

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

RICHARD D. GUYETTE,

Defendant.

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**PLEA AGREEMENT**

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1. The United States of America, by its attorneys, Richard G. Frohling, Acting United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, and the defendant, Richard D. Guyette, individually and by attorneys Anthony Cotton and Donna Kuchler, 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 two counts 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. and included Richard Guyette 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.

BCDTF intercepted drug related cell phone calls in May and June 2019 between Guyette and Ortiz including Guyette advising Ortiz that the faster Ortiz can do “that” (meaning provide controlled substances) the faster Guyette can “run around with shit” (meaning sell the controlled substances). Other conversations included Guyette advising Ortiz that he was “ready” and needs “another one.” At one point, Guyette advised Ortiz he had 20 people waiting around for him (to purchase drugs).

BCDTF advise that on August 2, 2019, Guyette was arrested on drug charges in Wausau, WI. Following his arrest, law enforcement went to Guyette’s motel room on August 3, 2019, observed that it had been cleaned by motel employees, and was directed by motel staff to the area where the refuse from the room was located. Law enforcement searched the Kleenex box found in a garbage bin behind the motel and located approximately 480 grams of a white substance testing positive for fentanyl. That amount was possessed with the intention of distributing to others.

BCDTF interviewed Guyette, following his arrest, after reading him his *Miranda* Rights. Guyette waived those rights and admitted that on approximately June 20, 2019, he removed the fentanyl that had been hidden by members of the conspiracy. Guyette stated that he used some and sold some of the fentanyl while in Green Bay. Guyette admitted he had only recently traveled from Green Bay to Wausau and was planning on driving to Minnesota. Guyette stated that his travel plans were interrupted when his friend overdosed on a portion of the fentanyl requiring a hospital stay in Wausau.

Further, Mr. Guyette agrees that on March 9, 2018, at approximately 2:44 a.m., at 10<sup>th</sup> Street between Brill Road and Eden Avenue in Kaukauna, Mr. Guyette was pulled over and ultimately his vehicle was searched. Officers located marijuana, a plastic grinder with marijuana residue and an unlabeled prescription bottle containing two Amphetamine capsules.

Also, on June 21, 2019, at approximately 8:05 a.m., at 1850 Dickinson Road in the Town of Ledgeview, Wisconsin, a BP gas station clerk called regarding Mr. Guyette leaving a needle in the bathroom. Approximately 4 minutes later, officers located Mr. Guyette in a vehicle parked in a lot at 2200 Dickinson Road. Mr. Guyette admitted to drug paraphernalia in the bathroom and stated he had injected some opiate pills in the gas station restroom. Officers noticed a loaded

needle sitting in plain view on the driver's seat of Mr. Guyette's vehicle. A subsequent search of the vehicle produced a loaded syringe without cap (Mr. Guyette admitted the substance was Percocet), two aluminum caps containing a Q-tip end with a white powdery residue, purified water, a large amount of cash and two cell phones.

Guyette agrees that the quantity of drugs involved in the conspiracy as a result of his own conduct and the conduct of other conspirators reasonably foreseeable to him involved in excess of 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, and 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.

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 1 kilogram of heroin and 400 plus grams of fentanyl. 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 1 kilogram or more of heroin or 400 grams or more of fentanyl.

### **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 1 kilogram or more of heroin and 400 grams or more of fentanyl.

### **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.

### **Acceptance of Responsibility**

19. 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**

20. 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.

21. 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.

22. The government agrees to recommend a sentence within the applicable sentencing guideline range. 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**

23. 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.

24. 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.

#### **FINANCIAL MATTERS**

25. 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.

26. 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.

#### **Forfeiture**

27. 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.

#### **Special Assessment**

28. 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**

29. 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.

30. 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.

31. 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.

32. 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**

33. 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**

34. 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.

35. 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**

36. 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**

37. 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: 3-27-2021

  
RICHARD D. GUXETTE  
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: 3.31.21

  
ANTHONY COTTON/DONNA KUCKLER  
Attorney for Defendant

For the United States of America:

Date: 4/18/21

  
RICHARD G. FROHLING  
Acting United States Attorney

Date: 4/18/21

  
WILLIAM J. ROACH  
Assistant United States Attorney