

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

RAY M. RAMIREZ

No. 13 CR 522

Judge Ronald A. Guzman

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant RAY M. RAMIREZ, and his attorney, MICHAEL I. LEONARD, 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(c)(1)(B), 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 attempted extortion under color of official right, in violation of Title 18, United States Code, Section 1951 (Counts One and Two); and exceeding authorized access of a computer and obtaining information from a department or agency of the United States, in violation of Title 18, United States Code, Sections 1030(a)(2)(B) and (c)(2)(B) (Count Three).

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.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the lesser included offense contained in Count Three of the indictment, which charges defendant with intentionally accessing and causing to be accessed a Chicago Police Department mobile computer and exceeding his authorized access, and thereby obtaining information from a department or agency of the United States, in violation of Title 18, United States Code, Sections 1030(a)(2)(B) and (c)(2)(A).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the lesser included offense contained in Count Three of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

On or about May 22, 2013, at Chicago, in the Northern District of Illinois, Eastern Division, defendant RAY M. RAMIREZ intentionally accessed and caused to be accessed a Chicago Police Department mobile computer and exceeded his authorized access, and thereby obtained information from a department or agency of the United States, namely, information regarding Illinois license plate number A169XXX, contained in the NCIC database housed at the FBI's Criminal Justice

Information Services Division in Clarksburg, West Virginia, in violation of Title 18, United States Code, Sections 1030(a)(2)(B) and (c)(2)(A).

The Federal Bureau of Investigation of the U.S. Department of Justice was an agency of the United States, which was primarily responsible for investigating violations of federal criminal law. The FBI was responsible for acquiring, collecting, classifying and preserving on a computer database criminal records, including criminal history, outstanding warrants, and vehicle and license plate information. The FBI's computerized criminal records system was known as the National Crime Information system, or NCIC.

The FBI was authorized to exchange NCIC records and information with, and solely for the official use of, authorized officials of the federal government and state and local governments. These records were stored and maintained by the FBI on a computerized data system at the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia, and were exchanged with authorized law enforcement agencies via computer transmissions to computer and data terminals throughout the country. A lawful function of the FBI was to maintain the integrity and confidentiality of the NCIC system.

Defendant was a sergeant in the Chicago Police Department assigned to the 12th police district. Defendant knew that the Chicago Police Department required its officers to follow the Department's Rules and Regulations and General Orders, which, as defendant knew, prohibited him from any conduct or action taken to use his official position for personal gain or influence. Defendant further understood

that the Department's Rules prohibited him from soliciting or accepting any gratuity, or soliciting or accepting a gift, present, reward, or other thing of value for any service rendered as a Department member, or as a condition for the rendering of such service, or as a condition for not performing sworn duties.

As a sergeant with the Chicago Police Department, defendant had computer access to NCIC records and was authorized to obtain and use NCIC information solely in the performance of his official duties. Defendant understood that access to information contained in the NCIC database was restricted to official use only. Defendant further understood that, pursuant to Department rules, he was not permitted to obtain information from the Department's computerized information system unless that information was necessary in connection with his duties and assignments. Defendant knew that access of information for personal or other reasons was strictly prohibited. Defendant also knew that the contents of any record, file, or report, including information contained in the NCIC database, could not be divulged to anyone outside of an authorized agency except as required by law or in performance of official duties.

On or about May 22, 2013, defendant spoke with Individual A over the telephone. Individual A was an employee of a particular liquor store in the 12th police district and who, unbeknownst to defendant, was cooperating with law enforcement. During the conversation, Individual A told defendant that a person had been taking photographs of the liquor store and that Individual A thought that person worked for the local alderman. Defendant understood from prior

conversations with Individual A that Individual A was concerned that the liquor store's liquor license was in jeopardy because of purported complaints made to the local alderman. Individual A gave defendant an Illinois license plate number, A169XXX, and said that the license plate belonged to the vehicle driven by the person whom Individual A suspected worked for the alderman. Defendant agreed to check the license plate number in exchange for \$200.

Later that evening, defendant, who was wearing his CPD uniform, drove a CPD sport utility vehicle to the liquor store and then entered the store. Prior to entering the store, defendant used his CPD mobile computer to conduct a query of Illinois license plate number A169XXX. This caused a query to be sent to the Illinois Secretary of State to check the registration on the vehicle with Illinois license plate A169XXX. The query generated an inquiry of the NCIC database.

After conducting the query, defendant went inside the liquor store and told Individual A that he had something to show Individual A. Defendant told Individual A that the information, referring to the registration information for Illinois license plate number A169XXX, was in the car on the computer. Individual A then gave \$200 in cash to defendant, who took the money. Defendant and Individual A then entered defendant's CPD sport utility vehicle. While inside the vehicle, defendant showed Individual A the registration information for Illinois license plate number A169XXX on his CPD mobile computer. Defendant then told Individual A to forget that defendant showed the information about the license plate to Individual A because he, defendant, could lose his job and be fired.

7. Defendant, for purposes of computing his sentence under Guideline § 1B1.2, stipulates to having committed the following additional offense:

Beginning on or about April 19, 2013, and continuing through on or about April 26, 2013, at Chicago, in the Northern District of Illinois, Eastern Division, defendant Ray M. Ramirez attempted to commit extortion, which extortion would have obstructed, delayed, and affected commerce, in that he attempted to obtain and obtained property, namely United States currency, from Individual A, with that person's consent induced under color of official right; in violation of Title 18, United States Code, Section 1951.

Specifically, in the winter and spring of 2013, defendant frequently visited the liquor store where Individual A worked. On these occasions, defendant often wore a CPD uniform and drove a CPD sport utility vehicle. On more than one occasion, defendant asked Individual A and other employees of the liquor store for money. Individual A and other employees of the liquor store gave defendant cash in amounts ranging from \$70 to \$200.

For example, on or about February 11, 2013, defendant asked an employee of the liquor store for \$200. The store employee told defendant to come back to the store later that afternoon. Later that afternoon, at approximately 4:00 p.m., defendant returned to the store and asked Individual A for \$200, which Individual A gave to defendant.

On or about February 21, 2013, defendant visited the liquor store while Individual A was working. Individual A asked defendant if CPD had reports

showing the number of police incidents occurring and around the liquor store. In response, defendant told Individual A that he could get the report for Individual A but that it would cost \$1,000 and Individual A could not show the report to anyone. Individual A declined the offer. Defendant also told Individual A that he would pay Individual A back the \$200 that Individual A had previously provided to him.

A few weeks later, on or about March 9, 2013, defendant came to the liquor store with an envelope that contained a statement signed by defendant. The statement said that defendant had searched for calls for service relating to the liquor store's address and that defendant had found no such calls for the time period from December 1, 2012 through January 31, 2013. The statement was signed "Sgt. Ray Ramirez #976 012th District Chicago Police Department." Individual A was not present in the liquor store when defendant brought the statement, but Individual A spoke with defendant over the telephone while defendant was inside the store. During the conversation, defendant offered to sell the statement to Individual A for \$1,000 and then lowered the price to \$200. At the direction of Individual A, the store clerk gave \$150 to defendant, who gave the signed statement to the store clerk and then left the store.

On or about April 19, 2013, Individual A informed defendant that the liquor store may be hiring a new employee. Individual A asked defendant to check the purported new employee's criminal background. Defendant agreed to conduct the background check and told Individual A to call him with the name of the employee.

Defendant told Individual A that they would discuss payment to defendant after defendant found the information for Individual A.

A few days later, on or about April 23, 2013, defendant met with Individual A inside the liquor store. Defendant was wearing his CPD uniform at the time. He told Individual A, "I just want to get to what you asked me to do[,]" in reference to conducting the criminal background check of the prospective employee. Individual A gave defendant a piece of paper with a name and date of birth. Defendant agreed to conduct the criminal background check. Later that evening, defendant returned to the liquor store and asked Individual A for the social security number for the prospective employee. Defendant also told Individual A that he wanted \$70 to pay for medicine. Individual A gave defendant \$70 in cash.

The next day, on or about April 24, 2013, defendant met with Individual A at the liquor store. Defendant informed Individual A that the prospective employee had not been arrested. Defendant offered to check for additional background information but said that it would cost \$200 and he needed the prospective employee's social security number.

On April 26, 2013, defendant called Individual A and said that he needed the money. Defendant and Individual A agreed to meet on April 27, 2013. Individual A also gave defendant the social security number for the purported new employee and agreed to have \$200 ready for defendant the next day. Later that same evening, defendant asked to meet that night.

Shortly after 8:30 p.m. on April 26, 2013, defendant arrived at the liquor store. Individual A gave defendant a piece of paper containing a social security number. Defendant agreed to check the number the following day when he was at work. Individual A then gave defendant \$200 in cash. Defendant said that he would call Individual A the following day. The next day, defendant informed Individual A that there were “no criminal, no arrests” regarding the prospective employee.

Maximum Statutory Penalties

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

a. A maximum sentence of 12 months’ imprisonment. This offense also carries a maximum fine of \$100,000. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$25 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

9. 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.

10. 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 2014 Guidelines Manual.

b. **Offense Level Calculations.**

Count Three

i. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. Pursuant to Guideline § 2B1.1(b)(18)(A)(i), the offense level is increased by 2, because the defendant was convicted of an offense under 18 U.S.C. § 1030, and the offense involved a computer system used by a government entity in furtherance of the administration of justice.

iii. Pursuant to Guideline § 3B1.3, the offense level is increased by 2, because the defendant abused a position of public trust in a manner that significantly facilitated the commission of the offense.

Stipulated Offense

iv. The base offense level for the stipulated offense is 14, pursuant to Guideline § 2C1.1(a).

v. Pursuant to Guideline § 2C1.1(b)(1), the base offense level is increased by 2, because the offense involved more than one extortion.

vi. Pursuant to Guideline § 2C1.1(b)(3), the offense level is increased by 4, because the defendant held a sensitive position.

Grouping

vii. Pursuant to Guideline § 3D1.2, Count Three and the stipulated offenses are not to be grouped together. Pursuant to Guideline § 3D1.4(a), defendant receives one unit for the stipulated offense, which is the group with the highest offense level. Pursuant to Guideline § 3D1.4(c), defendant receives no additional units because Count Three is nine levels less serious than the stipulated offense. This results in a combined offense level of 20.

viii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions 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.

ix. 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, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 17, which, when combined with the anticipated criminal history category of I, pursuant to Guideline § 5G1.1(a), results in an anticipated advisory sentencing guidelines range of 12 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature and based on facts known to the parties as of the time of this Agreement. 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 guidelines 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.

f. Both parties expressly acknowledge that while none of the guidelines calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed. R. Crim. P. 11(c)(1)(B) that certain components of those calculations—specifically, those set forth above in subparagraph[s] (b)(1) through (b)(7) of this paragraph—are binding on the parties, and it shall be a breach of this Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in the identified subparagraphs.

11. Defendant understands that with the exception of the guidelines provisions identified above as binding on the parties, the guidelines calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed. R. Crim. P. 11(c)(1)(B). Errors in applying or interpreting any of the sentencing guidelines (other than those identified above as binding) 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

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

13. 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.

14. The parties agree, pursuant to Title 18, United States Code, Section 3583(d), that the sentence to be imposed by the Court shall include, as a condition of any term of probation or supervised release imposed in this case, a requirement that defendant repay the United States \$400 as compensation for government funds that defendant received during the investigation of the case.

15. Defendant agrees to pay restitution, arising from the stipulated offense conduct set forth above, totaling \$420 to Individual A, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664.

16. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the

United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

17. Defendant agrees to pay the special assessment of \$25 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

18. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

19. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment, as well as the forfeiture allegation as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

20. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 13 CR 522.

21. 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

22. 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.

b. 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.

c. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States

Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

23. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

24. 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.

25. 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.

26. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution 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

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

28. 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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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

RAY RAMIREZ
Defendant

MEGAN CUNNIFF CHURCH
Assistant U.S. Attorney

MICHAEL I. LEONARD
Attorney for Defendant