

GUILTY PLEA COLLOQUY – UNLAWFUL REENTRY CASES

DATE

No. **CR**

United States v.

AUSA:

Defendant's Lawyer:

Probation officer: **Name**

Interpreter: **None**

[THE JUDGE WILL HAVE ANY INTERPRETER SWORN]

[THE JUDGE WILL ANNOUNCE THE CASE]

You're **[Mr./Ms. defendant]**? I'm Paul Zoss, a United States Magistrate Judge. On **[date of Indictment/Information]**, (the United States Grand Jury for the Northern District of Iowa returned an Indictment against you) **(or)** (the United States Attorney filed a ____ - count Information against you) charging you with unlawfully reentering the United States after you were removed. You've pled not guilty to this charge. I've been advised that you now wish to change your plea and enter a plea of guilty to the **Indictment/Information**.

[Mr./Ms. defense counsel], is that your understanding?

1. CONSENT TO PLEAD GUILTY BEFORE MAGISTRATE JUDGE

[Mr./Ms. defendant], this case is assigned to a district court judge, Judge **[name of district court judge]**. You have the right under the United States Constitution to have a district court judge preside over any guilty plea hearing. I can preside over this hearing, but since I'm a magistrate judge, I can only do so with your voluntary consent. You've signed a form stating that you consent to have me preside over this plea hearing. Is that what you'd like me to do?

[Mr./Ms. defense counsel], do you believe your client's consent is knowing and voluntary?

Very well, I'll accept the defendant's consent and go ahead with the guilty plea hearing.

2. THE OATH

[*Mr./Ms. defendant*], would you please raise your hand?

[THE JUDGE WILL PLACE THE DEFENDANT UNDER OATH]

You may put your hand down. [*Mr./Ms. defendant*], you're now under oath. You should tell the truth because if you don't, 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.

Even though you've come here today to plead guilty, you have the right to stay with your not-guilty plea. If you change your mind during this hearing and decide you don't want to plead guilty, just tell me and I'll recess the hearing and [*schedule your case for trial*] [*your case will go to trial as scheduled*].

Do you understand?

3. ENSURING MENTAL CAPACITY

[*Mr./Ms. defendant*], would you please state your full name? How old are you?

Are you a U.S. Citizen? Of what country are you a citizen?

Is (*Spanish*) your native language? Are you able to hear and understand what the interpreter is saying to you in (*Spanish*)?

[*Mr./Ms. defendant*], will you promise to let me know if you have problems hearing or understanding anything that comes up during this hearing today?

Have you ever **abused drugs or alcohol**? [*If "yes," then the judge will say the following:*] Do you think the fact you used (*drugs and/or alcohol*) in the past might make it hard for you to understand the legal matters we'll be talking about at this hearing today?

Have you ever suffered from **depression, anxiety, or any other mental illness**? [*If "yes," then the judge will say the following:*] Please give me a brief summary of your mental health problems. Do you think your mental health problems (*or the medications you're taking to treat your mental health problems*) might make it hard for you to understand the legal matters we'll be talking about at this hearing today?

Within the past week, have you used or taken **alcohol, legal or illegal drugs, or prescription or non-prescription medication**? [*If “yes,” then the judge will say the following:*] What have you used or taken? Do you think this might interfere with your ability to understand the legal matters we’ll be talking about at this hearing today?

Do you feel you’re competent to proceed with a plea hearing today?

[Mr./Ms. defense counsel], do you agree?

I ALSO AGREE, AND SO FIND.

4. RIGHT TO A LAWYER

[Mr./Ms. defendant], you have the right to a lawyer to help and represent you during every stage of this case. If at any time you can’t afford a lawyer, you’re entitled to a free one.

(If the defendant’s lawyer is not with the Federal Public Defender’s office, the judge will say the following.) **[Mr./Ms. defense counsel]**, are you retained or appointed?

[Mr./Ms. defendant], are you satisfied with the representation you’ve received from **[Mr./Ms. defense counsel]**?

5. INDICTMENT/INFORMATION

As I’ve told you, you’ve been charged with unlawfully reentering the United States after you were removed by immigration authorities. Do you understand what you’ve 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 charge?

[Mr./Ms. defense counsel], do you believe your client understands the charge against **him/her**?

6. PENALTIES

[Mr./Ms. defendant], under the statutes that apply to this charge, you could be sent to prison for up to _____ years, placed on supervised release for up to

_____ year(s), and fined up to \$ _____. Judge [name of district court judge] also will impose, and you'll have to pay, a special assessment of \$100.

Do you understand the statutory penalties?

You should understand you'll 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, or about 54 days per year[, *but only if you're sentenced to more than one year in custody*]. For example,

If you're sentenced to six months or one year in jail, you won't earn any good time credits, but will have to serve your entire sentence in some type of custody.

If you're sentenced to (2 yrs./5 yrs./10 yrs.) in prison, you could earn about (3½ mo./ 9 mo. /1½ yrs.) off of your prison sentence for good time, which, if you earned all of your good time credits, would reduce your time in custody on the (2 yr./ 5 yr./ 10 yr.) sentence to (20½ mo./ 51 mo./ 8½ yrs.).

After you've served your [jail or] prison sentence, you'll be required to serve a term of supervised release. Since you're not a U.S. citizen, you'll be deported immediately after serving your [jail or] prison sentence, and a condition of your supervised release will be that you not reenter the United States while on supervised release. If you do, Judge [name of district court 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'd receive if you were convicted on another charge of illegally reentering the United States.

Do you have any questions about good time or supervised release?

7. COLLATERAL CONSEQUENCES

After serving your sentence, you'll likely be deported[, *and it's unlikely you'll ever be allowed to lawfully come back to the United States*].

Do you understand?

8. RIGHT TO A JURY TRIAL

[*Mr./Ms. defendant*], if you plead guilty, you'll be giving up your one chance for a jury trial on this charge.

You have the right to a speedy, public jury trial before a jury of 12 people selected from a cross-section of this community. You have the right to be represented by a lawyer throughout the trial. You and your lawyer would help choose the people who'd serve on your jury.

Your jurors would promise under oath to try your case fairly and justly, based only on what's submitted into evidence at trial and the instructions given to them by Judge [*name of district court judge*]. Judge [*name of district court judge*] would tell the jury that you're 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. Judge [*name of district court judge*] also would tell the jury that the presumption of innocence alone is enough for you to be acquitted of this charge.

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. You'd be able to see and hear their testimony, and they'd be able to see you while they're testifying. [*Mr./Ms. defense counsel*] wouldn't have to question the prosecution's witnesses at all, but if (s)he wanted to, (s)he could confront them by cross-examining them.

The burden of proof would remain on the prosecution throughout the trial. You wouldn't 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. These subpoenas could be served anywhere in the United States, and would require your witnesses to come to this court for your trial. If you couldn't afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, I'd make the Government pay those costs and fees.

You could testify at your trial if you wanted to, but you wouldn't have to. If you decided not to testify, [*Mr./Ms. prosecutor*], the prosecutor, wouldn't say anything about it to the jury. In fact, Judge [*name of district court judge*] would tell the jurors that you have a constitutional right not to testify, and (s)he'd also tell them that they must not hold it against you if you don't testify.

You'd have the right to appeal, and the right to a free lawyer to help you with your appeal if you couldn't afford one.

Do you understand the rights I've just described to you?

9. WAIVER OF RIGHTS BY PLEADING GUILTY

If you plead guilty, you'll be giving up your right to a jury trial. 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/Information**, motions to dismiss the case, or motions to suppress evidence.

If you plead guilty, you'll have no trial. You'll be adjudged guilty based on your plea, just as if a jury had returned a guilty verdict against you.

[Mr./Ms. defendant], do you understand, if you plead guilty, you won't have a jury trial or any other trial?

10. SENTENCING HEARING

[Mr./Ms. defendant], if you plead guilty here today, I'll order a **presentence investigation report**, which will be prepared by **[Mr./Ms. probation officer]** a probation officer. **[Mr./Ms. probation officer]** will conduct a thorough investigation of this case, and then will prepare a draft presentence investigation report. **(S)he**'ll send a copy of the draft report to the lawyers. You should go over the report carefully. [*If you can't read the report in English, you should have it read to you in (Spanish) (your native language).*] 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 **[Mr./Ms. probation officer]** know about it. **[Mr./Ms. probation officer]** will be happy to change the report to make it complete and correct.

After the report has been finalized, it will be sent to Judge **[name of district court judge]**, and copies of the report will be sent to the lawyers. Then you'll have a sentencing hearing.

At the sentencing hearing, the lawyers can present witnesses and exhibits on any sentencing issue, and you'll be given a chance to talk to Judge **[name of district court judge]** directly to tell **him/her** anything you want.

During the sentencing hearing, Judge [name of district court 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. Judge [name of district court judge] will consider this range in determining your sentence, but (s)he’s not required to sentence you within this range. So long as the sentence (s)he gives you is reasonable, (s)he can depart from the advisory guideline range based on the factors listed in the sentencing guidelines, or (s)he can vary from the range based on the factors listed in the sentencing statutes.

[Mr./Ms. defense counsel], what’s your prediction as to how the Guidelines might work in this case? [Mr./Ms. prosecutor]?

[Mr./Ms. defendant], I’ve 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. Judge [name of district court judge] has the responsibility for determining your sentence. At the sentencing hearing, (s)he’ll review the presentence investigation report, consider the evidence offered at the sentencing hearing, and listen to the arguments of the lawyers and any statement you make, and then arrive at his/her own guideline calculation. The possible guideline calculation(s) we’ve talked about today are not binding on Judge [name of district court judge]. (S)he may calculate a higher or lower advisory guideline range than [what the parties have stipulated or] what we’ve talked about here. Also, as I’ve said, these guidelines are advisory only. Judge [name of district court judge] could depart or vary from whatever advisory guideline range (s)he 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.

[Mr./Ms. defendant], do you understand, the sentence Judge [name of district court judge] gives you may be different from what you’re hoping for or what [Mr./Ms. defense counsel] may have predicted?

[Mr./Ms. defendant], after your guilty plea is accepted by Judge [name of district court judge], you’ll have no right to withdraw your guilty plea, even if you don’t like the sentence (s)he gives you. However, under some circumstances, you and/or the Government may have the right to appeal from what happens at the sentencing hearing.

Do you have any questions so far?

11. ELEMENTS AND FACTUAL BASIS

[*Mr./Ms. defendant*], to convict you on this charge, the prosecution would have to prove all of the following elements beyond a reasonable doubt to the satisfaction of a unanimous jury: [*The judge will discuss the elements and the required factual basis.*]

First, the prosecution would have to prove that you were not a citizen of the United States on the date alleged in the **Indictment/Information**, [*date*]. Do you understand this element?

Have you ever been a citizen of the United States?

Second, the prosecution would have to prove that immigration authorities removed you from the United States, and returned you to [*the defendant's native country*] on or about the date alleged in the **Indictment/Information**, [*date*]. Do you understand this element?

Did the immigration authorities remove you from the United States and return you to [*the defendant's native country*] on or about that date?

Third, the prosecution would have to prove that after you were removed from the United States by immigration authorities and returned to [*the defendant's native country*], you unlawfully returned to the United States [on or about (date) at (location)], and then were found and arrested in the Northern District of Iowa. Do you understand this element?

After you were removed to [*the defendant's native country*] by immigration authorities, did you unlawfully return to the United States [on or about (date) at (location)]? Where were you then arrested on this charge here in the Northern District of Iowa?

Fourth, the prosecution would have to prove that when you returned to the United States, you did so knowingly, intentionally, and unlawfully. Do you understand this element?

Did you return to the United States knowingly, intentionally, and unlawfully?

Fifth, the prosecution would have to prove that when you returned to the United States, you did not have any paperwork from ICE, Homeland Security, or the

Department of Justice that granted you permission to reenter the United States lawfully. Do you understand this element?

When you returned to the United States, did you have any paperwork from the ICE, Homeland Security, or the Department of Justice that granted you permission to reenter the United States lawfully.

[*Mr./Ms. prosecutor*], did I correctly explain the elements of the charge to the defendant? Do you believe I've established an adequate factual basis for a guilty plea to the charge?

[*Mr./Ms. defense counsel*], do you think your client understands the elements of the charge against *him/her*? Have you had full access to the Government's discovery materials? Do you believe they support a factual basis for a guilty plea to the charge? Do you know of any possible defenses to the charge you haven't discussed with your client?

12. ENSURING VOLUNTARINESS OF PLEA

[*Mr./Ms. 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*], do you believe a guilty plea by your client to the charge against *him/her* would be voluntary?

13. [*The judge will ask the lawyers the following question:*] **ARE THERE ANY FURTHER QUESTIONS YOU THINK I SHOULD ASK, [*Mr./Ms. defense counsel*]? [*Mr./Ms. prosecutor*]?**

14. [*Mr./Ms. defendant*], **DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING? DO YOU STILL WANT TO PLEAD GUILTY? ARE YOU PLEADING GUILTY OF YOUR OWN FREE WILL, AND BECAUSE YOU ARE, IN FACT, GUILTY?**

15. [*Mr./Ms. defendant*], **FORMALLY AND FOR THE RECORD, how do you plead to the *Indictment/Information* – guilty or not guilty?**

The record should reflect that the defendant has pled guilty to the *Indictment/Information*.

16. I find that:

the defendant is competent; (s)he fully understands the charge against him/her; there's a factual basis for his/her plea; (s)he knows the maximum punishment that could be imposed on the charge; 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 of guilty.

17. Report and Recommendation

I've signed and will file my Report and Recommendation, recommending that the defendant's guilty plea be accepted. [*I'm serving*] [*Later today, I'll file and have served*] copies of the Report and Recommendation on the lawyers for the parties. **[THE JUDGE WILL PROVIDE LAWYERS WITH COPY OF REPORT AND RECOMMENDATION.]** The parties are advised they 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, Judge [*name of district court judge*] may accept the Report and Recommendation, and the defendant's plea of guilty, by simply entering a written order doing so.

18. 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.”]*

19. [*The judge will ask the lawyers the following question:*] IS THERE ANYTHING FURTHER THAT NEEDS TO BE DONE TO CONCLUDE THIS HEARING [*Mr./Ms. defense counsel*]? [*Mr./Ms. prosecutor*]?

20. [*The judge will address the defendant, if appropriate.*]

We are in recess.