

3. The indictment stated on its face “*ROBERT ALLEGRA, Defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, namely Five kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance; In violation of Title 21, United States Code Section 846.*” (emphasis added).

3. There was never any mixture or substances that contained a detectable amount of cocaine in the possession of Robert Allegra or anywhere in the context of this case.

4. The government submitted to the court a plea agreement that stated in pertinent part:

*“On or about March 25, 2015 undercover officers posing as narcotics traffickers brought weighted suitcases to defendant at the Van Nuys airport, which defendant believed to contain approximately 45 kilograms of cocaine”* (emphasis added). (See pg.4 Plea Agreement, [dkt.no.187], 15 cr 243).

5. The Government presented to the Grand Jury the indictment that stated on its face:

*“Defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, namely Five kilograms or more of a mixture and substance containing a detectable amount of cocaine”.* (emphasis added) (see indictment [dkt.no.1](case no.15 cr 243.)

## ARGUMENT

The indictment on its face is a fabrication of evidence, and a fraud on this court, the face of the indictment states:

**ROBERT ALLEGRA, Defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, namely Five kilograms or more of a**

**mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance; In violation of Title 21, United States Code Section 846.** (see indictment)[dkt.no.1](case no.15 cr 243)

21 USC § 846 states:

*§ 846 “Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy”.*

Notably absent from the face of the indictment is any reference to the charged offense required by the subchapter. However, the plain language of the indictment would indicate that the government intended to include the charged offense prescribed in § 841 which states:

§ 841

*(a)Unlawful acts Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—*

*“ (I) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;”*

*“ (b)Penalties Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows: “*

*“ (III) cocaine, its salts, optical and geometric isomers, and salts of isomers;”*

It is a requirement of the statute § 846 and § 841 that in order for a crime to have been committed and a penalty imposed, the offence must have met the requirements of (a)(1)(II) and

that is exactly what the government relied upon when they presented the indictment to the grand jury.

However, the facts, evidence and in the own words of the government, the indictment is a fabrication of evidence and facts.

*“It is firmly established that a constitutional right exists not to be deprived of liberty on the basis of false evidence fabricated by a government officer” see Zahrey v. Coffey, 221 F. 3d 342 - Court of Appeals, (2nd Cir. 2000). “It was established law by 1985 (indeed long before), when the fabrication is alleged to have occurred, that a government lawyer's fabricating evidence against a criminal defendant was a violation of due process” See. Fields v. Wharrie, 740 F. 3d 1107 - Court of Appeals, (7th Cir. 2014).*

The Supreme Court has held *“If officers use false evidence, including false testimony, to secure a conviction, the defendant's due process is violated.” See Mooney v. Holohan, 294 US 103 - Supreme Court 1935. “Due process is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured” “If officers use false evidence, including false testimony, to secure a conviction, the defendant's due process is violated” “deliberate deception of court and jury by the presentation of testimony known to be perjured... is... inconsistent with the rudimentary demands of justice”. See Mooney v. Holohan, 294 US 103 - Supreme Court 1935.*

It is well settled law that “*Rule 60 (b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process*” see *United Student Aid Funds, Inc. v. Espinosa*, 559 US 260 – (Supreme Court 2010)

It is also well settled law that “*a government lawyer's fabricating evidence against a criminal defendant was a violation of due process*” See. *Fields v. Wharrie*, 740 F. 3d 1107 - Court of Appeals, (7th Cir. 2014).

This motion relies on two simple and indisputable facts, the government presented to the grand Jury and obtained the indictment against Robert Allegra based on the fabricated evidence that:

1. “*Defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, **namely, Five kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance***” (emphasis added).

This statement on the face of the indictment that was presented to the grand jury infers that:

- a. there was an actual substance
- b. There was five kilograms or more of the actual substance
- c. The substance was tested by a laboratory or field tested
- d. The results of that test revealed a detectable amount of cocaine

All of which are a requirement of 21 USC § 846 and § 841.

2. The government stated on the record at the change of plea hearing on July 1, 2016 AUSA, Jenkins stated on the record:



*“On or about March 25, 2015 undercover officers posing as narcotics traffickers **brought weighted suitcases** to defendant at the Van Nuys airport, which defendant believed to contain approximately 45 kilograms of cocaine” (emphasis added)(see transcript of Plea Hearing)*

This is also supported by the plea agreement that was filed with this court by the government.

(See pg.4 Plea Agreement, [dkt.no.187], 15 cr 243).

There was no Five kilograms or more of a mixture and substance containing a detectable amount of cocaine, there was nothing more than “weighted suitcases”, the indictment was obtained through a fabrication of evidence.

There is no provision in the statute 28 USC § 846 or § 841 that does not require a substance or mixture and substance containing a detectable amount of cocaine.

The government, knowingly and willfully fabricated the material facts that were presented to the grand jury and appear on the face of the indictment, and this material fabrication was concealed from the court, certainly if the court had known, that the government, through their attorney’s, fabricated the essential material fact of a “*substance containing a detectable amount of cocaine*” the court **would have dismissed the case immediately**.

The government, through their attorneys, knowingly and willfully took advantage of the court’s impartiality, and concealed the use of fabricated evidence from the court.

The government admits in the affirmative, that they knew on or about March 25, 2015 that there was no 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine, and knowingly and willfully presented this fabricated evidence to the grand jury on April 29, 2015 in order to obtain the fraudulent and lawless indictment. [dkt.no.1, 15 cr 243].

The indictment was obtained through the knowing and willful fabrication of evidence, which violated Robert Allegra's Due Process and could not confer jurisdiction of the subject matter authorized by 28 USC § 846 and § 841, rendering the court lacking of Subject Matter Jurisdiction and all orders and judgments are VOID as a matter of law.

"[A] district court may, at any time, dismiss *sua sponte* a complaint for lack of subject-matter jurisdiction pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *See Hagans v. Lavine*, 415 US 528 (Supreme Court 1974). Here, in the instant case, the complaint or indictment is clearly and indisputably a complete fabrication and totally implausible, and devoid of any merit.

*"The validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties" "The restriction on jurisdiction "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause" "regarding subject matter jurisdiction, "the consent of the parties is irrelevant, principles of estoppel do not apply, and a party does not waive the requirement by failing to challenge jurisdiction" "the defendant is usually free to challenge the existence of subject matter jurisdiction in a later proceeding, and so the district court must review the jurisdictional question afresh as if it faced a motion to dismiss for **lack of subject matter jurisdiction** under Rule 12 (b)(1) during the underlying litigation" see Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 US 694 – (Supreme Court 1982).*

The only question that this court must decide is a question of fact, did the government fabricate evidence when it stated on the face of the indictment:

“Defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, **namely Five kilograms or more of a mixture and substance containing a detectable amount of cocaine**, a Schedule II Controlled Substance” (emphasis added)

If the evidence in the case does not include a “mixture and substance containing a detectable amount of cocaine” the statement on the face of the indictment must be accepted by this court as a fabrication of evidence, and this court must vacate all Orders and Judgments in all related cases for lack of Subject Matter Jurisdiction.

Not only does this evidence not exist anywhere in the record of the cases, but the government has confirmed its fabrication in the affirmative on the record of the case, when it not only stated verbally but included the admission of the fabrication of “*Five kilograms or more of a mixture and substance containing a detectable amount of cocaine*” in the plea agreement presented to this court that stated “*undercover officers posing as narcotics traffickers brought weighted suitcases*” not a substance containing a detectable amount of cocaine.(emphasis added)(see plea agreement).

Without this fabrication to the grand jury, no indictment would have issued, if the court had known about this fabrication of facts, the court would have dismissed the action immediately.

#### **REQUEST FOR APPOINTMENT OF COUNSEL**

Robert Allegra is not an attorney, and has never gone to law school, he is a graduate of Elmhurst College class of 1974. Robert Allegra is an educated man in the field of Business Administration and Aviation, but when it come to the law, he is just a lay person.


Robert Allegra was incarcerated from July 19, 2017 until he was released to Home Confinement Custody on or about May 13, 2020 in which he resides with a friend of his.

Robert Allegra has approached several attorneys with his case, all agreeing that it has merit, but none willing to take it on pro bono. Robert Allegra is 66 years old and his primary income is Social Security of approximately \$1499 monthly. Robert Allegra has no assets of any substantial value. Robert Allegra respectfully requests that this Honorable Court, appoint him an Attorney to represent him in this very serious legal matter.

### **CONCLUSION**

Wherefore, Robert Allegra respectfully requests that this Honorable Court, Grant his motion pursuant to Rule 60(b)(4) and vacate the VOID Judgments and Orders in case no. 18 CV 05061 and related case no. 15 CR 243 for lack of Subject Matter Jurisdiction and dismiss the case and grant him all relief to which he may be entitled in this proceeding.

Respectfully submitted,

  
Robert Allegra, Pro Se

Dated: November 12, 2020

Robert Allegra  
15100 W. 159<sup>th</sup> St.  
Homer Glen, IL 60491  
(630) 485-0280  
boballegra@aol.com



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES  
OF AMERICA

v.

ROBERT ALLEGRA


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)  
)  
)  
)  
)

No. 18 CV 05061

Judge Elaine E. Bucklo

**VERIFICATION**

**I declare under penalty of perjury that the statements made in this Verified Motion Pursuant to Rule 60(b)(4) are true and correct to the best of my knowledge.**

  
Robert Allegra

Date: November 12, 2020

Robert Allegra  
15100 W. 159<sup>th</sup> St.  
Homer Glen, IL 60491  
(630) 485-0280  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
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UNITED STATES  
OF AMERICA

v.

Robert Allegra

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No. 18 CV 05061

Judge Elaine Bucklo

**RULE 59(e) MOTION TO AMEND AND CLARIFICATION OF ORDER**

NOW COMES, Robert Allegra ProSe, and moves this honorable court to reconsider its Order denying the Motion Pursuant to Rule 60(b)(4) [dkt.no.23] pursuant to Rule 59(e).

Rule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence. *Sigsworth v. City of Aurora*, 487 F.3d 506, 511-12 (7th Cir.2007).

This court erred when it denied the Motion Pursuant to Rule 60(b)(4) .

**STATEMENT**

On or about October 18, 2020, this court issued an order [dkt.no.23] in which it denied Robert Allegra's Motion Pursuant to Rule 60(b)(4) in which the court clearly states no reason in fact or law that formed the basis on which the court denied the motion.

**SUBJECT MATTER JURISDICTION**

Federal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend are delineated in Art. III, § 2, cl. 1. Jurisdiction of the lower



federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. Again, this reflects the constitutional source of federal judicial power: Apart from this Court, that power only exists "in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1.

Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign.

Certain legal consequences directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, *California v. LaRue*, 409 U. S. 109 (1972), principles of estoppel do not apply, *American Fire & Casualty Co. v. Finn*, 341 U. S. 6, 17-18 (1951), and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. "[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884). See *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 US 694 – (Supreme Court 1982).

*"The objection that a federal court lacks subject-matter jurisdiction may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment."* *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006) (citations omitted) (jurisdiction upheld); see also *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) ("Whenever it appears by

*suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”)*

## ARGUMENT

A party can only collaterally attack a judgment for lack of jurisdiction in accordance with Federal Rule of Civil Procedure 60(b)(4). *Tittjung*, 235 F.3d. at 335 (“*The exception to the general rule barring collateral attacks on subject matter jurisdiction flows from Fed. R. Civ. P. 60(b)(4).*”). Under Rule 60(b)(4), a court will only allow a collateral attack when the jurisdictional error was “egregious”: “*the error must involve a clear usurpation of judicial power, where the court wrongfully extends its jurisdiction beyond the scope of its authority.*” *Id.* at 335 (citing *O'Rourke Bros., Inc. v. Nesbitt Burns, Inc.*, 201 F.3d 948, 951 (7th Cir.2000); *In re Edwards*, 962 F.2d 641, 644 (7th cir. 1992); *Kansas City S. Ry. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Cir.1980)).

Robert Allegra filed his motion pursuant to Rule 60(b)(4) attacking a VOID Judgement, the motion does not specifically bring a claim pursuant to Rule 60(d)(3) however, the plain language of the motion clearly makes a claim of fraud on the Court.

A party who brings a motion grounded in Rule 60(d)(3) for fraud on the court will receive relief only if he establishes by clear and convincing evidence “*the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated.*” (emphasis added) *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978); *Kinnear-Weed Corp. v. Humble Oil & Refining Co.*, 441 F.2d 631, 636 (5th Cir. 1971).



In the instant Rule 60(b)(4) motion, Allegra has presented this court with clear and convincing evidence that an Attorney for the government, filed with this court, an indictment that contained fabricated evidence, namely the knowingly fabricated statement “ *namely Five kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance; In violation of Title 21, United States Code Section 846.*” (emphasis added) (see indictment doc).

This is a fabrication of evidence, by the government’s own admission, there was never “ *Five kilograms or more of a mixture and substance containing a detectable amount of cocaine*” associated with Robert Allegera or the alleged offence.

An inspection of this case proves too show an absence of any evidence to support the governments knowing and willful fabrication of evidence that appears on the face of the indictment. “*when "over-zealous prosecutors" obtain indictments by knowingly presenting false evidence, courts have freely exercised their powers to dismiss indictments*” See *United States v. Udziela*, 671 F. 2d 995 - Court of Appeals, (7th Cir. 1982).

In the instant case, the government, through their over-zealous attorney’s, presented the grand jury and this court with knowingly false facts on the face of the indictment.

*Rule 60(d)(3) functions as a saving clause: it allows courts to “set aside a judgment for fraud on the court” without a strict time bar. The standard for “fraud on the court” is, as a consequence, demanding. “[O]nly the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute fraud on the court.”* *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978) (citations omitted). *Fraud under Rule 60(d)(3) “embrace [s] ... the species of fraud which does or attempts*



to [ ] defile the court itself.” *Wilson v. Johns–Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir.1989).*(emphasis added)*

[A] judgment is void for purposes of Rule 60(b)(4) “if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.” *In re Edwards*, 962 F.2d 641, 644 (7th Cir.1992).

“It was established law by 1985 (indeed long before), when the fabrication is alleged to have occurred, that a government lawyer's fabricating evidence against a criminal defendant was a violation of due process” See. *Fields v. Wharrie*, 740 F. 3d 1107 - Court of Appeals, (7th Cir. 2014)

Without the governments knowing and willful fabrication of evidence, the court does not have jurisdiction over the subject matter provided by 21 USC § 846 or 21 USC § 841 as described in the plain language of the indictment.

21 USC § 841 requires:

**(a)Unlawful acts** *Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—*

“ **(I)** to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;”

“**(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;”

The Court can not show in the record of this case, that there was “Five kilograms or more of a mixture and substance containing a detectable amount of cocaine” as required by statute, this

court did not have jurisdiction of the subject matter authorized by 21 USC § 846 and 21 USC § 841, simply because they do not exist.

“[T]here is a presumption that a federal court lacks subject matter jurisdiction, and the party seeking to invoke federal jurisdiction must affirmatively allege the facts supporting it. If these facts are challenged, the burden is on the party claiming jurisdiction to prove that the court has jurisdiction over the subject matter. . . . This showing must be made by a preponderance of the evidence.

Here, the government invoked federal subject matter jurisdiction under 21 USC § 846 and 21 USC § 841 and Robert Allegra’s Rule 60(b)(4) motion clearly and convincingly shows that the government fabricated evidence that was presented on the face of the indictment.

The evidence of the fabrication clearly and convincingly shows that the court lacked subject matter jurisdiction, “*No court has jurisdiction to sentence a defendant for that which is not a crime.*” *Commonwealth v. Burns*, 8 Mass. App. Ct. 194, 196 (1979) (quoting *Commonwealth v. Andler*, 247 Mass. 580, 581–82 (1924)).

The Supreme Court held “*A federal court has inherent equitable power to vacate a judgment that is obtained by fraud on the court*” See *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 – (Supreme Court 1944).

It has been proven without a doubt that the government, though it’s attorney’s fabricated facts on the face of the indictment, which violated due process of law and caused the deprivation of Robert Allegra’s constitutional rights.

**CLARIFICATION OF ORDER**

This Court issued an order on or about November 18, 2020, in which it denied Robert Allegra's Motion Pursuant to Rule 60(b)(4).

The court did not state a basis in fact or law for denying the motion.

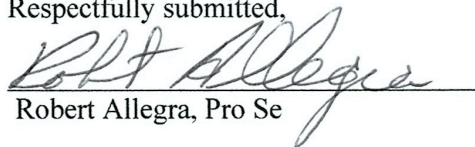
Robert Allegra respectfully requests that in the unlikely event that this court denies the instant motion, that the court issue an order detailing the basis in fact and law for denying the motion, so there is a basis for appeal to the 7<sup>th</sup> Circuit.

In the likely event that the court grants this motion to reconsider, Robert Allegra respectfully requests this honorable court to appoint counsel for Mr. Allegra, should more litigation be required.

**CONCLUSION**

Wherefore, Robert Allegra respectfully request that this honorable court reconsider its order denying the Motion Pursuant to Rule 60(b)(4) [dkt.no.23] and Grant the Motion Pursuant to Rule 60(b)(4) and grant any and all available relief pursuant to the order. Or in the alternative, request the government to provide clear and convincing evidence from the record of this case that would support the statements made on the face of the indictment.

Respectfully submitted,

  
Robert Allegra, Pro Se

Dated: November 28, 2020

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

ROBERT ALLEGRA

No. 15 CR 243

Judge Elaine E. Bucklo

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant ROBERT ALLEGRA, and his attorney, EDWARD GENSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The indictment in this case charges defendant with attempted possession **with intent to distribute** a controlled substance, namely, a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance, in violation of 21 U.S.C. § 846.

3. Defendant has read the charge against him contained in the indictment, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.



**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the indictment, which charges defendant with attempted possession with intent to distribute a controlled substance, namely, a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance, in violation of 21 U.S.C. § 846. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

Beginning on or about March 20, 2015, and continuing until on or about March 25, 2015, at Aurora, in the Northern District of Illinois, Eastern Division, and elsewhere, ROBERT ALLEGRA defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, namely, a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance.

Specifically, on or about February 9, 2015, defendant had an in-person meeting regarding trafficking cocaine with an individual whom, unbeknownst to defendant, was cooperating with law enforcement (the "CI"). During the meeting,

defendant agreed to transport a bulk quantity of cocaine from California to the Chicago area for the CI, using a private airplane flown by defendant. Also during the meeting, defendant stated in substance that he wanted to be paid approximately 10% of the value of the cocaine to be transported.

On or about February 24, 2015, defendant had an in-person meeting with the CI and an undercover officer (the "UC"), who posed as a narcotics trafficker. Defendant brought the CI and the UC to the Aurora Municipal Airport, where defendant showed the UC a private airplane, which defendant explained he could use to transport cocaine. During the meeting, defendant agreed to transport approximately 45 kilograms of cocaine hidden inside suitcases from California to the Chicago area.

On or about March 10, 2015, defendant had an in-person meeting with the CI at a restaurant in Elmhurst, Illinois, where defendant agreed to receive \$30,000 in cash as an upfront payment for the transportation of cocaine, with the remainder due after the delivery of cocaine was complete. On or about March 20, 2015, defendant, driving a black Bentley Continental convertible with VIN SCBGT3ZA0EC089032 (the "Bentley"), arrived at a restaurant in Oak Brook, Illinois, for a meeting with the CI to discuss the planned transportation of cocaine from California to Illinois. During the meeting, defendant received \$30,000 in U.S. Currency from the CI. At the conclusion of the meeting, defendant took the money and departed in the Bentley.

On or about March 23, 2015, defendant flew a private airplane from the Aurora Municipal Airport to Van Nuys Airport in California with the intent to obtain suitcases, which defendant believed would contain approximately 45 kilograms of cocaine. On or about March 23, 2015, undercover officers posing as narcotics traffickers brought weighted suitcases to defendant at the Van Nuys Airport, which defendant believed to contain approximately 45 kilograms of cocaine and which defendant helped load into a private airplane, for the purpose of transporting the cocaine to the CI in the Chicago area. Defendant acknowledges that he intended to distribute the 45 kilograms of cocaine he attempted to obtain on or about March 25, 2015.

**Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$2,000,000. Defendant further understands that the judge also must impose a term of supervised release of at least three years, and up to any number of years, including life.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

**Sentencing Guidelines Calculations**

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2015 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 32, pursuant to Guideline § 2D1.1(c)(4).

ii. If the Court determines that Guideline § 5C1.2 and 18 U.S.C. § 3553(f) are applicable, the offense level shall be reduced by two levels, pursuant to Guideline § 2D1.1(b)(16).

iii. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

iv. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant to § 3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline § 3E1.1(b) because defendant has timely notified the government 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.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Sentencing Guidelines Range.** Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a

statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

### **Forfeiture**

14. Defendant understands that by pleading guilty, he will subject to forfeiture to the United States all right, title, and interest that he has in any property constituting proceeds obtained as a result of the offense, as well as any property used or intended to be used, in any manner or part, to commit or facilitate commission of the offense.

15. Defendant agrees to forfeiture of the specific property identified for forfeiture in the indictment to the United States. In doing so, defendant admits that the property described above represents proceeds defendant obtained as a result of the offense, as well as property that facilitated the offense and was involved in the offense, as alleged in the indictment. Defendant consents to the immediate entry of a preliminary order of forfeiture as to this specific property, thereby extinguishing any right, title, or interest defendant has in it. If any of the specific property is not yet in the custody of the United States, defendant agrees to seizure of that property so that it may be disposed of according to law.

16. Defendant understands that forfeiture shall not be treated as satisfaction of any fine, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

17. Defendant agrees to waive all constitutional, statutory, and equitable challenges in any manner, including but not limited to direct appeal or a motion brought under Title 28, United States Code, Section 2255, to any forfeiture carried out in accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel.

## **Acknowledgments and Waivers Regarding Plea of Guilty**

### **Nature of Agreement**

18. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 15 CR 243.

19. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

20. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge

sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

21. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

22. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

24. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other

tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

### **Other Terms**

25. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

26. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

### **Conclusion**

27. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

28. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this



Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

29. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

30. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

31. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

\_\_\_\_\_  
ZACHARY T. FARDON  
United States Attorney

\_\_\_\_\_  
ROBERT ALLEGRA  
Defendant

\_\_\_\_\_  
PATRICK M. OTLEWSKI  
Assistant U.S. Attorney

\_\_\_\_\_  
EDWARD GENSON  
Attorney for Defendant