

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JUDGE RODOLFO RUIZ – CHANGE OF PLEA COLLOQUY

A. INTRODUCTION

1. To Defense Counsel: It is my understanding that your client wishes to change his plea from not guilty here today; is that correct?
2. Are you here to enter a guilty plea?

B. COMPETENCE

1. Do you understand that you are now under oath and if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or for making a false statement?
2. What is your full name?
3. Are you or have you ever been known by any other name or alias?
4. Where were you born?
5. When did you come to the United States?
6. How old are you?
7. How far did you go in school? Where?
8. Are you able to read and write?
9. Are you a citizen of the United States? A resident?
10. If a citizen:
 - a. When did you become a citizen?
 - b. To the Government: Did any of the criminal conduct precede the naturalization?

11. Have you ever been treated for any mental illness or addiction to alcohol or narcotic drug of any kind?
12. Are you currently under the influence of any prescription drug, narcotic, medication or alcoholic beverage of any kind? Have you taken any drugs, medication or alcohol in the last 48 hours?
13. Are you currently under the care or treatment of any physician, psychologist or psychiatrist? Do you believe that you have a physical or mental condition or illness which would prevent you from understanding what is happening in court today?
14. Do you understand everything I'm saying and everything that is going on here today?
15. Does Defense Counsel agree as to the competency of the defendant to enter this plea?

C. CHARGES AND REPRESENTATION

1. Have you received a copy of the indictment pending against you – that is, the written charges made against you in this case?
2. Have you fully discussed those charges, and the case in general, with _____, as your counsel?
3. Have you discussed possible defense strategies with _____?
4. Are you fully satisfied with the counsel, representation, and advice given to you in this case by your attorney, _____?
5. Is there anything concerning your representation that you are not satisfied with?
6. Count ___ of the indictment charges that from a date unknown but at least as early as _____ and continuing through on or about _____....
The indictment also _____.... You have agreed to plead guilty to Count ___ of the indictment. Do you understand that charge?

7. To the Government: I would ask for the record if the Government would set forth the elements of that count?
 - a. To Defense Counsel: Are you satisfied that is a correct statement of the elements of Count ___?
8. To Defense Counsel: Would you state for the record the steps you have taken to familiarize your client with the indictment, the charges against him, and specifically Count ___ of the Indictment and its elements?
 - a. To Defendant: Is that your understanding?
9. Do you understand that if you went to trial, the government would have to prove beyond a reasonable doubt that ____ (elements) _____?
10. Discuss forfeiture allegations in the Indictment.
 - a. Do you understand that the Government is seeking to forfeit or take from you the property listed in the Indictment, or any property derived from, or used in, or traceable to the crimes alleged in the Indictment?
 - b. And do you agree to forfeit to the government that property identified in the forfeiture allegations of the Indictment?

D. WRITTEN PLEA AGREEMENT

1. Have original agreement produced; to Defendant: is this the agreement you signed?
2. Before you signed the written plea agreement, did you have a full and complete opportunity to talk to your attorney about its content?
3. Do you believe you understand the written plea agreement in its entirety?
4. Does the plea agreement represent in its entirety the understanding you have with the Government?

5. No additional promises made to you that are not contained in this plea agreement?
6. Do you understand that the terms of the plea agreement are merely recommendations to the court, that I can reject the recommendations without permitting you to withdraw your plea of guilty, and that I can impose a sentence that is more severe than you may anticipate?

E. APPELLATE WAIVER RIDER (if applicable)

1. Do you understand that federal law gives you the right to appeal the sentence that I impose or the manner in which I impose it?
2. Do you understand that, by entering into this plea agreement, you would be waiving or giving up your right to appeal the sentence that I impose or the manner in which I impose it—except for two and only two situations: (1) if the Government were to appeal the sentence, then you would be absolved of your appellate waiver and you, too, would be allowed to appeal; or (2) if I were to sentence you above the statutory maximum permitted by law, you would be permitted to appeal that decision. But, aside from these 2 very narrow exceptions, you are giving up your right to appeal. Do you understand that?
3. Have you had a chance to discuss with your lawyer all the reasons why he/she thinks waiving your right to appeal is the best thing for you and your case?
4. Did your lawyer answer any questions you might have had about the costs and benefits of waiving your right to appeal?
5. Has anyone threatened you in order to induce you to waive your right to appeal?
6. Has anyone forced or coerced you in order to get you to waive your right to appeal?

7. Other than the promises made to you by the United States in your plea agreement, has anyone made any other promises, assurances, or guarantees to you to get you to waive your right to appeal?
8. So are you waiving your right to appeal because you agree with your lawyer's advice that waiving your right to appeal is the best thing for you and your case?

F. SENTENCING GUIDELINES

1. The United States Sentencing Commission has issued guidelines for Judges to follow to determine the sentence in a criminal case. Have you and your attorney had the opportunity to talk about how the Sentencing Guidelines may apply to the charge you are prepared to plead guilty to, that is Count _____?
2. Do you understand that your sentence will be calculated pursuant to the Sentencing Guidelines, which assign a score to your offense and to your criminal history?
3. Do you understand that any estimate of the sentence given to you by your attorney or others is only an estimate, and that I will not determine the sentence until I have reviewed a presentence investigation report?
4. Do you understand that you will not be allowed to withdraw your guilty plea solely as a result of the sentence that you receive?
5. Do you understand that under some circumstances you or the Government may have the right to appeal the sentence that I impose? Do you understand that I can depart or vary from the Sentencing Guidelines and give you a sentence that is higher or lower than the sentence fixed by the Sentencing Guidelines?
6. Do you understand that if I depart or vary upward from the Sentencing Guidelines you may appeal the sentence?

7. Do you understand that if I depart or vary downward from the Sentencing Guidelines you or the Government may appeal the sentence?
8. Has it been explained to you that parole has been abolished in the federal system, so if you are sentenced to prison, you will not be released early on parole?

G. VOLUNTARINESS

1. Has anyone made any other or different promise or assurance of any kind to you in an effort to induce you to plead guilty in this case?
2. Has anyone attempted in any way to force you to plead guilty in this case?
3. Are you pleading guilty of your own free will because you are in fact guilty?

H. LOSS OF LIBERTIES

1. Do you understand that the offense to which you are pleading guilty is a felony offense, that if your plea is accepted you will be adjudged guilty of that offense, and that such adjudication may deprive you of valuable civil rights?
2. These include the right to vote, the right to hold office, the right to serve on a jury, and the right to possess any kind of firearm?
3. Do you understand that an adjudication of guilt could also affect your immigration status or your ability to remain in or return to the United States?
4. And do you understand that if you committed the crime for which you are pleading guilty before you are naturalized, the Court may initiate denaturalization proceedings against you?

I. WAIVER OF CONSTITUTIONAL RIGHTS

1. Do you understand that you have a right to plead not guilty to any offense charged against you and to persist in that plea through a trial?
2. Do you understand that if you plead not guilty you would then have the right to a trial by jury?
3. Furthermore, do you understand that at a trial:
 - a. You would be presumed to be innocent and the government would have to prove your guilt beyond a reasonable doubt.
 - b. You would have the right to the assistance of effective and competent counsel for your defense at trial and at every other proceeding in this case (and that includes, if you need it, the right to have counsel appointed for you if you cannot afford a lawyer on your own).
 - c. You would have the right to see and hear all of the witnesses and evidence brought against you.
 - d. You would have the right to have the witnesses and evidence confronted and cross-examined in your defense.
 - e. You would have the right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses and evidence for the promotion of your defense.
 - f. You would have the right to decline to testify unless you voluntarily elected to do so in your defense, and if you decided not to testify, your silence could not be used against you in any way and you would retain the presumption of innocence.

- g. If you were convicted, you would have the right to appeal your conviction.
- h. Do you further understand that if you enter a plea of guilty there will be no trial and that you will have waived or given up your right to a trial, as well as those other rights associated with a trial that I just described?

J. FACTUAL BASIS

1. To the Government: Will the Government please set forth a factual basis with regard to Count ____ of the Indictment.
2. You have heard what has been said.
 - a. Do you agree it is an adequate statement of what has transpired in this case?
 - b. Do you have any changes or objections to what the prosecutor has said?
3. To Defense Counsel:
 - a. Are you satisfied that your client understands his rights and what he is giving up today?
 - b. Are you satisfied that there has been a sufficient statement of factual basis with regard to Count ____ of the Indictment?
4. How do you now plead to the charges set forth in Count ____ of the indictment: **guilty or not guilty?**