

CHANGE OF PLEA

UNITED STATES V. _____ CRIM. NO. _____-NT

COUNSEL PLEASE ENTER APPEARANCES

[DEFENSE COUNSEL], I UNDERSTAND THAT THIS CASE IS ON FOR A CHANGE OF PLEA TO COUNT ONE OF AN INDICTMENT, IS THAT CORRECT?

[TO THE DEFENDANT] ARE YOU _____, THE PERSON NAMED AS A DEFENDANT IN THIS INDICTMENT?

COMPETENCE

HOW OLD ARE YOU?

HOW FAR DID YOU GO IN SCHOOL?

HAVE YOU RECENTLY BEEN SEEING ANY DOCTOR OR PSYCHIATRIST?

ARE YOU CURRENTLY TAKING ANY MEDICATIONS?

WHAT? QUANTITY? HOW RECENTLY? PURPOSE? EFFECT?

HAVE YOU USED ANY DRUG OR ALCOHOL IN THE LAST 24 HOURS?

DO YOU FEEL YOU UNDERSTAND WHAT IS HAPPENING IN THESE PROCEEDINGS?

[IF ANY MEDICATION, ALCOHOL OR DRUG USE, INQUIRE OF BOTH LAWYERS WHETHER IN THEIR DEALINGS WITH THE DEFENDANT THERE IS ANY CAUSE FOR CONCERN ABOUT HIS/HER COMPETENCE TO DO A RULE 11.]

HAVING OBSERVED THE DEFENDANT IN MAKING HIS/HER ANSWERS AND HIS/HER Demeanor, Manner and Attitude, and

HAVING OBSERVED THE DEFENDANT DOES NOT APPEAR TO BE UNDER THE INFLUENCE OF MEDICINE, DRUGS OR OTHER SUBSTANCE THAT MAY AFFECT HIS/HER JUDGMENT IN THE MATTER,

I FIND THE DEFENDANT IS COMPETENT TO ENTER A PLEA.

TAKING THE PLEA

HAS YOUR LAWYER EXPLAINED TO YOU THE CONSEQUENCES THAT MAY FLOW FROM THESE PROCEEDINGS?

DO YOU AUTHORIZE YOUR LAWYER, [DEFENSE COUNSEL], TO SPEAK FOR YOU?

IF AT ANY TIME YOU DO NOT UNDERSTAND ANY QUESTION THAT I ASK, DON'T TRY TO ANSWER IT. TELL ME YOU DO NOT UNDERSTAND AND I WILL REPHRASE THE QUESTION.

IF AT ANY TIME YOU WISH TO TALK TO YOUR LAWYER, TELL ME SO, AND I WILL PERMIT YOU TO DO SO.

I UNDERSTAND THAT YOU WISH TO CHANGE YOUR PLEA TO COUNT ONE OF THE INDICTMENT, IS THIS CORRECT?

[DEFENSE COUNSEL] DO YOU APPROVE OF THE CHANGE OF PLEA AND RECOMMEND THAT I ACCEPT IT?

THE CLERK MAY PROCEED

ESTABLISHING THAT PLEA IS KNOWING AND VOLUNTARY

ONE OF THE PURPOSES OF THIS PROCEEDING IS THAT I NEED TO BE SURE THAT YOUR PLEA IS KNOWING AND VOLUNTARY.

[DEFENDANT], HAVE YOU PLEADED GUILTY TO THE CHARGE(S) CONTAINED IN COUNT(S) [COUNT NUMBER(S)] OF THE INDICTMENT BECAUSE YOU ARE ACTUALLY GUILTY AND FOR NO OTHER REASON?

[ALFORD OPTIONS IF NECESSARY]

[DEFENSE COUNSEL] ARE YOU SATISFIED THAT [DEFENDANT] IS PLEADING GUILTY BECAUSE HE/SHE IS ACTUALLY GUILTY?

[DEFENDANT], HAVE YOU RECEIVED A COPY OF THE INDICTMENT?

HAVE YOU HAD ENOUGH TIME TO DISCUSS THE CHARGE(S) CONTAINED IN COUNT(S) [COUNT NUMBER(S)] OF THE INDICTMENT WITH YOUR LAWYER?

HAS YOUR LAWYER EXPLAINED TO YOU:

THE ELEMENTS AND NATURE OF COUNTS [COUNT NUMBER(S)] OF THE INDICTMENT?

THE PENALTIES THAT CAN BE IMPOSED?

[DEFENSE COUNSEL] ARE YOU SATISFIED THAT [DEFENDANT] UNDERSTANDS THE CHARGE(S) CONTAINED IN COUNT(S) [COUNT NUMBER(S)] OF THE INDICTMENT AND THE PENALTIES THAT CAN BE IMPOSED?

[DEFENDANT], COUNT ONE OF THE INDICTMENT CHARGES [DESCRIPTION OF CHARGE] IN VIOLATION OF [STATUTORY CITE].

[REPEAT AS NECESSARY FOR OTHER COUNTS]

DO YOU UNDERSTAND THE CHARGE(S)?

DO YOU UNDERSTAND THE CHARGE(S) AGAINST YOU IS/ARE FELONY OFFENSE(S)?

MAXIMUM PENALTIES

THE MAXIMUM PUNISHMENTS ARE AS FOLLOWS.

1. YOU ARE SUBJECT TO A TERM OF IMPRISONMENT OF NOT MORE THAN __ YEARS. [OR NOT LESS THAN _____ YEARS AND NOT MORE THAN _____ YEARS]
2. YOU ARE ALSO SUBJECT TO A TOTAL FINE OF UP TO \$_____, OR BOTH.
3. FOLLOWING ANY TERM OF IMPRISONMENT, YOU ARE SUBJECT TO SUPERVISED RELEASE A PERIOD OF _____ YEARS [OR NOT LESS THAN _____ YEARS AND NOT MORE THAN _____]. IF YOU VIOLATE THE TERMS OF THAT SUPERVISED RELEASE YOU COULD RECEIVE AN ADDITIONAL PRISON TERM OF UP TO __ YEARS.

YOU MUST ALSO PAY A MANDATORY ASSESSMENT OF \$100 PER COUNT.

I MUST ALSO ADVISE YOU 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. DO YOU UNDERSTAND?

[OPTIONS:

- YOU MAY ALSO BE REQUIRED BY COURT ORDER TO MAKE FULL RESTITUTION TO ANY VICTIM OF THE OFFENSE.
- YOU MAY ALSO BE REQUIRED TO FORFEIT CERTAIN PROPERTY TO THE GOVERNMENT.
- YOU MAY ALSO BE DEPORTED FROM THIS COUNTRY.]

ADVICE OF RIGHTS

DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO CONTINUE TO PLEAD NOT GUILTY?

YOU HAVE THE RIGHT TO A TRIAL BY JURY, THE RIGHT TO THE ASSISTANCE OF YOUR LAWYER AT SUCH A TRIAL AND, IF YOU CANNOT AFFORD A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED FOR YOU AT GOVERNMENT EXPENSE. DO YOU UNDERSTAND?

AT TRIAL, YOU WOULD BE PRESUMED INNOCENT AND THE GOVERNMENT WOULD HAVE THE BURDEN OF PROVING YOU GUILTY BEYOND A REASONABLE DOUBT AND YOU WOULD NOT HAVE THE BURDEN OF PROVING THAT YOU ARE NOT GUILTY. DO YOU UNDERSTAND?

AT TRIAL, THE GOVERNMENT'S WITNESSES WOULD HAVE TO COME INTO OPEN COURT AND TESTIFY IN FRONT OF YOU AND YOUR LAWYER. YOUR LAWYER WOULD HAVE THE OPPORTUNITY TO CROSS-EXAMINE ANY GOVERNMENT WITNESSES, OBJECT TO EVIDENCE THE GOVERNMENT OFFERED, AND OFFER EVIDENCE IN YOUR BEHALF. YOUR COUNSEL WOULD ALSO HAVE THE RIGHT TO COMPEL THE ATTENDANCE OF WITNESSES AT TRIAL. DO YOU UNDERSTAND?

YOU WOULD HAVE THE RIGHT TO TESTIFY AT TRIAL IF YOU WANTED TO, BUT YOU WOULD ALSO HAVE THE RIGHT NOT TO TESTIFY AND YOU COULD NOT BE REQUIRED TO TESTIFY AT TRIAL. IF YOU CHOSE NOT TO TESTIFY, I WOULD INSTRUCT THE JURY THAT THEY COULD DRAW NO INFERENCE OR SUGGESTION OF GUILT FROM THE FACT THAT YOU DID NOT TESTIFY. DO YOU UNDERSTAND?

IF I ACCEPT YOUR GUILTY PLEA, YOU WILL HAVE GIVEN UP YOUR RIGHT TO A TRIAL AND THE OTHER RIGHTS I HAVE JUST DESCRIBED TO YOU AND THERE WILL BE NO TRIAL OF ANY KIND ON THIS INDICTMENT DO YOU UNDERSTAND?

IF I PROCEED TO ENTER A JUDGMENT OF GUILTY AND SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA, AND IF ALL THAT HAPPENS, EXCEPT FOR VERY LIMITED CIRCUMSTANCES, YOU WILL HAVE NO RIGHT OF APPEAL FROM YOUR CONVICTION. DO YOU UNDERSTAND?

AS PART OF YOUR PLEADING GUILTY, I MUST FIND THAT THERE IS A FACTUAL BASIS FOR YOUR GUILTY PLEA. TO ASSURE MYSELF THAT THERE IS SUCH A FACTUAL BASIS, I WILL BE ASKING YOU QUESTIONS ABOUT THE CONDUCT THAT GAVE RISE TO THIS/THESE CHARGE(S), AND YOU MUST ANSWER MY QUESTIONS TRUTHFULLY. DO YOU UNDERSTAND?

IN LIGHT OF ALL THAT I HAVE JUST EXPLAINED TO YOU, DO YOU STILL CHOOSE TO PLEAD GUILTY TO COUNT [COUNT NUMBER(S)] OF THE INDICTMENT?

FACTUAL BASIS

[PROSECUTOR], I HAVE BEFORE ME A GOVERNMENT'S VERSION OF THE OFFENSE [SOMETIMES REFERRED TO AS "PROSECUTION VERSION"] SIGNED BY YOU DATED _____. DOES THIS CONTAIN THE EVIDENCE THE GOVERNMENT WOULD PRESENT WERE THE CASE TO GO TO TRIAL?

[DEFENSE COUNSEL], HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE GOVERNMENT'S VERSION OF THE OFFENSE? ARE YOU SATISFIED THAT THE GOVERNMENT CAN IN FACT PRODUCE THE EVIDENCE CONTAINED IN THE GOVERNMENT'S VERSION?

ARE YOU SATISFIED THAT THE ADMISSIBLE PART OF THAT EVIDENCE WOULD PERMIT A PROPERLY INSTRUCTED JURY TO DETERMINE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF THE CRIME TO WHICH HE/SHE IS PLEADING GUILTY?

[DEFENDANT], HAVE YOU HAD AN OPPORTUNITY TO GO OVER THE GOVERNMENT'S VERSION OF THE OFFENSE? DO YOU UNDERSTAND EVERYTHING IN IT?

IS THERE ANY RESPECT IN WHICH YOU DISAGREE WITH WHAT IS CONTAINED IN THE GOVERNMENT'S VERSION OF THE OFFENSE?

IS THE INFORMATION TRUE TO YOUR OWN PERSONAL KNOWLEDGE?

[If not satisfied with the status of the factual basis of the plea, inquire of the defendant as to the essential details of the crimes to which a plea is entered.]

I FIND A FACTUAL BASIS FOR THE GUILTY PLEA TO THE CRIME CHARGED IN THE INDICTMENT.

[IF ALFORD: ADDRESS ADDITIONAL CONSIDERATIONS]

PLEA AGREEMENTS

[PROSECUTOR], HAS THE GOVERNMENT EXTENDED ANY FORMAL PLEA OFFERS TO THE DEFENSE? IF SO, PLEASE LIST THE DATE OF EACH OFFER. (If no formal plea offer was ever offered, there is no need to ask anything further of any party)

[DEFENSE COUNSEL], HAVE YOU COMMUNICATED THE OFFER [EACH OF THE OFFERS] JUST REFERRED TO BY THE PROSECUTOR TO YOUR CLIENT?

[DEFENDANT], DO YOU AGREE THAT YOUR ATTORNEY HAS EXPLAINED TO YOU THE OFFER [EACH OF THE OFFERS] JUST REFERRED TO BY THE PROSECUTOR?

[IF THERE IS AN AGREEMENT: DIRECT DEFENDANT TO LOOK AT THE WRITTEN PLEA AGREEMENT SIGNED AND DATED _____ BY [PROSECUTOR]

- (A) IS THAT YOUR SIGNATURE ON PAGE __?
- (B) DID YOU SIGN IT VOLUNTARILY?
- (C) DID YOU READ IT BEFORE YOU SIGNED IT?
- (D) DID YOU UNDERSTAND EVERYTHING IN IT BEFORE YOU SIGNED IT?
- (E) IN SIGNING IT, DID YOU INTEND TO AGREE TO ALL ITS TERMS AND CONDITIONS?

[IF THE AGREEMENT CONTAINS AN APPEAL WAIVER: YOUR PLEA AGREEMENT CONTAINS A PROVISION BY WHICH YOU WAIVE THE RIGHT TO APPEAL ANY SENTENCE OF IMPRISONMENT THAT I IMPOSE WHICH DOES NOT EXCEED ____ MONTHS. HAVE YOU READ THIS PORTION OF YOUR PLEA AGREEMENT? DO YOU UNDERSTAND IT?

ARE YOU AWARE THAT YOU NORMALLY WOULD HAVE A RIGHT TO APPEAL TO A HIGHER COURT ANY SENTENCE I IMPOSE, BUT THAT BY THIS AGREEMENT YOU ARE LIMITING THAT RIGHT?

I WANT YOU TO UNDERSTAND THAT I CAN IMPOSE A WIDE RANGE OF POSSIBLE SENTENCES, AND IF YOU DID NOT WAIVE THIS RIGHT TO APPEAL, YOU WOULD HAVE THE RIGHT TO HAVE ANOTHER COURT REVIEW MY DECISION ON SENTENCE. BECAUSE YOU ARE WAIVING THAT RIGHT OF APPEAL, EXCEPT FOR THE MOST LIMITED CIRCUMSTANCES, I WILL MAKE THE FINAL DECISION REGARDING SENTENCE. DO YOU UNDERSTAND?

I MUST REMIND YOU THAT DESPITE YOUR AGREEMENT WITH THE GOVERNMENT, I, AS THE JUDGE, HAVE THE AUTHORITY TO LESSEN OR INCREASE YOUR SENTENCE. IN THE EVENT THAT I IMPOSE A SENTENCE DIFFERENT FROM THE ONE RECOMMENDED IN YOUR PLEA AGREEMENT, AND EXCEPT IN VERY NARROW AND RARE INSTANCES, YOU ARE AGREEING NOT TO APPEAL A SENTENCE OF LESS THAN ___ MONTHS. DO YOU UNDERSTAND?

[DEFENSE COUNSEL], ARE YOU CONFIDENT THAT YOUR CLIENT FULLY UNDERSTANDS THE RIGHT TO APPEAL THAT HE/SHE IS WAIVING AND IS WAIVING THIS RIGHT KNOWINGLY AND VOLUNTARILY?]

[IF THERE IS A COOPERATION AGREEMENT WITH LETTER IMMUNITY:

I ALSO WANT TO DIRECT YOUR ATTENTION TO PARAGRAPH 2 OF THE COOPERATION AGREEMENT. LETTER IMMUNITY. DO YOU UNDERSTAND THAT THE GOVERNMENT WILL PROVIDE ME WITH THE INFORMATION THAT YOU PROVIDE TO THE GOVERNMENT PURSUANT TO THIS AGREEMENT. THE US ATTORNEY HAS AGREED TO TAKE THE POSITION THAT THE INFORMATION PROVIDE BY YOU PURSUANT TO THIS AGREEMENT SHOULD NOT BE USED EITHER IN DETERMINING WHERE WITHIN THE APPLICABLE GUIDELINE RANGE TO SENTENCE OR IN

DETERMINING WHETHER A DEPARTURE OR A VARIANT SENTENCE IS WARRANTED. DO YOU UNDERSTAND THAT THE GOVERNMENT'S POSITION DOES NOT BIND THE COURT IN ANYWAY? IN OTHER WORDS, THE GOVERNMENT CANNOT PREVENT THE COURT FROM USING THE INFORMATION AGAINST YOU.]

51. **[If an 11(e)(1)(B) agreement]** DO YOU UNDERSTAND THAT SO FAR AS SENTENCING IS CONCERNED, THIS PLEA AGREEMENT PERMITS YOU, YOUR LAWYER AND THE PROSECUTOR TO MAKE RECOMMENDATIONS REGARDING SENTENCING, BUT THAT THE AUTHORITY TO DETERMINE THE APPROPRIATE SENTENCE IN THIS CASE RESTS WITH ME AS THE JUDGE IN THIS COURT, AND IF I DO NOT ACCEPT THOSE RECOMMENDATIONS, YOU WILL HAVE NO RIGHT TO WITHDRAW YOUR GUILTY PLEA?

[If an 11(e)(1)(A) or (C) agreement, detail the specific agreement re: dismissal of counts (A) or sentence limitations (C) and inform the defendant that if the judge does not ultimately accept those provisions, he/she will have the opportunity to withdraw the plea.]

SENTENCING GUIDELINES & FINAL ADVICE

[DEFENDANT], I WILL CONSIDER THE SENTENCING COMMISSION'S ADVISORY GUIDELINES IN DETERMINING YOUR SENTENCE. I HAVE AN OBLIGATION TO CALCULATE THE APPLICABLE SENTENCING-GUIDELINE RANGE AND TO CONSIDER THAT RANGE, POSSIBLE DEPARTURES UNDER THE GUIDELINES, AS WELL AS OTHER FACTORS UNDER 18 U.S.C. § 3553(a). HAVE YOU AND YOUR LAWYER TALKED ABOUT HOW THESE ISSUES MAY AFFECT YOUR SENTENCE?

I CAN'T DETERMINE THE GUIDELINE SENTENCE UNTIL AFTER I HAVE READ A PRESENTENCE REPORT THE PROBATION OFFICE WILL PREPARE, AND UNTIL I HAVE GIVEN YOUR LAWYER AND THE PROSECUTOR AN OPPORTUNITY TO CHALLENGE THE PRESENTENCE REPORT.

AFTER I DETERMINE WHAT GUIDELINES APPLY TO A CASE, I STILL HAVE THE AUTHORITY IN SOME CIRCUMSTANCES TO IMPOSE A SENTENCE THAT IS MORE SEVERE OR LESS SEVERE THAN THE SENTENCE CALLED FOR BY THE APPLICABLE GUIDELINE. DO YOU UNDERSTAND?

AND YOU STILL WILL NOT BE PERMITTED TO WITHDRAW YOUR PLEA. DO YOU UNDERSTAND?

BOTH YOU AND THE GOVERNMENT WILL HAVE THE RIGHT TO APPEAL ANY SENTENCE THAT I IMPOSE. [OR: [DEFENDANT] YOUR RIGHTS OF APPEAL WILL BE LIMITED AS WE JUST DISCUSSED.]

IF A TERM OF IMPRISONMENT IS IMPOSED, YOU WILL BE REQUIRED TO ACTUALLY SERVE IN A JAIL OR PRISON ALL OF THE IMPRISONMENT TERM, EXCEPT GOOD-TIME DEDUCTIONS AND YOU WILL NOT BE PERMITTED TO SERVE ANY PART OF IT ON PAROLE. DO YOU UNDERSTAND?

THREATS, PROMISES, COERCION

HAS ANYONE THREATENED YOU OR HAS ANYONE ATTEMPTED TO FORCE YOU TO PLEAD GUILTY?

HAS ANYONE MADE ANY PROMISE TO YOU [OTHER THAN WHAT IS CONTAINED IN THE PLEA AGREEMENT] IN AN EFFORT TO GET YOU TO PLEAD GUILTY?

HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT KIND OF SENTENCE I WILL IMPOSE?

HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT THE PROSECUTOR'S RECOMMENDATION WILL BE?

FINAL QUESTIONS, FINDINGS & ADJUDICATION

I ASK YOU FINALLY, THEN, DO YOU STILL WISH TO PLEAD GUILTY TO THE CHARGE(S) CONTAINED IN COUNT(S) [COUNT NUMBER(S)] OF THE INDICTMENT]?

[DEFENSE COUNSEL], DO YOU, AS [DEFENDANT]'S LAWYER, STILL RECOMMEND THAT I ACCEPT HIS/HER GUILTY PLEA?

[DEFENDANT],

- SINCE YOU ACKNOWLEDGE THAT YOU ARE IN FACT GUILTY AS CHARGED IN COUNTS [COUNT NUMBER(S)] OF THE INDICTMENT, AND
- SINCE I FIND THERE IS A FACTUAL BASIS FOR THE PLEA, AND
- SINCE I FIND, BASED ON YOUR RESPONSES TO MY QUESTIONS AND MY DIRECT OBSERVATIONS, THAT YOU ARE COMPETENT TO ENTER A PLEA, AND
- SINCE I FIND THAT YOU KNOW OF YOUR RIGHT TO A TRIAL AND THE RIGHTS ASSOCIATED WITH THE RIGHT TO A TRIAL, AND
- SINCE I FURTHER FIND THAT YOU KNOW THE MAXIMUM POSSIBLE PUNISHMENT THAT MAY BE IMPOSED IF YOU ARE CONVICTED, AND
- SINCE I FIND THAT YOU HAVE NOT BEEN COERCED BUT THAT YOU HAVE VOLUNTARILY AND KNOWINGLY TENDERED A PLEA OF GUILTY,

I NOW ACCEPT YOUR GUILTY PLEA AS TENDERED AND ADJUDGE YOU GUILTY OF COUNTS [COUNT NUMBER(S)] OF THE INDICTMENT.

I HEREBY ORDER THE PREPARATION OF THE CUSTOMARY PRESENTENCE INVESTIGATION REPORT.

DETENTION/RELEASE ON CONDITIONS

OPTIONS:

- [I UNDERSTAND THAT THIS IS A MANDATORY DETENTION CASE AND THE DEFENDANT IS NOT SEEKING RELEASE. IS THAT CORRECT?
THE DEFENDANT IS REMANDED HEREWITH INTO THE CUSTODY OF THE UNITED STATES MARSHAL FOR THE DISTRICT OF MAINE. HE/SHE IS TO BE RETAINED IN THAT CUSTODY PENDING FURTHER ORDER OF THIS COURT.]
- [DECIDE WHETHER TO RELEASE ON BAIL AND UNDER WHAT CONDITIONS. IF RELEASED GIVE BAIL JUMPING AND ADDITIONAL CRIMINAL CONDUCT WARNINGS]

ANYTHING MORE FOR THE GOVERNMENT? FOR THE DEFENSE?

THE COURT WILL BE IN RECESS.