

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-20231-CR-
MIDDLEBROOKS

UNITED STATES OF AMERICA

vs.

CARLOS VAZQUEZ,
Defendant.

MOTION TO WITHDRAW GUILTY PLEA

Come Now, CARLOS VAZQUEZ by counsel and files the instant Motion to Withdraw
GuiltyPlea and in support states:

LEGAL ANALYSIS

The law in the Eleventh Circuit is well settled regarding withdrawal of a previously entered guilty plea. After the district court has accepted a plea and before sentencing, a defendant may withdraw a guilty plea if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R.Crim.P. 11(d)(2)(B). In determining whether the defendant has met his burden to show a "fair and just reason," a district court "may consider the totality of the circumstances surrounding the plea." *United States v. Buckles*, 843 F.2d 469, 471-72 (11th Cir.1988). The *Buckles* case instructs that this Court should determine the following: "(1) whether close assistance of counsel was available; (2) whether the plea was knowing and voluntary; (3) whether judicial resources would be conserved; and (4) whether the government would be prejudiced if the defendant were allowed to withdraw his plea." *Buckles* at 47. "The good faith, credibility and weight of a defendant's assertions in support of a motion to withdraw a guilty plea

are issues for the trial court to decide." *Id.* Our appellate courts will review the denial of a request to withdraw a guilty plea for abuse of discretion." *United States v. Freixas*, 332 F.3d 1314, 1316 (11th Cir.2003). There is no abuse of discretion unless the denial is "arbitrary or unreasonable." *United States v. Weaver*, 275 F.3d 1320, 1328 n. 8 (11th Cir.2001). See also

The first factor to consider is whether close assistance of counsel was available. On July 12 and 20, 2021, Mr. Vazquez appeared before this Court to change his plea. On both occasions the Court did not accept his plea due to uncertainty.

On July 27, 2021, undersigned counsel filed his Appearance on behalf of Mr. Vazquez. The Court at D.E. 39 granted Defendant's Motion to Continue Trial and extended the deadline for timely acceptance of responsibility to August 31, 2021. The Court indicated the Defendant risked losing acceptance of responsibility if he did not notify the Government and Chambers of his position on or before that date. On or about August 24, 2021, both Chambers and the Government were notified of his intention to plead guilty and on September 13, 2021, Mr. Vazquez appeared before the Magistrate via zoom for the change of plea which was ultimately accepted by this Court.

In making the decision to plead guilty the Government represented to the undersigned and Mr. Vazquez was led to believe that by timely entering the plea, he would receive at least a two level reduction for acceptance of responsibility. In addition, the Defendant was led to believe that he would be given an opportunity to provide substantial assistance. As of this filing, the Government has refused to meet with him or to even accept any proffer as to what assistance Mr. Vazquez could provide.

There were other discussions between counsel which were communicated to Mr. Vazquez which also contributed to his decision to plead guilty. Th Defendant possessed a cashiers check made payable to the IRS in the approximate amount of \$175,000.00, which he voluntarily relinquished to the Government subsequent to his plea. The return of the check was strongly urged by the Government with regard to what their position on acceptance of responsibility might be if it were not. This apparently had no impact on the Government with regard to its position on the Defendant's

acceptance of responsibility, nor did his voluntary surrender to authorities when he learned he was wanted by the authorities.

Now the Government's focus has turned to whether Mr. Vazquez lied in his pre-sentence interview to U.S. Probation, with regard to where he was born and his immigration status. To clear the record, Mr. Vazquez was born in Havana, Cuba. Shortly after arriving from Cuba, the family moved to Chicago where he grew up until approximately the age of 10. He is of the belief that he is a naturalized U.S. citizen through his parents. This may or not be true, however, this is what he believes. In addition, the Government is suggesting he was trying to dispose of an asset when the truth is he was making arrangements in the event he were to be sentenced to prison. This apartment, in which he has been living since shortly after his arrest, has been transferred back to Mr. Vazquez so as not to run afoul of the conditions of his bond. And to date Mr. Vazquez is in the dark about why he wasn't allowed to live with Annabel Lee, to whom Magistrate Goodman ordered him to reside.

What does the above have to do with this request to withdraw his plea? Mr. Vazquez was led to believe by representations made by the Government that he would receive a reduction in his offense level for acceptance, would not be enhanced for transferring his property in preparation of a likely prison sentence, would not lose his mother's apartment in forfeiture and would be given an opportunity to cooperate. Although it was his intention to plead guilty, these representations and the subsequent events being contrary thereto, have rendered his plea not knowingly and voluntarily entered.

The third factor that the Court must consider is whether judicial resources would be conserved. Counsel submits that should Carlos Vazquez be allowed to withdraw his guilty plea judicial resources would be put to their most efficient use. Mr. Vazquez attempted to plead guilty on two occasions, however, exhibited uncertainty. He maintains that he was misled in his understanding of what would transpire either by the undersigned or the Government and wants his day in Court. Actually, the undersigned would anticipate a two-day trial, if he were permitted to withdraw his plea.

The fourth factor, whether the government would be prejudiced if the defendant were allowed to withdraw his plea should likewise be answered in the negative. Th Government has been preparing for the Defendant's Sentencing as if it were a trial so there exists no prejudice.

All told, we submit that a fair and just resolution of this motion is to allow Carlos Vazquez to withdraw his guilty plea and proceed to trial in this matter.

WHEREFORE, Carlos Vazquez requests that this Court grant his Motion to Withdraw Guilty Plea.

Respectfully submitted,

By: /s/ Albert Z. Levin, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed this 5th day of November, 2021, and was served to the parties in this case from that system.

/s/ ALBERT Z.LEVIN

