



U.S. Department of Justice

United States Attorney  
Southern District of New York

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The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

August 18, 2011

**By Electronic Transmission**

Mark A. Racanelli, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Email: mracanelli@omm.com

Re: **United States v. John Fredy Norena-Correa, a/k/a "Frank"**  
**S1 09 Cr. 723(LAK)**

Dear Mr. Racanelli:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from John Fredy Norena-Correa, a/k/a "Frank" ("the defendant") to Counts One and Two of the above-referenced Indictment.

Count One charges the defendant with conspiring to distribute and possess with intent to distribute one kilogram and more of mixtures and substances containing a detectable amount of heroin and five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A). Under the terms of this Agreement, however, the Government will accept a guilty plea from the defendant to conspiring to distribute and possess with intent to distribute only one kilogram and more of mixtures and substances containing a detectable amount of heroin, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A).

Count Two charges the defendant with conspiring to import into the United States one kilogram and more of mixtures and substances containing a detectable amount of heroin and five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Sections 963, 960(a)(1) and 960(b)(1)(A) and (B). Under the terms of this Agreement, however, the Government will accept a guilty plea from the defendant to conspiring to import into the United States only one kilogram and more of mixture and substances containing a detectable amount of heroin, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A).

Counts One and Two each carry a maximum sentence of life imprisonment; a mandatory minimum sentence of 10 years' imprisonment; a maximum fine of \$4,000,000 or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to persons other than the defendant; a maximum of a life term of supervised release with a minimum of five years' supervised release; and a mandatory \$100 special assessment. The total maximum term of imprisonment on Counts One and Two is life, with a mandatory minimum term of 10 years.<sup>1</sup>

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for his trafficking of heroin and cocaine between Colombia and the United States from in or about 2007 through 2009, as charged in Counts One and Two of the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegation with respect to Counts One and Two of the Indictment and agrees to forfeit to the United States, pursuant to Title 21, United States Code, Sections 853 and 970: a sum of money in United States currency, representing any and all property constituting and derived from any proceeds that the defendants obtained directly and indirectly as a result of the said violation and any and all property used and intended to be used in any manner or part to commit and to facilitate the commission of the violations alleged in Counts One and Two of this Indictment (the "Money Judgment"). It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The Guidelines provisions in effect as of November 1, 2010, apply to the conduct charged in the Indictment.
2. Pursuant to U.S.S.G. § 3D1.2, Counts One and Two are grouped together.

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<sup>1</sup> The United States has made assurances to the Government of Colombia, from where the defendant was extradited, that it will not seek a term of life imprisonment.

3. The offense level applicable to both counts is calculated as follows:
  - a. U.S.S.G. § 2D1.1 applies to the narcotics offenses charged in Counts One and Two.
  - b. Pursuant to U.S.S.G. §§ 2D1.1(a)(5) and (c)(2), the base offense level is 36 because the offense involves more than 10 kilograms and less than 30 kilograms of heroin.
4. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 33.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history, which places him in Criminal History Category I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 135 to 168 months, with a mandatory minimum term of 120 months' imprisonment (the "Stipulated Guidelines Range").<sup>2</sup>

Notwithstanding any of the foregoing, the parties agree that, in the event the defendant seeks to qualify for relief from the mandatory sentencing provisions of Title 21 pursuant to Title 18,

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<sup>2</sup> The Government agrees that, consistent with this Agreement, the defendant may argue at sentencing that he is entitled to receive additional credit toward his sentence beyond the period of time that he spent in Colombian custody prior to his extradition to the United States, due to the conditions of the defendant's confinement. The Government reserves the right to oppose the defendant's receipt of any such additional credit.

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United States Code, Section 3553(f), and/or for a reduction in sentence pursuant to U.S.S.G. §§ 2D1.1(b)(11) and 5C1.2, and information furnished by the defendant at meetings with the Government and/or evidence obtained directly or indirectly therefrom supports a higher Guidelines range than that to which the parties have stipulated above, the Government: (i) will not be bound by the above-referenced stipulations regarding the appropriate sentencing range; and (ii) may offer into evidence, in connection with sentencing and for purposes of calculating the appropriate Guidelines range, statements made by the defendant at meetings with the Government.

In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 33, the applicable fine range is \$17,500 to \$4,000,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at

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the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 135 to 168 months' imprisonment and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any forfeiture amount that is less than or equal to the amount of the Money Judgment, and the Government agrees not to appeal any forfeiture amount that is greater than or equal to the amount of the Money Judgment.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than

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information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that because he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

It is further agreed that should the convictions following the defendant's pleas of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

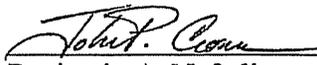
It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

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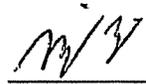
Apart from any written Proffer Agreement that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

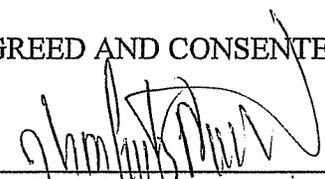
PREET BHARARA  
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APPROVED:

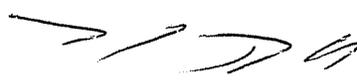
  
Michael Farbiarz  
Chief, Terrorism and International  
Narcotics Unit

AGREED AND CONSENTED TO:

  
John Fredy Norena-Correa

  
DATE

APPROVED:

  
Mark Racanelli, Esq.  
Attorney for John Fredy Norena-Correa

  
DATE