

reapply for admission to the United States, all in violation of Title 8, United States Code, Sections 1326(a) and (b)(2).

On June 6, 2006, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Counts One and Two of the Superseding Indictment pursuant to a plea agreement between defendant and the government.

At this hearing the defendant was placed under oath and testified that his full legal name is Alejandro Mejia-Delatorre, that he was born in Mexico on March 6, 1984, and that he completed the first year of high school in Mexico. The defendant stated that he could speak “just a little” but could not read or write the English language at all.² The defendant stated that he was fully aware of the nature of the charges against him and the consequence of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol, medicine, or any drug. Defendant stated that he had no other physical or mental condition which impaired his ability to understand the nature of the proceedings being held.

The defendant testified that he had received a copy of the Superseding Indictment pending against him and that he had fully discussed the charges therein, and his case in general, with his counsel. He also testified that he had read the plea agreement in its entirety and had discussed the plea agreement with his counsel before signing the agreement. He stated that he understood the terms of the agreement and that the document presented to the court set forth his agreement with the government in its entirety. The defendant specifically testified that he understood that under the terms of the agreement he was waiving any right to appeal or to collaterally attack his conviction or sentence and that he was waiving his right to have a jury determine beyond a reasonable doubt

²An interpreter assisted the defendant throughout the hearing.

the facts alleged in Counts One and Two, including any facts related to sentencing. Defendant's counsel stated that he had reviewed each of the terms of the plea agreement with the defendant and was satisfied that he understood those terms.

The defendant stated that he was pleading guilty of his own free will because he was, in fact, guilty of the offenses charged. The defendant also stated that no one had made any promises other than those contained in his agreement with the government, or made any assurances or threats to him in an effort to induce his plea. The defendant testified that he understood that the offenses with which he is charged are felonies and that, if his plea is accepted, he will be adjudged guilty of those offenses. Moreover, the defendant testified that he understood that he will be required to pay a mandatory assessment of \$100 per felony count and that, at the discretion of the court, he may also be denied federal benefits, as that term is defined in 21 U.S.C. § 862(a), for a period of years or indefinitely, as set forth in the plea agreement. The defendant acknowledged that he consented to the administrative forfeiture, official use and/or destruction of any illegal firearms or contraband seized by any law enforcement agency from his possession or from his direct or indirect control. The defendant further acknowledged that he consented to forfeit any right, title and interest he has in assets purchased with proceeds of his illegal activity, directly or indirectly, and that such a forfeiture of property is proportionate to the degree and nature of the offenses he committed and does not raise any of the concerns addressed in *United States v. Austin*, 113 S.Ct. 2801 (1993). The defendant stated that he understood that he must submit to the government a complete and truthful financial statement revealing all his assets and liabilities on a form provided by the government within 30 days of the date of the plea agreement. The defendant stated that he was waiving his right to raise the defense of the statute of limitations if for any reason the plea agreement is withdrawn

or otherwise not consummated. The defendant also testified that he was waiving all rights under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of his case.

The defendant was informed that the maximum penalty provided by law for Count One is life imprisonment and a \$4,000,000 fine, together with supervised release. The defendant was also informed that the statutory minimum sentence for Count One is ten years imprisonment.³ The defendant was informed that the maximum penalty provided by law for Count Two is twenty years imprisonment and a \$250,000 fine.

The defendant was informed that, under the Sentencing Reform Act of 1984, the United States Sentencing Commission has issued guidelines for judges to follow in determining the sentence in a criminal case. The defendant was then informed that, in light of the United States Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the sentencing guidelines are no longer mandatory but that the sentencing judge may apply them in an advisory fashion in determining a reasonable sentence. The defendant testified that he and his counsel had discussed how the sentencing guidelines might apply in his case. The defendant also testified that he understood that the court would not be able to determine the applicable guideline range, for advisory purposes, until after a presentence report had been prepared and both parties had been given an opportunity to challenge the reported facts and the application of the guidelines. He stated that he

³Defendant was informed that he could be sentenced to less than ten years imprisonment only if the government makes a motion pursuant to Title 18, United States Code, Section 3553(e), or if he qualifies for the "Safety-Valve" set forth in Title 18, United States Code, Section 3553(f).

understood that the eventual sentence imposed may be different from any estimate his attorney had given him and that the court has the authority to impose a sentence that is either higher or lower than that called for by the guidelines, so long as the sentence is not greater than the statutory maximum for the offenses to which the defendant is pleading guilty. The defendant stated that he knew that parole had been abolished and that if he is sentenced to imprisonment he will not be released on parole but on supervised release, a violation of which could result in additional incarceration.

The defendant stated that he understood that, contingent upon his acceptance of responsibility and continued cooperation in the sentencing process, and fulfillment of his duties under the plea agreement, the government will recommend a two-level (2) reduction under USSG § 3E1.1(a), and because he meets the listed criteria, he should also be granted an additional one-level (1) reduction under USSG § 3E1.1(b) if his offense level is 16 or greater. The defendant was informed that the government will recommend that he receive a sentence of incarceration between the low end and middle of the applicable sentencing guidelines range and that the government will object to any motion for downward departure that he might make.

The defendant also stated that he understood that the government is under no obligation to file a motion for substantial assistance, but that to the extent the government does exercise such discretion, he must provide such assistance in a manner set forth in the plea agreement. The defendant stated that he understood that a determination as to whether he had provided “substantial assistance” was a matter within the discretion of the United States Attorney’s Office.

The defendant testified that he understood that he had the right to a trial by a jury, in addition to the following rights, which will be waived or given up if his guilty plea is accepted:

1. The right to plead not guilty to any offense charged against him;
2. The right at trial to be presumed innocent and to force the government to prove

- his guilt beyond a reasonable doubt;
3. The right of assistance of counsel at trial and in any subsequent appeal;
 4. The right to see, hear and cross-examine witnesses;
 5. The right to call witnesses to testify in his own behalf and to the issuance of subpoenas or compulsory process to compel the attendance of witnesses; and
 6. The right to decline to testify unless he voluntarily elected to do so in his own defense;
 7. The right to a unanimous guilty verdict;
 8. The right to appeal a guilty verdict.

The defendant also testified that he understood that if he is adjudged guilty of the charges against him, he may be deprived of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess a firearm.⁴

The defendant stated that he was fully satisfied with the advice and representation given to him in this case by his counsel. The defendant testified that he understood the possible consequences of his plea and the consequences of breaching any term of the plea agreement. The defendant asked the court to accept his plea of guilty to Counts One and Two of the Superseding Indictment.

THE GOVERNMENT'S EVIDENCE

The defendant waived his right to have the government's Factual Summary read in open court and had no objection to the Summary. The Factual Summary having been filed in open court, the evidence presented therein regarding the offenses charged is as follows:

On May 19, 2005 a confidential source (CS) was interviewed by special agents of the Drug Enforcement Administration (DEA) and stated that defendant and others were selling large quantities of cocaine in the Winchester, VA area. The CS further stated that defendant was an illegal alien and had been previously deported for cocaine distribution. The CS stated that defendant and others were

⁴Defendant would not possess these rights which appertain only to citizens.

distributing between 30 and 35 ounces (between 840 grams to 980 grams) of cocaine bi-monthly since January 2005 (in excess of 5 kilograms).

On June 07, 2005 DEA agents conducted a trash pull at the residence occupied by defendant and Callejas-Urbe located at 2235 Roosevelt Blvd., Winchester, VA. In the trash was located cocaine “cutting” materials. Usual proper chain of custody submitted to DEA lab who determined the presence of cocaine in the items.

On June 27, 2005 defendant was arrested along with Callejas-Urbe. Defendant was advised of his Miranda rights. Defendant waived his Miranda rights and agreed to speak to investigators. Defendant admitted that he was previously deported for cocaine distribution. Defendant further stated that upon illegally re-entering the United States, he and Callejas-Urbe and others were partners in the distribution of cocaine in and around Winchester, VA. During this interview defendant confessed to distributing in excess of 1 kilogram of cocaine. Callejas-Urbe was also advised of his Miranda rights. Callejas-Urbe waived his Miranda rights and agreed to speak to investigators. Callejas-Urbe admitted that he, defendant and others were involved in a conspiracy to distribute cocaine in and around the Winchester, VA area. Callejas-Urbe admitted that defendant would purchase 5 ounces of cocaine a week from co-conspirators and use cutting agents to cut it to 10 ounces and then sell the cocaine. Callejas-Urbe stated that his role was to make cocaine deliveries that were previously arranged by defendant. A search incident to arrest of the vehicle that defendant and Callejas-Urbe were driving yielded suspected cocaine. Usual proper chain of custody submitted to DEA lab who determined that it was 69.2 grams of cocaine.

On July 08, 2005 a witness was interviewed by DEA agents and stated that he/she personally purchased cocaine from defendant beginning in 2003, and continuing until June 2005. During this time

period, the witness estimated that he/she purchased in excess of 4 kilograms of cocaine from defendant.

FINDINGS OF FACT

Based on the evidence presented at the plea hearing, the undersigned now submits the following formal findings of fact, conclusions and recommendations:

1. The defendant is fully competent and capable of entering an informed plea;
2. The defendant is aware of the nature of the charges and the consequences of his plea;
3. The defendant knowingly and voluntarily entered a plea of guilty to Counts One and Two of the Superseding Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offenses to which the defendant is pleading guilty.

RECOMMENDED DISPOSITION

Based upon the above findings of fact, the undersigned **RECOMMENDS** that the court accept the defendant's plea of guilty to Counts One and Two of the Superseding Indictment and adjudge him guilty of those offenses. The undersigned further **DIRECTS** that a presentence report be prepared and **RECOMMENDS** that the presiding District Judge defer acceptance of the plea agreement until after that report has been submitted to the Court. A sentencing hearing hereby is scheduled for August 21, 2006 at 2:00 p.m. before the presiding District Judge in Harrisonburg.

NOTICE TO PARTIES

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C): Within ten days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. The presiding District Judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The presiding District Judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The judge may also receive further evidence or recommit the matter to the undersigned with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the presiding United States District Judge.

The Clerk is hereby directed to send certified copies of this Report and Recommendation to all counsel of record.

ENTERED: _____
United States Magistrate Judge

Date