

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR No. 03-331-11
)	
vs.)	Washington, D.C.
)	August 18, 2014
WALDEMAR LORENZANA-LIMA,)	10:00 a.m.
)	
Defendant.)	
_____)	

TRANSCRIPT OF PLEA HEARING
BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	Amanda Nunn Liskamm Andrea Goldberg Adrian Rosales U.S. DEPARTMENT OF JUSTICE Criminal Division, Narcotics and Dangerous Drugs 145 N Street, NE Second Floor, East Wing Washington, D.C. 20530 (202)616-1576 amanda.liskamm@usdoj.gov
---------------------	---

For the Defendant:	Joaquin G. Perez 6780 Coral Way Suite 200 Miami, FL 33155 (305)261-4000 jplaw1@bellsouth.net
--------------------	---

Interpreter:	Jaime M. de Castellvi
--------------	-----------------------

APPEARANCES CONTINUED:

Court Reporter: William P. Zaremba, RMR, CRR
Official Court Reporter
U.S. Courthouse
333 Constitution Avenue, NW
Room 6511
Washington, D.C. 20001
(202) 354-3249

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

1 P R O C E E D I N G S

2 THE COURT: All right. Let's call the case.

3 DEPUTY CLERK: Criminal Case 03-331-11,

4 the United States versus Waldemar Lorenzana.

5 Counsel, would you please identify yourselves for
6 the record.

7 MS. LISKAMM: Good morning, Your Honor.

8 Amanda Liskamm on behalf of the United States. And seated
9 at counsel table are Andrea Goldberg and Adrian Rosales.

10 MR. PEREZ: Good morning. Joaquin Perez on behalf
11 of Waldemar Lorenzana, who is present in court, aided by an
12 interpreter and myself.

13 THE COURT: All right. I believe we have
14 Mr. Balarezo on the phone.

15 MR. BALAREZO: Edward Balarezo for Mr. Lorenzana.
16 I'm on the phone. Thank you.

17 THE COURT: All right. Let's swear in the Spanish
18 interpreters.

19 (Interpreters are placed under oath.)

20 INTERPRETER: Good morning. Teresa Salazar at
21 your leisure, staff interpreter.

22 INTERPRETER: Good morning, Your Honor.

23 Jaime M. de Castellvi, staff interpreter.

24 THE COURT: All right. Good morning.

25 I have two matters I want to bring up.

1 Mr. Lorenzana, you have two attorneys. Mr. Perez
2 entered an appearance, as well as Mr. Balarezo.
3 Mr. Balarezo indicated to Chambers last night that he was
4 going to be on the phone and wouldn't be present in court,
5 which, of course, means that he cannot consult with you;
6 however, Mr. Perez, as I understand it, has spoken to you,
7 and he has entered an appearance. Have you had an
8 opportunity to discuss the terms of the plea with Mr. Perez?

9 THE INTERPRETER: Yes.

10 THE COURT: Okay. And so is it acceptable to you
11 to have only Mr. Perez present as counsel with Mr. Balarezo
12 only on the phone? Is that acceptable in terms of going
13 forward?

14 THE INTERPRETER: Yes.

15 THE COURT: Because I want to make sure you meet
16 counsel who are present, so if you want to consult with him,
17 you can do so.

18 All right. Mr. Perez, perhaps you would want to
19 put on the record that you've had a discussion of the terms.
20 If you could come up to the front here, it's easier on --
21 Mr. Balarezo is not going to hear you from over there
22 either.

23 MR. PEREZ: I had the opportunity to discuss the
24 Plea Agreement and the Statement of Facts with the
25 Defendant. I did so in consultation with my co-counsel,

1 Mr. Balarezo, who met with him independently; and on the
2 basis of that, we have endorsed and submitted to the Court
3 the Plea Agreement and the Statement of Facts.

4 THE COURT: All right.

5 Before I go through all of this, let me just ask a
6 couple of questions. The last changes were submitted Friday
7 at around 7:00 p.m., the -- with the only changes I saw were
8 the checklist had a reorder, and also added some things that
9 were in the Plea Agreement but put in in the context of the
10 advisory Sentencing Guidelines. I did not see any change in
11 the factual proffer or the actual Plea Agreement itself, and
12 I want to make sure I didn't miss something.

13 Is that accurate?

14 MR. PEREZ: The Statement of Facts remain the
15 same. I think that the Plea Agreement was modified in
16 conjunction with the advice that the Court should give the
17 Defendant concerning the Guidelines and concerning whether
18 certain recommendations are -- may recommend, they may not
19 recommend, certain recommendations.

20 THE COURT: Okay.

21 Is there something in the Plea Agreement, then,
22 that I've missed? I've noticed that the checklist did
23 include in -- the Guideline calculations had in it not only
24 the calculations but what was also in the Plea Agreement was
25 the fact that both parties can ask for departures and can

1 ask for variances. So those are preserved, and those are
2 pulled out, but was there something else?

3 MS. LISKAMM: Your Honor, paragraph 8d of the
4 Plea Agreement.

5 THE COURT: Hang on one second. Let me find it.

6 MS. LISKAMM: 8d.

7 The language was changed when the parties agreed
8 that the "Government will seek other upward adjustments," et
9 cetera, to "may seek other upward adjustments."

10 THE COURT: All right. So it now says "may seek"?

11 MS. LISKAMM: That is correct, Your Honor.

12 THE COURT: I am at the right one. Okay.

13 I just wanted to make sure I hadn't missed anything.

14 The other thing that I had was just a couple
15 questions about in the charge, in the one that he pleads
16 to -- and I realize it's the language from the statute, but
17 is it actually accurate to include "manufacture"? I mean,
18 what it has is, "Conspiracy to import either 5 kilograms or
19 500 grams," which is the plea, "cocaine into the
20 United States and manufacture and distribute." I didn't see
21 anything that indicates he's manufacturing them, so I would
22 just leave the "distribute" and take out the "manufacture,"
23 unless I've missed something.

24 MS. LISKAMM: Your Honor, the Government accepts
25 that.

1 THE COURT: Okay. So I will take that out since
2 it's not what he's actually being -- factually being charged
3 with.

4 The other question I had was in terms of, perhaps,
5 on the record, some of you could -- the Government could put
6 out the jurisdiction and venue issues, which are being
7 waived, in terms of what you view is the jurisdiction and
8 venue of the Court.

9 MS. LISKAMM: Your Honor, may I just have one
10 moment?

11 THE COURT: Sure.

12 (Pause.)

13 THE COURT: You have him waiving it, so that's
14 why, in terms of raising an issue, it's part of the
15 Plea Agreement, I believe, to waive that, or does it raise
16 an issue? So let me find it.

17 I'm just asking whether -- I'm assuming that
18 Mr. Perez had a discussion, but I'm just asking for you to
19 state on the record what the jurisdiction and venue of the
20 Court is. I forgot where it is in here. Maybe it's in the
21 plea list.

22 Mr. Perez, perhaps you can help us. Have you had
23 a discussion with your client about this?

24 MR. PEREZ: The crime is against --

25 MR. BALAREZO: Your Honor, may I interject?

1 MR. PEREZ: I can do it.

2 The crime is against the United States. It can be
3 prosecuted in any of the 94 districts. The place in which
4 the Government has chosen to prosecute the case is in the
5 District of D.C.

6 And, in fact, in the absence of any particular
7 jurisdiction, the individual will be prosecuted where he
8 lands or, in the alternative, in Washington, D.C. So we
9 concede venue, and that was discussed. That's in the
10 statute itself.

11 THE COURT: All right. And you've had that
12 discussion with your client?

13 MR. PEREZ: Yes.

14 THE COURT: Then that answers that question.

15 MR. PEREZ: In fact, we considered at some point
16 filing a motion challenging venue, so we had that
17 discussion.

18 THE COURT: All right.

19 The next question that I have is on page 4,
20 paragraph 11. It indicates -- It talks about "forfeiting
21 and give to the United States prior to the date of the
22 sentencing any right, title, and interest which the
23 Defendant may have in any asset located within the
24 jurisdiction of the United States or elsewhere."
25 Does that mean outside of the United States or what?

1 What's the --

2 MS. LISKAMM: Yes, it does, Your Honor.

3 THE COURT: Okay. And is that the understanding
4 of your client?

5 MR. PEREZ: The question of forfeiture was
6 discussed. I presume that there are people in Guatemala who
7 have interest in property as well. I mean, all that
8 Mr. Lorenzana has agreed to do is to execute a document
9 saying, whatever interests I may have, I will not -- I will
10 not raise them in the event that somebody attempts to
11 forfeit the property.

12 THE COURT: All right. I just wanted to make
13 sure.

14 And the last is page 8, paragraph 21. It says it
15 does not bind any other office or agency of the
16 United States Government or U.S. Attorney's Office.
17 I'm assuming you're excluding the District of Columbia?
18 Or -- I mean, are you leaving it the U.S. Attorney's Office
19 for D.C. could bring charges? I assume not.

20 MS. LISKAMM: Your Honor, it would be applicable
21 to all U.S. Attorney's Offices.

22 THE COURT: So it doesn't bind -- So you're
23 leaving it the U.S. Attorney's Office in D.C. could still
24 bring charges?

25 MS. LISKAMM: Yes, Your Honor.

1 THE COURT: Okay. Is that your understanding,
2 Mr. Perez?

3 MR. PEREZ: You know, as a practical matter --

4 THE COURT: It's unlikely.

5 MR. PEREZ: -- it's unlikely, so we discussed
6 that. But frankly, we didn't discuss specifically
7 Washington, D.C., the U.S. Attorneys here.

8 THE COURT: Okay. Let me give you a moment to
9 just bring that up, and then I'll start going through all of
10 this.

11 (Pause.)

12 MR. PEREZ: Yes. I have explained the terms of
13 that particular paragraph, and the Defendant understands the
14 consequences of endorsing it.

15 THE COURT: All right. Then let me have
16 Mr. Lorenzana, if he would, come up. It's probably easier
17 if we could do it with you next to him here. Without that,
18 it makes it harder for Mr. Balarezo to hear other than
19 through the microphone.

20 If at some point -- Mr. Lorenzana, you'll be,
21 obviously, giving your answers in Spanish. They will
22 translate and give them to the Court in English.
23 You can pull the microphone up so you don't have to bend
24 over. So make yourself comfortable.

25 If at some point you need to take a rest to sit

1 down, just let us know, okay? It's just that this is the
2 microphone that has Mr. Balarezo listening to whatever it is
3 that we're saying.

4 So let me swear you in and then explain what we're
5 going to be doing.

6 DEPUTY CLERK: Raise your right hand.

7 (Defendant is placed under oath.)

8 THE INTERPRETER: Yes.

9 THE COURT: Okay. You can put your hand down.

10 All right. What I'm going to be doing is asking
11 you questions today to make sure that you understand the
12 terms of the Plea Agreement. I need to make a finding at
13 the end that you understand it, so you're entering it
14 well-informed, and also that you're doing this voluntarily
15 of your own free will, okay? So the question --

16 THE INTERPRETER: Yes.

17 THE COURT: The questions really go to that, to
18 make sure that you understand what's being said.

19 If you don't understand something I'm asking,
20 please stop me and ask. Some of this I will do in summary
21 form; and if it sounds different than what you've discussed
22 with your lawyer or you don't understand what I'm asking,
23 just ask me. Don't answer thinking this is what I want to
24 hear. I want to make sure that you understand it.

25 You at any time can consult with Mr. Perez.

1 So if you want to talk to him or you want to ask him a
2 question or anything else, you can do so, just let me know
3 and you can step back or, you know, we'll make an
4 arrangement for you to be able to talk to him. All right?

5 THE INTERPRETER: Yes. Thank you.

6 THE COURT: Okay. It is important that I make
7 sure that this is what you want to do, because you can't
8 come back, you know, in a week or two and say, well, Judge,
9 I've changed my mind. So I'm going to go through this
10 slowly and carefully to make sure that this is what you want
11 to do since we already have a trial date.

12 Also, we need to make sure that we put on the
13 record all of the terms of the agreement as you understand
14 it. So if something isn't brought up by me or it's not in
15 writing, then you need to speak up today. You can't come
16 back later and say, well, I thought this or that was part of
17 the agreement.

18 Do you understand?

19 THE INTERPRETER: I understand.

20 THE COURT: Okay. So I've placed you under oath.
21 I want to make sure that you understand that if you don't
22 answer my questions truthfully, you could be prosecuted for
23 perjury or for making a false statement.

24 Do you understand that?

25 THE INTERPRETER: Yes, I understand that.

1 THE COURT: All right. What I'm going to do is
2 set out what the original charges are, what you're pleading
3 guilty to, and what they're going to be dismissing.

4 The original charge was conspiracy to import
5 5 kilograms or more of cocaine into the United States and to
6 distribute 5 kilograms or more of cocaine, intending and
7 knowing that the cocaine will be unlawfully imported into
8 the United States. And they charged you not only as a
9 co-conspirator but as an aiding-and-abetting capacity, and
10 there is a criminal forfeiture count as well.

11 You're pleading guilty to a conspiracy to import
12 500 grams or more of cocaine into the United States and to
13 distribute 500 grams or more of cocaine, intending and
14 knowing that the cocaine will be unlawfully imported into
15 the United States.

16 So the difference between the two is the first one
17 has a larger amount of drugs, 5 kilograms or more; and the
18 second one, in terms of the charge, is what we call a
19 lesser-included offense, because it involves 500 grams or
20 more of cocaine. And at sentencing, then they will be
21 dismissing the greater charge. Is that your understanding?

22 THE INTERPRETER: Yes, I understand.

23 THE COURT: Okay. And there's two other points
24 that I want to go over. You've agreed, as part of the plea,
25 that you would remain locked up until sentencing, and you've

1 also agreed that the Government can make recommendations,
2 along with you, to the Court about the sentence. Sometimes
3 they don't reserve them, in which case they would be silent.
4 But in this particular case, they've asked to make
5 recommendations to the Court, and there are particular
6 conditions that have been set out in the Plea Agreement
7 about what you can bring up and what they can bring up, and
8 I'll go over those. But I wanted to make sure that you
9 understand that you were agreeing to remain locked up until
10 sentencing, and that you also understood that the Government
11 would be able to speak at the sentencing. Do you understand
12 both of those?

13 THE INTERPRETER: Yes, I am in agreement.

14 THE COURT: All right. Let me ask some background
15 information. The first question is: How old are you?
16 What's your age?

17 THE INTERPRETER: Seventy-five years.

18 THE COURT: And what is your date of birth?

19 THE INTERPRETER: February 19, 1940.

20 THE COURT: Okay. And how far have you gone in
21 school?

22 THE INTERPRETER: Second of elementary.

23 THE COURT: Okay. And where were you born?

24 THE INTERPRETER: At the hospital in Guatemala's
25 capital city.

1 THE COURT: All right. If you're not a
2 U.S. citizen, I want to make sure you understand that
3 conviction of this offense may result in your deportation,
4 exclusion from the United States, or denial of citizenship
5 under our immigration laws. Do you understand that?

6 THE INTERPRETER: Yes, I understand.

7 THE COURT: And did you discuss the possible
8 immigration consequences with your attorney?

9 THE INTERPRETER: Yes.

10 THE COURT: Okay. I should just explain,
11 Mr. Lorenzana, the Court is required to ask you certain
12 questions either because they're in the criminal rules or
13 because there's cases, so some of these things I need to
14 make sure that I ask as I go through it.

15 So the next question is whether you've taken any
16 kind of medication in the last 48 hours that would affect
17 your ability to understand what you're doing by pleading
18 guilty?

19 THE INTERPRETER: No. I am sick of -- I have
20 sickness of my heart, but my mind is fine. Thank you.

21 THE COURT: All right. So is your mind clear?

22 THE INTERPRETER: Yes, it's clear.

23 THE COURT: All right. Were you able to --

24 And maybe I'll ask Counsel:

25 Was the Plea Agreement in the Government's plea list, was it

1 translated into Spanish or was this something that was
2 discussed orally? In other words, did he have to read it or
3 not?

4 MR. PEREZ: It was discussed orally, both by
5 Mr. Balarezo and myself, some of the additional changes that
6 were made last Friday.

7 THE COURT: Okay. Mr. Lorenzana, do you speak or
8 write in English at all?

9 THE INTERPRETER: No, no, I can't.

10 THE COURT: And are you able to read in your
11 native language?

12 THE INTERPRETER: Yes, I can.

13 THE COURT: Okay. And have you ever received any
14 treatment for any type of mental illness or emotional
15 disturbance?

16 THE INTERPRETER: No, no, no, no, never.
17 There was a part which was unintelligible -- in everybody's
18 grace of God.

19 THE COURT: I know that we did an exam at one
20 point that he would understand the proceedings, and he was
21 found competent.

22 And, Mr. Perez, you had an opportunity to talk to
23 him this weekend and this morning. Is there any issue that
24 you see with this?

25 MR. PEREZ: No, ma'am.

1 THE COURT: All right. And now, Mr. Lorenzana,
2 have you received a copy of the Indictment, which would be
3 the written charges that you were originally charged with,
4 and had a chance to review those charges with your lawyer?

5 THE INTERPRETER: Yes.

6 THE COURT: Okay. And are you completely
7 satisfied with the services of Mr. Perez as your lawyer in
8 this case?

9 THE INTERPRETER: Yes.

10 THE COURT: And are you completely satisfied with
11 the services of Mr. Balarezo as your lawyer in this case?

12 THE INTERPRETER: Yes.

13 THE COURT: Okay. And have you had enough time to
14 talk with Mr. Perez, since he's the one here, and discuss
15 the case, the plea offer and whether or not you should
16 accept it?

17 THE INTERPRETER: Yes.

18 THE COURT: Okay. Let me go over your basic
19 constitutional rights that you're giving up by pleading
20 guilty. Whether you're a citizen or not, you're entitled to
21 these particular rights, so I'm going to go through and
22 indicate what they are, just to make sure you understand,
23 and then I'll ask at the end whether you're willing to give
24 them up.

25 So you have a right to plead not guilty and have a

1 jury trial, and we actually have a trial date in January for
2 you. And what would happen is citizens of the District of
3 Columbia would come to the courtroom; you, through Counsel,
4 the Government, the Court, would ask them questions in order
5 to ensure that you have a fair and impartial jury. And 12
6 citizens of the District of Columbia would be in the jury
7 box and they would listen to the evidence, they would listen
8 to the arguments from both sides, and they would determine
9 your guilt or innocence based on the evidence presented in
10 the courtroom. Do you understand your right to a jury
11 trial?

12 THE INTERPRETER: Yes, yes, I do understand it.

13 THE COURT: Do you understand that if you had a
14 trial, you'd have a right to be represented by a lawyer at
15 the trial, and one could be appointed if you could not
16 afford one? Do you understand that?

17 THE INTERPRETER: Yes. But since I have
18 Mr. Perez, there's no need for anyone else.

19 THE COURT: Yes, that's fine. I just want to make
20 sure you understand you have the right to counsel in these
21 proceedings.

22 Do you understand that at a trial, you would have
23 the right, through your lawyer, to confront and
24 cross-examine any witnesses? In other words, he could ask
25 questions of the witnesses that would be presented by the

1 Government. Do you understand that?

2 THE INTERPRETER: Yes, I understand that.

3 THE COURT: Do you understand that you would have
4 a right to present your own witnesses and have a right to
5 subpoena them; in other words, to make them come to court to
6 testify in your behalf? Do you understand that?

7 THE INTERPRETER: Yes, I do understand that.
8 And if there were a need, I do have witnesses as well.

9 THE COURT: Okay.

10 MR. PEREZ: No. I explained to him that he has a
11 right to compel witnesses, including witnesses in Guatemala.
12 So that was a response to your question.

13 THE COURT: All right. And that's correct.

14 Do you also understand that if we went forward
15 with a trial, you would have a right to testify? You could
16 also present evidence on your own behalf if you wanted to.
17 But you wouldn't have to testify yourself or present any
18 evidence if you decided not to, and that's because you can't
19 be forced to incriminate yourself; that is, present evidence
20 of your own guilt.

21 And if you asked for it and you decided not to
22 testify, the jury would be told that your decision, which is
23 your constitutional right not to testify, that they could
24 not infer any guilt against you or hold it against you.
25 Do you understand all of that?

1 THE INTERPRETER: I understand that, yes.

2 THE COURT: Do you understand that unless and
3 until I accept your guilty plea, you are presumed by the law
4 to be innocent of the charge, because it's the Government's
5 burden to prove your guilt beyond a reasonable doubt; and
6 until it does that, you cannot be convicted at trial?
7 Do you understand that?

8 THE INTERPRETER: I understand that.

9 THE COURT: Do you understand that if you went to
10 trial and were convicted, you would have a right to appeal
11 your conviction to the Court of Appeals? And, again, you
12 could ask to have a lawyer prepare your appeal and one could
13 be appointed if you could not afford one. And the appeal
14 would be the -- If you went to trial and were convicted, it
15 would be any issues that the Court had made at the time
16 prior to trial or at the time of the trial.
17 Do you understand that?

18 THE INTERPRETER: I understand that, yes.

19 THE COURT: All right. Do you understand that by
20 pleading guilty, you're giving up all of your rights to
21 appeal, except -- and let me go over it.

22 There are two kinds of appeals. There's an appeal
23 based on the statute, and you're giving up those rights, and
24 I'll go over those in a moment.

25 Your right to appeal any constitutional defects

1 you're not giving up; you're not waiving that. So if it was
2 unlawful or involuntary or some other fundamental defect of
3 a constitutional nature, you can appeal that. But you have
4 agreed -- and I'm going to go over this. It's in, as part
5 of your Plea Agreement, to -- based on the statute, it also
6 sets out certain rights that you have. So let me go over
7 what you've agreed to give up, and this is in exchange for
8 the plea.

9 You've agreed to give up your statutory right to
10 appeal the sentence, including if there was a restitution
11 order or how the Court determined the sentence that I
12 imposed, including any challenges to the constitutionality
13 of the sentencing guidelines, which the Court -- the Supreme
14 Court has actually already ruled on. But you could appeal
15 if the sentence exceeded the maximum, which would be an
16 illegal sentence, frankly, or if there was an upward
17 departure that the Court imposed. Under those
18 circumstances, then you would be able to appeal.

19 And you've indicated here you waived your right to
20 appeal the jurisdiction of the United States. And your
21 Counsel has indicated that he's looked into it on what the
22 jurisdiction of the Court is.

23 And you've also agreed that you would not raise an
24 issue about your -- the facts that the Court relied on in
25 determining your sentence under the Guidelines, or claim

1 that those facts would have to have been found by a jury.

2 Do you understand so far what I've talked about
3 and have you discussed that with your lawyer so you know
4 what you're giving up?

5 THE INTERPRETER: Yes.

6 THE COURT: Okay. And are you willing to give up
7 those rights?

8 THE INTERPRETER: I didn't understand that.

9 THE COURT: Okay. I just asked -- I went through
10 what rights you're giving up and what rights to appeal
11 you're not giving up, and you indicated you understood what
12 I had just set out. I want to make sure, having understood
13 it, that you're willing to give up these statutory rights
14 that I've set out. They're a part of your Plea Agreement.

15 THE INTERPRETER: Yes, I do agree with that.

16 THE COURT: Okay. The other thing that you're
17 agreeing to is to -- there is a statute that, in essence,
18 has a habeas statute, and you've agreed to waive your right
19 to collaterally attack. In other words, instead of doing a
20 direct appeal but to bring an appeal through another statute
21 to attack your guilty plea.

22 Did you discuss, Mr. Perez, his giving up his
23 right to a habeas petition?

24 MR. PEREZ: Yes, I did.

25 THE COURT: Is that correct, Mr. Lorenzana, that

1 you did discuss this, which is a different kind of appeal?
2 Did you discuss that with your lawyer?

3 THE INTERPRETER: Yes.

4 THE COURT: Okay. And are you willing to give up
5 that type of appeal as well?

6 THE INTERPRETER: Yes.

7 MR. PEREZ: Can we take a five-minute break,
8 please, so he can sit down.

9 THE COURT: Sure. That's not a problem. And if
10 he really can't do it this way, we can have him sit.
11 The only question is for Mr. Balarezo hearing. But if he's
12 more comfortable sitting, we can use the microphone there.

13 MR. BALAREZO: Thank you.

14 THE COURT: Mr. Perez, why don't you say something
15 into the microphone.

16 MR. PEREZ: One, two, three.

17 THE COURT: Mr. Balarezo, did you hear that?

18 MR. BALAREZO: Can you repeat it, Your Honor?

19 THE COURT: What I'm trying to do is see if
20 Mr. Perez and Mr. Lorenzana are seated --

21 MR. BALAREZO: No. I know.

22 THE COURT: -- you can hear.

23 You can or cannot?

24 MR. BALAREZO: If he could speak.

25 MR. PEREZ: One, two, three.

1 MR. BALAREZO: I can hear that.

2 THE COURT: Why don't we do it that way.

3 Does that work for the interpreters?

4 THE INTERPRETER: Yes, Your Honor.

5 THE COURT: Mr. Lorenzana?

6 MR. BALAREZO: Thank you, Your Honor.

7 THE COURT: Okay.

8 Mr. Lorenzana, I'm going to let you sit, okay,

9 because -- so you're more comfortable, all right?

10 So you still need to speak in the microphone, because the
11 interpreter needs to hear your answer in order to translate,
12 okay? Yeah.

13 And it turns out Mr. Balarezo can hear as long as
14 everybody speaks into the microphone, okay?

15 So you'll hear what the interpreter says, but you
16 need to speak into that microphone, the one that's right in
17 front of you, okay?

18 THE INTERPRETER: Yes. That's fine.

19 THE COURT: All right. Let me pick up.

20 There's a little bit more on the appeal that I wanted to
21 bring up that's in the Plea Agreement.

22 If the Government decides to appeal pursuant to
23 the statute, then you also can appeal. So if they decide to
24 appeal based on statutory, the sentence, or -- then you also
25 will be allowed to appeal. So if they don't appeal pursuant

1 to the statute, you have agreed, as I've gone over, to waive
2 certain rights of appeal. But if they decide to appeal,
3 then that allows you to also appeal.

4 Do you understand that?

5 INTERPRETER: Yes, I understand.

6 THE COURT: All right. Let me get back to my
7 questions.

8 And with few exceptions, any notice of appeal
9 would have to be filed within 14 days of judgment being
10 entered in this case. And if you couldn't pay for the cost
11 of an appeal, you could ask the Court to allow you to pay --
12 to file your appeal without filing any kind of a fee.

13 Do you understand that?

14 THE INTERPRETER: Yes.

15 THE COURT: Okay. Now, do you understand that if
16 you plead guilty in this case and I accept your guilty plea,
17 you'll be giving up the rights that I've just gone over,
18 because there won't be any trial? In other words, we won't
19 have the trial in January, and we won't -- you will be able
20 to appeal just the narrow areas I've discussed with you;
21 otherwise, you're giving up your rights to appeal your
22 statutory rights, unless the Government decides to appeal.

23 So are you willing to give up the rights as I've
24 just gone over?

25 THE INTERPRETER: Yes.

1 THE COURT: All right. Do you want to plead
2 guilty in this case and give up your rights as I've
3 explained them to you?

4 THE INTERPRETER: Yes.

5 THE COURT: All right.

6 At this point, I'm going to ask the Government to
7 state the facts that would have been presented if the case
8 had gone to trial. In turn, this is the facts that you've
9 agreed to and have signed.

10 I need to make a finding at the end that the
11 Government has sufficient facts based on this Statement of
12 Facts to meet the elements of the offense that you're
13 pleading guilty to. And I also need to hear from you that
14 you agree to these facts for me to find that you're
15 admitting facts that go to the elements of the offense.
16 There's certain things that need to be proven in order to
17 find you guilty of the charge against you. So I'm going to
18 ask the Government to go over it, and then to tie those
19 facts to the elements of the offense, because I do need to
20 make a finding at the end relating to that.

21 I'd ask if you would go a little more slowly than
22 you might usually to make sure that the interpreter can
23 interpret as we go along.

24 MS. LISKAMM: And, Your Honor, we've also provided
25 a copy of the statement of the facts to the interpreters to

1 assist with the translation today.

2 THE COURT: Okay. Why don't you move the
3 microphone up a bit.

4 Is that better?

5 MS. LISKAMM: The following Statement of Facts
6 does not purport to include all of the Defendant's --

7 THE COURT: Wait. He's consulting. Let him
8 consult for a second.

9 Okay. At the end, Mr. Lorenzana, I'm going to
10 ask, after they've stated these facts, whether you agree
11 with them, okay?

12 Go ahead.

13 So listen carefully to make sure -- because I'm
14 going to go through these facts to make sure that you do
15 agree with them.

16 Go ahead.

17 MS. LISKAMM: The following Statement of Facts
18 does not purport to include all of the Defendant's illegal
19 conduct during the course of his charged offense, nor does
20 it purport to be an inclusive recitation of all that
21 Defendant heard, knew or witnessed concerning the illegal
22 activities of himself or those of his co-conspirators.
23 It represents sufficient information for the Court to find a
24 factual basis for accepting the Defendant's guilty plea in
25 the above-captioned matter and is not intended to represent

1 all the Defendant's relevant conduct for sentencing
2 purposes.

3 If Defendant proceeded to trial, the Defendant
4 agrees that the Government's evidence would show the
5 following beyond a reasonable doubt.

6 THE COURT: Okay. You need to slow down a little
7 bit, okay? Go ahead.

8 MS. LISKAMM: From in or about March 1996 and
9 continuing thereafter up to and including April 2009, within
10 the country of Guatemala and elsewhere, the Defendant,
11 Waldemar Lorenzana-Lima, AKA Valdemar Lorenzana-Lima, did
12 unlawfully, knowingly, willfully and intentionally combine,
13 conspire, confederate, and agree with other conspirators,
14 both known and unknown, to commit the following offenses
15 against the United States, to wit: To import at least 500
16 kilograms or more of cocaine, a Schedule II Controlled
17 Substance, into the United States to manufacture --

18 THE COURT: Take out "manufacture" if you don't
19 have any facts for that.

20 MS. LISKAMM: Very well.

21 Your Honor, to distribute at least 500 kilograms
22 or more of cocaine, a Schedule II Controlled Substance,
23 intending and knowing that the cocaine would be unlawfully
24 imported into the United States, in violation of Title 21,
25 United States Code Sections 952, 959, 960, and 963.

1 During the course and in furtherance of the
2 conspiracy, the Defendant was a member of a drug trafficking
3 organization, or DTO, which, from on or about March 1996 and
4 continuing until at least November of 2007, would receive
5 inventory and stored large quantities of cocaine from
6 Columbia that would later be illegally imported into Mexico
7 and ultimately into the United States for further
8 distribution. Some of this cocaine would arrive in El
9 Salvador via go-fast boats from Colombia and was then
10 smuggled into Guatemala by land.

11 Once in Guatemala, the cocaine was received,
12 inventoried, stored, and further distributed for importation
13 into the United States on properties owned and/or utilized
14 by the DTO, including the Defendant. The DTO also utilized
15 cocaine-laden aircraft which would land on clandestine
16 airstrips located on or near properties owned and/or
17 utilized by the DTO, including the Defendant, to receive
18 inventory, store and further distribute the cocaine for
19 importation into the United States.

20 The Defendant was paid a fee for each shipment of
21 cocaine that members of the conspiracy received, stored,
22 transported and/or sold during the conspiracy on the
23 Defendant's properties. Members of the DTO would then
24 illegally sell the cocaine to Mexican drug traffickers in
25 Guatemala, knowing or intending that it would be further

1 distributed to the United States.

2 The Defendant agrees that during the course of his
3 involvement in the conspiracy, several shipments of cocaine
4 being distributed by his DTO, or intended for this DTO, were
5 seized by law enforcement authorities of several different
6 countries. The Defendant admits that he was aware that the
7 cocaine was going to be illegally imported into the United
8 States for further distribution. Defendant agrees venue and
9 jurisdiction lie with this Court.

10 The Defendant admits that the total amount of
11 cocaine involved in this conspiracy for which he had actual
12 knowledge and involvement was well over 450 kilograms.

13 The Defendant also agrees that his participation
14 as a conspirator in the above-described acts were, in all
15 respects, knowing, intentional, and willful, reflecting an
16 intention and deliberation to do something the law forbids,
17 and were not in any way the product of any accident, mistake
18 of fact -- excuse me, mistake of law or fact, duress,
19 entrapment or public authority.

20 THE COURT: And you're tying this to the elements
21 of the offense?

22 MS. LISKAMM: Your Honor, the elements for
23 conspiracy are that two or more persons directly or
24 indirectly reach an agreement to accomplish one of the two
25 illegal objects of the conspiracy; that the Defendant knew

1 of the unlawful purpose of that agreement, and the Defendant
2 joined in the agreement willfully; that is, with the intent
3 to further the unlawful purpose.

4 THE COURT: And that the two objects -- which I
5 assume you still have to show.

6 MS. LISKAMM: Two of the objects, Your Honor,
7 would be the payments that he received -- or I guess the
8 objects would be to intend that the drugs be transported up
9 to the United States for further distribution.

10 THE COURT: All right. I'll do it with them.
11 It's not the full elements, but that's all right.

12 MR. PEREZ: Give us one second, Your Honor.

13 THE COURT: Sure. Let me go ahead and let you
14 talk to him.

15 (Pause.)

16 MR. PEREZ: The Defendant basically admits that
17 there is a factual basis for taking the plea. The Defendant
18 has admitted, for purposes of taking this plea, some of the
19 facts or the facts that are alleged in the Statement of
20 Facts. The Defendant, at some point in the future, wishes
21 to, perhaps, explain to the Court in more detail, during the
22 sentencing, factors that may be relevant concerning his
23 participation in the offense. That's what he has asked me
24 to tell you.

25 THE COURT: Okay.

1 MR. PEREZ: But in light of the overall
2 circumstances, he admits to the statement, to the facts as
3 mentioned in the Statement of Facts.

4 THE COURT: Okay. I do need to go through the
5 basic facts to make sure he actually does on the record.
6 I know he signed it, but I've learned that you should ask
7 the basic facts to make sure that he's actually agreed to
8 it.

9 Understanding that, Mr. Lorenzana, the purpose of
10 doing this is because in order to accept the plea, both the
11 Government has to state the facts and he has to admit facts
12 for me to find that he's guilty of the charge he's pleading
13 to. It doesn't go any further.

14 At sentencing, obviously, he can bring up whatever
15 other information he thinks the Court should know and
16 understand in coming to, you know, some decisions about
17 sentencing. So there's a different purpose at that point in
18 terms of looking at what you have done. This purpose is
19 strictly in order for me to accept the guilty plea. So it
20 obviously has the elements that meet and set out and are
21 very simple, straightforward terms of what the Government
22 has said the conduct you engaged in, and I'm asking you
23 whether this is accurate.

24 MR. PEREZ: That would be fine. I mean, I just --
25 You're going to ask specifically about the Statement of

1 Facts or you're going to ask about --

2 THE COURT: No, no, no. I'm not going any further
3 than -- I'm just asking.

4 And, frankly, it's probably Paragraph 3 that's the
5 most important part in terms of any specific facts and the
6 rest. I'm not going any -- beyond what's here.

7 I'm not asking him who the other people are or anything.

8 MR. PEREZ: Fair enough. This is going to be a
9 difficult part of the plea. I just wanted to --
10 Mr. Balarezo and I have been over this with the Defendant.
11 But with that in mind, we're ready to proceed.

12 THE COURT: Okay. All right.

13 So, Mr. Lorenzana, the --

14 MR. PEREZ: Let me turn the mic on.

15 THE COURT: Sure.

16 Mr. Lorenzana, what they've indicated is that you
17 participated in a conspiracy, and a conspiracy is basically
18 a loose agreement. It's not a contract or something signed,
19 but it's an agreement between individuals to carry out a
20 particular purpose, putting it in very simple terms.

21 You don't have to know everybody that's in the
22 conspiracy; you may know some people, you may not know other
23 people, but all of you are moving towards a particular
24 purpose. I'm not going to ask you who's in the conspiracy,
25 but it has to be you and other people that are doing these

1 things. And in this case, it's an unlawful purpose.
2 The purpose of it was to import at least 500 kilograms of
3 cocaine, whether you did it directly or with -- through
4 other people that you were in agreement with, and to
5 distribute.

6 And distribute can be selling or just transferring
7 the drugs, at least 500 kilograms of drugs, knowing that
8 this cocaine ultimately would be imported into the
9 United States, and it would be unlawful to import it into
10 the United States.

11 So do you understand sort of the background on
12 what a conspiracy in general terms is? Because that's what
13 you've been charged with. Do you understand that?

14 THE INTERPRETER: Yes, I understand.

15 THE COURT: Okay. So you've been charged with
16 being part of this conspiracy, one of the members, from
17 March of 1996 up to April of 2009; is that correct?
18 And this would have been within Guatemala and some other
19 countries.

20 THE INTERPRETER: I understand.

21 THE COURT: Okay. Are you agreeing to it, though?
22 Is that accurate?

23 THE DEFENDANT: (Defendant raised hand.)

24 THE INTERPRETER: Your Honor, I accept pleading
25 guilty, because one of my son was working with Otto Herrera

1 and Guillermo Herrera, all the other stuff.

2 MR. PEREZ: Otto Herrera and Guillermo Herrera
3 were co-conspirators. I believe that they were sentenced by
4 the Court --

5 THE COURT: Right.

6 MR. PEREZ: -- and they were potential witnesses
7 in the case. He acknowledges that during the relevant
8 period of the conspiracy, members of his family dealt with
9 Mr. Herrera and others in Guatemala.

10 THE COURT: Well, I guess --

11 MR. PEREZ: In order to --

12 THE COURT: Well -- I'm sorry. Go ahead. Finish.

13 MR. PEREZ: In order to accomplish the ends of the
14 conspiracy.

15 THE COURT: Okay. But the question is whether
16 he -- with other people -- I don't have to know -- Whether
17 he had a role in -- as part of this, along with, whether it
18 was family or Herreras or anybody else -- what I'm asking is
19 whether he was a member of this group of individuals whose
20 purpose was to, in essence, import cocaine into the United
21 States.

22 He doesn't have to have done each of the things.
23 That's what I was trying to explain to him. But if he's
24 part of an organization, it can be a loose organization with
25 different people that you had agreements with. You may have

1 had -- You and your family may have had one role, other
2 people may have had other roles. But, ultimately, the goal
3 was -- And somebody else may have carried this out, but,
4 ultimately, the goal was to have the cocaine imported into
5 the United States. Would you agree with that?

6 THE INTERPRETER: Right. I understand.
7 But the reason why I'm pleading guilty, as I said, is
8 because Otto Herrera, Guillermo Herrera that were doing this
9 and it was a son of theirs -- I'm sorry, a son of mine who
10 got involved with him, and I'm pleading guilty because I'm
11 feeling guilty about this. By the time I had news about
12 this, everything had been done already.

13 THE COURT: Well, let me go further down.

14 THE INTERPRETER: And the Herreras were already in
15 jail.

16 THE COURT: The Herreras may have had their own
17 role, your sons may have had another role, but what we're
18 talking about is what your involvement was, and you do not
19 need to have done everything.

20 But according to this, which you have signed and
21 agreed to, is that you were paid a fee for each shipment of
22 cocaine that the other members of the conspiracy, whoever
23 they are, received the cocaine, stored it, transported it,
24 or sold during the conspiracy, and that this was on your
25 properties.

1 So is it correct that you were paid a fee for the
2 storing, transporting a sale of the cocaine that was
3 evidently stored on your property and then transported and
4 sold to others?

5 THE INTERPRETER: Yes, it's true. And I accept
6 that -- my guilt because my son was involved in this and the
7 land was mine and the stuff was being stored there.
8 By the time I realized, everything was already done.

9 THE COURT: So you seem to be indicating that you
10 were not aware that all of this was going on and
11 therefore -- I don't see how you can be considered to be
12 involved with it if you hear about it afterwards.
13 If you heard about it at the time and did nothing to stop
14 it, it's one thing, but it sounds as if you had no role at
15 all, the way you've described it.

16 (Pause.)

17 MR. BALAREZO: Hello?

18 THE COURT: They're talking.

19 MR. BALAREZO: Hello?

20 That's fine. No problem.

21 MR. PEREZ: Let me see if I can talk to my
22 co-counsel, because we -- This is going to become --
23 Mr. Balarezo and I were aware that this could become the
24 stumbling block. And I think that if we pursue this route,
25 it's going to make it very difficult to finalize and enter

1 into a plea.

2 This is what I will call a plea of convenience.
3 We've even checked with the D.C. Bar about the consequences
4 of taking a plea in this case, and the Defendant wanted to
5 take a plea. At the same time, he wants to allocute to
6 certain facts and not to others. And the more specific we
7 get, the more that it's going to --

8 THE COURT: I don't have a problem of his
9 indicating. That's what I said at the beginning: He may
10 not have done things himself. He may not even have been
11 aware of particular things. But I don't see how the plea
12 can be accepted if it's -- as a practical matter, he's
13 indicating he was not involved in some way towards being
14 aware that there was this group of people who had cocaine
15 that -- from Colombia that was stored on his inventory
16 and -- stored on his property; and that this cocaine would
17 then -- and it came by fast-boat from Colombia and/or by
18 planes; and that this then went to some Mexican drug
19 conspirators, who then were going to sell it into the
20 United States.

21 That's the basic facts. So he may not have had --
22 That's why I said he may not have been involved in
23 everything. But at least if he's doing this kind of a plea,
24 as opposed to something else, that, it seems to me, he has
25 to admit this. That's the basic.

1 MR. PEREZ: We have gone over the plea, and we
2 have gone over the Statement of Facts. We have advised the
3 Defendant that he has to admit to all the facts that are
4 included in the Statement of Facts.

5 Mr. Lorenzana takes the position that he doesn't
6 want to go to trial. Mr. Lorenzana takes the position that
7 this is a plea which is in his best interest. There's
8 nothing else that Mr. Balarezo and I can do under the
9 circumstances. If the Court wishes to reject the plea,
10 I understand that that would be the case.

11 THE COURT: Well, I guess the question that I have
12 for you: Is Mr. Lorenzana willing to admit or not that --
13 and it starts in 1996 through -- the conspiracy was longer,
14 but the facts are to November of 2007; that he was involved
15 in whatever capacity he was involved at the time, not
16 hearing about it later, where -- with other people, and they
17 can be his sons, the Herreras, whoever; that he was aware
18 that cocaine came into the country from Colombia to
19 Guatemala by boat or plane; that they were stored on his
20 property; that Mexican drug traffickers then took the drugs.

21 And if I'm wrong about the facts, let me know.

22 And they were intending to have it go into the
23 United States.

24 So if he is not willing to admit that, I think
25 that's the very basic --

1 MR. PEREZ: Well, let me consult with him.

2 THE COURT: All right.

3 (Pause.)

4 MR. PEREZ: He would like you to ask the same
5 question again.

6 THE INTERPRETER: Counsel, please use the
7 microphone.

8 MR. PEREZ: The Defendant requests that you ask
9 the questions again.

10 THE COURT: Okay. I will go ahead and ask this.
11 And there are obviously -- Well, let me go ahead and see how
12 this works.

13 As I indicated, a conspiracy involves more than
14 one person. So in this conspiracy, that's not only you; it
15 would be other people, and as you've indicated, the
16 Herreras. And people may have had different roles. You may
17 not have known of everything.

18 But the purpose of the conspiracy was to get --
19 have cocaine come from Colombia through Guatemala to Mexico,
20 and ultimately to the United States. And that from around
21 1996 to November of 2007, you, as part of this loose
22 organization, were involved in knowing that the drugs
23 were -- cocaine was coming from Colombia by boat or by
24 plane; that this cocaine was stored on your property with
25 the expectation that the drugs would then be picked up, it

1 appears, by the Mexicans, and then these drugs would go into
2 the United States, and that you would be paid a fee for
3 basically storing, transporting and transferring this
4 cocaine to others. And you would have to know that it was
5 illegal to have -- you know, to basically store the drugs,
6 knowing that these drugs would ultimately go into the
7 United States. Whether you're the one who takes them into
8 the United States isn't the point. The question is whether
9 you were aware that that was what was going to happen.

10 That seems to me is the pretty basic -- in summary, the
11 basic facts that are here. Do you agree with that or not?

12 THE INTERPRETER: I agree with that. I agree.

13 THE COURT: All right. Is that sufficient for the
14 Government?

15 MS. LISKAMM: Yes, Your Honor.

16 THE COURT: Okay. Because the other -- And the
17 Court's required, in terms of discussing this in terms of an
18 Alford, which the Government could or could not agree to.
19 And if they didn't agree to it, we could just plead to
20 the -- and not get into the facts -- plead to the
21 Indictment. I don't know whether there's -- whether you've
22 discussed that or not.

23 MR. PEREZ: The reason why we cannot do that is
24 that the concession that the Defendant is receiving is that
25 the charges will be reduced from a five to life to

1 500 grams -- from five to 40.

2 THE COURT: Okay.

3 MR. PEREZ: So we cannot plead to the Indictment.
4 By pleading to the indictment, we're pleading to the
5 10-to-life charge.

6 THE COURT: Okay.

7 MR. PEREZ: And so, therefore, even though we have
8 considered every conceivable alternative in this case, it
9 has become very difficult. And the only way that it makes
10 sense for the Defendant to take the plea is to the reduced
11 charge.

12 THE COURT: All right. Just so we have that on
13 the record.

14 So let's get back to the facts. We've gone
15 through what, I think, are the basic facts in terms of his
16 role.

17 The other additional facts is that you would be
18 agreeing that at some point law enforcement authorities were
19 able to seize some of these -- this cocaine that was
20 involved in this -- in this drug or drug trafficking
21 organization. Would you agree with that?

22 MR. PEREZ: He's agreeing to it. I frankly --
23 I believe that in light of the initial admission, whether
24 there were any supervised release or not is not -- is of no
25 real consequence as far as --

1 THE COURT: I'm only going by what's in the
2 Plea Agreement. If the Government wishes to not pursue
3 that, that's one thing. But it is beyond what I had just
4 talked as the basics. So is he agreeing to that?

5 Is that correct, Mr. Lorenzana?

6 THE INTERPRETER: That is not true. For me, that
7 is not true: That one of my sons was working with Otto, and
8 I found out about it. That's true.

9 THE COURT: Okay. So is that a problem for the
10 Government?

11 All right. I would just simply put that he
12 doesn't agree to it.

13 MS. LISKAMM: Your Honor, the Government --
14 The facts that the Government has in the Statement of Facts
15 are facts that the Government would -- I believe the parties
16 agreed the Government would be able to prove at trial.
17 It is not an element of the offense. But I think that the
18 fact the Defendant was aware that one of his sons was
19 working with the Herreras and that there were seizures from
20 that would be sufficient.

21 THE COURT: All right. Then moving along here.

22 The other important thing is that you have your
23 charges related to 500 grams of cocaine, which goes to -- is
24 important, because it goes to the issue of the mandatory
25 minimums, which under -- with the 500 grams, the mandatory

1 minimum is five years and not the ten years, which would be
2 true with the five kilograms.

3 But you're also agreeing that the conspiracy, this
4 arrangement that covered this period that you were involved
5 with, along with other people -- and as I said, you may not
6 have known everything that they were doing, but all of it
7 was for the same purpose -- that the amount of drugs would
8 be over -- totally, would be over 450 kilograms.

9 Now, the importance of this is, in calculating the
10 advisory Sentencing Guidelines and various other matters
11 that relate to it, it doesn't affect the mandatory minimum
12 at all, but it does affect how the calculations are done.
13 Is that something you have talked about, Mr. Perez, with
14 him?

15 MR. PEREZ: Yes. We did discuss the consequences
16 of pleading to more than 450 grams. The Defendant did
17 understand that, because it only has an impact upon the
18 Guidelines and not upon the minimum mandatories.

19 THE COURT: Okay. Is that correct, Mr. Lorenzana?
20 Is it correct that you had this discussion with your lawyer?
21 Let me start with that.

22 (Pause.)

23 MS. LISKAMM: Your Honor, I just wanted to clarify
24 that it was 450 kilograms, not grams.

25 THE COURT: Did I say grams? I meant kilograms.

1 MS. LISKAMM: I believe Defense Counsel did.

2 MR. PEREZ: I think that the answer is, yes, we
3 did discuss it; and, yes, he did acknowledge that that was a
4 possibility.

5 THE COURT: Okay. So, Mr. Lorenzana, I have to
6 hear from you, not your lawyer. So did -- Is it correct
7 that you discussed that and what the importance of that was
8 from your perspective?

9 THE INTERPRETER: Yes, that's true.

10 THE COURT: And are you agreeing that you were
11 involved with over 450 kilograms of cocaine as part of a
12 member of this organization or conspiracy?

13 THE INTERPRETER: Yes.

14 THE COURT: All right. In terms of looking at the
15 elements of two or more persons -- and we're talking about
16 the Defendant -- he's indicated his sons and the Herreras --
17 he's agreed to -- that the cocaine was -- came from
18 Colombia, was stored on his property and that he knew that
19 it would then go to Mexico and enter the United States; that
20 he knew the unlawful purpose, which was to be imported into
21 the United States.

22 And in terms of -- I take it you understood,
23 Mr. Lorenzana, that this was an unlawful purpose; that this
24 was illegal, having the cocaine stored on your property,
25 knowing that it was, then, ultimately going to go to the

1 United States, that that was illegal.

2 Do you understand that?

3 (Pause.)

4 MR. PEREZ: Could you repeat the question, please.

5 THE COURT: It won't be exact, because -- It has
6 to be the Defendant joined in the agreement willfully.

7 So I understand he's agreed that cocaine came from
8 Colombia, was stored on his properties in Guatemala and that
9 he knew that this cocaine on his properties would be
10 transferred or sold to Mexican drug traffickers who would
11 then take it into the United States. He's agreed to that.

12 So what I want to know is whether he understands
13 that knowing that it was -- he had the cocaine; that it was
14 going to be -- that it was going to be transferred to the
15 Mexican traffickers, who would then import it into the
16 United States, that that was unlawful; in other words, that
17 that was not legal.

18 THE INTERPRETER: I didn't know that it was coming
19 into the United States.

20 THE COURT: So are you indicating that --
21 I thought you had agreed when we discussed this that the
22 Mexican drug traffickers who came and got the cocaine from
23 Guatemala, that they would be selling, importing it or
24 selling it in the United States, not you, but that you would
25 know that that's what the Mexicans were going to do.

1 THE INTERPRETER: No. The only people I knew were
2 Otto and Guillermo. The others I didn't know. The ones who
3 were in charge of everything were Otto and Guillermo.
4 Nobody else that I know of.

5 THE COURT: Otto and Guillermo Herrera, what was
6 their role, from your perspective, that you were aware of
7 it? What were they doing?

8 Okay. Before you translate, we need to make sure
9 Mr. Balarezo is still on.

10 DEPUTY CLERK: Mr. Balarezo?

11 MR. BALAREZO: I am on, Your Honor.

12 THE COURT: Okay.

13 THE INTERPRETER: No. They bought the drugs
14 there, that's true. Where they sent it, I didn't know.
15 What I -- That's why I was pleading guilty, because one of
16 my sons was working with Otto, and his name is Valdemar.

17 MR. PEREZ: Your Honor, I believe that if it was
18 foreseeable that other co-conspirators intended to send the
19 drugs to the United States, that is sufficient for purposes
20 of the plea. I don't think that he himself has to deal with
21 the Mexicans, and he himself has to --

22 THE COURT: I wasn't suggesting that he had to
23 deal with the Mexicans. All it was, was he aware that the
24 drugs were going to be, by others, imported into the United
25 States. He doesn't have to be the one importing it;

1 he doesn't have to know exactly who was going to do it.
2 He had agreed that, I thought, that they stored, and then
3 they were picked up by others who eventually gave it to the
4 Mexicans, who brought it into the United States.
5 Was he aware or did he assume that these drugs would be
6 going to the United States?

7 THE INTERPRETER: I will be truthful, and I am
8 pleading guilty for the reasons I previously stated.
9 I didn't know anything about the rest. Otto worked with one
10 of my sons. During the time, I became sick. In 2006, I had
11 a heart operation; and all during that time up to 2006,
12 I was sick, and I turned my property over to my children.

13 THE COURT: Okay. Did you authorize your son,
14 then, to act on your behalf in terms of what was happening
15 with, you know, with whatever the cocaine was.
16 You've admitted the cocaine was stored on your properties,
17 is that correct, at various points?

18 THE INTERPRETER: I turned those properties over
19 to my children in 2000 because I was sick; and because they
20 were my children, I turned over those properties to them.
21 Subsequently, because I'd already turned them over, they did
22 not have to ask me for permission or get my authorization.
23 I didn't know what they were doing. I am pleading guilty
24 because what has been done already cannot be undone, and the
25 properties were, indeed, in my name.

1 THE COURT: Now, I think we have a problem.
2 I mean, in terms of -- it would appear that he's not
3 indicating that he was, although I thought he had agreed to
4 it.

5 MR. PEREZ: Part of the problem is he wants to
6 plead guilty --

7 THE COURT: I understand that, but --

8 MR. PEREZ: -- and we --

9 THE COURT: -- I still have to have some basis to
10 accept. And the key to this is he's agreed -- I thought
11 that he was aware that they were using the property for
12 it -- for the drugs. This last statement makes it sound
13 like he didn't know it. The importing is obviously
14 something -- he doesn't have to have imported himself.
15 He doesn't have to have -- But he has to have some, you
16 know, thought that this is what was going to happen with the
17 drugs when others pick the drugs up and sent them forward,
18 even if he didn't know specifically.

19 MR. PEREZ: I think --

20 THE COURT: I think there has to be something
21 that's foreseeable, some aspect to it. He seems to be
22 indicating that his son and the Herreras worked together and
23 that he wasn't involved, and that -- I don't see how I
24 can --

25 MR. PEREZ: It has been rather difficult for

1 Mr. Balarezo and I to deal with some of his concerns.
2 We have -- You know, we knew that this could potentially
3 become an issue.

4 We have advised the Defendant that he had to admit
5 certain facts; and at the same time, the Defendant keeps on
6 insisting that he wants to plead guilty, so we need to
7 comply with at least his wishes regarding the entry of the
8 plea.

9 Now, if the Court wishes to reject the plea, that
10 is obviously --

11 THE COURT: I'll hear from -- what the Government
12 has to say, but I think some -- I guess he's somewhat
13 contradicted himself on the record. My understanding when I
14 asked him the question originally -- and the only reason
15 I was adding anything else is that the import, the 450
16 kilograms and that there had to be some importation
17 illegally into the United States, and that he would know
18 that this was illegal, period.

19 Now, what he said originally he agreed to, which
20 was that he had properties, that cocaine came from Colombia,
21 they were stored on his property, and that's -- the others
22 came to then pick up the cocaine, the Mexican traffickers or
23 whoever it was, and eventually the drugs came into the
24 United States. He agreed to that, okay? So it's not clear
25 to me now. He seems to be saying he handed the property

1 over and didn't have anything to do with it and didn't know
2 about it until afterwards, so which is it?

3 MR. PEREZ: If I can have one second -- let me --
4 on that issue.

5 THE COURT: All right.

6 MR. PEREZ: I think we need a clarification.

7 (Pause.)

8 MR. BALAREZO: Hello, Your Honor, am I still
9 connected?

10 THE COURT: They're talking.

11 MR. BALAREZO: Okay. I'm sorry. I didn't hear
12 anything. Again, I just wanted to make sure I didn't get
13 disconnected. Thank you.

14 THE COURT: I mean, one question would be is, he
15 kept the property in his name, and he said he gave it to
16 them for their use in 2000, I think he said. Did he at any
17 time during this period of time come to understand what they
18 were using the property for?

19 MR. PEREZ: And that's what I was discussing with
20 him. I think we're very close to dealing with that issue.
21 And I was going to ask the Court's indulgence, if we could.

22 The problem that we have with the Statement of
23 Facts is that I think that they have put a lot of factual
24 issues there that are not necessary in order to take a plea.
25 And perhaps if we could revisit this issue and prepare a new

1 Statement of Facts that the Defendant will be able to
2 allocute, then we may be able to conclude the plea.

3 I mean, the problem with this Statement of Facts
4 is that it's too comprehensive. It's not necessary in order
5 to be able to take this plea, and we would like the
6 opportunity to meet with the Defendant, and, perhaps to --

7 THE COURT: Okay. Government?

8 I mean, you could probably separate out what he
9 has to agree to from what you want to have in there, but --
10 and you can present some of this stuff, frankly, at a later
11 point at sentencing, but it's up to you.

12 MS. LISKAMM: Your Honor, we have been back and
13 forth with Defense Counsel about this. And this is
14 actually -- The Statement of Facts that has been presented
15 to the Court today is the revised version that Defense
16 Counsel requested back in June and was revised to Defense
17 Counsel's request back in June, and has been consistent
18 since that time.

19 So at this point -- And I don't believe --
20 It doesn't sound like there's a particular fact that the
21 Defendant is having issue with. This is more of a
22 conceptual issue. So at this point, the Government is not
23 prepared to revise the Statement of Facts.

24 THE COURT: All right.

25 So is there something from your perspective --

1 I guess we're still back to, is Mr. Lorenzana in agreement
2 that at some point, you know, even if he gave -- he had the
3 property in his name, he gave the property or allowed his
4 sons and the Herreras to use the property, did he become
5 aware of how they were using the property?

6 MR. PEREZ: Let me --

7 THE COURT: And the property, in other words, that
8 the property -- the cocaine was coming from Colombia, stored
9 on his property, was being, then, taken from there by other
10 traffickers with the idea that they -- eventually, they
11 would -- It was intended that they -- The drugs that were
12 stored on his property would go into the United States.
13 Those are basic. If we can come to an agreement on that,
14 that covers it.

15 MR. PEREZ: Although it's true that the Statement
16 of Facts was provided to us ahead of time, it is also true
17 that Mr. Balarezo and I have been in a position where the
18 Defendant is saying, "I want to take a plea, I'll sign
19 whatever you put in front of me," and that is the problem
20 that we are having.

21 Now, if we -- In order to comply with the Court's
22 concern, I think that if we could sanitize a little bit the
23 Statement of Facts and then deal with some of the concerns
24 that the Government had at sentencing, which is the proper
25 time to do it, then maybe we can take this plea.

1 I mean, the real problem we have is that the --

2 THE COURT: Well, why don't you identify for now
3 what specifically you would -- paragraph 4, presumably, he's
4 indicated, he doesn't agree. I've noted that it's not
5 something that's required under the elements as long as
6 they're not objecting to it. They have it in it.
7 That's what they view as their evidence, which is what
8 they're proffering.

9 He doesn't agree to it. It's the reason I go over
10 these. The Government presents it, people sign it, and then
11 when you go through it, you find that the Government has
12 evidence of it but the Defendant may not specifically agree.
13 I can accept those as long as they don't, you know -- as
14 long as the elements are there.

15 The elements still have to be that he has
16 knowledge of what's going on in terms of how his property is
17 being used, that the cocaine is going to other traffickers,
18 and that it's likely that they're going to -- it's going to
19 the United States; that he got paid; that he received some
20 money, and that's pretty much it. And that's what I'm
21 asking.

22 MR. PEREZ: I agree. And I think that if the
23 Defendant allocutes, I want him to hear this, to the effect
24 that with his knowledge, the co-defendants, including family
25 members, used his properties in order to facilitate the

1 warehousing of cocaine that was subsequently taken to Mexico
2 by other co-conspirators, and that it was foreseeable that
3 some of those drugs eventually end up in the United States,
4 I think that we have more than enough in order to take a
5 plea.

6 If you allow me to talk to the Defendant, and that
7 can be -- I think that that would be more than enough that,
8 with his knowledge, he allowed the co-conspirators,
9 including his son and potentially some of the other
10 co-conspirators, to use properties that he owned in order to
11 facilitate the illegal activity, which was the possession of
12 cocaine, the -- the transportation of cocaine from Colombia
13 to Guatemala and, thereafter, the transportation by other
14 co-conspirators. So the cocaine from Guatemala to Mexico
15 and the United States. If that is what -- Let me --
16 Allow me to talk to the Defendant, and I think --

17 THE COURT: And he was paid a fee.

18 MR. PEREZ: The fact that -- I don't think he has
19 to make money, so long as he knows that he's participating
20 and that his properties are being used for illegal purposes.

21 THE COURT: Okay. I'm just saying what's in here
22 and what's not.

23 MR. PEREZ: No. I understand.

24 But I think one can conspire without necessarily a
25 financial gain, so as long as he facilitated the activity

1 with the co-conspirator. But let me talk to the Defendant
2 if that can be --

3 THE COURT: Let me ask this way: Do you need more
4 time than just our having a little conversation here?
5 Do you want me to take a break and give you an opportunity
6 to talk in the back with him or, you know, we can come back
7 in a half an hour or something? Is this the biggest
8 stumbling block to this, or do we have major things in the
9 Plea Agreement itself?

10 MR. PEREZ: I think that this is the biggest
11 stumbling block. Obviously, the other matters are
12 sentencing issues that are likely to be mitigated in the
13 future.

14 The major stumbling block has always been his
15 involvement in the conspiracy. And if you give me one --
16 maybe we can take a five-minute break, and I'll talk to the
17 Defendant in the back. I think Mr. Balarezo will also
18 agree, since he's on the phone, that this has been the major
19 stumbling block that we have in terms of working out this
20 case from the outset. And this --

21 MR. BALAREZO: Your Honor, can I --

22 Your Honor, if I could interject. If you do take
23 a quick break, could Mr. Perez take the opportunity to give
24 me a call back. Maybe taking a five-minute break would be a
25 good idea.

1 THE COURT: All right. Why don't I suggest this:
2 I'm going to take more than that. I'll take a 20-minute
3 break so you have enough time. I would ask that we will
4 clear out of the courtroom, Government, et cetera. I will
5 leave Mr. Balarezo on the phone; you, Mr. Perez, you don't
6 need the interpreters, and the Marshal and your client, and
7 the three of you can talk.

8 MR. PEREZ: That would be fair.

9 THE COURT: And if you need, we will -- then
10 nobody will be in here except you and the Marshal and your
11 client and Mr. Balarezo on the phone. And see what, you
12 know, if there's something -- I understand he wants to plea,
13 but that doesn't work unless I've got -- if it's a straight
14 plea of guilty. The agreement is in exchange. He has to
15 agree to some facts that meet these elements. The Alford
16 which would be he didn't have to agree to the fact, just
17 that the Government had this evidence, I understand you
18 didn't want to do because -- and I don't know whether you
19 had this discussion with the Government or not -- you got
20 stuck pleading to the charge. Then he winds up with a
21 ten-year mandatory minimum, and there would be no way of
22 doing something else. I don't know.

23 Did you have any discussion with the Government
24 about an Alford that included the charge that is the 500
25 grams? Did you have a discussion?

1 MS. LISKAMM: Your Honor, that has come up, and
2 the Government is not amenable to that option.

3 THE COURT: All right. I can't make them do it.
4 So that's not an option. So it's either -- if there's going
5 to be a plea, there must be a truthful admission of some
6 conduct that meets what would be required. The Government
7 can have more evidence, but at least the core facts -- or he
8 pleads to the, you know, to the charge.

9 MR. PEREZ: Fair enough.

10 THE COURT: Okay. So let me -- let's count on --
11 our clocks are all different, but let's say it's -- 10 of
12 12. If you need more time, I may leave Ms. Patterson, if
13 you don't have a problem with that, because we need somebody
14 to -- she's not going to understand. It's all Spanish --
15 As I understand, she's not a Spanish speaker, am I correct,
16 Ms. Patterson?

17 DEPUTY CLERK: Right.

18 THE COURT: Okay. So I leave her. If you need
19 more time, let her know, she'll contact me, and we'll let
20 everybody else know.

21 MR. PEREZ: Fair enough.

22 THE COURT: All right. The parties are excused
23 for the time being.

24 And I don't -- And where will you be, Teresa?

25 THE INTERPRETER: In the interpreter's office.

1 (Recess from 11:32 a.m. to 12:03 p.m.)

2 THE COURT: All right. Where are we? He needs
3 his ear things.

4 MR. PEREZ: If we may approach?

5 THE COURT: Okay.

6 MR. PEREZ: I think that the -- We had the chance
7 to discuss the Court's concern with the Defendant, and
8 I believe that if you were to ask the questions again, he
9 now understands the import of the question and is willing to
10 answer them.

11 THE COURT: All right. Let me make it the broad
12 question. And we're talking about a period that would have
13 been from in and around March of '96 up to November of 2007.
14 As I've indicated, the conspiracy, you can be a member of
15 it, others can be a member of it, and you may not know what
16 everyone else is doing, but you all have to be moving
17 towards the same purpose, which, in this case, would be to
18 distribute, sell, transfer cocaine with the expectation,
19 ultimately, going through various different drug trafficking
20 groups, that would wind up in the United States. So as I
21 understand it, you would have had properties that you owned.
22 You've indicated that you allowed your son to use them;
23 is that correct?

24 THE INTERPRETER: Yes, yes, yes. It's true.

25 THE COURT: Okay. Is it correct that you would --

1 you knew that your son and others were using your property
2 to store cocaine that would have come from Colombia to
3 Guatemala. And then from Guatemala would have been picked
4 up by other drug-traffic organizations and gone to different
5 countries, ultimately into the United States. Would you
6 agree with that?

7 THE INTERPRETER: No. That I didn't know.
8 What I did know was my sons were working with Otto Herrera,
9 and I knew no more than that, because at that time I was
10 sick.

11 THE COURT: Well, what did you know about Otto
12 Herrera and the Herrera group as to what they were doing?

13 THE INTERPRETER: That they were working the
14 drugs, and they used to sell it to the Mexicans.
15 That's what I knew with that.

16 MR. PEREZ: Give me one second.

17 (Pause.)

18 THE INTERPRETER: So that's what -- why I'm
19 pleading guilty, you know.

20 But I knew that they were using the properties for
21 drugs. But I knew no more than that because, at the time,
22 I was sick and I was operated in Guatemala -- was sick for
23 six years, but I knew they were using the properties for
24 drugs, and as a reason, I'm pleading guilty to the crime.

25 THE COURT: So let's see if this is what --

1 You kept title to the property in Guatemala, but you allowed
2 your sons to use the property; is that correct?

3 THE INTERPRETER: Yes, that's correct.

4 THE COURT: And you knew that your sons were
5 working with Otto Herrera; is that correct?

6 THE INTERPRETER: It's true.

7 THE COURT: And did you know that your son -- And
8 your son and Otto Herrera were dealing with cocaine?

9 THE INTERPRETER: Yes, that is also true.

10 THE COURT: And did you know that your son was
11 using the properties that you had allowed him to use for the
12 cocaine?

13 THE INTERPRETER: That is also true.

14 THE COURT: Okay. And so you were also aware that
15 Otto Herrera, whom your son was associated with, was selling
16 the cocaine to the Mexicans; is that correct?

17 THE INTERPRETER: It's true.

18 THE COURT: And were you aware or did you expect
19 that the Herreras, in selling it to the Mexicans -- is that
20 the idea is that then the drugs would come into the
21 United States?

22 THE INTERPRETER: That part of it, no.

23 THE COURT: Would you -- If you didn't know
24 specifically -- so you knew that Herrera was dealing with
25 the Mexicans? Is that all you knew about what they were

1 doing?

2 THE INTERPRETER: That is so.

3 THE COURT: Did you know whether the Mexicans were
4 sending any drugs to the United States?

5 THE INTERPRETER: No, I didn't know anything.

6 THE COURT: Did you know -- Did your son or the
7 Herreras ever talk to you about the fact that the drugs were
8 ultimately coming into the United States?

9 MR. PEREZ: Give me one second. Let me consult.

10 THE COURT: Sure.

11 (Pause.)

12 THE COURT: Did you want to add something? Okay.

13 THE INTERPRETER: Well, yes. The only thing that
14 gave me some little cause for suspicion was the fact that
15 they were dealing with dollars, you know -- I mean, dollars
16 are only -- United States has them.

17 THE COURT: Okay. And who is the "they were
18 dealing with," the Herreras, your son, the combination?

19 THE INTERPRETER: No, no. It was, I mean, the
20 boys were the Herreras.

21 THE COURT: Okay. But were the Herreras dealing
22 with your son and yourself, giving you dollars?

23 THE INTERPRETER: No. With my sons.

24 THE COURT: Okay. So the Herreras, who are
25 Colombian; is that correct?

1 MR. PEREZ: No. They're Guatemalan.

2 THE INTERPRETER: No. They're Guatemalan.

3 THE COURT: Okay. So your sons were dealing with
4 the Herreras, and the Herreras were paying your son in
5 dollars; is that correct?

6 THE INTERPRETER: That is so.

7 THE COURT: Okay. And so from your perspective,
8 because they were paying in dollars, you assumed that they
9 were getting the dollars because, somewhere along the line,
10 the cocaine was being sold in the United States?

11 THE INTERPRETER: That is also true.

12 THE COURT: Okay. So what we have -- and correct
13 me if I am wrong -- What we have is, you owned property in
14 Guatemala, you allow your son to use the property, and you
15 know that your son is using the property, along with the
16 Herreras, for the storage of cocaine, and that the cocaine
17 then moves out of your property at certain points. It's not
18 stored there permanently.

19 You also know that the Herreras have been dealing
20 with, working with and selling to the Mexicans; and that the
21 Herreras, who made payments to your son that you're aware
22 of, paid in dollars, which would give you notice that the
23 Herreras were selling to the Mexicans, the Mexicans were
24 selling to the United States, because the money that was
25 coming back came in dollars, which meant that it came from

1 the United States. Would you agree with that?

2 THE INTERPRETER: Yes, I agree.

3 THE COURT: All right.

4 Government?

5 MS. LISKAMM: Your Honor, the Government finds
6 that acceptable.

7 THE COURT: All right. Bare bones, but I think it
8 will work.

9 Okay. I need to -- Let me just look at one other
10 thing.

11 Okay. So, in terms of the findings, we have two
12 or more persons, we have the Defendant, his sons, the
13 Otto Herrera. He was aware that his sons were working with
14 the Herreras, and that the Herreras were transporting the
15 cocaine from the property that he owned to Mexican drug
16 traffickers. He was aware -- I'm assuming you knew that
17 transporting cocaine was not legal; is that correct?

18 THE INTERPRETER: Yes, I knew that it was illegal.

19 THE COURT: All right. And the distribution of
20 cocaine was outside of the United States. It occurred in
21 Colombia. And the Defendant would have known that it was
22 intended into the United States simply because the source of
23 the money, which would have been any sale of the drugs, the
24 money would come back to pay those that were involved, and
25 they came back in dollars. He's agreed in terms of the

1 quantity.

2 And I think it's foreseeable, based on the
3 Herreras and their trafficking with the Mexicans and the
4 payments that they obviously received, the Herreras, which
5 were then passed on to his sons, that he was aware of --
6 that the cocaine was being imported into the United States
7 and sold, and that's -- and the proceeds were coming back as
8 dollars.

9 The Government's proffer is certainly more
10 fulsome. I think it's a sufficient bare-bones factual
11 proffer to accept it, so let's proceed with the rest of it.

12 If he wants to sit down, that may be easier for
13 them.

14 THE INTERPRETER: Thank you.

15 THE COURT: Okay. We have a Plea Agreement, a
16 letter. And did you have that letter read to you,
17 Mr. Lorenzana, in terms of what you agreed to?

18 THE INTERPRETER: Yes, yes.

19 THE COURT: All right. Let me go through some of
20 the key parts. I'm not going to go through all of it,
21 I'll just go through parts of it.

22 It sets out what you're pleading guilty to, which
23 we've gone over. It indicates -- And I'll put out what the
24 statutory penalties are for what your -- which means the
25 Court cannot sentence you to more than this. And the

1 statutory maximums are maximum of 40 years imprisonment,
2 a fine that cannot be more than \$5 million. And for
3 supervised release, which, if you remained in the community,
4 were not deported but were in the -- released into the
5 community, that the Court could give you supervised release
6 by the Probation Office while you're in the community up to
7 life. And you would not be able to withdraw your guilty
8 plea if you thought the sentence was too harsh.

9 Did you agree to all of that?

10 THE INTERPRETER: Yes, I agree.

11 THE COURT: And also there's a statutory mandatory
12 minimum, which means that the Court cannot sentence you to
13 less than this, and it's five years.

14 And then supervised release would be at least four
15 years. And supervised release is you're in the community
16 and you have to report, not commit new crimes, those kinds
17 of things. Is that what you've agreed to as well, as that
18 what's the penalties would be?

19 THE INTERPRETER: Yes, I agree.

20 THE COURT: Okay. And the -- Let me explain.
21 On the supervised release -- Supervised release places you
22 in the community. After you served a sentence of jail time,
23 you would be in this.

24 And they would have conditions. If you violated
25 those conditions -- you committed a new crime, something of

1 that nature -- then you could be revoked; in other words,
2 you could be put -- the Court could resentence you based on
3 a violation of your conditions, and a new sentence would be
4 calculated. And the important part is that you wouldn't get
5 credit for the time that you had already served.

6 Do you understand that?

7 THE INTERPRETER: Yes, I understand.

8 THE COURT: Okay. And there's a special
9 assessment of \$100 which you have to pay at some point.
10 The Court cannot waive it. You need to pay that.

11 Do you understand that?

12 THE INTERPRETER: I understand.

13 THE COURT: All right. And so the statutory
14 penalties I've just gone over are -- it would be an illegal
15 sentence to sentence you to more than what these maximums
16 are. Do you understand that?

17 THE INTERPRETER: Yes, I understand.

18 THE COURT: All right. In terms of the
19 sentencing, let me just indicate briefly what considerations
20 the Court has and what information the Court will receive.
21 I've already talked to you about the statutory maximums, and
22 I can't sentence you to more.

23 There's a statute that sets out, 3553(a),
24 what factors the Courts consider in sentencing. It's very
25 broad. You would look at the nature of the offense, you

1 would consider your background and personal characteristics,
2 any rehabilitation needs. You would also consider
3 punishment. You would consider deterrence to you;
4 in other words, to keep you from committing this crime
5 again, deterrence to others. Again, keeping you from --
6 making an example so that other people would not commit
7 these crimes. They're very broad factors that the Court has
8 to consider. And the other aspect in this -- and that's
9 sort of the broad categories.

10 I then have to calculate the advisory sentence
11 guidelines. There's a commission that Congress set up, and
12 they set out different ways of calculating what possible
13 sentencing ranges the Court can consider. I'm required to
14 do the calculation. I'm not required to sentence you
15 according to the calculation. I have to consider it.
16 They are advisory, so they're not mandatory.

17 Do you understand so far?

18 THE INTERPRETER: Yes, I understand, Your Honor.

19 THE COURT: So the first thing that'll happen is
20 that the Probation Office will prepare a presentence report,
21 which gives -- sets out the nature of the offense, discusses
22 your background information. They will do a calculation
23 under the Sentencing Guidelines. Your Counsel and the
24 Government will receive a copy. You, through Counsel, will
25 have an opportunity to review it. If you disagree with

1 either something factually or you disagree with the
2 calculation -- and that's true of the Government as well --
3 you can object. The Probation Office, then, will consider
4 your objection and either change the report or will indicate
5 they're not changing it and why they're not changing it.
6 And I, prior to sentencing you, will consider those
7 objections and will resolve them so that you know going into
8 sentencing what my position is on anything that either the
9 Government or you have objected to.

10 Okay. So in terms of the guideline calculations,
11 the first one is an offense -- and this relates to --
12 there's a number -- it's all numbers. Depending on the
13 quantity of drugs, there's a number, which is 38 -- No. 38,
14 based on the quantity of drugs, which is the 450 kilograms.

15 There would be -- Assuming you continue to accept
16 responsibility, there would be -- and are truthful with
17 everyone, there would be a reduction of three points.
18 There would be -- And you've agreed to this: That two
19 points would be added, because the drugs that came on to
20 your property were brought there, in some instances, by
21 aircraft. And you get four points, you've agreed to, as an
22 organizer and a leader.

23 MR. PEREZ: No, no. I don't think that's --

24 THE COURT: No. Is that all wrong?

25 MS. LISKAMM: Your Honor, those are on the

1 checklist, because those are specific character requests
2 that the Government would be moving for.

3 THE COURT: Okay. So is the -- So he's -- The 38
4 is correct?

5 MS. LISKAMM: Yes, Your Honor.

6 THE COURT: The three.

7 And then is the aircraft and the other? Is that
8 just what you're going to ask for?

9 MS. LISKAMM: We will be seeking those.

10 The only agreement of the parties is Base Offense
11 Level of 38; and assuming the Defendant continues to accept
12 responsibility, a three-level decrease before that.

13 THE COURT: Okay. Let me go back.

14 MR. PEREZ: Before that, it's not that they will
15 be seeking. Let me -- The last conversation we had on
16 Friday is that they may, not that they will.

17 THE COURT: Okay.

18 MR. PEREZ: Your Honor, I think that that should
19 be included. It's discretionary. They may. The one before
20 said that they will. And that applies to the four-level
21 enhancement. And that also applies to the issue of the
22 airplane that was used in connection with the offense.

23 THE COURT: Okay. So what we have is the --
24 What's agreed to between the two of you is the offense level
25 start, the base offense is 38 based on a quantity of drugs.

1 Assuming you continue to accept responsibility and are
2 truthful, there would be a minor -- there would be a
3 reduction of three points, which would put you at 35.

4 You should be on notice that the Government may or
5 may not ask for some additional points to be added.

6 The ones they've identified would be the aircraft was used
7 to bring the drugs to the property, and that you served as
8 an organizer or leader. The first thing will be Probation
9 will figure out whether they want to give those points.

10 You can object. The Government will either ask for it, and
11 either the Probation will put it in or not. But at any

12 rate, if they ask for it, then you will have an opportunity
13 to object, and then the Court will decide factually whether
14 there's any basis to include all those additional points.

15 But all you've agreed to is the 38, the minus three, which
16 puts you at 35. You should just be aware that they may be
17 asking for those additional points, so that would put you at
18 35.

19 Criminal history is convictions; it would be
20 convictions in the United States, and you have none.

21 So it would be 168 months to 210 months in terms of doing
22 it.

23 So do you understand this so far?

24 THE INTERPRETER: Yes, I understand.

25 THE COURT: Okay. Now, after the calculation is

1 done on the Sentencing Guidelines as to the offense level
2 and criminal history, the Court can then consider, and/or
3 can be requested, departures, which are very narrow.
4 They're all under the Sentencing Guidelines considerations.
5 And you can ask for upward departures, downward departures;
6 or you can ask for a variance, which means that it doesn't
7 fit into the departures, but it is something the Court can
8 consider under the very broad factors that the Court has to
9 consider in coming up with a fair and impartial -- a fair
10 and reasonable sentence.

11 And the way it's been set up is that you and the
12 Government can ask for departures or variances. You have an
13 option of doing so, as do they. I think that's correct.
14 And the variance is because this is -- these are advisory
15 Sentencing Guidelines, so the Court can go outside of the
16 Guidelines. I have to explain on the record why I'm doing
17 it, but you can do that. Do you understand all of that?

18 THE INTERPRETER: Yes, I understand.

19 THE COURT: All right. Then let me just put some
20 notes here.

21 Okay. Have you discussed, Mr. Perez, the issue of
22 the safety valve?

23 MR. PEREZ: We have discussed the issue of the
24 safety valve, and we have agreed on the Plea Agreement that
25 we will not seek the two-level reduction, because of the

1 safety valve.

2 THE COURT: All right.

3 Is that correct, Mr. Lorenzana? Did you
4 discuss -- It's something under the advisory Sentencing
5 Guidelines in terms of whether or not you would be able --
6 eligible for the two points. It also takes you out of the
7 mandatory minimum. But you'd have to be eligible.
8 And you've evidently negotiated with the Government and have
9 agreed not to request that, as I understand it;
10 is that correct?

11 THE INTERPRETER: Yes.

12 THE COURT: You would get the three points for
13 acceptance of responsibility, as long as you are truthful,
14 both to the Government, as well as the Probation Office and
15 the Court; you don't commit another crime; and you don't
16 interfere with the extradition process or the availability
17 of co-conspirators or witnesses, either outside of the
18 United States or in the United States. Have you agreed to
19 that?

20 THE INTERPRETER: Yes.

21 THE COURT: All right.

22 Have you also agreed to forfeit -- in other words,
23 to give up -- to the United States, right, title, and
24 interest in any assets that are in the United States or
25 someplace else? They could be cash, property, things of

1 value, including things that you will have transferred or
2 sold to a third party within the last ten years. And these
3 assets or this property has to be involved in or used or
4 obtained through the narcotics trafficking; in other words,
5 has to be associated with that. Do you understand?

6 THE INTERPRETER: Yes, I understand that.

7 THE COURT: Okay. And you've agreed to that?

8 THE INTERPRETER: I understand that.

9 THE COURT: Okay. And you understand and agree?

10 THE INTERPRETER: Yes, I understand it.

11 THE COURT: Okay. And you're going to consent to
12 these orders so that this property could be made available
13 to the U.S. Government or other third parties, and you're
14 not going to contest it; is that correct?

15 THE INTERPRETER: Yes, that's so.

16 THE COURT: And you've agreed to take whatever
17 steps are necessary to pass title either to the
18 United States or a third-country as part of this forfeiture
19 proceeding; is that correct?

20 THE INTERPRETER: Yes.

21 THE COURT: Okay. And you understand that we've
22 done a possible calculation just so that you're informed,
23 but at this point, I haven't determined the sentence, so you
24 don't know what my sentence is going to be. Obviously, I'm
25 not going to give you an illegal one, but we've told you

1 what the options are under the advisory Sentencing
2 Guidelines and the maximum terms, and you do know you have
3 the mandatory five years; is that correct?

4 THE INTERPRETER: Yes.

5 THE COURT: Okay. And we've talked about that
6 both you and the United States can dispute issues within the
7 presentence report and any requests that one side or the
8 other makes if you think there's errors or you disagree with
9 what's being requested; is that correct?

10 THE INTERPRETER: Yes, yes, I understand that.

11 THE COURT: Okay. And are you telling the Court
12 that there have been no threats that have been made against
13 you, and that you're pleading guilty voluntarily because
14 you're guilty as we've discussed, and that you're satisfied
15 with your legal advice that you have received from your
16 lawyers; is that correct?

17 THE INTERPRETER: That's right.

18 THE COURT: Okay. We've gone over the appeals,
19 and we've talked about the possible consequences for
20 immigration.

21 And do you understand that this binds only the
22 Narcotics and Dangerous Drug Section of the Criminal
23 Division of the United States Department of Justice.
24 It does not bind any other office or agency of the
25 U.S. Government or U.S. Attorney's Offices, and they remain

1 free to take actions should they do so. Do you understand
2 and agree to that?

3 THE INTERPRETER: Yes, I do.

4 THE COURT: Okay. And is this the complete
5 agreement? Are there any other parts of this that I've not
6 gone over that you think are part of this agreement?
7 Anything that I have not gone over that you think is --
8 should be brought up?

9 THE INTERPRETER: Your Honor, the interpreter is
10 asking that the microphone be closer.

11 Your Honor, I'm satisfied with what I've heard,
12 and I understand it.

13 THE COURT: All right. Then we've discussed the
14 advisory Sentencing Guidelines, and I want to make sure you
15 understand that I don't know what the guideline range will
16 actually be until I get the presentence report, and then
17 everyone is going to have an opportunity to review it, make
18 requests and/or make objections. Do you understand that?

19 THE INTERPRETER: I understand that.

20 THE COURT: Okay. I'm required to ask this:
21 Do you understand that parole has been abolished?
22 So there used to be the system, probably saw it from the old
23 movies, where you would get a sentence and then you could be
24 paroled into the community and complete your sentence by
25 serving it in the community. That's not true anymore.

1 Whatever sentence you get, you actually have to serve, minus
2 any deduction for good-time credit that the
3 Bureau of Prisons would give you. But you're not paroled
4 out in the sentence. The sentence you serve is what you
5 get. Do you understand that?

6 THE INTERPRETER: I understand that.

7 THE COURT: All right. Since you're not a
8 U.S. citizen, I don't have to be concerned about civil
9 rights: The right to vote you can't do, public office,
10 serve on a jury. The one that you don't have to be a
11 citizen for, and that is the right to possess any kind of
12 firearm. Whether you're a citizen or not, there's a federal
13 statute that if you've been convicted as a felon, which you
14 would be, that you cannot have a firearm or ammunition
15 legally, even if you lived in a state that somehow let you
16 do it. Under federal statute, you cannot.

17 Do you understand that?

18 THE INTERPRETER: I understand.

19 THE COURT: All right. Some questions about
20 voluntariness. Has anyone, including your lawyers, the
21 prosecutors, law enforcement, any other person you've come
22 in contact with since your arrest, promised you that if you
23 pled guilty, that you would necessarily get -- in
24 other words, be guaranteed a lighter sentence? The Court
25 can consider it and the acceptance of responsibility and

1 other things, but it doesn't guarantee a lighter sentence.

2 Do you understand that?

3 THE INTERPRETER: I understand.

4 THE COURT: Okay. So do I also understand that
5 nobody's promised you that you would be guaranteed a lighter
6 sentence; is that correct?

7 THE INTERPRETER: I understand.

8 THE COURT: Has anyone forced, threatened or
9 coerced you in any way into entering this plea of guilty?

10 THE WITNESS: No.

11 THE COURT: Anyone made any promises to you in
12 connection with you're guilty plea, including a promise of
13 what sentence you would receive, other than those in the
14 plea letter and what I've just talked about here in open
15 court?

16 THE INTERPRETER: No.

17 THE COURT: Has anyone made any promises to you as
18 to what sentence I'll impose in this case if I accept you're
19 guilty plea?

20 THE INTERPRETER: No.

21 THE COURT: Do you understand that at this time,
22 I don't know what sentence I'll impose in your case since I
23 haven't heard from the Probation Office and I haven't heard
24 from the lawyers and from you?

25 THE INTERPRETER: I understand.

1 THE COURT: Okay. Are you entering this plea of
2 guilty voluntarily and of your own free will?

3 THE INTERPRETER: Yes.

4 THE COURT: And are you entering this plea of
5 guilty because you're guilty as we have discussed it on the
6 record?

7 THE INTERPRETER: Yes.

8 THE COURT: And anything you don't understand
9 about the proceeding or your plea in this case?

10 THE INTERPRETER: Everything is clear.

11 THE COURT: All right. Are you ready to make a
12 decision about the plea that's in this case?

13 THE INTERPRETER: Yes.

14 THE COURT: All right.

15 Mr. Waldemar Lorenzana, how do you plead to
16 conspiracy to import 500 grams or more of cocaine into the
17 United States and to distribute 500 grams or more of
18 cocaine, intending and knowing that the cocaine will be
19 unlawfully imported into the United States; guilty or not
20 guilty?

21 THE INTERPRETER: I plead guilty, and I ask for
22 pardon from all of you.

23 THE COURT: All right.

24 Anything else from the Government?

25 MS. LISKAMM: No, Your Honor. Thank you.

1 THE COURT: Anything that the Court needs to know
2 about a defense or legal issues or something that you
3 considered or I might need to discuss with him about his not
4 asserting at this time because he's pleading guilty?

5 MR. PEREZ: No, ma'am.

6 THE COURT: All right.

7 I am satisfied that the Defendant, Mr. Lorenzana,
8 is fully competent, capable of making a decision,
9 understands the nature and consequences of what he's doing;
10 he's acting voluntarily of his own free will, and there's an
11 adequate factual basis for the plea; therefore, the plea is
12 accepted, and I find Waldemar Lorenzana guilty of Conspiracy
13 to Import 500 Grams or More of Cocaine into the
14 United States and to Distribute 500 Grams or More of
15 Cocaine, Intending and Knowing that the Cocaine will be
16 Unlawfully Imported into the United States.

17 All right. At this point, we'll set a date.

18 All right. The 70 days is what?

19 MR. PEREZ: Judge, we were going to ask that you
20 set this matter for the report first, and then we would ask
21 for an extended sentencing date; that we ask for at least
22 six months from today. So my suggestion will be to set an
23 initial report date in about 60, 70 days, see where we are,
24 and set the sentencing date thereafter.

25 THE COURT: I don't have a problem waiting on the

1 sentencing date, but my -- I guess my question is why such a
2 long period?

3 MR. PEREZ: There may be some reasons that we may
4 bring to the attention of the Court that may be significant,
5 and so, therefore, we were asking for a sentencing date a
6 little bit -- at least six months into the future.

7 THE COURT: Is the Government agreeable?

8 MS. LISKAMM: Your Honor, we have no objection.

9 THE COURT: Is it six months from now or after the
10 presentence report comes in?

11 MR. PEREZ: It could be six months from now.

12 THE COURT: So we're talking about next year,
13 February of next year?

14 MR. PEREZ: February of next year.

15 THE COURT: Okay. Why don't I set the presentence
16 report as a due date, bring you back after that, and then we
17 can set other dates or we can move it up.

18 I won't set it in February today. I'm going to
19 set -- When the presentence report comes in, I will, then,
20 set a status date just to see what's going on, to see
21 whether you're ready to at least get things to be filed.
22 You'll be in a better position at that point.

23 MR. PEREZ: That'll be fine.

24 THE COURT: What's the 70 days?

25 DEPUTY CLERK: October 27th.

1 THE COURT: All right.

2 Let me give it till October 31st.

3 And unfortunately, I didn't bring my calendar in.

4 We can set -- Can you look and see if I have
5 matters on the 7th, November 7th?

6 (Pause.)

7 THE COURT: Mr. Balarezo, are you still on?

8 MR. BALAREZO: Yes, I am, Your Honor.

9 THE COURT: Okay. I know you're in trial, so
10 I don't know whether you want to come to the status hearing.
11 Do we need to work with your schedule or can Mr. Perez come?
12 I'm sure you'll want to be here for the sentencing.

13 MR. BALAREZO: What date are we looking?

14 THE COURT: Is the 7th open?

15 DEPUTY CLERK: Yes.

16 THE COURT: Does Friday, November 7th, work?

17 MS. LISKAMM: That works for the Government.

18 MR. BALAREZO: This is just for the status, right,
19 Your Honor?

20 THE COURT: Yeah. It's just a status to figure
21 out at that point whether we want to set dates for people to
22 file things, et cetera.

23 MR. BALAREZO: Your Honor, that would work.
24 I'm scheduled to be in trial, but I do believe Fridays we'll
25 be off.

1 THE COURT: Okay. If we set it at 10:00, I mean,
2 does that work for your schedule?

3 MR. PEREZ: That will be fine.

4 THE COURT: The Government?

5 MS. LISKAMM: Yes, Your Honor.

6 THE COURT: November 7th at 10:00?

7 MR. PEREZ: That will be fine.

8 MR. BALAREZO: That's fine, Your Honor.

9 THE COURT: All right.

10 So we'll have the presentence report, which we'll
11 order October 31st, and then the status hearing November 7th
12 at 10:00. Make a decision at that point what else needs to
13 be done.

14 All right. Parties are excused then. Take care.

15 (Proceedings concluded at 12:46 p.m.)

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: September 26, 2014 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR