

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

FRANCISCO MARTINEZ,

Defendant.

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**PLEA AGREEMENT**

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1. The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, and the defendant, Francisco Martinez, individually and by attorney E.J. Hunt, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

**CHARGES**

2. The defendant has been charged in one count of an eleven count Superseding Indictment which allege violations of Title 21, United States Code, Sections 841, 846 and Title 18, United States Code, Sections 924(c)(1)(A), 1956 and 2.

3. The defendant has read and fully understands the charges contained in the Superseding Indictment. He fully understands the nature and elements of the crimes with which he has been charged, and those charges and the terms and conditions of the plea agreement have been fully explained to him by his attorney.

4. The defendant voluntarily agrees to plead guilty to the following counts set forth in full as follows:

**COUNT ONE**

**THE GRAND JURY CHARGES THAT:**

1. *Beginning in approximately May 2017, and continuing until on or about August 2, 2019, in the State and Eastern District of Wisconsin and elsewhere,*

**RUBEN NMI ORTIZ, JR.,  
ALEJANDRO NMI LOPEZ,  
FRANCISCO NMI MARTINEZ,  
HECTOR M. GOMEZ-SALAS,  
OSCAR NMI ALONSO,  
GABIEL Y. BONILLA,  
CEDRIC D. COHEN,  
TERRY A. JOHNSON, and  
RICHARD D. GUYETTE**

*knowingly and intentionally conspired with each other and with persons known and unknown to the grand jury, to distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).*

2. *The quantity of drugs involved in the conspiracy involved 1 kilogram or more of a mixture and substance containing heroin, a Schedule I controlled substance; 5 kilograms or more of a mixture and substance containing cocaine, a Schedule II controlled substance; 28 grams or more of a mixture and substance containing cocaine base, in the form of “crack” cocaine, a Schedule II controlled substance; in excess of 400 grams of a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, also known as fentanyl, a Schedule I controlled substance; 50 grams or more of a mixture and substance containing methamphetamine, a Schedule II controlled substance; and a mixture and substance containing marijuana, a Schedule I controlled substance.*

*All in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(A).*

5. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offense described in paragraph 4. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits that these facts are true and correct and establish his guilt beyond a reasonable doubt:

The Brown County Drug Task Force and other law enforcement agencies investigated a drug organization led by Ruben Ortiz Jr. that distributed controlled substances beginning in at least May 2017 and continuing to August 2019. The investigation included statements by confidential informants, controlled purchases of various drugs, and search warrants executed on residences in the Green Bay area utilized by conspiracy members for the sale and storage of controlled substances.

On January 30, 2019, Francisco Martinez was arrested in Arizona after law enforcement stopped his car and located \$77,745 in a trap compartment. Martinez was enroute to California from Chicago after having previously arranged with Ruben Ortiz to meet Ortiz's source for marijuana cartridges. Ortiz was already in California at the time of the stop. Martinez intended to purchase approximately 9,000 cartridges that he intended to resell in Illinois and Wisconsin.

On May 24, 2019, Martinez was again driving a trap car (further described in the forfeiture provision of the Superseding Indictment) in Fond du Lac when law enforcement stopped him and determined the trap compartment was empty but that Martinez possessed approximately \$1000. Prior to the stop in Fond du Lac, Martinez had met with members of the conspiracy and received approximately \$1000. The money was partial payment for approximately 1000 blue, fentanyl tablets he sold to members of the conspiracy.

On June 2, 2019, Martinez spoke telephonically with Ortiz and the call was intercepted by law enforcement. During the call, Ortiz advised the blue pills purchased from Martinez are the "best" and they are liked by those smoking them. Ortiz told Martinez he will soon be able to pay for them through the sales made. Martinez said he purchased the blue pills by the "boat" (1000 pill quantity). Ortiz advised that he wanted to purchase ½ kilo coke from Martinez's source. Martinez advised Ortiz to use the "app" for future communication as it was safer. Martinez and Ortiz also discussed whether Ortiz advised anyone in advance of Martinez being stopped in Fond du Lac County with money in the car. Ortiz denied telling anyone and both discussed avoiding transporting money and drugs so they will not be arrested.

On June 11, 2019, Martinez and Ortiz again had a telephone call intercepted by law enforcement. Martinez wanted to purchase marijuana cartridges from Ortiz using Ortiz's source from California. Later that day during another conversation, Ortiz requested that Martinez provide him with a "square" meaning a kilogram quantity of cocaine. Ortiz advised he would travel to Rosemont (Illinois) to obtain the kilogram of cocaine and bring money to pay for the previously obtained blue pills. Ortiz called again to say his cousin backed out of assisting Ortiz but Ortiz was planning on meeting Martinez to pay his drug debt.

**ONEIDA EYE EDITOR'S NOTE: Nancy Skenandore is the mother of Ruben Ortiz Jr. and – until she was arrested & jailed in 2019 – had been appointed by the Oneida Nation Business Committee as Chairwoman of the reformed Personnel Commission in 2018, despite a previous drug conviction. She currently faces 8 (eight) additional criminal charges in Wisconsin relating to possession of cocaine & heroin w/ intent to deliver near a school, and maintaining a drug trafficking place (Brown Co. Case #19-CF-924). Her daughter, Stephanie Ortiz, previously pled guilty to her role in her brother's drug gang conspiracy (E. Dist. WI Case #19-CR-151).**

Law enforcement also spoke with a confidential informant (CI-1) who advised that Martinez supplied the conspiracy members with marijuana, marijuana cartridges, and blue pills that tested positive as containing fentanyl. Further, Martinez was able to supply the conspiracy with amounts of cocaine. Law enforcement also spoke with Nancy Skenandore who advised that she was familiar with Martinez and was that he supplied controlled substances to Ortiz.

Martinez agrees that he joined this conspiracy around September 2018 and that the quantity of drugs attributable to him as a result of his own conduct and the conduct of other conspirators that is reasonably foreseeable to them include 5 kilograms or more of cocaine and marijuana. Martinez agrees that he provided kilogram quantities of cocaine to this conspiracy and agreed with Ortiz to supply additional quantities although not all transactions occurred. Nonetheless, these discussions involved an agreement in total involving 5 kilograms of cocaine which served to further the conspiracy. Additionally, Martinez agreed as part of the conspiracy he obtained marijuana, THC cartridges and pills believing they were Percocet and delivered them to Ortiz although they were ultimately determined to be fentanyl.

This information is provided for the purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant's knowledge of, or participation in, these offenses.

#### **PENALTIES**

6. The parties understand and agree that Count One carries the following maximum penalties: a maximum of life imprisonment and a \$10,000,000 fine; a mandatory minimum term of 10 years of imprisonment; and a mandatory special assessment of \$100. Count One also requires at least 5 years of supervised release, and a maximum of a lifetime on supervised release.

7. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney including any possibility that the defendant may qualify as career offender under the sentencing guidelines.

#### **PROOF OF DRUG WEIGHT FOR STATUTORY MAXIMUM PENALTY**

8. The parties understand and agree that for the penalties in 21 U.S.C. § 841(b)(1)(A) to apply, as provided in paragraph 6 above, the government must prove beyond a reasonable doubt that the offense to which the defendant is pleading guilty involved at least 5 kilograms or more of cocaine as well as marijuana and what he believed to be Percocet. The

defendant agrees that the government possesses sufficient, admissible evidence to meet this burden.

### **ELEMENTS**

9. The parties understand and agree that in order to sustain the charge set forth in Count One, the government must prove each of the following propositions beyond a reasonable doubt:

First, the conspiracy as alleged in the indictment existed;

Second, the defendant knowingly and intentionally joined the conspiracy with the intent to further its objective.

Further, while not an element, for the increased penalties to apply, the government must prove that the offense involved 5 kilograms or more of cocaine as well as marijuana and what he believed to be Percocet pills.

### **SENTENCING PROVISIONS**

10. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

11. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

12. The defendant acknowledges and agrees that his attorney has discussed the potentially applicable sentencing guidelines provisions with him to the defendant's satisfaction.

13. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal

history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of the defendant's criminal history.

#### **Sentencing Guidelines Calculations**

14. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

#### **Relevant Conduct**

15. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offense to which the defendant is pleading guilty.

16. The parties agree to recommend to the sentencing court that the relevant conduct attributable to the defendant is at least 5 kilograms or more of cocaine and a quantity of marijuana and what he believed to be Percocet.

#### **Base Offense Level**

17. The parties will recommend to the sentencing court that the applicable base offense level for the offense charged in Count One is 30 under Sentencing Guidelines Manual § 2D1.1(c)(5).

#### **Specific Offense Increases**

18. The parties will recommend that no specific offense increases apply in the case.

### **Safety Valve**

19. The government agrees that if the defendant otherwise qualifies for the limitation on applicability of statutory minimum sentences under 18 U.S.C. § 3553(f), the government will not object to its application and will recommend a sentence consistent with Sentencing Guidelines Manual § 5C1.2.

### **Acceptance of Responsibility**

20. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility. In addition, if the court determines at the time of sentencing that the defendant is entitled to the two-level reduction under § 3E1.1(a), the government agrees to make a motion recommending an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b) because the defendant timely notified authorities of his intention to enter a plea of guilty.

### **Sentencing Recommendations**

21. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

22. Both parties reserve the right to make any recommendation regarding any and all factors pertinent to the determination of the sentencing guideline range; the fine to be imposed; the amount of restitution and the terms and condition of its payment; the length of supervised release and the terms and conditions of the release; the defendant's custodial status pending the sentencing; and any other matters not specifically addressed by this agreement.



23. The government agrees to recommend a 10 year prison sentence with credit given for time previously spent in custody on Brown County Case 19CF827. The government remains free to take a position with respect to any fact or factor pertinent to the sentencing decision consistent with this agreement.

#### **Court's Determinations at Sentencing**

24. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraphs 6 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

25. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

#### **Forfeiture**

26. The defendant agrees that all properties listed in the superseding indictment constitute the proceeds of the offense to which he is pleading guilty, or were used to facilitate such offense. The defendant agrees to the forfeiture of these properties and to the immediate entry of a preliminary order of forfeiture. The defendant agrees that he has an interest in each of the listed properties. The parties acknowledge and understand that the government reserves the right to proceed against assets not identified in this agreement.



### **FINANCIAL MATTERS**

27. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable in full upon entry of the judgment of conviction or on further order of the court. The defendant further understands that any payment schedule imposed by the sentencing court shall be the minimum the defendant is expected to pay and that the government's collection of any and all court imposed financial obligations is not limited to the payment schedule. The defendant agrees not to request any delay or stay in payment of any and all financial obligations. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the court specifically directs participation or imposes a schedule of payments.

28. The defendant agrees to provide to the Financial Litigation Unit (FLU) of the United States Attorney's Office, upon request of the FLU during any period of probation or supervised release imposed by the court, a complete and sworn financial statement on a form provided by FLU and any documentation required by the form.

### **Special Assessment**

29. The defendant agrees to pay the special assessment in the amount of \$100 prior to or at the time of sentencing.

### **DEFENDANT'S WAIVER OF RIGHTS**

30. In entering this agreement, the defendant acknowledges and understands that he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the

judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.

- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such trial, defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify on his own behalf.

31. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offenses to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

32. The defendant acknowledges and understands that he will be adjudicated guilty of the offense to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

33. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

#### **Further Civil or Administrative Action**

34. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement, including any attachment, is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

#### **GENERAL MATTERS**

35. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

36. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

### **EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT**

37. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.


### **VOLUNTARINESS OF DEFENDANT'S PLEA**

38. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

### ACKNOWLEDGMENTS

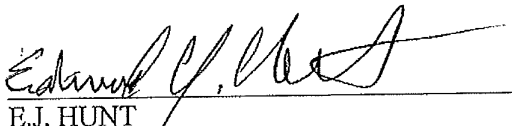
I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 12-21-20

  
FRANCISCO MARTINEZ  
Defendant


I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 12-21-2020


  
E.J. HUNT  
Attorney for Defendant

For the United States of America:

Date: 12/22/20

  
MATTHEW D. KRUEGER  
United States Attorney

Date: 12/22/20

  
WILLIAM J. ROACH  
Assistant United States Attorney