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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 18-11654  
Conference Calendar  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

November 13, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

MARTIN CALDERON-ORTALEJO, also known as Roy Martinez,

Defendant–Appellant.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:18-CR-49-1  
\_\_\_\_\_

Before JONES, HIGGINSON, and WILLETT, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Martin Calderon-Ortalejo has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Calderon-Ortalejo has not filed a response. We have reviewed counsel's brief and the relevant portions of the record reflected therein. We concur with counsel's assessment that the appeal presents no

\_\_\_\_\_  
\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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No. 18-11654

nonfrivolous issue for appellate review. Accordingly, counsel's motion for leave to withdraw is GRANTED; counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2.

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IN THE UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

UNITED STATES OF AMERICA

v.

MARTIN CALDERON-ORTALEJO

§  
§  
§  
§  
§

CASE NO. 18-11654  
ECF

MOTION TO WITHDRAW AS COUNSEL

TO THE HONORABLE JUDGES OF THE FIFTH CIRCUIT COURT OF  
APPEALS:

As explained in the Anders Brief I filed this same day, I have not been able to identify any plausible claims to raise on Appellant's behalf on this appeal. I therefore ask the Court to review my brief and the record. If there are no plausible issues, I ask that the Court relieve me and my office from further responsibilities on this case. If there are plausible issues, I ask the Court to give me an opportunity to file a brief addressing them.

Respectfully submitted,

/s/ Adam Nicholson

Adam Nicholson  
Assistant Federal Public Defender  
Northern District of Texas  
819 Taylor St., Room 9A10  
Fort Worth, Texas 76102  
Phone (817) 978-2753  
Adam\_nicholson@fd.org

ATTORNEY FOR APPELLANT

A

**CERTIFICATE OF SERVICE**

I, Adam Nicholson, hereby certify that on April 1, 2019, I filed an electronic copy of this motion through the Court's ECF system. Opposing counsel has therefore been served pursuant to Fifth Circuit Rule 25.2.5.

I further certify that I have reasonably attempted to communicate, in a manner and a language understood by the defendant: (i) that counsel has fully examined the record and reviewed the relevant law and there are no meritorious issues for appeal; (ii) that counsel has therefore moved to withdraw; (iii) that if granted, the motion will result in dismissal of the appeal; but (iv) the defendant has the right to file a response in English, opposing counsel's motion within 30 days of the filing of counsel's certificate of service. *See United States v. Moreno-Torres*, 768 F.3d 439 (5th Cir. 2014).

Finally, a copy will be sent to Martin Calderon-Ortalejo, SO No. 208794, Randall County Jail, 9100 S. Georgia, Amarillo, TX, 79118.

/s/ Adam Nicholson

Adam Nicholson

Assistant Federal Public Defender

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 32(a)(7) of the Federal Rules of Appellate Procedure, the undersigned certifies this motion complies with the type-volume limitations announced in Rule 27(d)(2) of the Federal Rules of Appellate Procedure.

1. Exclusive of the exempted portions announced in Rule 32(a)(7)(B)(ii) of the Federal Rules of Appellate Procedure and 5th Circuit Rule 32.2, the undersigned certifies that the Motion contains 125 words in proportionately spaced typeface.
2. The motion has been prepared in proportionately spaced typeface using MS Word 2013, Garamond 14 pt. Footnotes are in Garamond 12 pt.
3. The undersigned understand a material misrepresentation in completing the certificate, or circumvention of the type-volume limits states in Rule 32(a)(7) of the Federal Rules of Appellate Procedure, may result in the Court striking the motion and imposing sanctions against the person signing the motion.

/s/ Adam Nicholson  
Adam Nicholson

B

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

2018 JUL 11 PM 1:52

*PR*

UNITED STATES OF AMERICA

v.

MARTIN CALDERON-ORTALEJO  
a/k/a Roy Martinez

No. 5:18-CR-049-C

(supersedes indictment filed on May 31, 2018)

SUPERSEDING INDICTMENT

The Grand Jury Charges:

Count One

False Statement and Claim of United States Citizenship  
(Violation of 18 U.S.C. § 1015(e))

On or about August 23, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, did knowingly make a false statement and claim that he was, and at any time had been, a citizen and national of the United States, with the intent to obtain on behalf of himself, a State benefit and service, to wit: a driver's license issued by the State of Texas.

In violation of Title 18, United States Code, Section 1015(e).

B

Count Two  
False Representation of United States Citizenship  
(Violation of 18 U.S.C. § 911)

On or about August 23, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, did falsely and willfully represent himself to be a citizen of the United States.

In violation of Title 18, United States Code, Section 911.

B

Count Three

False Statement and Representation to a Department or Agency of the United States  
(Violation of 18 U.S.C. § 1001(a)(2))

On or about April 14, 2016, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, did willfully and knowingly make a materially false, fictitious, and fraudulent statement and representation, that is, defendant falsely represented to an agency within the Department of Homeland Security that he was a citizen of the United States by virtue of his birth in New Mexico on October 3, 1972.

In violation of Title 18, United States Code, Section 1001(a)(2).



B

Count Four

False Statement and Representation to a Department or Agency of the United States  
(Violation of 18 U.S.C. § 1001(a)(2))

On or about March 10, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, did willfully and knowingly make a materially false, fictitious, and fraudulent statement and representation, that is, defendant falsely represented to a federal agent with the Department of Homeland Security that he was a citizen of the United States by virtue of his birth in New Mexico on October 3, 1972.

In violation of Title 18, United States Code, Section 1001(a)(2).

B

Count Five

False Statement and Representation to a Department or Agency of the United States  
(Violation of 18 U.S.C. § 1001(a)(2))

On or about July 18, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, in a matter within the jurisdiction of the judicial branch of the Government of the United States, namely, the United States Probation Office for the Northern District of Texas, did willfully and knowingly make a materially false, fictitious, and fraudulent statement and representation, that is, defendant falsely represented to a United States Probation Officer that his true and legal name was "Roy Junior Martinez."

In violation of Title 18, United States Code, Section 1001(a)(2).

B

Count Six

**False Statement and Representation to a Department or Agency of the United States  
(Violation of 18 U.S.C. § 1001(a)(2))**

On or about August 8, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, in a matter within the jurisdiction of the judicial branch of the Government of the United States, namely, the United States Probation Office for the Northern District of Texas, did willfully and knowingly make a materially false, fictitious, and fraudulent statement and representation, that is, defendant falsely represented to a United States Probation Officer that his true and legal name was "Roy Martinez."

In violation of Title 18, United States Code, Section 1001(a)(2).

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Count Seven  
Use of a False Document  
(Violation of 18 U.S.C. § 1001(a)(3))

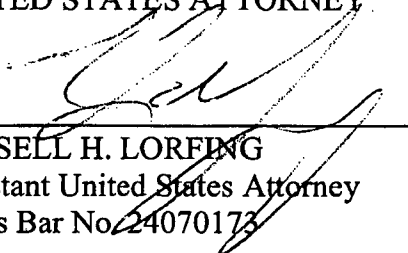
On or about August 8, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Martin Calderon-Ortalejo**, also known as Roy Martinez, defendant, in a matter within the jurisdiction of the judicial branch of the Government of the United States, namely, the United States Probation Office for the Northern District of Texas, did willfully and knowingly use a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, that is, defendant submitted to said United States Probation Office documents, that is, a temporary Texas driver's license and a Social Security card, in support of his false representation that his true and legal name was "Roy Martinez."

In violation of Title 18, United States Code, Section 1001(a)(3).

A TRUE BILL:

  
\_\_\_\_\_  
FOREPERSON

ERIN NEALY COX  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
RUSSELL H. LORFING  
Assistant United States Attorney  
Texas Bar No. 24070173

Martin Calderon-Ortalejo  
Superseding Indictment - Page 7

B

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Lubbock, Texas 79401

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF TEXAS  
3 LUBBOCK DIVISION

4 UNITED STATES OF AMERICA )  
5 VS. ) CAUSE NO. 5:18-CR-049-C  
6 MARTIN CALDERON-ORTALEJO )

7  
8 SENTENCING HEARING  
9 BEFORE THE HONORABLE SAM R. CUMMINGS,  
10 SENIOR UNITED STATES DISTRICT JUDGE

11 WEDNESDAY, DECEMBER 19, 2018  
12 LUBBOCK, TEXAS

A P P E A R A N C E S

FOR THE GOVERNMENT:

15 UNITED STATES ATTORNEY'S OFFICE  
16 1205 TEXAS AVENUE, SUITE 700  
17 LUBBOCK, TEXAS 79401  
BY: RUSSELL H. LORFING

FOR THE DEFENDANT:

18 FEDERAL PUBLIC DEFENDER'S OFFICE  
19 1205 TEXAS AVENUE, SUITE 506  
20 LUBBOCK, TEXAS 79401  
BY: DAVID SLOAN

21 INTERPRETER: RICHARD PERALES

22  
23 FEDERAL OFFICIAL COURT REPORTER: MECHELLE DANIEL, 1205 TEXAS  
24 AVENUE, LUBBOCK, TEXAS 79401, (806) 744-7667.

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY; TRANSCRIPT  
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

Mechelle Daniel, Federal Official Court Reporter  
(806) 744-7667

18-11654.227

Mechelle Daniel, Federal Official Court Reporter  
(806) 744-7667

18-11654.228

P R O C E E D I N G S

THE COURT: The Court calls for sentencing Cause Number CR5-18-049, United States of America vs. Martin Calderon.

MR. LORFING: The United States is ready, Your

Honor.

MR. SLOAN: The defendant is present and ready, Your Honor. He will need the services of an interpreter.

THE COURT: I'd ask the interpreter to raise his hand and be sworn.

(THE INTERPRETER IS SWORN BY THE COURTROOM DEPUTY)

THE COURT: The file reflects that a presentence report has been prepared. Mr. Calderon, have you gone over that report with your lawyer?

THE DEFENDANT: Yes.

THE COURT: The file also reflects that the government has filed a statement adopting the matters set forth in the presentence report. The defense has filed objections to the report.

Counsel, if you wish, you may address those objections.

MR. SLOAN: Your Honor, as to the-- I guess I'll start working through it backwards. As to my objection to paragraph 54, the addendum agreed with my objection and changed the guideline range appropriately there.

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In terms of paragraph 42 and 41, they're kind of-- they're kind of intertwined, and it basically goes to the conduct of the defendant.

And basically what happened is, Mr. Calderon represented himself as Roy Martinez, Jr. He did that for years and years in order to work and live in the United States. He was convicted in front of Judge Robinson for the Court--for the conviction that's referenced in the presentence report, and it was not difficult for Judge Robinson to ferret out the fact that he was misrepresenting himself.

At the same time that that was going on, he had a pending case for falsely representing his identity out of New Mexico. That case was dismissed.

At the end of his sentence, they teed him up for deportation, and he opted to contest his deportation, continuing to maintain that he was Roy Martinez, Jr. And for reasons that are completely unfathomable to me, Immigration didn't pursue the matter.

And so he wasn't deported, and so he's put on supervised release. He's meeting with these agents and he's saying, "I'm Roy Martinez," because apparently it seems to work for him. And ultimately, our local probation officers figure out that he's just lying, and that's the basis of this case here, this misrepresentation of citizenship.

He did procure some false documents, a false birth

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1 certificate at the beginning, but other than that, this has not  
 2 been a terribly complicated series of actions on his part. He  
 3 has been persistent. He has been a bit brazen. I think that  
 4 that is taken into account by the fact that he's not getting  
 5 credit for acceptance of responsibility in this case, and we're  
 6 not disputing that. He's getting the obstruction that we're  
 7 not disputing.

8 It's these additional guideline enhancers that this  
 9 is some sort of, you know, mad interference with the  
 10 administration of justice or that this was some terribly  
 11 complicated scheme that involved sort of a big complicated  
 12 thing. It wasn't. I mean, he did the basic thing of  
 13 misrepresenting his identity. It shouldn't have worked for  
 14 him, but it did, and he continued to do that for a long time.  
 15 But it wasn't terribly sophisticated. It wasn't terribly  
 16 complicated. The only thing he did was, he persisted in it.  
 17 And for that reason, we think that our objections  
 18 should be granted on those issues, and that's our position on  
 19 the PSR.

20 THE COURT: All right. Government's response?

21 MR. LORFING: Your Honor, in regards to  
 22 paragraphs 42 and 41, the government believes that the  
 23 defendant's conduct constituted substantial interference with  
 24 the administration of justice. As opposing counsel has  
 25 referenced, this case was born out of the false statements

1 provided. Mr. Calderon was ordered deported by Judge Robinson.  
 2 And in the months preceding that deportation, he told a false  
 3 statement to Homeland Security and signed a sworn affidavit  
 4 that he was not Martin Calderon but, instead, a U.S. citizen  
 5 named Roy Martinez.

6 Based on that representation, he was put on  
 7 supervised release, which is a significant expense, and put the  
 8 government to its burden. An investigation over several months  
 9 followed, culminating in myself and another assistant  
 10 United States attorney in my office, along with a member of the  
 11 Department of Homeland Security, traveling to the State of  
 12 New Mexico to interview witnesses. We requested resources by  
 13 the Federal Bureau of Investigation be spent to prepare for  
 14 trial. All of that could have been avoided by the defendant  
 15 simply telling the truth at the initial time that he was  
 16 scheduled to be deported.

17 For those reasons, Your Honor, I believe that it  
 18 was an appropriate enhancement, because there was an  
 19 unnecessary expenditure of substantial government resources and  
 20 court resources, and we'd ask that that be sustained.

21 MR. SLOAN: Judge, if I could--if I could just  
 22 respond.

23 THE COURT: All right, sir.

24 MR. SLOAN: I recognize that Mr. Lorfin made  
 25 extraordinary efforts in preparation for this trial. I think



1 that's commendable. I think he's dedicated to his job. He did  
2 a good job on this case.

3 That being said, the federal government has  
4 resources in New Mexico that also could have done that same  
5 investigation, and the fact that Mr. Lorfing chose to go the  
6 extra mile in preparation for this case does not make it an  
7 extraordinary case. And the guidelines account for that in the  
8 fact that he's not getting acceptance of responsibility, he's  
9 not getting the third point for preparation for trial.

10 THE COURT: All right, sir. The Court, having  
11 considered the defendant's objections, will sustain the  
12 objection to paragraph 54 and overrule the objections to  
13 paragraphs 41 and 42 for the reasons as set forth in the  
14 addendum and as argued by government's counsel this morning.

15 The Court then will adopt as the Court's findings  
16 those matters as set forth in the presentence report and the  
17 addendum, not only as it relates to the background data and  
18 information, but also the analysis made under the sentencing  
19 guidelines.

20 Does the government have any evidence or further  
21 argument?

22 MR. LORFING: Yes, Your Honor. Respectfully, the  
23 government would request that the Court dismiss all remaining  
24 counts and proceed to sentencing on Counts 4 and 5 of the  
25 superseding indictment.

1 THE COURT: All right. That motion is granted.

2 Does the defense have any evidence or further  
3 argument?

4 MR. SLOAN: Yes, Your Honor. I would ask the Court  
5 to consider making a placement recommendation to FCI Three  
6 Rivers.

7 THE COURT: Mr. Calderon, you have the right to  
8 address the Court this morning prior to the imposition of  
9 sentence. You are not required to say anything, should that be  
10 your choice, but the law does afford you that right and  
11 opportunity. Is there anything which you wish to state to the  
12 Court this morning?

13 THE DEFENDANT: No.

14 THE COURT: All right, sir. Mr. Calderon, you  
15 pleaded guilty to Count 4 and 5 of the superseding indictment,  
16 each count charging you with making a false statement and  
17 representation to a department or agency of the United States.  
18 You having pleaded guilty to those counts, I found you guilty,  
19 and I am now adjudging you guilty of those offenses.

20 Having adjudged you guilty, I am now going to  
21 impose the following sentence:

22 First, I'm ordering that you pay a special  
23 assessment of \$200. That's \$100 as to each count.

24 Next, I'm ordering that you be committed to the  
25 custody of the United States Bureau of Prisons to be imprisoned

1 for a term of 46 months as to Count 4, and 46 months as to  
2 Count 5, with the terms to run consecutive for each other, for  
3 a total of 92 months, with this sentence to be served  
4 consecutive to any further judgment entered in regard to the  
5 matter described on page 2 of the judgment.

6 I will recommend that you be placed at FCI Three  
7 Rivers.

8 Upon your release from incarceration, I'm ordering  
9 that you serve a 3-year term of supervised release as to  
10 Count 4, and a 3-year term of supervised release as to Count 5,  
11 with these terms to run concurrent with each other. You will  
12 get a copy of the judgment so you will know what the conditions  
13 of supervision are. There are some standard conditions, as  
14 well as special conditions.

15 The special conditions include the following:

16 First, you shall not illegally re-enter the  
17 United States if you are deported, removed, or allowed  
18 voluntary departure.

19 Next, you shall abstain from the use of alcohol and  
20 all other intoxicants during the term of supervision.

21 I will now state on the record the specific reasons  
22 for imposing the sentence I have just imposed.

23 As to the term of incarceration, I've imposed a  
24 term of 46 months as to each count, with the sentence to run  
25 consecutive to each other. I believe this sentence does

Mechelle Daniel, Federal Official Court Reporter  
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1 adequately address the sentencing objectives of punishment and  
2 deterrence.

3 The supervised release is imposed for the reason  
4 this does offer an additional potential sanction against the  
5 defendant should he subsequently be deported and then try to  
6 unlawfully come back into this country.

7 No fine is assessed.

8 The special assessment is imposed because the law  
9 mandates that it be.

10 Now, Mr. Calderon, you have the right to appeal, as  
11 authorized by law or as stated in your plea agreement. Should  
12 you choose to appeal, you must file your notice of appeal  
13 within 14 days from today. If you file that notice of appeal,  
14 you may also file a motion with the Court seeking permission to  
15 appeal at no cost to yourself, but rather at the cost of the  
16 government. Should you file that motion, I will take it under  
17 advisement and rule on it just as soon as I can.

18 I'm also entering an order of judicial removal,  
19 making findings as stated in this order. In this order, I'm  
20 ordering that the defendant be removed from the United States  
21 to Mexico upon his sentencing and which is to be effected upon  
22 completion of his term of incarceration. The defendant will  
23 get a copy of this order of removal.

24 You may stand aside.

25 (END OF HEARING)

Mechelle Daniel, Federal Official Court Reporter  
(806) 744-7667

18-11654.236

1 I, Mechelle Daniel, Federal Official Court Reporter in and  
2 for the United States District Court for the Northern District  
3 of Texas, do hereby certify pursuant to Section 753,  
4 Title 28, United States Code, that the foregoing is a true and  
5 correct transcript of the stenographically reported proceedings  
6 held in the above-entitled matter and that the transcript page  
7 format is in conformance with the regulations of the Judicial  
8 Conference of the United States.

9 /s/ Mechelle Daniel DATE FEBRUARY 6, 2019

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MECHELLE DANIEL, CSR #3549  
FEDERAL OFFICIAL COURT REPORTER

Mechelle Daniel, Federal Official Court Reporter  
(806) 744-7667 18-11654.237

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

2018 AUG 30 PM 3:32  
FILED  
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

No. 5:18-CR-049-C

MARTIN CALDERON-ORTALEJO  
a/k/a Roy Martinez

**PLEA AGREEMENT**

Martin Calderon-Ortalejo, also known as Roy Martinez, the defendant, David Sloan, the defendant's attorney, and the United States of America (the government) agree as follows:

1. **Rights of the defendant:** The defendant understands that the defendant has the rights:
  - a. to plead not guilty;
  - b. to have a trial by jury;
  - c. to have the defendant's guilt proven beyond a reasonable doubt;
  - d. to confront and cross-examine witnesses and to call witnesses in the defendant's defense; and
  - e. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** The defendant waives these rights and pleads guilty to the offenses alleged in Counts Four and Five of the Superseding Indictment, charging violations of 18 U.S.C. § 1001(a)(2), that is, False Statement and

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Representation to a Department or Agency of the United States. The defendant understands the nature and elements of the crimes to which the defendant is pleading guilty, and agrees that the factual resume the defendant has signed is true and will be submitted as evidence.

3. **Sentence:** The maximum penalties the Court can impose include (per count):

- a. imprisonment for a period not to exceed five years;
- b. a fine not to exceed \$250,000, or twice any pecuniary gain to the defendant or loss to the victim(s);
- c. a term of supervised release of not more than three years, which may be mandatory under the law and will follow any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release;
- d. a mandatory special assessment of \$100.00;
- e. restitution to victims or to the community, which is mandatory under the law, and which the defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone;
- f. costs of incarceration and supervision; and
- g. forfeiture of property.

4. **Immigration consequences:** The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses. The defendant understands this includes the offense to

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which the defendant is pleading guilty, and defendant has stipulated to removal as outlined herein. The defendant affirms that the defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea of guilty may entail, including the certain consequence of the defendant's automatic removal from the United States and future bar from re-entering the United States.

5. **Court's sentencing discretion and role of the Guidelines:** The defendant understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, but are advisory only. The defendant has reviewed the guidelines with the defendant's attorney, but understands no one can predict with certainty the outcome of the Court's consideration of the guidelines in this case. The defendant will not be allowed to withdraw the defendant's plea if the defendant's sentence is higher than expected. The defendant fully understands that the actual sentence imposed (so long as it is within the statutory maximum) is solely in the discretion of the Court.

6. **Mandatory special assessment:** Prior to sentencing, the defendant agrees to pay to the U.S. District Clerk the amount of \$200.00 in satisfaction of the mandatory special assessment in this case.

7. **Defendant's agreement:** The defendant shall give complete and truthful information and/or testimony concerning the defendant's participation in the offense of conviction. Upon demand, the defendant shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding the defendant's capacity to satisfy any fines or restitution. The defendant

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expressly authorizes the United States Attorney's Office to immediately obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. The defendant fully understands that any financial obligation imposed by the Court, including a restitution order and/or the implementation of a fine, is due and payable immediately. In the event the Court imposes a schedule for payment of restitution, the defendant agrees that such a schedule represents a minimum payment obligation and does not preclude the U.S. Attorney's Office from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation. The defendant understands that the defendant has a continuing obligation to pay in full as soon as possible any financial obligation imposed by the Court.

8. **Stipulation to Judicial Order of Removal:** The defendant agrees to the entry of a stipulated judicial order of removal pursuant to Title 8, United States Code, Sections 1228(c)(5) and 1227. Specifically, the defendant admits that he is a native and citizen of Mexico and that he is removable from the United States pursuant to Title 8, United States Code, Section 1227(a)(3)(D), as an alien who has falsely represented himself to be a citizen of the United States for any purpose or benefit.

a. **Voluntary Waiver of Rights:** After consultation with counsel and understanding the legal consequences of doing so, the defendant knowingly and voluntarily waives the right to the notice and hearing provided for in Title 8, United States Code, Section 1228(c)(2) and further waives any and all rights to appeal, reopen, reconsider, or

D

otherwise challenge this stipulated removal order. The defendant understands and knowingly waives his right to a hearing before an immigration judge or any other authority under the Immigration and Nationality Act ("INA"), on the question of the defendant's removability from the United States. The defendant further understands the rights the defendant would possess in a contested administrative proceeding and waives these rights, including the defendant's right to examine the evidence against him, to present evidence on his behalf, and to cross-examine the witnesses presented by the government. The defendant agrees to waive his rights to any and all forms of relief or protection from removal, deportation, or exclusion under the INA, as amended, and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: asylum; withholding of removal under Title 8, United States Code, Section 1231(b)(3); any protection from removal pursuant to Article 3 of the United Nations Convention Against Torture, including withholding or deferral of removal under 8 C.F.R. § 208; cancellation of removal; adjustment of status; registry; *de novo* review of a denial or revocation of temporary protected status (current or future); waivers under Title 8, United States Code, Sections 1182(h) or 1182(i); visa petitions; consular processing; voluntary departure or any other possible relief or protection from removal available under the



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Constitution, laws or treaty obligations of the United States. As part of this agreement, the defendant specifically acknowledges and states that the defendant has not been persecuted in, and has no present fear of persecution in Mexico on account of his race, religion, nationality, membership in a particular social group, or political opinion. Similarly, the defendant further acknowledges and states that the defendant has not been tortured in, and has no present fear of torture in, Mexico. The defendant hereby requests that an order be issued by this Court for his removal to Mexico. The defendant agrees to accept a written order of removal as a final disposition of these proceedings and waives any and all rights to challenge any provision of this agreement in any United States or foreign court or tribunal. The defendant hereby agrees to make the judicial order of removal a public document, waiving his privacy rights, including his privacy rights under 8 C.F.R. § 208.6. At the request of the U.S. Attorney's Office, U.S. Immigration and Customs Enforcement ("ICE") concurs with the government's request for a judicial order of removal. As a result of the above-referenced order, upon the completion of the defendant's criminal proceedings, including any sentence of incarceration and any court-imposed supervision, the defendant shall be removed to Mexico

- b. **Assistance in the Execution of Removal:** The defendant agrees to assist ICE in the execution of his removal. Specifically, the defendant

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agrees to assist ICE in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of the country or countries to which the defendant's removal is directed; and, to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant further understands that his failure or refusal to assist ICE in the execution of his removal shall breach this plea agreement and may subject the defendant to criminal penalties under Title 8, United States Code, Section 1253.

c. **Re-entry and Penalties:** The defendant concedes that the entry of this judicial order of removal renders him permanently inadmissible to the United States. He agrees that he will not enter, attempt to enter, or transit through the United States without first seeking and obtaining permission to do so from the Secretary of the Department of Homeland Security or other designated representative of the U.S. government. The Court's failure, for any reason, to enter the judicial order of removal, shall make this plea agreement, and the promises contained herein, null and void.

9. **Government's agreement:** The government will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty. The government will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. The government will dismiss, after sentencing, any remaining charges in the pending

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Indictment. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against the defendant or any property.

10. **Violation of agreement:** The defendant understands that if the defendant violates any provision of this agreement, or if the defendant's guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute the defendant for all offenses of which it has knowledge. In such event, the defendant waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, the defendant also waives objection to the use against the defendant of any information or statements the defendant has provided to the government, and any resulting leads.

11. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

12. **Waiver of right to appeal or otherwise challenge sentence:** The defendant waives the defendant's rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal the conviction, sentence, fine and order of restitution or forfeiture in an amount to be determined by the district court. The defendant further waives the defendant's right to contest the conviction, sentence, fine and order of restitution or forfeiture in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and

28 U.S.C. § 2255. The defendant further waives the defendant's right to seek any future reduction in the defendant's sentence (e.g., based on a change in sentencing guidelines or statutory law). The defendant, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at sentencing, (b) to challenge the voluntariness of the defendant's plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.

13. **Representation of counsel:** The defendant has thoroughly reviewed all legal and factual aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation. The defendant has received from the defendant's attorney explanations satisfactory to the defendant concerning each paragraph of this plea agreement, each of the defendant's rights affected by this agreement, and the alternatives available to the defendant other than entering into this agreement. Because the defendant concedes that the defendant is guilty, and after conferring with the defendant's attorney, the defendant has concluded that it is in the defendant's best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

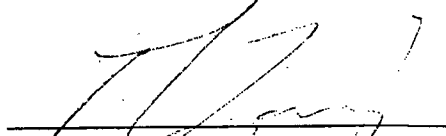
14. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties. This agreement supersedes any and all other promises, representations, understandings, and agreements that are or were made between the parties at any time before the guilty plea is entered in court. No promises or

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representations have been made by the United States except as set forth in writing in this plea agreement.

AGREED TO AND SIGNED this 30<sup>th</sup> day of August, 2018.

ERIN NEALY COX  
UNITED STATES ATTORNEY



RUSSELL H. LORFING  
Assistant United States Attorney  
Texas State Bar No. 24070173  
1205 Texas Avenue, Suite 700  
Lubbock, Texas 79401  
Telephone: 806-472-7351  
Facsimile: 806-472-7394  
E-mail: russell.lorfing@usdoj.gov



JEFFREY R. HAAG  
West Texas Branch Chief


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I have read or had read to me this plea agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.

  
MARTIN CALDERON-ORTALEJO  
Defendant

08-30-2018  
Date

I am the defendant's attorney. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge and belief, my client's decision to enter into this plea agreement is an informed and voluntary one.

  
DAVID SLOAN  
Attorney for Defendant

8/30/2018  
Date

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**ADDENDUM TO THE PRESENTENCE REPORT**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
UNITED STATES V. MARTIN CALDERON-ORTALEJO, A.K.A. ROY MARTINEZ  
DKT. 5:18-CR-049-C(01)**

COPY

**Judge: The Honorable Sam R. Cummings**

The probation officer certifies that the Presentence Report, including any revision thereof, has been disclosed to the defendant, defendant's attorney, and counsel for the government, and that the content of the Addendum has been communicated to counsel. The Addendum fairly states any objections they have made.

**By the Government**

The government has not filed an adoption or objections to the Presentence Report as of November 30, 2018.

**By the Defendant**

The defendant filed the following objections on November 14, 2018.

**I**

**OBJECTION TO PARAGRAPH 41:** The defendant objected to Paragraph 41 of the Presentence Report stating the three-level increase for substantial interference with the administration of justice is unwarranted and is additional punishment which is unnecessary.

**RESPONSE:** As detailed in paragraph 22 of the Presentence Report, the defendant, used the name Roy Martinez while in custody in Kansas, successfully had an immigration detainer removed and a False Claim to United States Citizenship charged dropped. Pursuant to USSG §2J1.2 app. note (1) this qualifies as "a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence..." which is conduct that qualifies as substantial interference with the administration of justice.

The Presentence Report outlines the defendant's attempts to assume the identity of Roy Martinez and gain legal access to reside in the United States for years. It is true the government had to prepare for trial in this case; however, the investigation by immigration officials and the U.S. Attorney's office went beyond "preparing for trial." The prosecutor and agents flew to New Mexico to interview witnesses in preparation for the trial and, additionally, purchased airline tickets for the witnesses to attend trial and testify regarding the defendant's identity. The preparation for trial continued until a letter written by the defendant, and intercepted by authorities, revealed the defendant's true identity. The defendant, only then, pleaded guilty the Friday before the trial was to begin the next week. Had the defendant not pleaded guilty, the government would have had to fly in witnesses from New Mexico to testify, regarding the defendant's identity. This unnecessary expenditure of substantial governmental or court resources also qualifies as substantial interference with the administration of justice.

The probation officer asserts the guideline application has been correctly applied and should not be changed.

## II

**OBJECTION TO PARAGRAPH 42:** The defendant objected to Paragraph 42 of the Presentence Report and asserts that the 2-level increase for being extensive in nature or involved the extensive destruction or fabrication of records or documents was not particularly complicated.

**RESPONSE:** The Presentence Report outlines the time period, which could have begun as early 1997, when the defendant began to use the alias name Roy Martinez. The defendant continued to present himself as Roy Martinez, even going so far, as to obtain a driver license from the Department of Motor Vehicles in Lubbock, Texas on August 23, 2017. This deceptive behavior continued for approximately 20 years. As such, the offense was extensive in scope, planning, and preparation.

The probation officer asserts the guideline application has been correctly applied and should not be changed.

## III

**OBJECTION TO PARAGRAPH 54:** The defendant objected to Paragraph 54 of the Presentence Report and indicates that the application of the multiple count adjustment should not be applied and the should be grouped in a single count.

**RESPONSE:** Upon further review, the probation officer concurs the defendant's counts of conviction should be grouped pursuant to USSG §3D1.2(b). As such, the Presentence Report should be amended as follows:

Paragraphs 47 through 57 should be deleted.

60. **Total Offense Level:**

19

105. **Guideline Provisions:** Based upon a Total Offense Level of 19 and a Criminal History Category of III, the Guideline Imprisonment Range is 37 months to 46 months, which is in Zone D of the Sentencing Table. The minimum term shall be satisfied by a sentence of imprisonment. USSG §5C1.1(f).

119. **Guideline Provisions:** The fine range for this offense is from \$10,000 to \$100,000. USSG §5E1.2(c)(3).

Respectfully submitted,

*Carol A. Meschwitz*

Carol A. Meschwitz  
U.S. Probation Officer  
806-472-1147  
November 30, 2018

APPROVED:

*Jacqueline Fontenot*

Jacqueline Fontenot  
Supervising U.S. Probation Officer  
806-472-1146



HAND WRITTEN NOTES FROM MR. SLOAN WITH REGARD TO MY POSSIBLE SENTENCE.  
 Martin Calderon-Ortalejo - Reg. No. 25031-051  
 Case No. 5:18-CR-00049-C(01)

E

III				
12 +2 <del>14</del> 16	2J	12	15-21	<del>15-21</del> 21-27
11 +2 <del>13</del> 15	2L	11	12-18	18-24
10 +2 <del>12</del> 14	2L2.2	10	10-16	15-21
			(culpable)	(Juisio)

3 posibilidades -

- 21-27
- 24-30
- 27 -33

This is from a legal visit I received from Mr. David Sloan, my Defense Counsel, before I was sentenced and before accepting the government's plea agreement.

This was explained as to the different scenarios and how important it would be for me to accept the plea. The III refers to the Criminal History Category.

2J, 2L and 2L2.2 are the tables from the Sentencing Guidelines, as I

understood him. "Culpable" means pleading guilty. "Juisio" meant if I went to trial.

Cargos  
 (4)5

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AUGUST 27, 2019

Mr. Adam Nicholson, Attorney-at-Law  
Assistant Federal Public Defender  
OFFICE OF THE FEDERAL PUBLIC DEFENDER  
P.O. Box 17743  
Forth Worth, TX 76102

Re: In the matter of USA v. Martin Calderon  
Criminal Case No. 5:18-cr-00049-C(01)  
Appeal Case No. 18-11654

Dear Mr. Adam Nicholson,

I received your letter dated August 13, 2019 containing copies of all transcript hearings related to the above-referenced case.

I appreciate your expedited response and your disposition to communicate with me if I have any questions related to my case. In fact, I would like to ask you a few questions about my appeal case in general and looking into the future.

As you may recall, Mr. David Sloan was my Counsel until one day that he notified me that you would be the new counsel assigned to my Appeal Case. Thank you for taking my case and continuing its review. However, I was very surprised when you filed the Motion to Withdraw because you did not find any errors made by the government or the court. I was surprised because to me, and error of some kind must have occurred in order to receive a sentence of 92 months in prison instead of what Mr. Sloan calculated for me when I accepted the plea agreement and followed all the instructions Mr. Sloan asked me to follow during the sentencing proceedings. To be more specific, I am attaching to this letter a copy of the hand written paper given to me by Mr. Sloan in one occasion when he visited me in the county jail. In that paper, he wrote three possible scenarios, including one if I went to trial by jury, and in all of these scenarios we were not looking at more than 33 months. Even for my Criminal History Category of III, the outcome explained to me by Mr. Sloan was totally different from what the court ordered. This outcome crushed me to the point that to this day I still do not understand what went wrong. Mr. Sloan told me that he had plenty of resources for an appeal and that he would request additional time to file a good brief.

After Mr. Sloan's letter indicating that you would be taking over my Appeal Case, I never heard from him again. Therefore, the last communication or message I possess regarding my Appeal Case is that we have strong arguments to challenge the District Court's decision in relation to my sentence.

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Mr. Nicholson, I was able to read your Ander's brief and your request to withdraw from further representation. This was the reason why I decided to contact the Court of Appeals to let it know that I wish, with my limited knowledge of the law and poor English, to proceed pro se and explain in the best way possible my reasons for appealing my sentence. Even though my case seems to be in complete compliance with federal criminal procedures and the United States Constitution, something did happen that deserves revision. Did Mr. Sloan fail to detect some important issues in the PSI report? Did the Court sentence me in excess of what was really necessary by ordering both sentences to run consecutively? Is there a sentence disparity that can not be reasonably explained other than an intention to punish me harder and longer than other defendants under siminal conditions? Did I act in a way that disrespected the court or the law in any way? Should I bring these issues on a 2255 motion claiming ineffective assistance of counsel?

Probably some of these questions you can not respond at the present moment, but I wish I had had an opportunity to speak with you when you took over the Appeal Case in order for me to understand why the outcome of my case was a lot worse than anticipated by Mr. Sloan and myself by such a wide margin. There ought to be something that we can appeal! This is what I was lead to beleive and to this day, I still do not have a clear explanation to why the court sentenced me to 92 months for two instances of false representation to government agencies both of them under the same name and papers, and both of them not too far apart as to when they occurred.

Mr. Nicholson, additionally to the questions I am making in previous paragraphs, I would like to know if you find normal and acceptable that my Total Offense Level was enhanced by three levels for substantial interference and another two levels for beings extensive in nature or involved the extensive destruction or fabrication of records when at the same time I was added an additional 12 months to my sentence for probation violation. My conduct during the sentencing proceedings was of complete cooperation with federal authorities, and I followed all the instructions provided by Mr. Sloan. When I say "all instructions", I mean by signing all the documents he provided and not even making an statement at my sentencing hearing in order not to talk too long or say something that the Judge would not like. Therefore, if I seems that I did not object to any of the critical issues during my sentencing phase, it is not that I agreed with all of the things that the District Attorney said. It is that I placed full confidence on the work being done my Defense Counsel Mr. Sloan, and the key aspect that I took into consideration was his continued assurance that my sentence would be in the vicinity of what he had shown me in terms of months under different scenarios. We already know that this was not the outcome and I do not understand, or have been explained in detail, why that was the case.

This is the reason why I consider that there are grounds to challenge the Court's decision with regard to my sentence. There has to be an explanation as to why I received a sentence of 92 months, instead of the 22-33 months that my Defense Counsel was predicting, and if there's possibility that the Judge

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acted in a way that is not consistent with any other Judge or Court that would place fair and judicial consideration to the case they are presiding.

I understand that your obligation is to identify all grounds for making a good appeal case. Although it may seem that the District Court complied with all existing regulations in terms of my "guilty plea" and that I knowingly supported it, there is something "not right" in the sentence imposed to me. I am not just talking as a Defendant who does not agree with the sentence. I am talking as a defendant who followed all instructions provided by his Defense Counsel and District Attorneys, and still, received a punishment that was a lot longer, a lot harder, than anticipated in a guilty plea agreement. How can this possibly be the case when based on the charges imposed to me, if the sentence would have been concurrent, the term of imprisonment would be of 46 months for the crime committed. The use of the name of "Roy Martinez, Jr." was a single name used in both occasions for which I was indicted. I accepted that it was wrong and I acknowledge that I was still using that name as an attempt to continue in the United States and be able to work in this country. Does it make sense to be sentenced to two consecutive terms of the use of the same false identification?

Thank you in advance, Mr. Nicholson, for taking the time to read this letter, and most importantly, for responding to my questions in the most complete way possible. I also hope that you can reconsider your decision and decide to stay as my defense attorney not only for this appeal, but for any other appeal proceeding or Motions for a reduction in Sentence.

Sincerely and respectfully,

Martin Calderon  
Martin Calderon-Ortalejo  
Reg. No. 25031-051  
Great Plains Correctional Facility  
P.O. Box 400  
Hinton, OK 73047

Enclosed: Sheet of paper hand written by Defense Counsel Mr. David Sloan before my plea agreement and sentence (around July-August 2018).