

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 14-20640-Cr-Scola

UNITED STATES OF AMERICA
vs.
GILBERTO SUAREZ,
Defendant.

PLEA AGREEMENT

The United States of America and Gilberto Suarez (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to the only Count in the Indictment, which charges the defendant with conspiring to encourage and induce an alien to come to, enter and reside in the United States, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I).

PENALTIES

2. The defendant understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 10 years, followed by a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000 or not more than the greater of twice the gross gains or gross loss resulting from the offense. *See* 18 U.S.C. § 3571(d).

3. The defendant further understands and acknowledges that, in addition to any sentence imposed under the previous paragraph of this agreement, a special assessment

in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

APPLICABLE SENTENCING PROCEDURES

4. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the illegal conduct to which the defendant has agreed to plead guilty (as described in paragraph 1) and that the defendant may not withdraw the plea

solely as a result of the sentence imposed.

5. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The United States further agrees to recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the court.

7. The United States agrees that it will recommend at sentencing that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.

8. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

<u>Guideline:</u>	Guideline 2L1.1 applies
<u>Offense level:</u>	The base offense level is 12.
<u>Profit/Family:</u>	The offense was committed for profit and the offense did not involve smuggling of family members.
<u>Number of Aliens:</u>	The offense involved smuggling fewer than six aliens.
<u>Enhancements:</u>	The enhancements in 2L1.1(b)(3), (4), (5), (6), (7), and (8) do not apply.
<u>Role:</u>	The defendant reserves the right to argue that, as a purely legal matter, he deserves a reduction for his role in the offense.

9. The United States, however, will not be required to make any motions or recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official. The parties agree that the defendant does not deserve any reduction pursuant to Section 3E1.1 if the defendant is found to have refused to assist authorities in recovery of the fruits and instrumentalities of the offense.

FORFEITURE & FINANCIAL DISCLOSURE OBLIGATIONS

10. The defendant agrees to forfeit to the United States voluntarily and immediately the following property which is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(6) and 18 U.S.C. § 981(a)(1)(C): (a) Real property located at 125 SW 130 Avenue, Miami, FL. 33184; (b) Real Property located at 7601 E. Treasure Drive, Unit 818, North Bay Village, FL. 33141; (c) One 2014 Mercedes Benz, V1N#4JGDF7DE5EA276489, TAG#BBGI; (d) One Glock 17- 9mm Firearm, Serial #NUM958; (e) One Colt .45 Firearm, Serial #SS37645E; (f) One Springfield XD9 Firearm, Serial number#MG871706l; and (g) the contents of Bank of America Account No. 898015514175.

11. As a result of the offenses alleged in the Indictment, as supplemented by the Bill of Particulars, the defendant agrees that the above-referenced property is property real or personal that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted or that is used to facilitate, or is intended to be used to facilitate, the commission of the offense to which he is pleading guilty. The above-referenced property is therefore subject to forfeiture pursuant to 18 U.S.C. § 982(a)(6) and 18 U.S.C. § 981(a)(1)(C).

12. The defendant also agrees that he shall assist the United States in all proceedings, whether administrative or judicial, involving the forfeiture, disgorgement, transfer or surrender of all of his rights, title, and interest, regardless of their nature or

form, in any property subject to forfeiture as discussed above. Such assistance requires the following, among other things: (a) the defendant agreeing to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture; and (b) the defendant assisting in the transfer of such property by delivery to the United States upon the United States' request, all necessary and appropriate documentation with respect to such property, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to such property. Defendant knowingly and voluntarily agrees to waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited asset. The defendant agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or further notification of any judicial or administrative forfeiture proceedings brought against said assets. The defendant agrees to waive any appeal for the forfeiture.

13. The defendant agrees to cooperate fully in forfeiture proceedings. The defendant agrees that providing false or incomplete information about the defendant's financial assets; that hiding, selling, transferring or otherwise devaluing assets; or failing to cooperate fully in the investigation and identification of assets can be used as a basis for a recommendation of a denial of a reduction for acceptance of responsibility pursuant to Sentencing Guideline Section 3E1.1.

WAIVER OF CERTAIN RIGHTS

14. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status, if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, and, in some cases, removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the district court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. Defendant nevertheless affirms the desire to plead guilty regardless of any immigration consequences that the plea may entail, even if the consequence is automatic removal from the United States.

15. The defendant agrees to having consulted with the defendant's attorney and fully understands all rights with respect to the pending charges. Further, the defendant was advised and fully understands all rights with respect to the provisions of the Sentencing Guidelines which may apply in this case. The defendant understands the constitutional rights associated with going to trial, including the right to be represented by counsel, the right to plead not guilty, the right to trial by jury, the right to confront and cross-examine adverse witnesses, the right to be protected from compelled self-incrimination, the right to testify and present evidence, and the right to compel the attendance of witnesses. By signing below, the defendant attests to having read this agreement, carefully reviewed every part of it with the defendant's attorney, and to

being satisfied with the advice and representation of the defendant's attorney regarding the decision to enter into the agreement. The defendant voluntarily agrees to be bound by every term and condition set forth herein. The defendant affirms that the defendant has discussed this matter thoroughly with the defendant's attorney. The defendant further affirms that the defendant's discussions with defense counsel have included discussion of possible defenses that the defendant might raise if the case were to go to trial, as well as possible issues and arguments that the defendant may raise at sentencing. The defendant additionally affirms that the defendant is satisfied with the representation provided defense counsel.

16. The defendant agrees not to enforce any contract, whether verbal or in writing, between the defendant and "Y.P." or "A.D." that were entered into between 2012 and 2013.

ADMISSIBILITY OF FACTUAL PROFFER

17. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph one (1) above or otherwise fails to fully comply with any of the terms of this plea agreement, this Office will be released from its obligations under this agreement, and the defendant agrees and understands that: (a) the defendant thereby waives any protection afforded by any proffer letter agreements between the parties, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by the defendant as part of plea discussions, any

debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against the defendant without any limitation in any civil or criminal proceeding brought by the government; (b) the defendant's waiver of any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information, referred to herein, shall remain in full force and effect; and (c) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or the defendant's representatives to any state or federal agency and/or this Office. The defendant stipulates to the admissibility, in any case brought by the United States in any way related to the facts in this agreement, of the entire factual basis set forth below as being the defendant's own statement. The defendant voluntarily and knowingly adopts the factual basis as a post-plea discussion statement that is not protected by Federal Rule of Criminal Procedure 11(6) or Federal Rule of Evidence 410.

18. This Office and the defendant stipulate to and agree not to contest the following facts, and stipulate that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, provide a sufficient factual basis for the plea of guilty in this case:

In or around June and July 2012, in Miami-Dade County and elsewhere, the Defendant, Gilberto Suarez, willfully and knowingly conspired with other people to induce Cuban migrants to enter into the United States, knowing that the Cuban migrants did not obtain visas to enter the United States.

Specifically, government witnesses will establish that Suarez arranged for two separate trips from Mexico to the United States. In the first trip, three Cuban migrants who never obtained visas to enter the United States successfully crossed the border. Suarez knew that he was arranging a cross-border trip for individuals who did not have the necessary immigration paperwork to enter the United States.

In the second trip, Suarez arranged for transportation for a Cuban baseball player. Earlier, Suarez helped that baseball player obtain a contract with the LA Dodgers, and Suarez stood to receive a percentage of any payments on that contract. Suarez specifically told the baseball player to go into a vehicle that would bring the player across the border. Suarez knew at the time that the player never obtained a visa to enter the United States.

Travel records would corroborate the anticipated testimony of the government witnesses. Specifically, records show that Suarez flew to Mexico on June 26, 2012; approximately 2 weeks after the four migrants arrived in Mexico. Suarez remained in Mexico until Sunday, July 1; a day before the Cuban baseball player left Mexico City to make the 750-mile trip to Brownsville, Texas (where he crossed the border illegally on July 3).

A-file records show that the migrants did not have visas to enter the United States. Records show that the baseball player arrived in the United States on or about July 3, 2012.

Finally, bank records show that Suarez received approximately \$2.5 million from the LA Dodgers baseball player. Bank records also show that the defendant, directly or indirectly, utilized the funds obtained through the conspiracy to purchase, maintain and improve real properties and personal property, including real property located at 125 SW 130 Avenue, Miami, FL. 33184; real Property located at 7601 E. Treasure Drive, Unit 818, North Bay Village, FL. 33141; and one 2014 Mercedes Benz, V1N#4JGDF7DE5EA276489, TAG#BBGI.

The defendant agrees that above-styled factual basis is true and correct to the best of the defendant's knowledge. Because the factual basis set forth above has the limited purpose of supporting the defendant's guilty plea to the charges discussed in paragraph

one, the factual basis set forth above does not purport to represent all facts and circumstances relating to the defendant's participation. Similarly, the factual basis contained above is not intended to identify all knowledge the defendant might have of the unlawful activity of other individuals.

EXTRADITION

19. By signing this agreement, the defendant waives any right to extradition from any country or state should the defendant flee the Southern District of Florida. The defendant agrees that the defendant was fully informed by the defendant's attorney of the rights to extradition, and voluntarily waives this right to extradition should the defendant fail to appear before the court as required in this matter. Further, through the waiver contained herein, the defendant agrees to petition the Court to expedite the defendant's return, in custody, to the United States of America to answer to the charges contained in this case. The defendant concedes to being the individual against whom charges are pending in this case, and for whom process is outstanding there. The defendant agrees to waive all rights under the extradition treaty or agreement, including the right to a hearing and agree to return to the United States without any promise or threats being made or any other form of inducement or intimidation being exercised on the part of any representatives, officials, or officers of the United States, or of any person whatsoever. The defendant agrees that this waiver of rights is entirely of the defendant's own free will and accord.

ADMISSION OF GUILT

20. The defendant confirms that the defendant is guilty of the offenses to which the defendant is pleading guilty; that the defendant's decision to plead guilty is the decision that the defendant has made; and that nobody has forced, threatened, or coerced the defendant into pleading guilty. The defendant accordingly affirms that the defendant is entering into this agreement knowingly, voluntarily, and intelligently, and with the benefit of full, complete, and effective assistance by the defendant's attorney.

21. Defense counsel, by signing below, attests to explaining fully to the defendant all rights with respect to the pending charges, to reviewing with the defendant the provisions of the Sentencing Guidelines and to explaining to the defendant the provisions which may apply in this case. Counsel for the defendant carefully reviewed every part of this plea agreement with the defendant in the defendant's native language.

22. The defendant confirms that the defendant has read this plea agreement, or that this plea agreement has been read to the defendant. If the defendant does not understand English, the defendant confirms that this plea agreement has been translated into the defendant's native language and that the defendant has read this plea agreement, or that this plea agreement has been read to the defendant in the defendant's native language.

23. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the

defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged above, that the defendant may not withdraw a plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

24. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 12/16/14

By: _____

H. RON DAVIDSON
ASSISTANT UNITED STATES ATTORNEY

Date: 12/16/14

By: _____

BIJAN SEBASTIAN PARWARESCH, ESQ.
ATTORNEY FOR DEFENDANT

Date: 12/16/14

By: _____

GILBERTO SUAREZ
DEFENDANT