

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 5:05CR00061-3
)	
)	
v.)	
)	<u>REPORT AND RECOMMENDATION</u>
JAIME CALLEJAS-URIBE,)	
)	
)	
Defendant.)	By: B. WAUGH CRIGLER U.S. MAGISTRATE JUDGE

In accordance with the provisions of Title 28 U.S.C. § 636(b)(3) and upon the defendant's consent, this case was referred to the undersigned to conduct a plea hearing.

DEFENDANT'S RESPONSES TO RULE 11 INQUIRY

The Grand Jury has returned a multiple count Superseding Indictment charging defendant in Count One with knowingly combining, conspiring, confederating, and agreeing with persons, both known and unknown to the Grand Jury, to knowingly and intentionally, distribute, and possess with the intent to distribute, 5 kilograms or more, of a mixture or substance containing a detectable amount of cocaine hydrochloride (powder), a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), all in violation of Title 21, United States Code, Section 846.

On June 6, 2006, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One of the Superseding Indictment. At this hearing the defendant was placed under oath and testified that his full legal name is Jaime Callejas-Uribe, that he was born in Mexico on October 12, 1982, and that he attended school in Mexico up to the fifth year of primary

school. The defendant stated that he cannot read, write, or understand the English language.¹ 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. Defendant's counsel stated that he had no reservations as to the defendant's competency to enter a plea of guilty to the offense.²

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. The defendant stated that he was pleading guilty of his own free will because he was, in fact, guilty of the offense charged. The defendant also stated that no one had made any promises, assurances, or threats to him in an effort to induce his plea. The defendant testified that he understood that the offense with which he is charged in Count One is a felony and that, if his plea is accepted, he will be adjudged guilty of that offense. Moreover, the defendant testified that he understood that he will be required to pay a mandatory assessment of \$100 per felony count.

The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count One, is life imprisonment and a fine of \$4,000,000, together with supervised release. The defendant was further informed that the minimum mandatory

¹An interpreter assisted the defendant during the hearing. The undersigned noted that during the hearing when defendant was asked about his ability to understand English that although he purported to have no understanding of the language, he understood English well enough to answer the question without the assistance of the interpreter.

²Defendant's counsel wanted the record to reflect that he met with defendant on several occasions.

sentence for Count One is ten years imprisonment.

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 has been prepared and both parties have been given an opportunity to challenge the reported facts and application of the guidelines. He stated that he 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 offense 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 prison he will not be released on parole but on supervised release, a violation of which could result in additional incarceration. At the conclusion of the hearing, the undersigned informed defendant that because he had not entered into a plea agreement waiving the right, he maintained the right to appeal the sentence ultimately imposed.

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;
 6. The right to decline to testify unless he voluntarily elects to do so in his own defense;
 7. The right to a unanimous guilty verdict; and
 8. The right to appeal a guilty verdict.

The defendant also testified that he understood that if he is adjudged guilty of these charges, 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.³

The defendant stated that he was fully satisfied with the advice and representation given to him in this case by his counsel. The defendant also stated that he believed his counsel's representation had been effective. The defendant testified that he understood the possible consequences of his plea. The defendant asked the court to accept his plea of guilty to Count One 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 offense 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 Mejia-Delatorre, defendant and others were selling large quantities of cocaine in the Winchester, VA area. The CS further stated that Mejia-Delatorre was an illegal alien and had been previously deported for cocaine distribution. The CS stated that Mejia-

³Defendant would not possess these rights which appertain only to citizens.

Delatorre, defendant and others were 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 7, 2005 DEA agents conducted a trash pull at the residence occupied by Mejia-Delatorre and defendant 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 Mejia-Delatorre was arrested along with defendant. Mejia-Delatorre was advised of his Miranda rights. Mejia-Delatorre waived his Miranda rights and agreed to speak to investigators. Mejia-Delatorre admitted that he was previously deported for cocaine distribution. Mejia-Delatorre further stated that upon illegally re-entering the United States, he and defendant and others were partners in the distribution of cocaine in and around Winchester, VA. During this interview Mejia-Delatorre confessed to distributing in excess of 1 kilogram of cocaine. Defendant was also advised of his Miranda rights. Defendant waived his Miranda rights and agreed to speak to investigators. Defendant admitted that he, Mejia-Delatorre and others were involved in a conspiracy to distribute cocaine in and around the Winchester, VA area. Defendant admitted that Mejia-Delatorre 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. Defendant stated that his role was to make cocaine deliveries that were previously arranged by Mejia-Delatorre. A search incident to arrest of the vehicle that Mejia-Delatorre and defendant 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 8, 2005 a witness was interviewed by DEA agents and stated that he/she personally purchased cocaine from Mejia-Delatorre beginning in 2003, and continuing until June 2005. During

this time period, the witness estimated that he purchased in excess of 4 kilograms of cocaine from Mejia-Delatorre.

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 Count One of the Superseding Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offense 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 Count One and adjudge him guilty of that offense. The undersigned further DIRECTS that a presentence report be prepared. A sentencing hearing hereby is scheduled for August 21, 2006 at 2:30 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

