

FILED <sup>ell</sup>

MAY 18 2007

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JUDGE JAMES B. ZAGEL  
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA            )  
  )  
                  v.                    ) No. 02 CR 1050 - 1  
  ) Honorable James B. Zagel  
NICHOLAS W. CALABRESE            )

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, NICHOLAS W. CALABRESE, and his attorney, John T. Theis, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 02 CR 1050.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is 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.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant,

NICHOLAS W. CALABRESE, and his attorney, John T. Theis, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the third superseding indictment ("the indictment") in this case with conspiring to conduct the affairs of an enterprise, that is, a criminal organization known as "the Chicago Outfit," through a pattern of racketeering and through the collection of unlawful debt, in violation of Title 18, United States Code, Section 1962(d).

2. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

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

4. Defendant will enter a voluntary plea of guilty to Count One of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following statement of facts is provided solely to assist the court in determining whether a factual basis exists for the defendant's plea of guilty and is not intended to be a complete or

comprehensive statement of all the facts within the defendant's personal knowledge regarding the charged crimes.

With respect to Count One of the indictment, the defendant admits that during the time period charged in the indictment, he was employed by and associated with a criminal enterprise known as "the Outfit," and that he agreed to commit criminal acts on its behalf that constituted federal and state felony violations, including murder, loan sharking, conducting an illegal gambling business, and collecting gambling debts and debts derived from usurious loans.

The defendant admits that the Outfit had a structure to enhance its ability to succeed in criminal ventures, including a hierarchy that included bosses and supervisors, and subgroups, or "crews," that operated in various parts of the Chicago area. The defendant himself was employed by and associated with what was known as "the 26<sup>th</sup> Street Crew," "the South Side Crew," and "the Chinatown Crew," a subgroup of the Outfit. This crew, which committed numerous murders and other crimes to advance Outfit interests, was at various times headed by Angelo LaPietra, James LaPietra, and John Monteleone. The defendant generally received instructions directly from his brother, Frank Calabrese, Sr., regarding the criminal activities he committed as a member of the crew.

The defendant admits that numerous federal and state crimes were in fact committed by himself and others in carrying out the criminal purposes of the criminal enterprise. The defendant personally made and collected "juice loans," and also collected illegal gambling debts on behalf of the Outfit. Under the direction of others in the Outfit, he also helped plan murders and committed murders on behalf of the Chicago Outfit with his brother, Frank Calabrese, Sr., James Marcello, Frank Schweih, Paul Schiro, and several others. The murder victims included Michael Albergo, John Mendell, Vincent Moretti, Donald Renno, Paul Haggerty, William Petrocelli, Henry Cosentino, Michael Cagnoni, Nicholas D'Andrea, Richard Ortiz, Arthur Morawski, Anthony and Michael Spilotro, and John Fecarotta. These murders were committed in order to protect the Outfit from individuals who were believed to be providing information about the enterprise to law enforcement officers, to punish actions taken against Outfit interests, or to otherwise advance the criminal goals of the Outfit.

In particular, the defendant, on orders of James LaPietra and under the direction of defendant Frank Calabrese, Sr., murdered John Fecarotta on September 14, 1986, with the assistance of his brother and John Monteleone. The defendant shot and killed the victim after luring him to a location on the pretext that they would be committing a crime together. The defendant and the victim struggled over a gun in the car they were in, and the victim fled

on foot. The defendant admits that he chased Fecarotta and shot and killed him after the victim fled the vehicle. The defendant admits that this murder was committed by him and the others without lawful justification and with premeditation that the death of the victim would result. The defendant acknowledges that his conduct in committing this homicide meets the requirements of the then-applicable Illinois statute defining murder subjecting him to a maximum penalty of life imprisonment.

From time to time, the defendant received a share of the Chicago Outfit's illegal proceeds. The defendant also relayed orders and messages from his Outfit superiors to members, employees, and associates of the Chicago Outfit and others. The defendant acknowledges that the enterprise and its various illegal activities were committed in and affected interstate commerce.

6. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The guidelines for the racketeering conspiracy charged in Count One of the indictment are calculated by calculating the offense levels applicable to the underlying racketeering activities. USSG §2E1.1(a)(2), and Application Note 1. Because the defendant committed murder in furtherance of the

conspiracy, the base offense level for the conspiracy is level 43. USSG §2A1.1(a).

(b) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline 3E1.1, a two-level reduction in the offense level is appropriate.

(c) The defendant agreed among other things to the initiation of racketeering charges against him while the government continued its investigation into the racketeering conspiracy charged in Count One, and further agreed to remain in custody, after his previous term of incarceration had been served, while continuing to assist the government in this investigation. The defendant thus agreed to remain in custody for a period of over 30 months until the return of the first superseding indictment naming his codefendants, and continues to remain in custody. Defendant has therefore provided timely complete information concerning his own involvement in the offenses, and notified the government timely 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, within the meaning of Guideline 3E1.1(b); an additional one-point reduction in the offense level is

therefore appropriate, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline 3E1.1(a).

(d) On or about August 27, 1997, the defendant was convicted of a racketeering conspiracy involving loansharking in the Northern District of Illinois, and sentenced to 70 months imprisonment. Because this offense was conduct that is relevant conduct to the instant offense, the sentence imposed is not a "prior sentence" within the meaning of Guideline 4A1.2 and Application Note 1 to that section.

(e) Based on the facts known to the government, the defendant's criminal history points equal 0 and the defendant's criminal history category is category I.

(f) The defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The 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 Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

(g) Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. Defendant understands the count to which he will plead guilty carries the following penalties:

Count One carries a maximum penalty of life imprisonment and a maximum fine of \$250,000. Defendant understands that this count also carries a term of supervised release of not more than five years, which the Court may specify.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on the count to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of



\$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

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

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) 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 of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, 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.

(e) 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.

11. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

12. Defendant is also aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging

this, defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction or the manner in which that sentence was determined, in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

13. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate that is related to or results from the charges in this case.

(a) Defendant agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify by any representative of the United States Attorney's Office, Northern District of Illinois.

(b) Defendant agrees to postpone his sentencing until after the conclusion of the prosecution of his co-defendants.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

15. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

16. Defendant understands that the State's Attorneys for Cook County, DuPage County, and Will County, have agreed not to prosecute defendant for the homicides identified in paragraph 5 above, provided that defendant pleads guilty to the offense of participating in the conduct of the Chicago organized crime family, a racketeering enterprise, through a pattern of racketeering activity, including homicides, as charged in Count One; that he is subject to a possible sentence of life imprisonment as a result of this plea; and that he continue to cooperate and to provide complete and truthful testimony.

17. Defendant understands that the government will apply to the Court for an order of use immunity prior to his testifying in the trial of this matter; however, the defendant understands that an order of use immunity will have no affect on his guilty plea, his plea allocution, or his exposure to a sentence of life imprisonment.

18. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose up

to the maximum penalties as set forth in paragraph 8 above. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea. However, the sentencing court is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming the defendant's continuing, full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline 5K1.1, to depart from the applicable sentencing guidelines range. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court, that the extent of any departure is solely within the Court's discretion and judgment, and that the government will make no specific recommendation regarding the sentence to be imposed. The defendant is free to make whatever sentencing recommendation he deems appropriate. The defendant understands that the Court remains free to impose the sentence it deems appropriate including any sentence up to life imprisonment.

20. Regarding forfeiture, the indictment charges that as a result of the violation of Title 18, United States Code, Section 1962(d), as set forth above, the charged defendants are subject to the forfeiture of monies which constitute or are derived from

proceeds traceable to the charged offense. By entry of a guilty plea to Count One of the indictment, defendant understands that any money acquired in violation of Title 18, United States Code, Sections 1962(d) and 1963, and any substitute assets up to the value of the money acquired, are subject to forfeiture to the United States. The United States and defendant agree that the extent of the defendant's liability shall be determined by the Court under a preponderance of the evidence standard. The defendant hereby waives any right he might have a jury decide the issue of forfeiture. At the time of sentencing, the Court shall enter a judgment of forfeiture, for which the defendant is jointly and severally liable, representing the funds acquired and maintained in violation of Title 18, United States Code, Sections 1962(d) and 1963.

21. Upon the entry of any judgment of forfeiture, the defendant agrees to cooperate fully and truthfully in identifying any funds subject to forfeiture, regardless where they may have been transferred or hidden. If the United States determines that funds of the defendant necessary to satisfy the forfeiture judgment cannot be located upon exercise of due diligence; have been transferred or deposited with a third party; have been placed beyond the jurisdiction of the Court; have been substantially diminished in amount; or have been commingled with other currency which cannot be divided without difficulty; then the United States

shall, at its option, be entitled to any other property of the defendant up to the value of the forfeited amount. Defendant agrees that the forfeiture of substitute assets as authorized herein and pursuant to Title 18, United States Code, Section 1963(m), shall not be deemed an alteration of defendant's sentence.

22. Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

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

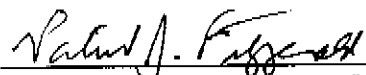
24. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

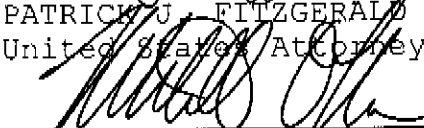
25. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

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


27. 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: 5/18/07

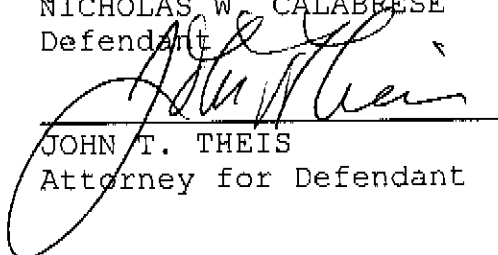
  
PATRICK J. FITZGERALD  
United States Attorney

  
MITCHELL A. MARS  
Assistant United States Attorney

  
JOHN J. SCULLY  
Assistant United States Attorney

  
T. MARKUS FUNK  
Assistant United States Attorney

  
NICHOLAS W. CALABRESE  
Defendant

  
JOHN T. THEIS  
Attorney for Defendant