with my client's decision to plead guilty as set forth in this plea agreement.

DATED: 4/28/2016


SALVATORE SCIANDRA
Attorney for Defendant

B. Defendant

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

DATED: APRIL 27, 2016


RAPHAEL GUZMAN, Defendant

C. Attorney for the United States

I accept and agree to this plea agreement on behalf of the government.

DATED: 4/28/2016

BENJAMIN B. WAGNER
UNITED STATES ATTORNEY

By: (


MELANIE L. ALSWORTH
ASSISTANT UNITED STATES ATTORNEY