

Xj1ndherp

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 0834-04(PAE)

5 DANIEL HERNANDEZ,

6 Defendant.

7 -----x

8  
9 January 23, 2019  
12:35 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 BY: MICHAEL D. LONGYEAR

17 JACOB WARREN

Assistant United States Attorneys

18 DAWN M. FLORIO LAW FIRM PLLC

Attorneys for Defendant

19 BY: DAWN MARIA FLORIO  
20  
21  
22  
23  
24  
25

Xj1ndherp

1 (Case called)

2 THE CLERK: Counsel, state your appearance for the  
3 record, please.

4 MR. LONGYEAR: Good afternoon, your Honor. Michael  
5 Longyear and Jacob Warren on behalf of the United States.

6 THE COURT: Very good. Good afternoon to you both.

7 MS. FLORIO: Good afternoon, your Honor. Dawn Florio,  
8 F-l-o-r-i-o, of The Dawn Florio Law Firm, 909 Third Avenue, New  
9 York, New York. I represent Mr. Daniel Hernandez, who is  
10 standing to the left of me. Good afternoon, your Honor.

11 THE COURT: All right. Good afternoon, Ms. Florio.

12 And good afternoon to you, Mr. Hernandez.

13 THE DEFENDANT: Good afternoon, your Honor.

14 THE COURT: You may all be seated.

15 All right. This proceeding is in open court.

16 However, I understand that the government has an application to  
17 seal the transcript of this proceeding and to delay for a  
18 period of time the docketing of this proceeding, and the  
19 government has handed up in fact a written application to that  
20 effect.

21 First of all, Mr. Longyear, is that correct?

22 MR. LONGYEAR: Yes, your Honor.

23 THE COURT: Would you please briefly put on the record  
24 the basis for that request, in essence, summarize what is in  
25 the application?

XjlnDherp

1 MR. LONGYEAR: Yes, your Honor.

2 The government, in its sealing application, requests  
3 that the documents filed in connection with today's plea, which  
4 is the Waiver of Indictment, the Superseding Information, as  
5 well as the plea transcript, be sealed and that their docketing  
6 be delayed. The reasons for our application, or the basis for  
7 that application are twofold. One is safety concerns with  
8 respect to the defendant and members of the defendant's family,  
9 and, most importantly, the defendant we expect will be pleading  
10 guilty to certain crimes. The government anticipates filing a  
11 superseder -- or presenting a superseding indictment to a grand  
12 jury in short order, and should this proceeding become public,  
13 that would jeopardize law enforcement's efforts to arrest the  
14 potential -- the defendants in that proposed superseding  
15 indictment and may put their lives at risk in apprehending  
16 those defendants.

17 That is a brief summary of what is set forth more  
18 fully in our written application to your Honor.

19 THE COURT: Very good. Thank you, Mr. Longyear.

20 All right. Let me rule at the outset on that  
21 application. There is a presumption of openness of court  
22 proceedings. It may be defeated only under very limited  
23 circumstances. The Second Circuit has identified the  
24 circumstances that may justify the closure of a courtroom or  
25 the sealing of a transcript to include where an ongoing

Xjlntherp

1 governmental investigation may be jeopardized or where the  
2 safety of governmental personnel may be jeopardized. See,  
3 e.g., United States v. Cojab, 996 F.2d 1404, at 1408 (2d Cir.  
4 1993); and United States v. Haller, 837 F.2d 84, at 87 (2d Cir.  
5 1988). To justify such measures, the court must make specific  
6 on-the-record findings justifying these steps and explaining  
7 why the court's actions are narrowly tailored.

8 The government here has not sought the closure of the  
9 courtroom today. Mr. Hernandez's anticipated guilty plea will  
10 be occurring, and is occurring right now, in open court. The  
11 government, however, is seeking the sealing of the transcript  
12 and the delay of docketing of this proceeding. The government  
13 has submitted an application and a letter explaining the basis  
14 for seeking sealing. The government is to file those materials  
15 under seal. Government counsel have also today in court  
16 summarized the bases for seeking sealing.

17 The Court has carefully reviewed and reflected on the  
18 government's submission. The Court finds the sealing of this  
19 proceeding and the delayed docketing of this proceeding  
20 justified, but only up to the point in time where the arrests  
21 that are anticipated as a result of Mr. Hernandez's cooperation  
22 have occurred. The government has represented that  
23 Mr. Hernandez is cooperating against multiple violent people  
24 associated with the same criminal enterprise of which he  
25 admits, or will soon apparently admit, being a member. The

Xjlntherp

1 government has represented that several of these individuals  
2 have yet to be charged. The government has represented that it  
3 intends, in the near future, to seek a superseding indictment  
4 that would include serious charges against these as-yet  
5 uncharged violent persons. The government has represented that  
6 among the information on which the superseding indictment  
7 against those individuals would be based would be information  
8 provided by Mr. Hernandez.

9           The government has represented that were  
10 Mr. Hernandez's plea to the nine-count Superseding Information  
11 against him to become public, it will alert the uncharged  
12 individuals who participated in these crimes to the likelihood  
13 that they would soon be criminally charged. That is  
14 particularly so as the superseding indictment against Mr. --  
15 excuse me, Information against Hernandez chronicles a number of  
16 distinct violent incidents in which he is alleged to have acted  
17 in concert with others. Publicity of Mr. Hernandez's plea to  
18 these charges and his cooperation would therefore give these  
19 uncharged individuals an incentive to flee. It would also give  
20 them an incentive and an opportunity to prepare to resist,  
21 potentially with deadly force, an attempt by law enforcement to  
22 take these persons into custody.

23           In authorizing sealing of the transcript of this  
24 proceeding, I have taken care to narrowly tailor the sealing.  
25 I do so particularly mindful that Mr. Hernandez is a public

Xjlntherp

1 figure and of the demonstrated public and press interest in his  
2 prosecution to date. I therefore order that the sealing and  
3 the delay of docketing of this proceeding is to last for only a  
4 limited time, which is to say no longer than is necessary to  
5 achieve the apprehension of the suspects whom the government  
6 intends to add to the forthcoming superseding indictment that  
7 it will seek.

8 As soon as the new suspects named in the anticipated  
9 superseding indictment have been apprehended, the government is  
10 directed immediately to move for the unsealing of the  
11 transcript of this proceeding and for the docketing publicly of  
12 the fact of this proceeding. I expect as well that the  
13 government will affirmatively draw attention to the fact of  
14 this guilty plea given the public interest in Mr. Hernandez's  
15 case.

16 Further, in the event that today's proceeding has not  
17 been unsealed, or the transcript, rather, has not been unsealed  
18 as of Friday, February 8, 2019, the government is to submit an  
19 ex parte status letter to the Court explaining the need, if  
20 any, for continued sealing and the anticipated duration of any  
21 continued sealing that it seeks.

22 All right. With that, Ms. Florio, I have been  
23 informed that your client wishes today to plead guilty to  
24 Counts One through Nine of an Information to be filed and  
25 marked as S5 18 Crim. 834; is that correct?

Xj1ndherp

1 MS. FLORIO: That is correct.

2 THE COURT: Mr. Hernandez, is that correct, that you  
3 intend today to plead guilty to those counts?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: All right. And, counsel, is the guilty  
6 plea pursuant to a plea agreement?

7 MS. FLORIO: It is.

8 MR. LONGYEAR: Yes, your Honor.

9 THE COURT: All right. Counsel have handed up a  
10 signed plea agreement. I am going to mark it as Government  
11 Exhibit 1, and I will question counsel and the defendant later  
12 on about that document.

13 Mr. Hernandez, before I accept your guilty plea, I am  
14 going to ask you certain questions so that I could establish to  
15 my satisfaction that you wish to plead guilty because you are  
16 guilty and not for some other reason. If you don't understand  
17 any of my questions or you would like a further opportunity to  
18 consult with your attorney, will you please let me know?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Are you able to speak and understand  
21 English?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Smallman, would you kindly place the  
24 defendant under oath.

25 (The defendant was sworn)

Xjlntherp

1 THE COURT: Thank you. You may be seated.

2 Mr. Hernandez, do you understand that you are now  
3 under oath and that if you answer any of my questions falsely,  
4 your answers to my questions may be used against you in another  
5 prosecution for perjury?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: What is your full name?

8 THE DEFENDANT: Daniel Hernandez.

9 THE COURT: How old are you?

10 THE DEFENDANT: I'm 22 years old.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: I believe about the tenth grade.

13 THE COURT: Where was that?

14 THE DEFENDANT: Legacy High School on 13th Street,  
15 Union Square, in Manhattan.

16 THE COURT: Have you ever been treated or hospitalized  
17 for any mental illness?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: When was that?

20 THE DEFENDANT: I believe in 2011 -- 2011/2012, around  
21 that time.

22 THE COURT: And briefly, what was the nature of the  
23 ailment in question?

24 THE DEFENDANT: It was depression and posttraumatic  
25 stress for the murder of my father -- stepfather.



Xjln dherp

1 THE COURT: I'm very sorry to hear about that.

2 And you said that the treatment concluded by about

3 2012?

4 THE DEFENDANT: Yeah, 2008 and 2010 -- around  
5 2011/2012, I started becoming just rebelling and not showering,  
6 like depression stuff.

7 THE COURT: And what was the result of the treatment  
8 you had in 2011 and 2012?

9 THE DEFENDANT: They gave me Zoloft, other medication,  
10 but I never took it. My mom used, like, Mexican remedies.

11 THE COURT: All right. Well, did the depression and  
12 posttraumatic stress symptoms go away?

13 THE DEFENDANT: Yeah. Yeah.

14 THE COURT: All right.

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Since 2012, have you been treated for any  
17 mental illness?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: All right. Are you now or have you  
20 recently been under the care of a doctor or a psychiatrist?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Have you ever been hospitalized or treated  
23 for addiction to any drugs or to alcohol?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: In the past 24 hours, have you taken any

Xj1ndherp

1 drugs, medicine or pills or drunk any alcoholic beverages?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Is your mind clear today?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand what's happening in this  
6 proceeding?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Ms. Florio, beginning with you, do you  
9 have any doubt as to your client's competence to plead at this  
10 time?

11 MS. FLORIO: I do not, your Honor.

12 THE COURT: How about you, Mr. Longyear?

13 MR. LONGYEAR: No, your Honor.

14 THE COURT: All right. Based on Mr. Hernandez's  
15 responses to my questions, which have been clear, direct,  
16 responsive and well informed, based on his demeanor, which is  
17 highly attentive as he appears before me, I find that  
18 Mr. Hernandez is competent to enter a plea of guilty at this  
19 time.

20 Have you had a sufficient opportunity to discuss your  
21 case with your attorney, Ms. Florio?

22 THE DEFENDANT: Yes. Yes, your Honor.

23 THE COURT: Have you had a sufficient opportunity to  
24 discuss the particular charges to which you intend to plead  
25 guilty, any possible defenses to those charges, and the

XjlnDherp

1 consequences of entering a plea of guilty?

2 THE DEFENDANT: Yes, your Honor, I have.

3 THE COURT: Are you satisfied with your attorney's  
4 representation of you, including in connection with reaching  
5 this plea agreement?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, as you are aware from being present  
8 at yesterday's court conference that included all the  
9 defendants in this case, an issue has arisen as to a potential  
10 conflict involving your other attorney, Lance Lazzaro, based on  
11 his having represented in earlier matters two of your  
12 codefendants. Until that issue is resolved, he is not, I have  
13 ordered, to represent you. So I'm specifically asking you  
14 whether you are satisfied with Ms. Florio's representation,  
15 including in connection with whether to plead guilty pursuant  
16 to this plea agreement?

17 THE DEFENDANT: Yes, your Honor, I am.

18 THE COURT: All right. I'm now going to explain  
19 certain constitutional rights that you have. You will be  
20 giving up these rights if you enter a plea of guilty.

21 Under the Constitution and laws of the United States,  
22 you are entitled to a speedy and a public trial by a jury on  
23 the charges contained in the Information. Do you understand  
24 that?

25 THE DEFENDANT: Yes, I do.

XjlnDherp

1           THE COURT: At that trial you would be presumed to be  
2 innocent, and the government would be required to prove you  
3 guilty by competent evidence and beyond a reasonable doubt  
4 before you could be found guilty. You would not have to prove  
5 that you were innocent. And a jury of twelve people would have  
6 to agree unanimously that you were guilty.

7           Do you understand that?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: At that trial and at every stage of your  
10 case, you would be entitled to be represented by an attorney,  
11 and if you could not afford one, one would be appointed to  
12 represent you free of charge.

13          Do you understand that?

14          THE DEFENDANT: Yes, your Honor.

15          THE COURT: During the trial, the witnesses for the  
16 government would have to come to court and testify in your  
17 presence, and your lawyer could cross-examine the witnesses for  
18 the government, object to evidence offered by the government  
19 and, if you desired, issue subpoenas or offer evidence and  
20 compel witnesses to testify on your behalf.

21          Do you understand that?

22          THE DEFENDANT: Yes, your Honor.

23          THE COURT: At a trial, although you would have the  
24 right to testify if you chose to, you would also have a right  
25 not to testify, and no inference or suggestion of guilt could

Xjln dherp

1 be drawn from the fact that you did not testify, if that was  
2 what you chose to do.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: At trial the government would have to  
6 prove each and every part, or element, of the charge beyond a  
7 reasonable doubt for you to be convicted of that charge.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that if you were  
11 convicted at a trial, you would then have the right to appeal  
12 that verdict?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Even at this time, right now, even as you  
15 are entering this guilty plea, you have the right to change  
16 your mind, plead not guilty, and go to trial.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If you plead guilty and I accept your  
20 plea, you will give up your right to a trial and the other  
21 rights that I have just described, there will be no trial, and  
22 I will enter a judgment of guilty and sentence you on the basis  
23 of your guilty plea after considering whatever submissions I  
24 receive from you, your lawyer and the government as well as a  
25 presentence report prepared by the Probation Department.

XjlnDherp

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: If you plead guilty, you will also have to  
4 give up your right not to incriminate yourself because I will  
5 ask you questions about what you did in order to satisfy myself  
6 that you are guilty as charged.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Now, the document which contains the  
10 charges to which you have indicated you wish to plead guilty is  
11 called an information. It has been issued by the United States  
12 Attorney. These are serious crimes. You have a constitutional  
13 right to require the government to present evidence to a grand  
14 jury, which may or may not vote to charge you with these  
15 crimes.

16 Do you understand what a grand jury is?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If the grand jury did vote to charge you  
19 with these crimes, the charge would be contained in a document  
20 called an indictment rather than an information. An indictment  
21 would be signed by both the United States Attorney and the  
22 grand jury foreperson.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you wish to give up your right to be

Xj1ndherp

1 charged by a grand jury?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Counsel have handed up a signed waiver of  
4 indictment form.

5 Ms. Florio, is this your signature on the form?

6 MS. FLORIO: It is, your Honor.

7 THE COURT: Mr. Hernandez, is this your signature on  
8 the form?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And the signatures have been witnessed by  
11 my deputy, Mr. Smallman.

12 When you signed this form, Mr. Hernandez, did you  
13 understand that you were acknowledging your willingness to give  
14 up your right to be indicted by a grand jury?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: All right. I find a knowing and a  
17 voluntary waiver of the right to be indicted by a grand jury.

18 Mr. Hernandez, have you received a copy of the  
19 Information containing the charges against you?

20 THE DEFENDANT: Yes, your Honor, I did.

21 THE COURT: Have you read it?

22 THE DEFENDANT: Yes.

23 THE COURT: And have you discussed it with Ms. Florio?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: You are proposing to plead guilty to

Xjlntherp

1 different counts, nine different counts, in the Information.

2 Do you understand that you will be separately sentenced on each  
3 of these counts?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that I may order you  
6 to serve your sentences either concurrently or consecutively,  
7 meaning together or one after the other?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Now I am going to summarize in order each  
10 of the nine charges.

11 Government, just be prepared. Afterwards, I am going  
12 to be asking you to set out the elements of those charges.

13 Do you understand that you are charged in Count One  
14 with knowingly participating in a racketeering conspiracy  
15 involving an enterprise known as the Nine Trey Gangsta Bloods,  
16 or "Nine Trey," from at least 2017 through in or about  
17 November 2018?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you are charged in  
20 Count Two with knowingly possessing a firearm which was  
21 brandished and discharged, and aiding and abetting the same,  
22 during and in relation to a crime of violence for which you may  
23 have been prosecuted in a court of the United States, namely,  
24 the racketeering conspiracy charged in Count One?

25 THE DEFENDANT: Yes.



Xj1ndherp

1           THE COURT: And do you understand that you are charged  
2 in Count Three with participating on or about March 20, 2018,  
3 in an attempted murder in aid of the same racketeering  
4 conspiracy and aiding and abetting the same?

5           THE DEFENDANT: Yes, your Honor.

6           THE COURT: Do you understand that in connection with  
7 the same incident on March 20, 2018, you are charged in Count  
8 Four with knowingly possessing a firearm which was brandished  
9 and discharged, and aiding and abetting the same, during and in  
10 relation to a crime of violence for which you may be prosecuted  
11 in a court of the United States, namely, the attempted murder  
12 charge in Count Three?

13          THE DEFENDANT: Yes, your Honor.

14          THE COURT: Do you understand that you are charged in  
15 Count Five with participating on or about April 13, 2018 in an  
16 assault --

17          MS. FLORIO: Your Honor, I think that is April 3rd,  
18 your Honor.

19          THE COURT: I'm sorry, April 3rd. Forgive me.

20          -- April 3rd, 2018 in an assault with a dangerous  
21 weapon in aid of the same racketeering conspiracy and aiding  
22 and abetting the same?

23          THE DEFENDANT: Yes, your Honor.

24          THE COURT: Thank you, Ms. Florio, for catching the  
25 date error.

Xjlntherp

1           And do you understand that in connection with the same  
2 incident on or about April 3, 2018, you are charged in Count  
3 Six with knowingly possessing a firearm which was brandished,  
4 and aiding and abetting the same, during and in relation to a  
5 crime of violence for which you may be prosecuted in a court of  
6 the United States, namely, the assault with a dangerous weapon  
7 charged in Count Five?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: Do you understand that you are charged in  
10 Count Seven with participating on or about June 2, 2018, in an  
11 assault with a dangerous weapon in aid of the racketeering  
12 conspiracy and aiding and abetting the same?

13          THE DEFENDANT: Yes, your Honor.

14          THE COURT: Do you understand that in connection with  
15 the same incident on or about June 2, 2018, you are charged in  
16 Count Eight with knowingly possessing a firearm which was  
17 brandished and discharged, and aiding and abetting the same,  
18 during and in relation to a crime of violence for which you may  
19 be prosecuted in a court of the United States, namely, the  
20 assault with a dangerous weapon charged in Count Seven?

21          THE DEFENDANT: Yes, your Honor.

22          THE COURT: Finally, do you understand that you are  
23 charged in Count Nine with participating in or about 2017 in a  
24 conspiracy to distribute and possess with intent to distribute  
25 one kilogram and more of mixtures and substances containing a

Xj1ndherp

1 detectable amount of heroin?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. Government counsel, would you  
4 please summarize the elements of each count?

5 MR. LONGYEAR: Yes, your Honor. And for efficiency,  
6 your Honor, for some of these counts that have similar  
7 elements, I will just group them.

8 THE COURT: Of course.

9 MR. LONGYEAR: Thank you, your Honor.

10 Your Honor, with respect to Count One, the government  
11 would have to prove the following elements beyond a reasonable  
12 doubt: First, that the enterprise alleged in the Indictment  
13 existed -- here, the enterprise is the Nine Trey Gangsta  
14 Bloods, or "Nine Trey" -- second, that the enterprise affected  
15 interstate or foreign commerce; third, that the defendant was  
16 associated with or a member of the enterprise; and, fourth,  
17 that the defendant knowingly and willfully conspired with at  
18 least one other person to participate in the conduct of the  
19 affairs of the enterprise through a pattern of racketeering  
20 activity that is at least two acts of racketeering activity.

21 The government with respect to this count, your Honor,  
22 would proffer that individuals in the enterprise sold heroin  
23 and fentanyl. Those narcotics came from out of state, indeed,  
24 out of the country.

25 With respect to Counts Two, Four, Six and Eight, the

Xjlntherp

1 defendant is charged with possessing, brandishing, and  
2 discharging firearms in furtherance of acts of violence. For  
3 those counts, the government would have to prove beyond a  
4 reasonable doubt the following elements: First, that the  
5 defendant committed the act of violence charged -- so, here it  
6 would be the racketeering conspiracy and three violent crimes  
7 in aid of racketeering -- that the defendant knowingly used,  
8 carried, or possessed a firearm, and that the use or carrying  
9 of the firearm was during and in relation to, or the possession  
10 of the firearm was in furtherance of, the defendant's crimes of  
11 violence.

12 With respect to Counts Two, Four and Eight --

13 THE COURT: One moment.

14 (Pause)

15 Go ahead.

16 MR. LONGYEAR: With respect to Counts Two, Four and  
17 Eight, the government would have to prove that the firearms  
18 were possessed, brandished and discharged.

19 With respect to Count Six, the government would have  
20 to prove that the firearm was possess and brandished.

21 With respect to Counts Three, Five and Seven, the  
22 defendant is charged with violent crimes in aid of  
23 racketeering. With respect to these counts, the government  
24 would have to prove the following elements: First, that the  
25 enterprise charged in the Information existed; second, that it

Xjlntherp

1 engaged in racketeering activity; third, that it engaged in or  
2 its activities affected interstate or foreign commerce; fourth,  
3 that the defendant committed the crime alleged -- with respect  
4 to Count Three, that would be attempted murder, and with Counts  
5 Five and Seven it would be assault with a dangerous weapon --  
6 and, fifth, that the purpose in doing so was to gain entrance  
7 to the enterprise or maintain or increase his position in the  
8 enterprise.

9 Finally, your Honor, with respect to Count Nine, the  
10 defendant is charged in a narcotics conspiracy. The government  
11 would have to prove the following elements beyond a reasonable  
12 doubt: First, that two or more persons agreed to violate the  
13 federal drug laws; second, the defendant knew the essential  
14 objective of the conspiracy; third, the defendant knowingly and  
15 voluntarily involved himself in the conspiracy; and, fourth,  
16 that the conspiracy involved the distribution of one kilogram  
17 and more of mixtures and substances containing a detectable  
18 amount of heroin.

19 Your Honor, the government would further have to prove  
20 venue by a preponderance of the evidence. In this case,  
21 several of the acts took place in the Bronx and Manhattan.

22 THE COURT: All right. Thank you, Mr. Longyear.

23 Ms. Florio, do you agree with Mr. Longyear's summary  
24 of the elements of each of those nine offenses?

25 MS. FLORIO: I do, your Honor.

XjlnDherp

1 THE COURT: Mr. Hernandez, did you hear and understand  
2 the prosecutor as he set out the elements of those nine  
3 offenses?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I'm now going to turn to the punishments,  
6 the consequences, for each of these offenses, and like  
7 Mr. Longyear, I have grouped certain ones that are common.

8 Do you understand that for Counts Two, Four, Six,  
9 Eight and Nine, the maximum possible penalty, in terms of  
10 imprisonment, is life imprisonment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that for each of Counts  
13 One, Five and Seven, the maximum possible penalty is 20 years  
14 imprisonment?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that for Count Three,  
17 the maximum possible penalty is ten years imprisonment?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that Counts Two, Four  
20 and Eight each carry a mandatory minimum term of imprisonment  
21 of ten years that must run consecutively to any other term of  
22 imprisonment imposed?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that Count Six carries a  
25 mandatory minimum term of imprisonment of seven years that must

Xjln dherp

1 run consecutively to any other term of imprisonment imposed?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that Count Nine, the  
4 narcotics conspiracy offense, carries a mandatory minimum term  
5 of imprisonment of ten years?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Putting all these mandatory -- consecutive  
8 and mandatory minimum provisions together, unless the Court  
9 grants a government motion from relief from these mandatory  
10 sentences based on your cooperation, you would face a mandatory  
11 minimum term of imprisonment of 47 years.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And to be clear, do you understand that  
15 that would just be the minimum and that the Court could impose  
16 a sentence of up to life imprisonment?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, turning to fines.

19 Counts One through Eight each have a maximum fine that  
20 may reach the greatest of \$250,000, twice the gross pecuniary  
21 gain derived from the offense or twice the gross pecuniary loss  
22 to persons other than you resulting from the offense.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: As to Count Nine, the maximum fine for

Xjlntherp

1 Count Nine may reach the greatest of \$10 million, twice the  
2 gross pecuniary gain derived from the offense or twice the  
3 gross pecuniary loss to persons other than you resulting from  
4 the offense.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: For pleading guilty to each of these  
8 crimes, you will be required to pay a mandatory \$100 special  
9 assessment, for a total of \$900.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: For pleading guilty to these crimes, you  
13 may be required to pay restitution to any person injured as a  
14 result of your criminal conduct.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: For pleading guilty to each of these  
18 crimes, you may be compelled to forfeit any and all property  
19 constituting and derived from proceeds obtained by your  
20 criminal conduct.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Let's turn now to supervised release.

24 Do you understand that Counts One, Three, Five and  
25 Seven each carry a maximum term of three years supervised



Xjln dherp

1 release; that Counts Two, Four, Six and Eight each carry a  
2 maximum term of five years supervised release?

3 THE DEFENDANT: Yes.

4 THE COURT: And that Count Nine carries a maximum term  
5 of lifetime supervised release and a mandatory minimum term of  
6 five years supervised release.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Supervised release means that you will be  
10 subject to monitoring when you are released from prison. There  
11 are terms of supervised release with which you must comply. If  
12 you don't comply with them, you can be returned to prison for  
13 the remainder of your term of supervised release without a jury  
14 trial. You would not under those circumstances be given any  
15 credit on that sentence for the time you had already served in  
16 prison, nor would you necessarily be given any credit for any  
17 time you had spent on post-release supervision.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you also understand that if I accept  
21 your guilty plea and adjudge you guilty, that may deprive you  
22 of valuable civil rights such as the right to vote, the right  
23 to hold public office, the right to serve on a jury, and the  
24 right to possess any kind of firearm?

25 THE DEFENDANT: Yes, your Honor.

Xj1ndherp

1 THE COURT: Are you a United States citizen?

2 THE DEFENDANT: Yes, your Honor, I am.

3 THE COURT: Under current law there are Sentencing  
4 Guidelines as well as other factors set forth in the sentencing  
5 statutes that a judge must consider -- a judge is required by  
6 law to consider in determining a sentence.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you spoken with your attorney about  
10 the Sentencing Guidelines and those other factors?

11 THE DEFENDANT: Yes, your Honor, I have.

12 THE COURT: Do you understand that I will not be able  
13 to determine the guideline range that will form a part of my  
14 determination of what a reasonable sentence will be in your  
15 case until after a presentence report has been prepared and  
16 until after you and your attorney and the government all have  
17 had an opportunity to challenge any of the facts in that report  
18 as prepared by the probation officer?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that even after the  
21 Court has determined what guideline range applies to your case,  
22 the Court has the discretion under the current law to impose a  
23 sentence that is higher or lower than the one recommended by  
24 the Sentencing Guidelines?

25 THE DEFENDANT: Yes, your Honor.

Xjln dherp

1           THE COURT: Do you understand that if your attorney or  
2 anyone else has attempted to predict what your sentence will  
3 be, that their prediction could be wrong? No one -- not your  
4 attorney, not the government's attorney -- no one can give you  
5 any assurance of what your sentence will be, because I'm going  
6 to decide your sentence and I'm not going to do that now and I  
7 really can't do that now. Instead, I'm going to wait until I  
8 receive a presentence report from the Probation Department.  
9 I'm going to wait until I receive what I'm sure will be  
10 thoughtful sentencing submissions by both the government and  
11 the defense. I'm going to do my own independent calculation of  
12 what the Sentencing Guidelines recommend in your case. But  
13 most of all, I am going to determine what a reasonable sentence  
14 is for you based on all of the factors contained in the  
15 sentencing statute which is known as Section 3553(a).

16           Do you understand all of that?

17           THE DEFENDANT: Yes, your Honor, I do.

18           THE COURT: Have you discussed these issues and the  
19 overall sentencing process with your attorney?

20           THE DEFENDANT: Yes, your Honor.

21           THE COURT: Even if your sentence is different from  
22 what your attorney or anyone else has told you it might be,  
23 even if it is different from what you expect, you would still  
24 be bound by your guilty plea and you will not be allowed to  
25 withdraw your plea of guilty.

Xjln dherp

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has anyone threatened you or anyone else  
4 or forced you in any way to plead guilty?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: All right. Counsel have handed up  
7 Government Exhibit 1, which has been identified as the plea  
8 agreement.

9 And looking at the back, I see here, Mr. Longyear, is  
10 this your signature?

11 MR. LONGYEAR: Yes, it is, your Honor.

12 THE COURT: And I see here the authorized -- the  
13 signature of the signatory for the Chief of the Criminal  
14 Division, Laura Birger.

15 Is this that person's signature?

16 MR. LONGYEAR: It is, your Honor.

17 THE COURT: All right. And I see, Ms. Florio, your  
18 signature dated today. Is that your signature?

19 MS. FLORIO: It is your Honor.

20 THE COURT: And, Mr. Hernandez, I see here your  
21 signature dated today. Is that your signature?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you read this agreement before you  
24 signed it?

25 THE DEFENDANT: Yes, your Honor.

XjlnDherp

1 THE COURT: Did you discuss it with your attorney  
2 before you signed it?

3 THE DEFENDANT: Yes, your Honor, I had.

4 THE COURT: Did you believe you understood the  
5 agreement at the time you signed it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you willingly sign the agreement?

8 THE DEFENDANT: Yes, I did, your Honor.

9 THE COURT: Did anyone force you to sign the  
10 agreement?

11 THE DEFENDANT: No, sir.

12 THE COURT: Mr. Longyear, would you please summarize  
13 the material terms of the plea agreement?

14 MR. LONGYEAR: Yes. Thank you, your Honor.

15 Your Honor, the agreement -- with this agreement, the  
16 defendant agrees to plead guilty to Counts One through Nine of  
17 the Superseding Information. As detailed by your Honor, those  
18 crimes carry a maximum sentence of incarceration of life with a  
19 mandatory minimum sentence of 47 years.

20 The defendant further agrees that two weeks prior to  
21 sentencing, he will pay any back taxes that may be required.

22 The defendant further admits the forfeiture  
23 allegations of Counts One and Nine.

24 The defendant's obligations under this agreement are  
25 as follows: That he shall truthfully and completely disclose

Xjlntherp

1 all information of the activities of himself and others to the  
2 U.S. Attorney's Office; that he will cooperate fully with the  
3 New York City Police Department, the Bureau of Alcohol, Tobacco  
4 and Firearms, Homeland Security Investigations, and any other  
5 law enforcement agency; that he shall attend all meetings of  
6 the Office; that he shall provide to the Office upon request  
7 any document; that he shall truthfully testify before the grand  
8 jury or at any trial; that he shall bring to the Office's  
9 attention all crimes which he has committed; and that he shall  
10 commit no further crimes.

11 If the defendant does this, the Office -- and this is  
12 detailed on pages 4 and 5 of the agreement -- agrees not to  
13 prosecute the defendant for the crimes set forth in Counts One  
14 through Nine of the Superseding Information as well as  
15 additional crimes that the defendant has told the government  
16 about.

17 Turning to page 5, the defendant has further provided  
18 additional crimes -- information concerning additional crimes  
19 to the Office's attention, crimes that the government cannot  
20 prosecute him federally but that the Court can take into  
21 consideration as relevant conduct at sentencing.

22 It is understood that the defendant's cooperation is  
23 likely to reveal the activities of individuals and that witness  
24 protection may be required at a later date.

25 This agreement does not bind any other prosecuting

Xjlntherp

1 Office.

2 And it is further set forth at the bottom of page 5  
3 that the sentence to be imposed on this defendant is within the  
4 sole discretion of this Court. The government has not made any  
5 representation about the sentence that he may receive. That  
6 sentence is to be determined based on the Court's evaluation of  
7 the sentencing submissions and the 3553(a) factors.

8 Should the defendant successfully cooperate, the  
9 government agrees that it will file at the time of sentencing a  
10 motion pursuant to 5K1.1 of the Sentencing Guidelines and  
11 further move pursuant to 3553(e) for a sentence below any  
12 mandatory minimum. However, if it is determined that the  
13 defendant has not fully cooperated, if the defendant has lied,  
14 or if he has committed any additional crimes, that the  
15 government may not move under 5K1.1 and 3553(e), and that if  
16 the government does not move, the defendant is still -- he  
17 cannot withdraw his guilty plea.

18 Further, if it is determined that the defendant has  
19 committed any other crimes, the Office may prosecute him for  
20 those crimes, and any statements that he has made to the Office  
21 can be used against him, that he may not make any motion to  
22 suppress those statement.

23 Finally, your Honor, on the last page of the  
24 agreement, on page 7 of the agreement, although the government  
25 believes, and has no information to the contrary, that the

Xjlntherp

1 defendant is a citizen, should it be determined at some later  
2 date that he is in fact not a citizen, he cannot withdraw his  
3 guilty plea pursuant to any adverse immigration consequences.

4 THE COURT: All right. Thank you, Mr. Longyear.

5 Ms. Florio, are you in agreement with the government's  
6 summary of the terms that Mr. Longyear covered?

7 MS. FLORIO: Yes, your Honor.

8 THE COURT: And, Mr. Hernandez, did you hear and  
9 understand Mr. Longyear as he reviewed those terms?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you have any agreement with the  
12 government, whether about your plea or your sentence, that has  
13 been left out, that has been omitted from this written  
14 agreement?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: All right. What I am going to do now is  
17 to highlight certain -- by no means all, but certain of the  
18 terms of this agreement just to make sure that you understand  
19 those terms.

20 First, do you understand that the agreement provides  
21 that you must cooperate fully with the Office of the United  
22 States Attorney; New York City Police Department; The Bureau of  
23 Alcohol, Tobacco, Firearms and Explosives; The United States  
24 Department of Homeland Security, Homeland Security  
25 Investigations; and any other law enforcement agency designated



Xjlntherp

1 by the United States Attorney?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that the agreement does  
4 not bind any federal, state or local prosecuting authority  
5 other than the United States Attorney?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that the agreement  
8 provides that if the United States Attorney determines that you  
9 have provided substantial assistance in an investigation or  
10 prosecution and if you have fully complied with the  
11 understandings specified in the agreement, that the United  
12 States Attorney will file a motion under Section 5K1.1 of the  
13 Sentencing Guidelines and Section 3553(e) of Title 18  
14 requesting that the Court sentence you in light of the factors  
15 set forth in Section 5K1.1?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All right. And do you understand that the  
18 factors that the Court could then consider under Section 5K1.1  
19 include the following -- the significance and usefulness of  
20 your assistance, taking into consideration the government's  
21 evaluation of the assistance you rendered; the truthfulness,  
22 completeness and reliability of any information or testimony  
23 you provided; the nature and extent of your assistance; any  
24 injury suffered or any danger or risk of injury to you, your  
25 family as a result of your assistance; and the timeliness of

Xjlntherp

1 your assistance?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you understand that even if the  
4 United States Attorney files such a motion, that the sentence  
5 to be imposed on you remains within the sole discretion of the  
6 Court?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And do you understand that you will not be  
9 entitled to withdraw your plea even if the government doesn't  
10 make that motion or if the government makes the motion and the  
11 Court denies the motion? Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that regardless of the  
14 position that the government takes at sentencing, that the  
15 Court is free to impose whatever sentence the Court believes is  
16 appropriate under the circumstances and the applicable law and  
17 you will have no right to withdraw your plea if you are unhappy  
18 with the sentence?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand than if the United  
21 States Attorney determines that you have not provided  
22 substantial assistance in an investigation or prosecution, or  
23 that you have violated any provision of the agreement, the  
24 United States Attorney is not obligated then to file a motion  
25 under Section 5K1.1 of the Sentencing Guidelines or Section

Xj1ndherp

1 3553(e)?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you understand, again, that you  
4 will not be entitled to withdraw your guilty plea even if the  
5 United States Attorney decides not to file that motion?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that the agreement  
8 provides that if you commit any further crimes or if it's  
9 determined that you gave false, incomplete or misleading  
10 testimony or information, or that you have otherwise violated  
11 any provision of the agreement, you shall be subject to  
12 prosecution for any federal violations that the United States  
13 Attorney has knowledge of, including perjury and obstruction of  
14 justice?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that the agreement  
17 provides than if you commit any further crimes or if it is  
18 determined that you gave false, incomplete or misleading  
19 testimony or information, or that you have otherwise violated  
20 any provision of the cooperation agreement, that all statements  
21 you've made to the United States Attorney or designated law  
22 enforcement agencies, or any testimony you've given, whether  
23 before a grand jury or another tribunal, may be admissible in  
24 evidence in any criminal proceedings against you?

25 THE DEFENDANT: Yes, your Honor.

Xj1ndherp

1 THE COURT: Do you understand that your agreement also  
2 provides that you may not assert a claim that such statements  
3 should be suppressed and, in fact, that you have waived your  
4 right to claim that such statements should be suppressed?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Has anyone made any promise or done  
7 anything other than what's contained in the plea agreement to  
8 induce you to plead guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Has anyone made a promise to you as to  
11 what your sentence will be?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you still wish to plead guilty pursuant  
14 to this agreement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. At this point, Mr. Hernandez,  
17 we're up to the point at which I would like you to tell me in  
18 your own words what you did that makes you believe you are  
19 guilty of the nine charges in the Information.

20 Ms. Florio, I see that you have handed a written  
21 document to your client; is that correct?

22 MS. FLORIO: That is correct, your Honor.

23 THE COURT: Mr. Hernandez, will you be consulting that  
24 document as you answer the question I just put to you?

25 THE DEFENDANT: Yes, your Honor.

Xjlntherp

1 THE COURT: That's fine. I just need to make sure  
2 that it is a document you have familiarized yourself with  
3 before. The important thing is that you are certain that  
4 everything that is on that document that you may be reading  
5 from is truthful and accurate. Is it?

6 THE DEFENDANT: Yes. Yes, your Honor, it is.

7 THE COURT: All right. You may proceed. I will ask  
8 you to speak nice and slowly. Often when people read in court,  
9 they speak too fast for the court reporter. So, take it slow.

10 THE DEFENDANT: In the fall of 2017, I met and joined  
11 the Nine Trey Blood Gang. As a member of Nine Trey, the  
12 enterprise engaged in such activities including shooting at  
13 people, robbing people, and at times drug trafficking.

14 THE COURT: What was the thing after shooting?  
15 Shooting people?

16 THE DEFENDANT: Robbing people.

17 THE COURT: Robbing people. Thank you.

18 THE DEFENDANT: We operated in Manhattan, Brooklyn and  
19 the Bronx.

20 As members of Nine Trey, we had disputes with rivals  
21 of Nine Trey, including disputes with our own members who we  
22 deemed disloyal to our organization. We engaged in these  
23 various criminal acts to preserve and enhance the power of Nine  
24 Trey.

25 Our enterprise was engaged in activities that affected

Xj1ndherp

1 interstate and foreign commerce.

2 As part of the conspiracy, we agreed that at least one  
3 of us would commit at least two acts of racketeering. In  
4 furtherance of the conspiracy, we at times knowingly used,  
5 carried, brandished, and discharged a gun in furtherance of the  
6 conspiracy. I helped other Nine Trey members to do the same.

7 On or about March 20, 2018, I helped members of Nine  
8 Trey attempt to kill a rival gang member. I did this to  
9 maintain or increase my own standing in Nine Trey. In  
10 furtherance of this attempted murder, I knew that another  
11 member of Nine Trey had a gun and discharged that gun.

12 On or about April 3, 2018, I and other members robbed  
13 a rival of Nine Trey in Manhattan. I helped other members of  
14 Nine Trey rob persons at gunpoint, and property was taken from  
15 the victims. I did this to maintain or increase my own  
16 standing in Nine Trey. In furtherance of this robbery, I knew  
17 that another member of Nine Trey had brandished a gun.

18 On or about June 2, 2018, in furtherance of Nine Trey,  
19 of the Nine Trey enterprise, I paid a person to shoot at a  
20 rival member of Nine Trey to scare him. The shooting took  
21 place in Manhattan. I did this to maintain or increase my own  
22 standing in Nine Trey. In furtherance of this shooting, I knew  
23 that a member of Nine Trey discharged a gun.

24 In 2017, I and others agreed to sell one kilogram of  
25 heroin. I participated in the drug transaction, and I received

XjlnDherp

1 a payment for my willingly participating in this drug  
2 transaction.

3 At all times I knew that these actions were wrong and  
4 in violation of the law.

5 I apologize to the Court, to anyone who was hurt, to  
6 my family, friends and fans for what I have done and who I have  
7 let down.

8 THE COURT: All right. Thank you. One moment.

9 (Pause)

10 Government, just as to venue, did each of the acts in  
11 question occur in this district?

12 (Pause)

13 Let me reformulate the question. Does each count have  
14 a basis of venue in this district even if there were acts in  
15 support that also occurred elsewhere?

16 MR. LONGYEAR: Yes, your Honor. The three acts of  
17 violence detailed -- the March 20, April 3rd and June 2nd  
18 shooting -- all three of those acts took place in Manhattan.

19 The drug transaction -- if I may have one moment with  
20 defense counsel, your Honor?

21 THE COURT: Yes.

22 (Pause)

23 MR. LONGYEAR: Your Honor, with respect to Count Nine,  
24 the drug transaction, the transaction itself took place in  
25 Brooklyn, in the Eastern District, although I think there is

Xjln dherp

1 probably foreseeability that distribution would happen in the  
2 Southern District. However, it may be prudent, just out of an  
3 abundance of caution, to ask the defendant if he would waive  
4 venue just as to that count.

5 THE COURT: All right. Let me begin with this. Thank  
6 you.

7 Mr. Hernandez, as to the three acts of violence, did  
8 each of those occur, as Mr. Longyear said, in Manhattan?

9 THE DEFENDANT: Yes, your Honor, it did.

10 THE COURT: OK. Now, as to the drug transaction, the  
11 kilo of heroin, that occurred, I take it, in Brooklyn?

12 THE DEFENDANT: Yes, your Honor, in Bushwick.

13 THE COURT: OK. It may be that there are acts that  
14 you took -- were there acts that you took in other boroughs  
15 besides Brooklyn that helped advance the gang's drug dealing?

16 (Pause)

17 MS. FLORIO: Your Honor, could you just break that  
18 down a little?

19 THE COURT: Let me take back the question. I think  
20 Mr. Longyear's way of approaching this is probably the better  
21 way.

22 Mr. Hernandez, you are entitled under the law to be  
23 prosecuted in a district in which, as to each crime in  
24 question, some act in furtherance of the crime or some part of  
25 the crime took place. It is not clear to me whether or not



Xjlntherp

1 some part of the drug crime took place in the Bronx or in  
2 Manhattan or Westchester or the upstate counties, which is this  
3 district. This district does not includes Brooklyn.

4 Are you waiving your right to be prosecuted in a  
5 different district, as opposed to this district, for the drug  
6 crime?

7 THE DEFENDANT: Yes, your Honor, I am.

8 THE COURT: OK. You understand that if there was not  
9 evidence that that drug crime occurred in the Southern District  
10 of New York, you would have a right to insist that you be  
11 prosecuted in the district in which some part of that crime  
12 took place?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And you are knowingly and voluntarily  
15 waiving your right to have that crime prosecuted in a different  
16 district if in fact it could not properly be brought here  
17 without your consent?

18 THE DEFENDANT: Yes, your Honor, I do.

19 THE COURT: All right.

20 MS. FLORIO: Your Honor, may I have just one moment?

21 THE COURT: Of course.

22 (Pause)

23 MS. FLORIO: Thank you, your Honor. We have had  
24 sufficient time to consult about that matter.

25 THE COURT: Great. Thank you.

Xjlntherp

1           A question or two. You mentioned earlier that the  
2 activities of the gang affected interstate and foreign  
3 commerce.

4           THE DEFENDANT: Yes.

5           THE COURT: Please confirm, the gang -- members of the  
6 gang sold both heroin and fentanyl, is that correct?

7           THE DEFENDANT: Yes, your Honor.

8           THE COURT: All right. And, government, again, just  
9 the government's proffer is that were the case to go to trial,  
10 you have evidence that those narcotics were -- traveled out of  
11 state or manufactured out of state? Just articulate that for  
12 me.

13           MR. LONGYEAR: Your Honor, they were manufactured and  
14 shipped from out of state and, indeed, in some instances out of  
15 the country into the U.S.

16           THE COURT: OK. Mr. Hernandez, do you dispute what  
17 Mr. Longyear just said about where the drugs came from?

18           THE DEFENDANT: One second.

19           THE COURT: Of course.

20           (Pause)

21           MS. FLORIO: Mr. Longyear, can we consult for a  
22 second?

23           (Counsel conferred)

24           THE DEFENDANT: My understanding is that the drugs  
25 came from out of state, from California.

XjlnDherp

1 THE COURT: All right. I don't expect that you know  
2 where each and every drug came from. I just want to make sure  
3 you are not disputing what Mr. Longyear says, which is that the  
4 government's evidence is that the drugs came from outside of  
5 New York State. Is that correct?

6 THE DEFENDANT: Yes, it is.

7 THE COURT: And, Ms. Florio, just to make sure, do I  
8 have that correct?

9 MS. FLORIO: You do have that correct.

10 THE COURT: All right. With respect to all nine  
11 counts, are you pleading guilty because you are in fact guilty?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Are you pleading guilty voluntarily and of  
14 your own free will?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Does government counsel agree that there  
17 is a sufficient factual predicate for a guilty plea to each of  
18 the nine offenses?

19 MR. LONGYEAR: Yes, your Honor.

20 THE COURT: Does defense counsel?

21 MS. FLORIO: Yes, your Honor.

22 THE COURT: Does defense counsel know of any valid  
23 defense that would prevail at trial or any reason why your  
24 client should not be permitted to plead guilty?

25 MS. FLORIO: Not at all, your Honor.

Xjlntherp

1           THE COURT: Mr. Hernandez, because you acknowledge  
2 that you are in fact guilty as charged in the Information,  
3 because I am satisfied that you know of your rights, including  
4 your right to go to trial, because I am satisfied that you are  
5 aware of the consequences of your plea, including the sentence  
6 that may be imposed, and because I find that you are  
7 voluntarily pleading guilty, I accept your guilty plea, and I  
8 enter a judgment of guilty on the nine counts to which you have  
9 pled guilty.

10           Now, eventually your case will proceed to the point of  
11 sentencing, and I want you to pay close attention to what I'm  
12 about to say.

13           Eventually this Probation Department is going to want  
14 to interview you in connection with the presentence report that  
15 it will prepare. That may be some time down the road given the  
16 nature of the plea agreement you have entered into but that day  
17 will come. If you choose to speak with the Probation  
18 Department, please make sure that anything you say to them is  
19 truthful and accurate. I read those reports very carefully,  
20 along with the parties' sentencing submissions. They are often  
21 extremely important to me in determining what a reasonable  
22 sentence is in the particular case.

23           You and your counsel have a right to examine the  
24 report and to comment on it at the time of sentencing. I urge  
25 you to read it. I urge you to discuss it with your attorney

Xjln dherp

1 before sentencing. If there are any mistakes in it, please  
2 point them out to your lawyer so that she can bring them to my  
3 attention before sentencing.

4 Will you agree to do that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: All right. Ms. Florio, it is a foregone  
7 conclusion but I need to ask you the question anyway. I take  
8 it this is not a case in which you are seeking an expedited  
9 sentence?

10 MS. FLORIO: No, your Honor.

11 THE COURT: OK. Government, when should I set a  
12 control date for sentencing?

13 MR. LONGYEAR: Your Honor, in view of the  
14 September 4th trial date, I think probably a date either in  
15 December or even January as a control date. Should this case  
16 resolve itself in advance of that, we would obviously promptly  
17 notify the Court and we can then set a sentencing date.

18 THE COURT: All right. How about one year from today,  
19 January 23rd at 10 o'clock in the morning? Counsel, I'm going  
20 to set that down as a control date for sentencing.

21 Government counsel, in consultation with the defense,  
22 when and if it becomes clear that that is a real date, that is  
23 to say, there won't be a need to adjourn it, please let the  
24 Court know, and from the point at which you tell the Court  
25 that, I expect at that point you will within two weeks provide

Xjlntherp

1 your account of the case summary to the Probation Department,  
2 and, defense, at that point within two weeks I will expect your  
3 sentencing submission -- the government's sentencing  
4 submission -- excuse me. Forgive me. Defense counsel within  
5 two weeks is to get -- is to have Mr. Hernandez interviewed by  
6 the Probation Department. In connection with sentencing, the  
7 defense submission is due two weeks before sentencing, and the  
8 government's submission is due one week before sentencing.

9 All right. Is there anything further from the  
10 government?

11 MR. LONGYEAR: No, your Honor.

12 THE COURT: Is there anything further from the  
13 defense?

14 MS. FLORIO: No, your Honor.

15 THE COURT: All right. Thank you. We stand  
16 adjourned.

17 MS. FLORIO: May I have just one second just to  
18 explain something to my client?

19 THE COURT: You may.

20 (Adjourned)