APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11011
Non-Argument Calendar

D.C. Docket No. 1:19-cr-00077-LMM-RGV-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDUARDO LOPEZ, a.k.a. Lalo,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(November 19, 2020)

Before JORDAN, GRANT, and ED CARNES, Circuit Judges.

PER CURIAM:

Eduardo Lopez pleaded guilty to conspiracy to possess with intent to distribute at least 500 grams of methamphetamine. Lopez appeals his conviction and

sentence, contending that the district court erred by disqualifying his original counsel and by rejecting his request for release based on his allegedly unlawful post-arrest detention. The government moved to dismiss Lopez's appeal or for summary affirmance, contending that he waived his right to appeal the district court's rulings on those two issues when he entered an unconditional guilty plea.[1]

Summary disposition is proper when "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case." Groendyke Transp., Inc. v. Davis, 406 F.2d 1158, 1162 (5th Cir. 1969). We review de novo whether a defendant's guilty plea waives his right to appeal adverse rulings of pretrial motions. United States v. Patti, 337 F.3d 1317, 1320 n.4 (11th Cir. 2003).

We have long held that "[a] defendant's plea of guilty, made knowingly, voluntarily, and with benefit of competent counsel, waives all nonjurisdictional defects in that defendant's court proceedings." United States v. Yunis, 723 F.2d 795, 796 (11th Cir. 1984). See also Class v. United States, 583 U.S. ___, 138 S. Ct. 798, 805 (2018) ("A valid guilty plea also renders irrelevant—and thereby prevents the defendant from appealing—the constitutionality of case-related government conduct that takes place before the plea is entered."); Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal

[1] The government also moved to stay briefing pending our resolution of its motion. We will deny that motion as moot because we summarily affirm Lopez's conviction and sentence.

defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.").

In light of that authority there is no substantial question that Lopez pleaded guilty knowingly and voluntarily and as a result waived the claims he presents on appeal. Id. Lopez confirmed at his plea colloquy that he understood that he was under oath, that he was waiving his constitutional rights, and the consequences of pleading guilty. There is a "strong presumption" that a defendant who enters a plea after proceedings that follow the requirements of Fed. R. Crim. P. 11 does so knowingly and voluntarily. United States v. Gonzalez-Mercado, 808 F.2d 796, 800 & n.8 (11th Cir. 1987). Lopez has not rebutted that strong presumption.

Although a defendant who pleads guilty can preserve appellate review of a non-jurisdictional defect "by entering a 'conditional plea' in accordance with Fed. R. Crim. P. 11(a)(2)," United States v. Pierre, 120 F.3d 1153, 1155 (11th Cir. 1997), Lopez did not do that. A defendant who seeks to enter a conditional plea must obtain consent from the government and the court, and he must reserve the right to appeal in writing. See Fed. R. Crim. P. 11(a)(2). Lopez did not do any of those things.

Because there is no substantial question that Lopez waived his claims when he entered an

unconditional guilty plea, we **GRANT** the government's motion for summary affirmance and **DENY** as moot the motion to stay the briefing schedule.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
v.	:	CRIMINAL ACTION NO. 1:19-CR-o0077-LMM-RGV
FREDRICO PACHECO-ROMERO, *et al.*,	:	
Defendants.	:	

ORDER

(Filed Apr. 18, 2019)

This case comes before the Court on Defendants' Objections [81] to the Magistrate Judge's disqualification order, which disqualified all six Defendants' current counsel from representing them due to actual and potential conflicts of interest. See Mag. Order, Dkt. No. [76].

Federal Rule of Criminal Procedure 59(a) dictates that a Court may refer to a magistrate judge any matter that does not dispose of a charge or defense. Fed. R. Crim. P. 59(a). A party may object to the magistrate judge's determination on a non-dispositive issue, but the district court will only modify or set aside the determination if it is contrary to law or clearly erroneous. Id. As the Magistrate Judge's disqualification ruling is non-dispositive, the Court will review it under Rule 59(a).

This Court finds that the Magistrate Judge's Order is neither contrary to law or clearly erroneous. Defendants' main argument is an apparent misunderstanding regarding the types of conflicts the Court may consider in assessing whether "there is good cause to believe that no conflict of interest is likely to arise," Fed. R. Crim. P. 44(c)(2), as Defendants complain that the "Magistrate imposed the extraordinary remedy of disqualification based on purely theoretical conflicts of interest." Obj., Dkt. No. [81] at 2.

However, as the Supreme Court and the text of the rule itself confirms, the question is whether the conflict is "likely" or whether there is a "serious potential" for conflict, not whether the conflict is actual or provable at the time of disqualification. Fed. R. Crim. P. 44(c)(2); Wheat v. United States, 486 U.S. 153, 164 (1988) ("The District Court must recognize a presumption in favor of petitioner's counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict."). As it is evident from the record that there are at least serious potential conflicts – if not actual ones, the Court is convinced that the Magistrate Judge correctly considered the conflict potentials in this case and determined that waivers were not an appropriate remedy. Thus, Defendants' Objection [81] is **OVERRULED**.

IT IS SO ORDERED this 18th day of April, 2019.

/s/ Leigh Martin May
Leigh Martin May
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

UNITED STATES OF AMERICA	CRIMINAL CASE NO.
v.	1:19-cr-00077-LMM-RGV
FREDRICO PACHECO-ROMERO, *et al.,*	

ORDER

(Filed Mar. 22, 2019)

Defendants Fredrico Pacheco-Romero ("Pacheco-Romero"), Carlos Martinez, Eduardo Lopez, Victor Manuel Sanchez, Jorge Mendoza-Perez, and Santana Cardenas, collectively referred to as "defendants," are charged with conspiring to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846. [Doc. 41].[1] Attorneys Jerome D. Lee ("Lee") and S. Eli Bennett ("Bennett")[2] of the law firm Taylor, Lee & Associates, LLC, have represented all six defendants since the commencement of the case

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[1] The listed document and page numbers in citations to the record refer to the document and page numbers shown on the Adobe file reader linked to the Court's electronic filing database, CM/ECF.

[2] Bennett's name is listed on the docket as "Stephen Elijah Brown-Bennett," but he uses the name "S. Eli Bennett" in court and on pleadings. See [Doc. 38].

upon the filing of a criminal complaint. See [Docs. 1, 2, 5, 8, 11, 14, 17, 38, & 60].[3] After Lee and Bennett appeared as counsel for the defendants at arraignment, [Docs. 64-69], the Court scheduled a hearing pursuant to Rule 44(c) of the Federal Rules of Criminal Procedure to inquire about the propriety of the joint representation of the defendants, [Doc. 74], and the government subsequently filed a motion to disqualify counsel, [Doc. 70]. Following the hearing on March 14, 2019, [Doc. 72], Lee and Bennett filed a response to the government's motion to disqualify, [Doc. 73], and the government has filed a reply in support of its motion, [Doc. 75]. For the reasons that follow, the government's motion to disqualify Lee and Bennett, [Doc. 70], is **GRANTED**.

Rule 44(c) (2) of the Federal Rules of Criminal Procedure requires the Court to "promptly inquire about the propriety of joint representation," and to "personally advise each defendant of the right to effective assistance of counsel, including separate representation." Fed. R. Crim. P. 44(c)(2). "Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel." Id. "'Appropriate measures' include requiring 'that an attorney who represents two co-defendants cease his representation of

[3] On February 15, 2019, Allison Dawson of the Federal Defender Program was appointed to represent Pacheco-Romero for his initial appearance only, [Docs. 20 & 21], and he was granted time to retain counsel of his choice, [Doc. 22]. On February 21, 2019, Bennett filed a notice of appearance on behalf of Pacheco-Romero. [Doc. 38].

either or both of them." United States v. Garner, Criminal No. 12-cr-65-JMH, 2013 WL 99396, at *2 (E.D. Ky. Jan. 7, 2013) (quoting United States v. May, 493 F.Supp.2d 942, 944 (S.D. Ohio 2004)).

The Court conducted the inquiry required by Rule 44(c) on March 14, 2019, including an *ex parte* conference with counsel and defendants to explore the propriety of joint representation of all six defendants in this case. [Doc. 72]. Each defendant was informed of his right to separate representation by counsel of his choice and the opportunity to retain another attorney or to have court appointed counsel if he could not afford to hire his own attorney. [Id.]. After the Court discussed with the defendants various examples of conflicts of interest that could occur with joint representation, each defendant affirmed in open court and by executing a written waiver that he wanted to continue to be represented by Lee and Bennett and their firm. See [Doc. 73-1 at 4-21].

Although a defendant has a presumptive right to be represented by the attorney of his choice, "this right is not absolute, but is qualified by the judiciary's 'independent interest in ensuring that the integrity of the judicial system is preserved and that trials are conducted within ethical standards." United States v. Henry, 307 F. App'x 331, 334 (11th Cir. 2009) (per curiam) (unpublished) (quoting United States v. Ross, 33 F.3d 1507, 1523 (11th Cir. 1994)). Thus, counsel may be disqualified from representing a defendant where an actual, or even potential, conflict of interest is present. Id. (citations omitted); see also Wheat v. United States,

486 U.S. 153, 164 (1988) ("[A] showing of a serious potential for conflict" overcomes presumption in favor of defendant's counsel of choice.).

The Court cannot find that there is good cause to believe that no conflict of interest is likely to arise from the joint representation in this case and concludes that disqualification of Lee and Bennett and their firm as counsel for all defendants is required because there is a serious potential, if not actual, conflict of interest in their joint representation of all six defendants, who are charged in a drug trafficking conspiracy. The criminal complaint in this case describes the differing roles the defendants allegedly played in the drug trafficking conspiracy, [Doc. 1], which creates a significant potential conflict of interest from joint representation because each defendant does not stand on equal footing with respect to their potential culpability and opportunity to negotiate a resolution of the pending charges against them. For example, as commonly occurs in conspiracy cases, the government may be willing to offer a favorable plea deal to one or more defendants in return for their cooperation and testimony against co-defendants, and Lee and Bennett could not fulfill their duty to effectively represent all of the defendants by advising one defendant to take a plea deal that would be detrimental to their other clients. United States v. Dempsey, 724 F. Supp. 573, 578 (N.D. Ill. 1989) (citation omitted) ("When one attorney represents multiple defendants, however, plea bargain negotiations are fraught with danger of conflicts of interests.").

Lee and Bennett suggest that there is a tactical advantage to joint representation during the pretrial portion of the case so that defendants may more effectively challenge the search warrants used during the investigation, see [Doc. 72; Doc. 73 at 7-9], but the very decision of whether to file pretrial motions or pursue a potential plea agreement has very real consequences in this district as the United States Attorney's office regularly reserves the most favorable plea terms for those defendants who do not file pretrial motions. Thus, even the pretrial strategy being jointly pursued by these six defendants presents a strong potential conflict of interest given their different alleged roles and levels of exposure and corresponding potential opportunities to negotiate a favorable plea agreement.[4] The joint representation of individuals with differing alleged participation in the charged conspiracy "could force defense counsel to forego certain strategic options

[4] The criminal complaint indicates that law enforcement agents executed search warrants at six different locations that were associated with different defendants or their relatives, [Doc. 1 at 17-18 ¶ 33], and the amount and type of evidence recovered during the searches varied at each location, [id. at 18-21 ¶¶ 34-40], which again underscores the potential conflict of interest arising from the relative culpability and risk of conviction among these six defendants that must be considered in evaluating whether to challenge a particular search by establishing a reasonable expectation of privacy in the location searched. Considering the different circumstances under which defendants were encountered during the searches as described in the criminal complaint, [id.], the common strategy being pursued begs the question whether the interests of each individual defendant are being adequately protected by the joint representation. Dempsey, 724 F. Supp. at 578.

that might otherwise be pursued if defendants were separately represented." Dempsey, 724 F. Supp. at 578 (footnote omitted).

If the defendants choose to go to trial, a serious potential conflict of interest remains with joint representation. Should any defendant elect to testify in his own defense, his testimony could prove to be harmful to the other defendants, and Lee and Bennett "would be faced with the prospect of examining or cross-examining a witness whom he represents and whose interest lies in direct conflict with his other client." Garner, 2013 WL 99396, at *2. Lee and Bennett, who are associated in law practice, have represented all of the defendants since the case initiated with the filing of a criminal complaint, and because there is an irrebutable presumption that they received confidential communications from the defendants during the course of that representation, see Freund v. Butterworth, 165 F.3d 839, 859 (11th Cir. 1999) (citation omitted), Lee and Bennett have "divided loyalties that prevent [them] from effectively representing the defendant[s]," Ross, 33 F.3d at 1523 (citation omitted). As the Eleventh Circuit explained:

> If the conflict could cause the defense attorney improperly to use privileged communications in cross-examination, then disqualification is appropriate. Indeed, it is also true that disqualification is equally appropriate if the conflict could deter the defense attorney from intense probing of the witness on cross-examination to protect privileged communications

> with the former client or to advance the attorney's own personal interest. In short, the court must protect its independent interest in ensuring that the integrity of the judicial system is preserved and that trials are conducted within ethical standards.

Id.

Lee and Bennett emphasize in their response that the scope of their representation is limited to the pretrial portion of the case and "once the current benefits of concurrent representation are exhausted through the pretrial process, [the defendants] will revisit the issue at that time." [Doc. 73 at 11]. The notice of appearance Bennett filed on behalf of Pacheco-Romero does not include such a limitation in representation, [Doc. 38], nor does the docket reflect entry of a limited appearance upon arraignment of the defendants, see [Docs. 64-69], and generally, such limited appearances are not permitted in this Court.[5] Moreover, as the government points out, [Doc. 75 at 3 n.2], the prospect of new counsel appearing for each of the defendants after pretrial motions have been litigated could result in delay of the trial of this case, contrary to the Local Rules, which provide that "[c]ounsel will not ordinarily be allowed to withdraw after pretrial or at a time when withdrawal will cause a delay in the trial of the case," LCrR 57.1E(1), NDGa. Indeed, the Supreme Court recognized in Wheat that trial courts need not wait for an

[5] The Court also has reviewed the letters of engagement for each defendant counsel has submitted under seal and does not see such a limitation in representation.

actual conflict to emerge before disqualifying counsel because "[n]ot only the interest of a criminal defendant but the institutional interest in the rendition of just verdicts in criminal cases may be jeopardized by unregulated multiple representation." 486 U.S. at 160.

The Court is mindful that a defendant may waive conflict-free representation, but courts are not bound to accept the waiver. See Ross, 33 F.3d at 1524 (citation omitted). In Wheat, the Supreme Court recognized that "in the murkier pre-trial context when relationships between parties are seen through a glass, darkly[,] [t]he likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even for those thoroughly familiar with criminal trials." 486 U.S. at 162-63. Thus, "court[s] must be allowed substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses." Id. at 163.

The full range of potential conflicts of interest can be difficult to assess at this early stage in this case, but the foregoing discussion demonstrates that there are very obvious potential, if not actual, conflicts already present, and the Court need not wait until these conflicts become even more certain to disqualify counsel from further representation of all defendants, despite the waivers executed by the defendants. Thus, the waiver option has been considered, but rejected, in order "to ensure the adequacy of representation, to

protect the integrity of the court, and to avoid future attacks over adequacy of waiver and fairness of trial." United States v. Harris, No. 4:07-CR-59 (CDL), 2008 WL 360626, at *3 (M.D. Ga. Feb. 8, 2008) (citation omitted).[6]

For the reasons stated, Lee, Bennett, and their firm are disqualified from representing any of the defendants in this case,[7] and the Court will afford the

[6] As the government points out, [Doc. 75 at 4-5], the waivers signed by the defendants include the statements that the defendants "believe that [their] lawyers are in a unique position to raise certain legal issues pertaining to the investigation and prosecution of [their] case," and "that joint representation will allow [them] to avail [themselves] of certain strategies and defenses that would be unavailable to [them] if [they] were represented separately from [their] co-defendants by a public defender, private retained counsel, or private appointed counsel, [Doc. 73-1 at 4-5, 7-8, 10-11, 13-14, 16-17, 19-20]. Lee and Bennett attempted to explain these statements during the *ex parte* portion of the Rule 44(c) hearing, but the Court is not persuaded that there is any unique or otherwise unavailable tactical advantage to the defendants being jointly represented by Lee and Bennett. Moreover, given that some of the defendants have a limited education and no prior experience with the United States criminal justice system, their waivers are suspect to the extent they relied on these dubious representations when electing to execute the waiver. Wheat, 486 U.S. at 163 (recognizing that potential conflicts of interest are "even more difficult to convey by way of explanation to a criminal defendant untutored in the niceties of legal ethics.").

[7] The Court has considered whether Lee and Bennett could continue to represent one of the defendants in this case, but concludes that a serious potential conflict of interest would remain based on their representation of all six of the defendants with whom they have discussed the case in concluding to pursue a common defense strategy. Moreover, other potential conflicts arising from their representation of additional individuals were apparent based on the *ex parte* portion of the hearing, which

defendants **14 days** from the entry of this Order to retain new counsel of their choice or to request appointment of counsel if they qualify.[8]

IT IS SO ORDERED, this 22nd day of March, 2019.

/s/ Russell G. Vineyard
RUSSELL G. VINEYARD
UNITED STATES
MAGISTRATE JUDGE

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further persuades the Court that Lee, Bennett, and their firm must be disqualified from representing any of the defendants in this case. See Ross, 33 F.3d at 1523.

[8] Counsel have not submitted the information regarding the payment of their fees that the Court inquired about at the hearing, despite follow-up requests by the undersigned's Courtroom Deputy Clerk. See United States v. Padilla-Martinez, 762 F.2d 942, 949 (11th Cir. 1985). The Court will pursue this matter and whether any portion of the fees paid should be refunded separately from this order.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
v.	:	CRIMINAL ACTION NO. 1:19-CR-077-LMM-JSA
EDUARDO LOPEZ,	:	
Defendant.	:	

ORDER

(Filed Jun. 18, 2019)

This case comes before the Court on Defendant Martinez's Motion for Review of Magistrate Judge's Detention Order [62]. On February 20, 2019, the Magistrate Judge denied bond, finding that there was a serious risk Defendant would not appear and was a danger to the community for the following reasons:

> According to the sworn affidavit testimony, the Defendant participated in a very large methamphetamine production operation, which involved significant levels of sophistication and substantial amounts of cash flow. It is evident that such operation is connected to a larger drug trafficking operation likely with international ties that likely has significant resources to assist with flight. The case involves use of prepaid or burner phones which

> is very difficult to address with supervision. Other reasons discussed in Court.

MJ Order, Dkt. No. [29] at 1.

The Magistrate Judge also noted at the hearing that there were wiretap calls, which paired with surveillance, indicated that Defendant communicated with the courier who delivered loads of liquid methamphetamine to the district and subsequently confirmed when the loads arrived on two occasions. Search of his residence also produced surveillance cameras, which were allegedly to be used in the counter-surveillance plan as per the wire conversations. And the utility bills for the conversion lab house were in Defendant's name. See Hr'g Tr., Dkt. No. [63-1] a 23-24.

Defendant argues that this Court should grant his appeal and set bond conditions because: he is a U.S. citizen; he has connections to the Northern District of Georgia; he has a well-established employment history; he supports his wife and their child; he has a stable residence; and he is also not a risk of flight. See Dkt. No. [62]. Defendant also argues that Law Enforcement's conduct post-arrest and pre-appearance before the Magistrate Judge demands his release. See id.

On May 14, 2019, this Court ordered Defendant to supplement his motion by June 7, 2019 to "specifically outline the reasons the Court should release Defendant, including what specific steps will be taken to minimize Defendant's risk of flight and danger to the community." Dkt. No. [137]. Defendant failed to file a supplement.

The Court has conducted an independent review of the Magistrate Judge's bond decision in light of Defendant's objections and agrees with the Magistrate Judge that detention is appropriate in this case. The Court again accordingly **ADOPTS** the Magistrate Judge's Order of Detention [27]. See U.S. v. King, 849 F.2d 485, 490 (nth Cir. 1988) ("[B]ased solely on a careful review of the pleadings and the evidence developed at the magistrate's detention hearing, the district court may determine that the magistrate's factual findings are supported and that the magistrate's legal conclusions are correct. The court may then explicitly adopt the magistrate's pretrial detention order. Adoption of the order obviates the need for the district court to prepare its own written findings of fact and statement of reasons supporting pretrial detention."). Accordingly, Defendant's Motion [62] is **DENIED**.

IT IS SO ORDERED this 17th day of June, 2019.

/s/ Leigh Martin May
Leigh Martin May
United States
District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, VS. EDUARDO LOPEZ, DEFENDANT.	DOCKET NUMBER 1:19-CR-77-LMM-3 ATLANTA, GEORGIA DECEMBER 11, 2019

TRANSCRIPT OF GUILTY PLEA PROCEEDINGS
BEFORE THE HONORABLE LEIGH MARTIN MAY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
TYLER MANN
UNITED STATES ATTORNEY'S OFFICE
ATLANTA, GEORGIA 30303

FOR THE DEFENDANT:
STEVEN BERNE
LAW OFFICES OF STEVEN BERNE
ATLANTA, GEORGIA 30338

[2] *(IN ATLANTA, FULTON COUNTY, GEORGIA, DECEMBER 11, 2019, IN OPEN COURT.)*

THE COURT: GOOD AFTERNOON. YOU MAY BE SEATED.

MR. MANN: GOOD AFTERNOON.

THE COURT: WE ARE HERE IN CRIMINAL ACTION 19-CR-77, UNITED STATES OF AMERICA VS. EDUARDO LOPEZ.

AND IF COUNSEL WOULD INTRODUCE THEMSELVES FOR THE RECORD, PLEASE.

MR. MANN: YOUR HONOR, TYLER MANN ON BEHALF OF THE GOVERNMENT.

THE COURT: OKAY. GOOD AFTERNOON.

MR. BERNE: AND STEVEN BERNE ON BEHALF OF MR. LOPEZ.

THE COURT: GOOD AFTERNOON.

AND TO YOU, MR. LOPEZ.

WE ARE HERE TODAY BECAUSE IT'S MY UNDERSTANDING THAT MR. LOPEZ WANTS TO ENTER A PLEA OF GUILTY TO THE SOLE COUNT OF THE INDICTMENT, AND THAT THERE IS NOT A PLEA AGREEMENT, BUT, RATHER, A PLEA WITH COUNSEL FORM; IS THAT CORRECT, MR. BERNE?

MR. BERNE: YES, YOUR HONOR.

THE COURT: OKAY. AND, MS. BACHELOR, IF YOU COULD SWEAR IN MR. LOPEZ, PLEASE.

COURTROOM DEPUTY CLERK: WOULD YOU PLEASE STAND AND RAISE YOUR RIGHT HAND.

(DEFENDANT SWORN.)

THE COURT: AND, MR. LOPEZ, IF YOU AND MR. BERNE CAN [3] COME TO THE CENTER PODIUM.

AND, MR. MANN, TO THE SIDE PODIUM, PLEASE.

AND IF WE COULD VERIFY THE SIGNATURES ON THE PLEA WITH COUNSEL FORM.

MR. MANN: MR. LOPEZ, HAVE YOU REVIEWED THIS FORM ENTITLED PLEA WITH COUNSEL AND SIGNED IT INDICATING YOUR DESIRE TO PLEAD GUILTY TO COUNT ONE IN THE INDICTMENT IN CRIMINAL ACTION NUMBER 1:19-CR-77?

MR. LOPEZ: CORRECT.

MR. MANN: MR. BERNE, HAVE YOU ALSO REVIEWED THE FORM AND SIGNED IT INDICATING THAT YOU ARE REPRESENTING MR. LOPEZ TODAY?

MR. BERNE: YES.

MR. MANN: MAY I APPROACH, YOUR HONOR?

THE COURT: YES, PLEASE. OKAY. THANK YOU.

EDUARDO LOPEZ

AFTER HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY THE COURT:

Q. MR. LOPEZ, YOU'VE BEEN PLACED UNDER OATH HERE TODAY, AND THAT MEANS THAT YOU HAVE TO ANSWER ALL THE QUESTIONS ASKED OF YOU COMPLETELY AND TRUTHFULLY. IF YOU WERE KNOWINGLY TO MAKE ANY FALSE STATEMENT UNDER OATH, THE GOVERNMENT WOULD HAVE THE RIGHT TO PURSUE PERJURY CHARGES AGAINST YOU. DO YOU UNDERSTAND THAT?

[4] A. I UNDERSTAND.

Q. BEFORE I CAN ACCEPT YOUR PLEA OF GUILTY, I NEED TO MAKE SURE THAT YOU'RE IN THE RIGHT FRAME OF MIND TO MAKE THAT DECISION, THAT YOU UNDERSTAND THE RIGHTS YOU HAVE AND THE OPTIONS AVAILABLE TO YOU, AS WELL AS ALL THE CONSEQUENCES OF PLEADING GUILTY. I ALSO NEED TO MAKE SURE THAT YOU'RE PLEADING GUILTY BECAUSE YOU ARE IN FACT GUILTY. SO FOR ME TO DO THIS, I HAVE A SERIES OF QUESTIONS THAT I'M GOING TO ASK YOU. BUT IF AT ANY TIME YOU DON'T UNDERSTAND MY QUESTION OR YOU WANT ME TO REPEAT IT OR IF YOU WANT TO SPEAK WITH

YOUR LAWYER BEFORE ANSWERING, JUST LET ME KNOW, AND WE'LL STEP THROUGH ALL THESE QUESTIONS. DO YOU UNDERSTAND THAT PROCESS?

A. FINE.

Q. HOW OLD ARE YOU?

A. 26.

Q. AND WHERE WERE YOU BORN?

A. IN LOS ANGELES, CALIFORNIA.

Q. IS IT CORRECT THAT YOU ARE A U.S. CITIZEN?

A. CORRECT.

Q. CAN YOU READ AND WRITE IN SPANISH?

A. YES, CORRECT.

Q. IN THE LAST 24 HOURS HAVE YOU HAD ANY ALCOHOL, PILLS, MEDICINE OR DRUGS OF ANY KIND?

A. NO.

Q. HAVE YOU RECENTLY BEEN TREATED FOR OR SUFFERED FROM [5] ALCOHOLISM OR DRUG ADDICTION?

A. NO.

Q. HAVE YOU EVER BEEN TREATED OR HOSPITALIZED FOR ANY MENTAL ILLNESS OR CONDITION?

A. NO, NEVER.

Q. DO YOU, TO YOUR KNOWLEDGE, HAVE ANY EMOTIONAL OR MENTAL DISABILITIES?

A. NO.

THE COURT: MR. BERNE, HAS MR. LOPEZ TOLD YOU ANYTHING ABOUT MEDICATION, PILLS, DRUGS, ALCOHOL OR OTHER FACTORS WHICH MIGHT AFFECT HIS ACTIONS TODAY OR DO YOU KNOW OF ANY?

MR. BERNE: NO, YOUR HONOR.

THE COURT: AND DO YOU HAVE ANY DOUBTS AS TO HIS COMPETENCY TO PLEA AT THIS TIME?

MR. BERNE: NO, I DO NOT.

BY THE COURT:

Q. NOW, MR. LOPEZ, I'M GOING TO GO OVER A NUMBER OF RIGHTS THAT THE CONSTITUTION AND LAWS OF THE UNITED STATES GUARANTEE TO YOU BECAUSE I NEED TO MAKE SURE THAT YOU UNDERSTAND THESE RIGHTS, AND, VERY IMPORTANTLY, THAT YOU WAIVE A NUMBER OF THESE RIGHTS IF YOU DECIDE TO PLEAD GUILTY. YOU HAVE A RIGHT TO PLEAD NOT GUILTY TO THE CHARGE AGAINST YOU

AND HAVE A SPEEDY, PUBLIC, JURY TRIAL OR COURT TRIAL IN THIS CASE. DO YOU UNDERSTAND THAT?

[6] A. I UNDERSTAND.

Q. YOU HAVE A RIGHT TO INSIST ON A NOT GUILTY PLEA NO MATTER WHAT ANYONE ELSE TELLS YOU. DO YOU UNDERSTAND THAT?

A. I UNDERSTAND, YES.

Q. DO YOU UNDERSTAND THAT YOU ARE PRESUMED TO BE INNOCENT OF THE CHARGE AGAINST YOU UNLESS AND UNTIL AT TRIAL THE GOVERNMENT PROVES YOU ARE GUILTY OF THE OFFENSE WITH WHICH YOU ARE CHARGED?

A. YES, I UNDERSTAND.

Q. NOW, IN ORDER TO OVERCOME YOUR PRESUMPTION OF INNOCENCE AND HAVE YOU FOUND GUILTY AT A TRIAL, THE GOVERNMENT WOULD HAVE TO PROVE THAT YOU WERE GUILTY BEYOND A REASONABLE DOUBT USING ONLY COMPETENT, ADMISSIBLE EVIDENCE. DO YOU UNDERSTAND THAT?

A. YES, I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT AT A TRIAL YOU WOULD HAVE A RIGHT TO CONFRONT THE WITNESSES AGAINST YOU, TO BE PRESENT, TO SEE AND HEAR ALL THE EVIDENCE AND WITNESSES CALLED TO TESTIFY AGAINST YOU, AND

TO QUESTION AND CROSS-EXAMINE THE WITNESSES THROUGH YOUR LAWYER?

A. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT YOU WOULD HAVE THE RIGHT TO USE THE SUBPOENA POWER OF THE COURT TO REQUIRE THE ATTENDANCE OF ANY WITNESSES OR EVIDENCE ON YOUR BEHALF WHETHER THE WITNESSES WANTED TO COME TO COURT OR NOT?

A. OKAY.

[7] Q. AT SUCH A TRIAL YOU WOULD HAVE THE RIGHT TO THE ASSISTANCE OF YOUR LAWYER, YOU WOULD BE CONTINUED TO BE REPRESENTED BY YOUR CURRENT LAWYER, BUT IF YOU HAD SOME FALLING OUT WITH HIM, YOU COULD HIRE YOUR OWN LAWYER, OR IF YOU COULD NOT AFFORD A LAWYER, UPON YOUR REASONABLE APPLICATION I WOULD APPOINT A DIFFERENT LAWYER TO REPRESENT YOU AT NO COST. DO YOU UNDERSTAND THAT?

A. I UNDERSTAND.

Q. AT SUCH A TRIAL YOU WOULD HAVE THE RIGHT TO TESTIFY AND PRESENT EVIDENCE OR YOU COULD REMAIN COMPLETELY SILENT. YOU COULD NOT BE FORCED TO TESTIFY OR PRODUCE ANY EVIDENCE OR ANY WITNESSES. IF YOU DID NOT TESTIFY, THOSE FACTS COULD NOT BE CONSIDERED AGAINST YOU IN

DETERMINING WHETHER YOU WERE GUILTY. DO YOU UNDERSTAND THAT?

A. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT YOU WOULD HAVE THE RIGHT AT TRIAL TO HAVE THE JURY RENDER A UNANIMOUS VERDICT BEFORE YOU COULD BE CONVICTED?

A. YEAH. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT BY ENTERING A PLEA OF GUILTY, THERE WILL BE NO TRIAL, AND I WILL SIMPLY ENTER A JUDGMENT OF GUILTY AND SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA?

A. I UNDERSTAND.

Q. BY PLEADING GUILTY, DO YOU UNDERSTAND THAT YOU WILL ALSO HAVE TO WAIVE YOUR RIGHT NOT TO INCRIMINATE YOURSELF BECAUSE I [8] WILL HAVE TO ASK YOU QUESTIONS ABOUT WHAT YOU DID TO SATISFY MYSELF THAT YOU ARE GUILTY AS CHARGED, AND YOU ARE GOING TO HAVE TO ACKNOWLEDGE YOUR GUILT?

A. YES, I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT BY PLEADING GUILTY ALL THAT WILL BE LEFT IS FOR ME TO SENTENCE YOU. THE ONLY RIGHTS OF THOSE I'VE EXPLAINED TO YOU THAT YOU KEEP AFTER A PLEA OF GUILTY IS THE RIGHT

TO HAVE A LAWYER REPRESENT YOU, ADVISE YOU ABOUT THE CASE, TALK TO YOU ABOUT YOUR OPTIONS, ARGUE ON YOUR BEHALF AT SENTENCING, AND TO APPEAL ANY LEGAL DEFECT IN YOUR PLEA OR SENTENCE? DO YOU UNDERSTAND THAT?

A. I UNDERSTAND.

THE COURT: SO AT THIS TIME I'M GOING TO ASK MR. MANN TO IDENTIFY THE CHARGE TO WHICH YOU INTEND TO PLEAD GUILTY AND WHAT THE ELEMENTS OF THAT CHARGE ARE. AND I'M GOING TO ASK YOU TO LISTEN CAREFULLY BECAUSE AFTER HE'S FINISHED I'M GOING TO ASK YOU IF YOU UNDERSTAND WHAT YOU'RE BEING CHARGED WITH.

SO, MR. MANN.

MR. MANN: YOUR HONOR, THE DEFENDANT IS CHARGED IN A ONE-COUNT INDICTMENT, A VIOLATION OF TITLE 21, UNITED STATES CODE, SECTION 841(A), 846 AND 841(B) (1)(A), WITH CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE. IN ORDER TO PROVE THE DEFENDANT'S GUILT, THE GOVERNMENT WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT AND OTHERS KNOWINGLY AND WILLFULLY FORMED A COMMON PLAN WITH AN [9] ILLEGAL PURPOSE, THAT PURPOSE BEING TO POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE, IN THIS CASE,

METHAMPHETAMINE, A SCHEDULE TWO CONTROLLED SUBSTANCE. AND FOR SENTENCING PURPOSES THE GOVERNMENT WOULD ALSO HAVE TO PROVE THAT THE AMOUNT OF METHAMPHETAMINE CONTEMPLATED BY THE CONSPIRACY WAS AT LEAST 500 GRAMS.

THE COURT: OKAY. THANK YOU.

MR. BERNE, DO YOU HAVE ANY DISAGREEMENTS WITH THE GOVERNMENT'S RECITATION OF THE CHARGE AND ITS ELEMENTS?

MR. BERNE: NO, YOUR HONOR.

BY THE COURT:

Q. MR. LOPEZ, DO YOU UNDERSTAND WHAT YOU'RE BEING CHARGED WITH?

A. YES, I UNDERSTAND.

THE COURT: NOW, I'M ALSO GOING TO HAVE MR. MANN SUMMARIZE THE EVIDENCE THAT THEY WOULD HAVE PRESENTED TO THE JURY IF THIS CASE HAD GONE TO TRIAL. AND, AGAIN, I'M GOING TO ASK YOU TO LISTEN VERY CAREFULLY BECAUSE THIS IS WHAT THE GOVERNMENT SAYS YOU'VE DONE TO VIOLATE THIS LAW. AND AS HE'S DETAILING ALL THE DIFFERENT THINGS THAT YOU'VE DONE, IF THERE'S ANYTHING THAT YOU DISAGREE WITH, IT'S GOING TO BE VERY IMPORTANT FOR YOU TO LET ME KNOW WHAT THAT IS EVEN IF YOU THINK IT'S JUST A MINOR POINT.

SO, MR. MANN.

MR. MANN: YOUR HONOR, IF THIS CASE PROCEEDED TO [10] TRIAL, THE GOVERNMENT WOULD EXPECT TO PROVE WITH ADMISSIBLE EVIDENCE THE FOLLOWING: IN SEPTEMBER 2018, D.E.A. BEGAN A WIRETAP INVESTIGATION OF A MEXICO-BASED DRUG TRAFFICKING AND MONEY LAUNDERING ORGANIZATION OPERATING IN GWINNETT COUNTY IN THE METRO ATLANTA AREA. AGENTS DETERMINED THAT THE ORGANIZATION WAS RECEIVING LARGE SHIPMENTS OF LIQUID METHAMPHETAMINE, COOKING IT INTO CRYSTAL FORM AT 2170 MOUNTAIN ROAD IN MILTON IN THE NORTHERN DISTRICT OF GEORGIA, AND THEN TRANSPORTING THE FINAL PRODUCT TO 4317 HEARN ROAD IN ELLENWOOD, ALSO IN THE NORTHERN DISTRICT OF GEORGIA, TO BE SOLD.

ON FEBRUARY 1ST, 2019, AGENTS INTERCEPTED COMMUNICATIONS BETWEEN CO-DEFENDANT PACHECO-ROMERO AND DEFENDANT INDICATING THAT A SHIPMENT OF LIQUID METHAMPHETAMINE WAS ON ITS WAY. THAT EVENING PACHECO-ROMERO INFORMED THE DEFENDANT THAT MONEY HAD BEEN DELIVERED. THE DEFENDANT RESPONDED THAT HE COULD NOT RETRIEVE IT BECAUSE HE WAS WAITING FOR, QUOTE, WHAT WAS COMING. AT 10:30 THE FOLLOWING MORNING IN AN INTERCEPTED CALL, THE DEFENDANT TOLD PACHECO-ROMERO TO

INFORM CO-DEFENDANT SANCHEZ THAT THE LOAD WOULD ARRIVE IN TWO HOURS.

AT APPROXIMATELY 2 P.M. DEFENDANT CALLED PACHECO-ROMERO'S PHONE AND TOLD THE UNIDENTIFIED MAN WHO ANSWERED TO INFORM PACHECO-ROMERO THAT, QUOTE, IT WAS DONE. ABOUT FIVE HOURS LATER PACHECO-ROMERO ASKED CO-DEFENDANT CARDENAS, QUOTE, IF IT WAS DONE. AND CARDENAS REPLIED THAT, QUOTE, THEY JUST HAD THE LAST ONE TO BE UNLOADED. PACHECO-ROMERO THEN ASKED IF [11] CO-DEFENDANT MENDOZA WAS ALREADY WORKING ON IT. CARDENAS THEN PASSED THE PHONE TO MENDOZA WHO TOLD PACHECO-ROMERO ABOUT HIS PREPARATIONS FOR THE COOKING PROCESS.

A LITTLE AFTER 10:30 A.M. ON FEBRUARY 7TH, 2019, AGENTS INTERCEPTED COMMUNICATIONS BETWEEN THE DEFENDANT AND PACHECO-ROMERO THAT INDICATED THAT ANOTHER SHIPMENT OF LIQUID METHAMPHETAMINE WOULD ARRIVE THE FOLLOWING DAY. ON THE AFTERNOON OF FEBRUARY 8TH, 2019, AGENTS INTERCEPTED COMMUNICATIONS BETWEEN AN UNIDENTIFIED CO-CONSPIRATOR AND THE DEFENDANT IN WHICH THE DEFENDANT SEEMED TO INDICATE THAT HE HAD RECEIVED A NEW SHIPMENT OF LIQUID METHAMPHETAMINE. THAT NIGHT PACHECO-ROMERO CALLED MENDOZA AND ASKED IF HE HAD, QUOTE, FINALIZED ANY. MENDOZA RESPONDED THAT HE HAD

FINALIZED 15, WHICH AGENTS INTERPRETED TO MEAN THAT MENDOZA HAD CONVERTED 15 KILOGRAMS OF LIQUID METH INTO ITS FINAL CRYSTAL FORM.

ON FEBRUARY 9TH, 2019, AGENTS EXECUTED SEARCH WARRANTS AT THE HEARN ROAD HOUSE, THE MOUNTAIN ROAD HOUSE, AND FOUR OTHER LOCATIONS RELEVANT TO THE CONSPIRACY. IN RELEVANT PART AT THOSE LOCATIONS THEY FOUND MORE THAN 100 KILOGRAMS OF METHAMPHETAMINE EITHER IN CRYSTAL FORM OR IN THE PROCESS OF DRYING IN CRYSTAL FORM, HUNDREDS OF POUNDS OF SUSPECTED LIQUID METHAMPHETAMINE, HUNDREDS OF THOUSANDS OF DOLLARS IN CASH, MULTIPLE CELL PHONES AND DRUG LEDGERS. AT THE MOUNTAIN ROAD HOUSE AGENTS FOUND THE AFOREMENTIONED LIQUID METHAMPHETAMINE, AN ACTIVE METH CONVERSION LAB AND A HANDGUN IN CLOSE PROXIMITY [12] TO THAT LAB. AT THE DEFENDANT'S RESIDENCE AGENTS FOUND DEFENDANT'S PASSPORT, CASH, SURVEILLANCE CAMERAS AND A MONEY COUNTER. DEFENDANT WAS PRESENT AT THE TIME OF THAT SEARCH.

THE COURT: OKAY. THANK YOU.

MR. BERNE, DO YOU HAVE ANY DISAGREEMENTS WITH THE GOVERNMENT'S SUMMARY OF EVIDENCE?

MR. BERNE: NO, YOUR HONOR.

BY THE COURT:

Q. MR. LOPEZ, WAS THERE ANYTHING THAT YOU DISAGREED WITH IN THE GOVERNMENT'S SUMMARY OF EVIDENCE?

A. WHEN THEY TALKED ABOUT THE DEFENDANT, THEY ARE TALKING ABOUT WHAT WAS FOUND IN MY HOUSE?

MR. MANN: YES, YOUR HONOR.

MR. BERNE: MAYBE IF YOU CAN READ THE LAST SENTENCE.

MR. MANN: SURE. AT DEFENDANT'S RESIDENCE AGENTS FOUND DEFENDANT'S PASSPORT, CASH, SURVEILLANCE CAMERAS AND A MONEY COUNTER.

BY THE COURT:

Q. OKAY. AND LET ME MAKE SURE THAT IT'S CLEAR. DO YOU HAVE ANY DISAGREEMENTS WITH WHAT THE GOVERNMENT'S SUMMARY OF THE EVIDENCE WAS?

A. NO.

THE COURT: OKAY. MR. BERNE, HAVE YOU ADVISED YOUR CLIENT CONCERNING THE LEGALITY OF ANY STATEMENTS OR CONFESSIONS OR OTHER EVIDENCE THE GOVERNMENT HAS AGAINST HIM?

[13] MR. BERNE: YOUR HONOR, I HAVE WITH THE PROVISION THAT I WAS REAPPOINTED TO REPRESENT MR. LOPEZ AFTER HIS CASE WAS CERTIFIED READY FOR TRIAL. SO, IN ALL HONESTY, I DID NOT FOCUS MY ATTENTION AS MUCH ON THE LEGALITY OF EVIDENCE, AS THAT ISSUE HAD ALREADY BEEN RESOLVED PRIOR TO MY REAPPOINTMENT.

THE COURT: OKAY. AND, TO YOUR KNOWLEDGE, IS HE PLEADING GUILTY BECAUSE OF ANY ILLEGALLY OBTAINED EVIDENCE IN THE POSSESSION OF THE GOVERNMENT?

MR. BERNE: NOT TO MY KNOWLEDGE.

THE COURT: NOW, MR. MANN, IF YOU WOULD PROVIDE THE MAXIMUM PUNISHMENT FOR THIS PARTICULAR OFFENSE.

MR. MANN: THE MAXIMUM TERM OF IMPRISONMENT IS LIFE, THE MANDATORY MINIMUM TERM OF IMPRISONMENT IS TEN YEARS, TERM OF SUPERVISED RELEASE IS FIVE YEARS TO LIFE, THE MAXIMUM FINE IS $10 MILLION, AND INDICTMENT ALLOWS FOR RESTITUTION AND FORFEITURE, AND THERE'S A MANDATORY SPECIAL ASSESSMENT OF A HUNDRED DOLLARS.

THE COURT: OKAY. MR. BERNE, DO YOU HAVE ANY DISAGREEMENTS WITH THE GOVERNMENT'S STATEMENT ON THE MAXIMUM PUNISHMENTS AND MANDATORY MINIMUM?

MR. BERNE: NO, YOUR HONOR.

BY THE COURT:

Q. MR. LOPEZ, DO YOU UNDERSTAND THAT IF YOU PLEAD GUILTY I CAN IMPOSE THE SAME SENTENCE ON YOU AS IF YOU HAD A TRIAL AND WERE FOUND GUILTY AFTER THAT TRIAL?

[14] A. YES, I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT IT IS SOLELY UP TO ME TO DECIDE ON YOUR SENTENCE?

A. YES, I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT IF YOU RECEIVE A SENTENCE THAT IS HARSHER THAN WHAT YOU THOUGHT YOU MIGHT GET, YOU WOULD NOT BE ALLOWED TO WITHDRAW YOUR PLEA OF GUILTY?

A. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT EVEN THOUGH THE GOVERNMENT MAY NOT BRING ADDITIONAL CHARGES BASED ON SOME OTHER CONDUCT THEY MAY KNOW ABOUT, I MIGHT STILL CONSIDER THAT CONDUCT AT SENTENCING?

A. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND IF I SENTENCE YOU TO PRISON FOR THIS CHARGE, THE FEDERAL

PRISON SYSTEM CALCULATES TIME SERVED DIFFERENTLY THAN MOST STATE PRISON SYSTEMS, AND YOU WOULD LIKELY END UP SERVING NEARLY ALL OF THE FEDERAL SENTENCE I IMPOSE?

A. YES, I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT I HAVE TO CALCULATE AND AT LEAST CONSIDER A RANGE FOR YOU UNDER THE UNITED STATES SENTENCING GUIDELINES WHICH CATEGORIZE ALL FEDERAL CRIMES AND ASSIGN POINTS DUE TO THE SERIOUSNESS OF THE OFFENSE, YOUR ROLE IN IT AND OTHER SPECIFIC CHARACTERISTICS SUCH AS THE AMOUNT OF DRUGS INVOLVED? THE GUIDELINES ALSO TAKE INTO ACCOUNT YOUR PRIOR CRIMINAL RECORD, IF ANY, AND THE RESULT IS A SCORE THAT [15] REPRESENTS A RANGE OF MONTHS OF INCARCERATION. THE GUIDELINES ARE ADVISORY, BUT I DO HAVE TO CALCULATE AND CONSIDER THE RANGE THAT APPLIES TO YOU. DO YOU UNDERSTAND THAT?

A. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT IT IS NOT POSSIBLE TO DETERMINE YOUR GUIDELINES UNTIL AFTER THE PRESENTENCE REPORT HAS BEEN COMPLETED AND YOU AND THE GOVERNMENT HAVE HAD AN OPPORTUNITY TO CHALLENGE THE FACTS REPORTED BY THE PROBATION OFFICER?

A. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT AFTER IT HAS BEEN DETERMINED WHAT YOUR GUIDELINES ARE, I HAVE THE AUTHORITY TO IMPOSE A SENTENCE THAT IS MORE OR LESS SEVERE THAN WHAT'S CALLED FOR BY THE GUIDELINES?

A. I UNDERSTAND.

Q. DO YOU UNDERSTAND IF YOU ARE ON PROBATION OR PAROLE, A PLEA OF GUILTY MAY RESULT IN THE REVOCATION OF YOUR PROBATION OR PAROLE?

A. OKAY.

Q. DO YOU UNDERSTAND THAT THE SENTENCE IMPOSED IN THIS CASE MAY RUN CONSECUTIVELY, THAT IS, ON TOP OF OR FOLLOWING ANY OTHER SENTENCE YOU MIGHT NOW BE SERVING?

A. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT A PLEA OF GUILTY IN THIS CASE MAY BE TAKEN INTO CONSIDERATION IN THE EVENT IN THE FUTURE YOU ARE CONVICTED OF ANOTHER OFFENSE AND POTENTIALLY MAKE THAT SENTENCE [16] LONGER?

A. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT YOUR CONVICTION IN THIS CASE MAY BE TAKEN INTO CONSIDERATION BY EMPLOYERS AND EDUCATIONAL INSTITUTIONS OR OTHER ENTITIES, INCLUDING, BUT NOT LIMITED TO, YOUR QUALIFICATIONS FOR THE RECEIPT OF SOME PUBLIC BENEFITS OR YOUR ABILITY TO OBTAIN OR HOLD CERTAIN EMPLOYMENT POSITIONS?

A. OKAY. I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT THE OFFENSE TO WHICH YOU ARE PLEADING GUILTY IS A FELONY, AND IF YOUR PLEA IS ACCEPTED AND YOU ARE FOUND GUILTY, THEN SUCH A FINDING MAY DEPRIVE YOU OF VALUABLE CIVIL RIGHTS SUCH AS THE RIGHT TO VOTE, THE RIGHT TO HOLD PUBLIC OFFICE, THE RIGHT TO SERVE ON A JURY, AS WELL AS THE RIGHT TO POSSESS ANY KIND OF FIREARM?

A. OKAY. I UNDERSTAND.

THE COURT: MR. MANN, HAS THE GOVERNMENT OFFERED A PLEA AGREEMENT IN THIS CASE?

MR. MANN: YES, YOUR HONOR.

BY THE COURT:

Q. MR. LOPEZ, WERE YOU AWARE THAT THE GOVERNMENT OFFERED A PLEA AGREEMENT IN THIS CASE?

A. YES, I UNDERSTAND.

Q. AND DID YOU DISCUSS THE OFFER WITH YOUR LAWYER AND HAS HE ANSWERED ALL YOUR QUESTIONS ABOUT IT?

A. YES.

[17] Q. KNOWING THAT THERE WAS A PLEA AGREEMENT THAT YOU DID NOT ACCEPT, DO YOU STILL WANT TO GO FORWARD AND PLEAD GUILTY?

A. YES.

Q. DO YOU UNDERSTAND THAT YOU MAY BE SENTENCED TO A TERM OF SUPERVISED RELEASE, AND THAT IF YOU VIOLATE THE CONDITIONS OF RELEASE, YOU CAN BE SENT TO PRISON FOR THE ENTIRE TERM OF SUPERVISED RELEASE?

A. YES, I UNDERSTAND.

Q. DO YOU UNDERSTAND THAT YOU WILL BE ORDERED TO PAY A SPECIAL ASSESSMENT OF A HUNDRED DOLLARS FOR THE CHARGE TO WHICH YOU ARE PLEADING GUILTY?

A. I UNDERSTAND.

Q. DO YOU KNOW THAT YOU MAY BE ORDERED TO MAKE RESTITUTION TO ANY VICTIMS OF THE OFFENSE?

A. OKAY. I UNDERSTAND.

Q. DO YOU KNOW THAT YOU MAY BE SUBJECT TO FORFEITURE PROCEEDINGS RELATED TO THE OFFENSE?

A. YES, I UNDERSTAND.

Q. HAS ANYONE MADE YOU ANY PROMISES OR REPRESENTATIONS TO GET YOU TO PLEAD GUILTY?

A. NO.

Q. HAS ANYONE THREATENED, PRESSURED, FORCED, OR INTIMIDATED YOU, OR SOMEONE YOU ARE CLOSE TO, TO GET YOU TO GIVE UP YOUR RIGHTS AND PLEAD GUILTY?

A. NO, NO ONE.

[18] Q. HAS ANYONE MADE A PROMISE TO YOU AS TO WHAT YOUR ACTUAL SENTENCE WILL BE?

A. NO, NO ONE.

Q. ARE YOU PLEADING GUILTY BECAUSE YOU ARE IN FACT GUILTY?

A. YES.

Q. ARE YOU SATISFIED WITH THE SERVICES YOUR LAWYER HAS PROVIDED YOU SO FAR IN THE CASE?

A. YES.

Q. HAVE YOU HAD ENOUGH TIME TO TALK WITH YOUR LAWYER AND DISCUSS THE CASE AND YOUR DECISION TO PLEAD GUILTY?

A. YES.

Q. IS THERE ANYTHING YOU WANTED TO ASK ME ABOUT OR ASK YOUR LAWYER ABOUT BEFORE I ASK YOU TO ENTER YOUR PLEA?

A. NO, NONE.

THE COURT: MR. BERNE, IS THERE ANY REASON THAT YOU KNOW ABOUT THAT I SHOULD NOT ACCEPT YOUR CLIENT'S PLEA OF GUILTY?

MR. BERNE: NO, YOUR HONOR.

THE COURT: MR. MANN, WAS THERE ANYTHING ELSE YOU WANTED ME TO ASK OF MR. LOPEZ AT THIS TIME?

MR. MANN: NO, YOUR HONOR, BUT, FIRST OF ALL, I APPRECIATE YOUR GOING THROUGH THE QUESTIONS ABOUT THE PRIOR PLEA AGREEMENT. I WOULD ASK THAT YOU ALLOW ME TO BRIEFLY ELABORATE ON THOSE OFFERS.

THE COURT: OKAY.

[19] MR. MANN: FOR THE SAKE OF THE RECORD, THERE WERE ACTUALLY TWO OFFERS MADE IN THE CASE. THE FIRST WAS MADE WITHOUT ANY PROMPTING FROM THE DEFENDANT. IT WAS THE GOVERNMENT'S ORIGINAL

OFFER. I JUST WANT TO VERY BRIEFLY PUT THE GUIDELINES STIPULATIONS FROM THAT AGREEMENT ON THE RECORD. THE AGREEMENT INCLUDED A STIPULATION FROM BOTH PARTIES THAT THE OFFENSE INVOLVED AT LEAST 45 KILOGRAMS OF METHAMPHETAMINE WHICH RESULTED IN A BASE OFFENSE LEVEL OF 38 -- EXCUSE ME, JUDGE -- THAT THE DEFENDANT SHOULD RECEIVE A TWO-LEVEL UPWARD ADJUSTMENT BECAUSE A DANGEROUS WEAPON WAS POSSESSED IN CONNECTION WITH THE CRIME; THAT THE DEFENDANT SHOULD RECEIVE AN ADDITIONAL TWO-LEVEL UPWARD ADJUSTMENT BECAUSE A PREMISES WAS MAINTAINED IN ORDER TO DISTRIBUTE THE CONTROLLED SUBSTANCE. THE GOVERNMENT HAD OFFERED A THREE-POINT -- A RECOMMENDATION OF A THREE-POINT DOWNWARD VARIANCE IN ORDER TO ACHIEVE SECTION 3553(A)'S GOALS OF A FAIR AND REASONABLE SENTENCE, OF A AGREEMENT CONTAINED -- THIS IS THE FIRST OFFER -- CONTAINED A STIPULATION OF SAFETY VALVE ELIGIBILITY AND INCLUDED AN AGREEMENT FROM THE GOVERNMENT TO RECOMMEND THE MAXIMUM POSSIBLE BENEFIT FOR ACCEPTANCE OF RESPONSIBILITY.

THE SECOND AGREEMENT INCLUDED ONLY A STIPULATION THAT THE ACTIVITY INVOLVED 45 KILOGRAMS OR MORE OF METHAMPHETAMINE AND THAT THAT RESULTED IN A BASE OFFENSE LEVEL OF 38. THE OTHER STIPULATIONS

FOR THE GUIDELINES WERE NOT IN THAT AGREEMENT. I BELIEVE THOSE ARE THE RELEVANT PARTS OF THE AGREEMENTS. THANK [20] YOU, YOUR HONOR.

BY THE COURT:

Q. OKAY. AND, MR. LOPEZ, I'M NOT HERE TO CONVINCE YOU ONE WAY OR THE OTHER TO PLEA UNDER A PLEA AGREEMENT OR TO PLEA AS YOU'VE PROCEEDED SO FAR TODAY. IT'S JUST IMPORTANT THAT I MAKE SURE THAT YOU WERE AWARE OF THE PLEA AGREEMENT AND THAT YOU UNDERSTOOD WHAT THE TERMS OF IT WERE BEFORE YOU MADE YOUR DECISION. SO I'M NOT HERE TO TELL YOU ONE WAY OR THE OTHER WHAT YOU SHOULD DO. I JUST HAVE TO MAKE SURE THAT YOU'RE AWARE OF YOUR OPTIONS. SO THE GOVERNMENT JUST SUMMARIZED SOME OF THE TERMS OF THE PLEA AGREEMENT. WERE YOU FAMILIAR WITH THOSE TERMS WHEN WE TALKED ABOUT YOUR PLEA AGREEMENT EARLIER?

A. YES, I DID.

Q. OKAY. AND IT'S YOUR DECISION TO PLEAD GUILTY WITHOUT GOING UNDER THE PLEA AGREEMENT; CORRECT?

A. CORRECT.

THE COURT: OKAY. MR. MANN, WAS THERE ANYTHING ELSE?

MR. MANN: NO, YOUR HONOR. THANK YOU.

THE COURT: OKAY.

BY THE COURT:

Q. MR. LOPEZ, HOW DO YOU PLEA TO THE CONDUCT CHARGED IN THE INDICTMENT, GUILTY OR NOT GUILTY?

A. GUILTY.

Q. AND IS YOUR GUILTY PLEA VOLUNTARY AND OF YOUR OWN FREE WILL?

[21] A. CORRECT.

THE COURT: NOW, I'VE LISTENED TO THE ANSWERS THAT YOU'VE GIVEN TO THE QUESTIONS I'VE ASKED HERE TODAY. AND ON THE BASIS OF THE RECORD AND TODAY'S PROCEEDING, I DO FIND THAT YOUR PLEA OF GUILTY IS KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY MADE. IT IS ON THE ADVICE OF COMPETENT COUNSEL AND HAS A BASIS OF FACT THAT COMPREHENDS EACH AND EVERY ELEMENT OF THE OFFENSE CHARGED TO WHICH YOU ARE PLEADING GUILTY. I ALSO FIND THAT YOU WERE AWARE OF THE EXISTENCE OF A PLEA OFFER FROM THE GOVERNMENT. AND I, THEREFOR, ACCEPT YOUR PLEA OF GUILTY. MR. LOPEZ, YOU ARE HEREBY ADJUDGED GUILTY TO THE CONDUCT CHARGED IN THE INDICTMENT.

WE HAVE SET YOUR SENTENCING FOR MONDAY, MARCH THE 2ND, AT 10:00 A.M. IT WILL BE HERE IN THIS SAME COURTROOM. AND IT'S MY UNDERSTANDING THAT YOU WILL BE IN CUSTODY, SO YOU'LL BE BROUGHT BACK JUST AS YOU WERE TODAY SO THAT YOU'LL BE PRESENT AT YOUR SENTENCING. BUT FOR SOME REASON IF YOU ARE NOT IN CUSTODY, IT IS YOUR RESPONSIBILITY TO COME BACK HERE AT THAT DATE AND TIME FOR YOUR SENTENCING. AND IF YOU FAIL TO APPEAR, YOU CAN BE PROSECUTED FOR A SEPARATE OFFENSE HAVING TO DO WITH FAILING TO APPEAR.

DO YOU UNDERSTAND THAT?

MR. LOPEZ: I UNDERSTAND.

THE COURT: COUNSEL, I DO -- I THINK Y'ALL HAVE BOTH HAD SENTENCINGS IN FRONT OF ME, BUT I DO REQUIRE A MEMO FIVE [22] DAYS PRIOR TO THE SENTENCING THAT AT A MINIMUM DOES INCLUDE YOUR SENTENCING RECOMMENDATION.

WAS THERE ANYTHING ELSE THAT EITHER OF YOU WANTED TO BRING UP AT THIS TIME?

MR. MANN: NO, YOUR HONOR. THANK YOU.

MR. BERNE: NO, YOUR HONOR. THANK YOU.

THE COURT: OKAY. WELL, THANK YOU.

AND THANK YOU, MR. LOPEZ. AND IS THIS YOUR FAMILY HERE TODAY?

MR. LOPEZ: YES.

THE COURT: THANK YOU FOR COMING AS WELL. AND, AS I SAID, THE SENTENCING WILL BE MONDAY, MARCH THE 2ND, AT 10:00 IF YOU WANT TO BE PRESENT FOR THAT AS WELL. SO THANK YOU FOR BEING HERE. AND, WITH THAT, WE ARE ADJOURNED.

(PROCEEDINGS ADJOURNED.)

[Certificate Omitted]

APPENDIX F

Amendment VI to the Constitution of the United States

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Federal Rule of Criminal Procedure 11. Pleas

(a) ENTERING A PLEA.

(1) *In General.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

Federal Rule of Criminal Procedure 44. Right to and Appointment of Counsel

(a) RIGHT TO APPOINTED COUNSEL. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.

(b) APPOINTMENT PROCEDURE. Federal law and local court rules govern the procedure for implementing the right to counsel.

(c) INQUIRY INTO JOINT REPRESENTATION.

(1) *Joint Representation.* Joint representation occurs when:

(A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

(B) the defendants are represented by the same counsel, or counsel who are associated in law practice.

(2) *Court's Responsibilities in Cases of Joint Representation.* The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including

separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.