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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**
12

13 UNITED STATES OF AMERICA,) Case No.: 2:16-cr-0046-GMN-PAL
14)
15 Plaintiff,)
16)
17 vs.) **MOTION TO WITHDRAW**
18) **GUILTY PLEA**
19)
20 GERALD DELEMUS,)
21)
22 Defendant)

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COMES NOW, Defendant Gerald Delemus, by and through his counsel of record, DUSTIN R. MARCELLO, ESQ., of the law firm of PITARO & FUMO, CHTD., hereby moves this Honorable Court to allow Defendant Gerald Delemus to withdraw his previously entered guilty plea.

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1 This Motion is made and based upon all the papers and pleadings on file
2 herein, the attached points and authorities in support hereof, and oral argument at
3 the time of hearing, if deemed necessary by this Honorable Court.
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6 DATED this 13th day of January, 2017

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8 **PITARO & FUMO, CHTD.**

9 /s/ Dustin R. Marcello, Esq.._____.

10 DUSTIN R. MARCELLO, ESQ.
11 Nevada Bar No.: 10134
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13 **MEMORADUM OF POINTS AND AUTHORITIES**

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15 **STATE OF FACTS**

16 **The Indictment**

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18 On March 2, 2016, Defendant, Gerald Delemus (“Delemus”) was charged
19 by way of Indictment as follows: Count One – Conspiracy to Commit an Offense
20 against the United States in violation of Title 18 U.S.C. 371; Count Two –
21 Conspiracy to impede or Injure a Federal Officer in violation of Title 18 U.S.C.
22 372; Count Three – Use and Carry of Firearm in Relation to a Crime of Violence
23 in violation of Title 18 U.S.C. 924(c); Count Five – Assault on a Federal Officer
24 in violation of Title 18 U.S.C. 111(a)(1) and (b); Count Eight – Threatening a
25 Federal Law Enforcement Officer in violation of Title 18 U.S.C. 115(a)(1)(B);
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1 Count Nine – Use and Carry of Firearm in Relation to a Crime of Violence in
2 violation of Title 18 U.S.C. 924(c); Count Twelve – Obstruction of the Due
3 Administration of Justice in violation of Title 18 U.S.C. 1503; Count Fourteen –
4 Interference with Interstate Commerce by Extortion in violation of Title 18 U.S.C.
5 Sections 1951; Count Fifteen – Use and Carry of Firearm in Relation to a Crime
6 of Violence in violation of Title 18 U.S.C. 924(c); Count Sixteen – Interstate
7 Travel in Aid of Extortion in violation of Title 18 U.S.C. 1952; and, a number of
8 forfeiture allegations related to the above listed offenses. (Doc. 27)
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12 **Arrest and Detention**
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14 Delemus was arrested and a detention hearing took place in his home state
15 of New Hampshire on March 7, 2016. (Doc. 104) After being ordered detained,
16 Delemus was transferred to this District. Delemus was appointed CJA counsel,
17 Brian Smith, Esq. (“Mr. Smith”) on April 4, 2016. (Doc. 225) Mr. Smith filed a
18 motion seeking to appeal the detention order entered in New Hampshire, however,
19 the Motion was dismissed as untimely on June 8, 2016. (Doc. 336 – minute order)
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21 A motion to reopen detention hearing was filed on June 17, 2016. (Doc. 544) The
22 motion was denied by order on August 9, 2016. (Doc. 630). The Court would
23 receive a signed plea agreement a week later and set a change of plea hearing was
24 set for August 25, 2016. (Doc. 649, Exhibit A)
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1 **Plea Agreement**

2 The plea agreement submitted to the Court on August 16, 2016, was not the
3 plea agreement signed and submitted at the change of plea hearing. The
4 Government had believed the agreement section of 18 U.S.C 1952 (a)(2), instead
5 of subsection (a)(3), which was listed in the agreement initially signed by
6 Delemus. The new plea agreement (“Agreement”) that is the subject of this
7 motion was filed in open court on August 25, 2016. (Doc. 649, Exhibit A).
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11 According to the Agreement, Delemus was pleading guilty to Count One of
12 the Superseding Indictment charging Conspiracy to Commit an Offense Against
13 the United States in violation of Title 18 United States Code, Section 371; and, to
14 Count Sixteen of the Superseding Indictment charging Interstate Travel in Aid of
15 Extortion in violation of Title 18 United States Code Section 1952(a)(2). (Doc
16 649, Exhibit A, pp. 3-4). The Agreement contained eight numerated paragraphs
17 of facts in support of the elements of the offense being pled. *Id.*, at 5-6.
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21 The Agreement called for a base offense level of 18 adjusted to 33 with the
22 following point increases: a 5-point increase for brandishing a firearm; a 3-point
23 increase for being offense role as a manager/supervisor; a 5-point increase
24 because the offense was calculated to influence or affect the conduct of the
25 government by intimidation or coercion; and, a 2-point increase for obstruction of
26 justice. The Agreement called for a 3-point reduction for acceptance and a further
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1 4-point reduction for early resolution for a total offense level of 26. (Doc 649,
2 Exhibit A, p. 7). Delemus' anticipated criminal history category was I.
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4 The Government explicitly stated in the Agreement it would argue for 72-
5 months regardless of calculations or guideline adjustments. In turn, Delemus was
6 free to argue for any sentence, to which the Government was permitted to oppose.
7 (Doc #649, Exhibit A, p. 11)
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10 **Change of Plea Hearing**

11 An initial status conference took place before the change of plea hearing in
12 order to address the issue of changes the Government needed to make to the
13 Agreement. (Doc. 942, Exhibit B) Before going off record for the Government to
14 type up a revised plea agreement, the following exchange took place between the
15 Court and Delemus:
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18 THE DEFENDANT: Attorney Smith's (sic) told me to ask you, if
19 that's all right, is what I'm concerned about is some of the verbiage
20 in here, if a I agree to it and I believe it to be unfactual, I'd be
21 perjuring myself, correct" If I swore to this to be a factual document
22 and raised my hand under oath or—

23 THE COURT: Well, I can't give – I can't give you any legal advice –

24 . . .

25 THE COURT: -- to assist you in determining what your options are
26 and whether or not you would be committing a crime by asserting
27 under oath something is true if you know it's not true.

28 (Cont.)

1 THE DEFENDANT: Well, that' perfectly – and I – believe me, I'm
2 from a Christian carpenter, I'm not an attorney by any stretch of the
3 imagination. And –

4 THE COURT: But Mr. Smith is an attorney.

5 THE DEFENDANT: Right, he is. And – but also is – well, what my
6 concern being is that if – if I sign something and I know it factually
7 to be untrue, isn't that like the definition of perjury and I swear to it?

8 THE COURT: It's much more complicated than that. If I swear
9 right now that it's not raining because when I came in this morning
10 it's not raining and then I walk outside and it's raining and I didn't
11 know it was raining, yeah, there's a whole range of different ways.
It's not black and white.

12 So it's really – depends on the facts and circumstances. And Mr.
13 Smith is the one to talk to about that.

14 He'll counsel you, and you can either accept or not accept his counsel
15 or ask for a second opinion.

16 (Doc. 942, Exhibit B, pp. 7-9).

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18 After the status conference the Court went back on record to conduct the
19 standard plea colloquy. (Doc. 646, Exhibit C) This hearing generally included:
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21 (1) the charges to be plead to, (2) a brief description of the elements constituting
22 those offenses (3) recitation of the Parties understanding of the applicable
23 guidelines, and, (4)the Parties position at sentencing. Id.
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1 During the colloquy, Delemus stopped to confer with Mr. Smith after
2 almost every question asked by the Court. Delemus states that each time he asked
3 Mr. Smith a question during the plea colloquy, the response was always the same
4 – If you want to accept this plea, answer “_____”. Delemus would in turn give
5 the appropriate yes/no response to continue with the plea colloquy and for his plea
6 to be accepted.
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9 Delemus claims he was advised during discussions with Mr. Smith if he did
10 not accept the offered plea, the Government would assert additional 924(c) counts
11 against him before trial. Additionally, Delemus had heard from a number of other
12 Co-Defendants that if a plea wasn’t accepted more 924(c) counts would be added
13 against Delemus and the other Defendants. Delemus states that when he
14 conferred with Mr. Smith on this point, Mr. Smith denied telling him that and if he
15 wanted to accept the plea than he had to answer “No”. After this conversation,
16 Delemus answered “No”. (Doc. 646, Exhibit C, p. 26).
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21 When the Court inquired on the conspiracy charge, there was a back and
22 forth conference between Mr. Smith and Delemus. (Doc. 649, Exhibit C, pp. 27-
23 30). The specific issue being discussed was Delemus telling Mr. Smith, that
24 Delemus never discussed or had any intent to “display force and aggression to
25 influence or interfere with the ability of federal law enforcement to perform or
26 carry out their duties”. Id. Delemus’ sole purpose and intention when coming to
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1 Nevada was to protect people and show support for the Constitutional execution
2 of the laws of the United States. Delemus repeatedly told his counsel and asserted
3 he had specifically told Bundy and instructed others that they were in no way to
4 interfere with Government agents if the agents were performing a lawful duty.
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7 Rather than continue to press Delemus on this point, the Court relied on the
8 more generic statement in the plea and asked whether Delemus “traveled to
9 Nevada with the intent to further one of the objects of the conspiracy”. Again
10 Delemus stated his concerns with Mr. Smith. According to Delemus, when
11 expressing these concerns to Mr. Smith he was again told to agree if he wanted to
12 accept the deal. Delemus agreed.
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15 The Court would then move on to the next factual statement asking
16 Delemus to admit that on “April 12, 2014, at least one of the members of the
17 conspiracy brandished a firearm . . . to intimidate the officers and to instill in them
18 fear and apprehension of immediate bodily injury or death”. (Doc. 646, Exhibit
19 C, p. 31) Delemus would not answer the Court whether this fact was true. Id.
20 Instead, the Court relied on Delemus stating that if the Court and the Government
21 said it was true, he had no reason to dispute it because he was not present when
22 the alleged act occurred. (Doc. 646, Exhibit C, p. 32-3).
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27 Likewise, the Court asked whether Delemus had any reason to believe that
28 “the armed assault did not force the law enforcement officers to relinquish custody

1 of the impounded cattle.” (Doc. 646, Exhibit C, p. 34). And again, Delemus did
2 not admit this fact. The closest Delemus would come, is to say that if the Court
3 was telling him it was true, he had not reason to dispute that assertion. Id.
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5 When the Court then moved on to Paragraph 8 of the factual statement
6 underlying the plea to Count Sixteen of the Superseding Indictment, the following
7 exchange took place:
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9 THE COURT: Did you make public statements to show and threaten force
10 to influence public officers?”
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12 THE DEFENDANT: I don’t known that I threatened anyone but I did make
13 public statements hoping that that end peacefully. So I don’t –

14 THE COURT: All right, so what it says here on page 6 paragraph 9, is
15 displayed firearms and made public statements to show and threaten force,
16 all in order to influence any public officer in violation of NRS 205.320.
Is that true?

17 (Discussions between the defendant and his counsel off record)
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19 THE DEFENDANT: I’m advised to say yes.

20 (Doc. 646, Exhibit C, p. 36).
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22 Following these exchanges, the Court asked the Government if they were
23 satisfied and accepted the plea. The matter was then set for sentencing. After
24 meeting with Delemus sometime in October, Mr. Smith filed a motion to
25 withdraw as attorney citing the reason that Delemus wished to withdraw his guilty
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1 plea and that his reasons were in conflict with continued representation by Mr.
2 Smith. (Doc. 979)
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4 **Lack of Knowledge of Charges and Legal Defenses**

5 Brian Smith, Esq., (“Mr. Smith”) was appointed to represent Delemus on
6 April 4, 2016. (Doc. 225). The factual statements contained herein are based on
7 discussions with Delemus regarding Mr. Smith’s representation of Delemus up
8 until Mr. Smith withdrew as counsel. An affidavit by Delemus will be submitted
9 in support of the factual statements contained herein.
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12 According to Delemus, Mr. Smith spoke in general terms but never
13 provided specific information or advice about the charges contained in the
14 Superseding Indictment. Specifically, Delemus claims he never reviewed the
15 United States Code, never reviewed the Nevada Revised Statutes, or was provided
16 with a legal definition of what constituted a conspiracy or intimidation of a public
17 officer.
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21 During the plea colloquy, Delemus asserts he often asked Mr. Smith about
22 different points or concepts, but was advised if he wanted to accept a plea then he
23 had to answer a particular way. Delemus claims there was no advice or he was
24 not made aware of what factual claims or legal theories he was admitting to during
25 the plea canvass.
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1 Delemus further asserts that other than discussing the moral question of
2 guilt or innocence, there was no discussion of the legal defenses or strategies that
3 could be asserted to prove Delemus' innocence. Delemus claimed that he and Mr.
4 Smith never discussed how Delemus could assert a defense against the conspiracy
5 charges because his agreement, if any, was not for an unlawful purpose and was
6 not in any way connected to events that took place prior to his arrival in Nevada.
7 Moreover, Delemus claims there was no discussion, and he was not made aware,
8 that his lack of intent to intimidate any public official from performing an official
9 duty would be a defense to the charges.
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14 **Threat of Additional Charges**

15 Delemus states that either Mr. Smith advised him or it was otherwise
16 understood by him that if Delemus did not accept the plea, the Government would
17 seek a superseding indictment to add additional 924(c) counts against him.
18 Delemus was under the belief and understanding that the penalties for additional
19 924(c) counts would essentially make his sentence a life sentence should he be
20 found guilty at trial. Although adamant in his belief he is not guilty Delemus
21 states that when he was presented the negotiation he understood that if he didn't
22 accept the deal he would be staking his life on his belief his actions were legal.
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1 movant has asserted his legal innocence is an important
2 factor to be weighed, as is the reason why the defenses
3 were not put forward at the time of the original pleading.
4 The amount of time which has passed between the plea
and the motion must also be taken into account.

5 Fed. R. Crim. P. 32 advisory committee's note (1983) (citations and
6 internal quotation marks omitted)

7 The defendant has the burden of demonstrating the existence of
8 at least one of these conditions. *See* Fed.R.Crim.P. 11(d)(2)(B);
9 *cf. United States v. Davis*, 428 F.3d 802, 805 (9th Cir. 2005).

10 While there is no per se right to withdrawal, the standard is liberally
11 construed in favor of defendants whose requests should be normally be freely
12 granted. As the Committee Note indicates, the burden is to prove the existence of
13 a basis of the fair and just reason, with nothing more required. Once the existence
14 of a basis is proven a Defendant has met his burden to show a fair and just reason
15 for withdrawal is present and relief should be granted.
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19 Fair and just reasons for withdrawal include inadequate Rule 11 plea
20 colloquies, newly discovered evidence, intervening circumstances, or any other
21 reason for withdrawing the plea that did not exist when the defendant entered his
22 plea." *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir. 2008) (internal
23 citation omitted); *accord United States v. Showalter*, 569 F.3d 1150, 1154 (9th
24 Cir. 2009). "While the defendant is not permitted to withdraw his plea 'simply on
25 a lark,' the 'fair and just standard' is generous and must be applied liberally."
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1 *McTiernan*, 546 F.3d at 1167 (quoting *United States v. Hyde*, 520 U.S. 670, 676-
2 77, 117 S. Ct. 1630, 137 L. Ed. 2d 935 (1997)). Thus, "a defendant does not have
3
4 to prove that his plea is invalid in order to establish a fair and just reason for
5 withdrawal before sentencing." *United States v. Davis*, 428 F.3d 802, 806 (9th Cir.
6 2005); see also *United States v. Garcia*, 401 F.3d 1008, 1012 (9th Cir. 2005)
7 ("[We have] squarely rejected the proposition that the fact that a plea is voluntary,
8 knowing, and intelligent forecloses an attempt to withdraw it prior to
9 sentencing."). Nor must the defendant "proclaim his innocence." *Garcia*, 401 F.3d
10 at 1012.
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13 Timeliness

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15 Related to the fair and just standard is the question of timeliness in seeking
16 to withdraw a plea. The shorter the delay, the more likely a motion to withdraw
17 will be granted, and a defendant's reasons for filing such a motion will be more
18 closely scrutinized when he has delayed his motion for a substantial length of
19 time." *United States v. Baez*, 87 F.3d 805, 808 (6th Cir. 1996).
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22 Delemus sought to withdraw his plea approximately two months after his
23 plea was entered. It is clear that this request was after the events in Oregon,
24 however, this should not be held against Delemus as it goes to his claims he is
25 factually innocent and that the plea colloquy was insufficient to establish he was
26 voluntarily and knowingly entering a plea of guilt.
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1 **Lack of Prejudice**

2 The Magistrate has just entered a trial order directing that the defendants be
3 severed into three groups to proceed to trial. It is unclear exactly which group
4 Delemus would fall into, but it is clear that the Government would put forward
5 much of the same evidence and witnesses already scheduled to be presented at the
6 upcoming trials. There would be no prejudice to the Government either through
7 spoliation of evidence or expenditure of resources. Accordingly, there is no
8 prejudice to the Government should Delemus be permitted to withdraw his plea.
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12 **DELEMUS' GUILTY PLEA WAS NOT ENTERED KNOWINGLY
13 AND VOLUNTARILY**

14 As noted above, one factor to consider is whether a guilty plea was entered
15 into knowingly and voluntarily. A plea can be rendered involuntary if it is the
16 product of an objectively reasonable misapprehension of law and facts. Further, a
17 defendant must be fully aware of the consequences of his plea and the plea must
18 not be the product of duress.
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22 When the basis for withdrawal is erroneous or inadequate legal advice, the
23 defendant's burden is simply to show that proper advice "could have at least
24 plausibly motivated a reasonable person in [the defendant's] position not to have
25 pled guilty had he known about the [grounds] prior to pleading." *Garcia, supra*
26 401 F.3d at 10121011-12. The defendant need not show that a legal argument
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1 foregone as a result of incorrect or incomplete advice would have been
2 "successful on its merits." *McTiernan*, 546 F.3d at 1168.
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4 In this case, Delemus was never advised as to the various legal definitions
5 of a conspiracy. Moreover, and more importantly, Delemus was never advised as
6 to the multiple legal defenses available against a conspiracy charge based on the
7 facts of his case. For instance, Delemus was not aware that he could have
8 multiple agreements and multiple conspiracies, but that each conspiracy to be a
9 crime, must stand on its own and as long as his agreement with any individual was
10 not for an unlawful purpose he could potentially have a defense to the conspiracy
11 charge. Nearly all of the alleged acts in furtherance of the charged conspiracy
12 occurred before Delemus arrived in Nevada and Delemus had no knowledge that
13 the acts occurred or were going to occur. Although, Delemus did agree to come to
14 Nevada, it was never for an illegal purpose or to prevent or intimidate any public
15 official or agent to prevent performance of public duties.
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21 Delemus never pointed a gun at a government agent or official. Delemus
22 was never aware anyone else allegedly did so prior to being prosecuted. He went
23 to the Clark County Sherriff's Office at some point with the express purpose of
24 notifying the Sherriff that the Bundys and the people protesting would comply
25 with any service of legal process or execution of an arrest warrant. Delemus was
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1 never provided with NRS 205.320, and never provided a legal definition of what
2 constitutes “intimidation” of a public official under that statute.
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4 It is clear from the colloquy that Delemus would not admit he ever intended
5 or did anything to intimidate a public official. In response, the Court relied on the
6 generic language contained in NRS 205.320.
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8 Delemus did not admit to the acts necessary to support a finding he
9 intimidated a public officer in violation of the Nevada Revised Statute. The
10 closest he came was to say “I was advised to say yes”. (Doc. 646, Exhibit C, p.
11 36). Delemus was never provided the Nevada Revised Statutes or United States
12 Code or advised his lack of criminal intent was a critical issue and a possible
13 defense to a charge of intimidation and by extension against the charge of
14 traveling in aid of extortion. Had Delemus been aware of this possible defense,
15 and now being aware of the defense, wishes to proceed to trial.
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20 Whether the potential defenses cited above would be successful is not a
21 consideration but only whether if Delemus was aware of the possible defense
22 would he have still plead guilty. Delemus states that he was not aware of the
23 defenses and had he been aware or understand the Nevada Revised Statute or
24 conspiracy law he would not have plead guilty. Accordingly, Delemus should be
25 permitted to withdraw his plea.
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1 **DELEMUS' PLEA IS VOID AS IT WAS INDUCED BY ACTUAL**
2 **THREAT OR DELEMUS' REASONABLE BELIEF THAT THE**
3 **GOVERNMENT WOULD SEEK MORE CHARGES AGAINST HIM**
4 **IF HE REFUSED TO CHANGE HIS PLEA**

5 Given that a plea of guilty waives a plethora of constitutional rights
6 afforded criminal defendants it must be the product of a knowing and intelligent
7 act, entered into voluntarily, with free and unrestrained will. *See Haynes v. State*
8 *of Washington*, 373 U.S. 503, 514 (1963); *see also Brady v. United States*, 397
9 U.S. 742, 748 (1970) (explaining that a guilty plea is valid only if voluntarily and
10 intelligently made). A plea is void if it is “induced by promises or threats which
11 deprive it of the nature of a voluntary act.” *Machibroda v. United States*, 368 U.S.
12 487, 493 (1972). The subjective state of mind of the accused is relevant to the
13 inquiry. *See Miller v. Fenton*, 474 U.S. 104, 113-16 (1985).

14 A plea is void if it is “induced by promises or threats which deprive it of the
15 nature of a voluntary act.” *Machibroda v. United States*, 368 U.S. 487, 493
16 (1972).

17 Delemus was not present on April 12, 2015, when the vast majority of the
18 acts giving rise to this case occurred. He was still driving from New Hampshire
19 and was completely unaware of what happened in the wash or with Bundy’s
20 cattle. Over the coming months, Delemus reviewed the indictments in this case
21 and was made generally aware of the significant penalties surrounding 924(c)
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1 counts. Delemus also became aware through his attorney that multiple charges of
2 924(c) can result in enhanced penalties.
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4 Prior to entering the plea, Delemus states Mr. Smith advised him if
5 Delemus did not accept the Government's plea offer that the Government would
6 move to add more 924(c) counts or would seek 924(c) enhancements at
7 sentencing. Moreover, Delemus had learned through his Co-Defendants that if
8 pleas were not accepted the Government would seek additional 924(c) Counts
9 against many of the Defendants including Delemus. Because of this, Delemus
10 accepted the plea under this subjective belief when he was entering the plea.
11 When the Court inquired about threat of further prosecution, Delemus conferred
12 with Mr. Smith about Delemus' fear but was advised by Mr. Smith if he wanted to
13 accept the negotiations he was to say "no". Delemus in turn denied any threats of
14 further prosecution and the plea was accepted. However, Delemus was always
15 operating under the belief the Government would seek additional penalties and
16 924(c) enhancements if he did not accept the plea. Accordingly, Delemus' plea is
17 void.
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1 **DELEMUS ASSERTED HIS LEGAL INNOCENCE DURING THE**
2 **PLEA HEARING AND CONTINUES TO CLAIM THAT HE IS**
3 **FACTUALLY AND LEGALLY INNOCENT OF THE CHARGES TO**
4 **WHICH HE HAS PLEAD**

5 The assertion of a claim of innocence is another relevant factor in the
6 application of Fed. R. Crim. P. 32(e)'s fair and just reason standard. *See United*
7 *States v. Horne*, 987 F.2d 833, 837 (D.C. Cir. 1993); *cf. United States v. Ford*, 993
8 F.2d 249, 251 (D.C. 1993) (explaining a court must consider whether a defendant
9 has asserted a viable claim of innocence).
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11 The day he entered his plea, Delemus started off the colloquy by asking the
12 court if it would be perjury to admit to facts he knew to be untrue. (Doc. 942,
13 Exhibit B, pp. 7-9). The facts he believed to be untrue were the same facts he was
14 being asked to admit to. More specifically, Delemus was stating he had no
15 knowledge whether individuals had used force or intimidation to get property
16 back for the Bundys or whether any public officer had been intimidated by any
17 actions occurring before he arrived in Nevada. Instead, as it related to the overt
18 acts constituting the conspiracy, Delemus' statements were claims of innocence
19 rather than allocations of wrong doing.
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24 Delemus agreed to the statutory elements of the offenses under the advice
25 of Counsel, but was continuously asserting his innocence to the main contention at
26 issue – whether Delemus had any criminal intent. Delemus was a peace maker.
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1 His statements were not to intimidate but to help coordinate between the
2 Government and the individuals at the Bundy ranch to ensure no
3 misunderstandings and to keep all persons – protestors, Government Agents, the
4 Bundy family – safe. Delemus stated he had no knowledge of the events
5 occurring on April 12, 2014, and that he never had any agreement with any of the
6 individuals who were present on April 12, 2014. Delemus only stated that he had
7 no reason to dispute, one way or the other, the claims of the Government as to
8 what the other Defendants were doing on April 12, 2014. Accordingly, Delemus
9 asserts his innocence to the charges and requests to withdraw his plea.
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15 **DELEMUS REQUESTS AN EVIDENTIARY HEARING ON THE**
16 **ISSUES RAISED IN THIS MOTION**

17 It is respectfully requested that an evidentiary hearing granted to establish a
18 record of any and all factual assertions entitling Delemus to relief.
19

20 **CONCLUSION**

21 Based on the forgoing, it is respectfully requested that this Court permit
22 Delemus to withdraw his previously accepted plea of guilty to Count One and
23 Count Sixteen of the Superseding Indictment.
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CERTIFICATE OF SERVICE

On January 13, 2016, the undersigned caused a true and correct copy of the aforementioned **ORDER** via the ECF system.

PITARO & FUMO, CHTD.

/s/ Dustin R. Marcello, Esq.

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