

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:16-cr-00005-MR-DLH**

FILED
IN COURT
ASHEVILLE, N.C.
NOV 29 2016
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA)	
)	RULE 11 INQUIRY
)	
vs.)	ORDER ACCEPTING
)	GUILTY PLEA
)	(WITH 11(c)(1)(C)
JUSTIN NOJAN SULLIVAN)	PLEA AGREEMENT)
_____)	

The Court is advised that you have decided to change your plea of not guilty to guilty. The Court is required by the Federal Rules of Criminal Procedure to inquire and advise you concerning your plea. The Court must ask you some questions and you will be required to personally respond to those questions under oath. I will now ask the Clerk to administer the oath to you.

1. Do you understand that you are now under oath and that you are required to give truthful answers to the questions that I am about to ask you?

YES: ✓ NO:

2. Do you understand that if you give false information under oath you may be prosecuted for perjury or false statements?

YES: _____ NO: _____

3. Are you able to hear and understand my questions?

YES: _____ NO: _____

4. a) There has been presented to me a document entitled "Sealed Addendum to Entry and Acceptance of Guilty Plea" which provides information to the Court concerning your name, age, education, use of drugs or alcohol and medical information. Did you provide the information for the completion of that document and did you sign that document?

YES: _____ NO: _____

b) Is all the information provided in the document true and accurate?

YES: _____ NO: _____

5. Is your mind clear and do you understand that you are here today to enter a guilty plea that may not later be withdrawn except in some limited circumstances that I will explain to you?

YES: _____ NO: _____

6. Do you understand that you are here today to enter a guilty plea pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure? I am advised from the plea agreement that the attorneys for the Government and you and your attorney have agreed that a specific sentence is the appropriate disposition of your case and if the Court accepts the plea agreement and then accepts the sentence, the agreed sentence will be included by the Court in the judgment. If the

Court rejects the plea agreement, or if the Court rejects the specific sentence recommendation, then you will be given an opportunity to withdraw your plea of guilty. Do you understand all of these things?

YES: _____ NO: _____

7. Have you reviewed the Superseding Bill of Indictment with your attorney, and have you and your attorney reviewed the Plea Agreement?

YES: _____ NO: _____

8. From my examination of the Plea Agreement I am advised that you are pleading guilty to Count Nine as contained in the Superseding Bill of Indictment, which charges you with attempted acts of terrorism transcending national boundaries. Are you in fact pleading guilty to this Count as contained in the Superseding Bill of Indictment?

YES: _____ NO: _____

STATUTE VIOLATED

You are charged in Count Nine of the Superseding Bill of Indictment with violating Title 18, United States Code, Sections 2332b(a)(1) and (2), which read in pertinent part, as follows:

(1) Offenses. Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b)--

(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or

(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure,

conveyance, or other real or personal property within the United States;

in violation of the laws of any State, or the United States, shall be punished as prescribed in subsection (c).

(2) Treatment of threats, attempts and conspiracies. Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished under subsection (c).

(b) Jurisdictional bases.--

(1) Circumstances.--The circumstances referred to in subsection (a) [include]

(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense; [or]

(B) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated.

ESSENTIAL ELEMENTS

The essential elements the Government would be required to prove beyond a reasonable doubt are as follows:

1. The defendant knowingly and intentionally attempted to kill, maim, or assault one or more persons within the United States in violation of state or federal law;
2. The defendant's conduct transcended national boundaries; and
3. The defendant used a facility of interstate or foreign commerce in furtherance of the offense, or the offense, if consummated, would have obstructed, delayed or affected interstate or foreign commerce.

PENALTY

The maximum penalties for this offense, as prescribed by Title 18, United States Code, Section 2332b(c), are a term of imprisonment for life; a fine of \$250,000; a term of supervised release for any term of years or life; and a \$100 special assessment.

9. a) Do you fully understand the charge against you, including the maximum penalties?

YES: _____ NO: _____

- b) Do you understand each element of the offense charged?

YES: _____ NO: _____

- c) Do you understand that upon a plea of not guilty the Government would be required to prove each element of the offense charged beyond a reasonable doubt?

YES: _____ NO: _____

- d) Do you understand that the Government would be required to prove that the unlawful acts were committed knowingly, willfully, intentionally, and unlawfully?

YES: _____ NO: _____

10. Have you been advised by your attorney that if you are not a citizen of the United States, your guilty plea may result in your deportation or removal from this country, your exclusion from admission to this country, or the denial of your naturalization under Federal law?

YES: _____ NO: _____

11. If the Court imposes an active term of imprisonment of more than one year, the court is required also to order a term of "supervised release," and a term of supervised release may be ordered in other circumstances. This means that after a defendant is released from prison, there are certain terms and conditions they will be required to follow. The length of supervised release usually ranges from one to five years, but may be more or less than that for certain offenses. Do you understand the term "supervised release" as the Court has explained it to you?

YES: ✓ NO:

12. Do you understand that if you violate the terms and conditions of supervised release, you could be returned to prison for an additional period of time?

YES: ✓ NO:

13. Do you understand that parole has been abolished in the federal system; and if you are sentenced to a term of imprisonment, you will not be released on parole?

YES: ✓ NO:

14. Have you and your attorney discussed how the Sentencing Guidelines may apply in your case?

YES: ✓ NO:

15. Do you understand how these Guidelines may apply to you?

YES: ✓ NO:

16. Do you understand that even though your plea is being presented under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure the Court must consult the United States Sentencing Guidelines and take them into account in determining whether or not to accept your plea and enter a specific sentence in accordance with that set forth in the written plea agreement?

YES: NO:

17. Do you understand that the sentence the Court will impose will be within the statutory limits for the offense to which you are pleading guilty?

YES: NO:

18. Do you understand that it is within the Court's sound discretion as to whether or not to accept the plea agreement and enter a judgment for the agreed upon specific sentence?

YES: NO:

19. Do you understand that the Court will follow the procedural components of the Guidelines system, which means that the Probation Office will prepare a presentence report which contains Guidelines calculations and both you and the Government will have an opportunity to object to any alleged deficiencies in the report?

YES: NO:

20. Do you understand that due to your plea being pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that if the Court accepts the plea, then such acceptance is conditional upon the Court imposing a sentence that is consistent with the agreed disposition set forth in the written plea agreement?

YES: ✓ NO: _____

21. Do you understand that if the Court does not accept and impose the specific sentence as agreed between yourself and the Government in the plea agreement, you will be given an opportunity to withdraw your plea of guilty?

YES: ✓ NO: _____

22. Do you understand that the Court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of the offense. The Court may also, in the appropriate circumstance, require you to pay the costs of your confinement in prison or costs of supervision or special investigative costs, or all of these costs. The Court may also require you to forfeit property involved in the offenses. Do you understand these requirements as I have explained them to you?

YES: ✓ NO: _____

23. Do you understand you have a right to plead not guilty, to have a speedy trial before a judge and jury, to summon witnesses to testify on your behalf, and to confront witnesses against you?

YES: ✓ NO: _____

24. Do you understand that if you exercise your right to trial you would be entitled to the assistance of an attorney, that you would not be required to testify, that you would be presumed innocent, and the burden would be on the Government to prove your guilt beyond a reasonable doubt. Do you understand all of these rights?

YES: _____ NO: _____

25. Do you understand that by entering a plea of guilty, you forfeit and waive (or give up) your right to plead not guilty, to a trial by jury, and at that trial the right to assistance of counsel, the right to confront and cross-examine witnesses against you, and the right against compelled self-incrimination or any other rights associated with a jury trial? Do you understand that by entering this plea of guilty you are waiving (or giving up) all of these rights. There will be no trial. If your plea of guilty is accepted, there will be one more hearing where this Court will determine whether to impose the agreed upon sentence. Do you understand all of these things?

YES: _____ NO: _____

26. Are you, in fact, guilty of the count in the Superseding Bill of Indictment to which you have come to court today to plead guilty? That is, did you commit the acts described in Count Nine of the Superseding Bill of Indictment?

YES: _____ NO: _____

27. There has been filed with the Court a 24-page document entitled "Factual Basis." Have you had an opportunity to review that document with your attorney?

YES: _____ NO: _____

a) Do you understand the contents of that document?

YES: _____ NO: _____

b) On the last page of that document your attorney has signed a statement that "the Defendant does not dispute this Factual Basis with the exception of those facts which are stated in italics." Is that a true statement? That is, do you not dispute the statements in that document with the exception of those portions written in italics?

YES: _____ NO: _____

28. a) Is your plea of guilty voluntary?

YES: _____ NO: _____

b) Other than the promises contained in the written plea agreement, has anyone made any promise to you or threatened you in any way to cause to enter this plea of guilty against your wishes?

YES: _____ NO: _____

c) Do you enter this plea of guilty of your own free will, fully understanding what you are doing?

YES: _____ NO: _____

29. Do you understand that entering a plea of guilty to a felony charge may deprive you, at least for a time, of certain civil rights such as the right to vote, hold a public office, serve on a jury and possess a firearm?

YES: _____ NO: _____

30. Is your willingness to plead guilty the result of prior discussions between your attorney and the attorney for the Government?

YES: _____ NO: _____

31. Have you and the Government entered into a plea agreement in regard to this case?

YES: _____ NO: _____

[Attorney for the government will present the terms of the agreement.]

32. Do you understand and agree with the terms of the plea agreement as they have just been explained to you?

YES: _____ NO: _____

33. Is this your signature on the plea agreement?

YES: _____ NO: _____

34. Have you discussed your right to appeal with your attorney, and do you understand the plea agreement in this case provides that you may not appeal your conviction or sentence or contest the same in a post-conviction proceeding unless it is on the grounds of prosecutorial misconduct or ineffective assistance of counsel?

YES: _____ NO: _____

35. Do you knowingly and willingly accept this limitation on your right to appeal and to file post-conviction proceedings?

YES: _____ NO: _____

36. Counsel, have you reviewed each of the terms of the plea agreement with the Defendant and are you satisfied that he understands those terms?

YES: ✓ NO: _____

37. Have you had ample time to discuss with your attorney any possible defenses you may have to this charge, and have you told your attorney everything you want her to know about this case?

YES: ✓ NO: _____

38. Are you entirely satisfied with the services of your attorney?

YES: ✓ NO: _____

39. Are you telling the Court that you know and understand fully what you are doing; that you heard and understood all parts of this proceeding; and that you want the Court to accept your plea of guilty?

YES: ✓ NO: _____


40. Do you have questions, statements, or comments to make about anything brought up or discussed in the course of the proceeding?

YES: ✓ NO: _____

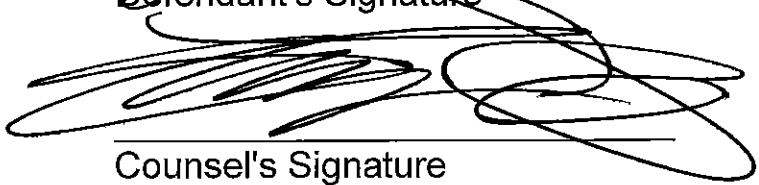
statement.

On advice and in the presence of counsel, the Defendant respectfully requests the Court to accept his guilty plea. By signing below, the Defendant (and counsel) certify and affirm that the answers given to the questions

propounded by the Court, as recorded above and on the record, are true and accurate to the best of their knowledge.



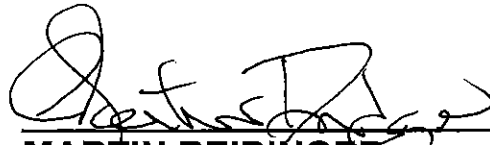
Defendant's Signature



Counsel's Signature

Based upon the representations and answers given by the Defendant (and counsel) in the foregoing Rule 11 proceeding, the Court finds that the Defendant's plea is knowingly and voluntarily made; and that the Defendant understands the charges, potential penalties, and consequences of said plea. The Court further finds that the Defendant's plea is supported by an independent basis in fact containing each of the elements of the offense charged against the Defendant in Count Nine of the Superseding Bill of Indictment. Accordingly, the Defendant's guilty plea is hereby accepted, and the Defendant is adjudicated to be guilty of said count. This plea of guilty is accepted pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure and is conditioned only upon the acceptance by the Court of the agreed sentence at a sentencing hearing in accordance with the Federal Rules of Criminal Procedure.

IT IS SO ORDERED.



MARTIN REIDINGER
UNITED STATES DISTRICT JUDGE