

SCRIPT FOR GUILTY PLEA HEARING

Chief Magistrate Judge Paul A. Zoss, Revised January 6, 2009

INDICTMENT/NO PLEA AGREEMENT

1. INTRODUCTION.

- [If an interpreter is required, the Judge will say the following.]
 - Will the clerk please swear the interpreter?
- This is the case of [name of case].
- You are Mr./Ms. [name of defendant]?
- I am Paul Zoss, a United States Magistrate Judge.
- The record should reflect that the defendant appears personally, and is represented by Mr./Ms. [defense counsel]. The government is represented by Assistant United States Attorney [name of prosecutor].
 - [If an interpreter is being used, the Judge will say the following.]
 - Mr./Ms. [name of defendant], is (*Spanish*) your native language? I want to make certain that your headset is working, and that you can follow what the interpreter is saying to you. Can you hear and understand what the interpreter is saying to you through your headset?
- Mr./Ms. [name of defendant], I want to make sure you understand everything we talk about here today. If you have problems hearing or understanding anything I say, I want you to interrupt me and let me know. Will you do that?

2. NATURE OF THE CHARGE(S).

- Mr./Ms. [name of defendant], the United States Grand Jury for the Northern District of Iowa has returned an Indictment [the Judge will identify the Count(s) in which the defendant is named as a defendant, and describe the charge(s) against him/her]. You have pled not-guilty to this/these charge(s). I understand that you are here today to plead guilty to(*Count(s) @ of*) the Indictment. Mr./Ms. [defense counsel], is that your understanding?

- Mr./Ms. [name of defendant], do you understand what you have been charged with in this case? Have you had the chance to talk with Mr./Ms. [defense counsel] as much as you want about this/these charge(s)?
- Mr./Ms. [defense counsel], do you believe your client understands the charge(s) against him/her?

3. **CONSENT TO PLEAD BEFORE MAGISTRATE JUDGE.**

- Mr./Ms. [name of defendant], you have the right to have a District Court Judge preside over any guilty plea hearing. As a Magistrate Judge, I can preside over this hearing, but only with your voluntary consent.
- You have signed a form stating that you consent to plead guilty before a Magistrate Judge. Do you consent to my presiding over this plea hearing?

4. **DEFENDANT PLACED UNDER OATH.**

- Mr./Ms. [name of defendant], I am now going to place you under oath. Would you please raise your right hand? [The Judge will place the defendant under oath.]
- You are now under oath. You should tell the truth because if you do not, you could be prosecuted for perjury or for making a false statement. In any such prosecution, the government could use against you any statements you make here under oath.

5. **ENSURING MENTAL CAPACITY.**

- Mr./Ms. [name of defendant], I am now going to ask you some personal questions to help me decide if you will be able to understand the matters we will be discussing during this hearing.
- Would you please state your full name? How old are you? (*Are you a citizen of the United States? Of what country are you a citizen?*) How far did you go in school? (*Can you read and write?*) Within the past month,

have you used any illegal drugs? Are you taking any prescription medication? Have you ever suffered from depression, anxiety, or any other mental illness? Do you have any problems from past drug or alcohol use that might make it hard for you to understand what is happening at this hearing today? Do you have any other physical or mental problems?

- Mr./Ms. [defense counsel], do you have any reason to believe your client is not competent to plead guilty at this hearing today?

6. RIGHT TO AN ATTORNEY.

- Mr./Ms. [name of defendant], you have the right to a lawyer to help and represent you during every stage of this case. If at any time you cannot afford a lawyer, you are entitled to a free one.
- Mr./Ms. [defense counsel], are you retained or appointed?
 - [If the defendant's lawyer is court-appointed, the Judge will say the following.] Mr./Ms. [name of defendant], Mr./Ms. [defense counsel] has been appointed to represent you at public expense, and will continue to represent you until your case is concluded, even if you decide to go to trial instead of entering (a) guilty plea(s) to this/these charge(s).
- Are you satisfied with the help you have received from Mr./Ms. [defense counsel]?

7. JURY TRIAL.

- Before I can recommend acceptance of your guilty plea(s), I must explain your trial rights to you. If you plead guilty, you will be giving up your one chance for a jury trial on this/these charge(s). You have the right to a speedy, public jury trial before a jury of 12 people selected from a cross-section of this community. Your jurors would promise under oath to try this

case fairly and justly, based only on what is submitted into evidence at trial and the instructions given to them by the Trial Judge.

- The Judge would tell the jury that you are presumed innocent, and that the presumption of innocence remains with you unless and until, at the end of your trial, the prosecution has convinced the jury of your guilt beyond a reasonable doubt. The Judge would tell the jury that the presumption of innocence alone is enough for you to be acquitted of this/these charge(s). Any verdict by the jury would have to be unanimous, which means all 12 jurors would have to agree on the verdict.
- The prosecution would have to call its witnesses to testify under oath here in court. Your lawyer would not have to question the prosecution's witnesses, although (s)he would have the right to cross-examination them if (s)he wanted to. If you plead guilty, you will be giving up your right to confront the prosecution's witnesses.
- The burden of proof would remain on the prosecution throughout the trial. You would not have to put on a defense or produce any evidence. However, if you wanted to, you could present any relevant evidence to the jury. For example, you could make witnesses come to court by having subpoenas served on them. If you could not afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, the government would have to pay those costs and fees. If you plead guilty, you will be giving up your right to present a defense.
- You would have the right to remain silent. This means you would not have to testify at your trial, although you could testify if you wanted to. If you go to trial but do not testify, the prosecutor would not say anything about it

to the jury. In fact, the Judge would tell the jurors that they must not hold it against you if you decide not to testify.

- You would have the right to appeal, and the right to a free lawyer to help you with your appeal if you could not afford one.
- If you plead guilty, you will be giving up your right to a jury trial, and all of the trial-related rights I have just described. You also will be waiving your right to raise any matters that might have helped you to defend this case, including issues you have raised or could have raised in motions for discovery, motions challenging the Indictment, motions to dismiss the case, or motions to suppress evidence. If you plead guilty, you will be found guilty based upon your guilty plea(s), just as if you had gone to trial and a jury had found you guilty.
- Mr./Ms. [name of defendant], do you understand, if you plead guilty, you will not have a jury trial or any other trial?

8. ELEMENTS AND FACTUAL BASIS.

- Mr./Ms. [name of defendant], I now must establish that you understand the charge(s) you are pleading guilty to, and I must determine that there exists an adequate factual basis to convict you on the charge(s).
- Regarding the charge of [name of first charge], the prosecution would have to prove all of the following matters to the jury: [The Judge will recite the elements of and obtain a factual basis for each charge to which the defendant is pleading guilty.]
- Mr./Ms. [prosecutor], did I accurately describe the elements of this/these charge(s)? Do you believe there is an adequate factual basis in this record for (a) guilty plea(s) to this/these charge(s)?

- Mr./Ms. [defense counsel], do you think your client understands the elements of the charge(s)? Do you believe there is a factual basis for him/her to plead guilty to the/these charge(s)? Do you know of any possible defenses to the charge(s) you have not considered and discussed with your client?

9. **PENALTIES.**

- Mr./Ms. [name of defendant], I want to inform you of the statutory penalties that apply to the charge(s) to which you are pleading guilty.
- On[*Count @,*] the charge of [name of charge], you could be sent to prison for up to (*@ years*)/(life)[, *and there is a mandatory minimum prison sentence of @ years*]; you could be placed on supervised release for up to (*@ years*)/(life)[, *and there is a mandatory minimum term of supervised release of @ years*]; and you could be fined up to \$@. There also is a special assessment of \$100 (*on each count to which you plead guilty, which would be a total of \$ @*).
- [The Judge will repeat for each additional count.]
- The Sentencing Judge also has the power to order forfeiture and restitution.
- Mr./Ms. [name of defendant], do you understand the statutory penalties?
- [If the offense involves **FRAUD** or other intentionally deceptive practices, the Judge will say the following.]
 - Because you have been charged with fraud, the Court also could order you to provide notice of your conviction to any victims of the offense. Mr./Ms. [name of defendant], do you understand?
- [If this is a **SEX CRIME**, the Judge will say the following.]
 - As a result of this conviction, you will be required to register as a sex offender with the national registry of sex offenders, and you will likely be required to register as a sex offender under the laws of the state where you live. Such registration may be required of you for

the rest of your life. (*The Judge will say the following if the defendant will not be in custody following his/her plea:* In fact, you should check with your local authorities to see if you are required, as a result of this plea, to register immediately as a sex offender under the laws of the state where you live.) Mr./Ms. [name of defendant], do you understand?

- Mr./Ms. [name of defendant], you will be in custody for all of any (*jail or*) prison sentence you receive, reduced only by any credit for good time you may earn. You can earn a reduction in your prison sentence for “good time” of up to about 15% of your sentence, which is about 54 days per year(, *but only if you are sentenced to more than one year in custody*). For example:
 - If you are sentenced to six months or one year in jail, then you would not earn any good time credits, but would have to serve your entire sentence in some type of custody.
 - If you are sentenced to (2 yrs./ 5 yrs./ 10 yrs./ 15 yrs./ 20 yrs.) in prison, if you do not get into any trouble while in prison, you could earn up to about (3½ mos./ 9 mos./ 1½ yrs./ 27 mo./ 3 yrs.) off of your prison sentence for good time, which would reduce your time in custody to about (20½ mos./ 51 mos./ 8½ yrs./ 12¾ yrs./ 17 yrs.) on a (2 yr./ 5 yr./ 10 yr./ 15 yr./ 20 yr.) sentence, if you earn all of your good time credits.
- (This is)/(These are) just (an) example(s). I do not know what your sentence will be – that will be up to the Sentencing Judge – but whatever sentence you receive, you never will see a parole board or be paroled out of prison because there is no parole in federal court.
- **[IF THE DEFENDANT IS A U.S. CITIZEN,** the Judge will say the following.]
 - After you have served your prison sentence, you will be placed on supervised release, during which your conduct will be monitored by a probation officer. There are a number of standard conditions of supervised release, and the Sentencing Judge could impose additional special conditions. If you violate any of the conditions of your

supervised release, the Sentencing Judge could revoke your supervised release, and require you to serve in prison all or part of the time you otherwise would have been on supervised release. As a result of this conviction, you also will be deprived of the right to vote, to serve on a jury, to hold public office, and to possess firearms and ammunition.

- **[IF THE DEFENDANT IS NOT A U.S. CITIZEN]**, the Judge will say the following.]
 - After you have served your prison sentence, you will be required to serve a term of supervised release. Because you are not a United States citizen, you likely will be deported immediately after serving your prison sentence, and a condition of your supervised release will be that you not reenter the United States unlawfully while on supervised release. If you reenter the United States unlawfully while on supervised release, the Sentencing Judge likely would revoke your supervised release and require you to serve in prison all or part of the time you otherwise would have been on supervised release. This prison term would be consecutive to any sentence you would receive if you were convicted on a new charge of illegally reentering the United States.
 - This conviction also could affect your status with United States immigration authorities, and could result in the loss of any rights you may have to residency in the United States. In fact, as a result of this conviction, after you are released from confinement, you probably will be deported immediately(, *and it is likely you never will be allowed to legally reenter the United States*).
- Mr./Ms. [name of defendant], do you have any questions about good time, supervised release(, *your residency or immigration rights*), or anything else we have talked about so far?

10. SENTENCING.

- Mr./Ms. [name of defendant], if you plead guilty here today, I will order a Presentence Investigation Report, which will be prepared by a probation officer. The probation officer will conduct a thorough investigation of this

case, and then will prepare a draft Presentence Investigation Report. The probation officer will send a copy of the draft report to the lawyers. You should go over the report carefully. (*If you cannot read the report in English, you should have it read to you in (Spanish).*) Be sure to point out to Mr./Ms. [defense counsel] if there are any mistakes in the report or if anything significant is left out of the report so (s)he can let the probation officer know about it. The probation officer will change the report to address any mistakes or omissions.

- After the report has been finalized, it will be sent to the Sentencing Judge, and copies of the report will be sent to the lawyers. Then you will have a sentencing hearing.
- At the sentencing hearing, the lawyers can present witnesses and exhibits on any sentencing issue, and you will be given a chance to talk to the Judge directly, if you want.
- During the hearing, the Sentencing Judge will perform a calculation under the federal sentencing guidelines, which are guidelines issued by the United States Sentencing Commission. This calculation will result in an “advisory guideline range,” which is a range of months within which the Sentencing Commission suggests that you be sent to (*jail or*) prison. The Sentencing Judge will consider this range in determining your sentence, but is not required to sentence you within this range. The Sentencing Judge can depart or vary from the advisory guideline range so long as the sentence you receive is reasonable.
- [The Judge will ask defense counsel, and then the prosecutor, the following.]
What is your prediction as to how the Guidelines might work in this case?

- Mr./Ms. [name of defendant], I have asked for these predictions just to give you an idea of what could happen at your sentencing hearing. You should understand that neither the lawyers nor I will be sentencing you. A District Court Judge will determine your sentence. At the sentencing hearing, the Judge will review the Presentence Investigation Report, consider the evidence offered at the sentencing hearing, listen to the arguments of the lawyers and any statement you make, and then arrive at his or her own guideline calculation. The Judge may calculate a higher or lower advisory guideline range than what we have talked about here today. Also, as I have said, the guidelines are advisory only. The Sentencing Judge could depart or vary from whatever advisory guideline range he or she calculates, and impose a sentence outside of the range. This means you could receive a sentence below or above the advisory guideline range(, *and in fact, you could receive a sentence all the way up to the maximum statutory sentence*).
- **[IF THERE IS A STATUTORY MANDATORY MINIMUM SENTENCE,** the Judge will say the following.]
 - You also should understand that however the guideline range is calculated, and regardless of whether the Sentencing Judge departs or varies from the guidelines, the Judge cannot sentence you below @ years in prison, the statutory mandatory minimum sentence, even if the Judge wants to[, unless (*either the safety valve applies or*) you provide substantial assistance to the government and the United States Attorney’s Office asks the Judge to sentence you below the mandatory minimum. (*For the safety valve to apply, [the Judge will describe the requirements for the application of the safety valve and the potential ramifications of the safety valve].*) You should understand that even if you believe you have provided substantial assistance to the government, there is no guarantee the United States Attorney will file a departure motion or that the Sentencing Judge will sentence you below the mandatory minimum].

- Mr./Ms. [name of defendant], do you understand that the Sentencing Judge may give you a sentence that is different from what you are hoping for or what Mr./Ms. [defense counsel] may have predicted?
- Do you have any questions about how you would be sentenced?

11. ACCEPTANCE OF GUILTY PLEA/RIGHT TO APPEAL.

- Mr./Ms. [name of defendant], after your guilty plea(s) is/are accepted by the District Court Judge, you will have no right to withdraw your guilty plea(s), even if you do not like the sentence you receive. However, under some circumstances, you and/or the government may have the right to appeal from what happens at the sentencing hearing. Mr./Ms. [name of defendant], do you have any questions about this?

12. VOLUNTARINESS AND VALIDITY OF PLEA(S).

- Mr./Ms. [name of defendant], has anyone forced or pressured you to plead guilty or made any promises to you to get you to plead guilty?
- Mr./Ms. [defense counsel], if your client pleads guilty, do you believe his/her guilty plea(s) would be voluntary? Do you know of any legal reason why his/her guilty plea(s) should not be accepted? Do you know of anything the Court has omitted that could affect the validity of your client's guilty plea(s)?
- Mr./Ms. [prosecutor], do you know of anything the Court has omitted that could affect the validity of the defendant's guilty plea(s)?
- Mr./Ms. [name of defendant], do you have any questions about the matters we have discussed here today? Do you still want to plead guilty? Are you pleading guilty of your own free will? Are you pleading guilty because you are, in fact, guilty?

13. PLEA.

- Mr./Ms. [name of defendant], formally and for the record, how do you plead to the charge of [name of offense] in Count @, guilty or not guilty? [The Judge will repeat for each charge to which the defendant is pleading guilty.]
- The record should reflect that the defendant has pled guilty to (*Count(s) @ of*) the Indictment.

14. FINDINGS.

- I find that the defendant has consented to proceed before a United States Magistrate Judge for this guilty plea hearing.
- The defendant is competent, (s)he fully understands the charge(s) against him/her, there is a factual basis for his/her plea(s) of guilty, (s)he knows the maximum punishment that could be imposed on the charge(s), and (s)he knows his/her jury rights and has voluntarily waived those rights.
- I further find that the defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises.
- Therefore, I find the defendant should be adjudged guilty based on his/her plea(s) of guilty.

15. REPORT AND RECOMMENDATION AND PSI.

- I have signed and will file a Report and Recommendation, recommending that the defendant's guilty plea(s) be accepted. I am providing copies of the Report and Recommendation to the lawyers for the parties. [The Judge will provide the lawyers with copies of the report and recommendation.] The parties have 10 days from today's date, not counting weekends and holidays, to file objections to the Report and Recommendation. If a party fails to file a timely objection, the party will have waived the right to make the

objection. After reviewing any objections, the District Court Judge may accept the Report and Recommendation, and the defendant's guilty plea(s), by simply entering a written order doing so.

- **I HEREBY ORDER** a Presentence Investigation Report. The parties should pay careful attention to the deadlines relating to the preparation of the Report. [The Judge will tell the defendant about any scheduled sentencing date; e.g., "Judge [name of District Court Judge] has scheduled a sentencing hearing in this case for (date and time)" or "Judge [name of District Court Judge] will schedule a sentencing hearing in this case for a later date."]

16. ADJOURNMENT.

- [The Judge will take care of any detention issues and, if appropriate, remand the defendant to the custody of the United States Marshal.]
- Do the lawyers want to make any further record? Mr./Ms. [prosecutor]? Mr./Ms. [defense counsel]? We are in recess.