

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

ALEJANDRO LOPEZ,

Defendant.

PLEA AGREEMENT

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, Alejandro Lopez, individually and by attorney Craig Mastantuno, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, enter into the following plea agreement. Both the Government and the defendant understand that, in accordance with Rule 11(c)(1)(C), if the Court should decide not to accept the Plea Agreement, the defendant has the right to withdraw his plea of guilty and proceed to trial. The specific terms of the agreement are as follows:

CHARGES

2. The defendant has been charged in a two- count information which alleges violations of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 846, and Title 18, United States Code, Sections 922(g). The defendant was previously charged in a superseding indictment with violations of Title 21, United States Code, Sections 841(a)(1), 846, and Title 18, United States Code, Sections 924(c)(1)(A).

3. The defendant has read and fully understands the charges contained in the Information. 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 UNITED STATES ATTORNEY 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,*

ALEJANDRO NMI LOPEZ,

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, 400 grams or more 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; 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).

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. On or about June 17, 2019, at XXXX Elm Street, Green Bay, in the State and Eastern District of Wisconsin,

ALEJANDRO LOPEZ

knowing he was an unlawful user of a controlled substance, that is, cocaine, knowingly possessed firearms, that, prior to his possession, had been transported in interstate commerce, the possession of which was therefore in and affecting commerce.

2. The firearms are more fully described as one Smith and Wesson handgun, model number PPK/S-1, serial number 8516BAT; one Anderson manufacturing AM-15 rifle, serial number 18262043; and one Remington 12 gauge shotgun, model number 870 Express, serial number RSI3293-G.

In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

5. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offenses 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 (BCDTF) and other law enforcement agencies investigated a drug organization led by Ruben Ortiz Jr. and including Alejandro Lopez 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 met with a confidential informant (CI-1) who advised that Lopez supplied him with marijuana, cocaine, heroin, and fentanyl. CS-1 indicated that sometimes the heroin would include a mix of heroin and fentanyl. CS-1 indicated that he would add cut based on the strength of the heroin provided. CS-1 recalled that Lopez provided him with one kilogram of heroin in March 2019, that was hidden in a Range Rover. The heroin was removed and CS-1 sold some of it to Gabriel Bonilla. BCDTF advised that they worked with a confidential informant (CI-2) who purchased some of that heroin from Bonilla on multiple occasions. CS-1 stated Lopez supplied him with approximately 5-8 kilos of heroin in total prior to and following the March 2019 heroin purchase. CS-1 also recalled an occasion when Lopez supplied 2 kilos of heroin that arrived in a

BMW. CS-1 stated that in June 2019, CS-1 ordered some "strong heroin" from Lopez that appeared to be pure fentanyl. BCDTF advise that they recovered approximately 480 grams of fentanyl.

On June 17, 2019, BCDTF executed a search warrant at Lopez's residence and located 1 kilogram of cocaine and 24 marijuana plants growing in basement. BCDTF also seized \$13,000 from a hallway closet, and three guns in a northwest master bedroom further described as one loaded .380 pistol found on the closet shelf, one AF15 Black Anderson assault rifle under a bed, and one 12 gauge shotgun on the closet floor.

In sum, Lopez 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 5 kilograms of cocaine, 400 grams of fentanyl and 1000 grams of heroin. Further, during the course of the conspiracy, including the time of his arrest, Lopez possessed the above described firearms while being an unlawful user of a controlled substance including cocaine.

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 forty years imprisonment and a \$10,000,000 fine; a mandatory minimum term of 5 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. Count Two carries a maximum of ten-years imprisonment, a maximum fine of \$250,000, a special assessment of \$100, and a maximum term of three years' supervised release.

Dismissal of Indictment

7. The government agrees to move to dismiss the superseding indictment as to Lopez at the time of sentencing.

8. 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

9. The parties understand and agree that for the penalties in 21 U.S.C. § 841(b)(1)(B) 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 of a mixture and substance containing cocaine, at least 400 grams of fentanyl, or at least 1000 grams of a mixture and substance containing heroin. The defendant agrees that the government possesses sufficient, admissible evidence to meet this burden.

ELEMENTS

10. 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 of mixture and substance containing cocaine, 400 or more grams of fentanyl, or 1000 grams or more of a mixture and substance containing heroin.

As to the prohibited person in possession of a firearm, the government must prove each of the following propositions beyond a reasonable doubt:

First, the defendant was an unlawful user of a controlled substance, that being, cocaine;

Second, the defendant knew he was an unlawful user of a cocaine;

Third, that on June 17, 2019, the defendant knowingly possessed a firearm; and

Fourth, that the firearm possessed by the defendant had traveled in interstate or foreign commerce prior to defendant's possession of it on that date.

The phrase "unlawful user of a controlled substance: means a person who uses a controlled substance in a manner other than as prescribed by a licensed physician. The defendant must have been actively engaged in use of a controlled substance during the time he possessed the firearms but the law does not require the he used the controlled substance at the precise time he possessed the firearms.

SENTENCING PROVISIONS

11. 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.

12. 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.

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

14. 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.

15. Pursuant to Rule 11(c)(1)(C), the parties enter into this plea agreement. If the Court accepts this Plea Agreement, the Defendant will receive the stipulated sentence set forth in paragraph 24. If the Court rejects this Plea Agreement, the Defendant will have the opportunity to withdraw his plea of guilty and proceed to trial, as provided under Rule 11(d)(2)(A).

Sentencing Guidelines Calculations

16. 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 the terms of this plea agreement control irrespective of the sentencing guideline range.

Relevant Conduct

17. 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.

18. The parties agree to recommend to the sentencing court that the relevant conduct attributable to the defendant is at least 5 but less than 15 kilograms of a mixture and substance containing cocaine, a Schedule II controlled substance; is at least 400 grams but less than 1.2 kilograms of a mixture and substance containing fentanyl; is at least 1 kilogram but less than 3 kilograms of a mixture and substance containing heroin; and is at least 2.5 but less than 5 kilograms of marijuana.

Base Offense Level

19. The parties will recommend to the sentencing court that the applicable base offense level for the offense charged in Count One is 32 under Sentencing Guidelines Manual § 2D1.1(c)(4). The parties acknowledge and understand that the government will recommend to the sentencing court that the applicable base offense level for the offense charged in Count Two is 14 under Sentencing Guidelines Manual § 2K2.1(a).

Specific Offense Increases

20. The parties acknowledge and understand that the government will recommend a 2-level increase for possession of a dangerous weapon under Sentencing Guidelines Manual §2D1.1(b)(1) as to Count One and a 4-level increase for possession of a dangerous weapon under Sentencing Guidelines Manual §2K2.1(b)(6)(B) as to Count Two.

Acceptance of Responsibility

21. 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

22. 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.

23. 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 conditions of supervised release; the defendant's custodial status pending the sentencing; and any other matters not specifically addressed by this agreement.

24. Pursuant to Rule 11(c)(1)(C), both the government and the Defendant agree that, after consideration of all the factors set forth in Title 18, United States Code, Section 3553(a), the appropriate sentence to be imposed in this case is between 7 and 8 years imprisonment with the parties free to argue for a sentence within that range. The parties also agree that, upon his release from prison, the Defendant should be subject to a 5 year term of supervised release.

Court's Determinations at Sentencing

25. The parties acknowledge, understand, and agree that the United States Probation Office is not a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court.

26. 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

27. The defendant agrees that all properties listed in the superseding indictment and in the Information as set forth above, 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

28. 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.

29. 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

30. The defendant agrees to pay the special assessment in the amount of \$200 prior to or at the time of sentencing.

DEFENDANT'S WAIVER OF RIGHTS

31. 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.

32. 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.

33. 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.

34. 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

35. 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

36. 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.

37. 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

38. 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

39. 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: 8-30-21


ALEJANDRO LOPEZ
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: 8.30.21


CRAIG MASTANTUNO
Attorney for Defendant

For the United States of America:

Date: 8/31/2021


RICHARD G. FROHLING
Acting United States Attorney

Date: 8/31/2021


WILLIAM J. ROACH
Assistant United States Attorney