

No.

IN THE SUPREME COURT OF THE UNITED STATES

JOSE FARIAS-VALDOVINOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX

Christopher S. Swiecicki
SWIECICKI & MUSKETT, LLC
Suite 308
16100 Chesterfield Parkway W
Chesterfield, MO, 63017
Telephone: (636) 778-0209
Chris@SwiecickiLaw.com
Attorney for Petitioner

TABLE OF CONTENTS

Appendix A:	Court of Appeals Opinion.....	1a
Appendix B:	Court of Appeals Denying Rehearing.....	3a
Appendix C:	Plea Agreement.....	4a
Appendix D:	Change of Plea (March 20, 2020)	19a
Appendix E:	Change of Plea (April 30, 2020)	28a
Appendix F:	Sentencing Hearing.....	42a

United States Court of Appeals
For the Eighth Circuit

No. 18-3481

United States of America

Plaintiff Appellee

v.

Jose Farias-Valdovinos

Defendant Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: March 3, 2020
Filed: May 18, 2020
[Unpublished]

Before SHEPHERD, KELLY, and ERICKSON, Circuit Judges.

PER CURIAM.

Jose Farias-Valdovinos appeals from his sentence after pleading guilty, pursuant to a plea agreement containing an appeal waiver, to aiding and abetting the possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and

846 and 18 U.S.C. § 2. After varying downward, the district court¹ sentenced him 120 months imprisonment. Having jurisdiction under 28 U.S.C. § 1291, we affirm and dismiss in part the appeal.

On appeal, Farias-Valdovinos's counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing that Farias-Valdovinos's sentence was substantively unreasonable and that the appeal waiver in his plea agreement should not be enforced. After independently reviewing the record under Penson v. Ohio, 488 U.S. 75 (1988), we ordered supplemental briefing on whether sufficient evidence supported Farias-Valdovinos's guilty plea and whether that claim survives his appeal waiver. After considering the parties' supplemental filings, we conclude that Farias-Valdovinos's argument that his sentence is substantively unreasonable is barred by the appeal waiver and must be dismissed. However, we find that the appeal waiver does not prevent us from considering his argument that his guilty plea was not knowing or voluntary because there was an insufficient factual basis underlying the plea. See United States v. Haubrich, 744 F.3d 554, 558 (8th Cir. 2014).

Because Farias-Valdovinos failed to challenge the factual basis underlying the plea before the district court, we review this issue for plain error. See United States v. Froom, 616 F.3d 773, 776 (8th Cir. 2010). Following careful review of the record, we conclude that the district court did not plainly err in finding that there was a sufficient factual basis for the plea and in accepting Farias-Valdovinos's guilty plea. Accordingly, we affirm the judgment of the district court and dismiss in part the appeal.

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

003a
**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-3481

United States of America

Appellee

v.

Jose Farias-Valdovinos

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:17-cr-00034-GAF-2)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 24, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE FARIAS-VALDOVINOS,

Defendant.

Case No. 17-00034-02-CR-W-GAF

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Timothy A. Garrison, United States Attorney, and Bruce Rhoades, Assistant United States Attorney, and the defendant, JOSE FARIAS-VALDOVINOS ("the defendant"), represented by Daniel J. Martinez.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to the lesser-included charge contained within **Count Two** of the indictment, *now* charging him with a violation of Title 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 846 and Title 18 U.S.C. § 2, that is, aiding and abetting the possession with intent to distribute a mixture or substance containing a

detectable amount of methamphetamine. By entering into this plea agreement, the defendant admits that he knowingly committed this offense, and is in fact guilty of this offense.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offenses to which he is pleading guilty are as follows:

On January 11, 2017, members of Kansas City, Missouri Police Department's Missouri Western Interdiction Narcotic Task Force were conducting narcotics interdiction activities at the Greyhound Bus Terminal located at 1101 S. Troost Avenue in Kansas City, Missouri. The terminal is located in the Western District of Missouri.

One of the task force members observed the bus originating from New York City, New York, arrive at the terminal and park in the docking area. The members of the task force know this route to be one frequently utilized for the transportation of narcotics and the proceeds generated from the sale of narcotics. As the passengers began to disembark from the bus, a task force member observed a Hispanic male, later identified as Jose Adrian Medina-Herrera pulling a black, soft-sided suitcase and carrying a red and grey "Adidas" brand duffel bag over his shoulder.

A member of the task force initiated contact with Medina-Herrera as Medina-Herrera approached the terminal front doors that led out to the parking lot. Medina-Herrera produced a one-way, paid-in-cash ticket from St. Louis, Missouri, to Kanas City, Missouri, in the name of "Jose Medina" and consented to a search of his bags. During the search of Medina-Herrera's suitcase the task force member observed a white piece of cardboard stuck down the side of the interior of the suitcase and folded over the top of the clothing. As the officer felt around the clothing, he felt hard bundles within. A further examination revealed eleven bundles wrapped in brown packing tape. The bundles contained a crystal-like substance that later field-tested positive for the presence of methamphetamine. The total gross weight of the bundles was 5.35 kilograms.

In a post-*Mirandized* interview Medina-Herrera waived his rights and agreed to give a statement. Medina-Herrera stated he had agreed to transport a suitcase with narcotics to St. Louis, Missouri for an acquaintance he knew in Mexicali, Mexico, in order to make some extra money. In keeping with this arrangement, Medina-Herrera picked up a black suitcase from an unknown Hispanic male in Los Angeles, California, on January 7, 2017. The unknown male instructed him to bring the suitcase to St. Louis, Missouri. Medina-Herrera transported the suitcase with narcotics to St. Louis, Missouri, as instructed, but upon arrival in St. Louis Medina-Herrera was given the additional instruction to take a train to Kansas City, Missouri. Medina-Herrera was unable to find a train

to Kansas City, Missouri, so he took a Greyhound bus instead. As noted above, Medina-Herrera was stopped by the task force officers prior to leaving the terminal in Kansas City.

Subsequent investigation resulted in contact with the individual in Mexicali, Mexico, who gave instructions for Medina-Herrera to wait at the bus terminal to be picked up. Prior to the anticipated pick-up, task force members removed all but a representative sample of the suspected methamphetamine, with the sample weighing approximately fifty-six (56) grams, inside Medina-Herrera's suitcase.

At approximately 10:05 a.m., a Hispanic male, later identified as Jose Farias-Valdovinos, arrived in a 2007 black Toyota Metrix bearing Missouri license plate number WK6-T4H. Surveillance officers observed Medina-Herrera walk up to the vehicle and as Medina-Herrera was getting into the vehicle; the officers approached and took both Medina-Herrera and Farias-Valdovinos into custody.

In a post-*Mirandized* interview Farias-Valdovinos waived his rights and agreed to give a statement. Farias-Valdovinos stated he was at the bus station to pick up someone for a friend. He refused to give the name of his friend and simply stated he knew him as "Pariente" from Mexico. Farias-Valdovinos stated he was going to take Medina-Herrera to a hotel.

The task force officers found several text messages in Farias-Valdovinos's phone that matched the text messages in Medina-Herrera's phone.

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to the lesser-included charge contained within **Count Two** of the indictment, *now* charging him with a violation of Title 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 846 and Title 18 U.S.C. § 2, that is, aiding and abetting the possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine, the maximum penalty the Court may impose is 20 Years imprisonment, a \$1,000,000 fine, no less than three (3) years of supervised release, and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class C felony.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range;

b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. in addition to a sentence of imprisonment, the Court will impose a term of supervised release of at least three (3) years;

d. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

e. any sentence of imprisonment imposed by the Court will not allow for parole;

f. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

g. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to the conspiracy to distribute methamphetamine, or possession with intent to distribute methamphetamine, that took place on or about January 11, 2017, for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Count One, after sentencing.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the counts to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw his plea of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range;

b. The applicable Guidelines section for the offense of conviction at this time is U.S.S.G. § 2D1.1(c)(3), which provides for a base offense level not less than 26;

c. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, it appears he may be entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will make a motion with the Court to that effect, unless the defendant (1) fails to abide by all of the terms and conditions of this plea agreement and his pretrial release; or (2) attempts to withdraw his guilty plea, violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility;

d. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

e. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in Paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

f. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The

defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay;

g. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed-upon Guidelines calculations contained in this agreement; and

h. The United States agrees to request a sentence within the United States Sentencing Guidelines range established at the sentencing hearing and the defendant agrees to request a reasonable sentence based on any good faith sentencing arguments the defendant cares to make that are not otherwise in conflict with agreements herein. The sentencing argument agreements by the parties are not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including a sentence outside the applicable Guidelines range or a consecutive sentence.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the indictment;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that defendant has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until defendant's guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against the defendant;
- e. the right to compel or subpoena witnesses to appear on defendant's behalf; and
- f. the right to remain silent at trial, in which case that silence may not be used against defendant.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask questions about the offense or offenses to which defendant pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, those answers may later be used against defendant in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose the right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights

a. The defendant acknowledges, understands and agrees that by his *unconditional* plea of guilty pursuant to this plea agreement he waives the right to appeal or collaterally attack a finding of guilt *or* denial of a motion to withdraw his guilty pleas following the acceptance of his pleas of guilty pursuant to this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct.

b. The defendant expressly waives the right to appeal any sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal sentence” is a sentence imposed in excess of the statutory maximum. It is *not* a misapplication or miscalculation of the Sentencing Guidelines, an abuse of discretion, the imposition of an unreasonable sentence, or the imposition of a sentence different from that recommended by either party. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal the sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. Financial Obligations. By entering into this plea agreement, the defendant represents that he understands and agrees to the following financial obligations:

a. The Court may order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order restitution in connection with the conduct charged in any counts of the indictment which are to be dismissed and all other uncharged related criminal activity.

b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine.

c. The defendant will fully and truthfully disclose all assets and property in which he has any interest, or over which the defendant exercises control directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant's disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full.

d. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant's acceptance of responsibility.

e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution.

f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to him to assist the USAO in evaluating the defendant's ability to satisfy any financial obligations imposed as part of the sentence.

g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of \$100.00 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of his fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that he has made no transfer of assets or property for the purpose of (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; nor (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that he will make no such transfers in the future.

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars (\$10,000.00) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution, and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

17. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive, or to authorize any third party to request or receive, from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

19. Defendant Will Surrender to Custody at the Plea. The defendant understands that the crime to which he is pleading is an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act. Accordingly, pursuant to 18 U.S.C. § 3143(a)(2), the Court must detain the defendant after he pleads guilty to the offense. The

defendant hereby agrees not to contest his detention immediately after the guilty plea, to surrender to the custody of the United States Marshals at that time, and to not attempt release from custody pending sentencing or transfer to the Bureau of Prisons following sentencing.

20. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

21. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than

the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

22. Immigration Consequences. The defendant understands that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States. Further, the defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea and regardless of any advice the defendant has received from his counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on those consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or collateral attack of any kind challenging his guilty plea, conviction or sentence, based on the immigration consequences of his guilty plea, conviction and sentence.

23. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

24. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Timothy A. Garrison
United States Attorney

Dated: 04/30/18

/s/ Bruce Rhoades
Bruce Rhoades
Assistant United States Attorney
Narcotics & Violent Crimes Unit

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the indictment. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated: 04/30/18

/s/ Jose Farias-Valdovinos
Jose Farias-Valdovinos
Defendant

I am defendant Jose Farias-Valdovinos' attorney. I have fully explained to him his rights with respect to the offenses charged in the indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Jose Farias-Valdovinos' decision to enter into this plea agreement is an informed and voluntary one.

Dated: 04/30/18

/s/ Daniel J. Martinez
Daniel J. Martinez
Attorney for Defendant Jose Farias-Valdovinos

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,) Case No. 17-00034-02-CR-W-GAF
Plaintiff,) Kansas City, Missouri
v.) March 20, 2018
JOSÉ FARIAS-VALDOVINOS,)
Defendant.)

TRANSCRIPT OF HEARING ON CHANGE OF PLEA
(NOT COMPLETED)
BEFORE THE HONORABLE SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: Mr. Bruce A. Rhoades
Assistant United States Attorney
400 E. Ninth St., Ste. 5510
Kansas City, MO 64106
(816) 426-3122

For the Defendant: Mr. Daniel J. Martinez
11800 Shawnee Mission Pkwy. #201
Shawnee, KS 66203
(913) 962-1555

Interpreter: Ms. Marcela Renna

Court Audio Operator: Ms. Traci Chorny

Transcribed by: Rapid Transcript
Lissa C. Whittaker
1001 West 65th Street
Kansas City, MO 64113
(816) 914-3613

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 (Court in Session at 10:44 a.m.)

2 MARCELA RENNA, INTERPRETER, SWORN

3 THE COURT: We're here on the case of *United States vs.*
4 *José Farias-Valdovinos*, Case No. 17-34. If counsel would state
5 their appearance.

6 MR. RHOADES: Bruce Rhoades for the United States, Your
7 Honor.

8 MR. MARTINEZ: The defendant appears in person, by and
9 through counsel, Daniel Martinez. We also have a Spanish-English
10 interpreter here with us this morning.

11 THE COURT: All right. Thank you. We're here this
12 morning because it's my understanding, Mr. Martinez, that the
13 defendant wishes to change his plea from not guilty to guilty, on
14 a lesser included offense in Count Two of the Indictment.

15 MR. MARTINEZ: That is my understanding, Judge.

16 THE COURT: All right. At this time, if you would place
17 the defendant under oath.

18 JOSÉ FARIAS-VALDOVINOS, DEFENDANT, SWORN

19 THE COURT: All right. Mr. Farias-Valdovinos, we're
20 here today because it's the Court's understanding that you wish
21 to change your plea from not guilty to guilty on the lesser
22 included offense in Count Two, is that correct?

23 MR. FARIAS-VALDOVINOS: Correct.

24 THE COURT: Let me go through the charge that we're then
25 here to talk about. The lesser included offense in Count Two is

1 basically a charge of possession with intent to distribute some
2 quantity of methamphetamine. As originally charged, it charged
3 you with intent to distribute 500 grams or more of a substance
4 containing a detectable amount of methamphetamine. The lesser
5 included charge, that we're going to talk about today, carries a
6 penalty of up to 20 years in prison, up to a \$1 million fine, not
7 less than three years supervised release. It is a Class C
8 felony, whereas the original charge was a Class A felony. It
9 also carries a \$100 mandatory special assessment. Is that your
10 understanding of the charge we're here to talk about this
11 morning?

12 MR. FARIAS-VALDOVINOS: Excuse me?

13 MR. MARTINEZ: Judge --

14 THE COURT: I just described to you what the lesser
15 included charge is in the Indictment. You're not here to plead
16 to Count Two, as set forth in the Indictment, but a lesser
17 charge, and I've gone through with you what the penalties of that
18 charge are. And what I asked you was, is that your understanding
19 of the charge that we're here to talk about this morning?

20 MR. FARIAS-VALDOVINOS: It's not completely clear to me,
21 but that's okay.

22 THE COURT: No. We're not going to go forward if it's
23 not completely clear to him. The charge that we're here to talk
24 about is possession with intent to distribute some quantity of
25 methamphetamine, a Class C felony. You were originally charged

1 with a Class A felony. The penalty on this charge in the Plea
2 Agreement is less than what you were originally charged with, and
3 the penalty is up to 20 years in prison, up to a \$1 million fine,
4 not less than three years supervised release. You need to
5 understand that's the charge we're here to talk about.

6 MR. MARTINEZ: Judge, off the record I was having some
7 discussions and explaining to my client because he was just not
8 understanding the exact charge, but I think I've explained it to
9 him. If the Court wants to inquire about it with my client
10 again, that's fine as well.

11 THE COURT: Well, I guess I'm just a little concerned
12 that I would have expected, if he had gone through and understood
13 the Plea Agreement, he would understand the charge that we're
14 here to talk about today. I mean, this is one of the easiest
15 questions I'm going to ask today. And if he doesn't understand
16 that question, I'm just questioning whether we need to put this
17 off to a different day where he has a chance to look at the Plea
18 Agreement further or how you want to proceed?

19 MR. MARTINEZ: I'm confident my client understands,
20 Judge. I've explained it to him on various occasions. I'm
21 confident my client understands what he's being charged with or
22 what he's pleading to. I'm very confident.

23 THE COURT: Well, I mean, my concern is when we got here
24 at 10:30, he needed some time. You know, we gave him about 10,
25 15 minutes or 10 minutes to go over everything again with you,

1 and now, he seems to have some concern about the charge we're
2 here to talk about. So, I guess I'm just, you know, I don't want
3 to go forward with this plea today, unless he is absolutely
4 understanding what he is pleading to, which is this lesser
5 included charge in Count Two. And, you know, I don't really know
6 how to make it any clearer to him what the charge is.

7 MR. MARTINEZ: I understand, Judge. I prefer this
8 matter not be set for trial, Judge. I would prefer that, if I
9 could have maybe a week to speak to my client again, go over it
10 with him clearly so there's no misunderstandings. I would ask
11 for a short continuance to do that.

12 THE COURT: Well, we have -- I'll have to go back and
13 look, but we always continue the cases through the last day of
14 the criminal docket. And so, you know, we can give you -- we
15 could certainly set this for sometime next week, even though
16 that's during the docket. I don't know if you have a trial or if
17 you'd be available, Mr. Rhoades?

18 MR. RHOADES: Judge, I have no objections. The Court
19 knows I never object to continuances. But my problem is is that
20 I have a trial starting on April the 2nd, and next week, all of
21 next week, every day next week I am in trial prep sessions with
22 inmates that the Marshals are bringing in.

23 THE COURT: Is there anyone who could attend the -- who
24 could review the Plea Agreement and attend for you?

25 MR. RHOADES: Judge, as the Court knows, obviously, our

1 office has a lot of folks in it, but -- and they're all very
2 smart people. The problem is is that everybody has the same
3 issue I do. They have their own cases to deal with. If we could
4 put it sometime this week, if there was a day this week, and I
5 understand the Court's calendar may be worse than my calendar.

6 THE COURT: Well, we have a judges retreat on Friday.
7 So, that would not give us a lot of time. We cannot do it
8 Friday.

9 MR. RHOADES: So, I can't imagine that Mr. --

10 THE COURT: Well, but I don't know what his schedule is.
11 He may have things booked --

12 MR. RHOADES: Right.

13 THE COURT: -- just like this week like you have things
14 booked next week.

15 MR. RHOADES: Right.

16 THE COURT: What is your schedule, Mr. Martinez?

17 MR. MARTINEZ: Judge, I have availability. The only
18 time that would work for me would be Wednesday afternoon, Judge.
19 That would be tomorrow.

20 THE COURT: Does that give you enough time to go over
21 this with your client?

22 MR. MARTINEZ: I think it should. I think it should. I
23 hope.

24 THE COURT: Well, I mean, I guess, let me look at my
25 calendar for tomorrow. If it doesn't, then if Mr. Rhoades is

1 tied up the next two weeks, we'd have to -- you'd have to put in
2 a motion to continue it until the next docket, which would then
3 give us until, you know, May 7th to get it worked out.

4 MR. MARTINEZ: Maybe that would be best, Judge. Maybe
5 that would be best.

6 MR. RHOADES: I don't have any objection to that, Judge,
7 if the Court doesn't, I -- I mean, it's --

8 THE COURT: And I haven't gone back and looked. I
9 assume the first defendant, who is represented by Ms. Burns, is
10 that defendant --

11 MR. RHOADES: She's -- that defendant has pled and is
12 set for sentencing. All we'd have to do in that case, Judge,
13 would move the sentencing, which is not a problem at all. We've
14 moved it before. So, that's not a problem. It would be whether
15 this Court would be willing to entertain a motion to continue the
16 trial, which the Government has no objection to.

17 THE COURT: Well, Judge Fenner is going to want the plea
18 to go forward, if at all possible. But I'm not taking the plea
19 where the defendant -- where I can't even get through --

20 MR. RHOADES: Oh, I agree, Judge. I think --

21 THE COURT: -- to what the charge is. So, if you put in
22 a motion to continue until May 7th, assuming, if you can make a
23 record now with your client that he wants that additional time to
24 go over the Plea Agreement with you, then we'll continue it until
25 May 7th.

1 MR. MARTINEZ: All right. That's fine, Judge. I'll, if
2 I could just --

3 THE COURT: Yes.

4 MR. MARTINEZ: Let me speak to my client right now.
5 Okay.

6 (Off Record: Attorney-Client Discussion)

7 MR. MARTINEZ: Judge, I've discussed speedy trial issues
8 with my client, he's okay with that.

9 THE COURT: All right. So, he's in agreement with a
10 continuance until May 7th, is that correct?

11 MR. FARIAS-VALDOVINOS: Yes, yes.

12 THE COURT: All right. Put that in, and then we'll
13 grant it, and I'll apprise Judge Fenner of the situation.

14 MR. RHOADES: That's fine, Judge. Thank you.

15 THE COURT: All right.

16 MR. MARTINEZ: Thank you, Judge.

17 (Court Adjourned at 10:55 a.m.)
18
19
20
21
22
23
24
25

1
2
3
4
5 I certify that the foregoing is a correct transcript
6 from the electronic sound recording of the proceeding in the
7 above-entitled matter.

8
9 /s/ Lissa C. Whittaker
Signature of transcriber

February 17, 2019
Date

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APRIL 30, 2018

(Court in session at 11:09 a.m.)

THE COURT: Thank you. You can all be seated.

Lisa, would you swear the interpreter, please.

(Courtroom deputy swears in interpreter.)

THE COURT: Are you ready, Mr. Martinez?

MR. MARTINEZ: I am, Judge.

THE COURT: Mr. Farias-Valdovinos, would you please stand, raise your right hand, receive an oath from my clerk.

JOSE FARIAS-VALDOVINOS, being sworn by the courtroom deputy, testified:

THE COURT: Thank you. You can be seated and everyone can stay seated.

EXAMINATION BY THE COURT:

Q Mr. Farias-Valdovinos, first of all, do you understand, sir, that you're now under oath; and a result of that, if you were to answer any of my questions falsely, those answers could later be used against you in yet another prosecution for perjury or making a false statement?

A Yes.

Q Would you state your full name for me, please.

A Jose Farias-Valdovinos.

Q How old are you, sir?

A Forty-three years old.

Q And how far have you gone in school?

1 A I didn't finish elementary.

2 Q All right. Have you been treated recently, sir, for
3 any mental illness or addiction to narcotic drugs of any kind?

4 A No.

5 Q Are you currently under the influence of any drug or
6 medication or alcoholic beverage of any kind?

7 A No.

8 Q Have you received a copy of the indictment which
9 contains the charges pending against you in this case?

10 A Yes.

11 Q Have you had an opportunity, sir, to review the charges
12 against you as well as review and discuss your case in general
13 fully with Mr. Martinez as your attorney?

14 A Yes.

15 Q Has Mr. Martinez done everything that you have asked
16 him to do as your attorney in this case?

17 A Yes.

18 Q Do you have any question, concern, or complaint
19 regarding the legal advice or legal representation that Mr.
20 Martinez has provided for you?

21 A No.

22 Q Are you fully and totally satisfied with the legal
23 representation that Mr. Martinez has provided for you?

24 A Yes.

25 Q And, Mr. Farias-Valdovinos, you have entered into a

1 plea agreement with the government in your case; is that
2 correct, sir?

3 A Yes.

4 Q I have an original copy of the plea agreement before
5 me, and on page 15 just below the middle of the page there's a
6 signature line with your name typed under it and initials on
7 that line. Do you consider that to be your signature on the
8 plea agreement?

9 A Yes.

10 Q Did you have the plea agreement read to you in Spanish
11 before you signed it?

12 A Yes.

13 Q And did you have an opportunity to discuss all of the
14 terms of the plea agreement with Mr. Martinez before you signed
15 it?

16 A Yes.

17 Q And do you understand, sir, that the terms of the plea
18 agreement call for the total dismissal of one charge against
19 you and the reduction of the other charge to a lesser offense
20 than the one that you were originally charged with?

21 A Yes.

22 Q Does this plea agreement represent the entire
23 understanding that you have with the government in your case?

24 A Yes.

25 Q Do you understand all the terms of the plea agreement?

1 A Yes.

2 Q Has anyone made any kind of a promise or assurance to
3 you of any kind other than those contained in the plea
4 agreement in an effort to cause you to plead guilty in this
5 case?

6 A No.

7 Q And do you understand, sir, that the terms of the plea
8 agreement are agreements between you and the government but
9 merely recommendations to the Court?

10 A Yes.

11 Q And do you understand that the Court could ultimately
12 reject some or all of those recommendations; and if that was to
13 occur, that would not give you a basis to withdraw a plea of
14 guilty?

15 A Yes.

16 Q Do you feel that anyone has attempted in any way to
17 force you to plead guilty in this case?

18 A No.

19 Q Is it your desire, sir, to plead guilty to the
20 charges -- to the lesser-included charge under Count 2 of
21 aiding and abetting and possession with the intent to
22 distribute a mixture or substance containing methamphetamine of
23 your own free will because you are, in fact, guilty of that
24 charge?

25 A Yes.

1 Q Are you a citizen of the United States, Mr.
2 Farias-Valdovinos?

3 A No.

4 Q Do you understand, sir, that if your plea of guilty is
5 accepted, that upon your release from custody you will likely
6 be deported from the United States and prohibited from
7 returning?

8 A Yes.

9 Q Do you understand that the range of punishment for this
10 lesser-included offense includes a term of imprisonment of up
11 to 20 years, a fine of up to \$1 million, and upon your release
12 from any period of imprisonment, a term of not less than three
13 years of supervised release?

14 A Yes.

15 Q And do you understand, sir, that if while you were
16 serving a term of supervised release it was to be revoked, that
17 you could be returned to prison for up to the full term of your
18 supervised release?

19 A Yes.

20 Q And in addition to all those matters, do you understand
21 that if your plea is accepted, you will be required to pay the
22 government a special assessment in the amount of \$100?

23 A Yes.

24 Q And do you understand, Mr. Farias-Valdovinos, that if
25 your plea is accepted, the probation office will prepare a

1 presentence report; and when that report is completed, the
2 Court will schedule a sentencing hearing at which hearing the
3 Court will determine a reasonable and appropriate sentence?

4 A Yes.

5 Q And do you understand, sir, that there are a number of
6 statutory factors that the Court will consider, and one of
7 those factors will be the recommended range of punishment under
8 the United States Sentencing Guidelines?

9 A Yes.

10 Q Do you understand that the Court could determine an
11 appropriate sentence to be one within the recommended guideline
12 range, one less than, or even one greater than what is
13 recommended by the sentencing guidelines?

14 A Yes.

15 Q And do you understand that if at the time of your
16 sentencing hearing there are questions of fact that are in
17 dispute between you and the government, those factual disputes
18 will be resolved at your sentencing hearing based upon the
19 greater weight of the evidence presented?

20 A Yes.

21 Q And do you understand that those factual disputes will
22 be determined by the Court with the Court taking into
23 consideration all information that the Court deems to be
24 reliable and that could include hearsay or out-of-court
25 statements of other parties?

1 A Yes.

2 Q And do you understand that if the Court decided at your
3 sentencing hearing that the sentencing guidelines are to be
4 applied in a manner different than what you or your attorney
5 thought might be the case, that would not give you a basis to
6 withdraw a plea of guilty?

7 A Yes.

8 Q Do you understand that no federal prisoners are granted
9 parole; therefore, if you're sentenced to prison, you will not
10 be eligible to be released prior to the expiration of your term
11 on parole?

12 A Yes.

13 Q Do you understand additionally that if your plea is
14 accepted, you will not later be allowed to withdraw that plea
15 because of either the nature or the length of the sentence that
16 you ultimately receive?

17 A Uh-huh. Yes.

18 Q And do you understand, Mr. Martinez [sic], that in
19 return for the government's concessions in your plea agreement,
20 you have agreed to waive the right to appeal or collaterally
21 attack, and collaterally attack meaning challenge on any basis
22 including by way of postconviction motion, a finding of guilt
23 following acceptance by the Court of your plea and plea
24 agreement except on grounds of ineffective assistance of
25 counsel or prosecutorial misconduct?

1 A Yeah.

2 Q Do you also understand that you have waived the right
3 to appeal any sentence that you receive, again, either directly
4 or collaterally except on grounds of ineffective assistance of
5 counsel, prosecutorial misconduct, or an illegal sentence?

6 A Yes.

7 Q And do you understand that you do have a right under
8 the law of this country to maintain a plea of not guilty to the
9 charges against you and to have a trial which could be by jury,
10 if it was your choice and desire to do so?

11 A Yeah.

12 Q Do you understand that if there was a trial in your
13 case, that at that trial you would be presumed to be innocent
14 and the government would be required to prove your guilt beyond
15 a reasonable doubt?

16 A Yes.

17 Q Do you also understand that if it was your desire to
18 have a trial, that at that trial you would have the following
19 rights: The right to the assistance of counsel for your
20 defense, the right on your own part to decline to testify or
21 present any evidence unless you voluntarily chose to do so, the
22 right to see and hear all witnesses and have them
23 cross-examined in your defense, and the right to have subpoenas
24 issued to compel the attendance at trial of witnesses to give
25 testimony?

1 A Yes.

2 Q Do you understand that if you were to decide at a trial
3 not to testify or present any evidence, the government would
4 not be allowed to argue or use that against you?

5 A Yes.

6 Q Do you understand that by entering a plea of guilty,
7 that if your plea is accepted, there will not be a trial and
8 you will have waived or given up your right to trial as well as
9 all of the other rights associated with a trial that we have
10 just discussed?

11 A Yes.

12 Q And do you understand that if there was a trial in your
13 case, the government would be required to prove that you aiding
14 and abetting others --

15 THE COURT: Was it aiding and abetting others or is
16 it just aiding and betting distribution?

17 MR. RHOADES: Aiding and abetting others.

18 Q (By the Court) All right. Aiding and abetting others
19 possessed with intent to distribute a mixture or substance
20 containing a detectable amount of methamphetamine, which is a
21 lesser-included charge contained within Count 2 of the
22 indictment?

23 A Yes.

24 Q And do you understand that the government would be
25 required to prove that you did this within the jurisdiction of

1 this court, the Western District of Missouri, on or about
2 January the 11th of 2017?

3 A Yes.

4 Q There is a recitation of facts applicable to this case
5 set forth under section numbered 3 of your plea agreement. Are
6 all of the facts set forth in your plea agreement true and
7 accurate?

8 A Yeah. Yes.

9 THE COURT: Mr. Rhoades, do you have any further
10 record you'd like to make this morning?

11 MR. RHOADES: Not at this time, Your Honor.

12 THE COURT: All right. And, Mr. Martinez, do you
13 have any further record you'd like to make on behalf of your
14 client at this time?

15 MR. MARTINEZ: There's just one slight point.

16 THE COURT: Mr. Martinez, could you speak into the
17 microphone?

18 MR. MARTINEZ: Just one slight clarification. I
19 think the government did a good job reciting the facts. With
20 regard to the text messages, the last paragraph of the facts,
21 to be clear, there were not any text messages from the
22 codefendant to my client's telephone.

23 MR. RHOADES: Judge, the way it's written it could
24 be interpreted that way. Apparently that's the way the
25 defendant interprets it. The way the government interprets it,

1 the way it was written was there were similar text messages on
2 each of the defendants' phones, not to each other but similar
3 text messages controlling their activities -- or directing
4 their activities.

5 THE COURT: All right. Is that your understanding,
6 Mr. Martinez?

7 MR. MARTINEZ: That is my understanding, Judge.
8 Thank you.

9 THE COURT: All right. The record will reflect the
10 agreement of counsel in defining those terms of the plea
11 agreement.

12 Mr. Farias-Valdovinos, to the lesser-included charge
13 under Count 2 of aiding and abetting the possession with the
14 intent to distribute a mixture or substance containing
15 methamphetamine, as that is all more fully and specifically set
16 out as a lesser-included charge under Count 2, how do you wish
17 to plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: I find, sir, that you are fully
20 competent and capable of entering an informed plea.

21 I find that you're aware of the nature of the
22 charges against you and also aware of the consequences of your
23 plea.

24 I find that your plea is made knowingly and
25 voluntarily; further, that it is supported by an independent

1 basis in fact which contains all of the essential elements of
2 the offense charged against you. I therefore accept your plea
3 and adjudge you guilty as charged within that lesser-included
4 offense.

5 The probation office will now prepare the
6 presentence report that I referred to earlier; and when that is
7 completed, we will schedule your sentencing hearing.

8 I'm going to order that you be retained in custody
9 pending sentencing and final disposition.

10 Mr. Martinez, do you have anything further that
11 needs to be taken up this morning?

12 MR. MARTINEZ: Nothing by defense, Judge.

13 THE COURT: Mr. Rhoades?

14 MR. RHOADES: No, Your Honor.

15 THE COURT: All right. Thank you all.

16 (Adjournment)

CERTIFICATE OF OFFICIAL REPORTER

I, Katherine A. Calvert, Federal Official Court Reporter, in and for the United States District Court for the Western District of Missouri, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings in UNITED STATES OF AMERICA, Plaintiff, vs. JOSE FARIAS-VALDOVINOS, Defendant, No. 17-00034-02-CR-W-GAF.

Dated this 13th day of February, 2019.

KATHERINE A. CALVERT, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	17-00034-02-CR-W-GAF
JOSE FARIAS-VALDOVINOS,)	
)	
Defendant.)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE GARY A. FENNER
SENIOR UNITED STATES DISTRICT JUDGE
OCTOBER 15, 2018
KANSAS CITY, MISSOURI

APPEARANCES

FOR THE PLAINTIFF:
MR. BRUCE A. RHOADES
United States Attorney's Office
Charles Evans Whittaker Courthouse
400 East Ninth Street, Floor 5
Kansas City, Missouri 64106

FOR THE DEFENDANT:
MR. DANIEL J. MARTINEZ
Law Offices of Daniel J. Martinez
11800 Shawnee Mission Parkway
Shawnee, Kansas 66203

Proceedings recorded by mechanical stenography, transcript
produced by computer

KATHERINE A. CALVERT, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER
CHARLES EVANS WHITTAKER COURTHOUSE
400 EAST NINTH STREET
KANSAS CITY, MISSOURI 64106

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OCTOBER 15, 2018

(Court in session at 2:32 p.m.)

THE COURT: Thank you. You can all be seated.

Lisa, would you swear the interpreter.

(Courtroom deputy swears in interpreter.)

THE COURT: Ready, Mr. Rhoades?

MR. RHOADES: We are, Your Honor.

THE COURT: Mr. Martinez?

MR. MARTINEZ: Yes, Judge.

THE COURT: Mr. Martinez, you reviewed the
presentence report with Mr. Farias-Valdovinos; is that correct?

MR. MARTINEZ: I have, Judge.

THE COURT: And you noted some objections to some of
the information in the report.

MR. MARTINEZ: We did, Judge.

THE COURT: You object to some of the information as
stated in paragraphs 6, 7, 8, and 9 and take the position that
the defendant never spoke to Mr. Medina-Herrera and did not
have Mr. Medina-Herrera's phone number. You say that the
defendant says that Mr. Medina-Herrera never entered into his
vehicle and that the defendant never knew Mr. Medina-Herrera as
Pariente, and that the defendant denies knowing that Mr.
Medina-Herrera was transporting narcotics and denies any
information from Mr. Medina-Herrera's phone matched his phone
and denies any texts or phone calls to one another.

1 It seems, Mr. Martinez, that much of that is refuted
2 by the information that was obtained from the telephones of the
3 defendant and Mr. Medina-Herrera. Am I incorrect in drawing
4 that conclusion?

5 MR. MARTINEZ: My understanding was there was some
6 information --

7 THE COURT: Could you speak into the microphone?
8 Pull that over to you.

9 MR. MARTINEZ: Judge, my understanding from my
10 client is that there was some information from the source in
11 Mexico to my client, but with regard to telephone communication
12 between the codefendants, I don't think, according to my
13 client, there was much, if any.

14 My client -- my understanding is my client did know
15 that he was there at the bus station to pick up someone for
16 some illicit illegal activity. How much knowledge he had -- he
17 had some knowledge of it, not completely all of the knowledge
18 what was contained in the packages and what those packages were
19 for. That is our position, Judge.

20 THE COURT: Well, isn't that the underlying charge
21 that he pled guilty to?

22 MR. MARTINEZ: My understanding of the underlying
23 charge is it was some sort of possession.

24 THE COURT: Aiding and abetting and possession with
25 intent to distribute.

1 MR. MARTINEZ: Correct, Judge.

2 THE COURT: So he had to know that he was aiding and
3 abetting.

4 MR. MARTINEZ: My understanding is he had some
5 knowledge of what was transpiring. How much is up -- I don't
6 want the Court to --

7 THE COURT: I got that. Maybe I was just confused
8 as to what you were saying earlier.

9 And when Mr. Farias-Valdovinos -- this is in
10 paragraph 9 -- was taken into custody, he had two flip-style
11 telephones in his possession; and on inspection, detectives
12 observed that several text messages matched text messages from
13 Mr. Medina-Herrera. Do you say that's not correct?

14 MR. MARTINEZ: I believe that when the government
15 speaks -- I believe there's some matching information from a
16 source outside the country to one of the codefendants and my
17 client. I don't believe, from my understanding, is that there
18 was identical information from the phones seized from the
19 codefendants, Judge.

20 THE COURT: All right. And so I guess your point is
21 that the defendant knew he was making contact to facilitate
22 this crime that he pled guilty to but he did not previously
23 know that person. Is that kind of the gist of all of this?

24 MR. MARTINEZ: That is my understanding, yes, Judge.

25 THE COURT: I don't know that has much impact on a

1 sentencing consideration.

2 Mr. Rhoades, do you have anything you want to offer?

3 MR. RHOADES: Judge, the only thing I would offer is
4 that -- a couple things, I guess. First of all, is that we
5 would agree that paragraph 6 of the PSR where it states that
6 upon Medina-Herrera's arrival in St. Louis the defendant
7 Farias-Valdovinos instructed Medina-Herrera. That's a mistake,
8 Judge. It's not a mistake in the PSR. Well, it is a mistake
9 in the PSR, but it's based on a mistaken statement in the
10 discovery that we corrected. So it is correct that
11 Medina-Herrera got instructions to come there. What's
12 incorrect is that those instructions did not come from
13 Farias-Valdovinos. So that's correct.

14 THE COURT: All right.

15 MR. RHOADES: So that objection, at least that part,
16 the government doesn't have issue with.

17 With respect to the objections to paragraph 7, Your
18 Honor, the factual basis in the plea agreement, and the
19 detective is here and could testify to the same thing, but it's
20 in the plea agreement. That supports paragraph 7.

21 Paragraph 8, Your Honor, is, again, a bit of a mixed
22 bag in the fact that it is in the -- it is in the plea
23 agreement in less detail than that, and is also from --
24 directly from the discovery that he was -- that this defendant,
25 Mr. Valdovinos, was contacted by an unknown subject, according

1 to him, to pick up a friend that stated he only knew as
2 Pariente, if that's the way it's pronounced. It's unclear from
3 the statement, Judge, whether Mr. Valdovinos was saying the
4 person that contacted him was named Pariente or that the person
5 he was picking up was named Pariente. Be that as it may, that
6 is exactly what the statement indicates from Mr. Valdovinos he
7 made at the time of his arrest.

8 I know that in the PSR it later indicates that
9 Pariente was identified by Medina-Herrera, but I would concede,
10 Judge, it's somewhat confusing in the statement whether
11 Medina-Herrera is the person that Mr. Valdovinos referred to as
12 Pariente. What is perfectly clear from the statement and is I
13 think backed up by the admissions in the plea agreement is that
14 Mr. Valdovinos gave a statement saying, I came here to pick
15 somebody up. I was contacted by somebody in Mexico to pick
16 somebody up at the bus station, take them to a hotel, and the
17 level of his knowledge is, of course, subject to
18 interpretation; but considering the fact that he admitted to
19 aiding and abetting possession with intent to distribute -- as
20 the Court indicated, I don't know how necessary it is to drill
21 down that far.

22 With respect to paragraph 9, Judge, the objection to
23 that paragraph is, again, directly contrary to the admissions
24 in the plea agreement where the defendant admitted that task
25 force officers found several text messages in his phone

1 matching the text messages in Medina-Herrera's phone. If the
2 quibbling is what "match" means, what that means, the PSR and
3 the discovery and the admissions in the plea agreement are that
4 there were similar type of messages between the people in
5 Mexico to the codefendant Medina-Herrera as there were messages
6 from the person in Mexico to Mr. Valdovinos. So, again, I
7 think to use the Court's terminology, I'm not sure of the
8 significance of those objections.

9 THE COURT: All right. Well, I accept the
10 information in the presentence report to the extent that it's
11 consistent with the facts stated in the plea agreement of the
12 parties, and also specifically note that the government's
13 acknowledged that their record was incorrect in relation to
14 paragraph 6, the information in paragraph 6.

15 Mr. Martinez, do you have anything further that you
16 believe needs clarification on those matters?

17 MR. MARTINEZ: No, Judge.

18 THE COURT: All right. As reflected in Mr.
19 Farias-Valdovinos' presentence report under the sentencing
20 guidelines, his total offense level is 35. His criminal
21 history category is I. The guidelines recommend consideration
22 of a range of punishment from 168 to 210 months.

23 And, Mr. Martinez, you filed a sentencing
24 memorandum, and I've reviewed your sentencing memorandum. I
25 take that into consideration.

1 Would you like to speak further at this time as to
2 what you feel would be an appropriate sentence?

3 MR. MARTINEZ: Judge, I believe the parties
4 contemplated to an offense level 26, Judge. We ask for a
5 downward variance to that amount with a guideline sentence from
6 46 to 57 months, Judge. My client's already done about 21
7 months in custody, Judge. We're requesting that based on his
8 criminal history, the level of involvement in this case, Judge,
9 we're asking for a downward variance to -- that he be given
10 credit for that and be released on post-release supervision,
11 Judge. I believe that's an appropriate sentence. I believe
12 the codefendant received 43 months in this case, Judge, and
13 that's what we're requesting.

14 THE COURT: Thank you.

15 Mr. Farias-Valdovinos, is there anything that you
16 would like to say this afternoon before I determine your
17 sentence?

18 THE DEFENDANT: Yes.

19 THE COURT: All right.

20 THE DEFENDANT: This is not fair. I didn't have
21 anything to do with this. Everything that they say is all,
22 like, hearsay. I don't know if there is any evidence, like a
23 video or anything like that.

24 MR. MARTINEZ: Judge, may we have a moment, please?

25 THE COURT: Yes. Ready to continue?

1 MR. MARTINEZ: Judge, yes. We can continue. I
2 think my client would like to clarify some of those statements
3 made to the Court, Judge.

4 THE COURT: All right. Mr. Farias-Valdovinos, you
5 just had the opportunity to have some discussion with your
6 attorney about possibly what you might want to say here this
7 afternoon; is that correct, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that whatever you
10 want to say this afternoon is up to you. It's your decision to
11 make as to what you want to say or what you don't want to say;
12 and while you should listen to your attorney and you should
13 consider your attorney's advice and assistance in that regard,
14 do you understand that it's not up to your attorney to limit or
15 suggest what you might want to say or not want to say? Do you
16 understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you feel free to express yourself
19 in whatever manner you would like this afternoon before I
20 determine your sentence?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Would you like to continue then, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: Very well.

25 THE DEFENDANT: I was forced to do this. They

1 murdered a young cousin of mine, the people obliged me to do
2 this. The people that contacted me, they told me it was
3 Pariente. That's how they called him. And if I didn't do
4 this, they told me they were going to kill the rest of my
5 family. And they told me I needed to be fooled to not know
6 something illegal that I had to transport, to give to a person.

7 I repeat, they told me that if I didn't do it, they
8 were going to keep killing my family, and they also kidnapped a
9 niece of mine because of the same issue, and that's why I had
10 to do it because I was forced.

11 THE COURT: How do you know these people that made
12 these threats?

13 THE INTERPRETER: Excuse me. The interpreter would
14 like a repetition of the question.

15 THE COURT: I wonder how Mr. Farias-Valdovinos knows
16 the people that he says made threats against him.

17 THE DEFENDANT: There's a lot of different groups
18 there in my country that do this type of thing and they
19 threaten and murder families. I don't know if you heard on the
20 news that they do threaten families that don't want to help
21 them out and cooperate with them.

22 THE COURT: Well, it's not necessarily a subject of
23 the sentencing today, but how did they happen to pick you to do
24 this?

25 THE DEFENDANT: They make the choice. They choose

1 you. They pick the most vulnerable, the ones that can't defend
2 themselves. I don't know. They pick wherever they have a
3 hand.

4 THE COURT: All right. Anything else you would like
5 to say?

6 THE DEFENDANT: I just think it's unfair to get such
7 a big sentence for something that I had to put my life at risk
8 for my family's life.

9 THE COURT: All right. Thank you, sir.
10 Mr. Rhoades.

11 MR. RHOADES: Judge, so the codefendant, Your Honor,
12 was started at a lower total offense level because they were
13 given -- they pled to a different charge; and because of that,
14 the drugs were calculated differently, and so then they got a
15 reduction -- the codefendant got a reduction for cooperation
16 for safety valve because they gave a statement and they had no
17 prior criminal history. They were not a leader or organizer,
18 no violence or firearms involved.

19 All of those, of course, applied to Mr. Valdovinos.
20 He did not choose to give a statement so, therefore, he would
21 not get the two levels off for safety valve. So when you
22 calculate that -- those two calculations, the codefendant
23 started at a lower number, and then the codefendant got a
24 downward departure from us because they assisted us in
25 apprehending those that were assisting them in getting these

1 drugs into the Kansas City metropolitan area.

2 Mr. Valdovinos probably could not have actually done
3 that part because we already had him in custody, but, of
4 course, there were other ways he could have done that, and he
5 chose not to do that, which, of course, is his prerogative to
6 do.

7 In fairness, he did tell us at the time he was
8 interviewed he was fearful for his life; but be that as it may,
9 Judge, the point of all of that is that, to use Mr. Valdovinos'
10 words, it just doesn't seem fair to impose the same sentence or
11 even a less sentence on somebody that doesn't -- that starts
12 out at a higher level and then does not do anything to earn
13 anything else. Maybe it's not fair because they are able to
14 earn those things, but he could have at least earned safety
15 value, but he didn't do that.

16 So what we're left with, Judge, is a request from
17 the defense for a sentence that the government just doesn't see
18 any way to get there. That doesn't mean that I'm saying that
19 the only reasonable sentence is the guideline range. As the
20 Court knows, the guidelines are advisory and the Court can
21 consider those along with 3553 factors, and some of these
22 things that have been brought up in defense are indisputably
23 relevant matters for the Court to consider for 3553 factors;
24 but at the end of the day, Judge, we just don't see that giving
25 this defendant the exact same sentence or even less than the

1 codefendant is a reasonable resolution, and we would ask the
2 Court to not impose that sentence.

3 As for whatever sentence we are asking the Court to
4 impose, I really don't have a number, Judge. It's difficult in
5 this fact pattern to do that because of the amount of drugs and
6 the purity of those drugs and the damage those drugs do and the
7 fact that these folks were illegally in the country doing those
8 things, it certainly seems like there should be significant
9 punishment, and what that number is exactly we would leave to
10 this court's discretion.

11 THE COURT: What did Mr. Medina-Herrera get?

12 MR. RHOADES: Forty-eight months, Judge. That was
13 actually the sentence I recommended in the downward departure
14 motion.

15 THE COURT: All right. Thank you.

16 Well, Mr. Farias-Valdovinos, if what you say is true
17 about the duress you were placed under, that's a very
18 unfortunate thing, but you don't deal with that by committing
19 crimes that destroy lives as well. Illegal drugs are extremely
20 destructive. They kill people. People kill for them. The
21 proliferation of this kind of criminal activity by virtue of
22 your acts destroys lives as well. So if what you say is true
23 about the threats and about the violence against your family,
24 that's a horrible thing and it will be a very, very difficult
25 thing to have to deal with and find a way out of, but that's

1 what you have to do. You have to find a legitimate way to deal
2 with that and not an illegal way that causes other lives to be
3 destroyed and placed in jeopardy.

4 Taking into consideration all of the sentencing
5 factors set forth under 18 U.S.C. Section 3553, including your
6 history and characteristics, which do seem a little suspect to
7 me from the record before me, the need for the sentence to
8 reflect the seriousness of your offense, promote respect for
9 the law, provide just punishment, afford adequate deterrence to
10 criminal conduct, protect the public from future crimes, and
11 provide you with needed correctional care and all other
12 statutory factors, that I believe a sentence of 120 months in
13 the custody of the Bureau of Prisons is a reasonable and
14 appropriate sentence, and I'm going to impose that sentence on
15 Count 2.

16 Upon your release, I'm going to order you be placed
17 on supervised release for a period of three years.

18 I find that you do not have the ability to pay a
19 fine and I waive that, but you are ordered to pay the United
20 States a special assessment in the amount of \$100, which is due
21 immediately.

22 While you're on supervised release, I'm going to
23 order that you comply with all the mandatory and standard
24 conditions that have been adopted by this court for
25 supervision, as well as the special conditions listed in Part D

1 of the presentence investigation report.

2 I'm going to order that you be retained in custody
3 for service of the sentence imposed.

4 And there was a waiver of your right to appeal under
5 the terms of your plea agreement; however if you believe there
6 is a basis for appeal that was not waived, you need to know
7 that you have only 14 days from today, the day the sentence was
8 imposed, to file a notice of your intent to appeal. If you
9 don't file that notice within 14 days of today, all right to
10 appeal will be waived and forfeited by you.

11 My clerk, who is seated here just to my left, has a
12 form that she will give you that you can use to file that
13 notice if it's something that you wish to pursue.

14 And, Mr. Rhoades, I believe you have a count to
15 dismiss?

16 MR. RHOADES: We do, Judge. At this time we move to
17 dismiss Count 1.

18 THE COURT: That count's dismissed.

19 MR. RHOADES: Thank you, Your Honor.

20 THE COURT: Thank you.

21 Mr. Martinez, do you have anything further that
22 needs to be addressed?

23 MR. MARTINEZ: No, Judge.

24 THE COURT: All right. Thank you all.

25 (Adjournment)

CERTIFICATE OF OFFICIAL REPORTER

I, Katherine A. Calvert, Federal Official Court Reporter, in and for the United States District Court for the Western District of Missouri, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings in UNITED STATES OF AMERICA, Plaintiff, vs. JOSE FARIAS-VALDOVINOS, Defendant, No. 17-00034-02-CR-W-GAF.

Dated this 13th day of February, 2019.

KATHERINE A. CALVERT, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER