

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JHONNY CORLEYIS GUEVARA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Eleventh Circuit Court of Appeals erred in denying Petitioner's request to be treated as a minor participant in light of the changes made by the U.S. Sentencing Commission to the sentencing guidelines U.S.S.G. § 3B1.2.

TABLE OF CONTENTS

	Page
Question Presented for Review	ii
Table of Contents	iii
Table of Appendices	iv
Table of Authorities	iv
Petition for Writ of Certiorari	v
Opinion Below	v
Jurisdiction	v
Constitutional Provisions and Statutes Involved	v
Statement of the Case	1
Course of Proceedings and Disposition in Court Below	1
Statement of Facts	1
Argument	4
Conclusion	10

INDEX TO APPENDICES

APPENDIX A:	Opinion of the Eleventh Circuit
APPENDIX B:	Judgment of the District Court
APPENDIX C:	Sentencing transcript.
APPENDIX D:	Transcript of Plea Hearing

TABLE OF AUTHORITIES

TABLE OF CITATIONS

CASE AUTHORITY

PAGE(S)

<i>United States v Cruickshank</i> , 837 F3d 1182 (11 th Cir. 2016).	8
<i>United States v. Rodriguez de Varon</i> , 175 F3d 930 (11 th Cir 1999)	5,8

CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. V	vi
U.S. CONST. Amend. VI	vi

STATUTORY AUTHORITY

28 U.S.C. §1254(1)	v
--------------------	---

Other

U.S.S.G. § 2D1.1	4,6
U.S.S.G. § 3B1.2 Application Note 3(A).	5
U.S.S.G. § 3B1.2 Application Note 3(C)	4,6,7
U.S.S.G. § 3B1.2 Application Note 5	5
U.S.S.G. Appendix C Amend 635	6
U.S.S.G. Appendix C Amend 640	4

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below, where the Eleventh Circuit Court of Appeals held that:

Because Petitioner's relevant conduct matched his actual conduct he cannot prove he is entitled to a minor-role adjustment. The court found there was no clear error by the district court.

OPINION BELOW

The Opinion of the Eleventh Circuit appears at Appendix A to the petition and is unpublished. The Judgment of the United States district court appears at Appendix B.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit issued its decision in this case is January 18, 2018. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This petition involves several statutory provisions. The content of these relevant provisions and sections are as follows:

U.S. CONST. Amend. V:

No person . . . shall be deprived of life, liberty, or property, without due process of law. . .

U.S. CONST. Amend. VI :

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 where in 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 defence.

18 U.S.C. § 3553(a) provides in relevant part that:

...The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider-

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established for- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines-... (5) any pertinent [Sentencing Commission] policy statement... (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.

28 U.S.C. § 1254(1) provides in relevant part that:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree...

U.S.S.G. § 3B1.2 Application Note 3(C) provides:

In determining whether to apply subsection (a) or (b), or an intermediate adjustment, the court should consider the following non-exhaustive list of factors:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or

organizing the criminal activity;
(iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
(iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
(v) the degree to which the defendant stood to benefit from the criminal activity.

For example, a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.

The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.

STATEMENT OF THE CASE

Course of the Proceedings and Disposition in the Court Below

On May 26, 2016 Petitioner was charged in a two count indictment along with two co-defendants. They were charged with violating 46 U.S.C. §§ 70503 and 70506. Petitioner entered an open plea to the charges on October 6, 2016. At his sentencing on February 16, 2017, Petitioner was sentenced to 168 months imprisonment followed by five years of supervised release. A Notice of Appeal was timely filed. Petitioner is currently incarcerated.

Statement of the Facts

On May 19, 2016 a United States Coast Guard Law Enforcement Detachment Team conducted a right of approach for the go-fast vessel Divino Nino I in international waters. (Appendix D Pg. 40). The Divino Nino I had markings of an Ecuadorian flag and registry number painted on the hull. (Appendix D Pg. 40). The Ecuadorian government was contacted regarding the Divino Nino I but could not confirm or deny nationality of the vessel and it was assimilated as one without nationality. (Appendix D Pg. 41-42). The Divino Nino I was found in a bale field of approximately 20 bales of cocaine weighing 760 kilograms. (Appendix D Pg. 40). The crew was transported to the Middle District of Florida for prosecution. (Appendix D Pg. 41). Petitioner gave a statement to

law enforcement officers that he was hired to go on a drug run. (Appendix D Pg. 41), Doc. 41.

Petitioner is a poor, indebted fisherman from Ecuador who is a Colombian national. (PSR¶¶ 38,47). He has lived in Ecuador for five years. (PSR¶ 36). His home was a one room efficiency. (PSR¶38). He was unable to pay a fine due to his financial condition. (PSR¶ 47).

Petitioner entered an open plea to the charges on October 6, 2016. (Appendix C).

A sentencing hearing was held on February 16, 2017. (Appendix C). Petitioner objected to his role in the offense arguing that he was a minor participant which would have qualified him for at least a two level downward adjustment the guidelines calculations for role in the offense. (Appendix C Pg. 6-9). Petitioner argued that he was entitled to the minor role adjustment for his participation in this offense. (Appendix C Pg. 6-9). He argued that he was a small part of this conspiracy which was effectively, a drug transaction.(Appendix C Pg. 6-7). It was a drug deal between the buyers and sellers of the cocaine. (Appendix C Pg. 6-7). The crew of the go-fast Petitioner was on were merely transporting the drugs, mules of you will. (Appendix C Pg. 6-7, 9). Petitioner argued that there were more people involved than the three people on the boat.

(Appendix C Pg.6-9). There were people that hired the men on the boat; the people that organized this venture; people who owned the drugs, and the people who were purchasing the drugs. (Appendix C Pg. 4-5, 8-9). Petitioner argued that even though he was the captain on the boat that was transporting the drugs he was entitled to an adjustment because there are others that are more culpable than he and the crew. (Appendix C Pg. 7). He argued that “someone who is in Mr. Guevara’s situation who is not—does not have a proprietary interest in the drugs and is merely performing a function that he was paid to perform, that being a transport (sic) of the drugs, should be considered for the minor role adjustment.”(Appendix C Pg.7). Further, Petitioner argued that in light of the Petitioner’s poverty, he did not have the means to purchase the millions and millions of dollars the cocaine was worth and therefore others more culpable in this conspiracy. (Appendix C Pg.9).

The government’s own argument supports Petitioner’s position that there are other, more culpable people involved. (Appendix C Pg. 7-8). The government stated that there was a load guard that was brought in from Guatemala to transport the drugs. (Appendix C Pg.7). The government conceded that there were owners and suppliers; cocaine purchasers and receivers. (Appendix C Pg.8). The government argued that because it did not know their identities, not that they did

not exist, the adjustment was unwarranted. (Appendix C Pg.8).

The court denied the minor role adjustment stating “[t]he principles of the DaVaron (sic) case still apply,” and overruled the objection. (Appendix C Pg.9). Petitioner was sentenced to 168 months on each count running concurrent and a five year period of supervised release on each count to run concurrent. (Appendix C Pg. 14.) Petitioner appealed his sentence to the Court of Appeals for the Eleventh Circuit which affirmed the sentence. (Appendix A)

ARGUMENT

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED IN DENYING PETITIONER’S REQUEST TO BE TREATED AS A MINOR PARTICIPANT IN LIGHT OF THE CHANGES MADE BY THE U.S. SENTENCING COMMISSION TO THE SENTENCING GUIDELINES U.S.S.G. § 3B1.2.

The Court of Appeals for Eleventh Circuit erred when it affirmed Petitioner’s sentence. The court should have accepted the Sentencing Commission’s changes as more than merely clarifying because the reasons for the change were to make application of the adjustment more frequent and more consistent. Ignoring the reason for the change violates Petitioner’s right to due process.

The Sentencing Commission since at least 2002 has issued a number of changes to the mitigating role adjustment as it related to drug offenses. Culminating in the most recent changes found in U.S.S.G. §3B1.2 Application Note 3(C) (2015). These changes have been an attempt by the Commission to clarify those individuals that should benefit from the mitigating role

adjustment. The most recent change was made because the Commission believed that the adjustment was not being applied uniformly among the Circuits and, more importantly for Petitioner, not as frequently as it had intended. *See* U.S.S.G. Appendix C, amend. 794.

Below is a review of these changes.

In November 2002 the United States Sentencing Commission amended U.S.S.G. § 2D1.1 to establish that the offense level for individuals in drug cases that were granted a mitigating role in the offense would be a level 30. U.S.S.G. § 2D1.1 (a) (3)(2002). The reason for this change was the following:

This amendment responds to concerns that the guidelines pertaining to drug offenses do not satisfactorily reflect the culpability of certain offenders. . . .

. . . the amendment modifies § 2D1.1 (a) (3) to provide a maximum base offense level of level 30 if the defendant receives an adjustment under § 3B1.2 (Mitigating Role). The maximum base offense level somewhat limits the sentencing impact of drug quantity for offenders who perform relatively low level trafficking functions, have little authority in the drug trafficking organization, and have a lower degree of individual culpability (e.g. “Mules” or “couriers” whose most serious trafficking function is transporting drugs and who qualify for a mitigating role adjustment).

This part of the amendment responds to concerns that base offense levels derived from the Drug Quantity Table in § 2D1.1 overstate the culpability of certain drug offenders who meet the criteria for a mitigating role adjustment under § 3B1.2. The commission determined that, ordinarily, a maximum base offense level of 30 adequately reflects the culpability of a defendant who qualifies for a mitigating role adjustment.

U.S.S.G. Appendix C Amend 640.

A minimal participant adjustment applies to defendants “who are plainly among the least culpable of those involved in the conduct of a group.” U.S.S.G. § 3B1.2 Application Note 4. A minor participant role reduction applies to a Defendant described in Application Note 3(A) who

is less culpable than most other participants, but whose role could not be described as minimal. U.S.S.G. § 3B1.2 Application Note 5. Application note 3(A) states that the section provides “adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant.” U.S.S.G. § 3B1.2 Application Note 3(A).

The seminal case is *USA v. Rodriguez de Varon*, 175 F3d 930 (11th Cir 1999). In that case, the defendant was caught smuggling heroin she ingested. She was charged with the amount of drugs she was actually carrying. The court stated that it did “not create a presumption that drug couriers are never minor or minimal participants, any more than they are always minor or minimal.” *Id.* at 943. The court held that the district court was required to “assess all the facts probative of the defendant’s role in her relevant conduct in evaluating the defendant’s role in the offense.” *Id.* The court set a two prong analysis to be used in determining whether an adjustment for minor participant is warranted. *Id.* “First, and most importantly, the district court must measure the defendant’s role against the relevant conduct for which she was held accountable at sentencing. . . . Second, the district court may also measure the defendant’s role against the other participants, to the extent that they are discernable, in that relevant conduct. *Id.* at 945.

In making the ultimate finding as to role in the offense, the district court should look to each of these principles and measure the discernable facts against them. In the drug courier context, examples of some relevant factual considerations include: amount of drugs, fair market value of drugs, amount of money to be paid to the courier, equity interest in the drugs, role in planning the criminal scheme, and role in the distribution.

Id.

The guidelines adopted the approach in *Rodriguez de Varon* in determining if a person qualified for a mitigating role because it did “not automatically preclude a defendant from being

considered for a mitigating role adjustment in a case which the defendant is held accountable under §1B1.3 solely for the amount of drugs the defendant personally handled.” U.S.S.G.

Appendix C Amend 635.

The substantive impact of this amendment. . . is to provide , in the context of a drug courier, for example, that the court is not precluded from considering a §3B1.2 adjustment simply because the defendant’s role in the offense was limited to transporting or storing drugs, and the defendant was accountable under §1B1.3 only for the quantity of drugs the defendant personally transported or stored.

Id.

In 2004, the Commission amended U.S.S.G. § 2D1.1(a)(3) making the reduction in base offense level for defendants that receive a mitigating role adjustment graduated. The amendment changed the base offense level from 30 to 34 for cases in which the Drug Quantity Table set the base offense level at 38. U.S.S.G. § 2D1.1 (a) (3)(2004).¹ The Commission made this change because of proportionality concerns with an across the board reduction to level 30 irrespective of the offense level as determined by the Drug Quantity Table. U.S.S.G. Appendix C Amend 669.

The United States Sentencing Commission made its most recent changes to U.S.S.G. § 3B1.2 effective November1, 2015. The changes to Application note 3(C) are as follows:

In determining whether to apply subsection (a) or (b), or an intermediate adjustment, the court should consider the following non-exhaustive list of factors:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
- (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- (iv) the nature and extent of the defendant’s participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in

¹ The graduated scheme is found in the current guideline manual at U.S.S.G. §2.D1.1(a)(5) (2016).

performing those acts;
(v) the degree to which the defendant stood to benefit from the criminal activity.

For example, a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.

The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.

U.S.S.G. § 3B1.2 Application Note 3(C) (2015).

The changes in the guidelines were made because the Sentencing Commission found that the adjustment was applied inconsistently and more sparingly than it intended. *See* U.S.S.G. Appendix C, amend. 794. The Commission conducted a review of cases involving low-level offenders, analyzed case law, and considered public comment and testimony. Overall the study found that mitigating role is applied inconsistently and more sparingly than the Commission intended. In drug cases, the Commission's study confirmed that mitigating role is applied inconsistently to drug defendants who perform similar low level functions (and the rate of application vary widely from district to district). For example, application of mitigating role varies along the southwest boarder, with a low of 14.3 percent of couriers and mules receiving the mitigating role adjustment in one district compared to a high of 97.2 percent in another. Moreover, among drug defendants who do receive mitigating role, there are differences from district to district in application rates of 2-, 3-, and 4-level adjustments. *See* U.S.S.G. App. C, Amend. 794.

The most recent changes made by the Sentencing Commission to the factors to be

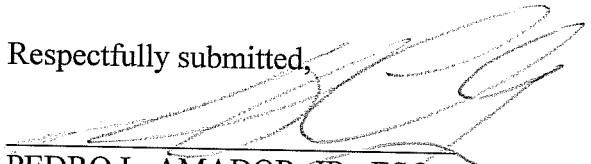
considered for a mitigating role adjustment effectively overruled *Rodriguez de Varon* and its reasoning. *Contra, U.S.A. v Cruickshank*, 837 F3d 1182 (11th Cir. 2016). Consequently, this court should no longer rely on it. Instead, the court should focus on these new factors. In light of the history of the Commission's changes to the mitigating role adjustment and, in particular the most recent changes, Petitioner should receive a mitigating role adjustment for being a minor participant. These changes weigh in Petitioner's favor he was part of a crew member of a vessel transporting drugs. Petitioner was not aware of the scope and structure of the organization. (factor i). He did not participate in planning or organizing these trips (factor ii); he had no decision-making authority or have influence over decision making (factor iii). He had no discretion, he did as he was told to do. (factor iv). Petitioner was paid very little in comparison to the value of the drugs (factor v).

Additionally, the last two paragraphs of the changes support giving Petitioner the adjustment because of his role in this case. As the second paragraph states, a defendant who, like Petitioner, does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline. He should receive an adjustment because he is less culpable than the average participant. A person, like Petitioner, who just performed tasks as he was directed is a minimal or minor participant. He should not be held responsible to the same degree as the organizers of this trip; the financiers; the owners of the drugs; and the buyers of the drugs. All of those individuals are more culpable than Petitioner. To do so would effectively make the mitigating role adjustment meaningless. Thus, Petitioner should have received an adjustment for mitigating role.

CONCLUSION

Based upon the forgoing arguments the Petitioner respectfully requests this Court to grant certiorari to review the issues that are of both national and constitutional magnitude assuring Petitioner and all defendants a fair sentencing hearing and protection of their rights. Thus, all defendants' rights are implicated by the decision in this case. Certiorari should therefore be granted.

Respectfully submitted,



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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10955
Non-Argument Calendar

D.C. Docket No. 8:16-cr-00240-EAK-AEP-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JHONNY CORLEYIS GUEVARA,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(January 18, 2018)

Before TJOFLAT, MARTIN, and NEWSOM, Circuit Judges.

PER CURIAM:

Jhonny Corleyis Guevara appeals his 168-month sentence, imposed after he
pled guilty to conspiracy to possess with intent to distribute five kilograms or more

of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a), 70506(a) and (b), and 21 U.S.C. § 960(b)(1)(B)(ii), and aiding and abetting to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a) and 70506(a), 18 U.S.C. § 2, and 21 U.S.C. § 960(b)(1)(B)(ii). On appeal, Corleyis Guevara argues that (1) the district court erred in denying him a minor-role reduction pursuant to United States Sentencing Guidelines (“USSG”) § 3B1.2(b); and (2) his sentence was unreasonable. After careful review, we affirm.

I.

Corleyis Guevara and his codefendants, Ilcias Artemio Perez De La Cruz and Carlos Alberto Reyes Rivas, were transporting cocaine on a “go-fast vessel” in international waters. Corleyis Guevara was the captain. When the United States Coast Guard approached the boat, the responding officers observed that the go-fast vessel was “dead in the water in a bale field.” The recovered bales tested positive for cocaine and weighed about 760 kilograms. Corleyis Guevara admitted “he was hired to go on a drug run,” “had received an advance payment[,] and before departing . . . put the bales on board.”

II.

We review a district court's decision about whether a defendant qualifies for a minor-role reduction under the Guidelines for clear error. United States v. Rodriguez De Varon, 175 F.3d 930, 937 (11th Cir. 1999) (en banc). A defendant "who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal," is entitled to a two-level reduction for his minor role. USSG § 3B1.2(b), cmt. n.5. The defendant must prove his minor role by a preponderance of the evidence. Rodriguez De Varon, 175 F.3d at 939.

To determine if the defendant qualifies, "the district court must measure the defendant's role against the relevant conduct for which [he] was held accountable" and "may also measure the defendant's role against the other participants, to the extent that they are discernable, in [the] relevant conduct." Id. at 945. Application Note 3(C) for Guidelines § 3B1.2 presents a non-exhaustive list of factors that the court may consider in making this evaluation. USSG § 3B1.2 cmt. n.3(C).

Corleyis Guevara argues he, Perez De La Cruz, and Reyes Rivas were merely drug couriers and there were other more culpable participants who "hired the men on the boat," "organized this venture," "owned the drugs," or were going to "purchas[e] the drugs." However, "a defendant's status as a drug courier does not alter the principle that the district court must assess the defendant's role in light

of the relevant conduct attributed to [him]” and is not itself dispositive of whether a defendant is entitled to the adjustment. Rodriguez De Varon, 175 F.3d at 942.

“The conduct of participants in any larger criminal conspiracy is irrelevant.” Id. at 944.

Here, Corleyis Guevara was held accountable for the 760 kilograms of cocaine that he admitted he loaded onto the boat and attempted to deliver to purchasers. Because his relevant conduct matched his actual conduct, “he cannot prove that he is entitled to a minor-role adjustment simply by pointing to some broader scheme for which he was not held accountable.” See United States v. Alvarez-Coria, 447 F.3d 1340, 1343 (11th Cir. 2006) (per curiam). And Corleyis Guevara presented no evidence demonstrating that he was less culpable than Perez De La Cruz and Reyes Rivas, the only other discernable participants involved in the relevant conduct. See Rodriguez De Varon, 175 F.3d at 944–45. Instead, Corleyis Guevara’s role loading the cocaine and captaining the boat suggested he understood the scope and structure of the criminal activity in which he was involved and exercised some authority over it. See USSG § 3B1.2 cmt. n.3(C); Rodriguez De Varon, 175 F.3d at 942–43, 945 (counseling courts to consider all facts to determine a drug courier’s role in the offense and listing factors to consider). The district court’s denial of the two-level minor-role reduction therefore was not clear error.

III.

We review the reasonableness of a sentence for abuse of discretion. Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). We first determine whether the sentence is procedurally unreasonable—that is, whether the district court committed any “significant procedural error, such as . . . improperly calculating[] the Guidelines range, treating the Guidelines as mandatory, [or] failing to consider the [18 U.S.C.] § 3553(a) factors.”¹ Id. If the sentence is procedurally sound, we determine whether it is substantively reasonable, “tak[ing] into account the totality of the circumstances.” Id.

Corleyis Guevara argues his 168-month sentence is procedurally unreasonable for three reasons: (1) the district court “incorrectly calculated the guidelines because it erroneously denied an adjustment for minor role,” (2) the court incorrectly “stated that no variance was available because [Corleyis Guevara] did not cooperate with [the] government . . . contrary to Booker,”² and (3) “the court failed to adequately consider the 18 U.S.C. § 3553(a) factors.” When

¹ The § 3553(a) factors include (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for deterrence; (4) the need to protect the public; (5) the need to provide the defendant with needed educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwarranted sentencing disparities; and (10) the need to provide restitution to victims. 18 U.S.C. § 3553(a).

² United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005).

sentencing a defendant, “the district court does not need to discuss or state each [§ 3553(a)] factor explicitly. An acknowledgment the district court has considered the defendant’s arguments and the § 3553(a) factors will suffice.” United States v. Gonzalez, 550 F.3d 1319, 1324 (11th Cir. 2008) (per curiam) (citation omitted).

There was no procedural error. First, because the district court’s denial of the minor-role reduction was not error, its Guidelines calculation was correct. Second, there is no indication the court misunderstood its authority to impose a variant sentence. Corleyis Guevara offered a number of reasons for requesting a variant sentence, and the court simply determined “[t]here [was] no basis to provide a variance.” Third, the district court adequately addressed the § 3553(a) factors. When imposing the sentence, the court stated it “consider[ed] . . . all the factors identified in [18 U.S.C. § 3553(a)]” and found “the sentence imposed is sufficient, but not greater than necessary to comply with the statutory purpose of sentencing.” Although this is all that is required by our precedent, see id., the court also discussed Corleyis Guevara’s age, health, education, work history, and family. It also noted the seriousness of the offense, observing it involved 760 kilograms of cocaine.

We next review Corleyis Guevara’s sentence for substantive reasonableness. A sentence within the Guidelines range is expected to be reasonable, and it is the defendant’s burden to show otherwise. Gonzalez, 550 F.3d at 1324. We will

reverse “if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” United States v. Clay, 483 F.3d 739, 743 (11th Cir. 2007) (quotation omitted).

Corleyis Guevara has not shown his sentence was substantively unreasonable. His Guidelines range of 168 to 210 months was driven primarily by the drug quantity with which he was charged. The district court appeared to give the drug amount significant weight at sentencing, repeatedly mentioning the offense involved 760 kilograms. However, it was within the district court’s discretion to give more weight to the amount of cocaine involved in the offense and the need to protect U.S. citizens from its distribution when balancing the § 3553(a) factors. See id. (stating “[t]he weight to be accorded any given § 3553(a) factor is a matter committed to the sound discretion of the district court” (quotation omitted)). The district court also explicitly considered other factors, including Corleyis Guevara’s history and characteristics, as well as how the educational and vocational programs offered by the Bureau of Prisons could aid Corleyis Guevara in providing for his family, both while in prison and afterwards. Finally, Corleyis Guevara’s 168-month sentence is at the lowest end of his

Guidelines range, which is the kind of sentence we expect to be reasonable. See
Gonzalez, 550 F.3d at 1324.

Corleyis Guevara's total sentence was procedurally and substantively
reasonable.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

vs

**Case Number. 8:16-cr-240-T-17AEP
USM Number: 67154-018**

JHONNY CORLEYIS GUEVARA

Pedro Amador, Jr., CJA

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts One and Two of the Indictment. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

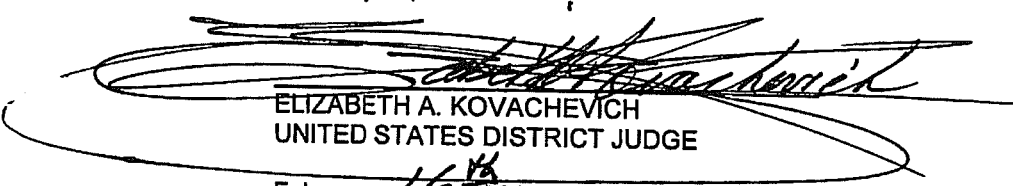
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
46 U.S.C. §§ 70503(a), 70506(a) and (b); and 21 U.S.C. § 960(b)(1)(B)(ii)	Conspiracy to Possess with Intent to Distribute Five Kilograms or More of Cocaine While on Board a Vessel Subject to the Jurisdiction of the United States	May 20, 2016	One
46 U.S.C. §§ 70503(a), 70506(a), 18 U.S.C. § 2, and 21 U.S.C. § 960(b)(1)(B)(ii)	Aiding and Abetting to Possess with Intent to Distribute Five Kilograms or More of Cocaine While on Board a Vessel Subject to the Jurisdiction of the United States	May 20, 2016	Two

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

February 16, 2017


ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

February 16th, 2017

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ONE HUNDRED and SIXTY-EIGHT (168) MONTHS**. This term consists of **ONE HUNDRED and SIXTY-EIGHT (168) MONTHS** as to each of Counts One and Two of the Indictment, both such terms to run **CONCURRENTLY**. Defendant shall receive credit for time served as calculated by the United States Bureau of Prisons.

The Court makes the following recommendations to the Bureau of Prisons:

1. 1st choice of incarceration – Ft. Dix, NJ
2. 2nd choice of incarceration – Jesup, GA
3. UNICOR or comparable program to send support for 5 minor children.
4. 500 hour substance abuse counseling.
5. Provide all necessary secondary education. Then procure GED.
6. Provide education to defendant speaking, reading, and writing English language.
7. Vocational education in diesel mechanics, electrical and plumbing trades, HVAC, refrigeration, small business administration and computers related to trades.
8. Defendant was legally paroled into the U.S.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS** as to each of Counts One and Two of the Indictment, both such terms to run CONCURRENTLY.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
4. You must cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

Jhonny Corleyis Guevara
8:16-cr-240-T-17AEP

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature: _____

Date: _____

Jhonny Corleyis Guevara
8:16-cr-240-T-17AEP

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Should the defendant be deported, he shall not be allowed to re-enter the United States without the express permission of the appropriate governmental authority.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

Total Assessment

\$200.00

Total Fine

Waived

Total Restitution

N/A

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	Tampa, Florida
	)	
Plaintiff,	)	No. 8:16-cr-240-T-17AEP
	)	
vs.	)	February 16, 2017
	)	
JHONNY CORLEYIS GUEVARA,	)	2:00 p.m.
	)	
Defendant.	)	Courtroom 14A
	)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Official Court Reporter:

*Scott Gamertsfelder, RMR, FCRR
801 North Florida Avenue
Tampa, Florida 33602
Telephone: (813) 301-5898*

*(Proceedings reported by stenotype; Transcript produced by
computer-aided transcription.)*

A P P E A R A N C E S

GOVERNMENT COUNSEL:

Joseph K. Ruddy, Assistant U.S. Attorney
United States Attorney's Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
(813) 274-6000

DEFENSE COUNSEL:

Pedro Amador, Jr., Esq.
Law Office of Pedro Amador, Jr.
2203 North Lois Avenue, Suite 925
Tampa, Florida 33607
(813) 250-0556

ALSO PRESENT:

Tracy Shroyer,
Probation Officer

Xavier Keogh,
Spanish Interpreter

- - -

P R O C E E D I N G S

February 16, 2017

2:02 p.m.

- - -

COURT SECURITY OFFICER: All rise.

The United States District Court in and for the Middle District of Florida is now in session. The Honorable Elizabeth A. Kovachevich presiding.

Please be seated.

THE COURT: This afternoon we have Mr. Zaremba.

MR. ZAREMBA: I'm here, but I'll be second.

THE COURT: Pedro, come up here and, Mr. Ruddy, on the Jhonny Corleyis Guevara case.

Mr. Interpreter, raise your right hand to be sworn.

THE COURTROOM DEPUTY: Do you solemnly swear or affirm under penalty of perjury that you will truthfully and to the best of your ability translate from English to Spanish and from Spanish to English all questions and responses propounded by this Court?

THE INTERPRETER: I do. Javier Keogh, K-e-o-g-h.

THE COURT: Ascertain you are able to speak with the defendant in the Spanish language.

(Interpreter complies.)

DEFENDANT CORLEYIS: Yes.

THE COURT: Interpreter acceptable to you,

1 Mr. Amador?

2 MR. AMADOR: Yes.

3 THE COURT: To you, Mr. Ruddy?

4 MR. RUDDY: Yes.

5 THE COURT: I'll call the case. This is *Jhonny*
6 *Corleyis Guevara*, Case No. 8:16-cr-240-T-17AEP. The
7 United States Attorney is represented by Mr. Ruddy; the
8 defendant is represented by Pedro Amador.

9 Bear with me. I have to read the script.

10 Jhonny Corleyis Guevara, on October 6th, 2016, you
11 entered a plea of guilty to Count One of the Indictment,
12 charging you with conspiracy to possess with intent to
13 distribute 5 kilograms or more of cocaine while on board a
14 vessel subject to the jurisdiction of the United States, in
15 violation of Title 46, United States Code, Sections 70503(a),
16 70506(a) and (b), and Title 21, United States Code, Section
17 906(b)(1)(B)(ii), and Count Two of the Indictment, charging
18 you with possession with intent to distribute 5 kilograms or
19 more of cocaine while on board a vessel subject to the
20 jurisdiction of the United States, and aiding and abetting,
21 in violation of Title 46, United States Code, Section
22 70503(a) and 70506(a), Title 18, United States Code, Section
23 2, and Title 21, United States Code, Section 960(b)(1)(B)(ii).
24 The Court has accepted your guilty plea and
25 adjudicated you guilty of those offenses. It's the duty of

1 the Court to address several questions. First, Mr. Guevara,
2 have you had an opportunity to read and discuss the
3 presentence report prepared January 12, 2017, and revised
4 February 14th, 2017, with your attorney, Mr. Amador?

5 DEFENDANT CORLEYIS: Oh, yes.

6 THE COURT: Mr. Amador, have you been over those
7 documents with your client?

8 MR. AMADOR: I have, Judge.

9 THE COURT: And you read them, Mr. Ruddy?

10 MR. RUDDY: I have.

11 THE COURT: The Court adopts the presentence
12 report. There are no objections by the government, but
13 objections by the defendant to item No. 1, paragraph 18,
14 captain enhancement, and I think that's the only objection.

15 At the present time, are there any other
16 objections as to the factual accuracy of the report or to the
17 application of the guidelines by the probation office,
18 Mr. Amador?

19 MR. AMADOR: Judge, I also made an objection for
20 minor role, and I submitted a memorandum on that topic. With
21 respect to the captain objection, based on my research and
22 the circumstances of this case, I'm going to withdraw the
23 objection at this time.

24 THE COURT: All objections?

25 MR. AMADOR: No, just the captain.

1 THE COURT: Just the captain enhancement?

2 MR. AMADOR: Yes, sir.

3 THE COURT: And you are adding the *Da Veron*
4 objection?

5 MR. AMADOR: Yes.

6 THE PROBATION OFFICER: Your Honor, if you don't
7 have that second page of the addendum, I apologize.

8 THE COURT: I have it. I see the *Da Veron*. So we
9 should list that as item 2, paragraph 21.

10 THE PROBATION OFFICER: Yes, Your Honor.

11 THE COURT: Fine. So you are withdrawing the
12 No. 1 and defendant withdraws this objection. That's item 1,
13 correct, Pedro?

14 MR. AMADOR: Yes.

15 THE COURT: Okay. Now we go to item No. 2. Go
16 ahead, state your argument.

17 MR. AMADOR: Thank you, Your Honor.

18 Judge, I would ask that the Court give Mr. Guevara
19 a reduction for the role in the offense and give him a
20 two-level reduction because he's a minor participant.

21 I submit to the Court that this case involving the
22 three individuals on this boat is essentially a drug
23 transaction and that the drug transaction is between the
24 people that hired Mr. Guevara and the crew, who were the
25 owners and organizer -- owners of the drugs and organizers of

1 this venture, and the other party being the party that was
2 going to accept the drugs and buy the drugs.

3 Essentially, the three people on that boat were
4 merely transporters of the drugs, and they should, in fact,
5 be considered less culpable than the people that were
6 involved in the drug transaction, which were the buyers --
7 the buyers and the sellers of the drugs.

8 Yes, he was a captain. We have never disputed
9 that. That being said, he still is entitled to that
10 reduction because as the new guidelines application notes
11 say, someone who is in Mr. Guevara's situation who is not --
12 does not have a proprietary interest in the drugs and is
13 merely performing a function that he was paid to perform,
14 that being a transport of the drugs, should be considered for
15 the minor role adjustment. Based on that, we are asking that
16 you give him that reduction. Thank you.

17 THE COURT: Okay. Anything from probation with
18 regard to this, please?

19 THE PROBATION OFFICER: Nothing further than
20 what's in the addendum, Your Honor. Thank you.

21 THE COURT: Mr. Ruddy.

22 MR. RUDDY: Yes, Your Honor. Mr. Corleyis Guevara
23 was the captain and navigator of the vessel. Mr. De la Cruz
24 was the load guard that was brought in from Guatemala to
25 transport the drugs from Ecuador to Guatemala, and the third

1 crew member, which was Mr. Reyes, they are the identified
2 participants in this illegal conduct.

3 As *Da Veron* says, we cannot identify individuals
4 that are involved in the crimes here. We do not have any
5 identification of who the cocaine owners or suppliers were.
6 We don't have any identifiers on who the cocaine purchasers
7 or receivers were.

8 What we have here is an indictment of three people
9 on a boat. Historically, our office has determined that
10 regardless of whether they are a navigator or captain or load
11 guard or just a mariner who is in charge of making sure the
12 fuel is connected from the barrels to the engines really
13 doesn't matter. They are all considered non-adjusted in
14 terms of their role, but the relevant conduct is what they
15 did.

16 As *Da Veron* teaches us, one cannot be a minor
17 participant in one's own conduct. As a captain, if anything,
18 it may mitigate toward not establishing -- the defendant not
19 establishing his burden that he's deserving of a minor role
20 reduction, but we are not asking for an aggravated. We are
21 saying a non-adjustment is appropriate here.

22 MR. AMADOR: Judge, how can you have a load guard
23 if that load guard isn't representing the people that are
24 buying the drugs? That's the whole purpose of the load
25 guard. The reason you have this go-fast in the water to

1 begin with is because someone is selling these drugs.

2 Certainly the government isn't going to contend
3 that these individuals that, by and large -- and particularly
4 Mr. Corleyis Guevara's case, who are very poor people, have
5 the means to purchase, even at wholesale, millions and
6 millions of dollars' worth of cocaine.

7 Obviously there are other people involved in this
8 transport of drugs, and the people on that boat really are
9 nothing but mules. We submit to the Court that all of them,
10 including Mr. Guevara, should receive the reduction for being
11 a minor participant because, in fact, he is simply a mule.

12 THE COURT: Okay. I appreciate your presentation.
13 Your objection is overruled. The principles of the *Da Veron*
14 case still apply and are still good law in the Eleventh
15 Circuit. The defendant's objection is overruled.

16 The Court adopts the analysis by probation.

17 Now, you had no other objections, correct?

18 MR. AMADOR: No, Judge. We had some issues. I
19 don't know if -- in my written objections we had some issues
20 that have since been corrected.

21 THE COURT: That's all that matters, if they are
22 corrected in the current revised presentence report. That's
23 all that matters.

24 MR. AMADOR: They are.

25 THE COURT: Mr. Ruddy, you don't have anything?

1 MR. RUDDY: No, Your Honor, nothing further.

2 THE COURT: The Court adopts the undisputed
3 factual statements and guideline applications contained in
4 the presentence report. As to the controverted factual
5 statements and guideline applications, the Court adopts the
6 position of the probation office as stated in the addendum.

7 The Court determines that the advisory guidelines
8 are -- this is where we begin -- total offense level 35,
9 Criminal History Category I, 168 to 210 months' imprisonment,
10 five years of supervised release, restitution is not
11 applicable, 40,000 to \$20 million fine, \$200 special
12 assessment, over which I have no control.

13 Do you know of any legal reason why this Court
14 should not now proceed with imposition of sentence? Any
15 legal reason?

16 MR. AMADOR: No.

17 THE COURT: Legal reason?

18 MR. RUDDY: No, Your Honor.

19 THE COURT: Do you wish to make any statement or
20 present anything in mitigation of sentence?

21 Is there a government motion?

22 MR. RUDDY: No, Your Honor.

23 THE COURT: Is one anticipated?

24 MR. RUDDY: Not at this time.

25 THE COURT: Okay. Go right ahead, Mr. Amador.

1 MR. AMADOR: Thank you, Judge.

2 As I've indicated in my sentencing memorandum,
3 Mr. Guevara is a very poor man. The reason he got involved
4 in this was to provide a better life for his family, as the
5 vast majority of the individuals in these cases do.

6 Mr. Guevara's case, I think the Court should
7 consider a variance to the minimum mandatory of 120 months.
8 Mr. Corleyis Guevara pled open to the Court, essentially out
9 of fear that something would happen to his family if he did
10 otherwise.

11 I think that the Court should take that into
12 account when imposing a sentence. And, again, he simply did
13 this out of need and, unfortunately, he feels as though he
14 cannot do anything to help himself.

15 THE COURT: Well, the Court understands that.
16 And, likewise, he has to understand he doesn't do anything to
17 help himself under the circumstances. There is no basis to
18 provide a variance.

19 Go ahead. Anything else?

20 MR. AMADOR: That was it, Judge.

21 THE COURT: Let me hear from him. Anything you
22 would like to say, sir? No? Okay.

23 Anything in this case from probation?

24 THE PROBATION OFFICER: No, Your Honor.

25 THE COURT: The government?

1 MR. RUDDY: Nothing further, Your Honor.

2 THE COURT: All right. And let me -- this is to
3 you, sir, before I even go forward with the sentence in this
4 case.

5 I was going to say this a few moments ago. You
6 are 34. Anyway, that's the age I have listed for you, 34
7 years of age. You are currently in good health, based upon
8 what I see here. You left high school to obtain employment
9 in Ecuador and you like working. You gave up the opportunity
10 to get your education, which you are going to get back now.
11 You are going to get the opportunity for further education,
12 which is a plus.

13 Now, you've got one, two, three, four, five
14 children at home; and when you are in prison, I'm going to
15 recommend that you get part of the UNICOR program so you can
16 send support home to those children.

17 I'm going to give you your substance abuse
18 counseling, which you need to have, the 500-hour program.
19 Also, I'm going to give you some employment opportunities
20 beyond the fishing boat mechanic and heavy machinery
21 background that you have got. So we are familiar with regard
22 to you and your background and what you went through.

23 Now, let me tell you something else you may not
24 know. If you had been successful in reaching your
25 destination, the chances are better than even that you would

1 have been murdered. You think they are going to give you a
2 plane ticket to go home? You think they are going to give
3 you a means of transportation to go back home? No. You
4 would have been lost at sea. That's what your family would
5 have been told.

6 It's fortunate for you that the Coast Guard picked
7 you up. Just pay attention to me for a second, because I
8 know you are being hard about this all the way around. I had
9 a young man that looked just about like you in front of me
10 the end of last year, and he was shaking because he found out
11 that his friends were killed. They had reached their
12 destination and they murdered him. He was grateful that the
13 Coast Guard had picked him up.

14 You got involved with some very dangerous people,
15 and you need to face the reality of that, as smart as you
16 think you are. You are going to go to prison and you are
17 going to have a better life in prison than you were able to
18 provide at home, and you are going to come out better
19 prepared to go back home.

20 The Court having asked the defendant why judgment
21 should not now be pronounced and after hearing the
22 defendant's response, the Court having found no cause to the
23 contrary, the parties having made statements on their behalf
24 or having waived the opportunity to do so, the Court having
25 reviewed the presentence report, pursuant to Title 18, United

1 States Code, Sections 3551 and 3553, it's the judgment of the
2 Court that the Defendant Jhonny Corleyis Guevara is hereby
3 committed to the custody of the Bureau of Prisons, to be
4 imprisoned for a term of 168 months. Credit for time served.
5 This consist of 168 months on each of Counts One and Two,
6 both terms to run concurrently.

7 Let the record further reflect that they were
8 bringing in 760 kilograms of cocaine; 760 kilograms of
9 cocaine. Poison to distribute to our people here in the
10 United States, our children, that you wouldn't feed to your
11 children at home. That's called blood money.

12 This term consists of 160 months on each of
13 Counts One and Two, both terms to run concurrently. Upon
14 release from imprisonment you shall serve a five-year term of
15 supervised release. This term consists of five-year terms as
16 to Counts One and Two, both terms to run concurrently.

17 While on supervised release, you shall comply with
18 the standard conditions adopted by the Court in the Middle
19 District of Florida. In addition, you shall comply with the
20 following special conditions:

21 One, if the defendant is deported, he shall not
22 re-enter the United States without the express permission of
23 the appropriate government authority. The Court recognizes
24 that the defendant was paroled into the United States for
25 this prosecution.

1 If you should ever come back again, you will never
2 get back home if you are apprehended. You'll spend the rest
3 of your life in prison up here.

4 The defendant having been convicted of a
5 qualifying felony shall cooperate in the collection of DNA as
6 directed by the probation officer. The mandatory drug
7 testing requirements of the Violent Crime Control Act are
8 waived; however, the Court orders the defendant to submit to
9 random drug testing, not to exceed 104 tests per year.

10 Based on the financial status of the defendant,
11 the Court waives imposition of a fine. It is further ordered
12 that the defendant shall pay the United States a special
13 assessment of \$200, which shall be due immediately. I have
14 no control over that.

15 After considering the advisory sentencing
16 guidelines and all the factors identified in Title 18, United
17 States Code, Sections 3553(A)(1) through (7), the Court finds
18 that the sentence imposed is sufficient, but not greater than
19 necessary to comply with the statutory purpose of sentencing.
20 The court finds the sentence to be reasonable and adequate.

21 The Court notes, again, 760 kilograms of cocaine.

22 The Court having pronounced sentence, does counsel
23 for the defendant or government have any objection to the
24 sentence or the manner in which the Court pronounced sentence
25 other than those previously stated for the record?

1 Mr. Amador?

2 MR. AMADOR: No, Judge, none other than previously
3 stated.

4 THE COURT: Noted.

5 Mr. Ruddy?

6 MR. RUDDY: No objections, Your Honor.

7 THE COURT: The defendant is hereby remanded to
8 the custody of the U.S. Marshal to await designation to the
9 Bureau of Prisons.

10 To the extent permitted by your plea agreement,
11 you have the right of appeal from the judgment and sentence
12 within 14 days from this date. Failure to appeal within the
13 14-day period shall be a waiver of your right to appeal. The
14 government may file an appeal from this sentence.

15 You are also advised that you are entitled to the
16 assistance of counsel in taking an appeal; and if you are
17 unable to afford a lawyer, one will be provided for you. If
18 you are unable to afford the filing fee, the Clerk of the
19 Court will be directed to accept the Notice of Appeal without
20 such fee.

21 First choice on incarceration? I assume you want
22 him to go to Fort Dix.

23 MR. AMADOR: Yes, ma'am.

24 THE COURT: Fort Dix, New Jersey. What's the
25 second choice?

1 MR. AMADOR: He didn't give me a second choice,
2 Judge. He's hoping he goes there.

3 THE COURT: Why don't you say Jesup, Georgia, so
4 he gets training.

5 MR. AMADOR: We will say Jesup.

6 THE COURT: They have good programs there in
7 vocational education, No. 1. Since he's in good health, the
8 first thing is UNICOR to send support for -- I think I
9 counted there were --

10 MR. AMADOR: He has five children.

11 THE COURT: Five, yeah. So support for five minor
12 children. No. 2, 500-hour substance abuse counseling.
13 No. 3, provide all necessary secondary education. I think
14 that's right. He went through three years of high school. I
15 think that's right.

16 MR. AMADOR: I think it was two.

17 THE COURT: Let me double-check. Left high school
18 after two years of high school. Excuse me. Right, all
19 necessary secondary education. Then procure a GED and then
20 provide all education, speaking, reading, writing English
21 language.

22 Okay. Vocational education, are you afraid of
23 electricity?

24 THE DEFENDANT: No.

25 THE COURT: Okay. Vocational education in

1 electrical trade, welding, HVAC, refrigeration, plumbing,
2 small business administration, and computers related to
3 trades.

4 Listen to me. The money you were making -- I
5 think you had diesel mechanics for a background, too, that
6 you had some experience in diesel mechanics, right, along
7 with the fishing and everything else? Is that right? Yes?

8 THE DEFENDANT: Yes.

9 THE COURT: You can also ask for that if you want
10 it, and I'll put it in here. I'll put here, diesel mechanics
11 and, then, number 1, and then electrical trade, et cetera.

12 Here's what I'm trying to do for you. If you get
13 the electrical trade and the plumbing, those are
14 free-standing trades. You can take them anywhere and open up
15 your own business if you learn them. But better yet, you can
16 go to the hotels, the biggest hotel in your country; and if
17 you speak English and you are able to know all these trades,
18 which you've got the time to learn and to perfect, you will
19 get a good job in those hotels, operating in the maintenance
20 department, and you will make good money in those hotels
21 because you can speak English and you'll be able to do all
22 those trades.

23 You'll be able to send money home to the family
24 and eventually move the family into the city. Do you
25 understand what I'm telling you? This is planning ahead for

1 you and the family. The more you think about this, the more
2 attractive it is. Understand me? Sí.

3 Any questions, Mr. Amador?

4 MR. AMADOR: No, Judge.

5 THE COURT: Mr. Ruddy?

6 MR. RUDDY: No, thank you.

7 THE COURT: Anything from probation?

8 THE PROBATION OFFICER: No, your Honor.

9 THE COURT: I wish you well, and take advantage of
10 this education. Learn everything you can and learn these
11 trades. They are your future for you and your family back
12 home, okay? I wish you well in the future, sir.

13 You are excused, sir.

14 MR. AMADOR: Judge, did you mention he had the
15 right to appeal or that he was legally in this country?

16 THE COURT: I thought I did. Didn't I? Didn't I
17 read that? Yes, he has the right of appeal. I have that
18 marked in here. Oh, that he was legally in this country.

19 MR. RUDDY: Paroled.

20 THE COURT: Paroled into the United States.
21 That's it. That's so he goes to the better facility.

22 Thank you.

23 (Proceedings concluded at 2:27 p.m.)

24 - - -

25

UNITED STATES DISTRICT COURT)
)
MIDDLE DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Scott N. Gamertsfelder, Official Court Reporter for the United States District Court, Middle District of Florida, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript from the stenographic notes taken in the above-entitled matter by the undersigned and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/S/Scott Gamertsfelder, RMR, FCRR
Official Court Reporter

Date: April 27, 2017

- - -

APPENDIX D

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UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

- - -

HONORABLE ANTHONY E. PORCELLI
UNITED STATES MAGISTRATE JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	8:16-CR-240-T-17AEP
	)	
JHONNY CORLEYIS GUEVARA,	)	
	)	
<u>DEFENDANT.</u>	)	

CHANGE OF PLEA
REPORTER'S TRANSCRIPT OF DIGITAL RECORDING
October 6, 2016
TAMPA, FLORIDA

SHARON A. MILLER, CSR, RPR, CRR, FCRR
IL CSR 084-2617
FEDERAL OFFICIAL COURT REPORTER
801 N. FLORIDA AVENUE, SUITE 13A
TAMPA, FLORIDA 33602

TRANSCRIPT OF DIGITAL RECORDING

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1 THE COURT: Thank you. All right. Good
2 morning. Let's call the case, please.

3 COURTROOM DEPUTY CLERK: United States
4 versus Carlos Alberto Reyes Rivas and Jhonny
5 Corleyis Guevara, 8:16-cr-240-T-17-AEP.

6 THE COURT: All right. Let me have
7 Counsel state your appearance for the record,
8 please.

9 MS. CASTANEDA: Rebecca Castaneda for the
10 United States Government.

11 MR. ZAREMBA: Good morning, Your Honor.
12 Frank Zaremba on behalf of Mr. Reyes Rivas.

13 THE COURT: Good morning.

14 MR. AMADOR: Good morning, Judge. Pedro
15 Amador on behalf of Mr. Guevara Salas.

16 THE COURT: All right. Again, good
17 morning, everyone. Again, thank you.
18 Gentlemen, good morning to you.

19 THE DEFENDANTS: Good morning.

20 THE COURT: My understanding is that you
21 each want to enter a plea of guilt in your
22 case. The purpose of this hearing is so that I
23 can conduct an inquiry into your decisions to
24 ensure your decisions are being done both
25 knowingly and voluntarily; therefore, during

1 the hearing I'm going to have a number of
2 questions for each of you as well as some
3 questions for your attorneys and for the
4 prosecutor. It's vital that you understand
5 everything that we are going to discuss. If at
6 any point you do not understand something, I
7 want you to feel free to interrupt me so I can
8 explain it to you further.

9 Additionally, if at any time you need to
10 discuss anything with your attorney, just let
11 me know and I will stop the hearing and give
12 you all the time that you need.

13 Now, in responding to my questions,
14 Mr. Reyes-Rivas, I'm going to ask that you
15 respond first. Mr. Guevara, after that then
16 you respond. The reason why I ask you do it in
17 that order is so that it's clear for the record
18 who's responding to the question, so let's try
19 this. Do each of you understand that?

20 DEFENDANT REYES: Yes.

21 DEFENDANT CORLEYIS: Yes.

22 THE COURT: In a moment I'm going to have
23 my courtroom deputy place you under oath. I
24 tell you that because it's important you
25 understand the consequences of the oath. If in

1 responding to my questions you should provide
2 any false or misleading answers, you could be
3 charged with additional crimes such as perjury
4 or obstruction of justice. Those crimes would
5 carry additional penalties beyond any of the
6 penalties you are facing in this case. Do each
7 of you understand that?

8 DEFENDANT REYES: Yes.

9 DEFENDANT CORLEYIS: Yes.

10 THE COURT: All right. Madam deputy.

11 COURTROOM DEPUTY CLERK: Please rise.

12 Raise your right hand.

13 (Defendants sworn.)

14 DEFENDANT REYES: Yes.

15 DEFENDANT CORLEYIS: Yes.

16 DEPUTY COURTROOM CLERK: Thank you. Have
17 a seat, please. I'll ask you to please state
18 your name for the record.

19 DEFENDANT REYES: Carlos Alberto Reyes
20 Rivas.

21 COURTROOM DEPUTY CLERK: Thank you. And?

22 DEFENDANT CORLEYIS: Corleyis Guevara
23 Salas.

24 COURTROOM DEPUTY CLERK: Thank you.

25 THE COURT: All right. Let me just ask,

1 is it all right, sir, if I call you Mr. Reyes?

2 DEFENDANT REYES: Yes.

3 THE COURT: And is it all right if I call
4 you Mr. Corleyis?

5 DEFENDANT CORLEYIS: Yes.

6 THE COURT: I want you to both understand
7 before I go forward that if at the end of the
8 hearing you do decide to enter a plea of guilt
9 and your plea is accepted by the Court, it will
10 become very difficult if not impossible for you
11 to later change your mind. Do you each
12 understand that?

13 DEFENDANT REYES: Yes.

14 DEFENDANT CORLEYIS: Yes.

15 THE COURT: I need to ask you some
16 questions you may consider to be somewhat
17 personal in nature. I want you to understand
18 that in no way am I trying to embarrass you.
19 The purpose of these questions is in order for
20 me to ensure that you're competent to enter a
21 plea of guilt. Do you understand what I mean
22 by that?

23 DEFENDANT REYES: Yes.

24 DEFENDANT CORLEYIS: Yes.

25 THE COURT: All right. Tell me how old

1 you are.

2 DEFENDANT REYES: Forty-three going on
3 forty-four.

4 DEFENDANT CORLEYIS: Thirty-three.

5 THE COURT: How far did you go in school?

6 DEFENDANT REYES: Fourth grade in
7 elementary school.

8 DEFENDANT CORLEYIS: Second year of high
9 school.

10 THE COURT: Is Spanish your primary
11 language?

12 DEFENDANT REYES: Yes.

13 DEFENDANT CORLEYIS: Yes.

14 THE COURT: Can you read and write in the
15 Spanish language?

16 DEFENDANT REYES: Yes.

17 DEFENDANT CORLEYIS: Yes.

18 THE COURT: What you have been charged
19 with in this case, was that read to you or
20 translated for you in the Spanish language?

21 DEFENDANT REYES: Yes.

22 DEFENDANT CORLEYIS: Yes.

23 THE COURT: And after it was translated
24 for you, did you feel that you understood the
25 charge against you?

1 DEFENDANT REYES: Yes.

2 DEFENDANT CORLEYIS: Yes.

3 THE COURT: To your knowledge have you
4 ever suffered from any mental disease or defect
5 of any kind?

6 DEFENDANT REYES: No.

7 DEFENDANT CORLEYIS: No.

8 THE COURT: In the past 24 hours have you
9 taken any drugs or medication of any kind?

10 DEFENDANT REYES: No.

11 DEFENDANT CORLEYIS: No.

12 THE COURT: Is there anything at all
13 impacting your ability to think clearly today?

14 DEFENDANT REYES: No.

15 DEFENDANT CORLEYIS: No.

16 THE COURT: And do you understand the
17 purpose of this hearing?

18 DEFENDANT REYES: Yes.

19 DEFENDANT CORLEYIS: Yes.

20 THE COURT: All right. Mr. Zaremba, any
21 concerns concerning competency on behalf of
22 Mr. Reyes?

23 MR. ZAREMBA: None whatsoever, Your Honor.

24 THE COURT: Mr. Amador, on behalf of
25 Mr. Corleyis?

1 MR. AMADOR: None.

2 THE COURT: Let me note for the record
3 based upon both Mr. Reyes and Mr. Corleyis'
4 responses to my questions as well as their
5 demeanor, I do find that they are both fully
6 competent to enter a plea of guilt if they
7 choose to do so; therefore, gentlemen, I'm
8 going to go forward with your hearing, but
9 before I proceed I must also inform you that
10 you have the right to have your plea heard by
11 the District Judge assigned to your case. I'm
12 the Magistrate Judge assigned to your case.
13 The District Judge is Judge Elizabeth
14 Kovachevich. Judge Kovachevich's authority is
15 different from my authority. Judge Kovachevich
16 not only has the authority to hear your plea
17 but it is Judge Kovachevich who it is who will
18 decide whether to accept your plea and
19 adjudicate you guilty.

20 If you are adjudicated guilty in the case,
21 it would then be Judge Kovachevich who would
22 impose sentence upon you. If you decided not
23 to enter a plea of guilt but rather take your
24 case to trial, it would be Judge Kovachevich
25 who would preside over your trial. My

1 authority is just limited to conducting this
2 hearing to determine whether you are entering a
3 plea knowingly and voluntarily. If I make that
4 determination I would then issue a report
5 recommending to Judge Kovachevich that your
6 plea be accepted. Having stated that, do you
7 each feel that you understand the difference in
8 my authority as compared to Judge Kovachevich's
9 authority?

10 DEFENDANT REYES: Yes.

11 DEFENDANT CORLEYIS: Yes.

12 THE COURT: And knowing that difference do
13 you wish to waive your right to have the plea
14 before Judge Kovachevich and have your plea
15 before me today?

16 DEFENDANT REYES: Yes.

17 DEFENDANT CORLEYIS: Yes.

18 THE COURT: Has anyone forced or
19 threatened you in any way in order for you to
20 waive that right?

21 DEFENDANT REYES: No.

22 DEFENDANT CORLEYIS: No.

23 THE COURT: Anyone promise you anything of
24 value in order for you to waive that right?

25 DEFENDANT REYES: No.

1 DEFENDANT CORLEYIS: No.

2 THE COURT: All right. Gentlemen, based
3 upon your waiver, I do find it appropriate to
4 go forward with your plea. What I want to do
5 first is to summarize each of the charges in
6 the indictment against you. As to Count 1, you
7 both have agreed to plead guilty to Count 1
8 which alleges that beginning on an unknown date
9 and continuing through on or about May 20th of
10 2016 while aboard a vessel subject to the
11 jurisdiction of the United States, each of you
12 and another named Defendant who were first
13 brought into the United States at a point in
14 the Middle District of Florida did knowingly
15 and willfully conspire and agree with each
16 other and other persons unknown to possess with
17 intent to distribute or to distribute five
18 kilograms or more of cocaine.

19 This is alleged to be in violation of
20 Title 46, United States Code, Section 70503(a)
21 and 70506(a) and (b).

22 Mr. Corleyis, you've agreed to plead
23 guilty also to Count 2 which alleges that
24 beginning on an unknown date and continuing
25 through on or about May 20th of 2016 while

1 aboard a vessel subject to the jurisdiction of
2 the United States you and the other two named
3 Defendants who were first brought into the
4 United States at a point in the Middle District
5 of Florida did knowingly and intentionally
6 while aiding and abetting each other and other
7 persons unknown possess with intent to
8 distribute five kilograms or more of cocaine.
9 This is alleged to be in violation of Title 46,
10 United States Code, Section 70503 and 70506(a).

11 Gentlemen, having stated that, I'll ask
12 you again, do you feel that you have understand
13 the charges that you have agreed to plead
14 guilty to in your case?

15 DEFENDANT REYES: Yes.

16 DEFENDANT CORLEYIS: Yes.

17 THE COURT: You also feel that you had a
18 full and fair opportunity to review the facts
19 and evidence in your case regarding the charges
20 against you in consultation with your attorney?
21 Do you understand the question, sir? Let me
22 rephrase it for you. Let me rephrase that.
23 Are you satisfied that you have had enough time
24 to consult with your attorney about all the
25 issues in your case before making your decision

1 to plead guilty?

2 DEFENDANT REYES: Oh, yes.

3 THE COURT: Mr. Reyes?

4 DEFENDANT REYES: Yes.

5 THE COURT: Mr. Corleyis?

6 DEFENDANT CORLEYIS: Yes.

7 THE COURT: Has your attorney done
8 everything that they have asked you to do for
9 you in your case?

10 DEFENDANT REYES: Yes.

11 DEFENDANT CORLEYIS: Yes.

12 THE COURT: And are you fully satisfied
13 with the advice and representation you have
14 received in the case?

15 DEFENDANT REYES: Yes.

16 DEFENDANT CORLEYIS: Yes.

17 THE COURT: Did you discuss with your
18 attorney all your options in your case to
19 specifically include your option to take the
20 case to trial if you wanted a trial?

21 DEFENDANT REYES: Yes, but, you know, why
22 would you plead innocent if you know you're
23 guilty?

24 THE COURT: Mr. Corleyis?

25 DEFENDANT CORLEYIS: Yes.

1 THE COURT: After having those
2 conversations then, Mr. Reyes, are you
3 satisfied then with your decision to plead
4 guilty pursuant to the written plea agreement?

5 DEFENDANT REYES: Yes.

6 THE COURT: Mr. Corleyis, are you
7 satisfied with your decision to plead without
8 the benefit of a plea agreement?

9 DEFENDANT CORLEYIS: Yes.

10 THE COURT: Mr. Amador, was a plea
11 agreement tendered to Mr. Corleyis?

12 MR. AMADOR: It was.

13 THE COURT: And one of the reasons for not
14 executing it, was there a standard appellate
15 waiver on the plea agreement?

16 MR. AMADOR: There was.

17 THE COURT: All right. Thank you.
18 Mr. Corleyis, did you have the opportunity to
19 discuss the plea agreement that was offered to
20 you by the government in the case with
21 Mr. Amador?

22 DEFENDANT CORLEYIS: Yes.

23 THE COURT: And after having conversations
24 with Mr. Amador about the plea agreement,
25 again, sir, are you satisfied with your

1 decision to plead guilty without the benefit of
2 the plea agreement?

3 DEFENDANT CORLEYIS: Yes.

4 THE COURT: Mr. Corleyis, just be patient
5 with me here for a moment because I'm going to
6 have some questions only for Mr. Reyes which
7 are only going to pertain to his plea
8 agreement, so just be patient with me and I
9 will address you again further in a moment.

10 Mr. Reyes, if you can confirm for me in
11 the plea agreement that's in front of you your
12 initials on each of the pages and your
13 signature on the last page.

14 DEFENDANT REYES: Yes.

15 THE COURT: Do your initials and your
16 signature in the plea agreement indicate that
17 it was read to you in the Spanish language and
18 you reviewed it in its entirety in consultation
19 with Mr. Zarembo?

20 DEFENDANT REYES: Yes.

21 THE COURT: Did Mr. Zarembo answer for you
22 all your questions about the plea agreement?

23 DEFENDANT REYES: Yes.

24 THE COURT: As such do you feel that you
25 understand all the provisions of the plea

1 agreement?

2 DEFENDANT REYES: Yes.

3 THE COURT: What I intend to do, sir, is
4 discuss with you a number of these provisions
5 in some detail. I'm not going to cover each
6 and every provision in detail, but that is not
7 to say that I think one provision is more
8 important than another. If you have any
9 questions about any of the provisions, just let
10 me know and we'll discuss them further. All
11 right? Looking at --

12 DEFENDANT REYES: I don't have any
13 questions.

14 THE COURT: All right. Sir, thank you.
15 Looking at Page 1, Paragraph A (1), this simply
16 memorializes what we just discussed, that you
17 have agreed to plead guilty to Count 1 which
18 charges you with a conspiracy to possess with
19 intent to distribute or to distribute five
20 kilograms or more of cocaine while on board a
21 vessel subject to the jurisdiction of the
22 United States. Again, Mr. Reyes, is that the
23 charge you've agreed to plead guilty to in your
24 case?

25 DEFENDANT REYES: Yes.

1 THE COURT: All right. If I go to Page 3
2 look at Paragraph A (5) of your plea agreement.
3 By this provision the United States has agreed
4 to dismiss the remaining count against you;
5 that is, at your sentencing hearing the United
6 States will move to dismiss Count 2 against
7 you. Do you understand that?

8 DEFENDANT REYES: Yes.

9 THE COURT: Going on to this next
10 provision, Paragraph A (6), by this provision
11 the United States Attorneys' office for the
12 Middle District of Florida has agreed not to
13 charge you with committing any other Federal
14 criminal offenses known to that office at the
15 time of the execution of your plea agreement
16 related to the conducting giving rise to your
17 plea agreement. What this simply means is is
18 if the government is aware of other criminal
19 conduct that you may have been engaged in and
20 that criminal conduct does not relate to the
21 facts of this case, the government remains free
22 to charge you with that known but unrelated
23 criminal conduct. Do you understand that?

24 DEFENDANT REYES: Yes.

25 THE COURT: I want you to understand that

1 the plea agreement in essence is like a
2 contract between you and the United States
3 Attorney for the Middle District of Florida.
4 The reason I didn't put it to you in those
5 terms because it's important you understand
6 that there are no other parties to the plea
7 agreement. As such it's only binding upon
8 yourself and the United States Attorney.
9 You're specifically put on notice of this issue
10 on Page 16 in Paragraph B (8) of your plea
11 agreement. In summary, the provision reads
12 that you understand that the plea agreement is
13 limited only to the office of the United States
14 Attorney for the Middle District of Florida and
15 it cannot bind any other Federal, State or
16 local prosecuting authorities. Do you
17 understand that?

18 DEFENDANT REYES: Yes.

19 THE COURT: There are a number of
20 provisions in the plea agreement that
21 Mr. Zaremba negotiated on your behalf in an
22 effort to mitigate any potential sentence you
23 may receive. If I go back to Page 3, look at
24 Paragraph A (7) there's one such provision
25 there. By this provision the United States has

1 agreed to recommend to the Court that you be
2 sentenced within the applicable advisory
3 guideline range as calculated by the court
4 pursuant to the United States Sentencing
5 Guidelines as adjusted by any departure the
6 United States has agreed to recommend in your
7 plea agreement.

8 So I want to explain that. At your
9 sentencing hearing Judge Kovachevich will use
10 the United States Sentencing Guidelines to
11 perform a type of calculation in order to
12 determine an appropriate advisory guideline
13 range for your case. The calculation of the
14 advisory guideline range is very important to
15 you because the Court will use that range as a
16 guide to determine your sentence. The
17 guideline range will consist of a high end as
18 well as a low end in terms of months of
19 imprisonment. Once the Court has calculated
20 the appropriate range, by this provision the
21 United States will recommend that you be
22 sentenced within that range, in other words,
23 that the court not depart or vary above or
24 beyond that range. Do you understand that?

25 DEFENDANT REYES: Yes.

1 THE COURT: All right. Moving on to Page
2 4 of Paragraph A (8). By this provision absent
3 any adverse information which may be received
4 suggesting such a recommendation to be
5 unwarranted, the United States has agreed to
6 recommend to the Court that you receive a two
7 level downward adjustment based upon your
8 acceptance of responsibility. Additionally, if
9 it is applicable, the United States has agreed
10 to file a motion with the Court requesting an
11 additional one level downward adjustment based
12 upon your acceptance in the case. So, in other
13 words, by this provision there's the total
14 potential for a three level downward adjustment
15 in the advisory guideline range calculation
16 based upon your acceptance of responsibility.
17 Do you understand that?

18 DEFENDANT REYES: Yes.

19 THE COURT: All right. Moving on to
20 Paragraph A (9), by this provision absent any
21 adverse information which may be received
22 suggesting such a recommendation to be
23 unwarranted, the United States has agreed to
24 recommend to the Court that you be sentenced at
25 the low end of the applicable advisory

1 guideline range. So simply stated, the
2 Government will ask the Court to sentence you
3 at the bottom of the range. Do you understand
4 that?

5 DEFENDANT REYES: Yes.

6 THE COURT: I want to remind you what we
7 spoke about just a moment ago, that is, your
8 plea agreement is only binding upon yourself
9 and the United States Attorney for the Middle
10 District of Florida. The reason I didn't
11 remind you of this is because it's important
12 you understand that the Court is not a party to
13 the plea agreement and as such the Court cannot
14 be bound by any of the provisions of the plea
15 agreement. You're specifically put on notice
16 of this issue on Page 15 in Paragraph B (6) of
17 the plea agreement. It reads in summary that
18 you further understand and acknowledge that any
19 discussions between you or your attorney and
20 the attorney or other agents for the government
21 regarding any recommendations by the government
22 are not binding on the Court and that should
23 any recommendations be rejected, you will not
24 be permitted to withdraw from your plea
25 pursuant to the plea agreement.

1 So, again, simply stated, the Court does
2 not have to follow any of the provisions of
3 your plea agreement and if the Court does not
4 follow any of the provisions you cannot later
5 complain and ask to withdraw from your plea of
6 guilt. Do you understand that?

7 DEFENDANT REYES: Yes.

8 THE COURT: It's important you understand
9 that absent your plea agreement you would have
10 the right to appeal any sentence you would
11 receive in the case; that is, you would have
12 the right to complain to a higher court about
13 your sentence, but by this provision in
14 Paragraph B (7) starting on Page 15 you have
15 expressly waived your right to appeal the
16 sentence unless certain events occur. Those
17 events include, one, the ground that the
18 sentence exceeds the applicable advisory
19 guideline range as calculated by the court
20 pursuant to the United States Sentencing
21 Guidelines; two, the ground that the sentence
22 exceeds the statutory maximum penalty; three,
23 the ground that the sentence violates the
24 Eighth Amendment to the Constitution which is
25 cruel or unusual punishment, or, four, in the

1 event the government files an appeal in your
2 case, you would then be free from this waiver
3 and you could appeal your sentence as well. Do
4 you understand, Mr. Reyes, that by this
5 provision of your plea agreement you have
6 expressly waived your right to appeal your
7 sentence unless one of those events occurs as
8 I've just described them?

9 DEFENDANT REYES: Yes, I understand.

10 THE COURT: Has anyone forced you or
11 threatened you in any way in order for you to
12 waive your right to appeal the sentence?

13 DEFENDANT REYES: No.

14 THE COURT: Other than what's in your plea
15 agreement, has anyone promised you anything
16 else of value in order for you to waive that
17 right?

18 DEFENDANT REYES: No.

19 THE COURT: Going back in the plea
20 agreement starting on Page 5 and continuing on
21 through Page 9 and Paragraphs A (10) through A
22 (12,) there are certain provisions here that
23 deal with any potential eventual cooperation
24 you may provide the government. It's not my
25 intent, Mr. Reyes, to discuss with you each of

1 these provisions in detail unless you have a
2 specific question. What I do want to do for
3 you, though, is highlight the last sentence of
4 Paragraph A (10) which is on Page 6 of the plea
5 agreement. This sentence reads, in any case,
6 you understand that the determination as to
7 whether a substantial assistance has been
8 provided or what type of motion related thereto
9 will be filed, if any, rests solely with the
10 United States Attorney for the Middle District
11 of Florida and you agree that you cannot and
12 will not challenge that determination whether
13 by appeal, collateral attack or otherwise. So
14 let me explain this a little bit more. If you
15 decide to cooperate with the government and you
16 feel your cooperation is worthy of a motion for
17 reduction in your sentence but the government
18 disagrees with your assessment and does not
19 file such a motion, you could not later
20 complain and ask to withdraw from the plea of
21 guilt.

22 Additionally, in the event the government
23 does file a motion on your behalf seeking a
24 reduction in your sentence based upon your
25 cooperation, the Court does not have to grant

1 the motion, and if the Court does not grant the
2 motion, you cannot later complain and ask to
3 withdraw from your plea of guilt. Do you
4 understand that?

5 DEFENDANT REYES: Yes.

6 THE COURT: Do you have any questions
7 about any of these three paragraphs relating to
8 cooperation?

9 DEFENDANT REYES: No.

10 THE COURT: All right. Mr. Corleyis, I'm
11 going to come back to you now as well, so after
12 Mr. Reyes responds to the next question, if you
13 can respond as well, sir.

14 I'd like to ask both of you as to your
15 decisions to plead guilty in your case. Has
16 anyone forced you or threatened you or anyone
17 you may know, for that matter, in order to
18 induce you to plead guilty in your case?
19 Mr. Reyes?

20 DEFENDANT REYES: Pardon? What was that?

21 THE COURT: Has anyone forced you or
22 threatened you or anyone you may know in order
23 to make you plead guilty in this case?

24 DEFENDANT REYES: No. No.

25 THE COURT: Mr. Corleyis, same question.

1 Has anyone forced you or threatened you or
2 anyone you know to make you plead guilty?

3 DEFENDANT CORLEYIS: No. No.

4 THE COURT: Has anyone promised you
5 anything at all of value other than what's in
6 your plea agreement for you, Mr. Reyes, in
7 order to make you plead guilty in this case?

8 DEFENDANT REYES: No. No.

9 THE COURT: Mr. Corleyis, has anyone
10 promised you anything at all in order to make
11 you plead guilty in the case?

12 DEFENDANT CORLEYIS: No.

13 THE COURT: Mr. Zarembo, on behalf of
14 Mr. Reyes, are you aware of any promises
15 outside the plea agreement?

16 MR. ZAREMBA: There are none, Your Honor.

17 THE COURT: Mr. Amador, are you aware of
18 any promises at all?

19 MR. AMADOR: No, sir.

20 THE COURT: Miss Castenada, are you aware
21 of any promises?

22 MS. CASTANEDA: No, Your Honor.

23 THE COURT: Yes. I have to explain to you
24 by pleading guilty there will be collateral
25 consequences to your plea. Given your status

1 in this country, you need to understand that
2 after serving your term of imprisonment you
3 will then be deported back to your home
4 country, denied re-entry into the United States
5 and denied citizenship to the United States.

6 Do you each understand that?

7 DEFENDANT REYES: Yes.

8 DEFENDANT CORLEYIS: Yes.

9 THE COURT: I want to explain to you then
10 the penalties associated with the charges
11 you've agreed to plead guilty to in your case.
12 As for both of you, Count 1 is punishable by a
13 mandatory minimum term of imprisonment of ten
14 years, up to a maximum term of imprisonment of
15 life, the maximum fine of \$10 million, a term
16 of supervised release of at least five years up
17 to a maximum of life and a special assessment
18 of \$100 which will be due on the date of
19 sentencing.

20 As for you, Mr. Corleyis, the same
21 penalties apply to Count 2 which again are a
22 mandatory minimum term of imprisonment of ten
23 years, up to a maximum term of imprisonment of
24 life, a maximum fine of \$10 million, a term of
25 supervised release of at least five years up to

1 a maximum of life and a special assessment of
2 \$100 which will be due on the date of
3 sentencing. Having stated that, do you each
4 feel you understand the penalties associated
5 with the charge or charges you've agreed to
6 plead guilty to?

7 DEFENDANT REYES: Yes.

8 DEFENDANT CORLEYIS: Yes.

9 THE COURT: I want to explain to you what
10 a term of supervised release is. After you are
11 released from jail the Court will place you on
12 a term of supervision and then it will place
13 upon you certain restrictions or conditions on
14 your liberties. If you violate any of the
15 Court's conditions while on supervision, the
16 Court after conducting a hearing could order
17 you back to jail for an additional period of
18 time. Having stated that, do you each feel you
19 understand the potential consequence for
20 violating conditions of your supervision?

21 DEFENDANT REYES: Violating? No.

22 THE COURT: All right. Let me put it to
23 you this way. As I just explained, one of the
24 conditions of your supervision given that you
25 will be deported from the country is going to

1 be that you not re-enter the United States
2 without the appropriate approval, so while
3 you're on supervised release, if you do enter
4 the United States without the appropriate
5 approval, the Court after conducting a hearing
6 could order you back to jail for an additional
7 period of time. So what I'm asking is do you
8 understand having explained that the potential
9 consequence for a violation of --

10 DEFENDANT REYES: Yes, yes, yes. I
11 understand.

12 THE COURT: Do you want me to rephrase it,
13 Mr. Corleyis? It may seem like you have a
14 question. Part of your sentence the Court is
15 going to put you on a term of supervised
16 release. This is called supervised release
17 because you'll be under the Court's
18 supervision. The Court will place upon you
19 certain restrictions or conditions during your
20 supervision, but given the fact that you are
21 going to be deported from the United States,
22 one of those conditions is certainly going to
23 be that you not re-enter the United States
24 without appropriate approval, and so I was
25 using that as an example to demonstrate that if

1 you violated that condition of supervision the
2 Court would then just simply conduct a hearing
3 to determine if you did violate the supervision
4 and if the Court was satisfied that you did
5 violate your supervision you could be ordered
6 back to jail for further time.

7 Now, I fully expect that after you are
8 sent home, you probably will never ever want to
9 come back to the United States, but I'm just
10 using that as an example to explain this to
11 you, sir. Do you understand?

12 DEFENDANT CORLEYIS: Yes.

13 THE COURT: I also have to explain to both
14 of you that parole has been abolished, and
15 really what that simply means is is whatever
16 term of imprisonment you receive in your case
17 you will serve all that time incarcerated and
18 not be released on early parole. Do you
19 understand that?

20 DEFENDANT REYES: Yes.

21 DEFENDANT CORLEYIS: Yes.

22 THE COURT: Is there any applicable
23 restitution or forfeiture?

24 MS. CASTANEDA: There is none, Your Honor.

25 THE COURT: Yes, I want to ask you, have

1 you discussed the United States Sentencing
2 Guidelines with your attorney and how they
3 might apply in your case? Mr. Reyes?

4 DEFENDANT REYES: Can you repeat that?
5 What was that?

6 THE COURT: Sure. In your discussions for
7 anticipating sentencing, have you discussed
8 something called the United States Sentencing
9 Guidelines with Mr. Zaremba and he's discussed
10 with you guideline ranges?

11 DEFENDANT REYES: Oh, yes, yes.

12 THE COURT: Mr. Corleyis, same question,
13 sir. Did you have that conversation with
14 Mr. Amador?

15 DEFENDANT CORLEYIS: Yes.

16 THE COURT: Gentlemen, that's perfectly
17 acceptable and it's anticipated that you will
18 do that, but I need to emphasize for you and
19 it's important you understand that no one, and
20 by no one, that includes your attorney, no one
21 could tell you with any certainty what your
22 advisory guideline range will be. That cannot
23 be done for a number of reasons, and one
24 specific reason is because the United States
25 Probation Office has to prepare an important

1 document called a Presentence Investigative
2 Report. This is an important document to you
3 because the Court will use it as an aid to
4 determine your sentence. You will have the
5 opportunity to review the report in
6 consultation with your attorney prior to the
7 sentencing hearing and you will be allowed to
8 make any objections to the report that you deem
9 necessary. If your objections go unresolved
10 prior to sentencing hearing, they then will be
11 resolved at the sentencing hearing by the
12 Court; therefore, again, I must emphasize that
13 no one could tell you with any certainty what
14 your advisory guideline range will be. Do you
15 each understand that?

16 DEFENDANT REYES: Yes.

17 DEFENDANT CORLEYIS: Yes.

18 THE COURT: So really what this means is
19 after consulting with your attorney you've
20 attempted to estimate a potential range for
21 your case, you need to understand that your
22 estimation could be wrong, and if it is wrong
23 you cannot later complain and ask to withdraw
24 from the plea of guilt. Do you each understand
25 that?

1 DEFENDANT REYES: Yes.

2 DEFENDANT CORLEYIS: Yes.

3 THE COURT: I must also explain that the
4 United States Sentencing Guidelines are not
5 binding upon the Court, that is, they are only
6 advisory. So what this means is once the Court
7 has calculated the appropriate advisory
8 guideline range for your case, the Court in
9 some circumstances could depart or vary above
10 or beyond that range up to the statutory
11 maximum penalty or in other circumstances
12 depart or vary below the range to the statutory
13 minimum penalties. Do you understand that?

14 DEFENDANT REYES: Yes.

15 DEFENDANT CORLEYIS: Yes.

16 THE COURT: Yes. It's very important you
17 understand that by pleading guilty you're
18 giving up very valuable constitutional rights.
19 Those rights include your right to persist in a
20 plea of not guilty and take the case to trial.
21 At trial it would be the government who would
22 always bear the burden of proof to establish
23 your guilt as charged beyond a reasonable
24 doubt. At trial you'd be presumed innocent and
25 you would never be required to prove anything

1 at all to specifically include to prove that
2 you were not guilty.

3 At the trial you'd have a jury of 12
4 persons who would be selected at random from
5 the community and who could not find you guilty
6 unless each and every member of the jury
7 unanimously agreed beyond a reasonable doubt
8 that you committed each of the essential
9 elements of the charged offenses.

10 Additionally, as you know, you have the
11 right to effective assistance of counsel at all
12 stages in the case. If you could not afford to
13 higher a lawyer, the Court would appoint one to
14 you at no cost to you to represent you
15 throughout the entirety of the case.

16 Now, at the trial you would have the right
17 to hear and see all the witnesses called by the
18 government against you and you have the right
19 to confront and cross examine those witnesses
20 in your defense. Additionally, you would have
21 the right to challenge any evidence the
22 government sought to use against you.

23 Now, as I stated, at the trial you would
24 not be required to prove anything, but if you
25 decided to do so, you would have the right to

1 present a defense on your own behalf; that is,
2 to call any witnesses you deem necessary or
3 present any evidence you thought important.

4 If your witnesses would not come to the
5 court voluntarily or if you could not afford to
6 pay for your witnesses, you would have the
7 right to have the Court to order those
8 witnesses to come to court to testify for you
9 at no cost to you.

10 Additionally, you would have the right to
11 have the Court to order your evidence be
12 produced at no cost to you. Also, if you
13 decided to do so you would have the right to
14 testify in your own defense, but, again, to be
15 clear, you would never be required to prove
16 anything at all, so if you decided not to
17 present a defense the jury would be
18 specifically instructed that it could not draw
19 any unfavorable conclusion from your silence.

20 Do you each understand that by pleading
21 guilty in this case, you are giving up all
22 these valuable constitutional rights as I've
23 just described them?

24 DEFENDANT REYES: Yes.

25 DEFENDANT CORLEYIS: Yes.

1 THE COURT: Let me also explain, if you
2 have any objections as to how the charges were
3 brought against you or as to how the evidence
4 was gathered in your case, you are waiving any
5 objections to those matters by entering a plea
6 of guilt. Do you understand that?

7 DEFENDANT REYES: Yes.

8 DEFENDANT CORLEYIS: Yes.

9 THE COURT: All right. Let me explain to
10 you then what the government would have to
11 prove in order to establish your guilt for the
12 charges you've agreed to plead guilty to. As
13 for both of you for Count 1, the elements
14 include, first, that two or more persons in
15 some way or manner agreed to try to accomplish
16 a common and unlawful plan as charged in the
17 indictment; and, second, you knowing the
18 unlawful purpose of the plan willfully joined
19 in it, the plan being an agreement to possess
20 or intend to distribute or to distribute a
21 quantity of cocaine.

22 Additionally in order for the mandatory
23 minimum term of imprisonment of ten years as
24 well as the maximum term of imprisonment of
25 life to be applicable as to Count 1, the United

1 States would also have to establish that the
2 unlawful agreement was an agreement to possess
3 with intent to distribute or to distribute five
4 kilograms or more of cocaine.

5 Mr. Corleyis, for you as to Count 2, the
6 elements include, first, that you knowingly
7 possessed cocaine as charged or aided and
8 abetted others in the possession of cocaine.
9 Second, that you possessed the substance with
10 the intent to distribute it, and, again, in
11 order for the mandatory minimum term of ten
12 years as well as the maximum term of life
13 imprisonment to be applicable, the United
14 States would have to establish that the amount
15 of cocaine possessed with intent to distribute
16 was five kilograms or more of cocaine.

17 Having stated that, do you each feel you
18 understand what the government would have to
19 prove in order to establish your guilt for the
20 charge or charges you've agreed to plead guilty
21 to?

22 DEFENDANT CORLEYIS: Yes.

23 THE COURT: Mr. Corleyis, do you
24 understand those elements, sir?

25 DEFENDANT CORLEYIS: Yes.

1 THE COURT: All right. In a moment I'm
2 going to have the prosecutor to give me a
3 factual basis in support of each of those
4 elements. I expect she will largely read or
5 summarize from the facts that have been filed
6 in your respective cases, but you need to
7 listen carefully to the facts because they're
8 not only important as to the essential
9 elements, the Court could rely upon them to
10 determine your sentence. All right. Miss
11 Castenada.

12 MS. CASTANEDA: Yes, Your Honor. The
13 Defendant -- do you have a preference, sir, as
14 to the Defendant's name which I should read
15 first or am I going to be reading the facts
16 separately for each?

17 THE COURT: I believe you can do them both
18 at the same time -- I think you can probably do
19 them both at the same time if you prefer.

20 MS. CASTANEDA: The Defendants Carlos
21 Alberto Reyes Rivas and Johnny Corleyis Guevara
22 and their Co-Defendants conspired to possess
23 with intent to distribute and to distribute in
24 excess of five kilograms of cocaine while on
25 board a vessel subject to the jurisdiction of

1 the United States. On May 19, 2016, a
2 maritime -- excuse me -- a marine patrol
3 aircraft, also known as an MPA, detected a
4 go-fast vessel, also known as a GFV, heading
5 north at a high rate of speed operating without
6 navigation lights in international waters off
7 the eastern Pacific ocean approximately 400
8 nautical miles southwest of the
9 Guatemala/El Salvador border. The Coast Guard
10 Cutter Seneca diverted to intercept the go-fast
11 vessel. The Seneca launched its
12 over-the-horizon vessel and -- also known as an
13 OTH, and made preparations to launch its
14 helicopter for visual cover. As the OTH
15 approached the go-fast vessel, the OTH reported
16 the go-fast vessel began to jettison packages.

17 During the course of the boarding this
18 go-fast vessel, a second go-fast vessel was
19 observed off the port bow of the Seneca. A
20 second OTH boarding team was directed to
21 intercept this newly discovered go-fast vessel.
22 Seneca's second OTH arrived on scene with the
23 newly discovered go-fast vessel subsequently
24 identified as the Divino Nino I which was dead
25 in the water in a bale field. One of the

1 mariners on board the go-fast vessel Divino
2 Nino I held a line connected to the nearby bale
3 field. The Seneca's helicopter was launched
4 and reported approximately 20 bales in this
5 debris field. The second OTH recovered the
6 bales which field tested positive for cocaine
7 and weighed approximately 760 kilograms.

8 The second OTH boarding team also
9 conducted an alongside right-of-approach for
10 the go-fast vessel Divino Nino I. The three
11 Defendants, Carlos Alberto Reyes Rivas, Johnny
12 Corleyis Guevara and Ilcias Artemio Perez De La
13 Cruz were on board the Divino Nino I. The
14 master of the go-fast vessel Divino Nino I,
15 Johnny Corleyis Guevara, made no claim of
16 nationality for the go-fast vessel, however,
17 there was an Ecuadorian flag, a vessel name and
18 a registry number painted on the hull. Based
19 on these observations, the Coast Guard
20 contacted the Government of Ecuador regarding
21 the registry of the go-fast vessel Divino Nino
22 I. The government of Ecuador replied that the
23 vessel was reported stolen in 2014, that there
24 was no way to confirm nationality for certain
25 of this vessel stating it could possibly be a

1 clone vessel and no persons on board were
2 Ecuadorian. In net effect, Ecuador could not
3 confirm or deny nationality and the vessel was
4 assimilated to be one without nationality.

5 The Defendants entered the United States
6 in the Middle District of Florida on May 27th,
7 2016. Upon his arrival the Defendant Carlos
8 Alberto Reyes Rivas gave a post-Miranda
9 statement admitting he was hired to go on a
10 drug run.

11 Also upon his arrival the Defendant Johnny
12 Corleyis Guevara did a post-Miranda statement,
13 admitted he was hired to go on a drug run and
14 had received an advance payment and before
15 departing on the go-fast vessel Nino Divino put
16 the bales on board. Defendant Reyes Rivas also
17 admitted to receiving an advance payment before
18 departing on the go-fast vessel Nino Divino I
19 with the bales already on board. The Defendant
20 Reyes Rivas was to receive the balance of the
21 payment upon successful completion of the
22 smuggling trip.

23 THE COURT: All right. Thank you, Miss
24 Castaneda. Gentlemen, did you hear the facts
25 as stated by the prosecutor?

1 DEFENDANT REYES: Yes.

2 THE COURT: Mr. Corleyis?

3 DEFENDANT CORLEYIS: Yes.

4 THE COURT: Do you have any disagreement
5 with any of those facts?

6 DEFENDANT REYES: No.

7 DEFENDANT CORLEYIS: No.

8 THE COURT: Mr. Amador.

9 MR. AMADOR: Judge, we dispute the amount
10 of the drugs. We certainly agree that there
11 were more than five kilograms of cocaine on
12 board.

13 THE COURT: All right. Thank you,
14 Mr. Amador. All right. Other than that,
15 Mr. Corleyis, let me ask you, the facts as
16 stated, are they true as you know them?

17 DEFENDANT CORLEYIS: Yes.

18 THE COURT: And, Mr. Reyes, let me ask
19 you, the facts as stated, are they true as you
20 know them?

21 DEFENDANT REYES: Yes.

22 THE COURT: Gentlemen, I want you both to
23 understand that it does not matter to the Court
24 whether you enter a plea of guilt in your case
25 or take the case to trial. That important

1 decision is for you and you alone. Having
2 stated that, do you feel you are prepared to
3 make that decision today? Mr. Reyes?

4 DEFENDANT REYES: Yes.

5 THE COURT: Mr. Corleyis?

6 DEFENDANT CORLEYIS: Yes.

7 THE COURT: All right. Gentlemen please
8 rise. Carlos Alberto Reyes Rivas, Johnny
9 Corleyis Guevara, how do you plead to Count 1
10 of the indictment which charges you with a
11 conspiracy to possess with the intent to
12 distribute or to distribute five kilograms or
13 more of cocaine while on board a vessel subject
14 to the jurisdiction of the United States in
15 violation of Title 46, United States Code,
16 Sections 70503(a) and 70506(a) and (b), guilty
17 or not guilty?

18 DEFENDANT REYES: Yes, I'm guilty.

19 DEFENDANT CORLEYIS: Guilty.

20 THE COURT: Mr. Corleyis, as to Count 2 of
21 the indictment which charges you -- I'm sorry.
22 Mr. Reyes, you may sit down, sir. Thank you.

23 DEFENDANT REYES: Thank you.

24 THE COURT: Mr. Corleyis, as to Count 2
25 which charges you with the possession with

1 intent to distribute or aiding and abetting
2 others to possess with intent to distribute
3 five kilograms or more of cocaine while on
4 board a vessel subject to the jurisdiction of
5 the United States, in violation of Title 46,
6 United States Code, Section 70503(a) and
7 70506(a), how do you plead, guilty or not
8 guilty?

9 DEFENDANT CORLEYIS: Guilty.

10 THE COURT: All right. Thank you, sir.
11 You may be seated.

12 DEFENDANT CORLEYIS: Thank you.

13 THE COURT: Gentlemen, as to your decision
14 to plead guilty to the charges, are you
15 pleading guilty because you're, in fact, guilty
16 of the charges that you have agreed to plead
17 guilty to?

18 DEFENDANT REYES: Yes. Yes.

19 DEFENDANT CORLEYIS: Yes.

20 THE COURT: All right. Mr. Zarembo,
21 anything you want to put on the record?

22 MR. ZAREMBA: No, Your Honor.

23 THE COURT: Mr. Amador.

24 MR. AMADOR: No, Your Honor.

25 THE COURT: Miss Castaneda, anything you

1 want me to ask or anything you want to put on
2 the record?

3 MS. CASTANEDA: Nothing, Your Honor.

4 THE COURT: All right. Gentlemen, before
5 I conclude, I want to ask each of you, do you
6 have any questions about anything that we have
7 discussed or for that matter anything that I
8 did not cover?

9 DEFENDANT REYES: No.

10 DEFENDANT CORLEYIS: No.

11 THE COURT: Let me note for the record
12 then based upon my review of the indictment as
13 well as Mr. Reyes' plea agreement, the factual
14 basis as provided by the Government and my
15 discussions both with Mr. Reyes and
16 Mr. Corleyis, I'm fully satisfied that they are
17 both competent to enter a plea of guilt and
18 their pleas are being entered knowingly,
19 intelligently and voluntarily, and they are
20 supported by independent factual basis for
21 Count 1 as to both of them as well as for Count
22 2 for Mr. Corleyis; therefore, gentlemen, I am
23 going to issue a report recommending your plea
24 be accepted. You will have 14 days to object
25 to my report. If you do not object to the

1 report, in all likely event your plea will be
2 accepted and your case will be scheduled for
3 sentencing which typically takes place around
4 70 to 90 days from the date of your plea.

5 Mr. Zarembo, Mr. Amador, was the probation
6 interview already scheduled or completed?

7 MR. ZAREMBA: Already started, Your Honor.

8 MR. AMADOR: It's next week sometime.

9 THE COURT: All right. Thank you. All
10 right. Anything else at this time?

11 MS. CASTANEDA: Nothing, Your Honor.

12 THE COURT: Mr. Zarembo, anything?

13 MR. ZAREMBA: No, Your Honor.

14 THE COURT: Mr. Amador?

15 MR. AMADOR: No.

16 THE COURT: Gentlemen, good luck to each
17 of you. We'll be in recess.

18 (Which were all the proceedings
19 had in the above-entitled
20 cause.)

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25

1 UNITED STATES DISTRICT COURT)

2)

3 MIDDLE DISTRICT OF FLORIDA)

4

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6 I, SHARON A. MILLER, Official Court Reporter

7 for the United States District Court, Middle District of

8 Florida, do hereby certify that pursuant to Section 753,

9 Title 28, United States Code that the foregoing is a true

10 and correct transcript of the stenographic notes taken by

11 computer-aided transcription taken in the above-entitled

12 cause by the undersigned and that the transcript format

13 is in conformance with the regulations of the Judicial

14 conference of the United States.

15

16 /S/Sharon A. Miller, CSR, RPR, CRR, FCRR

17 Official Court Reporter

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