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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 454 (KPF)

5 EFRAIN REYES,

Plea

6 Defendant.
7 -----x

8 New York, N.Y.
9 August 26, 2019
10 2:30 p.m.

11 Before:

12 HON. KATHERINE POLK FAILLA,

13 District Judge
14

15 APPEARANCES

16 GEOFFREY S. BERMAN
17 United States Attorney for the
18 Southern District of New York
19 FRANK J. BALSAMELLO
20 Assistant United States Attorney

21 MARLON G. KIRTON
22 Attorney for Defendant
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24
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1 (Case called)

2 MR. BALSAMELLO: Good afternoon, your Honor. Frank
3 Balsamello for the United States.

4 THE COURT: Sir, good afternoon. Thank you.

5 MR. KIRTON: Good afternoon. Marlon Kirton for
6 Mr. Reyes.

7 THE COURT: Mr. Kirton, before you sit down, let me
8 ask you some questions.

9 MR. KIRTON: Yes.

10 THE COURT: It is my understanding that it's the wish
11 of the parties that this matter be subject to delayed
12 docketing, is that correct?

13 MR. KIRTON: That's correct, your Honor.

14 THE COURT: Very briefly, are you also asking, I
15 presume, that this transcript be sealed at this time?

16 MR. KIRTON: Yes, I am.

17 THE COURT: I don't want to just decide this
18 reflexively. May I just have a sentence or two about why it is
19 appropriate both that the matter be delayed docketing and that
20 this transcript be sealed, and if you prefer that
21 Mr. Balsamello do that, that's fine, too. I just want to hear
22 from one of you before I make the determination.

23 MR. KIRTON: Your Honor, the parties propose that my
24 client plead guilty to a cooperation agreement. My client has
25 had a number of meetings with the government concerning his

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1 involvement not only in this conspiracy but other criminal
2 matters, and for issues of safety, we request that this docket
3 be sealed and the docket entry be delayed.

4 THE COURT: OK. For those reasons, I will do that.
5 Thank you very much.

6 Sir, do you have a copy of the indictment in this
7 case? Mr. Kirton, do you have a copy of the indictment in this
8 case?

9 MR. KIRTON: Yes.

10 THE COURT: OK. Do you also have a copy of the letter
11 from the government to you dated August 15?

12 MR. KIRTON: Yes, I do.

13 THE COURT: I'd ask you, please, to place both of
14 those documents in front of your client, if you could.

15 MR. KIRTON: Thank you, your Honor.

16 THE COURT: Thank you. You may be seated, sir. Thank
17 you so much.

18 MR. KIRTON: Thank you.

19 THE COURT: Mr. Reyes, good afternoon to you, sir.

20 THE DEFENDANT: Good afternoon. I stand up?

21 THE COURT: Whatever you're more comfortable doing.
22 If it's easier for you to sit down, you may sit down.

23 THE DEFENDANT: Yeah, I have a bad leg.

24 THE COURT: Then let's sit down. What I am going to
25 ask you to do is take the microphone and bring it a little bit

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1 closer to you because I want to make sure we all can hear you.

2 Thank you.

3 Sir, your attorney has placed in front of you the
4 indictment in this case and a letter that he has received from
5 the United States Attorney's Office for this district. In a
6 prior court proceeding before me, you entered a plea of not
7 guilty to the charges in this indictment, and it is my
8 understanding that today you wish to change that plea and enter
9 a plea of guilty to Count One of this indictment, is that
10 correct, sir?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And you wish to do that pursuant to an
13 agreement that you have with the government, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Mr. Reyes, before I can accept your guilty
16 plea, I need to ask you a series of questions, and let me
17 please explain to you the purpose of those questions. I want
18 to first ensure -- excuse me, let me start with the front end.

19 I want to sure that you are competent to enter a plea
20 of guilty, that you can see and hear and understand what's
21 going on in the courtroom, and that you are under no influence
22 that would impair your ability to understand these proceedings.
23 If I find that that is the case, I will talk to you about the
24 rights that you have and would be waiving by entering a plea of
25 guilty. We'll talk about the charge to which you propose to

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1 plead guilty and the penalties that are associated with it.
2 Finally, I will ask you a series of questions to confirm that
3 you are pleading guilty because you are, in fact, guilty of
4 this offense and not for some other reason.

5 Mr. Reyes, if at any time my questions are confusing
6 to you or if at any time you'd like to take a break and speak
7 with your attorney, just let me know. Will you do that, sir?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Thank you.

10 Ms. Noriega, can I ask you please to swear in
11 Mr. Reyes.

12 THE DEPUTY CLERK: Yes, your Honor.

13 THE COURT: Thank you.

14 (Defendant sworn)

15 THE COURT: Thank you. You may be seated.

16 Thank you, Mr. Reyes. The significance of my placing
17 you under oath is if you were to answer any of these questions
18 that I'm about to ask you falsely, you can be prosecuted for a
19 separate offense known as perjury. Do you understand that,
20 sir?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Mr. Reyes, how old are you?

23 THE DEFENDANT: 50.

24 THE COURT: How far did you go in school, sir?

25 THE DEFENDANT: I have a GED.

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1 THE COURT: Did you obtain that here in the New York
2 area or somewhere else?

3 THE DEFENDANT: While incarcerated in the state.

4 THE COURT: In the state of New York, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

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[REDACTED]

MR. KIRTON: OK. So he was the last inmate
incarcerated with Mr. Jeffrey Epstein.

THE COURT: Yes, sir. All right. As a consequence of
that, as a preventative measure, I imagine they would like to
speak with all of the folks who were being moved, is that fair?

MR. KIRTON: That was already done.

THE COURT: OK.

[REDACTED]

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18 [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 THE COURT: Thank you.

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1 Is there anything about your prior treatment for drug
2 addiction, either this most recent one or any prior one, that
3 would cause you to be unable to see, hear, or understand what's
4 going on in the courtroom?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: In the last two days, have you taken any
7 drugs, medicine, or pills of any type other than what you've
8 already told me about?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: In the last two days, have you consumed
11 any alcoholic beverages?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Is your mind clear this afternoon, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand what's happening in this
16 courtroom today?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Mr. Kirton, have you had enough of an
19 opportunity to discuss this matter with your client?

20 THE DEFENDANT: Yes, I have, your Honor.

21 THE COURT: Do you believe he understands the rights
22 that he has and would be waiving by pleading guilty?

23 MR. KIRTON: Yes, he does, your Honor.

24 THE COURT: Do you believe he understands the nature
25 of these proceedings?

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1 MR. KIRTON: Yes, he does.

2 THE COURT: Do you have any doubt as to Mr. Reyes'
3 competence to plead guilty if he wishes to do so?

4 MR. KIRTON: No, your Honor.

5 THE COURT: Thank you very much.

6 Mr. Balsamello, do you have any doubt as to Mr. Reyes'
7 competence to plead guilty if he wishes to do so?

8 MR. BALSAMELLO: No, not at all.

9 THE COURT: Thank you, sir.

10 Mr. Reyes, based on our conversation this afternoon,
11 and that includes both your answers to my questions and my
12 observations of your demeanor here in court, and based as well
13 on the conversation that I've just had with the attorneys, your
14 attorney and the attorney for the government, I find that
15 you're fully competent to enter a knowing and informed plea of
16 guilty if you wish to do so.

17 I've had your attorney place in front of you the
18 indictment in this case. Do you still have it there, sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I've asked you questions about this
21 document previously, but I'm going to ask some more.

22 Have you read this document, sir?

23 THE DEFENDANT: Numerous times, ma'am.

24 THE COURT: Have you read it in connection with
25 pleading guilty today, sir?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: You have not read it?

3 THE DEFENDANT: Not in the past month.

4 THE COURT: But you have read it repeatedly in the
5 past?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You are familiar with the charges in this
8 indictment?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Have you had enough of an opportunity to
11 speak with your attorney about the charge to which you propose
12 to plead guilty and any defenses that you might have to that
13 charge?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Sir, I don't want to know the specifics of
16 your communications with your attorney, but there are some
17 topic areas that I wanted to cover with you. So if I ask you a
18 question about communications with your attorney, I really just
19 want to know that you touched on a subject matter, not the
20 specifics of your discussions.

21 Has your attorney explained to you the consequences of
22 entering a plea of guilty?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Are you satisfied with his representation
25 of you in this matter?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Mr. Reyes, I'm now going to turn to the
3 rights that you have and would be waiving, or giving up, if you
4 were to enter a plea of guilty. If anything that I say is
5 confusing to you, please let me know.

6 THE DEFENDANT: OK.

7 THE COURT: Under the Constitution and laws of the
8 United States, you have the right to continue with your
9 previously entered pleas of not guilty to the charges contained
10 in the indictment. Do you understand that, sir?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: If you continued with your plea of not
13 guilty, you would be entitled to a speedy and public trial by a
14 jury on the charges contained in the indictment. Do you
15 understand that, sir?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: If there were a trial in this case, you
18 would be presumed to be innocent, and the government would be
19 required to prove you guilty by competent evidence beyond a
20 reasonable doubt before you could be found guilty. Do you
21 understand that, sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: A jury of 12 people would have to agree
24 unanimously that you were guilty of these offenses. You would
25 not have to prove that you were innocent if you were to go to

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1 trial. Do you understand that, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: At a trial and at every stage of your
4 prosecution, you are entitled to the assistance of an attorney.
5 If and to the extent that you cannot afford an attorney, one
6 would be appointed for you at public expense, free of cost to
7 you, in order to represent you. Do you understand that, sir?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: If there were a trial in this case,
10 Mr. Reyes, the witnesses for the government would have to come
11 into court and testify in your presence. Your attorney could
12 cross-examine the government's witnesses. He could object to
13 the government's evidence, and he could offer evidence on your
14 own behalf if you wanted him to do so. You would also have the
15 right to have subpoenas or other documents or process issued in
16 order to compel witnesses to testify in your defense. Do you
17 understand that, sir?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: If there were a trial in this case,
20 Mr. Reyes, you would have the right to testify if you wanted to
21 do so, and you would have the right not to testify if you
22 wanted not to do so. If you decided not to testify, no one,
23 including the jury, could draw any inference or suggestion of
24 guilt from your decision not to testify. Do you understand
25 that, sir?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Another consequence of entering a plea of
3 guilty in this fashion is that you give up your right to seek
4 suppression or exclusion of the government's evidence against
5 you. Are you aware of that, sir?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Without giving me the specifics, have you
8 had enough of an opportunity to discuss with your attorney
9 whether there is any basis to seek suppression or exclusion of
10 part or all of the government's evidence against you?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand, sir, that if you were
13 convicted after a trial, you would have the right to appeal
14 from the jury's verdict?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you also understand that even now, as
17 you're entering this plea, you have the right to change your
18 mind and to continue with your previously entered plea of not
19 guilty to the charges contained in the indictment?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: If you plead guilty and if I accept your
22 guilty plea, you will give up your right to trial and the other
23 rights that I've just been discussing with you, other than your
24 right to an attorney. You have the right to an attorney
25 whether you plead guilty or go to trial. But if you plead

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1 guilty and if I accept your guilty plea, there will be no
2 trial. I will enter a judgment of guilty on Count One of this
3 indictment. I will sentence you at a later date based on
4 information that I have from you today, that I receive from you
5 today, information that I receive from the United States
6 Probation Office in a document known as a presentence
7 investigation report, and information that I receive from you
8 and from your attorney and from the attorneys for the
9 government in connection with sentencing.

10 If you plead guilty and if I accept your guilty plea,
11 there would be no appeal on the issue of whether the government
12 could use the evidence that it has against you, and there would
13 also be no appeal on the issue of whether you, in fact,
14 committed this offense.

15 Do you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you also understand, sir, that if you
18 plead guilty, there is a degree to which you will have to give
19 up your right not to incriminate yourself? What I mean by that
20 is I will ask a series of questions later on to confirm that
21 you are pleading guilty because you are in fact guilty, and you
22 will have to admit and acknowledge your guilt of that offense.
23 Do you understand that, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Mr. Reyes, do you understand each of the

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1 rights that I've been discussing with you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Would you like me to provide any
4 additional or any clarifying information about any of those
5 rights?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Is it your wish today, sir, are you
8 willing to give up your right to trial and the other rights
9 that I've been discussing with you and enter a plea of guilty
10 in this case?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You're charged in Count One of the
13 indictment with participating in a conspiracy to distribute and
14 to possess with the intent to distribute 280 grams or more of
15 mixtures and substances containing a detectable amount of
16 cocaine base, this is commonly known as crack cocaine, as well
17 as quantities of heroin and marijuana between in or about 2016
18 and in or about June of 2018. This charge recites violations
19 of Title 21 of the United States Code, Sections 841(a)(1),
20 841(b)(1)(A), 841(b)(1)(C), 841(b)(1)(D), and 846.

21 Is that your understanding of what Count One charges,
22 sir?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And it's your wish to plead guilty to that
25 count, is that correct?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Mr. Reyes, I'm going to ask for your
3 attention right now, and I will pay my attention as well, to
4 the prosecutor. I'm going to ask him to outline for both of us
5 the elements of this offense.

6 Thank you, Mr. Balsamello.

7 MR. BALSAMELLO: Your Honor, if the case went to
8 trial, the government would have to prove two elements beyond a
9 reasonable doubt: First, that there was an agreement among two
10 or more people to distribute or possess with intent to
11 distribute 280 or more grams of crack cocaine as well as
12 quantities of heroin and marijuana; and, second, that the
13 defendant entered into that agreement knowingly and with the
14 intent to further its objectives. The government would also
15 have to prove by a preponderance of the evidence that some
16 portion of these crimes occurred -- or this crime occurred in
17 the Southern District of New York.

18 THE COURT: Thank you very much.

19 Mr. Reyes, did you hear the prosecutor just now?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand, sir, that if you were
22 to go to trial, that would be what the government would have to
23 prove at that trial?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I'm going to talk to you now, sir, about

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1 the penalties that are associated with this offense, and I'm
2 going to begin by talking about the maximum possible penalties
3 that are permitted under each statute. I want to underscore
4 that this is not necessarily what you're going to receive, but
5 I want to be sure you understand that by pleading guilty, you
6 are exposing yourself to the possibility of receiving any
7 combination of punishments up to the statutory maximum terms
8 that I'm about to describe. Do you understand that, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I will focus first on restrictions on your
11 liberty. The maximum term of imprisonment for this offense is
12 lifetime imprisonment. Do you understand that, sir?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand as well that the maximum
15 term of supervised release for this offense is lifetime
16 supervised release?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I'll speak to you now about supervised
19 release and what I mean by that term. Supervised release is a
20 period of time where you would be subject to supervision by the
21 United States Probation Office. There are terms and conditions
22 of supervised release that you would have to follow. If you
23 were unable or unwilling to follow those terms and conditions,
24 the possibility exists that your term of supervised release
25 could be revoked and you could be sent to prison to serve

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1 additional jail time. If that were to happen, you would not
2 get any credit for the time spent on your term of imprisonment.
3 You would also not get any credit for any time that you had
4 spent on supervised release without incident. Do you
5 understand each of these things, sir?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: I also want to make sure you understand
8 that there is no parole in the federal system. If you are
9 sentenced to a term of imprisonment, you would not be released
10 early on parole. There is a possibility to earn credit for
11 good behavior. Even then you'd have to serve approximately
12 85 percent of any term of imprisonment imposed. Do you
13 understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Mr. Reyes, there are also certain
16 financial penalties that are associated with this offense. The
17 maximum possible fine is the greatest of these three things:
18 \$10 million, twice the gross pecuniary gain or twice the gross
19 pecuniary loss to persons other than yourself. I can order you
20 to make restitution to any person or entity that has been
21 injured as a result of your conduct. I could order you to
22 forfeit the proceeds that you may have derived from this
23 offense or the property that you may have used to commit or to
24 facilitate the commission of the offense. Finally, I must
25 order a mandatory special assessment of \$100 per count of

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1 conviction.

2 Do you understand, sir, that these are the maximum
3 possible penalties?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Mr. Reyes, are you familiar with the term
6 "mandatory minimum"?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: When I use that term, what I mean is that
9 except in very -- well, in certain circumstances, a limited
10 number of circumstances, you would have to serve the mandatory
11 minimum. I'm going to begin again. I want to say that better.

12 When I use the term "mandatory minimum," what I mean
13 is that, except in very limited circumstances, I am not
14 permitted to go below the minimum term specified by the
15 statute. Are you aware of that, sir?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that in this case there
18 is a mandatory minimum term of ten years' imprisonment, there's
19 a mandatory minimum term of five years of supervised release?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Mr. Kirton, have you spoken with your
22 client about the bases that exist in the law for me to go below
23 the mandatory minimum?

24 MR. KIRTON: Yes, I have, your Honor.

25 THE COURT: Is there any reason that I would need to

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1 review them with him?

2 MR. KIRTON: No, your Honor.

3 THE COURT: Thank you, sir.

4 Mr. Reyes, I want to talk to you about something else.
5 I'll let you finish.

6 MR. KIRTON: Sorry.

7 (Defendant conferred with counsel)

8 MR. KIRTON: Thank you, your Honor.

9 THE COURT: Mr. Reyes, again, I don't want to intrude
10 on the communications that you have with your attorney, but may
11 I understand that you and he have discussed the circumstances
12 that would permit me to go below the mandatory minimum term?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Sir, I'm going to ask you some
15 questions, and my experience has been that not all of these
16 questions are applicable to everyone, but I am required to ask
17 them.

18 Are you a United States citizen?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I ask because some people appear before me
21 who are not, and a guilty plea can have adverse immigration
22 consequences, including deportation. Since you are a U.S.
23 citizen, I will ask you something different.

24 Do you understand, sir, that as a result of your
25 guilty plea, you could lose certain valuable civil rights, to

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1 the extent you have them today or could obtain them in the
2 future? These would include the right to vote, the right to
3 hold public office, the right to serve on a jury, and the right
4 to possess a firearm. You are aware of that, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Mr. Reyes, at this time are you serving
7 any other sentences?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: At this time, sir, to the best of your
10 knowledge, are you being prosecuted anywhere else?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: I ask, sir, because sometimes folks have
13 proceedings in state and federal court at the same time or they
14 have an administrative or parole board proceeding separate from
15 this case. What I want to make sure you understand is that
16 resolution of the case before me does not necessarily resolve
17 any other case that you might have. Do you understand that,
18 sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do the best of your knowledge, this is the
21 one case you have, is that also correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Reyes, without giving me the specifics
24 of your communications, have you and your attorney discussed
25 the process of sentencing?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you understand, sir, that I must
3 consult certain statutory factors called 3553(a) factors in
4 imposing sentence in this case?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: One of those factors, sir, is something
7 called the United States Sentencing Guidelines. Is that a term
8 that is familiar to you, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If I use the term "guidelines" or
11 sentencing guidelines," I'm referring to the United States
12 Sentencing Guidelines. What I wanted to ensure that you
13 understood today, sir, is that if anyone has attempted to
14 predict for you what your ultimate sentence will be, their
15 prediction could be incorrect. I will be sentencing you at a
16 later date. I don't have the information that I need. I hope
17 to obtain that in part today through speaking with you, later
18 on from the probation office in its presentence investigation
19 report, and then finally at sentencing in the oral and written
20 submissions of the parties.

21 Do you understand, sir, that today no one can predict
22 with any confidence what your ultimate sentence will be?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you also understand that if anyone has
25 attempted to predict for you -- well, let me say it this way:

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1 If your ultimate sentence is different from what anyone may
2 have suggested it might be, if it is different from what you
3 expect or hoped for, if it is different from any range in any
4 agreement that you may have with the government, you would
5 still be bound by your guilty plea; you would not be able to
6 withdraw your guilty plea based merely on dissatisfaction with
7 your sentence. Do you understand that, sir?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Mr. Reyes, it is my understanding that you
10 are pleading guilty today pursuant to an agreement with the
11 government. Am I correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I've been given a document. It's a letter
14 that is dated August 15 of this year to Mr. Kirton from the
15 United States Attorney's Office. Do you have a copy of that
16 letter with you, sir?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: The copy that I have I am marking as Court
19 Exhibit 1, and at the end of this proceeding, I will give it to
20 the government to keep safe. I'd ask you, please, to turn to
21 the last page of the document, which for me is page 6. Is that
22 the last page for you, sir?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: On my page 6 there are four signatures.
25 Are there four signatures on yours, sir?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Is one of the signatures yours?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Did you sign this document today in the
5 presence of your attorney?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Before you signed this document, whether
8 today or another day, did you read it, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If you had any questions about it, were
11 you able to resolve those questions with your attorney?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: At the time you signed it, did you
14 understand what was contained or is contained in this
15 agreement?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I'll speak to you about a couple of
18 paragraphs in it, and I'm going to ask you to turn to the first
19 page and let me know when you've gotten there.

20 THE DEFENDANT: I'm there.

21 THE COURT: Thank you, Mr. Reyes.

22 Mr. Reyes, in the second paragraph on the first page,
23 I understand that you are agreeing to make restitution in an
24 amount to be determined by me at a later date pursuant to the
25 statutes that are set forth there. Is that, in fact, what

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1 you've done, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: So if I find that restitution is warranted
4 and it's owed to someone, you are agreeing to make restitution?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: In the very next paragraph, I understand
7 that you are admitting to the forfeiture allegation that is
8 associated with Count One of the indictment. You're therefore
9 agreeing to forfeit any proceeds that you may have derived from
10 the offense or any property that you may have used to commit or
11 to facilitate the commission of the offense. Is that correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: So do you admit to the forfeiture
14 allegations, sir?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Sir, I'm going to ask you to turn to
17 page 2. You may have done that already, but I'm watching you
18 do that now. There, you have just done that.

19 In the first full paragraph, there's a list of
20 undertakings. You are agreeing to do certain things with
21 respect to your interactions with federal law enforcement. Is
22 that the case, sir?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: So are you agreeing to do what's contained
25 in this first paragraph?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Sir, I'm now looking at page 3. Could you
3 turn to page 3 and let me know when you've gotten there.

4 THE DEFENDANT: I'm there, ma'am.

5 THE COURT: Thank you.

6 Mr. Reyes, at the bottom of page 3, there's a
7 paragraph that carries over onto page 4, and then there are two
8 other paragraphs. Actually, I'm going to focus on page 4, the
9 second full paragraph. They all seem to begin "it is
10 understood." But do you see the second full paragraph there,
11 sir?

12 THE DEFENDANT: Uh-huh.

13 THE COURT: There's a listing of things or
14 consequences that could happen if, for example, you are found
15 to have committed further crimes or to have given false,
16 incomplete, or misleading testimony or information. Do you see
17 that, sir?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand those are the
20 consequences for committing further crimes or giving incomplete
21 or misleading testimony or information?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: The next paragraph which also begins "it
24 is understood," there are additional consequences regarding the
25 provision of false information or the commission of further

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1 crimes. Do you see that, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand those consequences?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You've read that and discussed it with
6 your attorney, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Mr. Reyes, is this agreement that you and
9 I have been talking about, is this your complete and total
10 understanding of the entire agreement you have with the
11 government?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: To the best of your knowledge, has
14 anything been left out of this agreement?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Other than what is contained in this
17 agreement, has anyone made you any promise or offered you any
18 type of inducement in order to get you to sign this agreement
19 or to plead guilty here today?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Has anyone forced you or threatened you to
22 sign this agreement or to plead guilty here today?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Has anyone made any promise to you as to
25 what your ultimate sentence will be?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: Could you please tell me in your own words
3 what it is you did that makes you believe that you are guilty
4 of Count One of this indictment, sir.

5 MR. KIRTON: Just one moment, your Honor.

6 THE COURT: Of course, sir. Mr. Kirton, do you and
7 your client have written notes to aid you?

8 MR. KIRTON: Yes.

9 THE COURT: That's fine. I just wanted to make sure.
10 That's so common, of course.

11 Mr. Reyes, whatever you read to me, may I understand
12 these are your thoughts?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: I'll let you and your attorney have a
15 moment to review them, and then I'll hear from you whenever
16 you're ready.

17 (Defendant conferred with counsel)

18 THE DEFENDANT: I'm ready.

19 THE COURT: I will hear from you now.

20 THE DEFENDANT: Between 2016 and 2018, in the Southern
21 District of New York, I, working with Anthony Corley, Allen
22 Walker, and others to distribute at least 280 grams of crack
23 cocaine. They supplied me with crack cocaine, and I sold the
24 crack cocaine in the vicinity of 1048 East 188th Street, Bronx,
25 New York.

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1 THE COURT: Mr. Corley and Mr. Walker, they were
2 people with whom you had an agreement, is that correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Am I correct that Mr. Corley and
5 Mr. Walker were not law enforcement officers or government
6 agents?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: They are not. OK.

9 In addition to the 280 grams of crack cocaine, were
10 you also involved or did you also receive heroin or marijuana?

11 MR. KIRTON: Just one moment, your Honor.

12 THE COURT: Of course, sir.

13 (Defendant conferred with counsel)

14 MR. BALSAMELLO: Your Honor, possible frame of that
15 question as well could be, was he aware of other people with
16 whom he worked selling those substances?

17 THE COURT: I appreciate that. I will ask that
18 question instead so that I can be more precise.

19 Mr. Reyes, let me ask a better question. While you
20 were selling crack cocaine, were you aware that others in the
21 group of people with whom you had this agreement were selling
22 heroin or marijuana?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Were you aware of both being sold, sir, by
25 others?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: At the time that you agreed with others to
3 sell crack cocaine, did you understand that what you were doing
4 was wrong and illegal?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Mr. Kirton, do you know of any valid
7 defense that would prevail at trial or any reason why your
8 client should not be permitted to plead guilty?

9 MR. KIRTON: No, your Honor, and no, your Honor.

10 THE COURT: Thank you for both answers.

11 Mr. Balsamello, are there additional questions you
12 would like me to ask of Mr. Reyes?

13 MR. BALSAMELLO: No, your Honor. I think you covered
14 earlier that he's satisfied with Mr. Kirton's representation.
15 That was the only thing in the allocution that I didn't
16 remember specifically, but nothing regarding his conduct at
17 all.

18 THE COURT: Sir, very briefly, may I have a sense of
19 the types of evidence that would be introduced if this case
20 were to go to trial.

21 MR. BALSAMELLO: Yes, your Honor. If the case went to
22 trial, the government's evidence would include, among other
23 things, video and audio recorded controlled drug buys from
24 defendant and coconspirators and the physical evidence from
25 those buys, namely, the controlled substances purchased. It

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1 would include audio recordings from Title III wiretaps on the
2 phones of members of the conspiracy, and it would include
3 testimony of cooperating witnesses about the defendant's and
4 other individuals' roles in this conspiracy.

5 THE COURT: Thank you.

6 Mr. Reyes, were you able to hear the prosecutor just
7 now?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand, sir, that if you were
10 to proceed to trial, that that is part or all of the
11 government's evidence against you at that trial?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Mr. Kirton, do you agree that there's a
14 sufficient factual predicate for a guilty plea to Count One?

15 MR. KIRTON: Yes, your Honor.

16 THE COURT: Is there any reason why I should not
17 accept it?

18 MR. KIRTON: No, your Honor.

19 THE COURT: Mr. Balsamello, the same two questions:
20 Do you agree that there's a sufficient factual predicate for a
21 guilty plea to Count One?

22 MR. BALSAMELLO: Yes, your Honor.

23 THE COURT: Is there any reason why I should not
24 accept it?

25 MR. BALSAMELLO: No, your Honor.

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1 THE COURT: Mr. Reyes, at this time do you wish to
2 enter a plea of guilty to Count One of the indictment 18
3 Cr. 454?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Mr. Reyes, because you've acknowledged
6 that you are in fact guilty as charged in this count; because
7 I'm satisfied that you know of your rights, including your
8 right to go to trial; because I'm satisfied that you're aware
9 of the elements of this offense and the penalties associated
10 with it; and because I find that you are knowingly and
11 voluntarily pleading guilty, I will accept your guilty plea. I
12 will enter a judgment of guilty on Count One of this
13 indictment.

14 Earlier we spoke about sentencing, and at some point
15 in this case there will be your sentencing. In connection with
16 that sentencing, the probation office will want to prepare the
17 presentence investigation report that I mentioned to you
18 earlier. I will order that the interview that they conduct in
19 order to prepare that report with you not take place unless
20 your attorney or someone from his office is with you. Do you
21 understand that, sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Reyes, in case I do not see you prior
24 to sentencing, I wanted you to understand that the presentence
25 investigation report is very important to me in deciding what

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1 sentence to impose. It is very useful to me. In fact, it is
2 most useful when it is complete and when it is accurate. So I
3 won't give you legal advice, sir, but I'd ask that if you
4 choose to speak with the probation office that you consider
5 ensuring that what you say to them is as truthful and accurate
6 as it can be, again, given the importance that I place on the
7 report.

8 I also want you to know that you'll have the
9 opportunity to review the report before I see it, as will your
10 attorney, as will the attorneys for the government. I invite
11 you to look at the report beforehand, sir, in case there's
12 anything that you would like to supplement or modify or correct
13 or object to. Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: May I ask the parties, would you like a
16 control date at this time?

17 MR. BALSAMELLO: Sure, that would be fine, your Honor.

18 THE COURT: Are you looking to go six months out or
19 something less than that, sir?

20 MR. BALSAMELLO: That would be fine. If the matter
21 proceeds in a way that we can move sentencing earlier, we can
22 alert the Court as soon as we become aware of that.

23 THE COURT: OK. Ms. Noriega, may I have a control
24 date six months out.

25 THE DEPUTY CLERK: Wednesday, February 19, at

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1 3:00 p.m.

2 MR. KIRTON: That's fine, your Honor. Just in terms
3 of the date, I'd like the probation department to, I guess,
4 start immediately the process by which the presentence report
5 should be prepared. [REDACTED]

6 [REDACTED]

7 [REDACTED] So I
8 didn't want to select a date that was substantially longer than
9 the normal sentencing date just in case my client's case would
10 be ready for sentencing.

11 THE COURT: I see.

12 Mr. Balsamello, you're agreeing that concurrent --
13 though this is a control date, I should begin the process of
14 preparing the PSR, because it is a process for which they
15 usually request 110 to 120 days?

16 MR. BALSAMELLO: Yes, your Honor. May I speak with
17 Mr. Kirton for one moment?

18 THE COURT: You may, of course.

19 MR. BALSAMELLO: Thank you.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

THE COURT: All right. Then I'll ask Ms. Noriega to advise the probation office that this is a date on which there could be a sentencing and that the presentence investigation report should therefore be started.

All right. I will remind the parties that when it comes time for sentencing, I'd like the opening sentencing submission two weeks in advance of sentencing and the responsive sentencing submission one week in advance of sentencing so that I can have a meaningful opportunity to review it.

Mr. Balsamello, when it is appropriate, I'd ask you to provide the factual statement to the probation office.

And, Mr. Kirton, in the coming few weeks, please arrange for the interview of your client.

MR. KIRTON: Yes.

THE COURT: Of course.

Mr. Balsamello, is there anything else you want to bring to my attention in this proceeding?

MR. BALSAMELLO: No, your Honor. Again, your notes may reflect that you already asked about Mr. Reyes' satisfaction with counsel. I may have missed it.

THE COURT: I believe I did ask that.

MR. BALSAMELLO: That's fine. I apologize, then.

THE COURT: But we can have him be satisfied with

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1 Mr. Kirton more than once.

2 Mr. Reyes, I want to make sure I get the language
3 proper. Are you satisfied with your attorney's representation
4 of you in this matter?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Thank you for letting me know.

7 Mr. Balsamello, anything else?

8 MR. BALSAMELLO: No, Judge. Thank you.

9 THE COURT: Mr. Kirton, is there anything you'd like
10 to bring to my attention in this proceeding?

11 MR. KIRTON: No, your Honor. Thank you.

12 THE COURT: I thank you very much.

13 Mr. Reyes, I thank you as well. We are adjourned.

14 (Adjourned)

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