

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-20231-CR-MIDDLEBROOKS/MCALILEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS VAZQUEZ,

Defendant.

_____ /

REPORT AND RECOMMENDATION ON CHANGE OF PLEA

The Honorable Donald M. Middlebrooks referred this matter to me to conduct a change of plea hearing for the Defendant Carlos Vazquez. (ECF No. 40). I held that hearing on September 13, 2021, and for the following reasons recommend that the Court accept Defendant's plea of guilty.

1. At the outset of the hearing, I told Defendant of his right to have these proceedings conducted by Judge Middlebrooks, the presiding District Court Judge. I also advised Defendant that Judge Middlebrooks would sentence Defendant, and make all findings and rulings concerning Defendant's sentence.

2. Defendant was made aware that he did not have to permit this Magistrate Judge to conduct this hearing and could request that the change of plea hearing be conducted by Judge Middlebrooks. Defendant, Defendant's attorney and the Assistant United States Attorney all agreed on the record and consented to my conducting the change

of plea hearing. Defendant also consented to my holding the hearing by video conference. And, both parties agreed that they preferred to hold the change of plea now by videoconference because it allows for social distancing and, therefore, reduces the possibility of their exposure to COVID-19. Pursuant to S.D. Fla. Administrative Order 2021-51, I find that Defendant's guilty plea could not be further delayed without serious harm to the interests of justice.

3. I conducted the plea colloquy with Defendant in accordance with Federal Rule of Criminal Procedure 11.

4. The parties do not have a plea agreement. Defendant pled guilty to both counts of the Indictment, which charges Defendant with wire fraud in violation of Title 18, United States Code, Section 1343. (ECF No. 19).

5. The parties did agree to a written factual proffer, and had that document with them at the hearing. This was later filed with the Court. Defense counsel read the factual proffer into the record, and Defendant agreed to its accuracy; he also confirmed that he signed it. Government counsel identified all of the essential elements of the offenses to which the Defendant plead guilty, including any sentencing enhancements and/or aggravating factors that may be applicable. The Court reviewed the factual proffer with the Defendant and he confirmed that it accurately summarizes how he committed the crime charged. I found that a factual basis exists for Defendant's plea of guilty. Defendant was also advised of the statutory maximum penalties. Defendant acknowledged that he

understood these possible penalties, including the maximum twenty (20) year period of imprisonment for each of Counts 1 and 2 of the Indictment.

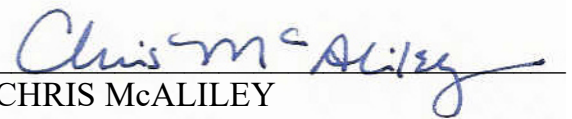
6. Based upon the foregoing, and the statements and findings at the plea colloquy which I incorporate into this Report and Recommendation, I find that Defendant was competent and capable of entering an informed plea, and that his guilty plea was knowing and voluntary and has factual support. I recommend that the Court adopt these findings, and adjudicate Defendant guilty of Counts 1 and 2 of the Indictment.

7. The U.S. Probation Office will prepare a pre-sentence investigation report, and the Defendant was advised that his **sentencing has been scheduled for November 16, 2021, at 1:15 p.m., before the Honorable Donald M. Middlebrooks, in Miami.**

Accordingly, I **RECOMMEND** that the Court accept Defendant's plea of guilty, adjudicate Defendant guilty of Counts 1 and 2 of the Indictment, and that a sentencing hearing be conducted for final disposition of this matter.

No later than fourteen days from the date of this Report and Recommendation the parties may file any written objections to this Report and Recommendation with the Honorable Donald M. Middlebrooks, who is obligated to make a *de novo* review of only those factual findings and legal conclusions that are the subject of objections. Only those objected-to factual findings and legal conclusions may be reviewed on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985), 28 U.S.C. § 636(b)(1); Fed.R.Crim.P. 59(b), 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED this 13th day of September, 2021, at
Miami, Florida.


CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable Donald M. Middlebrooks
Counsel of record