

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
	)	No. 11-10389-DPW
vs.	)	
	)	
INOCENTE ORLANDO MONTANO,	)	
Defendant.	)	

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

PLEA TO INFORMATION

John Joseph Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

December 19, 2011  
3:10 p.m.

Valerie A. O'Hara  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
One Courthouse Way, Room 3204  
Boston, MA 02210  
E-mail: vaohara@gmail.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

For The United States:

United States Attorney's Office, by JOHN A. CAPIN, ESQ.,  
1 Courthouse Way, Suite 9200, Boston, Massachusetts 02110

For the Defendant:

Federal Public Defender Office, by OSCAR CRUZ, JR.,  
ESQ., 51 Sleeper Street, Boston, Massachusetts 02210.

ALSO PRESENT: Julie Kurtz, Interpreter

1

PROCEEDINGS

2

THE CLERK: All rise. This is Criminal Action 11-10389, United States vs. Inocente Orlando Montano. Would the interpreter please rise and raise your right hand.

5

(The interpreter was sworn.)

6

THE COURT: I received a copy of the plea agreement and, of course, the information here, and so what I'm going to do is ask Mr. Lovett to swear Mr. Montano, and I'll ask him some questions.

7

8

9

03:10PM 10

MR. CRUZ: Your Honor, could I have a minute?

11

THE COURT: Sure, you can talk to your lawyer.

12

MR. CRUZ: Thank you, your Honor.

13

THE COURT: All right. Mr. Lovett.

14

(Defendant was sworn.)

15

THE COURT: Mr. Montano, the purpose of this hearing is to satisfy me that what appears your intent to plead guilty to something called an information and thereby waiver indictment in this case is a knowing and voluntary act.

16

17

18

Moreover, you've indicated by the plea agreement that you

03:12PM 20

intend to plead guilty to the two counts in the information.

21

In order for me to make the determination about whether or not to accept that plea and to accept the waiver of indictment, I have to satisfy myself that you're doing this knowingly and voluntarily. I have to ask you some questions.

22

23

24

25

Some of them are personal in nature. You understand I'm not

1 trying to delve into your personal life except that it makes it  
2 possible for me to know what you're doing and what you're doing  
3 is voluntary. Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Can you tell me how old a man you are?

6 THE DEFENDANT: Sixty-nine.

7 THE COURT: How far did you get in school?

8 THE DEFENDANT: Up to university.

9 THE COURT: And where did you attend university?

03:13PM 10 THE DEFENDANT: In El Salvador.

11 THE COURT: Okay. Did you receive a degree?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you presently working?

14 THE DEFENDANT: No.

15 THE COURT: When was the last time you worked for a  
16 living?

17 THE DEFENDANT: May 18th of this year.

18 THE COURT: What were you doing before that?

19 THE DEFENDANT: Now I'm retired.

03:14PM 20 THE COURT: I understand. What kind of work were you  
21 doing in the United States before you retired?

22 THE DEFENDANT: I worked as a machine operator in a  
23 candy factory.

24 THE COURT: And for how long a period did you do that?

25 THE DEFENDANT: Six years.

1 THE COURT: How long have you been in the  
2 United States?

3 THE DEFENDANT: Ten years.

4 THE COURT: Okay. And did you do other work in the  
5 United States before you worked as a machine operator?

6 THE DEFENDANT: No.

7 THE COURT: Okay. When you were in El Salvador, what  
8 was your kind of work?

9 THE DEFENDANT: I was an official in the armed forces.

03:15PM 10 THE COURT: For how long a period?

11 THE DEFENDANT: For 30 years.

12 THE COURT: Now, have you had any difficulty  
13 understanding what this case is about, what it is that the  
14 government is accusing you of?

15 THE DEFENDANT: If I understand the charges you're  
16 asking me?

17 THE COURT: Yes, you understand what it is that the  
18 government is accusing you of?

19 THE DEFENDANT: Yes.

03:15PM 20 THE COURT: Have you had an adequate opportunity to  
21 discuss this case with your attorney, Mr. Cruz?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. Now, can you tell me have you ever  
24 had any problem with either drugs or alcohol?

25 THE DEFENDANT: None at all.

1 THE COURT: Are you taking any prescription drugs at  
2 this point?

3 THE DEFENDANT: Yes.

4 THE COURT: What are you taking?

5 THE DEFENDANT: I'm taking Fosfomycin. It's an  
6 antibiotic for an infection in the urinary tract.

7 THE COURT: Have you been taking that for a long term  
8 period or is that just a --

9 THE DEFENDANT: Two years since they operated on me.  
03:17PM 10 I had an operation on my bladder, they removed it, and then I  
11 became infected from a bacteria.

12 THE COURT: And you've been taking antibiotics for two  
13 years?

14 THE DEFENDANT: Yes.

15 THE COURT: Is that interfering with you making a  
16 clear-eyed judgment on an important matter like this?

17 THE DEFENDANT: No, no, no.

18 THE COURT: Okay. Now, are you seeing a doctor for  
19 any other kinds of physical conditions?

03:18PM 20 THE DEFENDANT: Yes, I'm under permanent treatment.

21 THE COURT: For what?

22 THE DEFENDANT: For this problem that I've had because  
23 of the infection.

24 THE COURT: Apart from the bladder infection or  
25 bladder surgery related and infection, is there any other

1 physical problem you're facing?

2 THE DEFENDANT: I have problems with arthritis in a  
3 leg.

4 THE COURT: Anything else?

5 THE DEFENDANT: No, little things like flu, nothing  
6 else really.

7 THE COURT: Have you ever had occasion to consult with  
8 a mental health professional, I mean, a psychologist or a  
9 psychiatrist, social worker, someone like that?

03:19PM 10 THE DEFENDANT: No, no.

11 THE COURT: I started this hearing by mentioning that  
12 there was a plea agreement between you and the government and  
13 there was an additional waiver of an indictment, and both of  
14 those documents appear to have been signed by you today.

15 THE DEFENDANT: What happens with these two documents?

16 THE COURT: They appear to have been signed by you  
17 today.

18 THE DEFENDANT: Which documents?

19 THE COURT: I'm speaking of the letter dated  
03:20PM 20 December 19th directed to Mr. Cruz from the United States  
21 Attorney and the document labeled waiver of indictment signed  
22 by you and Mr. Cruz.

23 THE DEFENDANT: Okay.

24 THE COURT: All right. Now, let's turn to the letter,  
25 the December 19 plea agreement.

1 MR. CAPIN: If I may, your Honor?

2 THE COURT: Yes.

3 MR. CAPIN: It came to my attention, and I discussed  
4 it with Mr. Cruz, Mr. Cruz I believe has had a chance to talk  
5 to Mr. Montano about it, paragraph 2 or Section 2 of the  
6 indictment contains an error, specifically it states that the  
7 maximum penalties for both counts set forth in the information  
8 is five years in prison, et cetera. In fact, looking at the  
9 statute to refresh my memory, 1546A carries a statutory maximum  
03:21PM 10 of 10 years in prison. I would propose that we either  
11 interlineate it or the parties can agree to give the Court a  
12 clean copy after the hearing if it may be easier.

13 THE COURT: That may be easier, although I was going  
14 to make reference to what I thought was an error in this.

15 MR. CAPIN: Thank you.

16 THE COURT: Now, we're focusing on this letter with  
17 the refinement that Mr. Capin has mentioned. Is this your  
18 entire agreement with the government with respect to pleading  
19 guilty?

03:22PM 20 THE DEFENDANT: Yes.

21 THE COURT: Did anybody threaten you in any way to get  
22 you to plead guilty?

23 THE DEFENDANT: Not at all.

24 THE COURT: Did anybody promise you something that's  
25 not in this plea agreement to get you to plead guilty?



1 THE DEFENDANT: No.

2 THE COURT: Now, you understand, and Mr. Capin focused  
3 us on it, that you're pleading guilty to or propose to plead  
4 guilty to some serious federal felonies. The violation of the  
5 false statements on an immigration application provision  
6 carries with it a maximum penalty of incarceration of 10 years  
7 in prison, supervised release of three years, a fine of  
8 \$250,000 and a mandatory special assessment of \$100. Do you  
9 understand that those are the maximums that could be imposed on  
03:23PM 10 that count?

11 THE DEFENDANT: Yes.

12 THE COURT: And with respect to the count of perjury,  
13 the maximum period of incarceration is five years in prison,  
14 supervised release for three years, a fine of \$250,000 and a  
15 mandatory special assessment of \$100. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Now, as part of the plea agreement,  
18 the parties have gone through and tried to anticipate what the  
19 sentence might be in this case, and they've looked first to the  
03:23PM 20 question of the sentencing guidelines. The sentencing  
21 guidelines are a series of directives to me that tell me what  
22 the appropriate sentence might be or range of sentence might be  
23 for someone with your background who's committed these two  
24 crimes, and it requires the Court ultimately to make some  
25 determinations about how the sentencing guideline provisions

1 apply here.

2 Have you had an adequate opportunity to discuss with  
3 Mr. Cruz how the Sentencing Guidelines work, how they may apply  
4 in this setting?

5 THE DEFENDANT: Yes, yes, I have.

6 THE COURT: Now, the parties have made some judgments  
7 about what they think the sentencing guidelines would be in  
8 this area, but I want to emphasize something for you. I'm not  
9 bound by what the parties agree to. I'll make my own  
03:24PM 10 determination about what the Sentencing Guidelines are. Do you  
11 understand that?

12 THE DEFENDANT: That's correct, yes.

13 THE COURT: And, moreover, the sentencing guidelines  
14 don't end the discussion about sentencing. I will have to make  
15 an evaluation of the application of certain statutory  
16 provisions with respect to sentencing, and it may result in a  
17 sentence that is higher than the guidelines or lower than the  
18 guidelines. Do you understand that?

19 THE DEFENDANT: That's correct, yes.

03:25PM 20 THE COURT: One thing I want to emphasize for you is  
21 that if I accept your plea of guilty and you don't like the  
22 sentence I impose, you don't get to withdraw your plea of  
23 guilty. Do you understand that?

24 THE DEFENDANT: I can't withdraw?

25 THE COURT: Right.

1 THE DEFENDANT: Okay.

2 THE COURT: You're stuck with what the sentence is  
3 that I impose. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You're pleading guilty in the face of  
6 uncertainty about what I'm going to do because at this point I  
7 don't know all the relevant information to make a judgment  
8 about what the sentence should be in this case. Do you  
9 understand that?

03:25PM 10 THE DEFENDANT: Yes.

11 THE COURT: Now, you understand you don't have to  
12 plead guilty at all. Under our system of justice, a person  
13 who's accused of a crime is presumed innocent unless and until  
14 the government proves beyond a reasonable doubt each essential  
15 element of the charge against that person. You can look the  
16 government straight in the eye, say prove it, and unless and  
17 until they do, you can't be found guilty unless, of course, you  
18 plead guilty. Do you understand that?

19 THE DEFENDANT: Yes.

03:26PM 20 THE COURT: So by pleading guilty, you're giving up  
21 the valuable constitutional rights of forcing the government to  
22 its proof against a standard of -- a very high standard of  
23 proof beyond a reasonable doubt.

24 THE DEFENDANT: Yes.

25 THE COURT: And, in addition, you have the right to

1 challenge the government's case, that is to say, Mr. Cruz could  
2 cross-examine the witnesses the government brings in here, he  
3 could ask to have witnesses brought in here on your behalf if  
4 they wouldn't come in here voluntarily.

5 I would give him court process to force them to come  
6 in here, and you'd have the right to tell your side of the  
7 story if you wanted to from the witness stand, but, of course,  
8 you don't have to do that. Under our system of justice, a  
9 person who's accused of a crime does not have to testify, can't  
03:27PM 10 be forced to testify, and no adverse inference can be drawn by  
11 the failure to testify.

12 That's a principle I would observe myself if I were  
13 trying the case, and it's a principle that I'd inform the jury  
14 of here.

15 MR. CRUZ: I'm sorry, your Honor, could you repeat  
16 that last question?

17 THE COURT: Yes. What I'm doing, Mr. Montano, is  
18 trying to be sure that you understand the constitutional rights  
19 that you're giving up.

03:30PM 20 THE DEFENDANT: I understand.

21 THE COURT: Let me be clear, you have the right to  
22 challenge the government's case. Mr. Cruz could cross-examine  
23 the government's witnesses.

24 MR. CRUZ: Thank you, your Honor.

25 THE COURT: So you understand that Mr. Cruz can

1 cross-examine witnesses against you?

2 THE DEFENDANT: Yes.

3 THE COURT: And that I would give him all the court  
4 process to bring in witnesses on your behalf?

5 THE DEFENDANT: Yes.

6 THE COURT: And that you'd have the right to tell your  
7 side of the story?

8 THE DEFENDANT: Yes.

9 THE COURT: But that if you chose not to, it couldn't  
03:33PM 10 be held against you.

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: That's another valuable constitutional  
13 right you have, the right to remain silent in the face of  
14 criminal accusation.

15 THE DEFENDANT: Yes.

16 THE COURT: So you're giving up all those  
17 constitutional rights by pleading guilty?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, with respect to the waiver of  
03:33PM 20 indictment, what you're doing is giving up a collection of  
21 constitutional rights. Under our system of justice, a person  
22 who is going to be accused of a serious felony like these two  
23 felonies has the right to have a grand jury pass on the matter.

24 THE DEFENDANT: Yes.

25 THE COURT: A grand jury consists of 23 individuals,

1 the majority of whom have to agree with the government that  
2 these charges can be brought, and if the grand jury doesn't  
3 agree with the government, then the government can't go any  
4 further. You're giving up the right by waiving the indictment  
5 to have the grand jury function as a second check against the  
6 government's accusations. Do you understand that?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: Now, from time to time a grand jury  
9 decides not to indict, even if the government asks, by pleading  
03:35PM 10 guilty to this information, you're asking the government to  
11 proceed directly against you without even asking a grand jury.

12 THE DEFENDANT: I understand.

13 THE COURT: And you've had an adequate opportunity to  
14 discuss with Mr. Cruz whether or not this makes sense for you  
15 at this time?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, in this case not only do you not know  
18 what my ultimate judgment is going to be about since the  
19 parties haven't reached an agreement about the proposed  
03:35PM 20 sentence at all?

21 THE DEFENDANT: I understand.

22 THE COURT: And this conviction or pair of convictions  
23 may affect your life quite apart from what kind of sentence is  
24 going to be imposed.

25 THE DEFENDANT: To a large degree?

1 THE COURT: It may your affect your life quite apart  
2 from whatever sentence is imposed.

3 THE DEFENDANT: Yes, I know it's going to affect me a  
4 lot.

5 THE COURT: More specifically, you understand that you  
6 face deportation in this case?

7 THE DEFENDANT: Yes.

8 THE COURT: As a result of your convictions?

9 THE DEFENDANT: Yes.

03:36PM 10 THE COURT: And you've agreed in this plea agreement  
11 to a judicial order of removal from the United States upon the  
12 convictions?

13 THE DEFENDANT: Yes.

14 THE COURT: So you're going to be sent back from the  
15 United States?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Now, the other aspects of your life  
18 that may be affected are getting a job, serving in another  
19 public office, serving on a jury, holding a firearm. All of  
03:37PM 20 those things can be affected by getting convicted of a felony,  
21 you understand that?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: Okay. Now, do you have any questions of  
24 me with respect to the plea agreement?

25 MR. CRUZ: Your Honor, I have spoken to Mr. Montano

1 about proceeding with the plea. He is expressing some  
2 confusion and some reluctance, and I would ask the Court to  
3 cease the proceedings. I don't think I can move forward based  
4 on the plea.

5 THE COURT: Well, let me address one aspect of it.  
6 The change of plea requires in order for the plea agreement to  
7 stay in place --

8 MR. CRUZ: Yes, your Honor.

9 THE COURT: -- that he waive the indictment and plead  
03:41PM 10 guilty at the earliest possible time. I'll afford you some  
11 period of time to have further discussions with him.

12 MR. CRUZ: I apologize, I appreciate that.

13 THE COURT: I understand. He should be fully  
14 comfortable before he is prepared to enter a plea.

15 MR. CRUZ: Yes, your Honor.

16 THE COURT: So, if we put this on for hearing next  
17 week, is it possible? How much time do you really think you  
18 need?

19 MR. CRUZ: I am not available next week.

03:41PM 20 THE COURT: How much time do you need to discuss?

21 MR. CRUZ: Your Honor, if we schedule this for the  
22 first full week of January, either I could propose a date  
23 that's convenient to the Court --

24 THE COURT: We run into a problem with my schedule at  
25 that point.



1 MR. CRUZ: Your Honor, I was just going to schedule  
2 any time from the 3rd to the 6th, if there's a convenient date  
3 or perhaps the following week.

4 THE COURT: It would have to be the following week.

5 MR. CRUZ: Yes, your Honor.

6 THE COURT: Make it 10:00 on January 11th.

7 MR. CRUZ: That's fine, your Honor.

8 THE COURT: Now, this is a preliminary initial  
9 appearance, too, for the defendant, isn't it?

03:43PM 10 MR. CAPIN: It is, your Honor. I'm sorry, on the  
11 information, he was charged by complaint with solely the 1546  
12 count.

13 THE COURT: Okay. So this is a preliminary proceeding  
14 for purposes of the information?

15 MR. CAPIN: It is.

16 THE COURT: And I think I need to be clear that the  
17 defendant is aware of what the charges are for those purposes  
18 because we're going to continue, I assume, his bail?

19 MR. CRUZ: Yes, your Honor. Thank you.

03:43PM 20 THE COURT: Mr. Montano, we're going to continue these  
21 proceedings, we're going to put them off so you'll have an  
22 opportunity to discuss with your lawyer what's involved here.  
23 We've rescheduled for a later date, but I need to be sure that  
24 you understand that you've been charged here with the two  
25 counts in the information. It may be that you're unwilling to

1 agree, then the government will have to prove proceeding under  
2 mechanism through the grand jury, if necessary, but you've been  
3 charged with two felonies here, and I assume that, Mr. Montano,  
4 you waive the reading of the information, but I want to be  
5 clear --

6 MR. CRUZ: Yes, your Honor.

7 THE COURT: -- that you understand what the government  
8 has to prove. With respect to Count 1, the government has to  
9 prove that you made a false statement, that the statement was  
03:44PM 10 made knowingly, that is, you knew what you were doing, it was  
11 made under oath, that it concerns a material fact and it was  
12 made on an application required by the United States  
13 immigration laws and regulations.

14 Those are the five elements the government has to  
15 prove in connection with those charges. With respect to  
16 Count 2, which charges you with perjury, the government has to  
17 prove that you made a false statement, that the statement was  
18 made willfully and knowingly, that it was made under oath and  
19 that it concerned a material matter. We're going to talk about  
03:45PM 20 a material matter. We mean something that could have had an  
21 effect on the outcome of the transaction which you had with the  
22 government that's alleged in Count 2.

23 I do want to make one reference for the parties, and  
24 the parties have already addressed this, but I've had a similar  
25 case, at least a 1456 called United States vs. Bostich. It is

1 reported, the First Circuit decision is reported at 545 F.3d.  
2 69. It involved false statements by an individual who was  
3 denied that he had been involved in military service, but, in  
4 fact, it involved serving in a paramilitary organization.

5 In the sentencing, which was transcribed, there was a  
6 discussion about the impact, if at all, of the underlying  
7 allegations about involvement in human rights violations, and  
8 the parties may want to review that, you may want to review it  
9 with Mr. Montano before we get back together on that in which I  
10 indicated the way I would approach this kind of issue.

03:46PM

11 So is there anything further that we need to take up  
12 on this matter?

13 MR. CRUZ: No, your Honor.

14 MR. CAPIN: Not today, thank you.

15 THE COURT: We're going to continue the present  
16 conditions of release that Judge Dein imposed here. Okay.  
17 We'll be in recess.

18 THE CLERK: All rise.

19 (Whereupon, the hearing was adjourned at  
20 3:47 p.m.)

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I do hereby certify that the foregoing transcript,  
Pages 1 through 20 inclusive, was recorded by me  
stenographically at the time and place aforesaid in Criminal  
Action No. 11-cr-10389, United States of America vs. Inocente  
Orlando Montano and thereafter by me reduced to typewriting and  
is a true and accurate record of the proceedings.

Dated this 23rd day of January, 2013.

s/s Valerie A. O'Hara

\_\_\_\_\_

VALERIE A. O'HARA  
OFFICIAL COURT REPORTER