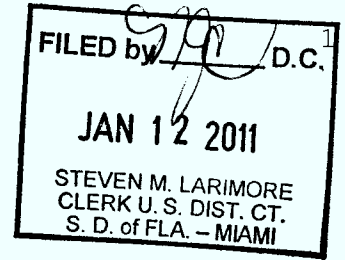


# **EXHIBIT 5**

**Sealed**



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 07-20794-CR-LENARD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Miami, Florida  
August 20, 2010

CARLOS MARIO JIMENEZ NARANJO,

Defendant.

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TRANSCRIPT OF  
CHANGE OF PLEA HEARING  
BEFORE THE HONORABLE JOAN A. LENARD  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

*United States Attorney's Office*  
BY: ALEJANDRO SOTO, A.U.S.A.  
99 N.E. 4th Street  
Miami, Florida 33132

FOR THE DEFENDANT:

BY: HUGO RODRIGUEZ, ESQ.  
BY: DAVID RODRIGUEZ, ESQ.  
1210 Washington Avenue  
Suite 245  
Miami Beach, Florida 33139

REPORTED BY:

DAWN M. WHITMARSH, RPR  
Official Court Reporter  
400 N. Miami Avenue, 10S03  
Miami, Florida 33128  
Telephone: 305-523-5598

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THE COURT: United States of America versus Carlos Mario Jimenez Naranjo, case number 07-20794.

Good morning, counsel. State your appearances please for the record, and pursuant to the order entered by the Court previously, this hearing is sealed.

MR. SOTO: Good morning, Your Honor. Alex Soto on behalf of the United States.

THE COURT: Good morning.

MR. RODRIGUEZ: Good morning, Your Honor. Hugo Rodriguez and David Rodriguez on behalf of Mr. Jimenez, who's present before the Court, who will rely on a court certified translator who has expertise.

Also on behalf of the defendant in the courtroom before the Court is Maria Leon, our investigator in this matter.

THE COURT: Good morning. And he is set for a change of plea, correct?

MR. RODRIGUEZ: He is, Your Honor, and the parties have executed a plea agreement and another letter agreement.

THE COURT: Okay. I'll have the plea agreement, please, if you would pass it up?

Mr. Soto, you can have the letter agreement back, please.

I'm just reviewing the plea agreement, and in paragraph one, there is a write-in that it's the second superseding

1 indictment. When was the second superseding indictment filed?

2 MR. SOTO: The indictment was returned yesterday and  
3 Mr. Jimenez Naranjo was arraigned on it yesterday afternoon at  
4 1:30, Your Honor.

5 THE COURT: Okay. It's not in the system. Is it  
6 there?

7 COURTROOM DEPUTY: Okay. Is it sealed?

8 MR. SOTO: It was not filed under seal, no. But I was  
9 present when the indictment was returned to Magistrate Judge  
10 Simonton, and I confirmed that he was in fact arraigned on it  
11 yesterday.

12 MR. RODRIGUEZ: I have a copy.

13 THE COURT: I believe your representations, it hasn't  
14 hit CM/ECF which I don't quite understand. Maybe -- what time  
15 was it returned?

16 MR. SOTO: Returned at 12 and he was arraigned at 1:30.

17 MR. RODRIGUEZ: We're trying to be efficient, Your  
18 Honor.

19 THE COURT: Okay. It shows the arraignment?

20 COURTROOM DEPUTY: Yes, but not the indictment.

21 THE COURT: Okay. Okay. So then paragraph two in the  
22 plea agreement which says superseding indictment, should that  
23 also read second superseding indictment?

24 MR. SOTO: Yes, Your Honor.

25 THE COURT: Okay. So you can write that in and initial

1 it after the hearing.

2 MR. RODRIGUEZ: Thank you, Your Honor.

3 THE COURT: Was he placed under oath?

4 COURTROOM DEPUTY: No.

5 THE COURT: Place him under oath please.

6 COURTROOM DEPUTY: Please stand and raise your right  
7 hand.

8 CARLOS MARIO JIMENEZ NARANJO, DEFENDANT, SWORN.

9 THE COURT: Do you understand, sir, that you are now  
10 under oath and if you answer any of my questions falsely, your  
11 answers may later be used against you in another prosecution for  
12 perjury or for making a false statement?

13 THE DEFENDANT: (Through Spanish Interpreter) Yes, Your  
14 Honor.

15 THE COURT: What is your full name?

16 THE DEFENDANT: Carlos Mario Jimenez Naranjo.

17 THE COURT: Have you been known by any other name or  
18 names?

19 THE DEFENDANT: Yes, by the alias of Javier Montanes or  
20 Macaco.

21 THE COURT: How about La Gerencia? I don't know if I'm  
22 pronouncing that right.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: How about Carlos Mario Jimenez Mejia?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And how about Macaco Montanez?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Any other names?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: What is your age?

6 THE DEFENDANT: 44 years old.

7 THE COURT: Could you explain your education, what was  
8 the last grade that you completed in school?

9 THE DEFENDANT: Third year high school.

10 THE COURT: Are you currently under the influence of  
11 any drug, medication or alcoholic beverage?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Within the last 24 hours, have you used any  
14 drug, medication or alcoholic beverage?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Have you recently been under the care of a  
17 doctor or psychiatrist?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Have you recently been hospitalized for any  
20 reason, including the use of narcotics, medicine, drugs or  
21 alcohol?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: The ability to understand the charges  
24 brought against you, has that ability been affected at any time  
25 by the use of any drug, medication or alcoholic beverage?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: The ability to understand the explanations  
3 and advice given to you by your lawyer, has that ability been  
4 affected at any time by the use of any drug, medication or  
5 alcoholic beverage?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Have you read a copy of the second  
8 superseding indictment which sets forth the written charges made  
9 against you in this case or was it read to you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand that you have the right  
12 to plead not guilty to any offense charged against you and to  
13 persist in that plea?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand that you would then have  
16 the right to a trial by jury in which you would be assisted by a  
17 lawyer in your defense and at which you would have the right to  
18 see and hear all of the witnesses who would testify against you  
19 and have them cross-examined in your defense?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that at a trial, the  
22 government cannot force you to testify unless you voluntarily do  
23 so in your own defense?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that should you decide

1 not to testify at trial, or put on any evidence at trial, that  
2 these facts cannot be used against you at trial?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And do you understand that the decision as  
5 to whether to testify or not testify in trial is your decision  
6 and your decision alone.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that you would have the  
9 right to have subpoenas issued to witnesses to compel them to  
10 attend the trial and testify on your behalf?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand that the government would  
13 have to prove beyond a reasonable doubt at trial the essential  
14 elements of the offenses charged against you?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you also understand that all 12  
17 jurors must unanimously agree before a finding of guilty can be  
18 made?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand that if you are convicted  
21 at trial, you would have the right to appeal my rulings at trial  
22 and your conviction?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you further understand that if you enter  
25 pleas of guilty and if I accept your pleas of guilty, there will



1 be no trial and you will have waived, or given up, your right to  
2 a trial as well as the various rights associated with the trial  
3 that I've just described.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You are charged by second superseding  
6 indictment in Count I that beginning in or about October 2004  
7 and continuing through in or about June 2007, the exact dates  
8 being unknown to the grand jury, in Miami-Dade County, in the  
9 Southern District of Florida and elsewhere, the defendant Carlos  
10 Mario Jimenez Naranjo also known as "Macaco", also known as "La  
11 Gerencia", also known as "Commander Javier Montanes", also known  
12 as "Carlos Mario Jimenez Mejia", also known as "Macaco  
13 Montanez", did knowingly and intentionally combine, conspire,  
14 confederate and agree with Sammy Humberto Fernandez Navarro and  
15 Jesus Maria Alejandro Sanchez-Jimenez, and with other persons  
16 known and unknown to the grand jury, to import into the United  
17 States, from a place outside thereof, a controlled substance in  
18 violation of Title 21, United States Code Section 952(a); all in  
19 violation of Title 21, United States Code, Section 963.

20 Pursuant to Title 21, United States Code, Section  
21 960(b)(1)(B), it is further alleged that this violation involved  
22 five kilograms or more of a mixture and substance containing a  
23 detectable amount of cocaine.

24 And in Count 18, that beginning at least as early as in  
25 or about September 2006, the exact date being unknown to the

1 grand jury, and continuing until at least on or about September  
2 6, 2007, while onboard a vessel subject to the jurisdiction of  
3 the United States, the defendants, Carlos Mario Jimenez Naranjo,  
4 Marco Julio Londono Vasquez, also known as "Canosito"; Francisco  
5 Arturo Ortiz Navarro, also known as "Maestro"; Marcial Gamboa  
6 Escobar, also known as "Marcial"; Jacinto Nicolas Fuentes  
7 German, also known as "Don Leo"; Andres Felipe Gomez Marulanda,  
8 also known as "Marulito"; and First Name Unknown, Last Name  
9 Unknown, also known as "Cachaco", did knowingly and  
10 intentionally combine, conspire, confederate and agree with each  
11 other and with Rosa Edelmira Luna Cordoba, Melbin Caicedo  
12 Sanchez, Elkin Dario Guerrero Agamez, Nebardo Antonio Estrada  
13 Munoz, Fernando Abuchar Gonzalez, Enot Chaverra Vargas, Elkin  
14 Dario Cantillo Salas, Hector Eduardo Munoz, Santander Cortecero,  
15 Jesus Maria Alejandro Sanchez-Jimenez, and other persons known  
16 and unknown to the grand jury, to possess with intent to  
17 distribute a controlled substance onboard a vessel subject to  
18 the jurisdiction of the United States in violation of Title 46,  
19 United States Code, Section 70503(a); all in violation of Title  
20 46, United States Code, Section 750506(b).

21 Pursuant to Title 46, United States Code, Section  
22 705068(a), and Title 21, United States Code, Section  
23 960(b)(1)(B), it is further alleged that this violation involved  
24 five kilograms or more of a mixture and substance containing a  
25 detectable amount of cocaine.

1           would counsel for the government make a representation  
2           concerning the facts the government is prepared to prove at  
3           trial, please.

4           MR. SOTO: Yes, Your Honor.

5           If this case had proceeded to trial, the government  
6           would have proven the following facts beyond a reasonable doubt.

7           THE COURT: Let me stop you for one minute, Mr. Soto.  
8           Does the court reporter have a copy of the factual proffer?

9           MR. SOTO: Yes, Your Honor.

10          THE COURT: Does the interpreter have a copy? Okay.  
11          Go ahead.

12          MR. SOTO: Carlos Mario Jimenez Naranjo was one of the  
13          principal leaders of a Colombian paramilitary and drug  
14          trafficking organization known as the Autodefensas Unidas de  
15          Colombia, or AUC, which was funded primarily through narcotics  
16          proceeds.

17          In 2001, the AUC was designated by the Department of  
18          State as a foreign terrorist organization. On June 2, 2003, the  
19          President of the United States designated the AUC as a specially  
20          designated narcotics trafficker under the Foreign Narcotics  
21          Kingpin Designation Act.

22          In February of 2008, Jimenez Naranjo was himself  
23          designated as a specially designated narcotics trafficker under  
24          the Act.

25          The AUC earned money by controlling access --

1 THE INTERPRETER: Sir, sir. Don't go so fast please.

2 MR. SOTO: I'm sorry.

3 The AUC earned money by controlling access to coca  
4 cultivation regions by taxing cocaine base and hydrochloride  
5 production and by providing security for cocaine laboratories.

6 The AUC provided transportation for cocaine shipments  
7 within Colombia to move coca base to clandestine cocaine  
8 laboratories and finished cocaine from labs to transit points  
9 along the coast.

10 THE COURT: Let me stop you there for a moment.

11 Explain to me how they tax cocaine base and  
12 hydrochloride production. What does that mean?

13 MR. SOTO: What that means is that they actually had --  
14 there were individuals who were -- who paid a fee for use of  
15 areas controlled by the AUC. So --

16 THE COURT: In Colombia.

17 MR. SOTO: In Colombia only. So any cocaine that was  
18 produced or in cocaine labs or produced in coca farms, the AUC  
19 designated a fee imposed on that cocaine by weight. By  
20 kilogram. And the amount of the fee changed over time. So at  
21 one point it was \$50 per kilogram produced or exported out of a  
22 region controlled by the AUC, and I think the number grows as  
23 high as \$200 per kilogram.

24 THE COURT: Okay. Go ahead.

25 MR. SOTO: The AUC charged transportation groups a tax

1 for access to AUC territory and to provide security for the  
2 movement of drugs within Colombia. Specifically, the Norte del  
3 Valle cartel employed the services of the AUC to protect its  
4 distribution routes and cocaine laboratories, as well as to  
5 provide personal security.

6 From the mid 1990s through 2007, Jimenez Naranjo  
7 controlled cocaine production and distribution, maritime  
8 seaports, and clandestine air strips in vast areas of Colombia  
9 through an army of several thousand men. Jimenez Naranjo used  
10 this paramilitary army to assume and maintain control of areas  
11 of Colombia which the organization used to cultivate, process,  
12 transport and export cocaine to Central America, Mexico and the  
13 United States.

14 In early 2005, Jimenez Naranjo self-surrendered to  
15 Colombian authorities in connection with the Colombian Justice  
16 and Peace Program. He remained incarcerated in various  
17 facilities in Colombia until his extradition to the United  
18 States in May 2008.

19 During the time that Jimenez Naranjo was incarcerated  
20 in Colombia, he used codefendant Sanchez-Jimenez, unindicted  
21 co-conspirator Hector Duque Ceballos, also known as "Monoteto",  
22 and others, to manage the organization's drug trafficking  
23 operations. Sanchez-Jimenez and Duque Ceballos visited Jimenez  
24 Naranjo regularly in Santa Fe de la Lita, La Ceja and Itagui, in  
25 order to keep him apprised of the organization's drug

1 trafficking operations and profits and to receive direction from  
2 Jimenez Naranjo regarding the same.

3 THE COURT: That was after he surrendered?

4 MR. SOTO: After he surrendered.

5 THE COURT: Those are the prisons he was in?

6 MR. SOTO: Santa Fe de la Lita was a compound in which  
7 he and other drug traffickers self-surrendered and were held  
8 there in what was a large farm that included a number of other  
9 AUC members including Mr. Jimenez Naranjo. La Ceja was an  
10 actual prison and Itagui was an actual prison in Colombia.

11 In 2004, Jimenez Naranjo assigned responsibility to  
12 Sanchez-Jimenez and Duque Ceballos, to Choco, a region of  
13 Colombia located on the Pacific coast from which Sanchez-Jimenez  
14 and others oversaw the organizations of maritime shipment of  
15 multi-hundred kilogram and multi-ton quantities of cocaine to  
16 Central America and Mexico en route to the United States.

17 Sanchez-Jimenez also oversaw the organization's  
18 activities in Antioquia, a region on Colombia's Caribbean coast.

19 At the direction of Jimenez Naranjo, Sanchez-Jimenez  
20 also charged narcotics traffickers a fee, or tax, of \$100 per  
21 kilogram of cocaine for the use of maritime launching points in  
22 these areas. Jimenez Naranjo imposed these taxes in other  
23 regions of Colombia including Putumayo, Vichada and the southern  
24 region of Bolivar, where Jimenez Naranjo's organization  
25 controlled clandestine air strips used to export cocaine from

1 Colombia.

2           Insofar as Count 1, on September 11, 2005, a King Air,  
3 model 200 airplane, carrying 1,300 kilograms of cocaine,  
4 conducted an emergency landing at Gustavo Rojas Pinilla Airport  
5 on the Colombian island of San Andres. When the Colombian  
6 National Police arrived to investigate, the plane was sitting  
7 just off of the runway with its engines running. Witnesses  
8 observed two males moving quickly away from the airplane after  
9 it touched down. In the aircraft, Columbia law enforcement  
10 observed the cocaine, extra fuel tanks and numerous documents.  
11 The documents included flight logs, the names of pilots and the  
12 name of the company from which the plane had been purchased.

13           Codefendant Sammy Humberto Fernandez Navarro was one of  
14 the individuals identified as a pilot for the aircraft.  
15 Fernandez Navarro was arrested by Colombian National Police just  
16 outside of the airport as he attempted to drive off in a taxi.

17           The documents found onboard the aircraft corroborated  
18 other evidence gathered by law enforcement which confirmed that  
19 the plane had been purchased in July 2005 with money that had  
20 been wire transferred in six installments from a money exchange  
21 business in Mexico known as Casa de Cambio Puebla through a  
22 Wachovia bank account located in Miami, Florida.

23           At the time of its purchase in July 2005, the plane was  
24 located in Fort Lauderdale, Florida. Law enforcement later  
25 learned that the plane's registry in the United States had been

1 removed in order to facilitate the plane's export to Colombia.

2 According to a government witness, the plane was flown  
3 from Fort Lauderdale to Bogota, Colombia for use in a shipment  
4 of a significant amount of cocaine. The individual hired to  
5 pilot the plane from Fort Lauderdale to Bogota was instructed to  
6 leave the plane on the tarmac in Bogota and return home. From  
7 there, the plane was moved to a clandestine air strip in the  
8 southern region of Bolivar where it was loaded with 1,300  
9 kilograms of cocaine. Witnesses confirmed that the plane  
10 departed with the cocaine from this clandestine air strip at the  
11 direction of an unindicted member of Jimenez Naranjo's drug  
12 trafficking organization, and that this airstrip was controlled  
13 by codefendant Carlos Mario Jimenez Naranjo.

14 Other witnesses explained that the cocaine seized from  
15 the plane belonged to several investors, among them codefendant  
16 Carlos Mario Jimenez Naranjo, and was being shipped to a drug  
17 trafficking organization in Mexico for distribution in the  
18 United States.

19 THE COURT: When this says codefendant Carlos Mario  
20 Jimenez Naranjo, that's the defendant you're referring to?

21 MR. SOTO: That's a mistake. It should be defendant,  
22 Carlos Mario.

23 THE COURT: Okay.

24 MR. SOTO: The plane was in fact en route to a remote  
25 air strip in Guatemala near the border of Mexico where the



1 cocaine would be offloaded and then transported into the United  
2 States by land.

3 witnesses explained that the plane piloted by  
4 codefendant Fernandez Navarro conducted an emergency landing on  
5 San Andres island due to a technical malfunction having to do  
6 with gas lines on the plane. This was later corroborated by  
7 observations made by the Colombian National Police upon their  
8 examination of the plane.

9 Insofar as Count 18, in late 2006 and early 2007,  
10 Jimenez Naranjo sold several multi-hundred kilogram quantities  
11 of cocaine to codefendant Francisco Arturo Ortiz Navarro, also  
12 known as "Maestro". These transactions were managed by  
13 Sanchez-Jimenez on behalf of Jimenez Naranjo, who was then  
14 incarcerated in Colombia at the time.

15 Three of the shipments sold to Ortiz Navarro were  
16 seized in international waters by the United States Coast Guard  
17 from vessels subject to the jurisdiction of the United States.

18 The first seizure occurred on October 25, 2006 when the  
19 United States Coast Guard intercepted the fishing vessel *Camilla*  
20 *C*, in international waters off the northwest coast of Colombia.  
21 The United States Coast Guard recovered 37 bales containing 900  
22 kilograms of cocaine from the *Camilla C*. Eyewitness testimony  
23 identified the fishing vessel *La India* as the boat from which  
24 the cocaine was loaded on to the *Camilla C*.

25 Codefendant Enot Chaverra Vargas, a member of

1 codefendant Ortiz Navarro's narcotics transportation  
2 organization, was identified as the person who supervised the  
3 offload of the cocaine from the fishing vessel *La India* to  
4 *Camilla C.*

5 In December 2006, several codefendants, including but  
6 not limited to Chaverra Vargas and Ortiz Navarro were  
7 intercepted on a judicialized Colombian wire discussing plans to  
8 conduct an at-sea transfer of cocaine from one vessel to  
9 another. Testimony from an eyewitness and a cooperating source  
10 confirmed that the conversations intercepted on the Colombian  
11 wire culminated at in at-sea transfer of the cocaine by  
12 codefendant Chaverra Vargas from the fishing vessel *La India* to  
13 the fishing vessel *Courageous*, in the early morning hours of  
14 December 19, 2006.

15 That same day, the United States Coast Guard cutter  
16 *Bear* interdicted the fishing vessel *Courageous* in international  
17 waters approximately 144 nautical miles northeast of Colombian  
18 territorial waters. A United States Coast Guard boarding team  
19 recovered 30 bales of cocaine weighing 720 kilograms from the  
20 vessel.

21 In late April 2007, several codefendants, including  
22 Ortiz Navarro, were intercepted on a judicialized Colombian wire  
23 discussing plans to conduct another maritime shipment of  
24 cocaine. As before, the conversations intercepted on the  
25 Colombian wire culminated in an at-sea transfer of the cocaine

1 sold by the Jimenez Naranjo drug trafficking organization to  
2 Ortiz Navarro in or about April 23.

3 On April 26, 2007 the United States Coast Guard Cutter  
4 *Tahoma* interdicted the fishing vessel *Captain Brolin* in  
5 international waters northeast of Colombian territorial waters.  
6 A United States Coast Guard boarding team recovered 95 bales of  
7 cocaine weighing 2,000 kilograms from the vessel. A series of  
8 intercepted telephone calls following the seizure confirmed that  
9 the cocaine seized by the United States Coast Guard vessel  
10 *Tahoma* belonged to codefendant Ortiz Navarro and that Ortiz  
11 Navarro had purchased the cocaine from the Jimenez Naranjo drug  
12 trafficking organization.

13 And that concludes the proffer, Your Honor.

14 THE COURT: Do you understand the charges against you?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you admit or not admit the facts as  
17 stated by the prosecutor?

18 MR. RODRIGUEZ: They're sufficient facts and basis for  
19 the violation. There may be some small issues, nothing that  
20 would interfere with him proceeding with this plea, Your Honor.

21 THE COURT: Okay. I need to hear it from him.

22 Do you admit or not admit the facts as stated by the  
23 prosecutor in totality and as they relate to Counts 1 and 18 of  
24 the --

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Is what the prosecutor stated correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you have any deletions or corrections?

4 MR. RODRIGUEZ: Judge, it's just a matter of  
5 nomenclature and words, and things -- adjectives. That's all.  
6 The substantive facts are correct and those are the things that  
7 he and I have discussed. I've discussed it with Mr. Soto. It  
8 isn't sufficient to affect the proffer.

9 THE COURT: So give me an example so I understand.

10 MR. RODRIGUEZ: I knew you were going to do that and I  
11 didn't highlight it as we were going.

12 Just give me a second, Your Honor.

13 THE COURT: Sure. Take your time.

14 MR. RODRIGUEZ: Your Honor, I reaffirmed with my client  
15 and I've told him this is the government's proffer as to what  
16 they believe they could prove at the time. And as he has said  
17 to you, he agrees with that.

18 There were such things as dates of being in one place  
19 or another that he was discussing when he said to me hey, the  
20 mid '90s, what does that mean. It's things along those lines  
21 that he may have a disagreement, but not as to the facts,  
22 jurisdiction and other matters that are in the proffer.

23 THE COURT: Okay.

24 How do you wish to plead to Counts 1 and 18 of the  
25 second superseding indictment? Guilty or not guilty?

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: Are you pleading guilty because you are  
3 guilty?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand that the mandatory  
6 minimum penalty of confinement provided by law for each one of  
7 these counts is ten years imprisonment?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And do you understand that the maximum  
10 possible penalty of confinement provided by law is up to life  
11 imprisonment?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: In addition, following a term of  
14 imprisonment exceeding one year, the Court must impose a term of  
15 supervised release, such term of supervised release shall  
16 commence upon release from imprisonment. The minimum amount of  
17 time in supervised release for each one of these counts is five  
18 years, and the maximum amount of time on supervised release for  
19 each one of these counts is up to life on supervised release.

20 Do you understand that as well?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand that if you violate the  
23 conditions of supervised release, you can be given additional  
24 time in prison?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: The maximum fine that may be imposed  
2 against you for each one of these counts is up to \$4 million.  
3 The Court may sentence you to serve a sentence of confinement  
4 and also assess a fine against you.

5 Do you understand that as well?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: In addition to the penalties of confinement  
8 and fines, you may be ordered to make restitution and you will  
9 be required to pay a special assessment of \$100 for each count  
10 of conviction.

11 Do you understand that as well?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you understand that the offense to which  
14 you plead guilty are felony offenses?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that if your pleas of  
17 guilty are accepted, you will be adjudicated guilty of those  
18 offenses?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand that if you are not a  
21 citizen of the United States, such adjudications will subject  
22 you to removal proceedings by the Bureau of Immigration and  
23 Customs Enforcement pursuant to United States law, and  
24 presumptively you will be removed from the United States as  
25 these are convictions for drug offenses other than possession of

1 30 grams or less of marijuana.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Have you discussed these immigration  
4 consequences with your attorney?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And are you satisfied with his services?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that the provisions of  
9 the sentencing guidelines promulgated by the United States  
10 Sentencing Commission will advise the Court in this matter?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Have you and your attorney talked about how  
13 the sentencing guidelines might apply to your case?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand that the Court will not  
16 be able to determine the advisory guideline range for your  
17 sentence until after the advisory presentence investigation  
18 report has been completed, and you and the government have had  
19 the opportunity to challenge the reported facts and the  
20 application of the guidelines as recommended by the probation  
21 officer?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that the Court will  
24 consider all the sentencing factors provided by law, including  
25 the sentencing guidelines?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand that after considering  
3 all of these factors, the Court will impose a sentence it finds  
4 appropriate, given the statutory minimum and statutory maximums?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that the sentence imposed  
7 may be different from any estimate your attorney may have given  
8 you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you understand that parole has been  
11 abolished and if you are sentenced to prison, you will not be  
12 released on parole?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand that under some  
15 circumstances, you or the government may have the right to  
16 appeal any sentence that I impose?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Are your pleas of guilty being made freely  
19 and voluntarily?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has anyone forced or threatened you or  
22 coerced you to plead guilty?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Other than the representations made to you  
25 in the plea agreement and the letter agreement, has anyone made



1 any other representations to convince you to plead guilty?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Are you satisfied with your attorney?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Have you had adequate time to fully confer  
6 with your attorney, and he with you, about these charges, these  
7 proceedings and all matters relating to these charges?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Turning now to the plea agreement, does the  
10 interpreter have a copy of the plea agreement? Yes? Okay.

11 You agree to plead guilty to Counts 1 and 18 of the  
12 second superseding indictment.

13 Count 1 charges you with conspiring to import into  
14 United States five kilograms or more of a mixture and substance  
15 containing a detectable amount of cocaine; a controlled  
16 substance in violation of Title 21, United States Code, Section  
17 963.

18 Count 18 charges you with conspiracy to possess with  
19 intent to distribute five kilograms or more of a mixture and  
20 substance containing a detectable amount of cocaine, a  
21 controlled substance while onboard a vessel subject to the  
22 jurisdiction of the United States in violation of Title 46,  
23 United States Code, Sections 70503(a) and 70506.

24 The government will dismiss the remaining counts of the  
25 second superseding indictment as to you after sentencing.

1           You are aware that sentence will be imposed in  
2 conformity with the sentencing guidelines and that the  
3 applicable guidelines will be determined by the Court, relying  
4 in part on the results of a presentence investigation by the  
5 probation office, and that this investigation will begin after  
6 your guilty plea has been entered.

7           You're also aware that under certain circumstances, the  
8 Court may depart from the applicable guideline range and impose  
9 a sentence that is either more severe or less severe than the  
10 guideline range.

11           Under Paragraph 19 of this plea agreement, you and the  
12 government agree to recommend that the Court sentence you to a  
13 term of imprisonment of up to 35 years. Knowing these facts,  
14 you understand and acknowledge that the Court has the authority  
15 to impose any sentence within and up to the statutory maximum  
16 authorized by law for the offenses to which you plead guilty,  
17 and you may not withdraw your pleas solely as a result of the  
18 sentence imposed.

19           You understand and acknowledge that the Court must  
20 impose a minimum term of imprisonment of ten years and may  
21 impose a statutory maximum term of imprisonment of up to life,  
22 followed by a term of supervised release of no less than five  
23 years.

24           In addition, the Court may impose a fine of up to \$4  
25 million.

1 Pursuant to assurances made by the United States to  
2 Colombia however, the government has agreed not to seek a  
3 sentence of life imprisonment in this case. This is necessary  
4 in order to effectuate the agreement between the governments of  
5 the United States and Colombia, reached in connection with your  
6 extradition to the United States to face charges in this case.

7 In addition, a special assessment in the amount of \$100  
8 per count, for a total special assessment of \$200, will be  
9 imposed on you. You agree that any special assessment imposed  
10 shall be paid at time of sentencing.

11 The government reserves the right to inform the Court  
12 and the probation office of all facts pertinent to the  
13 sentencing process, including all relevant information  
14 concerning the offenses committed, whether charged or not, as  
15 well as concerning you and your background, subject only to the  
16 express terms of any agreed upon sentencing recommendations  
17 contained in this agreement.

18 The government further reserves the right to make any  
19 recommendation as to the quality and quantity of punishment.

20 You agree that under the facts and circumstances of  
21 this case, there are no factors under Title 18, United States  
22 Code, section 3553(a) that would call for a term of imprisonment  
23 beneath the advisory guideline range produced by application of  
24 the sentencing guidelines. If application of the sentencing  
25 guidelines were to call for a sentence of life imprisonment, the

1 government will recommend that the Court sentence you to a term  
2 of years in light of the agreement between the governments of  
3 the United States and Colombia, reached in connection with your  
4 extradition to the United States to face charges in this case.

5 The government agrees it will recommend at sentencing  
6 that the Court reduce by two levels the sentencing guideline  
7 level applicable to your offense under section 3E1.1A of the  
8 guidelines, based upon your recognition and affirmative and  
9 timely acceptance of personal responsibility.

10 If your offense level equals a level 16 or greater, the  
11 government agrees that it will recommend that the Court reduce  
12 your offense level an additional one level under section 3E1.1b  
13 of the guidelines, based upon your timely notification of your  
14 intent to plead guilty. However, the government will not be  
15 required to make these sentencing recommendations if you fail,  
16 or refuse to make a full, accurate and complete disclosure to  
17 the probation office of the circumstances surrounding the  
18 relevant offense conduct. If it is found that you have  
19 misrepresented facts to the government prior to entering this  
20 plea agreement or if you commit any misconduct after entering  
21 into this plea agreement including, but not limited to,  
22 committing a state or federal offense, violating any term of  
23 release or making false statements or misrepresentations to any  
24 governmental entity or official.

25 In addition to the provisions of paragraph nine which I

1 just summarized which sets forth your eligibility for a downward  
2 adjustment for acceptance of responsibility under section 3E1.1  
3 of the guidelines, you and the government agree that, although  
4 not binding on the probation office or the Court, you will  
5 jointly recommend that the Court make the following findings and  
6 conclusions as to the sentence to be imposed:

7 Section 2D1.1 of the guidelines is the offense  
8 guideline applicable to Counts 1, 18 in this case. You agree  
9 that your violation of Counts 1 and 18 involved 150 kilograms or  
10 more of cocaine, and therefore section 2D1.1A yields a base  
11 offense level of 38.

12 You qualify for an additional one level upward  
13 adjustment under section 2D1.1, application note 16 of the  
14 guidelines because the quantity of cocaine attributable to you  
15 exceeds ten times the minimum quantity required for level 38.

16 You agree that you possessed at least one dangerous  
17 weapon in connection with Counts 1 and 18, and therefore you  
18 qualify for a two level upward adjustment under section 2D1.1b1.

19 You agree that you conspired in Count 1 to import a  
20 controlled substance into the United States under circumstance  
21 in which an aircraft, other than a regularly scheduled  
22 commercial air carrier, was used to import the controlled  
23 substance. Therefore, you qualify for a two level upward  
24 adjustment based upon section 2D1.1B2A. No additional specific  
25 offence characteristics under Chapter 2 of the guidelines are

1 applicable to your offense conduct.

2 You qualify for a four level upward adjustment for  
3 aggravating role pursuant to 3B1.1A of the guidelines.

4 Apart from your eligibility for a downward adjustment  
5 for acceptance of responsibility under 3E1.1, no additional  
6 upward or downward adjustments under Chapter 3 of the sentencing  
7 guidelines are applicable to your offense conduct.

8 In accordance with the findings of fact addressed --  
9 strike that.

10 In accordance with the findings of fact addressing your  
11 guidelines computations as set forth in A through I of this  
12 paragraph which I just read to you, your total base offense  
13 level is 44, and that is the sum and total of the  
14 recommendations that you and the government will be making  
15 regarding your sentence to be imposed.

16 You understand and agree that once you enter your  
17 guilty plea and such guilty plea is accepted by the Court, if  
18 for any reason you subsequently withdraw your guilty pleas, the  
19 factual basis offered by the government in support of your  
20 guilty pleas will be fully admissible against you in a trial in  
21 this case.

22 You also understand and agree that you waive any and  
23 all protections you may have under: A, Rule 11 F of the Federal  
24 Rules of Criminal Procedure; B, section 1B1.8A of the guidelines  
25 and C, Rule 410 of the Federal Rules of Evidence with respect to

1 the factual basis offered by the government in support of your  
2 guilty pleas.

3 You agree to voluntarily forfeit to the United States  
4 and/or the government of Columbia, all property subject to  
5 forfeiture under Title 18, United States Code, Section 982;  
6 Title 21, United States Code, Section 853; or Title 46, United  
7 States Code, Section 70507(a). Specifically, you agree to  
8 forfeit to the United States or to the government of Colombia  
9 your interest in any property in your possession or under your  
10 control, but constitutes or is traceable to proceeds of your  
11 narcotics trafficking. You agree to enter into a consent order  
12 of forfeiture and to fully assist the United States and  
13 Colombian Governments in effectuating the surrender of the  
14 forfeited assets, and to take whatever steps are necessary to  
15 ensure that clear title thereto passes either to the United  
16 States or the government of Columbia.

17 You agree not to file a claim, or assist others to file  
18 a claim, to any of the forfeited assets in any administrative or  
19 judicial proceeding of any third party other than a bonafide  
20 innocent third party files a claim to a litigation in the United  
21 States or Columbia regarding the properties which you identified  
22 are forfeitable, you will assist the governments in defending  
23 the forfeiture action.

24 Assets located in Colombia that are forfeited pursuant  
25 to this agreement may be used as reparations to Colombian

1 victims of the AUC violence in Crimes, pursuant to your  
2 obligations under the Justice and Peace Act. You knowingly and  
3 voluntarily waive your right to a jury trial on the forfeiture  
4 of such assets and waive all constitutional, legal and equitable  
5 defenses to the forfeiture of such assets. You knowingly and  
6 voluntarily waive any time or notice requirements in any  
7 forfeiture proceeding involved in this property.

8 You further knowingly and voluntarily waive any  
9 jeopardy defense or any claim of double jeopardy, whether  
10 constitutional or statutory, and agree to waive any claim or  
11 defense under the 8th Amendment to the United States  
12 Constitution, including any claim of excessive fines.

13 You understand and agree that forfeiture of your assets  
14 shall not be treated as satisfaction of any fine, restitution,  
15 cost of imprisonment or any other penalty this Court may impose  
16 upon you.

17 In exchange for the undertakings made by the United  
18 States in this plea agreement, you waive all rights, whether  
19 asserted directly or by a representative, to request or receive  
20 from any department or agency of the United States any records  
21 pertaining to the investigation or prosecution of this case,  
22 including, without limitation, any records that may be sought  
23 under the Freedom of Information Act, 5, United States Code,  
24 Section 922; or the Privacy Act of 1974, 5 United States Code,  
25 Section 522(a).



1           You are aware that Title 18, United States Code,  
2           Section 3742, affords you the right to appeal the sentence  
3           imposed in either or both cases.

4           What does that mean? In either or both cases?

5           MR. RODRIGUEZ: I don't know how the Court is going to  
6           handle the other agreement, but there is a -- the letter  
7           agreement which is more detailed. There is a -- almost a mirror  
8           image plea agreement that's sealed in the District of Columbia  
9           and this is the same language that was used.

10          THE COURT: So that references the case in the District  
11          of Columbia.

12          MR. RODRIGUEZ: In Washington, D.C.

13          MR. SOTO: may I have a moment, Your Honor?

14          THE COURT: Yes.

15          MR. RODRIGUEZ: Just give us a second, Your Honor?

16          THE COURT: Yes.

17          MR. RODRIGUEZ: judge, we have a recommendation.

18          THE COURT: Yes.

19          MR. RODRIGUEZ: we would ask that the Court eliminate  
20          the last five words of the first sentence of paragraph 15.

21          THE COURT: So it will end after "imposed"?

22          MR. RODRIGUEZ: So it will say "the defendant has the  
23          right to appeal the sentence imposed", okay. We'll take the  
24          first four letters. The last four out.

25          THE COURT: Okay. Okay. I'll let you do that and

1 initial it. Okay.

2 You are aware that Title 18, United States Code,  
3 Section 3742 affords you the right to appeal the sentence  
4 imposed.

5 Acknowledging this, in exchange for the undertakings  
6 made by the United States in this plea agreement, you waive all  
7 rights conferred by Title 18, United States Code, Section 3742  
8 to appeal any sentence imposed, including any restitution order,  
9 or to appeal the manner in which sentence was imposed, unless  
10 the sentence exceeds the maximum permitted by statute or is the  
11 result of an upward departure from the guideline range the Court  
12 establishes at sentencing.

13 You further understand that nothing in this agreement  
14 shall affect the government's right and/or duty to appeal as set  
15 forth in Title 18, United States Code, Section 3742(b); however,  
16 if the government appeals your sentence under Section 3742(b),  
17 you shall be released from your waiver of appellate rights.

18 You understand that although you will be sentenced in  
19 conformity with the sentencing guidelines, by this agreement you  
20 waive the right to appeal the sentence on the basis that the  
21 sentence is a result of an incorrect application of the  
22 guidelines.

23 I have a problem with that sentence, because I don't  
24 know if he's going to be sentenced in conformity with the  
25 sentencing guidelines. The guidelines are now advisory.

1 MR. RODRIGUEZ: May be sentenced.

2 THE COURT: You're going to change that to may? Okay.  
3 So let me reread that sentence then as amended by the parties.

4 You understand that although you may be sentenced in  
5 conformity with the sentencing guidelines, by this agreement you  
6 waive the right to appeal the sentence on the basis of the  
7 sentence is a result of an incorrect application of the  
8 sentencing guidelines.

9 You further waive any right to file any motion or make  
10 any claim whether under Title 28, United States Code, Sections  
11 2255, 2254, 2241, or any other provision of law to collaterally  
12 attack your conviction, your sentence or the manner in which  
13 sentence was imposed, unless the sentence exceeds the maximum  
14 permitted by statute.

15 You confirm that you are guilty of the offenses to  
16 which you are pleading guilty; that your decision to plead  
17 guilty is the decision that you have made, and that nobody has  
18 forced, threatened or coerced you into pleading guilty.

19 MR. RODRIGUEZ: Your Honor, if I may, and I apologize  
20 for stopping you, if we could go back to paragraph 16.

21 THE COURT: Yes.

22 MR. RODRIGUEZ: And I would ask Mr. Soto to consider  
23 adding the word "or treaty" at the end, because we have the  
24 unique situation here in that the treaty may limit the Court on  
25 the extent of sentence. And here it says that he waives all his

1 rights.

2 THE COURT: I'm not sure that it limits the Court. I  
3 think it limits -- if you want to amend that, that's fine. But  
4 I am not sure that the treaty limits the Court. As I read your  
5 agreement, it limits -- and I may or may not agree with what the  
6 recommendation is, but it limits the recommendation that the  
7 government recommends.

8 MR. RODRIGUEZ: i'm not going to disagree, but under  
9 the rule of speciality --

10 THE COURT: You may or may not be right, it would have  
11 to be a determination that I make..

12 MR. RODRIGUEZ: What I'm saying only -- since it  
13 doesn't affect the Court, would it be possible just to add the  
14 word "or treaty"? Or if not, I'll leave it as that.

15 MR. SOTO: Can I read it for a moment?

16 THE COURT: Yeah. If you want to amend it to include  
17 that, that's up to you and I don't have a problem with your  
18 doing that.

19 MR. SOTO: Your Honor, this doesn't -- my reading of  
20 this doesn't bind the Court, the defendant is merely waiving his  
21 right in connection with the sentence imposed, if that sentence  
22 exceeds the maximum permitted by statute or the agreement with  
23 respect to his extradition. It doesn't bind the Court.

24 THE COURT: No, I agree. This is his waiver and if  
25 you, the parties, want to amend it, that's up to you.

1 MR. SOTO: I think we'll amend it by adding "unless the  
2 sentence exceeds the maximum permitted by statute or any  
3 agreement between the governments of the United States and  
4 Colombia in connection with the defendant's extradition".

5 THE COURT: You agree, Mr. Rodriguez?

6 MR. RODRIGUEZ: Yes, Your Honor.

7 THE COURT: Okay. So I'm actually going to write that  
8 in. Okay? No, I have it.

9 MR. RODRIGUEZ: That's right, you have it now.

10 THE COURT: And I'll strike the prior reading of the  
11 paragraph and read it again.

12 Now, before I go back to the plea agreement beginning  
13 with paragraph 16 as now amended by the parties, I just want to  
14 make sure that I state for the record as I read the agreement  
15 with the -- by the parties, the United States government, the  
16 executive branch, has agreed with the government of Colombia  
17 that they will not seek life imprisonment in order to extradite  
18 the defendant from Colombia to the United States. At this  
19 juncture, that does not bind the judicial branch, meaning the  
20 Court, though I would certainly be mindful and consider the  
21 position of the United States government executive branch, and  
22 if you can provide authority to me and convince me that I am  
23 bound by that, I would consider that as well, Mr. Rodriguez.  
24 And I may find or not find -- strike that.

25 As I understand the parties' agreement, and correct me

1 please if I'm wrong, that the government will -- the agreement  
2 is that in order for the Colombian government to agree to  
3 extradite the defendant from Colombia to the United States to  
4 face the charges of this case, the government of -- the  
5 executive branch government of the United States agree that they  
6 will not seek life imprisonment but rather a term of years. Is  
7 that correct?

8 MR. SOTO: That is correct, Your Honor.

9 THE COURT: You agree, Mr. Rodriguez.

10 MR. RODRIGUEZ: Yes, Your Honor.

11 THE COURT: Okay. Now, if you want to, at sentencing,  
12 provide authority to me how that binds me, you may do so and I  
13 would consider at that time and if I need to reserve on that  
14 portion of the plea agreement, I will do so. But that at this  
15 juncture is my understanding that it's the recommendation by the  
16 government of the United States, the executive branch to the --  
17 that they made an agreement with the government of Colombia.  
18 The Court has not made any agreement with the government of  
19 Columbia.

20 So it is my position at this juncture that I am not  
21 bound by that agreement. I would certainly consider the  
22 position of the parties and I understand, of course, that there  
23 are certain diplomatic and national security positions that the  
24 parties have, especially the executive branch of the United  
25 States government as to their representations to the government

1 of Colombia.

2 Is there any disagreement as to that?

3 MR. SOTO: No, Your Honor, there's no disagreement on  
4 my part. I would, however, note that, of course, any decision  
5 by the Court not to abide by the agreement made between the  
6 governments of the United States and Colombia may have an affect  
7 on our ability to extradite individuals from that country in the  
8 future.

9 THE COURT: I understand that. Do you agree,  
10 Mr. Rodriguez?

11 MR. RODRIGUEZ: You articulated it correctly, Your  
12 Honor. It would be an issue, if necessary, to be dealt with at  
13 sentencing under the rule of speciality at that time, if it were  
14 to be an issue.

15 THE COURT: So as we proceed with the sentencing, and  
16 before I go back to continuing with the summarization of the  
17 substance of the plea agreement -- well, I guess the best thing  
18 for me to do is to reserve on whether or not I am bound and then  
19 that will give you an opportunity to argue to me that I am bound  
20 if, in fact, under the law I am bound. But I would reserve on  
21 that issue for purposes of accepting this plea agreement.

22 MR. RODRIGUEZ: Thank you, Your Honor. We have no  
23 objection. That's probably the most prudent way to approach it.

24 MR. SOTO: But just so that we're all on the same page  
25 here, I don't want there to be any argument in the future that

1 the Court's position now to reserve ruling on whether the Court  
2 is bound, as opposed to just the Department of State, in any way  
3 affects this plea agreement coming to a completion and this  
4 hearing to a completion once we've completed this hearing.

5 I think the only thing that paragraph does is permits  
6 Mr. Jimenez Naranjo to file a 2255 or writ of habeas corpus or  
7 other collateral attack in the event that the Court decides to  
8 impose a sentence higher than that agreed -- that would not  
9 abide by the agreement between the United States and the  
10 government of Colombia.

11 THE COURT: I would agree with that as far as paragraph  
12 16 is concerned.

13 As far as my acceptance of the plea, this is not a  
14 reservation as to that issue under Rule 11, but is a reservation  
15 so that the defendant can preserve his position. I'm certainly  
16 willing to consider any position that either side puts forth,  
17 and I understand the position of the executive branch of the  
18 United States government that if I didn't abide by that, that  
19 that might affect their relationship with the government of  
20 Colombia for future extraditions, and I understand that the  
21 defendant wants to have an opportunity to convince me that's the  
22 appropriate thing to do and to also convince me that under the  
23 law, I may be bound and I would certainly consider that.

24 Is that sufficient for preserving the argument for  
25 sentencing for everyone?



1 MR. SOTO: yes, Your Honor.

2 MR. RODRIGUEZ: Yes, Your Honor on behalf of  
3 Mr. Jimenez.

4 THE COURT: Okay. I just want to make sure we're all  
5 on the same page.

6 All right. Now, turning back to page eight of the plea  
7 agreement, paragraph 16 is now amended by the parties.

8 The defendant further waives any right to file any  
9 motion or make any claim, whether under Title 28, United States  
10 Code, sections 2255, 2254, 2241 or any other provision of law to  
11 collaterally attack his conviction, his sentence or the manner  
12 in which sentence was imposed, unless the sentence exceeds the  
13 maximum permitted by statute or any agreement between the  
14 governments of the United States and Colombia in connection with  
15 the defendant's extradition.

16 You confirm that you are guilty of the offenses to  
17 which you are pleading guilty, and that your decision to plead  
18 guilty is the decision you have made and that nobody has forced,  
19 threatened or coerced you into pleading guilty.

20 You confirm that this agreement has been translated  
21 into your native language and either that you have read it or  
22 that it has been read to you.

23 You affirm that you have discussed the matter of  
24 pleading guilty thoroughly with your attorneys.

25 You further affirm that your discussion with your

1 attorneys have included discussion of possible defenses that you  
2 may raise if this case were to go to trial, as well as possible  
3 issues and arguments you may raise at sentencing.

4 You additionally affirm that you are satisfied with the  
5 representation provided by your attorneys.

6 You accordingly affirm that you are entering into this  
7 agreement knowingly, voluntarily and intelligently and with the  
8 benefits of full, complete and effective assistance by your  
9 attorney.

10 You accordingly agree that by entering into this  
11 agreement, you waive any right to file any motion or make any  
12 claim whether under Title 28, United States Code, Sections 2255,  
13 2254 or 2241, or any other provision of law that contests the  
14 effectiveness of your counsel's representation up to the time of  
15 the entry of your guilty pleas.

16 The government agrees to recommend that the Court  
17 recommend to the United States Bureau of Prisons that you  
18 receive credit for time served while in custody in Colombia  
19 pending extradition to the United States on the charges in this  
20 case.

21 Now, as this paragraph is concerned, and I will -- I'm  
22 just bringing this up to so the parties can be prepared to  
23 present to me the status of this issue at sentencing, it has  
24 been my understanding in the past that the Bureau of Prisons  
25 will not grant credit for time served for time served outside of

1 the country. For other cases that I've had from Colombia. If  
2 you want -- if that's not correct, and they will, that's fine.  
3 But I'm just putting you on notice that that's been what's been  
4 represented to me in the past.

5 MR. RODRIGUEZ: I think that's -- the representation  
6 made to the Court may have been slightly incorrect. There is a  
7 statute that I know starts with 35 something that specifically  
8 addresses this. We probably maybe should have put it into the  
9 agreement, but there's a statute that allows the Court to make  
10 that finding at sentencing, if the person was detained for the  
11 purposes -- there's two things here. If the person was detained  
12 to be brought to the United States, that's in the statute. Then  
13 there's a question as to any other times that the person was  
14 detained in Colombia whether the Bureau of Prisons would then  
15 consider it. So you're right in some aspects, Your Honor. But  
16 this is the recommendation of the parties to the Court and it's  
17 something that we can address at sentencing.

18 THE COURT: No, that's fine. I don't have a problem  
19 with the recommendation.

20 Okay. Turning back to paragraph 19, based upon the  
21 various recommendations contained in this agreement, the parties  
22 agree that your offence level under the guidelines should equal  
23 an offense level of 44, which provides for a low end sentence of  
24 life imprisonment. Pursuant to its agreement with the  
25 government of Colombia, however, the United States cannot

1 recommend a sentence of life imprisonment as a consequence of  
2 your guilty plea in this case. The parties therefore agree to  
3 jointly recommend that the Court sentence you to a term of  
4 imprisonment of up to 35 years.

5 You are aware that sentence has not yet been determined  
6 by the Court.

7 You are also aware that any estimate of the probable  
8 sentencing range or sentence that you may receive, whether that  
9 estimate comes from your attorney, the government or the  
10 probation office, it is a prediction, not a promise and is not  
11 binding on the government, the probation office or the Court.

12 You understand further that any recommendation that the  
13 government makes to the Court as to sentencing, whether under  
14 this agreement or otherwise, it is not binding on the Court and  
15 the Court may disregard the recommendation in its entirety.

16 You understand and acknowledge that you may not  
17 withdraw your pleas in -- are you striking that language?

18 MR. SOTO: Your Honor, we would like the sentence to  
19 read "the defendant understands and acknowledges as previously  
20 acknowledged in paragraph 2 above that the defendant may not  
21 withdraw his plea in this case based upon the Court's decision".  
22 Okay? So just change "in either or both cases" to just "this",  
23 okay?

24 THE COURT: Okay. You understand and acknowledge, as  
25 previously acknowledged in paragraph 2, that you may not

1 withdraw your pleas in this case based upon the Court's decision  
2 not to accept a sentencing recommendation made by you, the  
3 government or a joint recommendation made by both you and the  
4 government.

5 This is -- this ten page agreement is the entire  
6 agreement and understanding between you and the United States.  
7 There are no other agreements, promises, representations or  
8 understandings unless contained in a letter from the United  
9 States Attorney's Office, executed by all parties and counsel  
10 prior to the change of plea.

11 If you would, Mr. Soto, give us a summary and synopsis  
12 of the letter agreement.

13 MR. SOTO: Yes, Your Honor. There's a letter agreement  
14 dated June 21, 2010 which addresses additional promises and  
15 understandings made between the United States and defendant.  
16 Two components, Your Honor; sentence and potential cooperation.  
17 There are no other letter agreements between the parties.

18 As relates to the defendant's sentence, the parties  
19 agree that in addition to the agreement we have in which the  
20 United States will not recommend a sentence of more than 35  
21 years, despite the guidelines range of life to life, that the  
22 parties further agree that they will recommend to the Court that  
23 it impose a sentence in this case to run concurrently with that  
24 of United States versus Carlos Mario Jimenez Naranjo, case  
25 number 05-235, which was filed in the United States District

1 Court for the District of Columbia.

2 So we're going to ask that you impose a sentence in  
3 this case that it run concurrently with the sentence imposed in  
4 that case. The defendant understands that you're not bound by  
5 that and that it's merely a recommendation that we'll be making  
6 to you.

7 The second component relates to cooperation and in  
8 that, the defendant agrees that he shall cooperate with the  
9 United States Attorney's Office for the Southern District of  
10 Florida; that he'll provide truthful and complete information  
11 and testimony and any other evidence requested by my office; and  
12 that he will appear at any such hearings, grand jury proceedings  
13 or other judicial proceedings as required by my office.

14 He understands that my office reserves the right to  
15 assess the nature and extent of his cooperation and to make a  
16 recommendation to the Court in connection with a motion under  
17 guideline section 5K1.1 or Rule 35 reflecting his substantial  
18 assistance if our office believes that he's provided substantial  
19 assistance.

20 The letter agreement also says that nothing in this  
21 agreement or the plea agreement precludes the defendant from  
22 meeting with -- or rather with continuing to meet his  
23 obligations under the Justice and Peace Law, which is a  
24 provision of Colombian law.

25 He agrees, however, that any information or assistance

1 he provides to the Colombian government in connection with the  
2 Justice and Peace Program shall not provide a basis for a  
3 downward departure or reduction of his sentence under Rule 5K1.1  
4 or Rule 35.

5 The defendant understands and agrees that the United  
6 States Attorney's Office for the Southern District of Florida's  
7 assessment of the nature and value, timeliness, truthfulness and  
8 accuracy of his cooperation shall be binding insofar as the  
9 appropriateness of my office's filing of any such motion and  
10 therefore he understands and agrees that making this assessment  
11 and determination whether to file a motion under either Rule  
12 5K1.1 or Rule 35, my office is in no way bound by any  
13 assessments, statements or representations made by other offices  
14 or officials. However, we will be making a recommendation  
15 consistent with any recommendation made by the office of the  
16 narcotics and dangerous drugs section in the District of Florida  
17 if filed in connection with the other case, that being United  
18 States versus Carlos Mario Jimenez Naranjo, case number 05-235.

19 THE COURT: District of Florida?

20 MR. SOTO: Did I say district of Florida?

21 THE COURT: Yeah.

22 MR. SOTO: In the District of Columbia. In other  
23 words, if the narcotics and dangerous drugs section in the  
24 District of Columbia files a motion under Rule 35 or 5K1.1, we  
25 will make a similar recommendation to this Court in connection

1 with this case for a reduction under Rule 5K1.1 or Rule 35.  
2 However, the defendant understands that Your Honor is not bound  
3 by any recommendation that we make to reduce his sentence at all  
4 or in the same way as any reduction imposed in the D.C. case.

5 The defendant further acknowledges that he has been  
6 advised that my office does not intend to make a motion to  
7 reduce his sentence in cases where the defendant cooperates with  
8 this or any other US Attorney's Office with the exception of  
9 NDDS, that being the narcotics and dangerous drugs section,  
10 unless the defendant, at a minimum, provides assistance in the  
11 investigation or prosecution of criminal activity that is at  
12 least equivalent to the seriousness and culpability of his  
13 criminal activity in this case, and the harm caused by such  
14 criminal activity as reflected in the factual basis I read to  
15 the Court during his change of plea hearing.

16 The defendant further understands and acknowledges that  
17 this office has made no promises or representations as to  
18 whether at some later point it might make a motion to reduce his  
19 sentence under a Rule 5K1.1 or Rule 35. He acknowledges that  
20 nothing in this agreement may be construed to require this  
21 office to file any such motion unless such a motion is first  
22 filed by NDDS.

23 And finally, the defendant further understands and  
24 acknowledges that the Court is under no obligation to grant a  
25 motion for reduction of sentence based upon either provision



1 SK1.1 or Rule 35 should the government exercise its discretion  
2 to file any such motion.

3 THE DEFENDANT: The defendant also understands that the Court is under  
4 no obligation to reduce the defendant's sentence because of the  
5 defendant's cooperation.

6 THE COURT: That concludes the letter agreement, Your Honor.

7 THE COURT: All right. Turning back to the plea  
8 agreement, is this your signature on the plea agreement, sir?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you initialed each page as well?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you read the agreement before you  
13 signed it or was it read to you before you signed it?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Did you discuss fully the plea agreement  
16 with your attorney before you signed it?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you understand all the terms of the  
19 plea agreement before you signed it?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that in paragraph 15 on  
22 page seven, that you are giving up your right to appeal your  
23 sentence?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you fully discussed this appeal waiver

1 with your attorney?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And are you satisfied with his services?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Are you entering into this waiver of your  
6 appellate rights freely and voluntarily?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And do you understand that in paragraph 16,  
9 on page eight, you are giving up your right to -- strike that.

10 You are giving up your rights to collaterally attack  
11 your conviction or your sentence or the manner in which sentence  
12 was imposed, unless the sentence exceeds the maximum permitted  
13 by statute or any agreement between the governments of the  
14 United States and Colombia in connection with your extradition.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Have you fully discussed this waiver of  
17 your collateral attack rights with your attorney?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And are you satisfied with his services?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are you entering into this waiver of your  
22 collateral attack rights freely and voluntarily?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And do you understand that in paragraph 17,  
25 you are giving up your rights to collaterally attack your

1 conviction or your sentence based upon ineffective assistance of  
2 your counsel's representation to -- strike that. Let me ask  
3 that question again.

4 Do you understand that in paragraph 17, you are giving  
5 up your rights to collaterally attack your conviction based upon  
6 the ineffective assistance of your counsel?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you fully discussed this collateral  
9 attack waiver with your attorney?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And are you satisfied with his services?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you entered into this waiver of your  
14 collateral attack rights freely and voluntarily?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: The terms that I summarized to you,  
17 including the changes that your attorney and the government  
18 attorney made during the hearing to this agreement, are those  
19 the terms of your plea agreement with the government as you  
20 understand them?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And did you also sign the letter agreement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Did you read the letter agreement before  
25 you signed it or was it read to you before you signed it?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Did you discuss fully the letter agreement  
3 with your attorney before you signed it?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did you understand all the terms of the  
6 letter agreement before you signed it?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: The terms summarized by the prosecutor, are  
9 those the terms of your letter agreement with the government as  
10 you understand them?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Has anyone made any other or different  
13 promises or assurances to you in an effort to induce you to  
14 enter into the plea agreement, enter into the letter agreement  
15 and enter pleas of guilty in this case?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Has anyone threatened you or tried to in  
18 any way to force you to enter into the letter agreement, enter  
19 into the plea agreement and enter pleas of guilty in this case?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Do you understand if I accept your pleas of  
22 guilty and the sentence that I give you is more severe than you  
23 expected, you will still be bound by your plea agreement, still  
24 be bound by your letter agreement, still be bound by your pleas  
25 of guilty and you will have no right to withdraw them?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Rodriguez, is this your signature on  
3 the plea agreement?

4 MR. RODRIGUEZ: it is Your Honor.

5 THE COURT: And did you sign the letter agreement as  
6 well?

7 MR. RODRIGUEZ: Yes, Your Honor.

8 THE COURT: And Mr. Soto, is this your signature on the  
9 plea agreement?

10 MR. SOTO: Yes, Your Honor.

11 THE COURT: And you sign the letter agreement as well?

12 MR. SOTO: Yes, Your Honor.

13 THE COURT: Mr. Rodriguez, are you satisfied that  
14 pleading guilty to the charges is in the best interest of your  
15 client considering all the circumstances in this case?

16 MR. RODRIGUEZ: Yes, Your Honor.

17 THE COURT: And do you feel that there would be  
18 sufficient evidence upon which to convict the defendant of these  
19 charges?

20 MR. RODRIGUEZ: Yes, Your Honor.

21 THE COURT: Mr. Jimenez, do you have any questions,  
22 sir, about the possible consequences of your pleas of guilty?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Do you understand fully all of the possible  
25 consequences of your pleas of guilty?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: It is the finding of the Court in the case  
3 of United States of America versus Carlos Mario Jimenez Naranjo  
4 that the defendant has entered into a waiver of his appellate  
5 rights and his collateral attack rights knowingly, freely and  
6 voluntarily after full consultation with his attorney and  
7 without coercion or duress.

8 It is further the finding of the Court in the case of  
9 United States of America versus Carlos Mario Jimenez Naranjo  
10 that the defendant is fully competent and capable of entering  
11 informed pleas; that the defendant is aware of the nature of the  
12 charges and the consequences of the pleas, and that the pleas of  
13 guilty are knowing and voluntary pleas supported by an  
14 independent basis in fact containing each of the essential  
15 elements of the offenses. The pleas are therefore accepted and  
16 the defendant is now adjudicated guilty of Count 1 and 18 of the  
17 superseding indictment.

18 A written advisory presentence investigation report  
19 will now be prepared by the probation office to assist the Court  
20 in sentencing. You will be asked, sir, to give information for  
21 the report, and your attorney may be present if you wish. The  
22 Court shall permit the defendant and counsel to read the  
23 advisory presentence investigation report, file any objections  
24 to the report for the sentencing hearing. The defendant and his  
25 counsel shall be afforded the opportunity to speak on behalf of

1 the defendant at the sentencing hearing. At this time, I'm  
2 going to refer the defendant to the probation office for an  
3 advisory presentence investigation report. He's to be remanded  
4 to the Bureau of Prisons pending a sentencing date and time  
5 which Patricia will give to us now.

6 COURTROOM DEPUTY: November 8th at 4:30.

7 THE COURT: When is the District of Columbia case set?

8 MR. RODRIGUEZ: Judge, we were just discussing that.  
9 That is open and there's no reference to it, which I'm going to  
10 ask the Court that there be no reference in PACER to any of  
11 these proceedings until after it is unsealed. But it's --

12 THE COURT: Well, the transcript is sealed in this  
13 matter and any docket entries are sealed in this matter.

14 MR. RODRIGUEZ: Judge, I know. But my understanding,  
15 there is no entries as to anything that's going on in the  
16 District of Columbia including his -- he's already pled guilty.  
17 He's pled guilty to a mirror image of this. He's pled to that  
18 indictment.

19 THE COURT: Is that a United States Marshal that just  
20 came in

21 MR. RODRIGUEZ: Yes.

22 THE COURT: Okay. Thank you.

23 MR. RODRIGUEZ: He's pled guilty in Washington D.C.  
24 prior to coming to this district. That sentence is held open  
25 and there is no reference to the plea, possible sentence, any

1 dates or anything in PACER. We were just discussing this very  
2 briefly --

3 THE COURT: That's not how we handle our dockets here.

4 MR. RODRIGUEZ: i'm not suggesting, but to -- I'm not  
5 saying we shouldn't go forward with sentencing and setting it,  
6 but any reference to it in PACER in essence violates the entire  
7 spirit of the reason everything is sealed.

8 THE COURT: I don't deal with PACER, so I'm not sure I  
9 understand what you mean any reference to PACER.

10 MR. RODRIGUEZ: What I'm saying, for example, there's  
11 no reference --

12 THE COURT: There won't be any date that comes up  
13 anywhere. Every document -- I entered an order sealing these  
14 proceedings. It will continue through -- I believe my order is  
15 -- let me check. Okay. I only have the first page, Patricia.  
16 I only have the first page of the order. Okay. I don't have  
17 the entire order that was issued by me in granting a motion to  
18 seal. I see the government's request and with your agreement,  
19 Mr. Rodriguez, was that all of the proceedings be sealed in this  
20 matter. So I'm going to have Patricia pull the entire order, I  
21 will review it, but it's my understanding -- and as you recall,  
22 this was, after quite a bit of input by the parties and  
23 examination by the Court, this was not just something that was  
24 done in a pro forma fashion by the Court. I required quite a  
25 bit of documentation by the parties that none of the information



1 concerning the actual entries will appear on CM/ECF, PACER or  
2 otherwise including the date of sentencing. Everything will  
3 just come up as sealed documents. That's my understanding.

4 MR. RODRIGUEZ: That's fine, Your Honor.

5 THE COURT: And if there's anything -- once I look at  
6 the order, if there's anything that indicates otherwise, I would  
7 notify the parties and have you come in for a status.

8 MR. RODRIGUEZ: And what time is that, Your Honor.

9 COURTROOM DEPUTY: 4:30.

10 THE COURT: November 8th at 4:30. My question though  
11 --

12 MR. RODRIGUEZ: In an abundance of caution, could we  
13 maybe schedule additional time rather than 4:30 taking you late?

14 THE COURT: You think it's going to take some time?

15 MR. RODRIGUEZ: In an abundance of caution. May not be  
16 necessary, but --

17 THE COURT: Give me another date with more time. Do I  
18 have another date with more time? I'm very booked.

19 MR. RODRIGUEZ: Your dance card has always been that  
20 way. I know that. That wheel isn't equitable.

21 THE COURT: I somehow have -- I seem to have more  
22 pending defendants than -- more pending criminal defendants than  
23 any of my colleagues for, I don't know, the last two years.

24 MR. RODRIGUEZ: Before even that.

25 THE COURT: Before that also. But now, you know,

1 certainly for the last two years, I am always at that end of the  
2 spectrum somehow.

3 COURTROOM DEPUTY: The 15th, Judge, at 2:30.

4 THE COURT: That's fine. The 15th at 2:30.

5 MR. RODRIGUEZ: Judge --

6 THE COURT: We can schedule -- that's not good for you?

7 MR. RODRIGUEZ: Eleventh Circuit, I have an oral  
8 argument in Atlanta on the 15th.

9 COURTROOM DEPUTY: The 22nd?

10 MR. RODRIGUEZ: We're here.

11 THE COURT: That's Thanksgiving week, I think. Is that  
12 okay with everyone? What time?

13 COURTROOM DEPUTY: At 2:30.

14 THE COURT: Okay. That's fine.

15 Let me just say this: You have agreed in the letter  
16 agreement to recommend that I issue a concurrent sentence. So  
17 it's going to be somewhat important to me, if you're going to be  
18 making that recommendation to me for me to make a determination  
19 whether I agree with that or not, for there to have been a  
20 sentence in the District of Columbia. Otherwise, it has to be  
21 the other way around. But, I mean, that's an issue we can take  
22 up at that time or you can let me know as we get closer to the  
23 November date as to what the status is in the District of  
24 Columbia.

25 MR. RODRIGUEZ: i can assure the Court that it won't

1 get done prior to yours and this is something that we discussed.  
2 We may be at a difference of opinion on how it's to go. I  
3 always assume that was a precursor or prerequisite. Mr. Soto  
4 believes that the Court can go forward and then he'll go back to  
5 D.C. But I think it's something we can discuss and advise the  
6 Court. But I think we should keep it as it is.

7 THE COURT: Okay. That's fine. I'm just putting you  
8 on notice as far as what you have agreed to as far as to  
9 recommend to me in the letter agreement that if you're going to  
10 be asking me to give a concurrent sentence to some -- to another  
11 court that has not yet sentenced, that is a somewhat difficult  
12 proposition for me to do.

13 MR. SOTO: Your Honor, my understanding is that the  
14 plea agreement in D.C. also asks the court in that case to have  
15 its sentence run concurrently with this one. So I think --

16 THE COURT: Yeah, I don't have a problem doing it that  
17 way if they haven't sentenced. But as far as an open-ended my  
18 sentence is going to run concurrent to another sentence, unless  
19 I know what that sentence is, it's hard for me to make a  
20 decision on it.

21 MR. RODRIGUEZ: And what I anticipate happening, just  
22 to cut to the quick, is that the Court will impose the sentence.  
23 I'm going to assume that he will be at some time writ'd to D.C.  
24 And if there is any consideration for substantial assistance, it  
25 will be done pursuant to Rule 35 rather than a 5K1, which would

1 be addressed here anyway.

2 So in the hypothetical, if the Court gave X amount of  
3 time, then that could be considered by the D.C. court. Then  
4 later at some time possibly if the government sees fit, there  
5 will be a Rule 35 which would be then filed in both districts.

6 THE COURT: I understand what you're saying. But I'm  
7 sure you're aware that unless there's a Rule 35, I would lose  
8 jurisdiction after the 14 days to make any changes as to whether  
9 it runs concurrently to any other sentence or not. If there's a  
10 Rule 35 and it comes back to me, then that -- and I know you're  
11 aware of that, that that would then give me jurisdiction to  
12 reconsider the concurrency element of it.

13 MR. SOTO: I'm not sure that that's entirely accurate.  
14 I believe that on a Rule 35, the Court's only authority is with  
15 respect to a reduction based upon cooperation. I'm not sure --  
16 I have to research that issue whether the Court can then impose  
17 the sentence so that it runs concurrent with the sentence in  
18 another district.

19 THE COURT: I'll leave you to research that. I would  
20 think, just off the top of my head, and I have not looked at the  
21 case law on it, that I have as much full reign as determining  
22 what the appropriate sentence is and determine how it runs. But  
23 I would certainly consider any arguments you make. But I just  
24 wanted to make the parties aware that in going forward with my  
25 sentence, that I'm going to find it difficult to grant your

1 request to have it run concurrent to a sentence that has not yet  
2 been imposed. If it's a mirror agreement in D.C. and you want  
3 to handle it through D.C. if I sentence first, that's fine. But  
4 I'm just putting you on notice.

5 MR. RODRIGUEZ: i think it's something we'll discuss.

6 MR. SOTO: Your Honor, just -- the reason I mention  
7 that there's also the same agreement in D.C. is that my  
8 interpretation of that was that whoever goes -- wherever the  
9 defendant is first sentenced, obviously that recommendation  
10 could not be made to the Court at that time. But that would be  
11 handled anyway because there's a similar agreement in the other  
12 district where we would have to make that recommendation.

13 THE COURT: That's fine.

14 MR. SOTO: So we would just withdraw it or not make it  
15 in the first case.

16 THE COURT: That's fine. I understand that. And if  
17 that's the way we proceed, I don't have a problem with that. I  
18 just want to make you aware of what my position would be if in  
19 fact D.C. had not yet sentenced.

20 MR. SOTO: Sure. Thank you, Your Honor.

21 THE COURT: Okay. So there are a number of changes in  
22 the plea agreement.

23 MR. SOTO: May I approach?

24 THE COURT: Yes. Are there any other matters that we  
25 need to take up today?

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MR. SOTO: nothing further from the government.

MR. RODRIGUEZ: No. And thank you very much, Your Honor.

THE COURT: Okay. We're in recess for the day.

(PROCEEDINGS CONCLUDED)  
\* \* \* \* \*

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

11/11/11  
Date

/s/ Dawn M. Whitmarsh  
DAWN M. WHITMARSH, RPR