

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Cause No. 1:17-cr-00021-TWP-DML
CRAIG NICHOLS,)	
)	
Defendant.)	

PETITION TO ENTER PLEA OF GUILTY AND PLEA AGREEMENT

The United States of America, by counsel, Josh J. Minkler, United States Attorney for the Southern District of Indiana, and, Tiffany J. Preston, Assistant United States Attorney (“the Government”), and the defendant, Craig Nichols (“the defendant” or “Nichols”), in person and by counsel, Scott Shockley, hereby inform the Court that a Plea Agreement has been reached in this case pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The following are its terms and conditions:

Part 1: Guilty Plea and Charge(s)

- 1. Plea of Guilty:** The defendant petitions the Court for leave to enter and agrees to enter a plea of guilty to the following offenses charged in the Superseding Indictment.
 - a.** Count 5, which charges that the defendant committed the offense of Wire Fraud, in violation of Title 18, United States Code, Section 1343.
 - b.** Count 26, which charges that the defendant committed the offense of Money Laundering, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i) and 2.

2. Dismissal of Counts: Following imposition of sentence, the government will move to dismiss Counts 1 through 4, 6 through 25, and 27 through 34 of the Superseding Indictment.

3. Potential Maximum Penalties: Count 5 is punishable by a maximum sentence of 20 years' imprisonment, a \$250,000 fine, and 3 years' supervised release following any term of imprisonment. Count 26 is punishable by a maximum sentence of 20 years' imprisonment, a \$500,000 fine, and 3 years' supervised release following any term of imprisonment.

4. Elements of the Offense: To sustain the offenses to which the defendant is pleading guilty, the Government must prove the following elements beyond a reasonable doubt:

As to Count 5, that Nichols knowingly devised and participated in a scheme to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts as described in the Superseding Indictment;

Second, that Nichols did so knowingly and with intent to defraud; and

Third, that Nichols caused interstate wire communications to take place in furtherance of his scheme to defraud as described in Count 5 of the Superseding Indictment.

As to Count 26, that Nichols engaged or attempted to engage in a monetary transaction, as described in the Superseding Indictment;

Second, that Nichols knew the transaction involved criminally derived property;

Third, the property had a value great than \$10,000;

Fourth, the property was derived from specified unlawful activity, namely wire fraud; and

Fifth, the transaction occurred in interstate commerce.

Part 2: General Provisions

5. Sentencing Court's Discretion Within Statutory Range: The defendant agrees and understands that: (A) the Court will use its discretion to fashion a sentence within the statutory range(s) set forth above; (B) the Court will consider the factors set forth in 18 U.S.C. § 3553(a) in determining the appropriate sentence within the statutory range(s); (C) the Court will also consult and take into account the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") in determining the appropriate sentence within the statutory range(s); (D) the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature; (E) restitution may be imposed; (F) by pleading "Guilty" to more than one offense (Count), the Court may order the sentences to be served consecutively one after another; (G) the final determination concerning the applicable advisory guideline calculation, criminal history category, and advisory sentencing guideline range will be made by the Court; and (H) by pleading "Guilty," the Court may impose the same punishment as if the defendant had plead "Not Guilty," had stood trial and been convicted by a jury.

6. Sentencing Court Not Bound by Guidelines or Recommendations: The defendant acknowledges that this Plea Agreement is governed by Federal Rule of Criminal Procedure 11(c)(1)(B) and that the determination of the defendant's sentence is within the discretion of the Court. The defendant understands that if the Court decides to impose a sentence higher or lower than any recommendation of either party, or determines a different advisory sentencing guideline range applies in this case, or decides to impose a sentence outside of the advisory sentencing guideline range for any reason, then the defendant will not be permitted to withdraw this plea of guilty for that reason and will be bound by this plea of guilty.

7. Plea Agreement Based on Information Presently Known: The defendant recognizes and understands that this Plea Agreement is based upon the information presently known to the Government. The Government agrees not to bring other federal charges against the defendant based on information currently known to the United States Attorney for the Southern District of Indiana.

The Government will inform the Court and the defendant at the time of taking the defendant's plea whether the Government has obtained any information after the Plea Agreement was signed that may warrant bringing other federal charges against the defendant.

8. No Protection From Prosecution for Unknown or Subsequent Offenses: The defendant acknowledges and agrees that nothing in this agreement shall protect the defendant in any way from prosecution for any offense not specifically covered by this agreement, or not known to the United States Attorney for the Southern District of Indiana at this time. The defendant further acknowledges and agrees that nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement.

9. Rights Under Rule 11(b), Fed. R. Crim. P.: The defendant understands that the Government has the right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath during the guilty plea colloquy. The defendant also understands that the defendant has the right: (A) to plead not guilty, or having already so pleaded, the right to persist in that plea; (B) to a jury trial; (C) to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceedings, including appeal; and (D) to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses. The defendant also understands that the Constitution guarantees the right

to be considered for release until trial¹; and if found guilty of the charge(s), the right to appeal the conviction on such charge(s) to a higher court. The defendant understands that if the Court accepts this plea of guilty, the defendant waives all of these rights.

Part 3: Sentence of Imprisonment

10. Sentencing Recommendation Pursuant to Federal Rule of Criminal Procedure

11(c)(1)(B): The parties have **not** agreed upon a specific sentence. The parties reserve the right to present evidence and arguments concerning what they believe to be the appropriate sentence in this matter.

a. Government's Recommendation: The Government has agreed to recommend a sentence at the lowest end of the Advisory Guideline Range as calculated by the Court at sentencing, provided that the defendant (i) continues to fully accept responsibility for the offense, (ii) does not commit a new criminal offense before the date of any sentencing, and (iii) does not otherwise violate the terms of any pre-trial release before the date of sentencing.

b. Defendant's Recommendation: The Defendant is free to ask for any sentence, including one below the applicable advisory range provided in the Sentencing Guidelines.

11. Placement: The defendant requests that this Court recommend to the Federal Bureau of Prisons that the defendant serve any sentence of imprisonment imposed in this case at an institution selected by the defendant at the time of sentencing. The defendant acknowledges and understands that any recommendation by the Court is only a recommendation and does not bind the Federal Bureau of Prisons. The Government does not object to the defendant's requested recommendation.

¹Title 18, U.S.C. §§ 3141-3156, Release and Detention Pending Judicial Proceedings.

12. Supervised Release: Both parties reserve the right to present evidence and arguments concerning whether the Court should impose a term of supervised release to follow any term of imprisonment in this case, the duration of any term of supervised release, and the terms and conditions of the release.

13. Conditions of Supervised Release: The parties understand and agree that the Court will determine which standard and special conditions of supervised release to apply in this case. The parties reserve the right to present evidence and arguments concerning these conditions.

Part 4: Monetary Provisions and Forfeiture

14. Mandatory Special Assessment: The defendant will pay a total of \$200 assessment on the date of sentencing or as ordered by the Court to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed pursuant to 18 U.S.C. § 3013.

15. Fine: The parties agree that the imposition of a fine in this case is left to the discretion of the Court. Nichols agrees that as of the date of filing this plea agreement he will provide all requested financial information to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana for use in the collection of any fines and restitution imposed by the Court and authorizes the Financial Litigation Unit to obtain credit reports relating to Nichols for use in the collection of any fines and restitution imposed by the Court.

16. Restitution: The defendant acknowledges that because the offenses of conviction occurred after April 24, 1996, restitution is mandatory without regard to his ability to pay and that the Court must order Nichols to pay restitution for the full loss caused by his criminal conduct pursuant to Title 18, United States Code, Section 3663A, provided, however, that the United States

agrees that the value of any property returned to victims through the forfeiture and remission process shall be credited against any order of restitution due to victims—to include, at least \$52,500 paid to subcontractors for the 527 E. Wilson, 424 S. Proud, 320 S. Beacon, and 909 S. Wolf property demolitions. The amount of restitution will be determined by the Court at sentencing and will be payable to the City of Muncie, Indiana. The parties agree that restitution shall be paid by the time of sentencing. In the event Nichols cannot pay the restitution within six months of entering his plea of guilty in open court, the provisions of the Forfeiture Allegations, as set forth in the Superseding Indictment, shall be applied.

17. The defendant agrees that, while the District Court sets the payment schedule, this schedule may be exceeded if and when the defendant's financial circumstances change. In that event, and consistent with its statutory obligations, the Government may take any and all actions necessary to collect the maximum amount of restitution in the most expeditious manner available.

18. Obligation to Pay Financial Component of Sentence: If the defendant is unable to pay any financial component of the defendant's sentence on the date of sentencing, then the defendant agrees that the payment of the financial component should be a condition of supervised release. The defendant has a continuing obligation to pay the financial component of the sentence. The defendant further agrees that as of the date of filing this Plea Agreement the defendant will provide all requested financial information, including privacy waivers, consents, and releases requested by the Government to access records to verify the defendant's financial disclosures, to the Government for use in the collection of any fines, restitution, and money judgments imposed by the Court and authorizes the Government to obtain credit reports relating to the defendant for use in the collection of any fines and restitution, and money judgments imposed by the Court. The defendant also authorizes the Government to inspect and copy all financial documents and

information held by the United States Probation Office. If the defendant is ever incarcerated in connection with this case, the defendant may participate in the Bureau of Prisons Inmate Financial Responsibility Program.

19. Forfeiture: The defendant admits that the payments Nichols and others received from Muncie (as calculated by the Court at sentencing), and items purchased using those payments property is contraband, was used to facilitate, or constitutes the fruits of the commission of the offense(s) to which the defendant is pleading guilty, and, therefore, is subject to forfeiture to the United States. The defendant abandons all right, title, and interest the defendant may have in the property so that proper disposition, including destruction, may be made thereof by federal, state, or local law enforcement agencies involved in the investigation of the defendant's criminal activity, without further notice or obligation whatsoever owing to the defendant. The defendant further agrees not to contest any forfeiture action brought against and consents to the forfeiture of any of the property, whether any such forfeiture action is administrative, judicial, civil, or criminal, and agrees not to contest any use or destruction of any of the property listed below by any federal, state, or local law enforcement agency. If any of the forfeitable property described above, as a result of any act or omission by defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty; the United States of America shall be entitled to forfeiture of substitute property pursuant to the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title

28, United States Code, Section 2461(c). The defendant consents to the entry of orders of forfeiture for such property and waives the requirements of Rules 32.2 and 43(a), Fed. R. Crim. P., regarding notice of the forfeiture in the charging document, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise the defendant of this, pursuant to Rule 11(b)(1)(J), at the time the defendant's guilty plea is accepted.

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment.

Part 5: Factual Basis for Guilty Plea

20. The parties stipulate and agree that the following facts establish a factual basis for the defendant's pleas of guilty to the offenses set forth in Paragraph One, above, and that the Government would be able to establish the following facts beyond a reasonable doubt in the event this cause was to proceed to trial. The following information is only a summary of the Government's evidence. This Plea Agreement is not intended to foreclose the presentation of and the Government reserves the right to present additional evidence at the time of sentencing.

a. The City of Muncie ("Muncie") and the Muncie Sanitary District ("MSD") are located in the Southern District of Indiana. From 2012 to 2016, the defendant was Muncie's Building Commissioner, and held a position of public trust. While he was employed as the Building Commissioner, the defendant was also the registered owner and agent of Advanced Walls and Ceilings ("AWC"), a drywall company, and the de facto owner of Capitol Consulting and

Property Management (“CCPM”), which the defendant promoted as an asbestos inspection and removal, and demolition company.

b. Beginning in or about July 2015, and continuing until in or about June 2016, in the Southern District of Indiana, Indianapolis Division, and elsewhere, the defendant devised and participated in a scheme to defraud Muncie and MSD to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts.

c. In June, 2015, the defendant established CCPM. Though the defendant was the de facto owner of CCPM, he failed to file a Uniform Conflict of Interest Disclosure Statement (Indiana Form 236) indicating that he had a financial interest in contracts awarded to CCPM, until March 22, 2016, after the Federal Bureau of Investigation issued a March 14, 2016 subpoena for records to CCPM. The defendant admits that he intentionally concealed his ownership interest in CCPM so that he could enrich himself through that company, by steering public works projects and associated payments to CCPM through sham bidding practices and fraudulent invoices. He also intentionally concealed his ownership interest in CCPM so that CCPM would be awarded public works projects from Muncie without revealing that the defendant had a financial interest in the projects.

d. On or about June 30, 2015, and at the defendant’s instruction, Individual A registered CCPM with the Indiana Secretary of State. The registration claimed that Individual A was the owner and registered agent of CCPM, even though the defendant was the de facto owner. Records and eyewitness testimony prove that the defendant concealed his ownership interest in CCPM by inducing Individual A to be a nominee owner of CCPM, and to register CCPM in Individual A’s name, and CCPM’s business address as P.O. Box 2824, in Muncie, Indiana, instead

of the defendant's home address. The defendant also used Individual A's and his name as signatories on CCPM's business bank account at Star Financial Bank, while the defendant controlled the checkbook, ATM card, and P.O. Box associated with CCPM's business bank account. The defendant also took possession of Individual A's signature stamp so that he could endorse Individual A's name on checks issued from Muncie to CCPM, deposit them in CCPM's business bank account, and withdraw the funds in cash or via bank transfer without using his own signature or name. Further, the defendant delivered invoices from subcontractors to Individual A, and instructed Individual A to electronically sign checks from CCPM payable to its subcontractors who had performed work on CCPM's behalf. Finally, the defendant instructed Individual B to answer CCPM correspondence, obtain checks from the Muncie Controller's office, and interact with CCPM's subcontractors.

e. MSD awarded CCPM asbestos inspection and abatement work as part of the Levee Recertification Project, and demolition work at Kitselman Pure Energy Park.

f. In or about August 2015, Nichols, and others acting at his direction, agreed to have CCPM perform demolition work at 507 South Elliott, in Muncie. Nichols and others acting at his direction, instructed contractors to submit false and fraudulent quotes to demolish the property at 507 South Elliott, to ensure that CCPM would be the lowest responsive contractor and would thus be awarded the work, and to conceal price inflation built into CCPM's quote. As a result of the defendant's intentional efforts to conceal his ownership interest in CCPM and defendant's false and fraudulent bidding and invoices practices, Muncie/MSD awarded CCPM asbestos inspection and abatement work as part of the Levee Recertification Project, and demolition work at Kitselman Pure Energy Park, and 507 S. Elliott Street.

g. Nichols submitted an invoice to Muncie for \$22,000 which falsely inflated the cost of demolishing the structure at 507 South Elliott. As set forth in Count 5 of the Superseding Indictment, on or about August 28, 2015, Nichols caused Muncie to issue a check in the amount of \$22,000 drawn from Muncie's City Account, which Nichols deposited into CCPM's business bank account.

h. In or about early Fall 2015, Nichols agreed to perform for MSD asbestos inspection and abatement work for numerous properties in Muncie that were to be demolished as part of the Levee Recertification Project (the "Muncie Asbestos Abatement Job"). Nichols concealed from the public and various Muncie Officials that he was the de factor owner of CCPM, and that CCPM was not licensed to perform asbestos inspection or abatement.

i. Nichols subcontracted the inspection and abatement work associated with the Muncie Asbestos Abatement Job to Company A, which was licensed to perform the work. During this time period, Company A maintained a business bank account at Chase Bank.

j. On or about July 26, 2015, and May 6, 2016, Nichols, and others acting at his direction, caused Muncie to issue checks on behalf of MSD for the Muncie Asbestos Abatement Job, which were drawn from MSD Accounts with the Muncie Controller and deposited into CCPM's business bank account. On some occasions, Nichols fraudulently billed Muncie/MSD for the Asbestos Abatement Job at an inflated price. Nichols billed Muncie/MSD approximately \$19,450 for the abatement of approximately 17 properties in which no asbestos was found, and approximately \$16,800 for duplicative inspections. One such occasion is the subject matter of Count 26. Nichols billed Muncie/MSD to abate the property at 808 N. Elm Street, even though Company A's inspection revealed that no asbestos had been found. As such, Muncie/MSD issued a check to CCPM, and on January 5, 2016, Nichols caused a check in the amount of \$11,907 to be

drawn on CCPM's account at Star Financial Bank to be deposited into Company A's bank account at Chase Bank.

k. Between July 31, 2015 and June 8, 2016, the defendant engaged in no less than eighty-three financial transactions affecting interstate and foreign commerce, which involved the proceeds of a specified unlawful activity, that is wire fraud and theft of government funds, in violation of Title 18, United States Code, Sections 666 and 1343, knowing that the financial transactions were designed in whole and in part to conceal and disguise the source and ownership of the proceeds of said specified unlawful activity. On eleven occasions, the defendant deposited checks from Muncie into the Star Financial Bank account of CCPM. On seventy-two occasions, Nichols withdrew funds from the same account in order to pay subcontractors, or withdrew funds in cash.

Part 6: Other Conditions

21. Background Information: The defendant acknowledges and understands that no limitation shall be placed upon the Court's consideration of information concerning the background, character, and conduct of the defendant for the purpose of imposing an appropriate sentence. The defendant acknowledges and understands that the Government is not prohibited from providing information concerning background, character, and conduct of the defendant for the purpose of recommending or advocating an appropriate guideline calculation and sentence.

22. Good Behavior Requirement: The defendant agrees to fully comply with all conditions of release imposed by the Court during all stages of this case. If the defendant fails to fully comply with such conditions, then the Government may withdraw from this Agreement.

23. Compliance with Federal and State Laws: The defendant understands that the obligations of the Government in this Plea Agreement are expressly contingent upon the defendant abiding by federal and state laws.

Part 7: Sentencing Guideline Stipulations

24. Guideline Computations: Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the Stipulations below. The parties understand and agree that these Stipulations are binding on the parties but are only a recommendation to the Court and that the Court will determine the advisory sentencing guidelines applicable in this case. The parties agree that no stipulation regarding any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court. The 2018 version of the Sentencing Guidelines has been used by the parties to make the stipulations set forth below.

The parties agree that pursuant to Sentencing Guideline §2B1.1, the base offense level for the offense to which Nichols is pleading guilty is seven (7). The parties agree that two (2) levels are added because Nichols abused a position of trust, namely, his position as the City of Muncie's Building Commissioner, and that the defendant's position of trust contributed in a significant way to facilitating the commission and concealment of the offense.

It's is the Government's position that pursuant to Sentencing Guideline §2B1.1(b)(G), the base offense level is increased by twelve (12) levels, because Nichols' scheme to defraud involved a loss amount of more than \$250,000, but less than \$550,000. The defendant disagrees, and is free to argue at sentencing under §2B1.1(b)(E) that the base offense level is increased by eight (8) levels, because Nichols' scheme to defraud involved a loss amount of more than \$95,000 but less than \$150,000.

It's is the Government's position that pursuant to §2B1.1(b)(10), the base offense level should be increased by two (2) levels because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means. The defendant disagrees.

Accordingly, it is the Government's position that Nichols' offense level for sentencing purposes under the U.S.S.G. is twenty-three (23). It is the defendant's position that Nichols' offense level for sentencing is seventeen (17).

Acceptance of Responsibility: To date, the defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for the defendant's criminal conduct. Based upon the defendant's willingness to accept a Plea Agreement and enter a plea of guilty to the criminal conduct noted in this agreement and the defendant's agreement to cooperate in and not to contest the forfeiture of the property described above, the Government agrees that the defendant should receive a two (2) level reduction *provided* the defendant satisfies the criteria set forth in Guideline §3E1.1(a) up to and including the time of sentencing. The defendant timely notified the Government of defendant's intention to enter a plea of guilty, thereby permitting the Government and the Court to allocate their resources efficiently. After the Defendant enters a plea of guilty, the Government intends to file a motion pursuant to U.S.S.G. §3E1.1(b) requesting that the Court decrease the offense level by one (1) additional level. The parties reserve the right to present evidence and arguments concerning the defendant's acceptance of responsibility at the time of sentencing.

- a. Final Offense Level (Government's Position): 20**
- b. Final Offense Level (Defendant's Position): 14**

Part 9: Waiver of Right to Appeal

25. Direct Appeal: The defendant understands that the defendant has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right, and in exchange for the concessions made by the Government in this Plea Agreement, the defendant expressly waives the defendant's right to appeal the conviction imposed in this case on any ground, including the right to appeal conferred by 18 U.S.C. § 3742. The defendant further expressly waives any and all challenges to the statute(s) to which the defendant is pleading guilty on constitutional grounds, as well as any challenge that the defendant's admitted conduct does not fall within the scope of the applicable statute(s). The defendant further agrees that in the event the Court sentences the defendant to a sentencing within the applicable Sentencing Guideline Range as calculated by the Court at the sentencing hearing, regardless of the defendant's criminal history category or how the sentence is calculated by the Court, then the defendant expressly waives the defendant's right to appeal the sentence imposed in this case on any ground, including the right to appeal conferred by 18 U.S.C. § 3742. This blanket waiver of appeal specifically includes all provisions of the guilty plea and sentence imposed, including the length and conditions supervised release and the amount of any fine.

26. Later Legal Challenges: Additionally, the defendant expressly agrees not to contest, or seek to modify, the defendant's conviction or sentence or the manner in which either was determined in any later legal proceeding, including but not limited to, an action brought under 18 U.S.C. § 3582 or 28 U.S.C. § 2255. As concerns this Section 3582 waiver, should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to the defendant's offense(s) and explicitly make such an amendment retroactive, the Government agrees that it will not argue that this waiver bars the

defendant from filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2) based on that retroactive Guidelines amendment. However, if the defendant files such a motion, the Government may oppose the motion on any other grounds. Furthermore, should the defendant seek to appeal an adverse ruling of the district court on such a motion, the Government may claim that this waiver bars such an appeal. As concerns the Section 2255 waiver, the waiver does not prevent claims, either on direct or collateral review, that the defendant received ineffective assistance of counsel.

27. No Appeal of Supervised Release Term and Conditions: The parties' reservation of the rights to present evidence and arguments in this Court concerning the length and conditions of supervised release is not intended to be inconsistent with the Waiver of Appeal specified above, which includes a waiver of the right to appeal to the length and conditions of the period of supervised release.

Part 10: Presentence Investigation Report

28. The defendant requests and consents to the commencement of a presentence investigation by probation officers of the United States District Court for purposes of preparing a Presentence Investigation Report at this time and prior to the entry of a formal plea of guilty.

29. The defendant further requests and consents to the review of the defendant's Presentence Investigation Report by a Judge, defendant's counsel, the defendant, and the Government at any time, including prior to entry of a formal plea of guilty.

Part 11: Immigration Consequences

30. 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, including the offenses to which the

defendant is pleading guilty. The defendant also recognizes that removal will not occur until service of any sentence imposed in this case has been completed. 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 Court, can predict to a certainty the effect of the conviction in this case on the defendant's immigration status. The defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is the defendant's removal from the United States.

Part 12: Statement of the Defendant

31. By signing this document, the defendant acknowledges the following:

a. I have received a copy of the Superseding Indictment and have read and discussed it with my attorney. I believe and feel that I understand every accusation made against me in this case. I wish the Court to omit and consider as waived by me all readings of the Indictment/Information in open Court, and all further proceedings including my arraignment.

b. I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the Superseding Indictment, and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed, counseled and advised me as to the nature and cause of every accusation against me and as to any possible defenses I might have in this case.

c. I have read the entire Plea Agreement and discussed it with my attorney.

d. I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

e. Except for the provisions of the Plea Agreement, no officer or agent of any branch of Government (federal, state or local), nor any other person, has made any promise or suggestion

of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead “Guilty.” I respectfully request that the Court consider in mitigation of punishment at the time of sentencing the fact that by voluntarily pleading “Guilty” I have saved the Government and the Court the expense and inconvenience of a trial. I understand that before it imposes sentence, the Court will address me personally and ask me if I wish to make a statement on my behalf and to present any information in mitigation of punishment.

f. I am fully satisfied with my attorney’s representation during all phases of this case. My attorney has done all that anyone could do to counsel and assist me and that I fully understand the proceedings in this case against me.

g. I make no claim of innocence, and I am freely and voluntarily pleading guilty in this case.

h. I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crime(s) to which I am entering my plea.

i. I understand 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.

j. My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within fourteen (14) days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be

done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

k. My attorney has informed me, and I understand, that if I provide or cause to be provided materially false information to a judge, magistrate-judge, or probation office, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two-level increase in the offense level.

l. If this cause is currently set for trial on the Court's calendar, I request that this date be continued to permit the Court to consider this proposed guilty Plea Agreement. I further understand that any delay resulting from the Court's consideration of this proposed guilty Plea Agreement, up to and including the date on which the Court either accepts or rejects my guilty plea, will be excluded in computing the time within which trial of this cause must commence, pursuant to 18 U.S.C. § 3161(h)(1)(G).

Part 13: Certificate of Counsel

32. By signing this document, the defendant's attorney and counselor certifies as follows:

m. I have read and fully explained to the defendant all the accusations against the Defendant which are set forth in the Indictment in this case;

n. To the best of my knowledge and belief each statement set forth in the foregoing petition to enter plea of guilty and Plea Agreement is in all respects accurate and true;

o. The plea of "Guilty" as offered by the defendant in the foregoing petition to enter plea of guilty and Plea Agreement accords with my understanding of the facts as related to me by the defendant and is consistent with my advice to the defendant;

p. In my opinion, the defendant's waiver of all reading of the Superseding Indictment in open Court, and in all further proceedings, including arraignment as provided in Rule 10, Fed. R. Crim. P., is voluntarily and understandingly made; and I recommend to the Court that the waiver be accepted by the Court;

q. In my opinion, the plea of "Guilty" as offered by the defendant in the foregoing petition to enter plea of guilty and Plea Agreement is voluntarily and understandingly made and I recommend to the Court that the plea of "Guilty" be now accepted and entered on behalf of the defendant as requested in the foregoing petition to enter plea of guilty and Plea Agreement.

Part 14: Final Provision

33. **Complete Agreement:** The defendant acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce the defendant to plead guilty. This document is the complete and only Plea Agreement between the defendant and the United States Attorney for the Southern District of Indiana and is binding only on the parties to the Plea Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.

Respectfully submitted,

JOSH J. MINKLER
United States Attorney

7-19-18
DATE

Tiffany J. Preston
Tiffany J. Preston
Assistant United States Attorney

7-19-18
DATE

Steven D. DeBrot TJP
Steven D. DeBrot
Deputy Chief, Criminal Division

7-19-18
DATE

Craig Nichols
Craig Nichols
Defendant

7-19-18
DATE

Scott Shockley
Scott Shockley
Counsel for Defendant