

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

JAVIER SANTOS SUAREZ
a/k/a Roberto Rios, Simon Estrada,
Jorge Viveros, Francisco Alvarado,
and Fernando Razo

No. 04 CR 50017-1

Judge Philip G. Reinhard

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant JAVIER SANTOS SUAREZ, and his attorney, BRENDAN CAVER, 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 indictment in this case charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344 (Counts 1, 2, 7, and 8), possession of counterfeit instruments, in violation of Title 18, United States Code, Section 513(a) (Counts 4, 5, 13, 14, and 26), and possession of an unlawfully produced identification document, in violation Title 18, United States Code, Section 1028(a)(6) (Count 27).

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 following count of the indictment: Count Seven, which charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Seven of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

(a) In general, the defendant admits that beginning not later than January 2003, and continuing through at least August 2003, in Poplar Grove, Illinois, and elsewhere in Illinois, Wisconsin, Indiana, Kentucky, Delaware, and Maryland, he and others, including defendants Misael Sangabriel Alarcon, Leonel Bello Leon, and Rogelio Ramos, devised and participated in a scheme to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises and omissions;

(b) In particular, defendant and other participants carried out the plan by using checks which were falsely made in their entirety, and that the checks were counterfeited in such a manner that they were payable to fictitious names, and had fictitious addresses, fictitious amounts, fictitious dates and fictitious signatures. The defendant

and other participants then cashed the counterfeit checks at banks which were generally located near the businesses on whose bank accounts the checks were purportedly drawn, and used false personal identification documents such as false Resident Alien Cards when personal identification was presented to the banks for the purpose of cashing the counterfeit checks. The defendant kept at least a portion of the cash he received from personally cashing counterfeit checks, and turned the balance of the cash over to other participants;

(c) Defendant knowingly executed the scheme on April 5, 2003, by having cashed a counterfeit check at Poplar Grove State Bank, Poplar Grove, Illinois. The counterfeit check was numbered 9907, was payable in the amount of \$959.20, and was payable to Simon Estrada. The Defendant admits he knew that the business on whose account the check purported to have been written had not issued the check to him, he knew that the business did not owe him any money, he knew that his name was not Simon Estrada, he knew that the signature on the check was not valid, and he knew that the check had been completely fabricated;

(d) When defendant cashed other counterfeit checks, he did so in the company of his codefendants and others. The defendant accompanied his codefendants and others when they cashed counterfeit checks. The defendant was aware that individuals other than he and his codefendants participated in the scheme and were engaged in cashing counterfeit checks at the same banks at the same times during which he cashed counterfeit checks;

(e) At the time that the defendant cashed counterfeit checks at the following banks, their deposits were insured by the Federal Deposit Insurance Corporation: First National Bank of Marengo, Poplar Grove State Bank and Midwest Bank and Trust Company; and Belvidere National Bank.

(f) In the course of executing the scheme, the defendant used the following aliases: Roberto Rios, Simon Estrada, Jorge Viveros, Francisco Alvarado, and Fernando Razo.

(g) The defendant further stipulates that the scheme was jointly undertaken by the defendant, his co-defendants and others, and that the following executions of the scheme were reasonably foreseeable to the defendant.

(h) The defendant, his co-defendants and/or others engaged in the scheme, cashed counterfeit checks at the following banks and businesses in the corresponding amounts, and caused losses in the same amounts, on or about the listed dates:

i.	01/17/03; Bank of Mauston, Mauston and Wisconsin Dells, WI;	\$28,251
	Viking Foods, Reedsburg, WI;	\$ 6,594
ii.	01/23/03; El Mercadito, Middleton, WI;	\$10,943
	Mercado Marimar, Middleton, WI;	\$ 6,572
iii.	03/01/03; Commonwealth Bank and Trust, Shelbyville, KY;	\$77,506
	Michoacan Grocery, Shelbyville, KY	\$ 4,844
v.	03/28/03; First National Bank of Marengo, Marengo, IL;	\$32,836
vi.	04/04/03; Poplar Grove State Bank, Poplar Grove, IL;	\$96,110
vii.	04/25/03; Bank of Madison, Madison, GA;	\$33,787
viii.	05/03/03; Walworth State Bank, Walworth WI;	\$22,071

	Fiesta Foods, Harvard, IL;	\$ 1,670
	Harvard Currency Exchange, Harvard, IL;	\$ 4,220
ix.	05/09/03; Currency Exchange, Charles St., Rockford, IL;	\$ 11,477
x.	05/10/03; The Market, Racine, WI;	\$ 822
	Olympic Liquor, Racine, WI;	\$ 4,949
	Sunshine Supermarket, Racine, WI;	\$ 11,092
xi.	05/21/03; Currency Exchange, Beloit, WI;	\$ 36,891
	Belvidere National Bank, Belvidere, IL;	\$ 1,965
xii.	06/09/03; Associated Bank, Green Bay, WI;	\$104,124
xiii.	06/13/03; Midwest Bank and Trust, Union, IL;	\$ 60,890
xiv.	06/14/03; Lincoln Federal Savings Bank, Frankfort, IN;	\$ 28,087
	Schultz Market, Frankfort, IN;	\$ 17,989
	ACT Enterprises, Frankfort, IN;	\$ 1,064
	Azteca Grocery, Frankfort, IN;	\$ 2,108
xv.	06/20/03; LaPlaza Mexicana, Milford, DE;	\$ 1,952
	Gulf Mart, Milford, DE;	\$ 2,285
xvi.	06/20/03; Queenstown Bank, Easton, MD;	\$ 60,036
xvii.	07/11/03; Mis Dos Patrias, Rockford, IL;	\$ 2,643
	Central Park Tap, Rockford, IL;	\$ 18,028
	Resource Bank, Genoa, IL;	\$ 5,357
xviii.	07/18/03; La Rosita Grocery Stores, Crystal Lake, IL;	\$ 2,456
xix.	07/18/03; La Rosita Grocery Stores, McHenry, IL;	\$19,165
xx.	08/04/03; Piggley Wiggley, Fort Atkinson, WI;	\$ 2,833

(i) Based on the foregoing agreed loss amounts, the total loss attributable to the defendant is \$721,617.

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 30 years' imprisonment. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation for this offense. This offense also carries a maximum fine of \$1,000,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than five years.

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

c. Pursuant to 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 or restitution imposed.

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 the offense. The following statements regarding the calculation of the Sentencing Guidelines are based on the November 2018 Guidelines Manual.

b. **Offense Level Calculations.**

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

ii. The offense level must be increased by 14 levels, to level 21 pursuant to Guideline § 2B1.1(b)(1)(H) because the loss of \$721,617 was more than \$550,000 but less than \$1,500,000.

iii. The offense level must be increased by 2 levels, to level 23 pursuant to Guideline § 2B1.1(b)(2)(A) because there were more than 10 victims.

iv. 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.

v. 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 3 and defendant's criminal history category is II:

i. On or about August 17, 2018, defendant was convicted of forgery/uttering in the Circuit Court of Jefferson County, Wisconsin and sentenced to 365 days incarceration (time served). Defendant receives 2 criminal history points for this conviction pursuant to Guideline § 4A1.1(b).

ii. On or about January 28, 2017, defendant was convicted of public intoxication in the Municipal Court of Hoover, Alabama, and sentenced to 3 days incarceration (time served). Defendant receives 0 criminal history points for this conviction pursuant to Guideline § 4A1.2(c)(2).

iii. On or about July 7, 2003, defendant was convicted of operating while intoxicated in the Circuit Court of Sauk County, Wisconsin and sentenced to 45 days incarceration (time served). Defendant receives 1 criminal history point for this conviction pursuant to Guideline § 4A1.1(c).

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 20, which, when combined with the anticipated criminal history category of II, results in an anticipated advisory sentencing guidelines range of 37 to 46 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 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. Regarding restitution, defendant acknowledges that the total amount of restitution owed to victims is \$721,617, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution in the amount outstanding at the time of sentencing.

14. 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.

15. 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.

16. 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.

17. 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 to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

18. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 04 CR 50017-1.

19. 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

20. 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 and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

21. 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

22. 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.

23. 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.

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

25. 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.

26. 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 the offense 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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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: _____

JOHN R. LAUSCH, JR.
United States Attorney

JAVIER SANTOS SUAREZ
Defendant

MICHAEL D. LOVE
Assistant U.S. Attorney

BRENDAN CAVER
Attorney for Defendant