

RULE 11—GUILTY PLEA

I. INTRODUCTION

[Ask the prosecutor if she/he has provided notice of the proceeding to any victim(s) of the offense as required by the Justice for All Act of 2004. 18 U.S.C. § 3771.]

1. ARE YOU _____, THE PERSON NAMED AS A DEFENDANT IN THIS [INDICTMENT] [INFORMATION]?
2. HOW FAR DID YOU GO IN SCHOOL?
3. CAN YOU READ AND WRITE?
4. HAVE YOU RECENTLY BEEN SEEING ANY DOCTOR, PSYCHIATRIST OR OTHER MENTAL HEALTH PROFESSIONAL?
5. ARE YOU CURRENTLY TAKING ANY MEDICATION?¹ IF SO, (for each medication):
 - A. WHAT IS THE PURPOSE OF THE MEDICATION?
 - B. ARE YOU TAKING THE PRESCRIBED AMOUNTS?
 - C. DOES IT ALONE, OR IN COMBINATION WITH OTHER MEDICATIONS, PREVENT YOU FROM UNDERSTANDING WHAT IS HAPPENING HERE TODAY?
 - D. DOES IT ALONE, OR IN COMBINATION WITH OTHER MEDICATIONS, IN ANY WAY AFFECT YOUR ABILITY TO VOLUNTARILY ENTER A PLEA?
6. HAVE YOU USED ANY OTHER DRUG OR CONSUMED ANY ALCOHOL IN THE PAST 24 HOURS?
7. WHAT DO YOU UNDERSTAND THE PURPOSE OF THIS HEARING IS?

8. HAS YOUR LAWYER EXPLAINED TO YOU WHAT MAY HAPPEN AS A RESULT OF TODAY'S HEARING AND YOUR CHANGE OF PLEA?

9. DO YOU AUTHORIZE _____ **[name of lawyer]** TO SPEAK FOR YOU?

10. I UNDERSTAND THAT YOU WISH TO CHANGE YOUR PLEA TO COUNTS ____ AND ____ OF THE [INDICTMENT] [INFORMATION]. IS THAT CORRECT?

11. ATTORNEY _____ **[lawyer]**

A. HAS ANYTHING COME TO YOUR ATTENTION THAT CASTS ANY DOUBT ON THE DEFENDANT'S COMPETENCE TO CHANGE HIS/HER PLEA?

B. DO YOU APPROVE OF THE CHANGE OF PLEA AND RECOMMEND THAT I ACCEPT IT?

12. THE CLERK MAY PROCEED.

[Clerk obtains tender of a guilty plea]

13. **EXPLAIN QUESTIONING PROCESS:**

(A) THE PURPOSE OF QUESTIONS I WILL ASK.

(B) IF AT ANY TIME YOU DON'T UNDERSTAND ANY QUESTION I ASK YOU, DON'T TRY TO ANSWER IT. TELL ME YOU DON'T UNDERSTAND AND I WILL REPHRASE IT.

(C) IF AT ANY TIME YOU WANT TO TALK TO YOUR LAWYER, DON'T TRY TO ANSWER MY QUESTION—TELL ME YOU WANT TO TALK TO YOUR LAWYER AND I'LL PERMIT YOU TO DO SO.

II. CHARGE(S) AND PENALTIES

14. **[To Defendant]** DID YOU PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THIS [INDICTMENT] [INFORMATION] BECAUSE YOU ARE ACTUALLY GUILTY?

IF THE PLEA TURNS INTO AN ALFORD PLEA (400 U.S. 25 (1970)), DETERMINE:

- (A) WHETHER THE DEFENDANT HAS CONSIDERED ALTERNATIVE COURSES OF ACTION AND MADE VOLUNTARY AND INTELLIGENT CHOICE;
- (B) WHETHER COMPETENT COUNSEL'S ADVICE IS THAT PLEA IS TO DEFENDANT'S ADVANTAGE;
- (C) WHETHER DEFENDANT DEMONSTRATES CLEARLY EXPRESSED DESIRE TO PLEAD GUILTY.

SPECIFICALLY, ASK DEFENDANT:

- (i) TO EXPLAIN IN DETAIL WHY PLEADING GUILTY;
- (ii) WHAT BENEFIT HE/SHE BELIEVES WILL COME FROM PLEADING GUILTY?
- (iii) HAVE YOU CONSULTED WITH YOUR LAWYER IN DETAIL ON THIS SUBJECT AND ARE YOU SATISFIED WITH HIS/HER ADVICE?

15. **[To Lawyer]** ARE YOU SATISFIED THAT _____ **[Defendant]** HAS PLEADED GUILTY BECAUSE HE/SHE IS ACTUALLY GUILTY?

16. **[To Defendant]** DID YOU RECEIVE A COPY OF THE [INDICTMENT] [INFORMATION]?

17. DID YOU HAVE ENOUGH TIME TO DISCUSS THE CHARGE[S] WITH YOUR LAWYER?

18. DID YOUR LAWYER EXPLAIN TO YOU:
- (A) THE ELEMENTS AND NATURE OF THE CRIMES CHARGED?
 - (B) THE PENALTIES THAT CAN BE IMPOSED?
19. **[To Lawyer]** ARE YOU SATISFIED THAT _____ **[defendant]** UNDERSTANDS THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE [INDICTMENT] [INFORMATION] AND THE PENALTIES THAT CAN BE IMPOSED?
20. **[To Defendant]** YOU ARE CHARGED IN AN [INDICTMENT] [INFORMATION] CONTAINING ____ COUNTS:
- [Review the indictment with the Defendant]²***
21. DO YOU UNDERSTAND THESE CHARGES?
22. A. IF YOU ARE NOT A UNITED STATES CITIZEN, BY PLEADING GUILTY TO THESE CRIMES YOU MAY BE REMOVED FROM THE UNITED STATES, DENIED CITIZENSHIP, AND DENIED ADMISSION TO THE UNITED STATES IN THE FUTURE. DO YOU UNDERSTAND?
- B. BY PLEADING GUILTY TO THESE CRIMES, YOU:
- 1. MAY BE IMPRISONED FOR A TOTAL OF UP TO _____ YEARS ***[maximum and minimum for certain drug cases, describing effects of drug quantity, previous convictions, etc.]***
 - 2. MAY BE PLACED ON SUPERVISED RELEASE OF UP TO _____ YEARS ***[maximum and minimum]*** TO FOLLOW ANY TERM OF IMPRISONMENT. IF YOU VIOLATE THE TERMS OF THAT SUPERVISED

RELEASE, YOU COULD BE PUT BACK INTO PRISON FOR UP TO _____
MORE YEARS.

3. MAY BE REQUIRED TO PAY FINES OF UP TO \$ _____;
AND

4. MUST PAY A MANDATORY ASSESSMENT OF \$100 ON EACH OF
THESE COUNTS ON WHICH YOU ARE CONVICTED FOR A TOTAL OF
\$ _____.

C. **[If applicable]** MAY ALSO BE REQUIRED BY COURT ORDER TO MAKE
FULL RESTITUTION TO ANY VICTIM OF THE OFFENSE.

D. **[If applicable]** MAY ALSO BE REQUIRED TO FORFEIT CERTAIN
PROPERTY TO THE GOVERNMENT.

23. ***[In any 18 U.S.C. § 922(g) case (e.g., felon-in-possession), consider warning of possibility of Armed Career Penalties under 18 U.S.C. § 924(e)(1), i.e., 15-year mandatory minimum and maximum of life.]***

III. DEFENDANT'S RIGHTS

24. DO YOU UNDERSTAND THAT YOU COULD IF YOU WISHED, STILL PLEAD NOT
GUILTY?

25. YOU HAVE THE RIGHT TO A SPEEDY TRIAL BY JURY, THE RIGHT TO THE
ASSISTANCE OF YOUR LAWYER AT THE 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?

26. AT A TRIAL, YOU WOULD NOT HAVE TO PROVE THAT YOU ARE INNOCENT. YOU WOULD BE PRESUMED INNOCENT AND THE GOVERNMENT WOULD HAVE TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND?
27. AT A 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, TO OBJECT TO EVIDENCE THE GOVERNMENT OFFERED, TO OFFER EVIDENCE FAVORABLE TO YOU, AND TO COMPEL WITNESSES TO COME TO COURT. DO YOU UNDERSTAND?
28. AT A TRIAL YOU WOULD HAVE THE RIGHT TO TESTIFY IF YOU WANTED TO, BUT YOU WOULD ALSO HAVE THE RIGHT NOT TO TESTIFY AND YOU COULD NOT BE REQUIRED TO TESTIFY AT A TRIAL. DO YOU UNDERSTAND?
29. ALSO, IF YOU CHOSE NOT TO TESTIFY, I WOULD INSTRUCT THE JURY THAT IT COULD DRAW NO INFERENCE OR SUGGESTION OF GUILT FROM THE FACT THAT YOU DID NOT TESTIFY. DO YOU UNDERSTAND?
30. AT A TRIAL, YOU COULD ONLY BE FOUND GUILTY UPON A UNANIMOUS VOTE BY THE JURY.
31. IF I ACCEPT YOUR GUILTY PLEA, YOU WILL HAVE GIVEN UP YOUR RIGHT TO A TRIAL AND THE OTHER RIGHTS I HAVE JUST DESCRIBED, AND THERE WILL BE NO TRIAL OF ANY KIND ON THESE CHARGES. DO YOU UNDERSTAND?
32. AND I WILL ENTER A JUDGMENT OF GUILTY AND SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA. IF ALL OF THAT HAPPENS, YOU WILL HAVE

VIRTUALLY NO RIGHT OF APPEAL FROM YOUR CONVICTION. DO YOU UNDERSTAND?

33. ALSO BY PLEADING GUILTY, YOU GIVE UP YOUR RIGHT NOT TO INCRIMINATE YOURSELF, AT LEAST TO THE EXTENT OF THE QUESTIONS I ASK YOU TODAY ABOUT YOUR CONDUCT THAT GAVE RISE TO THESE CHARGES. YOU MUST ANSWER MY QUESTIONS TRUTHFULLY, AND I AM GOING TO TREAT YOUR ANSWERS AS TRUE AND ACT ACCORDINGLY. DO YOU UNDERSTAND?
34. IF APPLICABLE: DO YOU UNDERSTAND THAT IN ANY PROSECUTION FOR PERJURY OR FALSE STATEMENT, THE GOVERNMENT WOULD HAVE THE RIGHT TO USE AGAINST YOU ANY STATEMENT THAT YOU HAVE GIVEN UNDER OATH?
35. IN LIGHT OF ALL THAT I HAVE JUST EXPLAINED, DO YOU STILL CHOOSE TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE [INDICTMENT] [INFORMATION]?

IV. FACTUAL BASIS FOR FINDING OF GUILT

36. **[To U.S. Attorney]** _____, WHAT EVIDENCE THE GOVERNMENT WOULD PRODUCE IF THIS MATTER SHOULD GO TO TRIAL.

[Listen to entire recital of evidence or, in the alternative, admit written prosecution version and do inquiry]

[To Lawyer] HAVE YOU RECEIVED THE PROSECUTION VERSION, AND HAVE YOU HAD SUFFICIENT TIME TO REVIEW IT WITH YOUR CLIENT?

37. **[To Lawyer]** MR./MS. _____, ARE YOU SATISFIED THAT THE GOVERNMENT CAN IN FACT PRODUCE THE EVIDENCE [DESCRIBED BY THE UNITED STATES ATTORNEY] [CONTAINED IN THE PROSECUTION 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 [EACH OF] THE CRIME[S] TO WHICH HE/SHE IS PLEADING GUILTY?
38. **[To Defendant]** DO YOU UNDERSTAND THE EVIDENCE THE PROSECUTOR WOULD PRODUCE IF THIS MATTER SHOULD PROCEED TO TRIAL?
39. HAVE YOU READ AND DISCUSSED THE PROSECUTION VERSION WITH YOUR LAWYER?
40. DO YOU DISAGREE WITH ANY OF THE INFORMATION [THE PROSECUTOR DESCRIBED] OR [THAT IS CONTAINED IN THE PROSECUTION VERSION]?
41. 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 THAT THERE IS A SUFFICIENT FACTUAL BASIS FOR THE GUILTY PLEAS TO THE CRIMES CHARGED IN EACH OF COUNTS ____ AND ____ OF THE [INDICTMENT] [INFORMATION].

IF ALFORD PLEA, REQUIRE STRONG EVIDENCE OF ACTUAL GUILT.

V. VOLUNTARINESS AND PLEA AGREEMENT

42. HAS ANYONE THREATENED YOU OR TRIED TO FORCE YOU IN ANY WAY TO PLEAD GUILTY?

IF ALFORD PLEA, HAS DEFENDANT MADE INTELLIGENT CONCLUSION THAT DEFENDANT'S INTERESTS REQUIRE GUILTY PLEA?

43. A. **[If no apparent plea agreement]** DO YOU HAVE ANY PLEA AGREEMENT, WRITTEN OR VERBAL, WITH THE PROSECUTION OR ANY AGREEMENT ABOUT THE SENTENCE OR ABOUT OTHER CHARGES?

- OR -

44. B. **[If written plea agreement]** I UNDERSTAND THAT YOU HAVE AGREED TO PLEAD GUILTY BECAUSE OF DISCUSSIONS AMONG YOU AND YOUR LAWYER AND THE PROSECUTOR THAT HAVE RESULTED IN A WRITTEN PLEA AGREEMENT. IS THAT CORRECT?

VI. MISSOURI V. FRYE – 132 S. Ct. 1399 (2012)

45. **[To U.S. Attorney]** HAS YOUR OFFICE EXTENDED ANY PRIOR FORMAL PLEA OFFERS TO THE DEFENDANT? IF YES, LIST THE DATE OF EACH OFFER.
[If no prior formal plea offer was ever offered, there is no need to ask anything further of any party on this topic.]
46. **[To Lawyer]** HAVE YOU COMMUNICATED [THE OFFER] [EACH OF THOSE OFFERS] TO YOUR CLIENT?

47. **[To Defendant]** DO YOU AGREE THAT YOUR LAWYER HAS EXPLAINED TO YOU [THE OFFER] [EACH OF THE OFFERS] JUST REFERRED TO BY THE PROSECUTOR?

VII. WRITTEN PLEA AGREEMENT

48. **IN EXAMINING THE WRITTEN PLEA AGREEMENT [referring to one or both documents but without naming cooperation agreement as such]:**
- (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?

HIGHLIGHT:

- (A) **AGREEMENT TO DISMISS CHARGES [Fed. R. Crim. P. 11(e)(1)(A) agreement] AND RIGHT TO WITHDRAW GUILTY PLEA IF I REJECT THAT PART;**
- (B) **SENTENCING GUIDELINE AGREEMENT AND/OR SENTENCING RECOMMENDATION [Fed. R. Crim. P. 11(e)(1)(B) agreement]:**

THIS LANGUAGE TELLS ME WHAT YOU AND THE PROSECUTOR HAVE AGREED TO AND/OR PERMITS YOU, YOUR LAWYER AND THE PROSECUTOR TO MAKE RECOMMENDATIONS ON SENTENCING, BUT THE AGREEMENT AND/OR THE RECOMMENDATIONS ARE NOT BINDING ON ME AS THE SENTENCING JUDGE. THE AUTHORITY TO DETERMINE THE APPROPRIATE SENTENCE IN THIS CASE RESTS

WITH ME AS THE JUDGE, AND IF I DO NOT ACCEPT THOSE RECOMMENDATIONS OR IF THE SENTENCE IS MORE SEVERE THAN YOU HOPED FOR, YOU WILL HAVE NO RIGHT TO WITHDRAW YOUR GUILTY PLEA. DO YOU UNDERSTAND?

- (C) **IF WAIVER OF RIGHT TO APPEAL OR § 2255, OR IF FORFEITURE PROVISION, EXAMINE ON THOSE PARTICULAR ASPECTS. FOR EXAMPLE,**

“ORDINARILY YOU WOULD HAVE THE RIGHT TO APPEAL YOUR SENTENCE OR THE SENTENCING PROCEDURES OR ANY ERROR THAT I MIGHT MAKE IN THESE GUILTY PLEA PROCEEDINGS BY TAKING YOUR CASE TO A HIGHER COURT, BUT YOU ARE AGREEING HERE NOT TO TAKE ANY APPEAL OF _____ TO A HIGHER COURT. IN OTHER WORDS, IF I SENTENCE YOU AT _____ MONTHS OR LESS, I AM THE LAST JUDGE IN YOUR CASE AND YOU ARE AGREEING THAT YOU WILL NOT BE ABLE TO OVERTURN WHAT I DO. DO YOU UNDERSTAND?”

- (D) **IF FED. R. CRIM. P. 11(E)(1)(C) AGREEMENT, DETAIL THE SPECIFIC AGREEMENT RE SENTENCE LIMITATIONS AND INFORM THE DEFENDANT THAT IF THE JUDGE DOES NOT ULTIMATELY ACCEPT THOSE PROVISIONS, HE/SHE WILL HAVE THE OPPORTUNITY TO WITHDRAW THE PLEA.**

VIII. SENTENCING GUIDELINES

49. THERE ARE ADVISORY SENTENCING COMMISSION GUIDELINES THAT WILL AFFECT YOUR SENTENCE. I HAVE A RESPONSIBILITY TO CALCULATE THE GUIDELINE RANGE, TO CONSIDER THAT RANGE, TO CONSIDER POSSIBLE DEPARTURES UNDER THE GUIDELINES, AND TO CONSIDER OTHER

SENTENCING FACTORS LISTED IN A FEDERAL STATUTE, (18 U.S.C. § 3553(a)). HAVE YOU AND YOUR LAWYER TALKED ABOUT HOW THESE ISSUES MAY AFFECT YOUR SENTENCE?

50. I CANNOT DETERMINE WHAT SENTENCE THE ADVISORY GUIDELINES PRODUCE IN YOUR CASE UNTIL I READ A PRESENTENCE REPORT THE PROBATION OFFICE WILL PREPARE. I WILL THEN GIVE YOU AND THE GOVERNMENT AN OPPORTUNITY TO OBJECT TO ANY OF THE INFORMATION IN THE REPORT. AFTER I DETERMINE WHAT GUIDELINE RANGE DOES APPLY TO YOUR CASE, I MAY NOT FOLLOW THE GUIDELINE, BUT INSTEAD IMPOSE A SENTENCE THAT IS MORE SEVERE OR LESS SEVERE THAN THE SENTENCE CALLED FOR BY THE GUIDELINE. DO YOU UNDERSTAND?
51. AND DO YOU UNDERSTAND THAT IF THE SENTENCE IS MORE SEVERE THAT WOULD NOT BE A REASON FOR YOU TO BE PERMITTED TO WITHDRAW YOUR GUILTY PLEA?

IX. CONCLUDING QUESTIONS

52. BOTH YOU AND THE GOVERNMENT HAVE THE RIGHT TO APPEAL ANY SENTENCE THAT I IMPOSE. **[UNLESS PLEA AGREEMENT LIMITS]** DO YOU UNDERSTAND?
53. YOU WILL BE REQUIRED TO ACTUALLY SERVE IN A JAIL OR PRISON ALL OF ANY IMPRISONMENT TERM I IMPOSE EXCEPT FOR GOOD-TIME DEDUCTIONS. YOU WILL NOT BE PERMITTED TO SERVE ANY PART OF IT ON PAROLE BECAUSE THERE IS NO PAROLE IN THE FEDERAL SYSTEM. DO YOU UNDERSTAND?

54. ASIDE FROM THE WRITTEN PLEA AGREEMENT WE HAVE TALKED ABOUT, HAS ANYONE MADE ANY PROMISE TO YOU IN AN EFFORT TO GET YOU TO PLEAD GUILTY?
55. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT SENTENCE I WILL IMPOSE?
56. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT THE PROSECUTOR'S SENTENCING RECOMMENDATION WILL BE (OTHER THAN WHAT IS CONTAINED IN THE WRITTEN PLEA AGREEMENT)?
57. I ASK YOU FINALLY, THEN, DO YOU STILL WISH TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS ___ AND ___ OF THE [INDICTMENT] [INFORMATION]?
58. **[To Lawyer]** DO YOU, AS _____'S LAWYER, STILL RECOMMEND THAT I ACCEPT THE GUILTY PLEA?

X. ACCEPTANCE OR RESERVATION OF ACCEPTANCE OF GUILTY PLEA

59. **[To Defendant]** MR./MS. _____:
- I HAVE OBSERVED YOU THROUGHOUT THIS HEARING, AND MADE NOTE OF THE WAY YOU LISTENED TO AND RESPONDED TO MY QUESTIONS.
 - BASED ON EVERYTHING I OBSERVED AND HEARD, IT IS APPARENT TO ME THAT YOU UNDERSTOOD MY QUESTIONS AND PROVIDED APPROPRIATE RESPONSES.
 - I FIND THAT YOU ARE NOT UNDER THE INFLUENCE OF ANY SUBSTANCE THAT MIGHT AFFECT YOUR JUDGMENT.

- YOU ACKNOWLEDGE THAT YOU ARE IN FACT GUILTY AS CHARGED IN COUNTS ____ AND ____ OF THE [INDICTMENT] [INFORMATION].
- I FIND THAT YOU KNOW OF YOUR RIGHT TO A TRIAL AND THE RIGHTS ASSOCIATED WITH THE RIGHT TO A TRIAL.
- I FURTHER FIND THAT YOU KNOW THE MAXIMUM POSSIBLE PUNISHMENT [AND MINIMUM, *if applicable*] THAT MAY BE IMPOSED IF YOU ARE CONVICTED.
- I ALSO FIND THAT YOU HAVE NOT BEEN COERCED BUT THAT YOU HAVE VOLUNTARILY AND KNOWINGLY PLEADED GUILTY TO COUNTS ____ AND ____ OF THIS [INDICTMENT] [INFORMATION].
- I THEREFORE ACCEPT YOUR GUILTY PLEA AND ADJUDICATE YOU GUILTY.

- OR -

[If Fed. R. Crim. P. 11(c)(1)(A) or (C) agreement] I WILL RESERVE DECISION ON ACCEPTING THE PLEA AGREEMENT UNTIL I HAVE REVIEWED THE PRESENTENCE REPORT.

I HEREBY ORDER THE PREPARATION OF A PRESENTENCE REPORT.

[Counsel to arrange]

[Resolve detention status; direct defendant to check with Probation re beginning presentence investigation; and to check with Marshal for processing if not already done.]

REMAND DEFENDANT TO CUSTODY OF U.S. MARSHAL, IF APPLICABLE.

¹ *United States v. Román-Orench*, 625 F. App'x 1, 2-3 (1st Cir. 2015).

² *United States v. Jones*, 778 F.3d 375, 381-83 (1st Cir. 2015).