

## **GUILTY PLEA TO AN INDICTMENT**

### ***I. Introduction and Consent to a Magistrate Judge***

- This case comes to me today for a potential plea of guilty to the Indictment.

### ***II. Swearing of Defendant and Determination of Competency to Enter a Plea***

- Before accepting your guilty plea, there are a number of questions I must ask you to assure myself that you are entering into a valid, knowing, and voluntary guilty plea. If you do not understand any of the questions, or at any time wish to consult with your attorney, please say so, since it is essential to a valid plea that you understand each question before you answer.
- Will the Deputy Clerk please swear the Defendant in?
- Do you understand that you are now under oath and if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or making a false statement?
- I am now going to ask you some questions to assure myself that you are competent to enter a guilty plea. Some of these questions may be very basic.
- What is your full name?
- Where were you born?

- How old are you?
- How far did you go in school?
- Are you able to speak, read, write, and understand English?
- Have you been treated recently for any mental illness?
- Have you been treated recently for any addiction to alcohol or narcotic drugs of any kind?
- Are you now, or have you recently been, under the care of a physician or a psychiatrist?
- Are you currently under the influence of any drug, medication, or alcoholic beverage of any kind?
- How do you feel physically today?
- Do you understand what is happening today?
- Counsel for the Defendant, do you have any doubt as to the Defendant's competence to plead at this time?
- Counsel for the Government, do you have any doubt as to the Defendant's competence to plead at this time?
- Based upon the Defendant's responses to my questions, my own personal observations of the Defendant, and counsel's representations, I find that the Defendant is competent to understand these proceedings and to enter a knowing and voluntary plea.

### ***III. Nature of Charges and Penalties***

- Have you had ample opportunity to discuss your case with your attorney, who is here with you now?
- Are you fully satisfied with the counsel, representation, and advice given to you in this case to you by your attorney?
- Turning to the Indictment, do you have a copy of the Indictment?
- Did you discuss this Indictment with your attorney?
- The Indictment charges you with [STATE THE OFFENSE(S)] in violation of Title \_\_ of the United States Code, Section(s) [STATE THE SECTION NUMBER(S)].
- Counsel for the government, do you agree those are the charge(s) contained in the Indictment?
- Counsel for the Defendant, do you agree those are the charge(s) contained in the Indictment?
- Defendant, do you understand the charge(s) against you?
- Counsel for the government, would you explain precisely and in a meaningful manner the essential elements of the offense(s) charged to which the Defendant intends to plead guilty?
- Counsel for the Defendant, do you agree those are the essential elements of the charge(s) to which the Defendant intends to plead guilty?
- Defendant, do you understand the elements of the charge(s)?

- The potential penalty(ies) for the offense(s) is/are [STATE THE MINIMUM AND MAXIMUM TERM OF IMPRISONMENT, SUPERVISED RELEASE, FINE RANGE AND SPECIAL ASSESSMENT FOR EACH COUNT. ALSO RECITE MINIMUM AND MAXIMUM PENALTIES IF PENALTIES ON ALL COUNTS WERE RUN CONSECUTIVELY. If RESTITUTION IS POSSIBLE, NOTE THAT AS WELL].

[IF THE INDICTMENT CONTAINS A FORFEITURE COUNT, STATE:]

- The Indictment also contains a forfeiture count. Do you understand that if you enter a plea of guilty to the charge(s) in the Indictment, you would also be consenting to the forfeiture of the property listed in the forfeiture count?
- Counsel for the government, do you agree those are the potential penalties for the charge(s)?
- Counsel for the defendant, do you agree those are the potential penalties for the charge(s)?
- Do you understand the potential penalties the charge(s) has/ have?

#### *IV. Nature of Charges & Consequences of Plea*

- Do you understand that the offense(s) to which you are pleading guilty is/are felony offense(s), that if your plea is accepted you will be adjudged guilty of the offense(s), and that such adjudication may deprive you 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 any kind of firearm?

[IF THE OFFENSE INVOLVES THE POTENTIAL FOR RESTITUTION]

- Do you also understand that the court may also order, or may be required to order under the Mandatory Victims Restitution Act, that you make restitution to any victim of the offense(s)?
- Do you understand that if you are not a natural born citizen of the United States, a finding of guilty could subject you to immigration consequences, including loss of citizenship or involuntary removal from the United States?

**[IF THE OFFENSE IS A SEX OFFENSE, ASK:]**

- Do you understand that the offense(s) to which you wish to plead guilty is/are classified as [a] sex offense(s)?
- Do you understand that a conviction for the offense(s) will likely result in substantial future restrictions on where you may live or work, and with whom you may associate?
- Do you understand that a conviction for the offense(s) to which you seek to plead guilty will subject you to registering as a sex offender and to residency restrictions under state and federal law should you reside in the United States after serving your sentence?
- Do you further understand that that you may be subject to the registration requirements and residency restrictions for the remainder of your life.
- Do you understand that as part of any supervised release conditions, you may be required to participate in sex offender treatment, including any testing (such as polygraph) that is part of such treatment?
- Do you understand that as part of any supervised release conditions you may have restrictions on the your internet usage and the installation of monitoring and filtering software on any computer that you use.

- Do you understand that, if you were found by a court after a hearing with the assistance of counsel to be a “sexually dangerous person,” that you could be subject to civil commitment after the completion of any sentence you might serve for this offense?

**[IF THE DEFENDANT IS NOT A CITIZEN]**

- Have you discussed the possible immigration consequences of a guilty plea with your attorney?
- Do you understand that if you are not a citizen of the United States, in addition to the other possible penalties you are facing, a plea of guilty may subject you to deportation, exclusion, or voluntary departure, and prevent you from obtaining U.S. citizenship?

***V. Defendant’s Right to a Trial and the Nature Thereof***

- Under the Constitution and laws of the United States, you have an absolute right to that trial by jury. No one, including myself as Judge of this Court, your own attorney, the Government attorney, or any agents for the Government, can deny you your constitutional right to a jury trial on the charge(s) contained in the Indictment, and this case will proceed on to trial before me as scheduled unless you enter a guilty plea here today. Do you understand that?
- You have a right to persist in your not guilty plea and go to trial. Do you understand that?
- You have a right to a trial before a jury of twelve men and women who would sit in a jury box, and you and your attorney would participate in the selection of that jury. Do you understand that?

- At that trial, you would be presumed to be innocent and the Government would have the burden of producing competent evidence before that jury that convinced each and every one of those twelve jurors of your guilt beyond a reasonable doubt before you could be found guilty. You would not have to prove that you were innocent. Do you understand that?
- At that trial, you would have the right to the assistance of counsel for your defense. Do you understand that?
- During the trial, the witnesses for the Government would have to come before the Court and testify in your presence, and your counsel could cross-examine the witnesses for the government and object to evidence offered by the Government. Do you understand that?
- You could, if you so choose, present evidence in your own behalf, although there is no burden or obligation on you to do so. Do you understand that?
- You would also have the right to compel the attendance of witnesses to testify in your defense. Do you understand that?
- Also, at the trial, while you would have the right to testify in your own behalf if you chose to do so, you also would have the right not to testify, and no inference or suggestion of guilt could be drawn from the fact that you did not testify. Do you understand that?
- These are very important rights guaranteed to you by our Constitution and the laws of the United States, and you must understand that if you plead guilty, you will be waiving your right to a trial the other rights I have just discussed; there will be no trial. Do you understand that?
- Finally, if you plead guilty, you must understand that you will also have to waive your right not to incriminate yourself, since I will ask you questions about what you did in order to satisfy myself that you are guilty as charged. You will have to acknowledge your guilt in open court here today. Do you understand that?

- Having discussed your rights with you, do you still wish to plead guilty?

## ***VI. Plea agreement***

**[SKIP SECTION (VII) AND PROCEED TO SECTION VII IF NO PLEA AGREEMENT]**

- I have had presented to me a document entitled “Plea Agreement”. On page \_\_\_\_ of this document, there is what purports to be your signature. Did you in fact sign this document?
- Did you read this document before signing it?
- Did you discuss it with your attorney before you signed it?
- Does the plea agreement represent in its entirety any understanding you have with the government?
- I am now going to discuss some specific provisions of the plea agreement with you to satisfy myself that you fully understand this agreement.

**[GO THROUGH THE SPECIFICS OF THE PLEA AGREEMENT. MOST IMPORTANTLY, DISCUSS IN DETAIL ANY WAIVERS OF THE RIGHT TO APPEAL OR COLLATERAL ATTACK. ALSO SPECIFICALLY DISCUSS ANY**



**BINDING RECOMMENDATIONS MADE IN THE PLEA AGREEMENT. WHEN FINISHED GOING THROUGH THE PROVISIONS, ASK:]**

- Counsel for the government, are there any other provisions of the plea agreement you believe I should address which I have not already addressed?
- Counsel for the Defendant, are there any other provisions of the plea agreement you believe I should address which I have not already addressed?
- Defendant, are there any provisions of this plea agreement that I have discussed with you or have not discussed with you that you do not understand?
- Do you understand the terms of the plea agreement?
- And you wish to enter into this plea agreement with the government?
- Has anyone made any promise or assurance that is not in the plea agreement to persuade you to accept this agreement?
- Has anyone threatened you in any way to persuade you to accept this agreement?

**[IF THE PLEA AGREEMENT IS NON-BINDING]**

- Do you understand that the Court is not bound by this agreement, which is a contract between, and only between, you and the Government?

- Do you understand that the terms of the plea agreement are merely recommendations to the court—that I can reject the recommendations without permitting you to withdraw your plea of guilty and impose a sentence that is more severe than you may anticipate, up to the maximum permitted by law?
- Do you further understand that if I decline to impose any sentence recommended by the Government and your counsel, and impose a more severe sentence, you will not be entitled to withdraw your guilty plea?

**[IF THE PLEA AGREEMENT IS BINDING]**

- Do you understand that if I decline to accept the binding provision(s) made in the Plea Agreement which we discussed, then you will be allowed to withdraw your plea and proceed to trial?
  - Do you understand that if I decline to accept the binding provision(s) made in the Plea Agreement, you also have a right to persist in your plea of guilty, although I would not be bound by the binding provision(s) at sentencing?
  - Do you understand that for any of the non-binding recommendations made in the Plea Agreement, those provisions are merely recommendations to the court—that I can reject those recommendations without permitting you to withdraw your plea of guilty and impose a sentence that is more severe than you may anticipate, up to the maximum permitted by law, so long as such a sentence would not be inconsistent with one of the binding recommendations in the Plea Agreement?
- Defense Counsel, were all formal plea offers by the government conveyed to the Defendant?
  - I find the Plea Agreement to be in proper form and direct that it be filed of record.

***VII. Sentencing advisements***

[IF NO PLEA AGREEMENT, ASK:]

- Defense Counsel, were all formal plea offers by the government conveyed to the Defendant?
- Do you understand that your sentence will be determined by a combination of advisory Sentencing Guidelines, possible authorized variances from those guidelines, and other statutory sentencing factors?
- Have you and your attorney talked about how these advisory Sentencing Guidelines might apply to your case?
- Do you understand that the court will not be able to determine the advisory guideline range for your case until after the presentence report has been completed and you and the government have had an opportunity to challenge the reported facts and the application of the guidelines recommended by the probation officer, and that the sentence ultimately imposed may be different from any estimate your attorney may have given you?
- Do you also understand that, after your initial advisory guideline range has been determined, the court has the authority in some circumstances to vary upward or downward from that range, and will also examine other statutory sentence factors, under 18 U.S.C. § 3553(a), that may result in the imposition of a sentence that is either greater or lesser than the advisory guideline sentence?
- Do you understand that under some circumstances you or the government may have the right to appeal any sentence that the District Judge may impose?

[IF NON-BINDING PLEA AGREEMENT, ASK]

- Do you understand that your sentence will be determined by a combination of advisory Sentencing Guidelines, possible authorized variances from those guidelines, and other statutory sentencing factors?

- Have you and your attorney talked about how these advisory Sentencing Guidelines might apply to your case?
- Do you understand that the court will not be able to determine the advisory guideline range for your case until after the presentence report has been completed and you and the government have had an opportunity to challenge the reported facts and the application of the guidelines recommended by the probation officer, and that the sentence ultimately imposed may be different from any estimate your attorney may have given you?
- Do you also understand that, after your initial advisory guideline range has been determined, the court has the authority in some circumstances to vary upward or downward from that range, and will also examine other statutory sentence factors, under 18 U.S.C. § 3553(a), that may result in the imposition of a sentence that is either greater or lesser than the advisory guideline sentence?

[IF NO APPEAL WAIVER IN THE PLEA AGREEMENT]

- Do you understand that under some circumstances you or the government may have the right to appeal any sentence that I may impose?

[IF WAIVER OF APPEAL RIGHTS IS IN PLEA AGREEMENT]

- Do you understand that by entering into the plea agreement we discussed and entering a plea of guilty, you will have waived, or given up, your right to appeal or collaterally attack all or part of this sentence?

[IF BINDING PLEA AGREEMENT TO A SPECIFIC SENTENCE, ASK:]

- As we discussed, you have agreed in your Plea Agreement to a specific sentence which, if I accept that agreement, will be your sentence. Do you understand that?
- For any other aspect of your sentence to which there is no binding agreement, or if I reject your Plea Agreement, but you decide to persist in your plea of guilty anyway, do you understand that your sentence will be determined by a combination of advisory Sentencing Guidelines, possible authorized variances from those guidelines, and other statutory sentencing factors?
- Have you and your attorney talked about how these advisory Sentencing Guidelines might apply to your case?
- Do you understand that the I am not able to determine the advisory guideline range for your case until after the presentence report has been completed and you and the government have had an opportunity to challenge the reported facts and the application of the guidelines recommended by the probation officer?
- Do you understand that for any portion of your sentence to which you have not made a binding recommendation on the court, that aspect of your sentence ultimately imposed may be different from any estimate your attorney may have given you?
- Do you also understand that, after your initial advisory guideline range has been determined, I have the authority in some circumstances to vary upward or downward from that range, and will also examine other statutory sentence factors, under 18 U.S.C. § 3553(a), that may result in the imposition of a sentence that is either greater or lesser than the advisory guideline sentence—again, for any aspect of your sentence for which there is no agreement which is binding on the district judge?

[IF NO APPEAL WAIVER IN THE PLEA AGREEMENT]

- Do you understand that under some circumstances you or the government may have the right to appeal any sentence that I may impose?

**[IF WAIVER OF APPEAL RIGHTS IS IN PLEA AGREEMENT]**

- Do you understand that by entering into the plea agreement we discussed and entering a plea of guilty, you will have waived, or given up, your right to appeal or collaterally attack all or part of this sentence?

***VIII. Determining Factual Basis for Guilty Plea***

- Counsel for the government, please tell us what evidence you would present if this case were to go to trial sufficient to establish a factual basis for this plea.
- Counsel for the Defendant, do you agree that would be the Government's evidence in this case if this case were to go to trial?
- Defendant, do you agree with the Government's summary of what you did?
- Did you do what he said you did?

**[ASK DEFENDANT "POINTED" QUESTIONS ABOUT THE OFFENSE ON EACH OF THE REQUIRED ELEMENTS TO MAKE CERTAIN DEFENDANT ACKNOWLEDGES HIS GUILT IN OPEN COURT.]**

***IX. The Plea***

- Has anyone attempted in any way to force you to plead guilty or otherwise threatened you?

- Has anyone made any promises or assurances of any kind to get you to plead guilty (other than those that are in the plea agreement)?
- Are you pleading guilty because you are guilty?
- And are you doing this of your own free will?
- Counsel for the government, are there any advisements that I have not given the Defendant that you believe I need to give before the Defendant pleads guilty?
- Counsel for the Defendant, are there any advisements that I have not given the Defendant that you believe I need to give before the Defendant pleads guilty?
- How do you now plead to the charge of \_\_\_\_\_ in the Indictment?

[IF THERE IS MORE THAN ONE COUNT, HAVE THE DEFENDANT ENTER A PLEA OF GUILTY ON EACH CHARGE IN THE INDICTMENT]

[IF THERE IS A FORFEITURE COUNT, ASK:]

- Do you also consent to the forfeiture of the property set for in the notice of forfeiture contained in the Indictment?
- I hereby find that there is indeed a factual basis for the plea of guilty, and since you acknowledge that you are in fact guilty as charged in Count(s) \_\_\_\_ of the Indictment, since you know your right to a trial by jury, what the maximum possible punishment is, and since you are voluntarily pleading guilty, I will accept your guilty plea.

***X. Pre-Sentence Investigation Report and Sentencing Date***

- A pre-sentence investigation report is hereby ordered.
- You and your counsel have a right and will have an opportunity to examine the report and to object and comment on it.  
Sentencing is set before me on \_\_\_\_\_.
- What is the government's position on release or detention?

**[IF DEFENDANT TO BE ON BOND TO DATE OF DISPOSITION:]**

- Do you understand that you must be in the District Court for sentencing on \_\_\_\_\_, or you will be guilty of a violation of the Bail Reform Act, for which there is a maximum penalty five years' incarceration and \$10,000 fine?
- This case is in recess until the date of sentencing.