

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA )

v. )

CR. NO. [REDACTED]

**PLEA AGREEMENT**

DEFENSE COUNSEL: \_\_\_\_\_, Esq.

ASSISTANT U.S. ATTORNEY: MONICA A. STUMP

**COUNTS AND STATUTES CHARGED:**

Count 1 8 U.S.C. § 1326(a)  
Illegal Reentry of Previously Removed Alien

**COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:**

Count 1 8 U.S.C. § 1326(a)  
Illegal Reentry of Previously Removed Alien

**PENALTIES BY COUNT - MAXIMUM PENALTY:**

Count 1 8 U.S.C. § 1326(a)  
A term of imprisonment which may not be more than 2 years, a fine not to exceed \$250,000, or both the fine and the imprisonment; a term of supervised release of no more than 1 year; an assessment fee of \$100.00; and restitution to any victims of the offense.

But if he was previously convicted of a felony: A term of imprisonment which may not be more than 10 years, a fine not to exceed \$250,000, or both the fine and the imprisonment; a term of supervised release of no more than 3 years; an assessment fee of \$100.00; and restitution to any victims of the offense.

**ELEMENTS OF THE OFFENSE:**

To prove a violation of 8 USC § 1326(a), the Government must prove that:

1. The defendant was an alien at the time alleged in the indictment;
2. The defendant had previously been deported or removed from the United States;

3. The defendant thereafter knowingly reentered or was found to be voluntarily in the United States; and
4. The defendant had not received the consent of the Secretary of Homeland Security or Attorney General of the United States to apply for readmission to the United States.

With the authorization of the defendant, the parties to this action have entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Indictment. As a result of those discussions, the parties have reached a Plea Agreement. The disposition contemplated by this Plea Agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Middle District of Alabama. This Plea Agreement is being submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (c)(1)(C) and pursuant to U.S.S.G. § 5K3.1, and both the Government and the defendant understand that, in accordance with that Rule, if the Court should decide not to accept the terms of the Plea Agreement, the defendant has the right to withdraw his plea of guilty and proceed to trial.

The specific terms of the Plea Agreement are as follows:

#### **GOVERNMENT'S PROVISIONS**

1. For purposes of the calculation of the defendant's offense level under the United States Sentencing Guidelines, pursuant to Fed. R. Crim. P. 11(c)(1)(C) and U.S.S.G. §5K3.1, the Government agrees with the defendant to the following:

- a. The base offense level is eight. See U.S.S.G. § 2L1.2.
- b. The Government agrees with the Defendant that a four level enhancement is applicable under U.S.S.G. § 2L1.2(b)(1)(D) because the Defendant has a prior felony conviction for Reentry of a Removed Alien (United States District Court for the Middle District of Alabama, Jan. 24, 2008) which was punishable by imprisonment for a term exceeding one year.

c. The two-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a) for the defendant's acceptance of responsibility is appropriate, and if the defendant's offense level is sixteen or more and should the Government find that the defendant assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, the Government agrees to move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the defendant met his obligations to qualify for the reduction pursuant to U.S.S.G. § 3E1.1(b) is at the sole discretion of the United States. The Government's obligation under this paragraph should become null and void if, between the date of this agreement and the date of sentencing, defendant obstructs justice, commits any new federal or state offenses, or otherwise fails to accept responsibility for the offense.

d. A sentence at the low-end of the Guidelines Range, as calculated by the Court, is appropriate in this case.

e. The Government agrees that the Defendant is eligible for participation in the fast track program. Pursuant to U.S.S.G. § 5K3.1 and defendant's timely request for consideration in this program, and in light of Defendant's prior felony conviction, the Government agrees to move at sentencing for a four-level downward departure.

2. This agreement is conditioned on the defendant having less than 13 criminal history points and the information known to the Government about the defendant's criminal history. If the defendant has 13 or more criminal history points, or if the government discovers a prior conviction that would qualify for a greater enhancement under U.S.S.G. §2L1.2(b)(1), other

than those disclosed to the defense prior to sentencing, the government shall have the right to withdraw from this agreement.

3. If Defendant pleads guilty and is sentenced on Count 1 of the Indictment, the Government further agrees not to pursue any other criminal charges against the defendant stemming from the facts supporting his conviction in this case.

4. The Government reserves the right to inform the Court and the United States Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses and the defendant's background.

5. The Government agrees with the defendant that this plea agreement contains all of the terms, conditions, stipulations, and sentencing provisions, including any departures, to which the Government and the defendant agree.

#### **DEFENDANT'S PROVISIONS**

6. The defendant agrees to plead guilty to Count 1 of the Indictment.

7. For purposes of the calculation of the defendant's offense level under the United States Sentencing Guidelines, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the defendant agrees with the Government to the provisions stated above at paragraph 1.

8. The Defendant agrees to waive the right to argue at sentencing for any further reductions, departures, adjustments, or variances, including reductions under 18 U.S.C. § 3553(a).

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the defendant agrees with the Government to the terms set forth in paragraph 3.

10. The defendant agrees to waive a full pre-sentence investigation.

11. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3).

12. The defendant further agrees not to commit any other federal, state, or local offense while awaiting sentencing. The determination of whether the defendant's conduct is a violation of this provision is at the complete discretion of the Government.

13. The defendant agrees with the Government that this plea agreement contains all of the terms, conditions, stipulations, sentencing provisions, including any departures, to which the Government and the defendant agree.

14. Waiver of the Defendant's Right to Appeal or Collaterally Attack the Sentence.

a. *Defendant's Waiver.* By entering into this Plea Agreement, the defendant knowingly and voluntarily waives any and all of his rights under 18 U.S.C. § 3742 to appeal the sentence in this case. The defendant specifically waives his right to appeal the sentence on the grounds that the Sentencing Guidelines are in any respect unconstitutional, or that any fact found by the Court for sentencing was not alleged in the Indictment, admitted by the defendant, found by a jury, or found beyond a reasonable doubt. The defendant further expressly waives his right to appeal the conviction and sentence on any other ground, including any challenge to the reasonableness of the sentence, and waives the right to attack the sentence in any post-conviction proceeding.

b. *Exceptions.* This waiver does not include (and the defendant expressly reserves) the right to appeal or collaterally attack his sentence on the grounds of ineffective assistance of counsel. The defendant is released from this waiver if the Government files an appeal under 18 U.S.C. § 3742(b).

c. *No Waiver by Government.* Nothing in this Plea Agreement affects the Government's right and/or duty to appeal the sentence imposed in the case, as set forth in 18 U.S.C. § 3742(b). Nor does the Government waive its right to appeal any order dismissing the

Indictment, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings.

### FACTUAL BASIS

15. The defendant admits the allegations charged in Count 1 of the Indictment and understands that the nature of the charge to which the plea is offered involves proof the defendant committed the crime of **Illegal Reentry by an Alien Previously Removed** as follows:

Defendant, [REDACTED], is a native and citizen of Mexico. He has no authorized immigration status in the United States and is not a citizen or national of the United States. On or about [REDACTED], at or near New Orleans, Louisiana, R [REDACTED] was removed from the United States. [REDACTED] also was removed from the United States on or about [REDACTED] 2006, at or near the Hidalgo, Texas Port of Entry. Following each removal, [REDACTED] voluntarily and freely reentered the United States at the United States-Mexico border. Each time he reentered the United States, [REDACTED] knew his actions were illegal and that he had not sought or obtained prior permission from the Attorney General or the Secretary of Homeland Security to reenter the country. On or about December 30, 2011, in Chambers County, within the Middle District of Alabama, [REDACTED] was found to be voluntarily in the United States illegally.

Furthermore, for sentencing purposes, I admit that I was convicted of Reentry of a Removed Alien, a felony under the laws of the United States, on [REDACTED], and that I was represented by an attorney. That offense at the time of sentencing was punishable by a term of imprisonment of more than one year.

### DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

16. After conferring with his attorney and before entering a plea of guilty to Count 1, the defendant advises the Court that he understands the following to be true:

a. The defendant has the right to plead not guilty, the right to be tried by a jury, the right to the assistance of counsel at every stage of the proceedings, the right to confront and cross-examine witnesses against him, the right to call witnesses on his behalf, and the right not to be compelled to incriminate himself. By entering a plea of guilty, the defendant waives all of those rights, and there will be no trial of any kind in this case.

b. Upon entering a plea of guilty, the defendant may be asked questions about the offense to which the plea is entered. Evidence of a plea of guilty later withdrawn, evidence of an offer to plead guilty to the crime charged in the Indictment, or statements made in connection with and relevant to a guilty plea are not admissible against the defendant in any civil or criminal proceedings, except in a criminal proceeding for perjury or false statement, and only if the defendant makes a false statement under oath, on the court record, and in the presence of counsel.

c. In entering a plea of guilty herein, the defendant further recognizes that his immigration status with Immigration and Customs Enforcement may be affected and he may face administrative removal or deportation from the United States.

d. The United States Probation Office will prepare for the Court a pre-sentence investigation report, in which the Probation Officer will recommend a sentence based upon the calculated offense level and the defendant's criminal history, as well as any relevant conduct related to the offense to which the plea is offered. The offense level and criminal history category calculated by the Probation Officer, as well as those ultimately determined by the Court, may differ from each other, or from what is projected by defendant's counsel or the Government.

e. At sentencing, the Court will find by a preponderance of the evidence the facts used to determine the defendant's sentence. For that purpose, the Court may consider any reliable evidence, including hearsay.

f. The Court is not bound to accept the terms of this Plea Agreement. If the Court rejects this Plea Agreement, the defendant will be given an opportunity to withdraw his plea and proceed to trial. If the defendant does not withdraw his plea at that time, the Court may

dispose of the case either more favorably or less favorably toward the defendant than this Plea Agreement contemplated.

g. The maximum penalty allowed by law for conviction of the offense charged in Count 1 of the Indictment is no more than 2 years in prison, a \$250,000 fine, or both the fine and the imprisonment; 1 year on supervised release; and restitution to any victims of the offense. But if the defendant has previously been convicted of a felony, the maximum penalty allowed is no more than 10 years in prison, a \$250,000 fine, or both the fine and the imprisonment; 3 years on supervised release; and restitution to any victims of the offense.

h. If the Court sentences defendant to a term of supervised release and if the defendant violates any condition of supervised release, the supervised release may be revoked. Upon such revocation, notwithstanding any other provision of this agreement, the defendant may be required to serve a term of imprisonment or the defendant's sentence may otherwise be altered.

i. If the Court imposes a fine in this case, the defendant will be required to make an honest, good faith effort to pay the fine as directed by the Financial Litigation Section of the United States Attorney's Office. To that end, the defendant will meet with a member of the Financial Litigation Section on the day of sentencing and complete a written personal financial statement, setting forth the defendant's assets and liabilities as of the date of the offense. The defendant further understands that by completing the financial statement, he is representing that it is true and accurate to the best of his information, knowledge, and belief.

j. Pursuant to 18 U.S.C. § 3013, the defendant will be ordered at sentencing to pay an assessment fee of \$100.00, which will be due and payable to the Court immediately.

k. There is no possibility of parole in the federal prison system, and if the Court sentences the defendant to a term of imprisonment, the defendant will likely serve all or substantially all of his prison sentence.

l. If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court in a later proceeding, the government will be free to prosecute the defendant for all charges and/or allegations of supervised release violations as to which it has knowledge, and any charges and/or allegations of supervised release violations that have been dismissed or not alleged because of this plea agreement will be automatically reinstated. In such event, the defendant waives any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment to the Constitution as to the delay occasioned by the later proceedings. Defendant agrees that the stipulated fast-track departures will not be offered if prosecution is re-instituted.

m. Defendant acknowledges that nothing in this agreement shall be construed to protect the defendant in any way from prosecution for perjury, false declaration or false statement, or any other offense committed by the defendant after the date of this agreement. In addition, if the defendant commits any criminal offense between the date of this agreement and the date of sentencing, the government will have the right to withdraw from this agreement. Any information, statements, documents and evidence which the defendant provides to the United States pursuant to this agreement may be used against the defendant in all such proceedings.

n. This Plea Agreement is the result of prior discussions between the attorney for the Government and the attorney for the defendant. Those discussions were all conducted with the defendant's authorization, knowledge, and consent.

o. This Plea Agreement and the guilty plea to be entered by the defendant are voluntary and are not the result of any force or threats and were not induced by any promises, apart from what the parties have expressly agreed upon in this written Plea Agreement.

**REPRESENTATIONS OF THE PARTIES**

17. The undersigned attorneys for the Government and for the defendant represent to the Court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to Rule 11, Federal Rules of Criminal Procedure, as amended and U.S.S.G. § 5K3.1.

18. The attorney for the defendant represents to the Court that she/he has advised the defendant on all of the contents of this Plea Agreement, including specifically all of the provisions listed in Paragraph 16 herein, and that she/he is satisfied that the defendant adequately understands all of the contents of this Plea Agreement.

19. Additionally, the attorney for the defendant represents to the Court that she/he has translated or caused to be translated this agreement from English into Spanish to the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

This \_\_\_th day of March, 2012.

Respectfully submitted,

---

Louis V. Franklin, Sr., Chief  
Criminal Division

---

Monica A. Stump  
Assistant United States Attorney  
131 Clayton Street  
Montgomery, Alabama 36104  
Tel: (334) 223-7280  
Fax: (334) 223-7135  
Email: monica.stump@usdoj.gov

I have read the Plea Agreement, understand the same, and agree that it accurately states both the representations that have been made to me and the conditions of the agreement that has been reached. I am satisfied that my attorney, \_\_\_\_\_, Esq., has represented my interests in this matter competently and effectively. IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_, Esq.  
Attorney for the Defendant

\_\_\_\_\_  
Date

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA )

v. )

CR. NO. 1 )

**SUPPLEMENTAL PLEA AGREEMENT**

DEFENSE COUNSEL: JACK SPENCE, Esq.

ASSISTANT U.S. ATTORNEY: BRANDON K. ESSIG

**COUNTS AND STATUTES CHARGED:**

Count 1 8 U.S.C. § 1326(a)  
Illegal Reentry of Previously Removed Alien

**COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:**

Count 1 8 U.S.C. § 1326(a)  
Illegal Reentry of Previously Removed Alien

**PENALTIES BY COUNT - MAXIMUM PENALTY:**

Count 1 8 U.S.C. § 1326(a)  
A term of imprisonment which may not be more than 2 years, a fine not to exceed \$250,000, or both the fine and the imprisonment; a term of supervised release of no more than 1 year; an assessment fee of \$100.00; and restitution to any victims of the offense.

But if he was previously convicted of a felony: A term of imprisonment which may not be more than 10 years, a fine not to exceed \$250,000, or both the fine and the imprisonment; a term of supervised release of no more than 3 years; an assessment fee of \$100.00; and restitution to any victims of the offense.

**ELEMENTS OF THE OFFENSE:**

To prove a violation of 8 USC § 1326(a), the Government must prove that:

1. The defendant was an alien at the time alleged in the indictment;
2. The defendant had previously been deported or removed from the United States;

3. The defendant thereafter knowingly reentered or was found to be voluntarily in the United States; and
4. The defendant had not received the consent of the Secretary of Homeland Security or Attorney General of the United States to apply for readmission to the United States.

With the authorization of the defendant, the parties to this action have reached a Supplemental Plea Agreement. The disposition contemplated by this Supplemental Plea Agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Middle District of Alabama. This Supplemental Plea Agreement is being submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and U.S.S.G. § 5K3.1, and both the Government and the defendant understand that, in accordance with that Rule, if the Court should decide not to accept the terms of the Supplemental Plea Agreement, the defendant has the right to withdraw his plea of guilty and proceed to trial.

The specific terms of the Supplemental Plea Agreement are as follows:

#### **GOVERNMENT'S PROVISIONS**

a. The Government agrees with the Defendant that a four level enhancement is applicable under U.S.S.G. § 2L1.2(b)(1)(D) because the Defendant has a prior felony conviction for Felony Driving Under the Influence (Houston County Circuit Court, Houston County, Alabama, CC 01-1407) under Alabama law for which he was sentenced to a term of imprisonment in excess of year.

2. The Government agrees that the Defendant is eligible for participation in the fast track program. Pursuant to U.S.S.G. § 5K3.1, and in light of the Defendant's prior felony conviction and prior Illegal Reentry conviction, the Government agrees to move at sentencing for a four-level downward departure.

3. The Government agrees with the defendant that this plea agreement contains all of the sentencing provisions, including any departures, to which the Government and the defendant agree.

### **DEFENDANT'S PROVISIONS**

4. The defendant reaffirms his agreement to the initial Plea Agreement in this case. In addition to those terms, the Defendant agrees to the terms contained in this Supplemental Plea Agreement and understands that both agreements, combined, contained all the provisions to which the parties agree.

5. The Defendant agrees with the Government that a four level enhancement is applicable under U.S.S.G. § 2L1.2(b)(1)(D) because the Defendant has a prior felony conviction for Felony Driving Under the Influence (Houston County Circuit Court, Houston County, Alabama, CC 01-1407) under Alabama law for which he was sentenced to a term of imprisonment in excess of year.

6. The Defendant agrees to waive the right to argue at sentencing for any further reductions, departures, adjustments, or variances, including reductions under 18 U.S.C. § 3553(a).

7. Waiver of the Defendant's Right to Appeal or Collaterally Attack the Sentence. Defendant agrees to waive of his right to appeal or collaterally attack his sentence on the grounds of prosecutorial misconduct.

8. The defendant understands and agrees that this Supplemental Plea Agreement contains all the terms, conditions and stipulations regarding sentencing. If the defendant requests or if the court authorizes (a) any downward departure or variance, other than those expressly contained in the Plea Agreement and Supplemental Plea Agreement; (b) any reduction of criminal history category which differs from that set forth in the Presentence report; or (c) any

other reduction or adjustment of sentence not specifically agreed to in writing by the parties, the government may withdraw from the plea agreement. If the court departs from the terms and conditions set forth in this Supplemental Plea agreement, either party may withdraw.

**DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT**

9. After conferring with his attorney, the defendant advises the Court that he understands the following to be true:

a. The Court is not bound to accept the terms of this Plea Agreement. If the Court rejects this Plea Agreement, the defendant will be given an opportunity to withdraw his plea and proceed to trial. If the defendant does not withdraw his plea at that time, the Court may dispose of the case either more favorably or less favorably toward the defendant than this Plea Agreement contemplated.

b. The maximum penalty allowed by law for conviction of the offense charged in Count 1 of the Indictment is no more than 2 years in prison, a \$250,000 fine, or both the fine and the imprisonment; 1 year on supervised release; and restitution to any victims of the offense. But if the defendant has previously been convicted of a felony: A term of imprisonment which may not be more than 10 years, a fine not to exceed \$250,000, or both the fine and the imprisonment; a term of supervised release of no more than 3 years; an assessment fee of \$100.00; and restitution to any victims of the offense.

c. If the Court imposes a fine in this case, the defendant will be required to make an honest, good faith effort to pay the fine as directed by the Financial Litigation Section of the United States Attorney's Office. To that end, the defendant will meet with a member of the Financial Litigation Section on the day of sentencing and complete a written personal financial statement, setting forth the defendant's assets and liabilities as of the date of the offense. The

defendant further understands that by completing the financial statement, he is representing that it is true and accurate to the best of his information, knowledge, and belief.

d. Pursuant to 18 U.S.C. § 3013, the defendant will be ordered at sentencing to pay an assessment fee of \$100.00, which will be due and payable to the Court immediately.

e. There is no possibility of parole in the federal prison system, and if the Court sentences the defendant to a term of imprisonment, the defendant will likely serve all or substantially all of his prison sentence.

f. The defendant understands that if sentenced to a term of supervised release and if the defendant violates any condition of supervised release, the supervised release may be revoked. Upon such revocation, notwithstanding any other provision of this supplemental agreement, the defendant may be required to serve a term of imprisonment or the defendant's sentence may otherwise be altered.

g. Defendant acknowledges that nothing in this agreement shall be construed to protect the defendant in any way from prosecution for perjury, false declaration or false statement, or any other offense committed by the defendant after the date of this supplemental agreement. In addition, if the defendant commits any criminal offense between the date of this agreement and the date of sentencing, the government will have the right to withdraw from this agreement. Any information, statements, documents and evidence which the defendant provides to the United States pursuant to this agreement may be used against the defendant in all such proceedings.

h. If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court in a later proceeding, the government will be free to prosecute the defendant for all charges and/or allegations of supervised release violations as to which it has knowledge, and any

charges and/or allegations of supervised release violations that have been dismissed or not alleged because of this supplemental plea agreement will be automatically reinstated. In such event, the defendant waives any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment to the Constitution as to the delay occasioned by the later proceedings. Defendant agrees that the stipulated fast-track departures will not be offered if prosecution is re-instituted.

i. This Supplemental Plea Agreement is the result of prior discussions between the attorney for the Government and the attorney for the defendant. Those discussions were all conducted with the defendant's authorization, knowledge, and consent.

j. This Supplemental Plea Agreement and the guilty plea to be entered by the defendant are voluntary and are not the result of any force or threats and were not induced by any promises, apart from what the parties have expressly agreed upon in this written Supplemental Plea Agreement.

#### **REPRESENTATIONS OF THE PARTIES**

10. The undersigned attorneys for the Government and for the defendant represent to the Court that the foregoing Supplemental Plea Agreement is the agreement of the parties that has been reached pursuant to Rule 11, Federal Rules of Criminal Procedure, as amended.

11. The attorney for the defendant represents to the Court that he has advised the defendant on all of the contents of this Plea Agreement, including specifically all of the provisions listed in Paragraph 9 herein, and that he is satisfied that the defendant adequately understands all of the contents of this Plea Agreement.

12. Additionally, the attorney for the defendant represents to the Court that he has translated or caused to be translated this agreement from English into Spanish to the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

This \_\_\_\_ day of March, 2012.

Respectfully submitted,

---

Louis V. Franklin, Sr., Chief  
Criminal Division

---

Brandon K. Essig  
Assistant United States Attorney  
131 Clayton Street  
Montgomery, Alabama 36104  
Tel: (334) 223-7280  
Fax: (334) 223-7135  
Email: [brandon.essig@usdoj.gov](mailto:brandon.essig@usdoj.gov)

I have read the Supplemental Plea Agreement, understand the same, and agree that it accurately states both the representations that have been made to me and the conditions of the agreement that has been reached. I am satisfied that my attorney, Jack Spence, Esq., has represented my interests in this matter competently and effectively.

\_\_\_\_\_  
[REDACTED]  
Defendant

\_\_\_\_\_

\_\_\_\_\_  
JACK SPENCE, Esq.  
Attorney for the Defendant

\_\_\_\_\_  
Date

1 ANN BIRMINGHAM SCHEEL  
Acting United States Attorney  
District of Arizona

2 **FIELD(AUSA)**  
3 Assistant U.S. Attorney  
Two Renaissance Square  
40 N. Central Avenue, Suite 1200  
4 Phoenix, Arizona 85004-4408  
Arizona State Bar No. **FIELD(AUSA Bar No.)**  
5 Telephone (602) 514-7500  
**FIELD(AUSA e-mail address)**

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 United States of America,  
9 Plaintiff,

10 v.

11 **FIELD(Def First Name) FIELD(Def**  
12 **Surname),**  
13 **FIELD(Alias 1)**  
14 **FIELD(Alias 2)**  
**FIELD(Alias 3)**  
**FIELD(Alias 4)**

15 Defendant.

No. CR-**FIELD(CR No.)**

Mag. No. **FIELD(Mag. No.)M**

**PLEA AGREEMENT**

(Fast Track 5K3.1)

16 The United States of America and the defendant hereby agree to dispose of this matter  
17 on the following terms and conditions:

18 **PLEA**

19 The defendant will plead guilty to an Information charging a violation of Title 8, United  
20 States Code (U.S.C.), Section 1326(a), with a possible sentencing enhancement under 1326(b)(1)  
21 or 1326(b)(2), Reentry of Removed Alien.

22 **1. MAXIMUM PENALTIES**

23 a. A violation of 8 U.S.C. § 1326(a), a Class E felony, is punishable by up to a  
24 maximum term of imprisonment of 2 years, a maximum fine of \$250,000, or both imprisonment  
25 and a fine, and a term of supervised release of up to 1 year. If a sentencing enhancement under  
26 8 U.S.C. § 1326(b)(1), a Class C felony, is applicable, then the maximum term of imprisonment  
27 is 10 years. If the sentencing enhancement under 8 U.S.C. § 1326(b)(2), a Class C felony, is  
28

1 applicable, then the maximum term of imprisonment is 20 years. A Class C felony is punishable  
2 by both imprisonment and a maximum fine of \$250,000, and a term of supervised release of up  
3 to 3 years.

4 b. According to the United States Sentencing Guidelines (U.S.S.G.) issued pursuant  
5 to the Sentencing Reform Act of 1984, the Court shall:

6 (1) Order the defendant to pay a fine pursuant to 18 U.S.C. §§ 3572 and 3553,  
7 unless the Court finds that a fine is not appropriate; and

8 (2) Order the defendant to serve a term of supervised release when required by  
9 statute or when a sentence of imprisonment of more than one year is imposed, and may impose  
10 a term of supervised release in all other cases.

11 c. Pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant  
12 to pay a \$100 special assessment.

## 13 **2. AGREEMENTS REGARDING SENTENCING**

14 a. Stipulation: Acceptance of Responsibility. Pursuant to Fed. R. Crim. P.  
15 11(c)(1)(C), if the defendant makes full and complete disclosure to the Probation Office of the  
16 circumstances surrounding the defendant's commission of the offense, and if the defendant  
17 demonstrates an acceptance of responsibility for this offense up to and including the time of  
18 sentencing, the United States will stipulate and agree to a two-level reduction pursuant to  
19 U.S.S.G. § 3E1.1. If the defendant has an offense level of 16 or more, the United States will  
20 stipulate and agree to an additional one-level reduction pursuant to U.S.S.G. § 3E1.1.

21 b. Stipulated Sentence Under Early Disposition Program. Although the parties  
22 understand that the Sentencing Guidelines are only advisory, and just one of the factors the  
23 Court will consider under 18 U.S.C. § 3553(a), pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P.  
24 and U.S.S.G. § 5K3.1, the government and the defendant stipulate and agree that the following  
25 is an appropriate disposition of this case:

26 The defendant's Base Offense Level will be calculated as the sum of Offense Level 8  
27 PLUS the sentencing guideline adjustment for the defendant's most serious prior conviction,  
28 pursuant to U.S.S.G § 2L1.2(a) and (b), as determined by the Court at the time of sentencing.

1 Defendant's Offense Level will further be reduced pursuant to the Attorney General's Early  
2 Disposition Program as follows:

3 (1) Two level departure for any defendant with a criminal history category VI or with  
4 at least one felony conviction for an offense identified in U.S.S.G. § 2L1.2(b)(1)(A) [a drug  
5 trafficking offense for which the sentence imposed exceeded 13 months; a crime of violence; a  
6 firearms offense; a child pornography offense; a national security or terrorism offense; a human  
7 trafficking offense; or an alien smuggling offense]; or,

8 (2) Four level departure for all other defendants.

9 (3) If the defendant does not qualify for a 1326(b)(1) or 1326(b)(2) enhancement, then  
10 in lieu of the departures listed in (1) and (2) above, the defendant's sentence shall not exceed the  
11 following caps:

12 Three months of imprisonment if defendant's Criminal History Category is I;

13 Four months of imprisonment if defendant's Criminal History Category is II;

14 Five months of imprisonment if defendant's Criminal History Category is III;

15 Six months of imprisonment if defendant's Criminal History Category is IV;

16 Nine months of imprisonment if defendant's Criminal History Category is V;

17 and Twelve months and one day of imprisonment if defendant's Criminal History  
18 Category is VI.

19 c. Multiple Offense Levels. If the defendant has multiple convictions, which fall  
20 under more than one specific offense classification level (i.e. U.S.S.G. § 2L1.2(b)(1)(A), (B),  
21 and/or (C)), the highest specific offense classification level will be used in calculating the  
22 sentence which will be imposed upon the defendant. The precise level of offense and number  
23 of months sentence imposed will be determined by the court based upon the defendant's criminal  
24 record.

25 d. Criminal History Points. If the defendant has 18 or more criminal history points,  
26 the government shall have the right to withdraw from this agreement.  
27  
28

1 e. No Other Departure or Reduction. The defendant understands and agrees that this  
2 plea agreement contains all of the terms, conditions, and stipulations regarding sentencing. If  
3 the defendant requests or if the Court authorizes (a) any downward departure [or variance]; (b)  
4 any reduction of criminal history category which differs from that set forth in the Presentence  
5 Report; or (c) any other reduction or adjustment of sentence not specifically agreed to in writing  
6 by the parties, the government may withdraw from the plea agreement. If the court departs from  
7 the terms and conditions set forth in this plea agreement, either party may withdraw.

8 f. Supervised Release. If the defendant is on supervised release, the government  
9 shall have the right to withdraw from this agreement.

10 **3. COURT APPROVAL REQUIRED**

11 If the Court, after reviewing this plea agreement, concludes that any provision is  
12 inappropriate, it may reject the plea agreement under Rule 11(c)(5), Fed. R. Crim. P., giving the  
13 defendant, in accordance with Rule 11(d)(2)(A), Fed. R. Crim. P., an opportunity to withdraw  
14 the defendant's guilty plea.

15 **4. WAIVER OF DEFENSES AND APPEAL RIGHTS**

16 Providing the defendant's sentence is consistent with this agreement, the defendant waives  
17 (1) any and all motions, defenses, probable cause determinations, and objections that the  
18 defendant could assert to the indictment or information; and (2) any right to file an appeal, any  
19 collateral attack, and any other writ or motion that challenges the conviction, an order of  
20 restitution or forfeiture, the entry of judgment against the defendant, or any aspect of the  
21 defendant's sentence, including the manner in which the sentence is determined, including but  
22 not limited to any appeals under 18 U.S.C. § 3742 and motions under 28 U.S.C. §§ 2241 and  
23 2255. The defendant acknowledges that if the Court has sentenced the defendant according to  
24 the terms of this agreement, this waiver shall result in the dismissal of any appeal, collateral  
25 attack, or other motion the defendant might file challenging the conviction, order of restitution  
26 or forfeiture, or sentence in this case.

27 **5. REINSTATEMENT OF REMOVAL, DEPORTATION OR EXCLUSION OR**  
28 **STIPULATION TO REMOVAL**

1 The defendant admits that the defendant was the subject of a previous order of removal,  
2 deportation or exclusion. The defendant agrees to the reinstatement of that previous order of  
3 removal, deportation or exclusion. The defendant admits that he does not have a fear of  
4 returning to the country designated in the previous order. If this plea agreement is accepted by  
5 the Court, the defendant agrees not to contest, either directly or by collateral attack, the  
6 reinstatement of the prior order of removal, deportation or exclusion.

7 **6. PERJURY AND OTHER OFFENSES**

8 Nothing in this agreement shall be construed to protect the defendant in any way from  
9 prosecution for perjury, false declaration or false statement, obstruction of justice, or any other  
10 offense committed by the defendant after the date of this agreement. Any information,  
11 statements, documents, or evidence the defendant provides to the United States pursuant to this  
12 agreement, or to the Court, may be used against the defendant in all such prosecutions.

13 **7. REINSTITUTION OF PROSECUTION**

14 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court in  
15 a later proceeding, the government will be free to prosecute the defendant for all charges and/or  
16 allegations of supervised release violations as to which it has knowledge, and any charges and/or  
17 allegations of supervised release violations that have been dismissed or not alleged because of  
18 this plea agreement will be automatically reinstated. In such event, the defendant waives any  
19 objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment to  
20 the Constitution as to the delay occasioned by the later proceedings. Defendant agrees that the  
21 stipulated fast-track departures set forth under "Agreements Regarding Sentence" will not be  
22 offered if prosecution is re-instituted.

23 **8. DISCLOSURE OF INFORMATION**

24 a. The United States retains the unrestricted right to provide information and make  
25 any and all statements it deems appropriate to the Probation Office and to the Court in  
26 connection with the case.

27

28

1           b.       The defendant shall cooperate fully with the U.S. Probation Office. Such  
2 cooperation shall include providing complete and truthful responses to questions posed by the  
3 Probation Office including, but not limited to, questions relating to:

4                   (1)     Criminal convictions, history of drug abuse and mental illness; and

5                   (2)     Financial information, including present financial assets or liabilities that  
6 relate to the ability of the defendant to pay a fine.

7       **9.     EFFECT ON OTHER PROCEEDINGS**

8           This agreement does not preclude the United States from instituting any civil or  
9 administrative proceedings as may be appropriate now or in the future.

10                               **DEFENDANT'S APPROVAL AND ACCEPTANCE**

11           I have read the entire plea agreement with the assistance of counsel and understand each  
12 of its provisions.

13           I have discussed the case and my constitutional and other rights with my attorney. I  
14 understand that by entering my plea of guilty I shall waive my rights to plead not guilty; to trial  
15 by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence  
16 in my defense; to remain silent and refuse to be a witness against myself by asserting my  
17 privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a  
18 reasonable doubt, all with the assistance of counsel.

19           I agree to enter my guilty plea as indicated above on the terms and conditions set forth  
20 in this agreement.

21           I have been advised by my attorney of the nature of the charges to which I am entering  
22 my guilty plea. I have further been advised by my attorney of the nature and range of the  
23 possible sentence and that my ultimate sentence shall be determined after consideration of the  
24 advisory Sentencing Guidelines. I understand that the Sentencing Guidelines are only advisory  
25 and that without this agreement the Court would be free to exercise its discretion to impose any  
26 reasonable sentence up to the maximum set by statute for the crimes of conviction.

27  
28

1 My guilty plea is not the result of force, threats, assurances, or promises other than the  
2 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary  
3 act on my part and I agree to be bound according to its provisions.

4 I fully understand that, if I am granted probation or placed on supervised release by the  
5 Court, the terms and conditions of such probation/supervised release are subject to modification  
6 at any time. I further understand that, if I violate any of the conditions of my  
7 probation/supervised release, my probation/supervised release may be revoked and upon such  
8 revocation, notwithstanding any other provision of this agreement, I may be required to serve  
9 a term of imprisonment or my sentence may otherwise be altered.

10 I agree that this written plea agreement contains all the terms and conditions of my plea.  
11 I further agree that promises, including any predictions as to the Sentencing Guideline range or  
12 to any Sentencing Guideline factors that will apply, made by anyone (including my attorney) that  
13 are not contained within this written plea agreement are null and void and have no force and  
14 effect.

15 I am satisfied that my defense attorney has represented me in a competent manner.

16 I am fully capable of understanding the terms and conditions of this plea agreement. I am  
17 not now using or under the influence of any drug, medication, liquor, or other intoxicant or  
18 depressant that would impair my ability to fully understand the terms and conditions of this plea  
19 agreement.

## 20 ELEMENTS

### 21 **Reentry of Removed Alien**

22 On or about **FIELD**(Offense Date), in the District of Arizona:

- 23 1. The defendant was an alien;
- 24 2. The defendant had been previously denied admission, excluded, deported, or  
25 removed from the United States;
- 26 3. The defendant knowingly and voluntarily reentered or was present after a  
27 voluntary entry and found in the United States in the District of Arizona; and  
28



1 agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all  
2 the requirements of Fed. R. Crim. P. 11.

3 I translated or caused to be translated this agreement from English into Spanish to the  
4 defendant on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

5  
6 \_\_\_\_\_  
7 Date FIELD(DC First) FIELD(DC Last)  
8 Attorney for Defendant

8 **UNITED STATES' APPROVAL**

9 I have reviewed this matter and the plea agreement. I agree on behalf of the United States  
10 that the terms and conditions set forth are appropriate and are in the best interests of justice.

11 ANN BIRMINGHAM SCHEEL  
12 Acting United States Attorney  
13 District of Arizona

14  
15 \_\_\_\_\_  
16 Date FIELD(AUSA)  
17 Assistant U.S. Attorney

17 **COURT'S ACCEPTANCE**

18  
19 \_\_\_\_\_  
20 Date United States District Judge

21  
22  
23  
24  
25  
26  
27  
28

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  
26  
27  
28

[REDACTED]

FEB 01 2012

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

IN OPEN COURT  
JAMES W. McCORMACK, CLERK  
BY: Plachon  
DEPUTY CLERK

UNITED STATES OF AMERICA )  
 )  
v. )  
 )  
[REDACTED] )

No. [REDACTED] JMM

PLEA AGREEMENT

The United States Attorney for the Eastern District of Arkansas, Christopher R. Thyer, by and through John Ray White, Assistant United States Attorney (hereinafter "the United States"); and [REDACTED], defendant (hereinafter "the defendant"), represented by the undersigned counsel, hereby agree to the following terms and conditions in connection with the above-referenced proceedings.

1. GUILTY PLEA: The defendant will enter a plea of guilty to making a firearm, that is, a destructive device as that term is defined in Title 26, United States Code, Section 5845, in violation of Title 26, United States Code, Section 5822, which is not registered to him in the National Firearms Registration and Transfer Record, thereby violating Title 26, United States Code, Sections 5841, 5861(f), and 5871, as set forth in Count One of the Indictment. Following the Court's acceptance of the defendant's guilty plea, the United States will move the Court to dismiss any remaining counts in the Indictment against the defendant. This plea agreement is entered under Federal Rule of Criminal Procedure 11(c)(1)(A) and (B).

2. ELEMENTS OF THE CRIME: The parties agree that the elements of the offenses to which the defendant will plead guilty are:

COUNT ONE – Making a Firearm

One, the defendant knowingly made a firearm;

Two, the defendant knew the firearm was a destructive device;

Three, the firearm could readily be put in operating condition and was capable of operating as designed; and,

Four, the firearm was not registered in the National Firearms Registration and Transfer Record.

The defendant agrees that he is guilty of this offense and that each of these elements is true.

3. PENALTIES:

A. STATUTORY PENALTIES: The defendant acknowledges that the maximum penalty for Count One is not more than 10 years, not more than 3 years supervised release, not more than a \$250,000 fine and a \$100 special assessment.

B. SUPERVISED RELEASE: Supervised release is a period of time following imprisonment during which the defendant will be subject to various restrictions and requirements. The defendant understands that if he violates one or more of the conditions of any supervised release imposed, the defendant may be returned to prison for all or part of the term of supervised release, which could result in the defendant serving a total term of imprisonment greater than the statutory maximum stated above.

4. WAIVERS: The defendant acknowledges that he has been advised of and fully understands the nature of the charges to which the plea pertains, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law. The defendant further understands that by entering into this Agreement, he is waiving certain constitutional rights, including, without limitation, the following:

(a) The right to plead not guilty or to persist in that plea if it has already been made, and the right to a speedy and public trial before a jury;

(b) The right to be presumed innocent and to have the burden of proof placed on the United States to establish guilt beyond a reasonable doubt;

(c) The right to confront and cross examine witnesses;

(d) The right to testify in his own behalf if the defendant so chooses, or, the right to remain silent and not be compelled to testify, and to have that choice not used against the defendant;

(e) The right to call witnesses and to require those witnesses to appear by issuing subpoenas;

(f) Even after a plea of guilty, a Fifth Amendment right against self-incrimination as to some matters relevant to the defendant's own sentencing.

(g) Any and all motions, defenses, probable cause determinations, and objections which the defendant could assert to the information or to the Court's entry of judgment against the defendant and imposition of sentence upon the defendant providing the sentence is consistent with this agreement;

(h) Any and all challenges to the searches, seizures, arrests and statements that have taken place as of the date of the execution of this plea agreement by the defendant in this investigation by any entity, and in any forum where the offense may be pursued and/or forfeiture may be sought, and,

(i) Any right to appeal the Court's entry of judgment against the defendant.

The defendant acknowledges that these waivers shall result in the dismissal of any appeal the defendant might file challenging his conviction or sentence in this case. If the defendant files a notice of appeal, notwithstanding this agreement, the defendant agrees that this case shall, upon motion of the United States, be remanded to the district court to determine whether the defendant

is in breach of this agreement and, if so, to permit the United States to withdraw from the plea agreement.

5. STIPULATIONS: The United States and the defendant stipulate to the following:

A. The defendant's base offense level should be determined under Section 2K2.1 of the United States Sentencing Guidelines.

B. Two points shall be added pursuant to 2K2.1(b)(1)(A).

C. Two points shall be added pursuant to 2K2.1(b)(3)(B).

D. The defendant is eligible for a two point reduction for acceptance of responsibility unless the defendant takes any action between the entry of the guilty plea and imposition of the sentence that is inconsistent with acceptance of responsibility. If the offense level is 16 or greater, the determination of whether the defendant is eligible for a third point reduction for acceptance of responsibility will be made by the United States at the time of sentencing.

E. The defendant acknowledges that, pursuant to Section 4 above, he waives any and all challenges to the searches, seizures, arrests and statements that have taken place as of the date of the execution of this plea agreement by the defendant in this investigation by any entity, and in any forum where the offense may be pursued and/or forfeiture may be sought. Defendant will assist in executing any requested waiver of challenge and relinquishment of rights to any and all assets that have been seized to date in this investigation by any participating agency or department, in any forum where the forfeiture may be sought.

F. The parties jointly recommend the defendant be sentenced to 36 months imprisonment.

The parties understand that the Court is not bound by these stipulations. The defendant

further understands that if the Court does not accept the stipulations, the defendant is not entitled to withdraw the guilty plea or otherwise be released from the defendant's obligations under this Agreement.

6. SENTENCING GUIDELINES: It is specifically understood by the defendant that the Sentencing Guidelines are not mandatory but are advisory, and that the Court is to consult them in determining the appropriate sentence. The defendant understands that the determination of the applicability of the Guidelines and of the appropriate sentence will be made by the Court. The defendant is aware that any estimate of the probable sentencing range under the Sentencing Guidelines that the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is merely a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea, or otherwise avoid the defendant's obligations under this Agreement, based upon the actual sentence imposed by the Court. The parties understand and agree that if the sentencing range is greater or less than the defendant or the United States expected it to be, and/or the sentence imposed by the Court is greater or lesser than anticipated, neither the defendant nor the United States will be allowed to withdraw, nor request withdrawal of, the guilty plea, nor be excused from any obligation under this Agreement.

7. ALLOCUTION: At the time of sentencing, the United States reserves the right to bring to the Court's attention any and all facts, as deemed appropriate by the United States.

8. COOPERATION IN THE SENTENCING PROCESS:

A. The defendant agrees to provide truthfully all information to the Probation Office as needed for preparation of the pre-sentence report, including, but not limited to, criminal

history information. The defendant shall voluntarily provide a complete and truthful written accounting of the defendant's criminal history to the Probation Office.

B. The defendant agrees to execute all waivers necessary for the preparation of the pre-sentence report.

C. The defendant understands and acknowledges that the defendant's obligation of disclosure regarding criminal history is not limited to arrests and convictions reported in computer databases, but requires the defendant to disclose all arrests and/or convictions, including any juvenile matters, regardless of whether the defendant believes the arrest/conviction counts under the Sentencing Guidelines.

D. The defendant is required to comply with these obligations no later than the expiration of the date on which objections to the pre-sentence report are due.

9. FINANCIAL MATTERS:

A. FINANCIAL STATEMENT: The defendant agrees to fully and truthfully complete a Financial Statement provided by the Probation Office.

B. FINES: The defendant understands that unless the Court determines that the defendant is financially unable to pay a fine, the Court must impose a fine pursuant to the Sentencing Reform Act of 1984.

C. SPECIAL PENALTY ASSESSMENT: The defendant agrees to pay to the United States a special assessment of \$100.00 per count, as required by Title 18, United States Code, Section 3013. This special assessment is to be paid by bank cashier's check or money order as directed by the Court. Cashier's checks or money orders should be made payable to "Clerk, United States District Court."

D. RESTITUTION: The parties state that restitution is not applicable, and

that there are not victims who are due restitution from the Defendant.

10. **DOUBLE JEOPARDY AND SUCCESSIVE PROSECUTION:** The United States Attorney for the Eastern District of Arkansas will bring no further charges against the defendant for any acts or conduct arising out of the events described in the Indictment, which is the subject of this action, unless the defendant breaches this Agreement and Addendum.

11. **RECORDS:** The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. Section 552, or the Privacy Act of 1974, 5 U.S.C. Section 552a.

12. **CIVIL CLAIMS BY THE GOVERNMENT:** Except to the extent otherwise expressly specified herein, this Agreement does not bar or compromise any civil or administrative claim pending or that may be made against the defendant, including but not limited to tax matters.

13. **EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT:**

A. The defendant acknowledges and understands that if he violates any term of this Agreement, engages in any further criminal activity prior to sentencing, or fails to appear for any subsequent proceeding including sentencing, the United States shall have, in addition to all other rights and remedies otherwise available, the right to:

- (1) terminate this Agreement; or
- (2) proceed with this Agreement and
  - (a) deny any and all benefits to which the defendant would otherwise be entitled under the terms of this Agreement; and/or
  - (b) advocate for any sentencing enhancement that may be appropriate.

B. In the event the United States elects to terminate this Agreement, the United States shall be released from any and all obligations hereunder. The defendant acknowledges and understands that the agreement of the United States to dismiss any charge is conditioned upon final resolution of this matter. If this Agreement is terminated or if the defendant's conviction ultimately is overturned, then the United States retains the right to reinstate any and all dismissed charges and to file any and all charges that were not filed because of this Agreement.

C. The defendant hereby knowingly and voluntarily waives any defense based upon the applicable statute of limitations and/or the Speedy Trial Act, for any charges reinstated or otherwise filed against the defendant as a result of defendant's breach of this Agreement, so long as the United States initiates any otherwise time barred action within one year of termination or revocation of this Agreement.

D. In the event that the Agreement is terminated or if the defendant successfully moves to withdraw his plea, any statement made by the defendant in negotiation of, or in reliance on this Agreement:

- (1) may be used to cross-examine the defendant should he testify in any subsequent proceeding; and/or
- (2) any leads derived therefrom may be used by the United States.

The defendant waives any and all rights to the contrary and shall assert no claim under the United States Constitution, any statute, or any rule of procedure or evidence to the contrary.

14. PARTIES: This Agreement is binding only upon the United States Attorney's Office for the Eastern District of Arkansas, the Criminal Section of the Civil Rights Division of the Department of Justice, and the defendant. It does not bind any United States Attorney outside the Eastern District of Arkansas, nor does it bind any other federal, state or local prosecuting,

administrative, or regulatory authority.

15. MISCELLANEOUS:

A. MODIFICATION: No term or provision contained herein may be modified, amended or waived except by express written agreement signed by the party to be bound thereby.

B. HEADINGS AND CAPTIONS: Subject headings and captions are included herein for convenience purposes only and shall not affect the interpretation of this Agreement.

C. WAIVER: No waiver of a breach of any term or provision of this Agreement shall operate or be construed as a waiver of any subsequent breach or limit or restrict any other right or remedy otherwise available. Any waiver must be expressly stated in writing signed by the party to be bound thereby.

D. RIGHTS AND REMEDIES CUMULATIVE: The rights and remedies of the United States expressed herein upon any breach hereunder by the defendant are cumulative and not exclusive of any rights and remedies otherwise available to the United States in the event of any breach of this Agreement by the defendant.

E. JOINT NEGOTIATION: This Agreement has been mutually negotiated by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by reason of its drafting of this Agreement, but instead shall be interpreted according to the application of the general rules of interpretation for arms length agreements.

16. NO OTHER TERMS: This document reflects completely all promises, agreements and conditions made between the parties, constitute the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties, oral or

written, with respect to the subject matter hereof.

17. APPROVALS AND SIGNATURES:

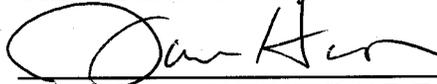
A. DEFENDANT: The defendant has read this Agreement and carefully reviewed every part of it with his attorney. The defendant understands and voluntarily agrees to the terms and condition of this Agreement. Further, the defendant has consulted with his attorney and fully understands his rights with respect to the provisions of the United States Sentencing Guidelines which may apply to this case. No other promises or inducements have been made to the defendant, other than those expressly contained in this Agreement. In addition, no one has threatened or forced the defendant in any way to enter into this Agreement. The defendant further acknowledges that he has entered into this Agreement, consciously and deliberately, by his free choice, and without duress, undue influence or otherwise being forced or compelled to do so, and this Agreement constitutes the legal, valid and binding obligation of the defendant, fully enforceable against the defendant in accordance with its terms. The defendant is satisfied with the representation of his attorney in this matter.

B. DEFENSE COUNSEL: Defense counsel acknowledges that she is the attorney for the defendant, and that she has fully and carefully discussed every part of this Agreement with the defendant. Further, defense counsel has fully and carefully advised the defendant of the defendant's rights, of possible defenses, and of the consequences of entering into this Agreement, including the possible consequences of not complying with this Agreement. To defense counsel's knowledge, the defendant's decision to enter into this Agreement is an informed and voluntary decision.

DATED this 15<sup>th</sup> day of February, 2012.

CHRISTOPHER R. THYER

United States Attorney



*bn*

By: JOHN RAY WHITE (AR Bar # 91003)

Assistant United States Attorney

Post Office Box 1229

Little Rock, Arkansas 72203

(501) 340-2600

john.white2@usdoj.gov

[REDACTED]

[REDACTED]

Defendant



KIM DRIGGERS

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
XXXXXXXXX DIVISION

UNITED STATES OF AMERICA            )  
  )  
v.    )       CRIMINAL NO.  
  )  
XXXXXXXXXXXXX                                )  
  )  
  )

**PLEA AGREEMENT**

Pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure, the parties hereto acknowledge that they have entered into negotiations which have resulted in this agreement. The agreement of the parties is as follows:

**PLEA OF GUILTY TO INDICTMENT**

1. The defendant, XXXXXXXX hereby agrees to plead guilty to the one count Indictment, charging the defendant with Illegal Reentry into the United States after Previous Removal, in violation of 8 U.S.C. § 1326(a).

**ADMISSION OF FACTUAL BASIS IN SUPPORT OF GUILTY PLEA(S)**

2. The defendant has fully discussed with defense counsel the facts of this case and the elements of the crime(s) to which the defendant is pleading guilty. The defendant has committed each of the elements of the crime(s) to which the defendant is pleading guilty, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

a.       XXXXX

b.       Furthermore, for sentencing purposes, the defendant acknowledges that he/she was convicted of XXXX, an aggravated felony on XXXXX and that the defendant was represented by an

attorney.

**AGREEMENT REGARDING SENTENCE  
SPECIFIC OFFENSE CHARACTERISTICS AND EARLY DISPOSITION  
(FAST-TRACK) PROGRAM**

3. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Western District of Arkansas. Although the parties understand that the Guidelines are only advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a), pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P. and U.S.S.G. § 5K3.1, the government and the defendant stipulate and agree that the following is an appropriate disposition of this case:

a. The defendant's Base Offense Level will be calculated as the sum of Offense Level 8 PLUS the sentencing guideline adjustment for defendant's most serious prior conviction as recommended by the U.S. Probation Office after defendant's change of plea. Defendant's Final Adjusted Offense Level will be the Base Offense Level minus the appropriate downward adjustment for acceptance of responsibility, and:

(1) Two level departure for any defendant with a criminal history category VI;  
and

(2) Four level departure for all other defendants.

b. The parties agree that the defendant may only seek a downward criminal history departure under U.S.S.G. § § 4A1.3. The Government is free to oppose any such downward departure. The parties will not seek any further adjustments, variances, reductions, or departures, including reductions under 18 U.S.C. § 3553.

c. The parties agree that if it is discovered during the presentence investigation that the defendant would not have been eligible for the Fast Track Program based on a criminal conviction that was previously unknown to the United States Attorney's Office, then the United States Attorney's Office shall have the right not to recommend a guideline departure based on the Fast Track Program.

### ADVICE OF RIGHTS

4. The defendant hereby acknowledges that he/she has been advised of and fully understands the following constitutional and statutory rights:

- a. to have an attorney and if the defendant cannot afford an attorney, to have one provided to him/her and paid for at government expense;
- b. to persist in his/her plea of not guilty;
- c. to have a speedy and public trial by jury;
- d. to be presumed innocent until proven guilty beyond a reasonable doubt;
- e. to confront and examine witnesses who testify against him/her;
- f. to call witnesses on his/her behalf;
- g. to choose to testify or not testify and that no one could force the defendant to testify; and,
- h. to have at least 30 days to prepare for trial.

### WAIVER OF RIGHTS

5. The defendant hereby acknowledges that he/she understands with respect to each count to which he/she pleads guilty, he/she thereby WAIVES all of the rights listed as (b) through (h) of the above paragraph. Furthermore, the defendant WAIVES all rights under Federal Rules of Criminal Procedure 12(b)(3).

### WAIVER OF APPELLATE AND POST-CONVICTION RIGHTS

6. In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, as follows:

- a. the defendant waives the right to directly appeal the conviction and sentence pursuant to 28 U.S.C. § 1291 and/or 18 U.S.C. § 3742(a);
- b. the defendant waives the right to challenge his conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel;
- c. the defendant reserves the right to appeal from a sentence which exceeds the statutory maximum

### **WAIVER OF ACCESS TO RECORDS**

7. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

### **WAIVER OF "HYDE" CLAIM**

8. The defendant hereby waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney fees and other litigation expenses arising out of the investigation or prosecution of this matter.

### **EFFECTS OF BREACH OF THIS AGREEMENT BY DEFENDANT**

9. The defendant agrees that if after signing this plea agreement the defendant commits any crimes, violates any conditions of release, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, intentionally incomplete, or intentionally untruthful, or if the defendant violates any term of this plea agreement, takes a position at sentencing which is contrary to the terms of this plea agreement or attempts to withdraw from this plea agreement, this shall constitute a breach of this plea agreement which shall release the United States from any and all restrictions or obligations placed upon it under the terms of this agreement and the United States shall be free to reinstate dismissed charges or pursue additional charges against the defendant. The defendant shall, however, remain bound by

the terms of the agreement, and will not be allowed to withdraw this plea of guilty unless permitted to do so by the court.

10. The defendant further agrees that a breach of any provisions of this plea agreement shall operate as a WAIVER of defendant's rights under Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence and the government shall be allowed to use and to introduce into evidence any one or more of the following:

- a. admissions against interest, both oral and written, made by the defendant to any person;
- b. statements made by the defendant during his/her change of plea hearing;
- c. the factual basis set forth in the plea agreement;
- d. any testimony given under oath in these proceedings or to a grand jury or a petit jury;
- e. any and all physical evidence of any kind which the defendant has provided to the government; and,
- f. any and all information provided by the defendant to the government's attorneys, or to federal, state, county, and/or local law enforcement officers.

#### **DEPORTATION CONSEQUENCES OF GUILTY PLEA**

11. Defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status if he/she is not a citizen of the United States. The defendant acknowledges that he/she has discussed the immigration consequences of his/her guilty plea with his/her attorney and understands that his/her guilty plea and conviction for this offense may result in his/her removal from the United States through the deportation process.

## **MAXIMUM PENALTIES**

12. The defendant hereby acknowledges that he/she has been advised of the maximum penalties for each count to which he/she is pleading guilty. By entering a plea of guilty to the sole count of the Indictment, the defendant agrees that he/she faces:

- a. a maximum term of imprisonment for 2 years [ 10 years][20 years];
- b. a maximum fine of \$250,000;
- c. both imprisonment and fine;
- d. a term of to three years supervised release which begins after release from prison;
- e. a possibility of going back to prison if the defendant violates the conditions of supervised release;
- f. a special assessment of \$100.00 for each count of conviction.

## **CONDITIONS OF SUPERVISED RELEASE**

13. The Defendant acknowledges that if a term a supervised release is imposed as part of the sentence, the defendant will be subject to the standard conditions of supervised release as recommended by the United States Sentencing Commission and may be subject to other special conditions of supervised release as determined by the court. The standard conditions of supervised release are as follows:

- A. The defendant shall not leave the judicial district without the permission of the court or probation officer.
- B. The defendant shall report to the probation officer in a manner and frequency directed by the Court or Probation Officer.
- C. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

- D. The defendant shall support his or her dependents and meet other family responsibilities.
- E. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
- F. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- G. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- H. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- I. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.
- J. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
- K. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- L. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court, and
- M. The defendant shall—as directed by the probation officer—notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

#### **NO OTHER CHARGES**

14. The government agrees that no other federal charges, which stem from the activities described in the Indictment, will be brought against the defendant in the Western District of Arkansas.

**SENTENCING GUIDELINES ARE ADVISORY BUT NOT MANDATORY**

15. The parties acknowledge that the Court shall consult and take into account the United States Sentencing Commission Guidelines in determining the sentence, but that the Court is not bound by the Guidelines and may sentence the defendant to any reasonable sentence within the statutory range.

**AGREEMENT DOES NOT PROMISE A SPECIFIC SENTENCE**

16. The defendant acknowledges that discussions have taken place concerning the possible guideline range which might be applicable to this case. The defendant agrees that any discussions merely attempt to guess at what appears to be the correct guideline range and do not bind the district court. Further, the defendant acknowledges that the actual range may be greater than contemplated by the parties. In the event that the actual guideline range is greater than the parties expected, the defendant agrees that this does not give him/her the right to withdraw his/her plea of guilty.

**RELEVANT CONDUCT CONSIDERED**

17. At the sentencing hearing, the government will be permitted to bring to the Court's attention, and the Court will be permitted to consider, all relevant information with respect to defendant's background, character and conduct, including the conduct that is the subject of this investigation for which he has not been charged up to the date of this Agreement, and/or which is the basis for any of the counts which will be dismissed pursuant to this agreement, as provided by § 1B1.3 of the Sentencing Guidelines.

## **PERJURY**

18. In the event that it is determined that the defendant has not been truthful with the court as to any statements made while under oath, this plea agreement shall not be construed to protect the defendant from prosecution for perjury or false statement.

## **CONCESSIONS BY THE GOVERNMENT**

19. The government agrees to recommend that the defendant be sentenced within the Guideline range as determined by the Court.

20. The government agrees not to object to a recommendation by the probation office or a ruling of the court which awards the defendant an appropriate-level decrease in the base offense level for acceptance of responsibility. If the offense level in the Presentence Report is 16 or greater and the court accepts a recommendation in the Presentence Report that defendant receive two points for acceptance of responsibility, the United States agrees to move for an additional one-point reduction for acceptance of responsibility for a total of three points. However, the Government will not be obligated to move for an additional one-point reduction or recommend any adjustment for acceptance of responsibility if defendant engages in conduct inconsistent with acceptance of responsibility including, but not limited to, the following: (a) falsely denies, or makes a statement materially inconsistent with, the factual basis set forth in this agreement, (b) falsely denies additional relevant conduct in the offense, (c) is untruthful with the Government, the Court or probation officer, or (d) materially breaches this plea agreement in any way.

## **GOVERNMENT'S RESERVATION OF RIGHTS**

21. Although the government agrees not to object to certain findings by the probation office or to rulings of the court, it reserves the right to:

- a. make all facts known to the probation office and to the court;
- b. call witnesses and introduce evidence in support of the Presentence Report;
- c. contest and appeal any finding of fact or application of the Sentencing Guidelines;
- d. contest and appeal any departure from the appropriate Guideline range; and,
- e. defend all rulings of the District Court on appeal including those rulings which may be contrary to recommendations made or positions taken by the government in this plea agreement which are favorable to the defendant.

### **NO RIGHT TO WITHDRAW THE GUILTY PLEA**

22. The government's concessions on sentencing options are non-binding and made pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. As a result, if the court should reject the defendant's requests or recommendations for certain findings of fact or applications of the Guidelines, the defendant acknowledges that there is no right to withdraw the guilty plea.

### **AGREEMENT NOT BINDING ON THE COURT**

23. The parties agree that nothing in this agreement binds the district court to:
- a. make any specific finding of fact;
  - b. make any particular application of the Sentencing Guidelines;
  - c. hand down any specific sentence;
  - d. accept any stipulation of the parties as contained in this plea agreement; and,
  - e. accept this plea agreement.

24. The government and the defendant acknowledge that the court has an obligation to review the Presentence Report before it accepts or rejects this plea agreement.

### **AGREEMENT DOES NOT BIND ANY OTHER ENTITY**

25. The parties agree that this plea agreement does not bind any governmental entity other than the United States Attorney's Office for the Western District of Arkansas.

## **SPECIAL ASSESSMENT**

26. The defendant agrees to pay \$100 as the special assessment in this case.

### **REPRESENTATIONS BY DEFENDANT**

27. By signing this plea agreement, the defendant acknowledges that:
- a. The defendant has read this agreement (or has had this agreement read to him/her) and has carefully reviewed every part of it with defense counsel.
  - b. The defendant fully understands this plea agreement and is not under the influence of anything that could impede the defendant's ability to fully understand this plea agreement.
  - c. No promises, agreements, understandings, or conditions have been made or entered into in connection with the decision to plead guilty except those set forth in this plea agreement.
  - d. The defendant is satisfied with the legal services provided by defense counsel in connection with this plea agreement and matters related to it.
  - e. The defendant has entered into this plea agreement freely, voluntarily, and without reservation and the defendant's desire to enter a plea of guilty is not the result of threats or coercion directed at the defendant or anyone connected with the defendant.

### **REPRESENTATIONS BY DEFENSE COUNSEL**

28. By signing this plea agreement, counsel for the defendant acknowledges that:
- a. Counsel has carefully reviewed every part of this agreement with the defendant and this agreement accurately and completely sets forth the entire agreement between the United States and the defendant.
  - b. Counsel has explained the ramifications of the plea agreement to the defendant, and believes that the defendant understands this plea agreement, what rights are being lost by pleading guilty, and what the government has agreed to do in exchange for the plea of guilty.
  - c. Counsel believes that the defendant's decision to enter into this agreement is an informed and voluntary one.

**PLEA AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT**

29. The defendant and his attorney both acknowledge that this plea agreement constitutes the entire agreement of the parties. Further, all parties agree that there are no oral agreements or promises which have been made to induce the defendant to change his/her plea to guilty.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

CONNER ELDRIDGE  
UNITED STATES ATTORNEY

By: \_\_\_\_\_  
KYLE E. WATERS  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
(Wichita Docket)

<b>UNITED STATES OF AMERICA,</b>	}	
	}	
Plaintiff,	}	
	}	
v.	}	No. 1 [REDACTED]
	}	
[REDACTED],	}	
	}	
Defendant.	}	

**PLEA AGREEMENT**

The United States of America, by and through Brent I. Anderson, assistant United States attorney, and [REDACTED], the defendant, personally and by and through defendant’s counsel, Steven K. Gradert, hereby enter into the following plea agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure:

**1. Defendant's Guilty Plea.** The defendant agrees to waive indictment in writing and to plead guilty to Count 1 of the Superseding Information, which charges a violation of Title 8, United States Code, § 1326(a) and (b)(2), that is, re-entry after deportation subsequent to conviction for an “aggravated felony” as defined by the Immigration and Nationality Act. By entering into this plea agreement, the defendant admits to knowingly committing this offense, and to being guilty of this

offense. The defendant understands that the maximum sentence which may be imposed as to Count 1 of the Superseding Information to which the defendant has agreed to plead guilty is not more than 20 years of imprisonment, a \$250,000 fine, three years of supervised release, and a \$100 mandatory special assessment.

**2. Factual Basis for the Guilty Plea.** The parties agree the facts constituting the offense to which the defendant is pleading guilty are as follows:

On January 14, 2005, the defendant, a citizen of Mexico who is not a citizen or national of the United States, was convicted of using a communication device to facilitate a drug trafficking crime in U.S. District Court, District of Kansas, Case No. 0 [REDACTED], an “aggravated felony” as defined by the Immigration and Nationality Act. Then, on February 11, 2005, the defendant was deported and removed from the United States at El Paso, Texas. Subsequent to that removal, on March February 3, 2012, the defendant was found in the United States at Wichita, Sedgwick County, Kansas, not having obtained the permission or consent of the Attorney General of the United States or the Secretary of Homeland Security to reapply for admission into the United States or to otherwise be present within the United States.

**3. Application of the Sentencing Guidelines.** The parties request that the United States Sentencing Guidelines (Guidelines) be applied by the Court to calculate the applicable sentence in this case and that a sentence consistent with the Guidelines be imposed by the Court. The defendant further waives any right to have facts that determine the offense level under the Guidelines alleged in an indictment or superseding information and found by a jury beyond a reasonable doubt; agrees

that facts that determine the offense level will be found by the Court at sentencing by a preponderance of the evidence and agrees that the Court may consider any reliable evidence, including hearsay; and the defendant agrees to waive all constitutional challenges to the validity of the Guidelines.

**4. Government's Agreements.** In return for the defendant's plea of guilty as set forth herein, the United States Attorney for the District of Kansas agrees:

- a. To not file any additional charges against the defendant arising out of the facts forming the basis for the present Superseding Information;
- b. If he is deemed eligible, to recommend that the defendant received the maximum level reduction available pursuant to the DOJ's early disposition "fast track" program;
- c. To recommend a sentence at the low-end of the guideline range determined by the Court to apply;
- d. To recommend the defendant receive maximum credit for acceptance of responsibility; and
- e. To not seek an upward departure or variance from the applicable guideline range so long as the defendant does not seek a downward departure or variance.

The government's obligations concerning its agreements listed in ¶ 4 are contingent upon the defendant's continuing manifestation of acceptance of responsibility as determined by the United States. If the defendant denies or gives conflicting statements as to involvement, falsely denies or frivolously contests

relevant conduct that the court determines to be true, willfully obstructs or impedes the administration of justice as defined in U.S.S.G. § 3C1.1 (or willfully attempts to do so), or engages in additional criminal conduct, the United States reserves the right to request a hearing to determine if the defendant has breached this agreement.

In the event the Court finds the defendant has breached this plea agreement or otherwise failed to adhere to its terms, the United States shall not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges which may have occurred. The defendant understands and agrees that in the event the defendant violates this plea agreement, all statements made by the defendant subsequent to the execution of this plea agreement, any testimony given by defendant before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against the defendant in any and all criminal proceedings. The defendant waives any rights which might be asserted under the United States Constitution, any statute, Federal Rule of Criminal Procedure 11(f), Federal Rule of Evidence 410, or any other federal rule that pertains to the admissibility of any statements made by the defendant subsequent to this plea agreement.

**5. Sentence to be Determined by the Court.** The defendant understands that the sentence to be imposed will be determined solely by the United States District

Judge. The United States cannot and has not made any promise or representation as to what sentence the defendant will receive.

6. **Withdrawal of Plea Not Permitted.** The defendant understands that if the court accepts this plea agreement but imposes a sentence with which the defendant does not agree, the defendant will not be permitted to withdraw this plea of guilty.

7. **Payment of Special Assessment.** The defendant understands that a special assessment of \$100 per count of conviction will be entered against the defendant at the time of sentencing.

8. **Waiver of Appeal and Collateral Attack.** The defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, the defendant's conviction, or the components of the sentence to be imposed herein including the length and conditions of supervised release. The defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal the conviction and sentence imposed. By entering into this agreement, the defendant knowingly waives any right to appeal a sentence imposed which is within the guideline range determined appropriate by the court. The defendant also waives any right to challenge a sentence or otherwise attempt to modify or change his sentence or manner in which it was determined in any collateral attack, including, but

not limited to, a motion brought under Title 28, U.S.C. § 2255 [except as limited by *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001)], a motion brought under Title 18, U.S.C. § 3582(c)(2) and a motion brought under Fed. Rule of Civ. Pro 60(b). In other words, the defendant waives the right to appeal the sentence imposed in this case except to the extent, if any, the court departs upwards from the applicable sentencing guideline range determined by the court. However, if the United States exercises its right to appeal the sentence imposed as authorized by Title 18, U.S.C. § 3742(b), the defendant is released from this waiver and may appeal the sentence received as authorized by Title 18, U.S.C. § 3742(a).

**9. FOIA and Privacy Act Waiver.** The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, U.S.C. § 552 and the defendant waives any rights conferred under the Privacy Act of 1974, Title 5, U.S.C. § 552a to prevent or object to the disclosure of records or materials pertaining to this case.

**10. Full Disclosure by United States.** The defendant understands the United States will provide to the court and the United States Probation Office all

information it deems relevant to determining the appropriate sentence in this case. This may include information concerning the background, character, and conduct of the defendant including the entirety of the defendant's criminal activities. The defendant understands these disclosures are not limited to the count to which the defendant has pled guilty. The United States may respond to comments made or positions taken by the defendant or defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The defendant also has the right to provide information concerning the offense and to make recommendations to the court and the United States Probation Office.

**11. Parties to the Agreement.** The defendant understands this plea agreement binds only the defendant and the United States Attorney for the District of Kansas, and that it does not bind any other federal, state, or local prosecution authority.

**12. No Other Agreements.** The defendant has had sufficient time to discuss this case, the evidence, and this agreement with the defendant's attorney and defendant is fully satisfied with the advice and representation provided by defendant's counsel. Further, the defendant acknowledges that he has read the plea

agreement, or has had it read to him, understands it and agrees it is true and accurate and not the result of any threats, duress or coercion. The defendant further understands that this plea agreement supersedes any and all other agreements or negotiations between the parties, and that this agreement embodies each and every term of the agreement between the parties. The defendant acknowledges that the defendant is entering into this agreement and is pleading guilty because the defendant is guilty and is doing so freely and voluntarily.

\_\_\_\_\_  
Brent I. Anderson  
Assistant U.S. Attorney  
301 N. Main, Suite 1200  
Wichita, Kansas 67202  
(316) 269-6481  
Kan. Sup. Ct. No. 11611

Date: \_\_\_\_\_

\_\_\_\_\_  
  
Defendant

Date: \_\_\_\_\_

\_\_\_\_\_  
Steven K. Gradert  
Assistant Federal Defender  
Attorney for Defendant

Date: \_\_\_\_\_

*Office of the*  
**FEDERAL PUBLIC DEFENDER**  
DISTRICT OF KANSAS  
U.S. Courthouse  
500 State Avenue, Room 201  
Kansas City, Kansas 66101  
(913) 551-6712  
FAX: (913) 551-6562

CYD GILMAN  
Federal Public Defender

KIRK REDMOND  
Assistant Federal Public Defender  
TIM BURDICK  
Assistant Federal Public Defender

Jared Maag  
Criminal Chief, United States Attorney's Office  
290 Federal Building  
444 S.E. Quincy  
Topeka, Kansas 66683

Jared,

After reviewing the new DOJ memo on Fast-Track Programs, it seems as if sentencing litigation in immigration cases is about to get either much simpler or much more difficult. If we can approach these cases in a similar way throughout the district, with a general agreement on how to handle particular priors, these cases should move much more smoothly than they do now. Here is our initial assessment of one way we could work together to implement this memo.

Part III of the memo outlines discretionary eligibility requirements. Several of the requirements will be simple to implement. Defendants who have already received a fast-track plea in the past, or who are part of an independent federal criminal investigation of some other crime, would not be eligible. And we understand, consistent with the fourth eligibility criteria, that there will be a limited number of cases in which there is something sufficiently aggravated in a particular

case that, with supervisory approval, a fast track agreement may be denied even if the defendant were otherwise eligible, as long as care is taken to ensure that this exception not swallow the rule.

Reading Part III(A) together with (D), it seems clear that certain prior offenses will limit the benefit of a fast track agreement. Part A begins by stating that the "United States Attorney retains the discretion to limit or deny a defendant's participation in a fast track program based on (1) the defendant's prior violent felony convictions". Part D permits a departure of "four levels for all defendants, except those with a criminal history category VI or with at least one felony conviction for a serious violent offense. For the latter category, if a defendant is not excluded under Section A(1), the government may offer only a two-level departure, with supervisory approval and on a case-by-case basis after considering the interest of public safety." We read these two sections to limit departures in cases involving violent felonies to two levels, unless the particular prior offenses in a specific case "reflect history of serious violent crime" and therefore make the case sufficiently aggravated to deny the departure altogether.

The most important question will be how to define "prior violent felony convictions". We could refer to the ACCA, which has the same language. But the point of having a fast track program is to streamline things, not to have to determine whether we can apply the modified categorical approach or to contrast the Colorado burglary statute with the model Penal Code version, as the Supreme Court's ACCA precedent may require. We could also rely on the definitions at 4B1.2, which is a bit simpler but still no walk in the park.

The memo itself says to consider "the defendant's prior violent felony convictions (including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, firearms offenses, or convictions which otherwise reflect a history of serious violent

crime.)" This confuses things a bit, by inserting drug trafficking crimes and firearms offenses, which are generally not violent felonies under either the ACCA or 4B1.2. Also difficult is that the memo itself does not specify which crimes should deny fast track eligibility, and which crimes should merely limit eligibility to the two-level departure.

Perhaps the easiest thing to do is agree generally (though we recognize you have the discretion to unilaterally determine) which crimes will disqualify and which would limit fast track departures. The crimes listed in Part II(A)(1) of the memo do not categorically deny eligibility. ("The United States Attorney retains the discretion to **limit or deny** a defendant's participation[.]")

We therefore make the following proposal:

- Prior convictions for murder, kidnapping, voluntary manslaughter, forcible sex offenses, and child sex offenses make a defendant ineligible for a fast track departure.
- Prior participation in a fast track program would make a defendant ineligible for a fast-track departure.
- Defendants simultaneously charged with other felony offenses, such as drug crimes in addition to the immigration offense, are ineligible for a fast track departure. There may be rare instances in which the defendant, though charged with another offense, will be sentenced based primarily on the guideline range for the immigration offense. In these instances, we could still discuss a fast-track solution.
- Placement in criminal history category VI would make a defendant eligible for a two-level departure, so long as the other criteria are met.
- Prior convictions for serious drug offenses, as defined by 18 U.S.C. 924(e)(2)(A), would be eligible for a two-level departure, so long as the other criteria are met.

- Prior convictions for firearms offenses, as defined by U.S.S.G. 2L1.2, would be eligible for a two-level departure, so long as the other criteria are met.
- Defendants with other kinds of prior offenses would be eligible for a four-level departure, so long as the other criteria are met.
- If, in rare circumstances, the defendant's background and characteristics justify denial of participation in the fast track program when he or she would have otherwise qualified, the United States Attorney's Office retains the discretion to deny a fast track departure to a defendant who otherwise qualifies.

Here is our thinking. Certain violent offenses, such as the specifically enumerated murder, kidnapping, voluntary manslaughter, forcible sex offenses, and child sex offenses will never be eligible for a fast track because there is, in our view, little chance the judges in this district would ratify such a departure. There may be cases where the prior conviction overstates the defendant's involvement or recidivism risk, but those cases can be handled through ordinary requests for departures or variances, rather than the fast track process.

Similarly, defendants who have previously received a fast track departure have little claim to eligibility for a second time. Defendants who are simultaneously charged with other federal offenses have no need to pursue the fast track process because the other offense will almost invariably drive the offense level. If there is an exception we can take it up on a case-by-case basis, but a defendant charged with transporting two pounds of methamphetamine has no reason to care if the tagalong immigration charge were dealt with through the fast track program.

That leaves two categories of offenses which are listed in Part III(A)(1)- drug trafficking offenses and firearms offenses. The fast track memorandum takes a qualitative approach toward

exclusion. Subsection (D) requires the existence of a “serious violent offense” before eligibility is limited or denied. This conclusion is eminently reasonable, given that otherwise a hand-to-hand marijuana sale or an alien in possession of a hunting rifle would trigger a denial or limitation of the fast track program. So the question for us is how to define what a serious offense is in the context of drug crimes and firearms offenses.

For drug crimes, the only place in either the criminal code or the sentencing guidelines that purports to define a “serious drug offense” is 18 U.S.C. § 924(e)(2)(A). That statute provides;

(A) the term “serious drug offense” means--

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law

Essentially, any drug crime that exposes a defendant to a sentence of ten years or more would fit this definition. We believe that this approach has two advantages: it draws from a pre-existing definition of the same term in the United States Code, and it is simple to apply.

For firearms offenses, perhaps the best way to divide “serious” offenses is by reference to U.S.S.G. 2L1.2. The commentary to that guideline defines the term “firearms offense” to include;

(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).

(II) An offense under Federal, state, or local law that prohibits the possession of a

firearm described in 26 U.S.C. 5845(a), or of an explosive material as defined in 18 U.S.C. 841(c).

(III) A violation of 18 U.S.C. 844(h).

(IV) A violation of 18 U.S.C. 924(c).

(V) A violation of 18 U.S.C. 929(a).

(VI) An offense under state or local law consisting of conduct that would have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

This definition excludes simple possession, but includes use of the weapon in a crime. It also includes Title 26 weapons and destructive devices, which are more serious offenses than simple possession. Again, it seems we would have little interpretive difficulty applying this definition.

In sum, our proposal would exclude defendants with the enumerated serious violent felonies, defendants with other simultaneous federal charges, and defendants who have previously received a fast track departure. It would permit a two-level departure for defendants in category VI, defendants with prior serious drug, and firearm offenses. It would permit a four-level departure for other defendants. The following chart illustrates our approach.

<b>Prior Offense</b>	<b>Eligible</b>	<b>Levels</b>
Murder, kidnapping, voluntary manslaughter, forcible sex offenses, and child sex offenses	No	None
Other Simultaneous Federal Criminal Charges	No	None
Prior Fast Track Disposition	No	None
CHC VI	Yes	2

Serious Drug Offense (18 U.S.C. § 924(e)(2)(A))	Yes	2
Firearms Offense (2L1.2)	Yes	2
Other Priors	Yes	4

I have spoken informally with the Probation Office, and for eligible defendants we could significantly streamline the pre-sentence investigation report process. Especially because after the recent amendment to §5D1.1 that directs supervised release should not ordinarily be imposed for deportable aliens, a brief report that sets out the defendant’s criminal history, offense level, and a small amount of biographical data would be sufficient for the sentencing process. These reports could be prepared in a fraction of the time it takes to generate a full report, and sentencings could occur much closer to the plea than they do now.

Finally, as part of the agreement, we would waive appeals, waive habeas rights, waive the right to ask for a sentence below the applicable guideline range, waive the ability to file pretrial motions. Although the memo refers to binding plea agreements, we would not necessarily need to plead under Rule 11(c)(1)(C) unless you believe it to be necessary.<sup>1</sup>

The DOJ memorandum observes that fast track programs “address a compelling, and otherwise potentially intractable, resource issue” and save “significant and scarce resources.” These objectives, however, cannot be met unless we have a clear set of standards guiding application of the departure. Past battles concerning the disparity created by fast track programs in other districts

---

<sup>1</sup> Also, implementing fast track via Rule 11(c)(1)(C) plea agreements would be problematic for those cases assigned to Judge Belot, who as of November 1, 2011, no longer even considers proposed 11(c)(1)(C) plea agreements.

would pale by comparison to the potential litigation of variance motions based on intra-district disparity. We do not pretend to have formulated the perfect solution, but hope to start a dialogue about how to create a clear platform for a fast track program in Kansas that is consistently applied. When you have had time to digest our proposal, please let us know your thoughts.

Yours,

Kirk Redmond

**FILED**  
VANESSA L. ARMSTRONG, CLERK

MAR 12 2012

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

U.S. DISTRICT COURT  
WEST'N. DIST. KENTUCKY

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO. 3 [REDACTED]

[REDACTED]

DEFENDANT

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States of America, by David J. Hale, United States Attorney for the Western District of Kentucky, and defendant, [REDACTED], and her attorney, Scott Wendelsdorf, have agreed upon the following:

1. Defendant acknowledges that she has been charged in the Indictment in this case with a violation of Title 8, United States Code, Section 1326(a) and (2).

2. Defendant has read the charges against her contained in the Indictment, and those charges have been fully explained to her by her attorney. Defendant fully understands the nature and elements of the crimes with which she has been charged.

3. Defendant will enter a voluntary plea of guilty to Count 1 in this case. Defendant will plead guilty because she is in fact guilty of the charge. The parties agree to the following factual basis for this plea:

On or about October 20, 2011, the Louisville Metro Jail contacted the Louisville ICE office regarding a subject, [REDACTED], who was in their custody on unrelated charges. An Immigration Enforcement Agent (IEA) interviewed M [REDACTED] and thereafter determined that she was a citizen of Honduras present in the United States illegally. Further investigation revealed that [REDACTED] was a citizen of Honduras who had been

previously deported from the United States on or about [REDACTED], through the Phoenix, Arizona Port of Entry. At the time that M [REDACTED] was found in the United States on [REDACTED], she did not have the permission of the Attorney General of the United States, or the Secretary of the Department of Homeland Security, to re-apply for entry into the United States.

4. Defendant understands that the charge to which she will plead guilty carries a maximum term of imprisonment of 2 years, a maximum fine of \$250,000, and a maximum 1 year term of supervised release. Defendant understands that an additional term of imprisonment may be ordered if the terms of the supervised release are violated, as explained in 18 U.S.C. § 3583.

5. Defendant understands that if a term of imprisonment of more than one year is imposed, the Sentencing Guidelines require a term of supervised release and that she will then be subject to certain conditions of release. §§5D1.1, 5D1.2, 5D1.3.

6. Defendant understands that by pleading guilty, she surrenders certain rights set forth below. Defendant's attorney has explained those rights to her and the consequences of her waiver of those rights, including the following:

A. If defendant persists in a plea of not guilty to the charges against her, she has the right to a public and speedy trial. The trial could either be a jury trial or a trial by the judge sitting without a jury. If there is a jury trial, the jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent and that it could not convict her unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

B. At a trial, whether by a jury or a judge, the United States would be

required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and her attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in her own behalf. If the witnesses for defendant would not appear voluntarily, she could require their attendance through the subpoena power of the Court.

C. At a trial, defendant would have a privilege against self-incrimination and she could decline to testify, without any inference of guilt being drawn from her refusal to testify. If defendant desired to do so, she could testify in her own behalf.

7. Defendant understands that the United States Attorney's Office has an obligation to fully apprise the District Court and the United States Probation Office of all facts pertinent to the sentencing process, and to respond to all legal or factual inquiries that might arise either before, during, or after sentencing. Defendant admits all acts and essential elements of the indictment counts to which she pleads guilty.

8. The defendant further understands that she may be responsible for a fine, costs of prosecution, costs of incarceration and supervision which may be required. All financial matters are left to be addressed at sentencing.

9. Defendant acknowledges liability for the special assessment mandated by 18 U.S.C. § 3013 and will pay the assessment in the amount of \$100 to the United States District Court Clerk's Office by the date of sentencing. If the defendant is indigent, the special assessment will be collected according to Title 18, United States Code, Chapters 227 and 229.

10. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Western District of Kentucky.

Although the parties understand that the Guidelines are only advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a), pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P. and U.S.S.G. § 5K3.1, the United States and the defendant stipulate and agree that the following is an appropriate disposition of this case:

The defendant's Base Offense Level will be calculated as the sum of Offense Level 8 plus the sentencing guideline adjustment for defendant's most serious prior conviction as recommended by the U.S. Probation Office after defendant's change of plea. Defendant's Final Adjusted Offense Level will be the Base Offense Level minus the appropriate downward adjustment for acceptance of responsibility, and:

- (1) Two level departure for any defendant with a criminal history category VI, or with at least one felony conviction for a serious violent offense; and
- (2) Four level departure for all other defendants.

11. The criminal history of defendant shall be determined upon completion of the presentence investigation, pursuant to Fed. R. Crim. P. 32(c). Both parties reserve the right to object to the U.S.S.G. §4A1.1 calculation of defendant's criminal history. The parties agree that the defendant may only seek a downward criminal history departure under U.S.S.G. §4A1.3. The United States is free to oppose any such downward departure. The parties will not seek any further adjustments, variances, reductions, or departures, including reductions under 18 U.S.C. §3553. This agreement is conditioned on the defendant having less than 18 criminal history points. If the defendant has 18 or more criminal history points, or if the United States discovers a conviction other than those disclosed to the defense prior to sentencing, the United States shall

have the right to withdraw from this agreement.

12. Defendant is aware of her right to appeal her conviction and that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The Defendant knowingly and voluntarily waives the right (a) to directly appeal her conviction and the resulting sentence pursuant to Fed. R. App. P. 4(b) and 18 U.S.C. § 3742, and (b) to contest or collaterally attack her conviction and the resulting sentence pursuant to 28 U.S.C. § 2255 or any other collateral attack, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel, or unless the sentence is inconsistent with the provisions set forth in paragraph 10.

13. Defendant recognizes that pleading guilty may have consequences with respect to her immigration status if she is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including her attorney or the district court, can predict to a certainty the effect of her conviction on her immigration status. Defendant nevertheless affirms that she wants to plead guilty regardless of any immigration consequences that her plea may entail, even if the consequence is her automatic removal from the United States.

14. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

15. Defendant agrees to interpose no objection to the United States transferring evidence or providing information concerning defendant and this offense, to other state and federal agencies or other organizations, including, but not limited to the Internal Revenue Service, other law enforcement agencies, and any licensing and regulatory bodies, or to the entry of an order under Fed. R. Crim. P. 6(e) authorizing transfer to the Examination Division of the Internal Revenue Service of defendant's documents, or documents of third persons, in possession of the Grand Jury, the United States Attorney, or the Criminal Investigation Division of the Internal Revenue Service.

16. If the Court refuses to accept this agreement and impose sentence in accordance with its terms, pursuant to Fed. R. Crim. P. 11(c)(1)(C), this Agreement will become null and void and neither party shall be bound thereto, and Defendant will be allowed to withdraw the plea of guilty.

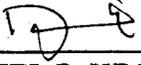
17. Defendant agrees that the disposition provided for within this Agreement is fair, taking into account all aggravating and mitigating factors. Defendant states that she has informed the United States Attorney's Office and the Probation Officer, either directly or through her attorney, of all mitigating factors.

18. This document and the Supplemental Plea Agreement state the complete and only Plea Agreements between the United States Attorney for the Western District of Kentucky and defendant in this case, and are binding only on the parties to this Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that are signed by all parties or on the record in Court. No other promises or inducements have been,

or will be made to defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

AGREED:

DAVID J. HALE  
United States Attorney

By:   
\_\_\_\_\_  
DANIEL P. KINNICUTT  
Assistant U.S. Attorney

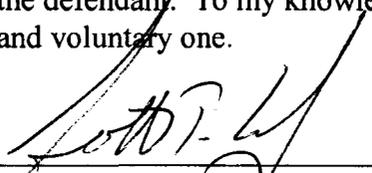
3/12/12  
\_\_\_\_\_  
Date

I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

  
\_\_\_\_\_  
Defendant

3/12/12  
\_\_\_\_\_  
Date

I am the defendant's counsel. I have carefully reviewed every part of this Agreement with the defendant. To my knowledge my client's decision to enter into this Agreement is an informed and voluntary one.

  
\_\_\_\_\_  
SCOTT WENDELSDORF  
Counsel for Defendant

3/12/12  
\_\_\_\_\_  
Date



b) the defendant agrees not to file any pre-trial motions, including, but not limited to, the motions described in Rule 12(b)(3), Fed.R.Crim.P.;

c) the defendant hereby expressly waives the right to appeal defendant's conviction and sentence, including any appeal right conferred by Title 18, United States Code, Section 3742, and to challenge the conviction and sentence in any post-conviction proceeding, including a proceeding under Title 28, United States Code, Section 2255, and any modification of sentence pursuant to Title 18, United States Code, Section 3582(c)(2). The defendant, however, reserves the right to appeal the following: (a) any punishment imposed in excess of the statutory maximum; (b) any punishment which is an upward departure pursuant to the guidelines; and (c) any punishment which is above the guidelines range calculated by the Court. Nothing in this paragraph shall act as a bar to the defendant perfecting any legal remedies the defendant may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel;

[d) the United States agrees to move at sentencing pursuant to Sentencing Guidelines Section 5k3.1 for a downward departure from the adjusted base offense level found by the Court (after application of the adjustment for acceptance of responsibility) as follows:

four levels, unless the defendant is determined by the Court to have a Criminal History Category VI. In the event that the defendant has a Criminal History Category VI, the United States shall move for a two level downward departure.]

[d) the United States agrees to move at sentencing pursuant to Sentencing Guidelines Section 5k3.1 for a two level downward departure from the adjusted base offense level found by the Court (after application of the adjustment for acceptance of responsibility.)]

4.

This plea agreement is conditioned on the defendant having less than 18 criminal history points. If the defendant has 18 or more criminal history points or if the United States discovers a conviction other than those disclosed to the defense prior to the defendant signing the Agreement, the United States shall have the right, in its sole discretion, to withdraw from this agreement.

5.

The defendant understands that, as a result of this Plea Agreement, the defendant could receive a maximum sentence of two (2) years imprisonment, a \$250,000 fine, or both. In addition, the Court must impose a special assessment of \$100, which defendant agrees to pay at the time of sentencing. The Court may also order restitution in accordance with law. The defendant understands that, if the Court imposes a term of imprisonment, the defendant may also receive a term of supervised release after imprisonment of not more than one (1) year. The defendant further understands that supervised release is a period of supervision during which the defendant must comply with certain rules. Supervised release is imposed in addition to a sentence of imprisonment, and a violation of the conditions of supervised release can subject the defendant to imprisonment for a term of one (1) year, without credit for any time already served on the term of supervised release. The defendant further understands that should the Court find that the defendant's removal was subsequent to convictions for three or more misdemeanors involving drugs, crimes against the person, or both or a felony (other than an aggravated felony), then the maximum penalty would be a term of imprisonment of ten (10) years, a \$250,000 fine, or both, and a special assessment of \$100. The Court may also impose a term of supervised release of not more than three (3) years, and a violation of the conditions of supervised release can subject the defendant to imprisonment for a term of two (2) years, without credit for time already served on the term of supervised release. The defendant further understands that should the Court find that his

removal was subsequent to a conviction for an aggravated felony as that term is defined in Title 8, United States Code, Section 1101(a)(43), then the maximum penalty would be a term of imprisonment of twenty (20) years, a \$250,000 fine, or both, and a special assessment of \$100. The Court may also impose a term of supervised release of not more than three (3) years, and a violation of the conditions of supervised release can subject the defendant to imprisonment for a term of two (2) years, without credit for time already served on the term of supervised release. The defendant understands that the Court, while not bound to apply the Sentencing Guidelines, must consult the guidelines and take them into account when sentencing.

6.

The defendant recognizes that pleading guilty may have consequences with respect to defendant's immigration status since defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including defense counsel or the district court, can predict to a certainty the effect of his conviction on his immigration status. The defendant nevertheless desires to plead guilty regardless of any immigration consequences that defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States.

7.

Pursuant to Rule 11(c)(3)(A) and 11(c)(5), Federal Rules of Criminal Procedure, the Court may accept or reject this Plea Agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the Presentence Report. If the Court rejects the Plea Agreement, the Court, on the record, will so inform the defendant and advise the defendant that the Court is not bound by the Plea Agreement. The Court will give the defendant an opportunity to withdraw the plea and will advise the defendant that, if the

plea is not withdrawn, the disposition of the case may be less favorable to the defendant than contemplated by the Plea Agreement.

8.

The defendant acknowledges that there is no agreement with the United States as to the actual sentence that will be imposed by the Court as a result of this Plea Agreement and acknowledges that no promises or assurances have been made to the defendant as to what the sentence will be. The defendant acknowledges that the terms herein constitute the entire agreement and that no other promises or inducements have been made. The defendant acknowledges that he has not been threatened, intimidated, or coerced in any manner.

9.

The defendant acknowledges that this Plea Agreement has been entered into knowingly, voluntarily, and with the advice of counsel, and that he fully understands the agreement. The defendant has no objection to the legal representation he has received.

This Plea Agreement is entered into this \_\_\_\_\_ day of September, 2011, at Baton Rouge, Louisiana.

UNITED STATES OF AMERICA, by

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
DONALD J. CAZAYOUX, JR., LBN 20742  
UNITED STATES ATTORNEY

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

\_\_\_\_\_  
ASSISTANT U.S. ATTORNEY  
777 Florida Street, Suite 208  
Telephone: (225) 389-0443  
Fax: (225) 389-0561

Image Not Available

**U.S. Department of Justice**

*United States Attorney  
Middle District of Louisiana*

---

*Russell B. Long Federal Building  
777 Florida Street, Suite 208  
Baton Rouge, Louisiana 70801-1717*

*Telephone: (225) 389-0443  
Fax: (225) 389-0561*

Date

Defense Attorney's Name  
Address

RE: U.S. v.  
Magistrate No.

Dear

Enclosed you will find discovery, the Fast Track Approval, a written plea agreement, defendant's Approval to Institute a Presentence Investigation Prior to Conviction or Plea of Guilty, and a Waiver of Rule 32 Delays. In order to accept this offer, you must (1) return the plea agreement signed by the defendant to the U.S. Attorney's Office, within twenty (20) days of the date of this letter; and (2) file with the Clerk's Office for the Middle District of Louisiana defendant's signed Approval to Institute a Presentence Investigation Prior to Conviction or Plea of Guilty and Waiver of Rule 32 Delays, also within twenty (20) days of the date of this letter.

The defendant is encouraged to advise me, in writing, of any criminal history which is not included on the Fast Track Approval Form. This will expedite the resolution of the issues which additional criminal history may present under paragraph 4 of the plea agreement.

If the defendant files any motions or causes the government to prepare for trial, the offer may be withdrawn and/or may result in fewer fast track points being offered.

If you have any questions, please feel free to call me at (number).

Sincerely,

DONALD J. CAZAYOUX, JR.  
UNITED STATES ATTORNEY

AUSA Name  
Assistant United States Attorney

**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	:	
	:	CRIMINAL NO. 12-
versus	:	
	:	
	:	
	:	

**WAIVER OF RULE 32 DELAYS**

In the above-numbered and entitled proceeding, the defendant, \_\_\_\_\_, and the United States of America, through undersigned counsel, voluntarily waive the time delays set forth in Rule 32, Federal Rules of Criminal Procedure, including, but not limited to, the following: (a) the right to receive the presentence report at least 35 days before the sentencing hearing; (b) the right to have at least 14 days to communicate, in writing, to the probation officer any objections to any material information, sentencing classifications to any material information, sentencing guideline ranges, and policy statements contained in or omitted from the presentence report; and (c) the right to receive any revision to the presentence report and any addendum to the presentence report at least 7 days before the sentencing hearing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
ASSISTANT U.S. ATTORNEY

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT



**FAST TRACK APPROVAL  
(Illegal Re-Entry Case)**

Defendant's Name:

Criminal History:

\_\_\_\_\_ A standard fast track plea offer **is approved** for a \_\_\_\_\_ level reduction pursuant to the policies of the Department of Justice and the United States Attorney's Office.

\_\_\_\_\_ A standard fast track plea offer **is NOT approved** for this case.

Approved By: \_\_\_\_\_  
Chief, Criminal Division

\_\_\_\_\_  
Date

## **NOTICE OF PRELIMINARY SELECTION FOR FAST-TRACK DISPOSITION**

It has been determined that your client may be eligible for Fast-Track disposition of a charge of Unlawful Reentry following Removal (8 U.S.C. § 1326(a)). If so, this disposition of the charge would allow for a departure with regard to the sentencing guidelines.

In this regard, Fast-Track disposition may result in two or a four-level reduction of the offense level pursuant to U.S.S.G. § 5K3.1. As outlined in the enclosed Rule 11, the minimum sentence shall be 60 days.

To qualify for Fast-Track disposition, your client must:

1. Consent to pretrial detention unless the USAO agrees in its discretion to a detention hearing or to pretrial release
2. Waive the right to a preliminary exam to allow time for Fast-Track resolution, and agree to proceed by Information
3. Seek no discovery material beyond what discovery material is being provided to you with this notice
4. Agree not to file any motions described in Rule 12(b)(3), Fed. R. Crim. P.
5. Agree not to file any motions for a variance under 18 U.S.C. § 3553(a) or a departure under U.S.S.G § 5K
6. Agree to waive a full pre-sentence investigation but agree that the pre-sentence investigation report must contain at least a criminal history section and a Sentencing Guidelines calculation section
7. Agree not to contest or seek relief from deportation or removal at the conclusion of this criminal case, as set forth in the enclosed Rule 11
8. Waive the right to appeal and the opportunity to challenge the conviction under 28 U.S.C. § 2255 (except on the issue of ineffective assistance of counsel)
9. Return the enclosed Rule 11 plea agreement fully executed within 14 days of today's date

As set forth in the Rule 11 plea agreement, the USAO may withdraw the offer of Fast-Track disposition at any time before the plea, and it may refuse to file a motion for a reduction in offense level or withdraw from the agreement before sentencing if the defendant is found to have additional criminal history beyond that set forth in the enclosed criminal history documents.

If the defendant is disqualified entirely from Fast-Track disposition after entering a plea of guilty but before sentencing due to criminal history, the defendant shall have the opportunity to withdraw from the plea agreement.

In all cases, the decision to allow a defendant to participate in a Fast-Track disposition is subject to the non-reviewable discretion of the USAO.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

United States of America,

Plaintiff,

v.

PLEA AGREEMENT

(Fast Track 5K3.1)

VIOLATION: 8 U.S.C. § 1326(a)  
(Unlawful Reentry into the  
United States)

Defendant.

---

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America and the defendant, [REDACTED] agree to the following disposition of this matter.

1. GUILTY PLEA

The defendant agrees to plead guilty to a one-count Information charging a violation of 8 U.S.C. Section 1326(a), Illegal Re-entry into the United States After Deportation and Removal, a felony.

2. PENALTIES, ELEMENTS, AND FACTUAL BASIS

A. Maximum Penalties

A violation of 8 U.S.C. § 1326 (a), a Class E felony, is punishable by up to a maximum term of imprisonment of 2 years, a maximum fine of \$250,000, or both

imprisonment and a fine, and a term of supervised release of up to 1 year. NOTICE OF ENHANCEMENT: Under the following two circumstances the maximum term of supervised release will be 3 years and the term of imprisonment enhanced as follows: (1) up to 10 years imprisonment if defendant's removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony; and (2) up to 20 years imprisonment if defendant's removal was subsequent to a conviction for commission of an aggravated felony. In both of these circumstances the maximum fine remains \$250,000.

The special assessment is due and payable at the time the defendant enters the plea of guilty, and must be paid by the time of sentencing unless the defendant is indigent. If the defendant is indigent, the special assessment will be collected according to Title 18, United States Code, Chapters 227 and 229.

**B. Elements of the Offense**

1. The defendant is an alien.
2. The defendant has been previously denied admission, excluded, deported, and removed from the United States.
3. The defendant knowingly entered and was found in the United States.
4. The defendant did not obtain the express consent of the Attorney General or Secretary of the Department of Homeland Security to reapply for admission to the United States prior to returning to the United States.

**C. Factual Basis and Sentencing Factors**

I agree that the following facts accurately describe my conduct in connection with the

offense to which I am pleading guilty and that if this matter were to proceed to trial, the government could prove these facts beyond a reasonable doubt:

I am not a citizen or national of the United States. I was deported, excluded, or removed from the United States in Douglas, Arizona on or about August 16, 2006. I was voluntarily present and found in the United States in Jackson, Michigan, which is in the Eastern District of Michigan on or about October 23, 2011. I did not obtain the express consent of the Attorney General or Secretary of the Department of Homeland Security to reapply for admission to the United States prior to returning to the United States.

I agree that if I am found to have been under a term of supervised release when the present offense was committed, I will be subject to less of a fast-track benefit.

### 3. AGREEMENTS REGARDING SENTENCE

#### A. Early Disposition (Fast-Track) Program

The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Eastern District of Michigan.

Although the parties understand that the Guidelines are only advisory and just one of the factors the Court may consider under 18 U.S.C. § 3553(a), pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P. and U.S.S.G. § 5K3.1, the government and the defendant stipulate and agree that the following is an appropriate disposition of this case:

The U.S. Probation Office shall issue a modified pre-sentence investigation report which shall include, at a minimum, criminal history and a sentencing guidelines calculation to aid the parties and the Court. The defendant's Base Offense Level will be calculated as the sum of Offense Level 8 PLUS the highest applicable specific offense characteristic for defendant, pursuant to U.S.S.G § 2L.1.2

At sentencing, the government will make a motion for a downward departure pursuant to U.S.S.G. § 5K3.1 as follows:

(1) Two-level departure in the Base Offense Level for any defendant with a criminal history category VI, or with a criminal history reflecting drug trafficking violations, firearms violations, or a history of violence, or at the discretion of the USAO, with a criminal history reflecting an offense not disclosed to the defense at the time of offering this agreement, or if it is discovered that the instant offense was committed while under some form of supervision; and

(2) Four level departure in the Base Offense Level for all other defendants.

If the motion is not granted, the Court must reject this plea agreement. If the motion is granted, the reduced base offense level minus a two-level reduction for Acceptance of Responsibility, as the Court deems appropriate, shall result in a Final Adjusted Offense Level.

The sentencing guideline range shall be calculated by the Court based upon the Final Adjusted Offense Level and the Criminal History Category, as determined by the Court. The parties agree that the Court shall sentence within that range.

If the sentencing guideline range, absent the government's motion under § 5K3.1, would have been 0-6 months, the sentence shall be 60 days. In all other cases where the sentencing guideline range, as based upon the Final Adjusted Offense Level, is 0-6 months, the sentence shall be 120 days.

The parties further agree that the Court must sentence as specified in the above two paragraphs unless the Court makes a finding on the record that it would reject the plea agreement under Rule 11(c)(5) solely because the sentence is binding upon the

Court. After stating the reasons for its finding, the Court may treat this agreement as an agreement until Rule 11(c)(1)(B) and imposed a sentence other than as specified in this agreement. The parties agree not to advocate for such a finding by the Court and doing so shall constitute a breach of this agreement, entitling the other party to withdraw.

B. Departures, Variances, and Motions

The parties agree that the only departure the defendant may seek is a downward criminal history departure under USSG § 4A1.3. The Government is free to oppose any such downward departure. The parties will not seek any further adjustments, variances, reductions, or departures, including reductions under 18 U.S.C. § 3553, and defendant agrees not to file motions under Fed. R. Crim. P. 12(b)(3).

C. Exception to § 5K3.1 Motion Based Upon Criminal History

This agreement by the government to make a motion under U.S.S.G. § 5K3.1 is conditioned on the defendant having less than 18 criminal history points. If the defendant has 18 or more criminal history points, or if the government discovers a conviction other than those disclosed to the defense prior to or at the time of offering this agreement, the government shall have the right to refuse from making the above motion under U.S.S.G. § 5K3.1 for a downward departure and the right to withdraw from this agreement entirely, at its election. A disclosed arrest on a LIEN or RAP sheet with an unknown or unclear disposition shall not constitute disclosure of a conviction resulting from such arrest.

The refusal by the government under this provision to make a motion under U.S.S.G. § 5K3.1 will entitle the defendant to withdraw from the agreement. However, if the defendant does not choose to withdraw from the agreement, the calculated guideline range shall in such case become advisory, the above prohibition on motions will not apply, and the parties may request variances under 18 U.S.C. § 3553 and departures under the U.S.S.G. as in the ordinary course.

The defendant understands and agrees that this plea agreement contains all the terms, conditions and stipulations regarding sentencing. If the defendant requests or if the court authorizes (a) any downward departure or variance; (b) any other reduction or adjustment of sentence not specifically agreed to in writing by the parties, the government may withdraw from the plea agreement. If the court departs from the terms and conditions set forth in this plea agreement, either party may withdraw.

#### 4. STIPULATIONS AND AGREEMENTS

##### A. Discovery

The defendant agrees to seek no discovery beyond what has been voluntarily provided by the government.

##### B. Waiver of Defenses and Appeal Rights

The defendant waives any and all motions, defenses, probable cause determinations, and objections which the defendant could assert to the information or to the Court's entry of judgment against the defendant and imposition of sentence upon the

defendant providing the sentence is consistent with this agreement. The defendant further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the imposition of sentence upon defendant under Title 18, United States Code, Section 3742 (sentence appeals); (3) any right to collaterally attack defendant's conviction and sentence under Title 28, United States Code, Section 2255, or any other collateral attack, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel; and (4) any right to file a motion for modification of sentence, including under Title 18, United States Code, Section 3582(c). The defendant acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might file challenging his/her conviction or sentence in this case. If the defendant files a notice of appeal or a habeas petition, notwithstanding this agreement, defendant agrees that this case shall, upon motion of the government, be remanded to the district court to determine whether defendant is in breach of this agreement and, if so, to permit the government to withdraw from the plea agreement.

C. Reinstatement of Removal, Deportation, or Exclusion

The defendant admits that the defendant was the subject of a previous order of removal, deportation or exclusion. The defendant agrees to the reinstatement of that previous order of removal, deportation or exclusion. The defendant admits that he does not have a fear of returning to the country designated in the previous order and agrees to seek no relief from reinstatement, withholding of removal or protection under the Convention Against

Torture. If this plea agreement is accepted by the Court, the defendant agrees not to contest, either directly or by collateral attack, the reinstatement of the prior order of removal, deportation or exclusion.

D. Padilla Waiver

Defendant agrees that he or she is not a citizen or national of the United States and is an alien removable or deportable from the United States under the Immigration and Nationality Act. Defendant further acknowledges that her guilty plea in this case may affect or even foreclose her eligibility to enter or remain in this country. Defendant has discussed these matters with the defendant's attorney in this case, but expressly agrees that the decision to plead guilty in this case is in no way conditioned upon or affected by advice regarding any potential immigration consequences of her conviction(s). Defendant agrees that because her decision to plead guilty in this case is wholly independent of the immigration consequences of a conviction, defendant agrees that she will not seek to challenge her guilty plea in any later proceeding via collateral attack on any basis relating to her immigration status or lack thereof in this country.

E. Reinstitution of Prosecution

Nothing in this agreement shall be construed to protect the defendant in any way from prosecution for perjury, false declaration or false statement, or any other offense committed

by the defendant after the date of this agreement. In addition, if the defendant commits any criminal offense between the date of this agreement and the date of sentencing, the government will have the right to withdraw from this agreement. Any information, statements, documents and evidence which the defendant provides to the United States pursuant to this agreement may be used against the defendant in all such proceedings.

If defendant breaches this plea agreement, at any time, in any way, including but not limited to appealing or collaterally attacking the conviction or sentence, the Government may prosecute defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the Government may use any factual admission made by defendant pursuant to this plea agreement in any prosecution.

F. Release of Information to U.S. Probation Office

The defendant understands the government's obligation to provide all information in its file regarding the defendant to the United States Probation Office. The defendant fully understands and agrees to cooperate fully and truthfully with the United States Probation Office in providing all information requested by the probation officer.

G. Effect on Other Proceedings

This agreement does not preclude the United States from instituting any civil or administrative proceedings as may be appropriate now or in the future.

The defendant understands that if the defendant violates any of the conditions of the defendant's supervised release, the supervised release may be revoked. Upon such revocation, notwithstanding any other provision of this agreement, the defendant may be required to serve a term of imprisonment or the defendant's sentence may otherwise be altered.

#### H. Scope of Agreement

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

#### 4. WITHDRAWAL OF OFFER

The United States Attorney's Office for the Eastern District of Michigan may withdraw its offer to enter into this agreement anytime before the defendant pleads guilty.

5. WAIVER OF DEFENDANT'S RIGHTS

I have read or had read to me each of the provisions of the entire plea agreement with the assistance of counsel and understand its provisions.

I understand that this guilty plea waives the right to:

- A. Continue to plead not guilty and require the government to prove the elements of the crime beyond a reasonable doubt;
- B. A speedy and public trial by jury;
- C. The assistance of counsel at all stages of trial;
- D. Confront and cross-examine adverse witnesses;
- E. Present evidence and to have witnesses testify on behalf of defendant;
- F. Not testify or have any adverse inferences drawn from the failure to testify.

I agree to enter my guilty plea as indicated above on the terms and conditions set forth in this agreement.

I have been advised by my attorney of the nature of the charge to which I am entering my guilty plea. I have further been advised by my attorney of the nature and range of the possible sentence. However, I am aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Therefore,

I acknowledge that the exact length of sentence that the Court will impose is uncertain at this time.

My guilty plea is not the result of force, threats, assurance or promises to either me or any of my family members other than the promises contained in this agreement. I agree to the provisions of this agreement as a voluntary act on my part, rather than at the direction of or because of the recommendation of any other person, and I agree to be bound according to its provisions.

I agree that this written plea agreement contains all the terms and conditions of my plea and that promises made by anyone (including my attorney) that are not contained within this written plea agreement are without force and effect and are null and void.

I am satisfied that my defense attorney has represented me in a competent manner.

I am not now on or under the influence of any drug, medication, liquor, or other intoxicant or depressant, which would impair my ability to fully understand the terms and conditions of this plea agreement.

I am pleading guilty because in truth and in fact I am guilty and for no other reason.

\_\_\_\_\_  
Date

\_\_\_\_\_  
G  
Defendant

DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea, including the defendant's waiver of the right to appeal. No assurances, promises, or representations have been given to me or to the defendant by the Government or by any of its representatives which are not contained in this written agreement. I concur in the entry of the plea as indicated above and on the terms and conditions set forth in this agreement as in the best interests of my client. I agree to make a bona fide effort to ensure the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim. P.

I personally translated or caused to be translated the entirety of this agreement from English into the defendant's native tongue.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for Defendant

GOVERNMENT'S APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

BARBARA L. MCQUADE  
United States Attorney  
Eastern District of Michigan

\_\_\_\_\_  
Date

\_\_\_\_\_  
Special Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 1 [REDACTED]

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) PLEA AGREEMENT AND  
 ) SENTENCING STIPULATIONS  
v. )  
 )  
 [REDACTED], )  
 )  
 Defendant. )

The United States of America and [REDACTED] (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the U.S. Attorney's Office for the District of Minnesota. This agreement does not bind any other U.S. Attorney's Office or any other federal or state agency.

1. **Charges**. The defendant agrees to plead guilty to Count 1 of the Indictment, which charges the defendant with unlawful re-entry after deportation, in violation of 8 U.S.C. §§ 1326 (a) and (b)(2), and 6 U.S.C. §§ 202 and 507.

2. **Factual Basis**. The United States and the defendant agree on the following factual basis for the plea:

a. The defendant is an alien. The defendant was born in Mexico and is a native and citizen of Mexico. The defendant has no lawful status in the United States.

b. The defendant was removed from the United States on or about August 26, 2009. This removal was subsequent to a conviction for an aggravated felony, on or about August 10, 2009,

in the Kandiyohi County District Court, in the State of Minnesota, for Assault in the Fourth Degree - Peace Officer.

c. On or about November 11, 2011, the defendant was found in the United States, having knowingly, voluntarily and illegally reentered the United States prior to that date.

d. The defendant did not obtain the consent of the Attorney General or his successor, the Secretary of Homeland Security, or any other designated and authorized representative, to re-apply for admission to the United States.

3. **Statutory Penalties.** The parties agree that Count 1 of the Indictment carries statutory penalties of:

- a. a maximum of 20 years imprisonment;
- b. a maximum supervised release term of 3 years;
- c. a fine of up to \$250,000.00 and
- d. a mandatory special assessment of \$100.

4. **Revocation of Supervised Release.** The defendant understands that if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

5. **Guidelines Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will consider the

advisory United States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following guideline calculations:

- a. Base Offense Level. The parties agree that the Base Offense Level for unlawful re-entry after removal is 8. (U.S.S.G. § 2L1.2(a)).
- b. Specific Offense Characteristics. The parties agree that the Base Offense Level should be increased by 16 levels because the defendant was previously removed after a conviction for a felony that is a crime of violence which receives criminal history points under Chapter Four. (U.S.S.G. § 2L1.2(b)(1)(A)). The parties believe that no other specific offense characteristics apply.
- c. Chapter 3 Adjustments. The Government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea and sentencing hearings, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, and (iii) the defendant commits no further acts inconsistent with acceptance of responsibility. (U.S.S.G. §3E1.1). The parties agree that no other Chapter Three adjustments apply.
- d. Early Disposition Pursuant to §5K3.1. Provided the defendant abides by the waivers set forth in paragraph 8 and otherwise meets the requirements for participation in the District of Minnesota's Unlawful Reentry Fast-Track Program, the Government agrees to move at sentencing, pursuant to U.S.S.G. § 5K3.1, for a 4-level downward departure from the adjusted based offense level.
- e. Criminal History Category. Based on information available at this time, the parties believe that the defendant's Criminal History Category is III. This does not constitute a stipulation, but a belief based on an assessment of the information

currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing. The defendant understands that if the presentence investigation reveals any prior adult or juvenile sentences which should be included within his criminal history under the Sentencing Guidelines, the defendant will be sentenced based on his true criminal history category, and he will not be permitted to withdraw from this Plea Agreement. (U.S.S.G. § 4A1.1).

- f. Guidelines Range. If the adjusted offense level is 17, and the criminal history category is category III, the Sentencing Guidelines range is 30 to 37 months imprisonment.
- g. Fine Range. If the adjusted offense level is 17, the fine range is \$5,000 to \$50,000. (U.S.S.G. § 5E1.2(c)(3)).
- h. Supervised Release. The Sentencing Guidelines specify that if a term of supervised release is ordered, the length of the term shall be at least one year but not more than three years. (U.S.S.G. § 5D1.2(a)(2)). However, the Court ordinarily should not order a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment. (U.S.S.G. § 5D1.1(c)).

6. **Discretion of the Court**. The foregoing stipulations are binding on the parties but do not bind the Court. The parties understand that the application of the Sentencing Guidelines is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guidelines factors and the applicable criminal history category. If the Court determines that the applicable Guidelines calculations or the defendant's criminal history category are different from that stated above, neither party may withdraw from this agreement, and

the defendant will be sentenced pursuant to the Court's determinations.

7. **Special Assessment.** The Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The special assessment is due and payable at sentencing.

8. **Required Waivers for Early Disposition Pursuant to U.S.S.G. § 5K3.1** In exchange for the Government's motion pursuant to U.S.S.G. § 5K3.1, the defendant, after consultation with his attorney, agrees to the following waivers:

(a) Waiver of direct appeal and collateral attack. The defendant understands that 18 U.S.C. § 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, the defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal defendant's sentence unless the sentence exceeds 37 months. Further, the defendant expressly waives the right to petition under 28 U.S.C. § 2255, except for a post-conviction collateral attack based on a claim of ineffective assistance of counsel. The defendant has discussed these rights with the defendant's attorney. The defendant understands the rights being waived, and the defendant waives these rights knowingly, intelligently, and voluntarily.

(b) Waiver of pre-trial motions. The defendant understands and agrees that he has certain rights to file pre-trial

motions pursuant to Fed.R.Crim.P 12(b)(3). As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions, including but not limited to those pursuant to Fed.R.Crim.P. 12(b)(3), in this case.

(c) Waiver of Right to Argue for Further Variance or Departure. The defendant will not seek any further adjustments, variances, reductions or departures, including reductions under 18 U.S.C. § 3553.

(d) Stipulation to Removal. The defendant admits that he was the subject of a previous order of removal, deportation or exclusion. The defendant agrees to the reinstatement of that previous order of removal, deportation or exclusion. The defendant admits that he does not have a fear of returning to the country designated in the previous order. If this plea agreement is accepted by the Court, the defendant agrees not to contest, either directly or by collateral attack, the reinstatement of the prior order of removal, deportation or exclusion.

9. **Collateral Consequences**. The defendant understands that pleading guilty may have consequences with respect to his immigration status, including removal or deportation. The defendant understands that no one, including his attorney, the Assistant United States Attorney or the District Court, can predict to a certainty the effect of his conviction on his immigration

status. Regardless of any immigration consequences that may follow from his guilty plea, even automatic removal or deportation from the United States, the defendant still wishes to plead guilty as set forth in this agreement.

10. **Reinstatement of Prosecution.** If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court in a later proceeding, the Government will be free to prosecute the defendant for all charges and/or allegations of supervised release violations as to which it has knowledge, and any charges and/or allegations of supervised release violations that have been dismissed or not alleged because of this plea agreement will be automatically reinstated. In such event, the defendant waives any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment to the Constitution as to the delay occasioned by the later proceedings. Defendant agrees that the stipulated departures referenced under the header above, entitled "Early Disposition Pursuant to §5K3.1," will not be offered if prosecution is re-instituted.

11. **Complete Agreement.** This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date: April \_\_, 2012

B. TODD JONES  
United States Attorney

---

BY: ANDREW DUNNE  
Assistant U.S. Attorney

Date: April \_\_\_\_, 2012

---

  
Defendant

Date: April \_\_\_\_, 2012

---

ANDREW H. MOHRING, Esq.  
First Assistant Federal Defender  
Attorney for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal [REDACTED]

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) PLEA AGREEMENT AND  
 ) SENTENCING STIPULATIONS  
 v. )  
 )  
 [REDACTED], )  
 )  
 Defendant. )

The United States of America and [REDACTED] (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the U.S. Attorney's Office for the District of Minnesota. This agreement does not bind any other U.S. Attorney's Office or any other federal or state agency.

1. **Charges.** The defendant agrees to plead guilty to Count 1 of the Indictment, which charges the defendant with unlawful re-entry after deportation, in violation of 8 U.S.C. §§ 1326 (a) and (b)(2), and 6 U.S.C. §§ 202 and 507.

2. **Factual Basis.** The United States and the defendant agree on the following factual basis for the plea:

a. The defendant is an alien. The defendant was born in Mexico and is a native and citizen of Mexico. The defendant has no lawful status in the United States.

b. The defendant was removed from the United States on or about August 26, 2009. This removal was subsequent to a

conviction for an aggravated felony, on or about August 10, 2009, in the Kandiyohi County District Court, in the State of Minnesota, for Assault in the Fourth Degree - Peace Officer.

c. On or about November 11, 2011, the defendant was found in the United States, having knowingly, voluntarily and illegally reentered the United States prior to that date.

d. The defendant did not obtain the consent of the Attorney General or his successor, the Secretary of Homeland Security, or any other designated and authorized representative, to re-apply for admission to the United States.

3. **Statutory Penalties**. The parties agree that Count 1 of the Indictment carries maximum statutory penalties of:

- a. 20 years imprisonment;
- b. a supervised release term of three years;
- c. a fine of up to \$250,000.00; and
- d. a mandatory special assessment of \$100.

4. **Waiver of Pretrial Motions**. The defendant understands and agrees that defendant has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

5. **Revocation of Supervised Release**. The defendant understands that if he were to violate any condition of supervised

release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

6. **Guideline Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will utilize the United States Sentencing Guidelines to determine the appropriate sentence and stipulate to the following guideline calculations:

- a. Base Offense Level. The Base Offense Level for unlawful re-entry after deportation is 8. (U.S.S.G. § 2L1.2(a)).
- b. Specific Offense Characteristics. The Base Offense Level is increased by 16 levels because the defendant was previously deported after being convicted of a felony crime of violence which receives criminal history points under Chapter Four. (U.S.S.G. § 2L1.2(b)(1)(A)(ii)). The parties believe that no other specific offense characteristics apply.
- c. Acceptance of Responsibility. The Government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea and sentencing hearings, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, and (iii) the defendant commits no further acts inconsistent with acceptance of responsibility. (U.S.S.G. § 3E1.1). The parties agree that other than as provided for herein no other Chapter Three adjustments apply.

- d. Criminal History Category. Based on information available at this time, the parties believe that the defendant's Criminal History Category is III. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing. The defendant understands that if the presentence investigation reveals any prior adult or juvenile sentence which should be included within his criminal history under the U.S. Sentencing Guidelines, the defendant will be sentenced based on his true criminal history category, and he will not be permitted to withdraw from this Plea Agreement. (U.S.S.G. § 4A1.1).
- e. Guideline Range. If the adjusted offense level is 21, and the criminal history category is category III, the Sentencing Guidelines range is 46 to 57 months imprisonment.
- f. Supervised Release. The Sentencing Guidelines specify that if a term of supervised release is ordered, the length of the term shall be at least one year but not more than three years. (U.S.S.G. § 5D1.2(a)(2)). However, the Court ordinarily should not order a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment. (U.S.S.G. § 5D1.1(c)).
- g. Fine Range. If the adjusted offense level is 21, the fine range is \$7,500 to \$75,000. (U.S.S.G. § 5E1.2(c)(3)).
- h. Departures. The parties reserve their rights to seek a departure or variance from the applicable guideline range of imprisonment on any grounds, as well as a non-guideline sentence, and to oppose any such motion or request made. The defendant acknowledges that the Government offered a proposed plea agreement pursuant to the District of Minnesota's Unlawful Reentry Fast-Track Program, but the defendant has determined not to accept that agreement. Thus, the defendant acknowledges that

the Government will not be making any motions for a downward departure pursuant to U.S.S.G. § 5K3.1 and he will not receive any of the benefits derived from the District's fast-track program.

7. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. If the Court determines that the applicable guideline calculations or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

8. **Special Assessment.** The Guidelines require payment of a special assessment in the amount of \$100.00. U.S.S.G. § 5E1.3. The defendant agrees that the special assessment in the amount of \$100 will be due and payable at the time of sentencing.

9. **Collateral Consequences.** The defendant understands that pleading guilty may have consequences with respect to his immigration status, including removal or deportation. The defendant understands that no one, including his attorney, the Assistant United States Attorney or the District Court, can predict to a certainty the effect of his conviction on his immigration status. Regardless of any immigration consequences that may follow from his guilty plea, even automatic removal or

deportation from the United States, the defendant still wishes to plead guilty as set forth in this agreement.

10. **Complete Agreement**. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Dated: April \_\_\_\_, 2012

B. TODD JONES  
United States Attorney

---

BY: ANDREW DUNNE  
Assistant United States Attorney  
Attorney ID No. 175195

Dated: April \_\_\_\_, 2012

---

  
Defendant

Dated: April \_\_\_\_, 2012

---

ANDREW H. MOHRING  
First Assistant Federal Defender  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) 8:12 \_\_\_\_\_  
 )  
Plaintiff, )  
v. )  
 ) **PLEA AGREEMENT**  
 ) (Fast Track 5K3.1)  
 )  
Defendant. )

IT IS HEREBY AGREED between the plaintiff, United States of America, through its counsel, Deborah R. Gilg, United States Attorney and Christopher L. Ferretti, Special Assistant United States Attorney, and defendant, [REDACTED] and David R. Stickman, counsel for defendant, as follows:

I

**THE PLEA**

A. **CHARGE(S) & FORFEITURE ALLEGATION(S).**

Defendant agrees to waive Indictment and plead guilty to an Information. Count I of the Information charges a violation of Title 8, United States Code, Section 1326(a). The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the District of Nebraska.

II

**NATURE OF THE OFFENSE**

A. **ELEMENTS EXPLAINED.**

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Defendant is an alien who was removed and deported from the United States.

2. Defendant departed the United States while an order of exclusion, deportation or removal was outstanding.
3. Defendant knowingly and unlawfully reentered the United States and was found in the District of Nebraska.
4. Defendant did not obtain consent from the United States Attorney General or his successor, the Secretary for the Department of Homeland Security to reapply for admission into the United States.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS.

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed.

1. On February 17, 2012, defendant was encountered by ICE HSI responding to a call from the Nebraska State Patrol (NSP). NSP contacted ICE when a trooper came upon a disabled van containing 10 illegal aliens on Interstate 80. Defendant was driving the vehicle, and had on his person a valid Minnesota DL. A database query performed by ICE revealed a match for defendant, born on 5/12/77, in Mexico. Further, it was determined that defendant had previously been ordered removed from the U.S. on 5/5/09, and that the remaining 9 passengers were all undocumented citizens of Mexico illegally present within the U.S. The passengers told agents they were traveling to Minnesota after working in Denver. Defendant and the remaining 9 aliens were arrested and processed administratively by ICE.

2. During administrative processing at ICE, defendant's fingerprints were taken and submitted to FBI and DHS databases, confirming his identity, criminal history, and alienage. Defendant was previously ordered removed by an immigration judge in Bloomington, MN, on 5/5/09. The order was executed on 5/6/09, at Laredo, TX.
3. The defendant is a native and citizen of Mexico and not a citizen or national of the United States. He possesses no immigration documents granting him authorization to be employed, enter, remain, or pass through the United States. Neither the Attorney General nor the Secretary of the Department of Homeland Security consented to the defendant reentering the U.S. after having been removed.

### III

#### PENALTIES

- A. COUNT I. Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:
1. A maximum 2 years in prison;
  2. A maximum \$250,000 fine;
  3. A mandatory special assessment of \$100 per count; and
  4. A term of supervised release of not more than 1 year. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison all or part of the term of supervised release.
  5. Possible ineligibility for certain Federal benefits.

IV

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
DISTRICT OF NEBRASKA**

This plea agreement is limited to the United States Attorney's Office for the District of Nebraska, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities.

V

**PARTIES' SENTENCING RECOMMENDATIONS**

A. **SENTENCING GUIDELINE CALCULATIONS.**

Although the parties understand that the Guidelines are advisory and only one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable). Unless otherwise stated, all agreements as to sentencing issues are made pursuant to Federal Rule of Criminal Procedure 11(c) (1) (B).

1. The parties agree that Base Offense Level 8 applies, pursuant to U.S.S.G. § 2L1.2(a).
2. If the defendant is found to be entitled to an offense level reduction under U.S.S.G. § 3E1.1(a) for acceptance of responsibility, the United States hereby moves that the court reduce the defendant's offense level by one additional level, pursuant to U.S.S.G. § 3E1.1(b), if that paragraph otherwise applies.
4. The parties agree that at the time of sentencing, the United States will make a non-binding recommendation to the court that the defendant

should receive a 4 level downward departure, pursuant to U.S.S.G § 5K3.1. For a defendant determined to fall within Criminal History Category VI or found to have a felony conviction for a "serious violent offense," as determined by the United States after review of the presentence investigation report, the parties agree that the United States will make a non-binding recommendation to the court that the defendant should receive a 2 level downward departure.

B. ACCEPTANCE OF RESPONSIBILITY.

Notwithstanding paragraph A above, the United States will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the guilty plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the guilty plea, or
6. Refuses to abide by any lawful court order, or
7. Contests or assists any third party in contesting the forfeiture of property(ies) seized or forfeited in connection with this case.

**The parties further agree the defendant will make no "blanket" objections to the criminal history calculation (specific objections based on stated grounds are permitted). Objections to criminal history on the basis that the defendant was not the person who was convicted of the offense(s) described**

in the presentence investigation report or on the basis that the defendant was not represented by counsel in connection with such conviction(s), if determined to be unfounded, are evidence the defendant has not accepted responsibility and the parties agree no credit for acceptance of responsibility should be given.

C. ADJUSTMENTS, DEPARTURES & REDUCTIONS UNDER 18 U.S.C. § 3553.

The parties agree that defendant may not request or recommend additional downward adjustments, departures, including criminal history departures under U.S.S.G. § 4A1.3, and sentence reductions under 18 U.S.C. § 3553, and that the United States may oppose any such downward adjustments, departures, and sentence reductions not set forth in Section VI, paragraph A, above.

D. CRIMINAL HISTORY.

The parties have no agreement concerning the defendant's Criminal History Category, except that if defendant is determined to be a Career Offender, the parties agree that the defendant is automatically a Criminal History Category VI pursuant to U.S.S.G. § 4B1.1(b).

E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION.

The parties agree that the facts in the "factual basis" paragraph of this agreement, if any, are true, and may be considered as "relevant conduct" under U.S.S.G. § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

The parties agree that all information known by the office of United States Pretrial Service may be used by the Probation Office in submitting its presentence report, and may be disclosed to the court for purposes of sentencing.

F. REINSTATEMENT OF REMOVAL, DEPORTATION, OR EXCLUSION.

The defendant admits that the defendant was the subject of a previous order of removal, deportation, or exclusion. The defendant agrees to the reinstatement of that previous order of

removal, deportation, or exclusion. The defendant admits that defendant does not have a fear of returning to the country designated in the previous order. If this plea agreement is accepted by the court, defendant agrees not to contest, either directly or by collateral attack, the reinstatement of the prior order of removal, deportation, or exclusion.

## VI

### DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Except as provided in Section I above, (if this is a conditional guilty plea) the defendant hereby knowingly and expressly waives any and all rights to appeal the defendant's conviction and sentence, including any restitution order in this case, including a waiver of all motions, defenses, and objections which the defendant could assert to the charges or to the Court's entry of Judgment against the defendant, and including review pursuant to 18 U.S.C. § 3742 of any sentence imposed.

The defendant further knowingly and expressly waives any and all rights to contest the defendant's conviction and sentence in any post-conviction proceedings, including any proceedings under 28 U.S.C. § 2255, except:

(a) The right to timely challenge the defendant's conviction and the sentence of the Court should the Eighth Circuit Court of Appeals or the United States Supreme Court later find that the charge to which the defendant is agreeing to plead guilty fails to state a crime.

(b) The right to seek post conviction relief based on ineffective assistance of counsel, or prosecutorial misconduct, if the grounds for such claim could not be known by the defendant at the time the Defendant enters the guilty plea contemplated by this plea agreement.

If defendant breaches this plea agreement, at any time, in

any way, including, but not limited to, appealing or collaterally attacking the conviction or sentence, the United States may prosecute defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the United States may use any factual admissions made by defendant pursuant to this plea agreement in any such prosecution.

## VII

### BREACH OF AGREEMENT

Should it be concluded by the United States that the defendant has committed a crime subsequent to signing the plea agreement, or otherwise violated this plea agreement, the defendant shall then be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted. Any such prosecution(s) may be premised upon any information, statement, or testimony provided by the defendant.

In the event the defendant commits a crime or otherwise violates any term or condition of this plea agreement, the defendant shall not, because of such violation of this agreement, be allowed to withdraw the defendant's plea of guilty, and the United States will be relieved of any obligation it otherwise has under this agreement, and may withdraw any motions for dismissal of charges or for sentence relief it had already filed.

## VIII

### SCOPE OF AGREEMENT

A. This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

B. By signing this agreement, the defendant agrees that the

time between the date the defendant signs this agreement and the date of the guilty plea will be excluded under the Speedy Trial Act. The defendant stipulates that such period of delay is necessary in order for the defendant to have opportunity to enter the anticipated plea of guilty, and that the ends of justice served by such period of delay outweigh the best interest of the defendant and the public in a speedy trial.

C. The United States may use against the defendant any disclosure(s) the defendant has made pursuant to this agreement in any civil proceeding. Nothing contained in this agreement shall in any manner limit the defendant's civil liability which may otherwise be found to exist, or in any manner limit or prevent the United States from pursuing any applicable civil remedy, including but not limited to remedies regarding asset forfeiture and/or taxation.

D. Pursuant to 18 U.S.C. § 3013, the defendant will pay to the Clerk of the District Court the mandatory special assessment of \$100 for each felony count to which the defendant pleads guilty. The defendant will make this payment at or before the time of sentencing.

E. By signing this agreement, the defendant waives the right to withdraw the defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d). The defendant may only withdraw the guilty plea in the event the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5). Furthermore, defendant understands that if the court rejects the plea agreement, whether or not defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

F. This agreement may be withdrawn by the United States at any time prior to its being signed by all parties. For a defendant offered a non-binding recommendation for a four level downward departure, the offer is contingent upon defendant not falling within Criminal History Category VI or having a felony conviction for a "serious violent offenses", as determined by the United States after review of the presentence investigation report. A defendant determined to fall within Criminal History Category VI or found to have a felony conviction for a "serious violent offense" shall only be offered a non-binding recommendation for a two level downward departure, pursuant to U.S.S.G. § 5K3.1. Further, this proposed plea agreement is automatically withdrawn if the properly executed original agreement is not received at the United States Attorney's Office, District of Nebraska, by April 4, 2012, or if defendant files any motions of the type described in Fed. R. Crim. P. 12(b)(3). Further, this agreement is automatically withdrawn if the change of plea is not scheduled to occur by May 4, 2012.

#### **IX**

##### **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

This agreement ends all plea discussions. No promises, agreements or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties.

#### **X**

##### **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

By signing this agreement, defendant certifies that defendant read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its

meaning and effect.

XI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

UNITED STATES OF AMERICA  
DEBORAH R. GILG  
United States Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
CHRISTOPHER L. FERRETTI  
SPECIAL ASSISTANT U.S. ATTORNEY

3-6-12  
Date

*DH*  
DEFENDANT 

3-6-12  
Date

*David R. Stickman*  
DAVID R. STICKMAN  
COUNSEL FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CRIMINAL NO. _____
	)	
<b>FIELD(Defendant),</b>	)	
	)	
Defendant.	)	

FAST TRACK PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant and the defendant's counsel.

REPRESENTATION BY COUNSEL

1. The defendant understands the defendant's right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with counsel and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

- 2. The defendant further understands defendant's rights:
  - a. to be charged and prosecuted by indictment;
  - b. to plead not guilty;
  - c. to have a trial by jury;
  - d. to confront and cross-examine witnesses and to call witnesses in the defense of this charge; and
  - e. against compelled self-incrimination.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The defendant hereby agrees to waive these rights and to plead guilty to an ~~KEYBOARD~~(Indictment/Information) charging a violation of 8 U.S.C. §§ 1326(a) and (b), that being Re-entry of a Removed Alien.

SENTENCING AGREEMENT AND PENALTIES

4. With respect to sentencing, the defendant understands:

a. The sentence for the crime of Re-entry of a Removed Alien will be determined by the sentencing court after a presentence investigative report has been completed by the U.S. Probation Office, and defendant has had an opportunity to review the report, request corrections or deletions to the facts presented in the report, and make arguments in support of any such requested factual changes, and make legal arguments regarding the application of § 2L1.2 or § 4A1.1 of the sentencing guidelines. The parties agree that the potential arguments mentioned in the preceding sentence are the only arguments relating to the calculation of the guidelines range that may be raised under this plea agreement.

b. The federal sentencing guidelines are only advisory, but pursuant to Rule 11(c)(1)(C), Fed.R.Crim.P., the parties agree that the guidelines will be used to determine the defendant's sentencing range.

c. This plea agreement, and the sentencing guidelines offense level agreed upon pursuant to Fed.R.Crim. P. 11(c)(1)(C), is contingent upon the defendant's agreement that the defendant will not collaterally attack or contest in any manner reinstatement of the defendant's prior deportation/removal order. By signing this plea agreement, defendant hereby agrees to waive all challenges, constitutional or otherwise, to reinstatement of defendant's prior deportation/removal

order. Defendant understands and knowingly waives any right the defendant may have to a hearing before an immigration judge, or any other authority under the Immigration and Nationality Act, on the question of the defendant's removal from the United States.

d. The United States and the defendant agree that the defendant is not a citizen of the United States, and that defendant is a native and citizen of KEYBOARD(country of citizenship). The United States, defendant, and defendant's counsel agree that defendant has no legal immigration status within the United States.

e. The Government agrees, pursuant to Rule 11(c)(1)(C), Fed.R.Crim.P., to a downward departure/adjustment to determine defendant 's Final Adjusted Offense Level, as described in this subparagraph. Defendant's Base Offense Level (Column A) will be the sum of Offense Level 8 plus the sentencing guideline adjustment for defendant 's most serious prior criminal conviction as determined by the sentencing court. Defendant's Final Adjusted Offense Level (Column B) will be the Base Offense Level minus a downward adjustment for acceptance of responsibility, and minus a two-level downward departure pursuant to USSG § 5K3.1.

(A) If BOL is: (B) Then final adjusted OL shall be:

24	19
20	15
16	11
12	8
8	4

f. **The defendant agrees not to seek any further reduction, departure, deviation, or variance in the Final Adjusted Offense Level or the Criminal History Category**

as determined by the Court, through motion or by argument at sentencing pursuant to 18 U.S.C.

§§ 3553(a)(1-7), United States v. Booker, 543 U.S. 220 (2005), or otherwise.

g. The United States hereby expressly reserves the right to make known to the United States Probation Office and the Court, for inclusion in the presentence report prepared pursuant to Fed.R.Crim.P. 32, any information that the United States believes may be helpful to the Court.

h. Although the sentencing range will be based on the Final Adjusted Offense Level and the applicable Criminal History Category as determined by the U.S. Probation Office and the sentencing court, defendant specifically understands that the maximum statutory penalty under 8 U.S.C. § 1326(b) is:

- (1) imprisonment for a period of not more than twenty years;
- (2) a fine not to exceed \$250,000;
- (3) a term of supervised release of not more than three years; and
- (4) a mandatory special penalty assessment of \$100.00.

#### DEFENDANT'S ADMISSION OF FACTS

5. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of committing a violation of 8 U.S.C. § 1326(a). I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt beyond a reasonable doubt. I specifically admit and declare under penalty of perjury that I am not a citizen or national of the United States, I do not have any legal immigration status in the

United States, and that I reentered the United States after previously having been deported, excluded or removed and without the express consent of the Secretary for Homeland Security.

WAIVER OF APPEAL RIGHTS AND  
POST-CONVICTION CHALLENGES TO SENTENCE

6. The defendant is aware that federal law affords a defendant the right to appeal the conviction and the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal this conviction and any sentence, including any fine, at or under the maximum statutory penalty authorized by law and imposed in conformity with this plea agreement. In addition, the defendant agrees to waive any collateral attack to the defendant's conviction pursuant to 28 U.S.C. § 2255, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

GOVERNMENT'S AGREEMENT

7. Provided that the defendant fulfills the defendant's obligations as set out above, the United States agrees not to bring additional criminal charges against the defendant arising out of the facts forming the basis of the present KEYBOARD(Indictment/Information).

DEFENDANT'S ABSOLUTE RIGHT TO WITHDRAW GUILTY PLEA

8. Pursuant to Rule 11(c)(5), Fed.R.Crim.P., if the Court rejects this agreement, defendant shall have the right to withdraw defendant 's plea of guilty.

VOLUNTARY PLEA

9. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the

Court will impose. The defendant also represents that the defendant is pleading guilty because the defendant is in fact guilty.

ENTIRETY OF AGREEMENT

10. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2012.

KENNETH J. GONZALES  
United States Attorney

---

FIELD(AUSA)  
Assistant U.S. Attorney  
555 S. Telshor Blvd., Suite 300  
Las Cruces, NM 88011  
(575) 522-2304 - Tel.  
(575) 522-2391 - Fax

This agreement has been read to me in the language I understand best, and I have carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

---

FIELD(Defendant)  
Defendant

I am the attorney for FIELD(Defendant). I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

---

FIELD(Def Counsel)  
Attorney for Defendant

C:\Documents and Settings\jtierney\Local Settings\Temporary Internet Files\Content.Outlook\FH2ZP7VMS\1326 FT PA 2 Levels.wpd

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CRIMINAL NO. _____
	)	
<b>FIELD(Defendant),</b>	)	
	)	
Defendant.	)	

FAST TRACK PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant and the defendant's counsel.

REPRESENTATION BY COUNSEL

1. The defendant understands the defendant's right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with counsel and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The defendant further understands defendant's rights:
  - a. to be charged and prosecuted by indictment;
  - b. to plead not guilty;
  - c. to have a trial by jury;
  - d. to confront and cross-examine witnesses and to call witnesses in the defense of this charge; and
  - e. against compelled self-incrimination.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The defendant hereby agrees to waive these rights and to plead guilty to an KEYBOARD(Indictment/Information) charging a violation of 8 U.S.C. §§ 1326(a) and (b), that being Re-entry of a Removed Alien.

SENTENCING AGREEMENT AND PENALTIES

4. With respect to sentencing, the defendant understands:

a. The sentence for the crime of Re-entry of a Removed Alien will be determined by the sentencing court after a presentence investigative report has been completed by the U.S. Probation Office, and defendant has had an opportunity to review the report, request corrections or deletions to the facts presented in the report, and make arguments in support of any such requested factual changes, and make legal arguments regarding the application of § 2L1.2 or § 4A1.1 of the sentencing guidelines. The parties agree that the potential arguments mentioned in the preceding sentence are the only arguments relating to the calculation of the guidelines range that may be raised under this plea agreement.

b. The federal sentencing guidelines are only advisory, but pursuant to Rule 11(c)(1)(C), Fed.R.Crim.P., the parties agree that the guidelines will be used to determine the defendant's sentencing range.

c. This plea agreement, and the sentencing guidelines offense level agreed upon pursuant to Fed.R.Crim. P. 11(c)(1)(C), is contingent upon the defendant's agreement that the defendant will not collaterally attack or contest in any manner reinstatement of the defendant's prior deportation/removal order. By signing this plea agreement, defendant hereby agrees to waive all challenges, constitutional or otherwise, to reinstatement of defendant's prior deportation/removal

order. Defendant understands and knowingly waives any right the defendant may have to a hearing before an immigration judge, or any other authority under the Immigration and Nationality Act, on the question of the defendant's removal from the United States.

d. The United States and the defendant agree that the defendant is not a citizen of the United States, and that defendant is a native and citizen of KEYBOARD(country of citizenship). The United States, defendant, and defendant's counsel agree that defendant has no legal immigration status within the United States.

e. Unless the defendant has been previously convicted of a crime of violence or has a Criminal History Category of VI, the Government agrees, pursuant to Rule 11(c)(1)(C), Fed.R.Crim.P., to a downward departure/adjustment to determine defendant's Final Adjusted Offense Level, as described in this subparagraph. Defendant's Base Offense Level (Column A) will be the sum of Offense Level 8 plus the sentencing guideline adjustment for defendant's most serious prior criminal conviction as determined by the sentencing court. Defendant's Final Adjusted Offense Level (Column B) will be the Base Offense Level minus a downward adjustment for acceptance of responsibility, and minus a four-level downward departure pursuant to USSG § 5K3.1.

(A) If BOL is: (B) Then final adjusted OL shall be:

24	17
20	13
16	9
12	6
8	2

If, after the defendant has pled guilty, the United States learns, either through the disclosure of the Presentence Report or otherwise, that the defendant has a prior conviction for a crime of violence or a CHC of VI, the parties agree that the defendant will receive a two-level downward departure pursuant to USSG 5K3.1 instead of a four-level departure, unless the United States determines, in its sole discretion, that the defendant is ineligible for participation in the fast track program because of aggravating or extenuating circumstances. If the United States determines that the defendant is ineligible for the program, the United States will not oppose a motion to withdraw the defendant's guilty plea.

f. For the purposes of this plea agreement, a "crime of violence" includes murder, kidnapping, voluntary manslaughter, forcible sex offenses, child sex offenses, burglary of a dwelling and any other felony that: (1) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (2) is an offense that, by its nature, involves a substantial risk that physical force against the person or property of another may be used negligently, recklessly or intentionally in the course of committing the offense.

h. **The defendant agrees not to seek any further reduction, departure, deviation, or variance in the Final Adjusted Offense Level or the Criminal History Category as determined by the Court,** through motion or by argument at sentencing pursuant to 18 U.S.C. §§ 3553(a)(1-7), United States v. Booker, 543 U.S. 220 (2005), or otherwise.

i. The United States hereby expressly reserves the right to make known to the United States Probation Office and the Court, for inclusion in the presentence report prepared pursuant to Fed.R.Crim.P. 32, any information that the United States believes may be helpful to the Court.

j. Although the sentencing range will be based on the Final Adjusted Offense

Level and the applicable Criminal History Category as determined by the U.S. Probation Office and the sentencing court, defendant specifically understands that the maximum statutory penalty under 8 U.S.C. § 1326(b) is:

- (1) imprisonment for a period of not more than twenty years;
- (2) a fine not to exceed \$250,000;
- (3) a term of supervised release of not more than three years; and
- (4) a mandatory special penalty assessment of \$100.00.

DEFENDANT'S ADMISSION OF FACTS

5. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of committing a violation of 8 U.S.C. § 1326(a). I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt beyond a reasonable doubt. I specifically admit and declare under penalty of perjury that I am not a citizen or national of the United States, I do not have any legal immigration status in the United States, and that I reentered the United States after previously having been deported, excluded or removed and without the express consent of the Secretary for Homeland Security.

WAIVER OF APPEAL RIGHTS AND  
POST-CONVICTION CHALLENGES TO SENTENCE

6. The defendant is aware that federal law affords a defendant the right to appeal the conviction and the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal this conviction and any sentence, including any fine, at or under the maximum statutory penalty authorized by law and imposed in conformity with this plea agreement. In addition,

the defendant agrees to waive any collateral attack to the defendant's conviction pursuant to 28 U.S.C. § 2255, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

#### GOVERNMENT'S AGREEMENT

7. Provided that the defendant fulfills the defendant's obligations as set out above, the United States agrees not to bring additional criminal charges against the defendant arising out of the facts forming the basis of the present ~~KEYBOARD~~(Indictment/Information).

#### DEFENDANT'S ABSOLUTE RIGHT TO WITHDRAW GUILTY PLEA

8. Pursuant to Rule 11(c)(5), Fed.R.Crim.P., if the Court rejects this agreement, defendant shall have the right to withdraw defendant's plea of guilty.

#### VOLUNTARY PLEA

9. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the Court will impose. The defendant also represents that the defendant is pleading guilty because the defendant is in fact guilty.

#### ENTIRETY OF AGREEMENT

10. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

KENNETH J. GONZALES  
United States Attorney

---

FIELD(AUSA)  
Assistant U.S. Attorney  
555 S. Telshor Blvd., Suite 300  
Las Cruces, NM 88011  
(575) 522-2304 - Tel.  
(575) 522-2391 - Fax

This agreement has been read to me in the language I understand best, and I have carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

---

FIELD(Defendant)  
Defendant

I am the attorney for FIELD(Defendant). I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

---

FIELD(Def Counsel)  
Attorney for Defendant

EK:TAD

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

[REDACTED]

also known as [REDACTED]

Defendant.

- - - - - X

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York (the "Office") and [REDACTED], also known as [REDACTED]," (the "defendant") agree to the following:

1. The defendant will plead guilty to the above-captioned indictment, charging a violation of 8 U.S.C.

§ 1326(a). The count carries the following statutory penalties:

- a. Maximum term of imprisonment: 20 years (8 U.S.C. § 1326(b)(2)).
- b. Minimum term of imprisonment: none (8 U.S.C. § 1326(b)(2)).
- c. Maximum supervised release term: three years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. § 3583 (b) & (e)).

- d. Maximum fine: \$250,000  
(18 U.S.C. § 3571(b)(3)).
- e. Restitution: Not applicable.  
(18 U.S.C. § 3663).
- f. \$100 special assessment  
(18 U.S.C. § 3013).
- g. Other penalties: Defendant consents to  
removal as set forth below in paragraph 6.

2. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the "Guidelines" and "U.S.S.G.") is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case. The Office will advise the Court and the Probation Department of information relevant to sentencing, including criminal activity engaged in by the defendant, and such information may be used by the Court in determining the defendant's sentence. The Office estimates the likely adjusted offense level under the Guidelines to be level 12, which is predicated on the following Guidelines calculation:

Base Offense Level (2L1.2(a))	8
Plus: Defendant Previously Deported Following Conviction for an Aggravated Felony (2L1.2(b)(1)(C))	+8
Less: Early Disposition Program (5K3.1)	<u>-4</u>
Total:	<u><u>12</u></u>

If the defendant clearly demonstrates acceptance of responsibility, through allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a), resulting in an adjusted offense level of 10 and a range of imprisonment of 10 - 16 months, assuming that the defendant falls within Criminal History Category III. The defendant stipulates to the above Guidelines calculation. The defendant also stipulates that on or about November 13, 2006, she was convicted in County Court for the State of New York, County of Ulster, of Grand Larceny in the Fourth Degree, was sentenced to two to four years (of which the defendant served approximately six months before being deported), and was thereafter removed from the United States to Turkey on or about August 7, 2007.

3. The Guidelines estimate set forth in paragraph 2 is not binding on the Office, the Probation Department or the Court. If the Guidelines offense level advocated by the Office, or determined by the Probation Department or the Court, is, for any reason, including an error in the estimate, different from the estimate, the defendant will not be entitled to withdraw the plea and the government will not be deemed to have breached this agreement.

4. The defendant agrees not to file an appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or

any other provision, the conviction or sentence in the event that the Court imposes a term of imprisonment of 16 months or below. This waiver is binding without regard to the sentencing analysis used by the Court. The defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution that is not time-barred on the date that this agreement is signed in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates this agreement, or (c) the defendant's plea is later withdrawn. The defendant waives any right to additional disclosure from the government in connection with the guilty plea. The defendant agrees that with respect to all charges referred to in paragraphs 1 and 5(a) she is not a "prevailing party" within the meaning of the "Hyde Amendment," 18 U.S.C. § 3006A note, and will not file any claim under that law. The defendant agrees to pay the special assessment by check payable to the Clerk of the Court at or before sentencing. The defendant understands that she may be subject to removal as set forth in paragraph 6 below. Nevertheless, the defendant affirms that she wants to plead guilty and to waive her right to appeal as set forth at the beginning of this paragraph, even if the consequence is the defendant's automatic removal from the United States.

5. The Office agrees that:

- a. no further criminal charges will be brought against the defendant for her attempted illegal reentry into the United States on or about December 24, 2011, after having been previously removed from the United States after a conviction for the commission of an aggravated felony; it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 et seq.;

and, based upon information now known to the Office, it will

- b. take no position concerning where within the Guidelines range determined by the Court the sentence should fall; and
- c. make no motion for an upward departure under the Sentencing Guidelines.

If information relevant to sentencing, as determined by the Office, becomes known to the Office after the date of this agreement, the Office will not be bound by paragraphs 5(b) and 5(c). Should it be judged by the Office that the defendant has violated any provision of this agreement, the defendant will not be released from her plea of guilty but this Office will be released from its obligations under this agreement, including but not limited to: (a) moving for the additional one-level downward adjustment for timely acceptance of responsibility described in paragraph 2 above; and (b) the provisions of paragraph 5 (a)-(c).

6. The defendant consents to her removal. The

defendant acknowledges that she received a Notice of Intent to Request Judicial Removal dated April \_\_, 2012 and Factual Allegations In Support of Judicial Removal dated April \_\_, 2012. The defendant also acknowledges that she signed a Plea Statement In Support of Judicial Removal Proceedings dated April \_\_, 2012 (the "Removal Plea Statement"). The Notice of Intent to Request Judicial Removal, Factual Allegations In Support of Judicial Removal, and the Removal Plea Statement are all attached hereto and incorporated herein. As set forth more fully in the defendant's Removal Plea Statement, the defendant concedes that she is removable from the United States; waives any right she may have to apply for relief or protection from removal; requests that an order be issued for her removal to Turkey; and requests that the Court, at the time of sentencing, order that the defendant be removed from the United States promptly upon her release from confinement, or, if the defendant is not sentenced to a term of imprisonment, promptly upon her sentencing.

7. This agreement does not bind any federal, state, or local prosecuting authority other than the Office, and does not prohibit the Office from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant.

8. No promises, agreements or conditions have been

entered into by the parties other than those set forth in this agreement and none will be entered into unless memorialized in writing and signed by all parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Brooklyn , New York  
April \_\_, 2012

LORETTA E. LYNCH  
United States Attorney  
Eastern District of New York

By: \_\_\_\_\_  
Tiana A. Demas  
Assistant United States Attorney

Approved by:

\_\_\_\_\_  
Supervising Assistant U.S. Attorney

I have read the entire agreement and discussed it with my attorney. I understand all of its terms and am entering into it knowingly and voluntarily.

\_\_\_\_\_  
Defendant

Approved by:

\_\_\_\_\_  
Len Kamdang, Esq.  
Counsel to Defendant

Translated by:

\_\_\_\_\_

UNITED STATES DISTRICT COURT FOR  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED 3/16/2012  
[Signature]  
CLERK  
BY DEPUTY

UNITED STATES OF AMERICA

§

V.

§

CRIMINAL NO. H [REDACTED]

[REDACTED]

§

PLEA AGREEMENT

COMES NOW the United States of America, by and through its attorneys KENNETH MAGIDSON, United States Attorney for the Southern District of Texas, and the undersigned Assistant United States Attorney, and the defendant, [REDACTED], and the defendant's counsel, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and state that they have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant agrees to plead guilty to the indictment in this case. The indictment charges the defendant with ILLEGAL REENTRY OF REMOVED ALIEN, in violation of Title 8, United States Code, §1326 (a) and (b)(2). The defendant, by entering this plea, agrees that he/she is waiving any right to have the facts that the law makes essential to the punishment either charged in the indictment, or proved to a jury or proven beyond a reasonable doubt.

2. As part of this agreement, the United States agrees to recommend credit for Acceptance of Responsibility, and sentencing at the low end of guideline level the defendant scores. The Government also agrees to recommend a 2-point credit under 5K3.1 Notice of the early plea, unless the defendant has a criminal history category of VI, or a previous conviction for a serious felony or a conviction under 8 USC 1326.

3. The statutory maximum penalty for each violation of Title 8, United States Code, Section 1326(a) and (b)(2), is a maximum term of imprisonment of 20 years, and a fine of \$250,000.00; and a period of supervised release not to exceed 3 years. The defendant also acknowledges and understands that if (s)he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then the Defendant may be imprisoned for a period not to exceed 2 years without credit for time already served on the term of supervised release prior to such violation. The defendant understands that he/she cannot have the imposition or execution of the sentence suspended, nor is he/she eligible for parole.

4. The defendant will pay to the United States District Clerk a special assessment in the amount of one-hundred dollars (\$100.00) per count of conviction, as required in Title 18, United States Code, Section 3013(a)(2)(A). The payment will be by certified check payable to United States District Clerk, Houston, Texas 77002.

5. The defendant understands that under the Sentencing Guidelines, the Court is permitted to order the defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release; if any is ordered.

6. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately, and defendant will not attempt to avoid or delay payment.

7. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing if he/she is requested to do so. In the event that the Court imposes a fine or orders the payment of restitution as part of the Defendant's sentence, the Defendant shall make complete financial disclosure

3 MTD [Signature]

[REDACTED]

by truthfully executing a sworn financial statement immediately following his/her sentencing.

8. If the defendant is not a citizen of the United States, a plea of guilty may result in deportation, exclusion from admission to the United States, or the denial of naturalization.

9. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentence Guidelines. The defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas. Should the defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance", the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statement. The defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, not oppose the forfeiture of assets contemplated in this agreement. The defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

10. The defendant understands and agrees that "fully cooperate" as used herein, includes providing all information relating to any criminal activity known to defendant, including but not limited to the specific facts of the present offense. The defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this plea agreement binds only the United States Attorney for the Southern District of Texas and defendant; it does not bind

Effective Date: 03/2012

3 MTD  
A [REDACTED]

any other United States Attorney or any other unit of the Department of Justice;

- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his/her Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (d) Defendant agrees to provide truthful, complete and accurate information and testimony and understands any false statements made by the defendant to the Grand Jury or at any court proceeding (criminal or civil), or to a government agent or attorney can and will be prosecuted under the appropriate perjury, false statement or obstruction statutes;
- (e) Defendant agrees to provide to the United States all documents in his/her possession or under his/her control relating to all areas of inquiry and investigation.
- (f) Should the recommended departure, if any, not meet the defendant's expectations, the defendant understands he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his/her plea.

11. Defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The defendant agrees to waive the right to appeal the sentence imposed or the manner in which it was determined **on any grounds set forth in Title 18 U.S.C. § 3742.** Additionally, the defendant is aware that Title 28, U.S.C. § 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the conviction or sentence has become final. The defendant waives the right to contest his/her conviction or sentence by means of any post-conviction proceeding, **including but not limited to Title 28, U.S.C. § 2255.** If the defendant files a notice of appeal following the imposition of sentence, the government will seek specific performance of this provision.

Effective Date: 03/2012

4 M 10



[REDACTED]

In exchange for the Agreement with the United States, Defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time barred on the date that this Agreement is signed, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

12. In agreeing to these waivers, defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he/she may have received from his/her counsel, the United States or the Probation Office, is a prediction, not a promise, did not induce his/her guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are "effectively advisory" to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

13. The Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in paragraph 2 of this plea agreement.

Effective Date: 03/2012

S M T D



14. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with defendant's counsel and the Probation Office; and,
- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2 and Title 18, U.S.C. § 3553(a).

15. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, U.S.C. § 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement, and the parties have no agreement as to defendant's Criminal History Category.

Effective Date: 03/2012

6 M r o [Signature]

[REDACTED]

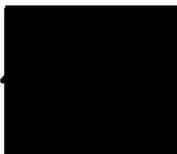
16. Defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. Defendant understands that by entering into this agreement, he/she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- (a) If defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against the defendant. Defendant would have the opportunity to confront those witnesses and his/her attorney would be allowed to cross-examine them. In turn, the defendant could, but would not be required to, present witnesses and other evidence on his/her own behalf. If the witnesses for defendant would not appear voluntarily, he/she could require their attendance through the subpoena power of the court.
- (c) At a trial, defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired to do so, he/she could testify on his/her own behalf.

17. If defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and the defendant's plea and sentence will stand. If at any time defendant retains, conceals or disposes of assets in violation of this plea agreement, or if defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by defendant,

Effective Date: 03/2012

AMN



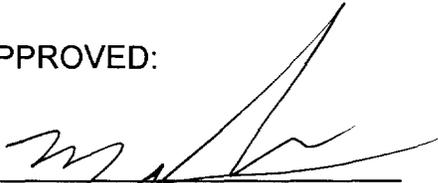
whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

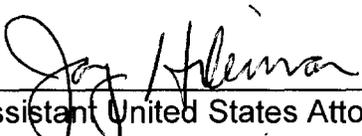
18. This written plea agreement, consisting of nine pages, including the attached certifications of defendant and his/her attorney, constitutes the complete plea agreement between the United States, defendant and his counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him/her and that he/she is pleading guilty freely and voluntarily because he is guilty.

19. Any modification of this plea agreement must be in writing and signed by all parties.

[REDACTED]  
Defendant

APPROVED:

  
\_\_\_\_\_  
Attorney for Defendant

  
\_\_\_\_\_  
Assistant United States Attorney



Effective Date: 03/2012

8 MTP   
[REDACTED]

**CERTIFICATION BY THE DEFENDANT**

I have consulted with my counsel and fully understand all my rights with respect to the charge(s) pending against me. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

[REDACTED]

Defendant

3/16/12  
Date

**CERTIFICATION BY ATTORNEY**

I have fully explained to the defendant, his rights with respect to the pending indictment/information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

[Handwritten Signature]

Counsel for Defendant

3/16/12  
Date

Effective Date: 03/2012

IP MTD  
[REDACTED]

## PLEA PACKET MEMO

DEFENDANT: [REDACTED]

CASE NO.: [REDACTED]

Recommendation in exchange for Defendant's Plea to the **INDICTMENT and WAIVER OF APPEAL RIGHTS** as outlined in the plea agreement: **credit for Acceptance of Responsibility and sentencing at the low end of the advisory guideline level the defendant scores. The Government also agrees to recommend a 2-level downward departure pursuant to USSG 5K3.1, for notice of an early plea of guilty, unless the defendant has a criminal history category of VI, or a previous conviction for a serious violent felony or an 8 USC 1326 violation.**

## FACT SUMMARY SHEET

The defendant is a citizen and national of the United Mexican States (Mexico), and not a citizen of the United States.

On October 28, 2002, defendant, using the name [REDACTED], was convicted in the 389<sup>th</sup> District Court of Hidalgo County, Texas, for the offense of **delivery of controlled substance, to wit: cocaine, in an amount of more than one gram but less than four grams**, committed on or about August 21, 2002, in Cause No. CR-[REDACTED] H. He was sentenced to 10 years probation. On February 17, 2011 the defendant's probation was revoked and he was sentenced to 3 years confinement.

On November 13, 2002, defendant, using the name [REDACTED], was deported to Mexico at Hidalgo, Texas.

On February 2, 2011, defendant, using the name [REDACTED], was found in the United States in Edinburg, Texas.

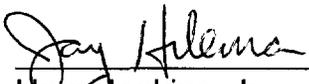
A record search of the Central Index System and the Defendant's A-file revealed no evidence that the defendant obtained consent before March 2003 from the Attorney General of the United States to reapply for admission into the United States; and no evidence that the defendant obtained corresponding consent after February 2003 from the Secretary of the Department of Homeland Security pursuant to 6 U.S.C. §§ 202(3) and (4) and 6 U.S.C. § 557.

A fingerprint analyst examined and compared the fingerprints on the warrant of deportation and conviction documents to the known fingerprints of the defendant and concluded they were made by the same individual.

I agree the above factual summary accurately represents my involvement in the crime to which I am pleading guilty and that the proposed plea agreement accurately and fully describes my plea agreement with the government.

*Alfonso*  
[REDACTED]  
Alfonso [REDACTED]  
Defendant

  
Marina Douenat  
Counsel for Defendant

  
Hays Jenkins, Jr.  
Assistant United States Attorney  
*for Hays Jenkins*

LAREDO DIVISION

CRIMINAL DOCKET  
NO. \_\_\_\_\_

FILE: 12-  
FELONY INFORMATION

L-12-mj-\_\_\_\_M

Filed: \_\_\_\_\_

Judge: \_\_\_\_\_

UNITED STATES OF AMERICA

ATTORNEYS:

KENNETH MAGIDSON, USA

VS.

\_\_\_\_\_, AUSA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

	Appt'd	Private
_____		
_____		
_____		
_____		
_____		
_____		

**CHARGE:**  
**(TOTAL**  
**COUNTS:)**  
**(1)**

Ct. 1: Illegal entry after deportation [8 USC 1326]

**PENALTY:** 0 to 20 Yrs. and/or \$250,000.00, \$100 Spec Assessment,  
NOT MORE THAN 3 YRS TERM OF SUPERVISED RELEASE [8 USC 1326]

In Jail: NAME & ADDRESS

On Bond: of Surety:

No Arrest:

**PROCEEDINGS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

UNITED STATES OF AMERICA

v.

§  
§  
§  
§  
§

CRIMINAL NO.

CRIMINAL INFORMATION

**THE UNITED STATES ATTORNEY CHARGES THAT:**

On or about \_\_\_\_\_, 2012, in the Southern District of Texas and within the jurisdiction of the Court, **Defendant,**

\_\_\_\_\_ ,  
an alien who had previously been denied admission, excluded, deported, and removed, and has departed the United States while an order of exclusion, deportation and removal is outstanding, was found in the United States, having not obtained the consent of the Attorney General of the United States to reapply for admission into the United States prior to March 1, 2003 and having not obtained consent from the Secretary of the Department of Homeland Security to reapply for admission into the United States on or after March 1, 2003.

In violation of Title 8, United States Code, Section 1326.

KENNETH MAGIDSON  
UNITED STATES ATTORNEY

\_\_\_\_\_  
Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

UNITED STATES OF AMERICA

v.

§  
§  
§  
§  
§

CRIMINAL NO.

\_\_\_\_\_

**WAIVER OF INDICTMENT AND WAIVER OF THIRTY DAYS  
TO PREPARE FOR TRIAL**

Defendant, \_\_\_\_\_, who is accused of violating Title 8, United States Code, Section 1326, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of indictment. Furthermore, Defendant hereby waives the thirty days to prepare for trial pursuant to Title 18, United States Code, Section 3161(c)(2).

Date: \_\_\_\_\_

\_\_\_\_\_  
Defendant

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

UNITED STATES OF AMERICA

v.

§  
§  
§  
§  
§

CRIMINAL NO.

**“FAST-TRACK” PLEA AGREEMENT**

The United States Attorney for the Southern District of Texas and Defendant enter into the following agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

A. In consideration of the terms contained herein, Defendant: **1) agrees** to plead guilty to the Criminal Information filed herewith, which charges defendant with **ILLEGAL ENTRY AFTER DEPORTATION**, in violation of 8 U.S.C. § 1326; **2) waives** the rights listed in Paragraph C, below; and, **3) agrees** to all terms stated herein.

B. The offense to which Defendant is pleading guilty carries the following penalties: Maximum possible prison term of 20 years, maximum fine of \$250,000, maximum term of supervised release of 3 years, and a special assessment in the amount of \$100.00.

C. Defendant understands that Defendant has the following rights, but waives and gives up these rights: **1)** the right to have the facts the law makes essential to the punishment either charged in an indictment or proven to a jury; **2)** the right to grand jury indictment; **3)** the right to speedy trial; **4)** the right to a trial by jury; **5)** the right at trial to confront and cross-examine adverse witnesses; **6)** the right to be protected from compelled self-incrimination (the right to remain silent); **7)** the right to testify and present evidence, and to compel the attendance of witnesses; **8)** the right to be represented by counsel at trial and at every stage of the proceeding; **9)** the right to have this prosecution presented to a court or jury in the Southern District of Texas as that is the location where the underlying events giving rise to this prosecution occurred; **10)** the right to file discovery motions under Rule 12(b)(3); **11)** the right to a full presentence investigation report; **12)** the right to argue for any downward departure under the United States Sentencing Guidelines or any sentencing variance under Title 18, United States Code, § 3553(a); and, **13)** the right to appeal or collaterally attack his conviction.

D. Defendant acknowledges that a guilty plea and conviction may adversely affect Defendant’s immigration status, including the loss of a visa, permanent resident alien status, or other basis for being in the United States, the deportation or removal of Defendant from the United States, the denial of naturalization, or the ability to ever lawfully enter the United States.

E. Defendant agrees that Defendant will not be permitted to withdraw his guilty plea because the sentence imposed differs from the sentence he expected or hoped for.

F. The United States Attorney's Office for the Southern District of Texas agrees, absent any new circumstances, to recommend the maximum downward adjustment available pursuant to U.S.S.G. Section 3E1.1; and a downward departure of an additional four (4) levels, unless the Defendant's criminal history category is VI or if the Defendant has at least one felony conviction for a serious violent offense, in which case the United States agrees to move the court to grant a downward departure of two (2) levels.

G. In the event the Defendant violates or breaches any of the terms of the plea agreement, the United States will be released from its obligations under this agreement and may move to set aside the Defendant's guilty plea and proceed on charges previously filed and additional charges.

H. The Government's evidence proves the following beyond a reasonable doubt: Defendant is not a citizen of the United States and Defendant has no documents allowing Defendant to enter, travel through, or remain in the United States; Defendant was previously removed from the United States on or about \_\_\_\_\_; Defendant thereafter attempted to enter or was found in the United States; and Defendant has never applied for or received the permission of either the United States Attorney General or the Secretary of the Department of Homeland Security to re-enter or re-apply for admission to enter the United States after Defendant's removal.

I. This document constitutes the entire agreement between Defendant and the United States Attorney's Office and is binding only upon those parties. No other promises, inducements or agreements have been made or entered into between the parties. The Court may accept or reject this agreement, and may defer this decision until it has reviewed the presentence report.

Respectfully submitted,

KENNETH MAGIDSON  
United States Attorney

By: \_\_\_\_\_  
Assistant United States Attorney

I have carefully read and reviewed the foregoing plea agreement or, in the alternative, my attorney has read it to me in a language that I understand. After considering this plea agreement and discussing it with my attorney, and in reliance upon my own judgment and the advice of my attorney, I freely and voluntarily agree to the specific terms and conditions of the plea agreement. Moreover, I am satisfied with the advice my attorney has provided to me in this matter.

\_\_\_\_\_  
*Defendant*

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Attorney for Defendant*

\_\_\_\_\_  
Date

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**[REDACTED]**

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

**NO. EP-12-CR-**

**FAST-TRACK PLEA AGREEMENT**

Come now the United States of America, by and through its United States Attorney for the Western District of Texas, and the Defendant, **[REDACTED]**, by and through Defendant's attorney, and notify this Court that a Plea Agreement has been reached between the parties in the above entitled and numbered cause as follows:

**COUNT(S) OF CONVICTION**

The Defendant, agrees to plead guilty to Count charge of Illegal Reentry after Deportation, a violation 8 U.S.C. § 1326.

**RANGE OF PUNISHMENT**

The Defendant understands that the range of punishment for the Defendant's offense is a term of imprisonment of not more than two (2) years, a fine not to exceed \$250,000, a term of supervised release of at least one (1) year, and a \$100 special assessment. The Defendant further agrees to pay any restitution resulting directly or indirectly from the commission of this offense, as determined by the United States Probation Office.

In determining the Defendant's sentence, the parties agree that the following sentencing factor(s) of the U.S.S.G. shall be consulted and taken into account by the Court for sentencing purposes pursuant to 18 U.S.C. § 3553, as construed by the United States Supreme Court in *United States v. Booker* and *United States v. Fanfan*.

#### IMMIGRATION CONSEQUENCES OF CONVICTION

The Defendant further understands that in addition to the punishment described above, if the Defendant is not a citizen of the United States, a plea of guilty may affect the Defendant's immigration status, may result in deportation and removal from the United States, may prevent the Defendant from ever lawfully reentering or remaining in the United States, and may result in the denial of naturalization.

#### FAST-TRACK PROGRAM CONCESSIONS BY THE PARTIES

As part of this agreement, and in exchange for the concessions made by the Government herein, the Defendant agrees:

1. That the factual basis accurately reflects the Defendant's offense conduct, and the Defendant stipulates to the facts related to the prior conviction and removal;
2. Not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
3. To waive the right to argue for any other downward departure under the United States Sentencing Guidelines or any sentencing variance under 18 U.S.C. § 3553(a);
4. To waive the right to appeal and the opportunity to challenge the Defendant's conviction under 28 U.S.C. § 2255, as set forth more fully herein;

5. To waive a full pre-sentence investigation, and in lieu thereof, will request a modified or expedited pre-sentence investigation report; however, the court retains the discretion to require a full pre-sentence investigation report, notwithstanding the defendant's waiver; and
6. To execute, in open court, after the court has imposed sentence, a written waiver of the right to appeal.

In exchange for these and the other concessions made herein by the Defendant, the Government will:

1. Not oppose the award of a two-level adjustment for acceptance of responsibility. The Defendant realizes that award of such adjustment ultimately remains in the Court's discretion. Further, if the two-level adjustment is granted and, if applicable, the Government will move, at the time of sentencing, for the award of the third-level for acceptance of responsibility.
2. Recommend that the Court grant the Defendant a four-level downward departure from the applicable sentencing guidelines under U.S.S.G. § 5K3.1. However, should the Government determine, at any time after the Defendant has entered into this plea agreement, that this Defendant's prior convictions or other factors would disqualify the Defendant from the Fast-Track program, the Government will notify defense counsel of the Defendant's disqualification and will no longer be obligated to move for the downward departure. Under these circumstances, the Government will not oppose the Defendant's request to withdraw the plea of guilty. Alternatively, under

these circumstances, should the Defendant decline to withdraw the plea of guilty, the Government will not seek enforcement of the Defendant's waiver of appeal.

#### IMPOSITION OF SENTENCE

The parties agree that the Court will consult with and take into account the United States Sentencing Guidelines and accompanying policy statements ("the U.S.S.G.") for the calculation of the Defendant's sentence pursuant to 18 U.S.C. § 3553 as construed by *United States v. Booker*, 543 U.S. 220 (2005). However, the Defendant understands that the U.S.S.G. is advisory and that the Court may take other factors into account on sentencing which would result in a greater or lesser sentence than the sentencing range calculated under the U.S.S.G.

#### WAIVER OF ADDITIONAL DISCOVERY

The Defendant waives the right to any additional discovery, including those rights conferred by Rule 16(a), Federal Rules of Criminal Procedure and the Court's Standing Discovery Order.

#### WAIVER OF RIGHTS

The Defendant acknowledges that by pleading guilty, the Defendant will be waiving each of the following rights:

- A. The right to plead not guilty and persist in that plea.
- B. The right to a jury trial as well as the right to assistance of counsel at that trial.
- C. The right to remain silent.
- D. The right to present evidence and witnesses and to compel their attendance, including the right of the Defendant to testify.
- E. The right to confront, question, and cross-examine adverse witnesses.
- F. The right to be presumed innocent.
- G. The right to appeal a guilty verdict.

#### WAIVER OF APPEAL AND COLLATERAL ATTACK

The Defendant is aware that any sentence imposed will be up to the maximum allowed by statute for the offense(s) to which the Defendant is pleading guilty. The Defendant is also aware that the sentence to be imposed is not subject to parole. By entering into this plea agreement, and as a term of this plea agreement, the Defendant voluntarily and knowingly waives any right to appeal the

sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742, as amended by the *United States v. Booker* case cited above.

The Defendant also voluntarily and knowingly waives the right to contest the sentence in any post-conviction proceeding, including but not limited to, a proceeding pursuant to 28 U.S.C. § 2255; provided, however, that consistent with principles of professional responsibility imposed on the Defendant's counsel and counsel for the Government, the Defendant does not waive the right to challenge the sentence to the extent that it is the result of a violation of the Defendant's constitutional rights based on claims of ineffective assistance of counsel or prosecutorial misconduct of constitutional dimension.

The Defendant waives all rights to challenge the sentence imposed, knowing that the Court has not yet determined that sentence. The Defendant understands and agrees that any estimate of the probable sentencing range that may be received from defense counsel, the Government, or the United States Probation Office is not a promise, did not induce the guilty plea or this waiver, and does not bind the Government, the United States Probation Office, or the Court. In other words, the Defendant understands that the Defendant may not challenge the sentence imposed by the District Court, even if it differs substantially from any sentencing range estimated by any person, including but not limited to: defense counsel, the Defendant, the attorney for the Government, or the United States Probation Officer. Realizing the uncertainty in estimating what sentence the Defendant will ultimately receive, the Defendant knowingly and voluntarily waives any rights to appeal the sentence or contest it in any post-conviction proceeding in exchange for the concessions made by the Government in this plea agreement.

#### RESERVATION OF GOVERNMENT'S RIGHTS

The Government reserves the right to: (1) bring its version of the facts of this case to the attention of the United States Probation Office in connection with that office's preparation of a

presentence report; (2) dispute sentencing factors and/or facts material to sentencing in the presentence report; and (3) seek resolution of such factors and/or facts in conference with defense counsel and the United States Probation Office.

ASSISTANCE OF COUNSEL

The Defendant acknowledges that the Defendant's attorney has advised the Defendant of the nature of the charges, any possible defense to the charges, and range of possible sentences. The Defendant is satisfied that Defendant's counsel has provided competent representation.

ADMISSION TO FACTUAL BASIS

Attached to this plea agreement and incorporated by reference herein for all purposes is a written factual basis supporting Defendant's plea of guilty. By signing the Plea Agreement, the Defendant admits that the facts set out in the attached factual basis as alleged by the Government are true and correct. The Government intends to read or summarize this factual basis in open court at the time of the plea.

Respectfully submitted,  
ROBERT PITMAN  
UNITED STATES ATTORNEY

BY: \_\_\_\_\_  
PATRICIA J. ACOSTA  
Assistant U.S. Attorney

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
DARREN LIGON  
Attorney for Defendant

## FACTUAL BASIS



The Defendant is a native and citizen of Mexico and not of the United States. The Defendant was previously removed, deported or excluded from the United States on March 27, 2010. After the Defendant's removal, exclusion or deportation from the United States, the Defendant was found in the United States on February 16, 2012 approximately 4 miles east of the Ysleta Port of Entry in El Paso, Texas. A review of the Defendant's immigration records reveal that the Defendant had not received permission from the Attorney General of the United States or the Secretary of Homeland Security to reapply for admission to the United States.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
DIVISION**

---

<b>UNITED STATES OF AMERICA,</b>	§	
	§	
Plaintiff,	§	
	§	<b>NO. ENTER COURT NO</b>
v.	§	
	§	
<b>NAME,</b>	§	
	§	
Defendant.	§	

**FAST-TRACK PLEA AGREEMENT**

Come now the United States of America, by and through its United States Attorney for the Western District of Texas, and the Defendant, **NAME**, by and through Defendant's attorney, and notify this Court that a Plea Agreement has been reached between the parties in the above entitled and numbered cause as follows:

**COUNT(S) OF CONVICTION**

The Defendant, agrees to plead guilty to Count **ENTER COUNT** of the **KEYBOARD(ENTER /IND/SIND/INFO)** currently pending in the above entitled and numbered cause, charging a violation 8 U.S.C. § 1326.

**RANGE OF PUNISHMENT**

The Defendant understands that the range of punishment for the Defendant's offense is a term of imprisonment of not more than **KEYBOARD(ENTER SECTION /IM1 /IM2 /IM3 /IM4 /IM5 /IM6 /IM7 /IM8 /IM9 /IM10)**. In determining the Defendant's sentence, the parties agree that the following sentencing factor(s) of the U.S.S.G. shall be consulted and taken into account by the Court for sentencing purposes pursuant to 18 U.S.C. § 3553, as construed by the United States Supreme Court in *United States v. Booker* and *United States v. Fanfan*.

## IMMIGRATION CONSEQUENCES OF CONVICTION

The Defendant further understands that in addition to the punishment described above, if the Defendant is not a citizen of the United States, a plea of guilty may affect the Defendant's immigration status, may result in deportation and removal from the United States, may prevent the Defendant from ever lawfully reentering or remaining in the United States, and may result in the denial of naturalization.

## FAST-TRACK PROGRAM CONCESSIONS BY THE PARTIES

As part of this agreement, and in exchange for the concessions made by the Government herein, the Defendant agrees:

1. That the factual basis set forth herein accurately reflects the Defendant's offense conduct, and the Defendant stipulates to the facts related to the prior conviction and removal;
2. Not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
3. To waive the right to argue for any other downward departure under the United States Sentencing Guidelines or any sentencing variance under 18 U.S.C. § 3553(a);
4. To waive the right to appeal and the opportunity to challenge the Defendant's conviction under 28 U.S.C. § 2255, as set forth more fully herein;
5. To waive a full pre-sentence investigation, and in lieu thereof, will request a modified or expedited pre-sentence investigation report; however, the court retains the discretion to require a full pre-sentence investigation report, notwithstanding the defendant's waiver; and

6. To execute, in open court, after the court has imposed sentence, a written waiver of the right to appeal.

In exchange for these and the other concessions made herein by the Defendant, the Government will:

1. Not oppose the award of a two-level adjustment for acceptance of responsibility. Further, if the two-level adjustment is granted and, if applicable, the Government will move, at the time of sentencing, for the award of the third-level for acceptance of responsibility.
2. Recommend that the Court grant the Defendant a four-level downward departure from the applicable sentencing guidelines under U.S.S.G. § 5K3.1. However, should the Government determine, at any time after the Defendant has entered into this plea agreement, that this Defendant's prior convictions or other factors would disqualify the Defendant from the Fast-Track program, the Government will notify defense counsel of the Defendant's disqualification and will no longer be obligated to move for the downward departure. Under these circumstances, the Government will not oppose the Defendant's request to withdraw the plea of guilty. Alternatively, under these circumstances, should the Defendant decline to withdraw the plea of guilty, the Government will not seek enforcement of the Defendant's waiver of appeal.

#### IMPOSITION OF SENTENCE

The parties agree that the Court will consult with and take into account the United States Sentencing Guidelines and accompanying policy statements ("the U.S.S.G.") for the calculation of

the Defendant's sentence pursuant to 18 U.S.C. § 3553 as construed by *United States v. Booker*, 543 U.S. 220 (2005). However, the Defendant understands that the U.S.S.G. is advisory and that the Court may take other factors into account on sentencing which would result in a greater or lesser sentence than the sentencing range calculated under the U.S.S.G.

#### WAIVER OF ADDITIONAL DISCOVERY

The Defendant waives the right to any additional discovery, including those rights conferred by Rule 16(a), Federal Rules of Criminal Procedure and the Court's Standing Discovery Order.

#### WAIVER OF RIGHTS

The Defendant acknowledges that by pleading guilty, the Defendant will be waiving each of the following rights:

- A. The right to plead not guilty and persist in that plea.
- B. The right to a jury trial as well as the right to assistance of counsel at that trial.
- C. The right to remain silent.
- D. The right to present evidence and witnesses and to compel their attendance, including the right of the Defendant to testify.
- E. The right to confront, question, and cross-examine adverse witnesses.
- F. The right to be presumed innocent.
- G. The right to appeal a guilty verdict.

#### WAIVER OF APPEAL AND COLLATERAL ATTACK

The Defendant is aware that any sentence imposed will be up to the maximum allowed by statute for the offense(s) to which the Defendant is pleading guilty. The Defendant is also aware that the sentence to be imposed is not subject to parole. By entering into this plea agreement, and as a term of this plea agreement, the Defendant voluntarily and knowingly waives any right to appeal the sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742, as amended by the *United States v. Booker* case cited above.

The Defendant also voluntarily and knowingly waives the right to contest the sentence in any post-conviction proceeding, including but not limited to, a proceeding pursuant to 28 U.S.C. § 2255;

provided, however, that consistent with principles of professional responsibility imposed on the Defendant's counsel and counsel for the Government, the Defendant does not waive the right to challenge the sentence to the extent that it is the result of a violation of the Defendant's constitutional rights based on claims of ineffective assistance of counsel or prosecutorial misconduct of constitutional dimension.

The Defendant waives all rights to challenge the sentence imposed, knowing that the Court has not yet determined that sentence. The Defendant understands and agrees that any estimate of the probable sentencing range that may be received from defense counsel, the Government, or the United States Probation Office is not a promise, did not induce the guilty plea or this waiver, and does not bind the Government, the United States Probation Office, or the Court. In other words, the Defendant understands that the Defendant may not challenge the sentence imposed by the District Court, even if it differs substantially from any sentencing range estimated by any person, including but not limited to: defense counsel, the Defendant, the attorney for the Government, or the United States Probation Officer. Realizing the uncertainty in estimating what sentence the Defendant will ultimately receive, the Defendant knowingly and voluntarily waives any rights to appeal the sentence or contest it in any post-conviction proceeding in exchange for the concessions made by the Government in this plea agreement.

**KEYBOARD(IF RETAINED ATTY ENTER /HYDE)**

#### RESERVATION OF GOVERNMENT'S RIGHTS

The Government reserves the right to: (1) bring its version of the facts of this case to the attention of the United States Probation Office in connection with that office's preparation of a presentence report; (2) dispute sentencing factors and/or facts material to sentencing in the

presentence report; and (3) seek resolution of such factors and/or facts in conference with defense counsel and the United States Probation Office.

ASSISTANCE OF COUNSEL

The Defendant acknowledges that the Defendant's attorney has advised the Defendant of the nature of the charges, any possible defense to the charges, and range of possible sentences. The Defendant is satisfied that Defendant's counsel has provided competent representation.

ADMISSION TO FACTUAL BASIS

By signing this Plea Agreement, the Defendant admits that the facts set forth herein, as alleged by the Government are true and correct:

1. The Defendant is a native and citizen of \_\_\_\_\_ and not of the United States.
2. The Defendant was previously removed, deported or excluded from the United States on \_\_\_\_\_.
3. After the Defendant's removal, exclusion or deportation from the United States, the Defendant was found in the United States on \_\_\_\_\_ at \_\_\_\_\_  
(or the Defendant entered the United States on \_\_\_\_\_ at \_\_\_\_\_.)  
(or the Defendant attempted to enter the United States on \_\_\_\_\_ at \_\_\_\_\_).
4. A review of the Defendant's immigration records reveal that the Defendant had not received permission from the Attorney General of the United States or the Secretary of Homeland Security to reapply for admission to the United States.
5. The Defendant was convicted of \_\_\_\_\_ on \_\_\_\_\_.

KEYBOARD(IF RETAINED ATTY ENTER /ASSESS)

Respectfully submitted,  
ROBERT PITMAN  
UNITED STATES ATTORNEY

BY: \_\_\_\_\_  
KEYBOARD(ENTER AUSA NAME)  
Assistant U.S. Attorney

\_\_\_\_\_  
NAME  
Defendant

\_\_\_\_\_  
ENTER DEFENSE ATTORNEY NAME  
Attorney for Defendant



**U.S. Department of Justice**

*United States Attorney*

*Eastern District of Virginia*

---

*Neil H. MacBride  
United States Attorney*

*2100 Jamieson Avenue  
Alexandria, Virginia 22314*

*Tel: 703-299-3700  
Fax: 703-299-3980*

March 14, 2012

[Defense Counsel Address]

Re: [Case Name and Number]

Dear XX:

Enclosed you will find a written plea agreement and proposed statement of facts for the above-captioned matter, pursuant to the United States Attorney's Fast Track program for early disposition of illegal reentry cases.

In order to accept this offer, you must (1) notify my office by **XX [insert date based on deadline of 14 days after defendant entered federal custody]** of the defendant's intention to accept the plea; and (2) schedule a hearing for the plea to be entered on or before **XX [insert date based on five days after 14-day deadline to accept plea]**. This is a firm plea deadline. If the defendant files any motions or causes the government to prepare for indictment or trial, the offer may be withdrawn and/or may result in fewer Fast Track points being offered.

If you have any questions or wish to discuss this matter further, please feel free to contact me at **XX**.

Sincerely,

Neil H. MacBride  
United States Attorney

By: \_\_\_\_\_

[AUSA/SAUSA]  
[Special] Assistant United States Attorney

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA                    )  
  )  
                          v.                            ) Case No.  
  )  
[Defendant],                                    )  
  )  
                          Defendant.             )

PLEA AGREEMENT

Neil H. MacBride, United States Attorney for the Eastern District of Virginia;  
[AUSA/SAUSA], Assistant United States Attorney; the defendant, [Defendant]; and [defense  
counsel], the defendant’s counsel, have entered into an agreement pursuant to Rule 11 of the  
Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to waive indictment and plead guilty to a single-count criminal  
information charging the defendant with illegal reentry by an alien previously removed **[add any  
additional description of offense]**, in violation of Title 18, United States Code, Section 1326  
**[add relevant paragraph for offense charged]**. The maximum penalties for this offense are a  
term of **XX** years of imprisonment, a fine of **\$XX**, full restitution, a special assessment, and **XX**  
years of supervised release. The defendant understands that this supervised release term is in  
addition to any prison term the defendant may receive, and that a violation of a term of  
supervised release could result in the defendant being returned to prison for the full term of  
supervised release.

## **2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

## **3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

## **4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above, but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing

range under the U.S. Sentencing Commission’s Sentencing Guidelines Manual the defendant may have received from the defendant’s counsel, the United States, or the Probation Office is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

**5. Fast Track Program (Early Disposition)**

The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast Track) program authorized by the Attorney General of the United States and the United States Attorney for the Eastern District of Virginia.

Although the parties understand that the Sentencing Guidelines are advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a), in accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure and U.S.S.G. § 5K3.1, the United States and the defendant stipulate and agree that the following is an appropriate disposition of this case:

**A. Offense Level**

- a. The defendant’s base offense level is 8, pursuant to U.S.S.G. § 2L1.2(a).
- b. The defendant’s offense level is increased by **XX** levels, pursuant to U.S.S.G. § 2L1.2(b)[**insert citation to applicable specific offense characteristic**], for the defendant’s most serious prior conviction—namely, the defendant’s **XXXX** [**insert year**] conviction for **XXXX**.

**[insert conviction] (If applicable:** If the defendant has multiple convictions that fall under more than one specific offense classification in U.S.S.G. § 2L1.2(b), the highest specific offense classification will be used in calculating the sentence that will be imposed upon the defendant.)

- c. The defendant's final adjusted offense level will be the base offense level, plus the above-noted enhancement for specific offense characteristics **[if applicable]**, minus the appropriate downward adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and
  - i. A two level downward departure for any defendant with a criminal history category VI or with at least one felony conviction for a serious violent offense; and
  - ii. A four level downward departure for all other defendants.
- d. Based on the calculations specified above, the parties stipulate and agree to recommend to the Court that the defendant's final adjusted offense level is **XX**.

With respect to the adjustment for acceptance of responsibility, the United States will not recommend any adjustment for acceptance of responsibility if the defendant:

- a. Fails to admit a complete factual basis for the plea at the time it is entered;
- b. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or Probation Office;
- c. Fails to appear in court;
- d. Engages in additional criminal conduct;
- e. Attempts to withdraw the plea; or

f. Refuses to abide by any lawful court order.

**B. Criminal History Category**

a. The precise Sentencing Guidelines range applicable to the defendant will be determined by the defendant's offense level and the defendant's criminal history category, as calculated pursuant to U.S.S.G. §§ 4A1.1 and 4A1.2.

b. The parties stipulate and agree to recommend to the Court that the defendant's criminal history category is **XX**, based upon the following:

**[insert table of prior convictions]**

<b>Date of Imposition</b>	<b>Offense</b>	<b>Sentence</b>	<b>Guideline Section</b>	<b>Criminal History Pts.</b>

Based on the above-calculated offense level and criminal history category, the parties agree to recommend to the Court that the following Sentencing Guidelines range applies to the defendant: **XX** to **XX** months of imprisonment, followed by **XX** years of supervised release. The defendant understands that the Court may not follow the recommendations or requests made by the parties at the time of sentencing. The defendant cannot withdraw from this plea agreement or the guilty plea, regardless of the Court's actions.

**6. Waiver of Sentencing, Appeal, and Other Rights**

The defendant waives the preparation of a presentence report in this case and consents to sentencing by this Court immediately after the defendant has entered a plea of guilty pursuant to this plea agreement. The defendant understands and agrees that this plea agreement contains all

the terms, conditions, and stipulations regarding sentencing. If the Court orders that a presentence report be prepared by the Probation Office, notwithstanding the parties' recommendations in this plea agreement, the defendant may not withdraw from the plea agreement. Whether or not the Court orders a presentence report, if the defendant requests or if the Court authorizes (a) any downward departure or variance; (b) any reduction of criminal history category that differs from that set forth in this agreement (or the presentence report, if applicable); or (c) any other reduction or adjustment of sentence not specifically agreed to in writing by the parties, the government may withdraw from the plea agreement. The parties will not seek any adjustments, variances, reductions, or departures, including reductions under 18 U.S.C. § 3553.

The defendant waives any and all motions, defenses, probable cause determinations, and objections that the defendant could assert to the information, indictment, or petition to revoke, or to the Court's entry of judgment against the defendant and imposition of sentence. The defendant also understands that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in 18 U.S.C. § 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. (This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).) The defendant further waives any right to collaterally attack defendant's conviction and sentence under 28 U.S.C. § 2255, or any other collateral attack—except a post-conviction collateral attack based on a claim of ineffective assistance of counsel—and any right to file a motion for modification of sentence, including under 18 U.S.C. § 3582(c).

The defendant acknowledges that these waivers shall result in the dismissal of any appeal or collateral attack the defendant might file challenging the defendant's conviction or sentence in this case. If the defendant files a notice of appeal or a habeas petition, notwithstanding this agreement, defendant agrees that this case shall, upon motion of the government, be remanded to the district court to determine whether defendant is in breach of this agreement and, if so, to permit the government to withdraw from the plea agreement.

If the defendant was on supervised release at the time the present offense was committed, the defendant waives any right to a revocation hearing on any allegations of supervised release violations.

The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

#### **7. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

#### **8. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, within 14 days of a request, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's

examination and/or complete a financial statement under penalty of perjury. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to voluntarily participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**9. Immunity from Further Prosecution in This District**

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the information or statement of facts.

**10. Impact of Guilty Plea on Immigration Status**

The defendant recognizes that pleading guilty may have consequences with respect to defendant's immigration status if defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which defendant is pleading guilty. Because removal and other immigration consequences are the subjects of a separate proceeding, the defendant understands that no one, including defendant's attorney or the District Court, can predict to a certainty the effect of the defendant's conviction on defendant's immigration status. Defendant nevertheless affirms that defendant wants to plead guilty regardless of any immigration consequences that defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States.

**11. Consent Given for Removal from the United States**

The defendant acknowledges that the defendant is removable from the United States and agrees not to contest any removal proceedings brought against the defendant by the Department

of Homeland Security (DHS). If the DHS files a Notice to Appear or other administrative charging document against the defendant, the defendant agrees to request an expedited removal hearing and to consent to removal. The defendant acknowledges that by consenting to removal, the defendant will be immediately removed from the United States upon the completion of any period of incarceration. The defendant knowingly waives any and all rights to appeal, reopen, reconsider, or otherwise challenge this removal.

**12. Waiver of Rights Related to Removal from the United States**

Except as provided in paragraph 12 below, the defendant agrees to waive the defendant's rights to apply for any and all forms of relief or protection from removal, deportation, or exclusion under the Immigration and Nationality Act (as amended) and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: (a) voluntary departure, (b) asylum, (c) withholding of deportation or removal, (d) cancellation of removal, (e) suspension of deportation, (f) adjustment of status, and (g) protection under Article 3 of the Convention Against Torture. As part of this agreement, the defendant specifically acknowledges and states that the defendant has not been persecuted in, and has no present fear of persecution in, [insert country of return] on account of race, religion, nationality, membership in a particular social group or political opinion. Similarly, the defendant further acknowledges and states that the defendant has not been tortured in, and has no present fear of torture in [insert country of return].

**13. Exception for Changed Circumstances Arising After Plea**

Nothing in this plea agreement shall prohibit the defendant from applying for asylum, withholding of removal, or protection under Article 3 of the Convention Against Torture,

provided the application is based solely on changed circumstances arising after the entry of this plea but before the defendant's removal.

**14. Abandonment of Pending Applications for Relief from Removal**

The defendant agrees that upon entry of this plea agreement, the defendant abandons (1) any existing immigration benefit the defendant may hold and (2) any application for relief from removal, deportation, or exclusion the defendant may have filed prior to the completion of this plea agreement. The defendant further agrees not to file or prosecute any application for relief from removal, deportation, or exclusion, either written or oral, before any federal court, the Board of Immigration Appeals, an immigration judge, or the Department of Homeland Security (DHS), prior to the defendant's removal from the United States, except that the defendant may apply for asylum, withholding of removal, or protection under Article 3 of the Convention Against Torture as provided in paragraph 12 of this plea agreement.

**15. The Defendant's Cooperation in the Defendant's Removal**

The defendant agrees to assist the DHS in the execution of the defendant's removal. Specifically, the defendant agrees to assist the DHS in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of the country or countries to which the defendant's removal is directed; and to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant further understands that the defendant's failure or refusal to assist the DHS in the execution of the defendant's removal shall breach this plea agreement and may subject the defendant to criminal penalties under 8 U.S.C. § 1253.

**16. Plea Agreement Binding for Purposes of Removal Proceedings**

The defendant agrees that the defendant intends the agreements contained in this plea agreement to be binding upon the defendant during any removal proceeding that may be instituted against the defendant as a result of this plea agreement. In particular, the defendant acknowledges and agrees that the agreements concerning removal contained in the plea agreement were entered into by the defendant and the United States with the express understanding that the agreements are binding for purposes of any future removal proceeding before the Board of Immigration Appeals, an immigration judge, or the DHS.

**17. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state, or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date

this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

#### **18. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any

modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Neil H. MacBride  
United States Attorney

By: \_\_\_\_\_  
[AUSA/SAUSA]  
[Special] Assistant United States Attorney

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Counsel for the Defendant

U. S. DEPARTMENT OF JUSTICE  
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	[Case No]
DEFENDANT'S NAME:	[Defendant]
PAY THIS AMOUNT:	

INSTRUCTIONS:

1. **MAKE CHECK OR MONEY ORDER PAYABLE TO:**  
*CLERK, U.S. DISTRICT COURT*
2. **PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE**
3. **PAYMENT SHOULD BE SENT TO:**

	In person (9 AM to 4 PM)	By mail:
<b>Alexandria cases:</b>	<b>Clerk, U.S. District Court 401 Courthouse Square Alexandria, VA 22314</b>	
<b>Richmond cases:</b>	<b>Clerk, U.S. District Court 701 East Broad Street, Suite 3000 Richmond, VA 23219</b>	
<b>Newport News cases:</b>	<b>Clerk, U.S. District Court 2400 West Ave, Ste 100 Newport News, VA 23607</b>	
<b>Norfolk cases:</b>	<b>Clerk, U.S. District Court 600 Granby Street Norfolk, VA 23510</b>	

4. **INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER**
5. **ENCLOSE THIS COUPON TO ENSURE PROPER and PROMPT APPLICATION OF PAYMENT**

1 Michael C. Ormsby  
2 United States Attorney  
3 Eastern District of Washington  
4 \*\*\*

5 Assistant United States Attorney  
6 Post Office Box 1494  
7 Spokane, WA 99210-1494  
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 \*\*\*,

15 Defendant.

16 CR-\*\*\*

17 Plea Agreement  
18 (Fast Track U.S.S.G. § 5K3.1)

19 Plaintiff, United States of America, by and through Michael C. Ormsby,  
20 United States Attorney for the Eastern District of Washington, and Pamela J.  
21 Byerly, Assistant United States Attorney for the Eastern District of Washington,  
22 and Defendant, \*\*\*, and the Defendant's counsel, \*\*\*, of Federal Defenders of  
23 Eastern Washington, agree to the following Plea Agreement:

24 1. Guilty Plea and Maximum Statutory Penalty:

25 The Defendant, \*\*\*, agrees to plead guilty to the Indictment, dated \*\*\*,  
which charges the Defendant with being an Alien in the United States After  
Deportation, in violation of 8 U.S.C. § 1326. Defendant understands this charge is  
a Class C felony offense that carries a maximum penalty of: not more than a \*\*\*-  
year term of imprisonment; not more than a \$250,000 fine; not more than a three-

1 year term of supervised release; and a \$100 special penalty assessment.

2           2.     Violation of Supervised Release:

3           The Defendant,\*\*\*, understands that a violation of a condition of  
4 supervised release carries an additional penalty of re-incarceration for all or part of  
5 the term of supervised release, without credit for time previously served on post-  
6 release supervision.

7           3.     The Court is Not a Party to the Agreement:

8           The Court is not a party to this Plea Agreement and may accept or reject this  
9 Plea Agreement. Sentencing is a matter that is solely within the discretion of the  
10 Court. The Defendant understands that the Court is under no obligation to accept  
11 any recommendations made by the United States and/or by the Defendant; that the  
12 Court may obtain an independent report and sentencing recommendation from the  
13 U.S. Probation Office; and that the Court may, in its discretion, impose any  
14 sentence it deems appropriate up to the statutory maximum stated in this Plea  
15 Agreement.

16           The Defendant,\*\*\*, acknowledges that no promises of any type have been  
17 made to the Defendant with respect to the sentence the Court will impose in this  
18 matter. The Defendant understands that the Court is required to consider the  
19 applicable sentencing guideline range, but may depart upward or downward under  
20 the appropriate circumstances.

21           The Defendant understands that should the sentencing judge decide not to  
22 accept any of the parties' recommendations, that decision is not a basis for  
23 withdrawing from this Plea Agreement or a basis for withdrawing this plea of

1 guilty.

2 4. Waiver of Constitutional Rights:

3 The Defendant,\*\*\*, understands that by entering this plea of guilty the  
4 Defendant is knowingly and voluntarily waiving certain constitutional rights,  
5 including:

- 6 (a.) The right to a jury trial;
- 7 (b.) The right to see, hear and question the witnesses;
- 8 (c.) The right to remain silent at trial;
- 9 (d.) The right to testify at trial; and
- 10 (e.) The right to compel witnesses to testify.

11 While the Defendant is waiving certain constitutional rights, the Defendant  
12 understands the Defendant retains the right to be assisted through the sentencing  
13 and any direct appeal of the conviction and sentence by an attorney, who will be  
14 appointed at no cost if the Defendant cannot afford to hire an attorney.

15 5. Elements of the Offense:

16 The United States and the Defendant agree that in order to convict the  
17 Defendant of being an Alien in the United States After Deportation, in violation of  
18 8 U.S.C. § 1326, the United States would have to prove the following elements  
19 beyond a reasonable doubt:

- 20 (a.) First, that the Defendant,\*\*\*, was deported from  
21 the United States;
- 22 (b.) Second, after the Defendant was deported he  
23 voluntarily entered the United States;

1 (c). Third, at the time and after the Defendant entered  
2 the United States, he knew he was in the United States  
3 and knowingly remained;

4 (d). Fourth, the Defendant was found in the United  
5 States, without having obtained the consent of the  
6 Attorney General or the Secretary of the Department of  
7 Homeland Security to reapply for admission into the  
8 United States; and

9 (e). Fifth, the Defendant was an alien at the time of  
10 his entry into the United States.

11 6. Factual Basis and Statement of Facts:

12 The United States and \*\*\* stipulate and agree that the following facts are  
13 accurate; that the United States could prove these facts beyond a reasonable doubt  
14 at trial; and these facts constitute an adequate factual basis for Defendant's guilty  
15 plea. This statement of facts does not preclude either party from presenting and  
16 arguing, for sentencing purposes, additional facts which are relevant to the  
17 guideline computation or sentencing, unless otherwise prohibited in this  
18 agreement.

19 The Defendant,\*\*\*, is not a citizen of the United States. The Defendant is a  
20 citizen of \*\*\*. The Defendant was lawfully deported from the United States at  
21 \*\*\*, on or about \*\*\*. The Defendant was also deported from \*\*\*. On \*\*\*, the  
22 Defendant was contacted by an agent from the \*\*\* in \*\*\* County, in the Eastern  
23 District of Washington. At that time, the Defendant did not have the permission of

1 the Attorney General or his successor, the Secretary of the Department of  
2 Homeland Security, through the Bureau of Citizenship and Immigration Services,  
3 to re-enter the United States. Identity of the Defendant has been confirmed  
4 through comparison of the fingerprint on the Warrant of Removal with inked  
5 prints taken on or about the date of the Defendant's most recent arrest.

6 By entering a guilty plea, Defendant admits he/she voluntarily entered the  
7 United States, and at the time and after he/she entered the United States, he/she  
8 knew he/she was in the United States and knowingly remained.

9 7. United States Sentencing Guideline Calculations:

10 Defendant understands and acknowledges that the Court will consult the  
11 United States Sentencing Guidelines (U.S.S.G.) and take them into account when  
12 sentencing. The Defendant also understands, however, that pursuant to United  
13 States v. Booker, 543 U.S. 220 (2005), the Sentencing Guideline range is advisory  
14 and that the Court is required to consider the factors set forth in 18 U.S.C.  
15 § 3553(a) and to impose a reasonable sentence.

16 (a.) Acceptance of Responsibility:

17 If the Defendant pleads guilty and demonstrates a recognition and an  
18 affirmative acceptance of personal responsibility for the criminal conduct;  
19 provides complete and accurate information during the sentencing process; does  
20 not commit any obstructive conduct; accepts this Plea Agreement within ~~forty-five~~  
21 thirty (30) days of arraignment, unless extended by mutual agreement of the  
22 parties due to administrative procedures or exceptional circumstances; and enters a  
23 plea of guilty as soon thereafter as it may be placed on the Court's docket, the

1 United States will recommend that the Defendant receive a two (2)-level reduction  
2 for acceptance of responsibility, and if the Defendant's adjusted offense level is  
3 sixteen, or greater, the United States will move for a one (1)-level reduction for  
4 timeliness. *See* U.S.S.G. § 3E1.1(a) and (b).

5 The Defendant agrees to pay the \$100 mandatory special penalty assessment  
6 to the Clerk of Court for the Eastern District of Washington, before sentencing,  
7 and shall provide a receipt from the Clerk to the United States Attorney's Office  
8 before sentencing as proof of this payment, as a condition to this recommendation  
9 by the United States. *See* 18 U.S.C. § 3013. If the Defendant lacks the financial  
10 resources to pay the assessment at or before sentencing, he/she agrees to  
11 participate in the Bureau of Prison's Inmate financial Responsibility Program in  
12 order to pay the assessment.

13 The Defendant and the United States also agree that the United States may,  
14 at its option and upon written notice to the Defendant, not recommend a reduction  
15 for acceptance of responsibility if, prior to the imposition of sentence, he/she is  
16 charged with or convicted of any criminal offense whatsoever, and /or if he/she  
17 tests positive for any controlled substance.

18 (b.) Criminal History:

19 The United States and the Defendant agree to the criminal history  
20 calculations contained in the abbreviated presentence investigation report prepared  
21 by the U.S. Probation Office.

22 8. Departures:

23 Pursuant to U.S.S.G. § 5K3.1, the United States and the Defendant stipulate  
24

1 and agree that a ~~three (3)~~ four/two-level downward departure should be applied in  
2 this case as part of an early disposition program. The Defendant agrees that  
3 he/she, absent consent of the United States, will not seek any further variances  
4 from the applicable Sentencing Guidelines.

5 9. Presentence Report:

6 The U.S. Probation Office has prepared an abbreviated presentence  
7 investigation report in this case. The United States and the Defendant believe they  
8 can provide sufficient information to the Court on the record to enable the Court,  
9 together with the abbreviated presentence investigation report, to exercise  
10 meaningful sentencing discretion, pursuant to 18 U.S.C. § 3553. Thus, the United  
11 States and the Defendant request the Court waive the preparation of a full  
12 presentence investigation report pursuant to Fed. R. Crim. P. 32(c)(1)(A)(ii).

13 10. Incarceration:

14 The United States and the Defendant agree to recommend that the Court  
15 impose a sentence within the applicable sentencing guideline range. The United  
16 States is recommending a sentence of \*\*\*.

17 11. Supervised Release:

18 The United States and the Defendant agree to recommend that the Court  
19 impose a three (3)-year term of supervised release.

20 12. Criminal Fine:

21 The Defendant and the United States reserve the right to make whatever  
22 recommendation they believe is appropriate concerning the imposition of a  
23 criminal fine.

1           13.   Mandatory Special Penalty Assessment:

2           The Defendant agrees to pay the \$100 mandatory special penalty assessment  
3 to the Clerk of Court for the Eastern District of Washington, at or before  
4 sentencing, pursuant to 18 U.S.C. § 3013, and shall provide a receipt from the  
5 Clerk to the United States before sentencing as proof of this payment.

6           14.   Payments While Incarcerated:

7           If the Defendant lacks the financial resources to pay the monetary  
8 obligations imposed by the Court, the Defendant agrees to earn the money to pay  
9 toward these obligations by participating in the Bureau of Prisons' Inmate  
10 Financial Responsibility Program.

11          15.   Waiver of Appeal Rights:

12          In consideration of the United States' recommendations contained in this  
13 Plea Agreement as well as the various waivers by the Defendant, both parties  
14 waive any right to appeal this conviction and the sentence imposed by the Court in  
15 this case.

16          The Defendant also waives any right to collaterally attack this conviction  
17 and sentence under 28 U.S.C. § 2255, or any other collateral attack (except for  
18 ineffective assistance of counsel based on facts discovered after the plea and  
19 sentencing). The Defendant acknowledges that this waiver shall result in the  
20 dismissal of any appeal or collateral attack the Defendant might file challenging  
21 the conviction or sentence in this case, except for ineffective assistance of counsel  
22 as noted above. If the Defendant files a notice of appeal, a habeas petition, or  
23 other collateral attack, notwithstanding this agreement, the Defendant agrees that

1 this case shall, upon motion of the United States, be remanded to the district court  
2 to determine whether the Defendant is in breach of this agreement and, if so, to  
3 permit the United States to withdraw from the Plea Agreement.

4 16. Integration Clause:

5 The United States and the Defendant acknowledge that this document  
6 constitutes the entire Plea Agreement between the United States and the  
7 Defendant, and no other promises, agreements, or conditions exist between the  
8 United States and the Defendant concerning the resolution of the case. This Plea  
9 Agreement is binding only upon the United States Attorney's Office for the  
10 Eastern District of Washington, and cannot bind other federal, state or local  
11 authorities. The United States and the Defendant agree that this agreement cannot  
12 be modified except in a writing that is signed by the United States and the  
13 Defendant.

14 Approvals and Signatures

15 Agreed and submitted on behalf of the United States Attorney's Office for  
16 the Eastern District of Washington.

17 Michael C. Ormsby  
18 United States Attorney

19  
20 \_\_\_\_\_  
\*\*\*

\_\_\_\_\_ Date

21 Assistant U.S. Attorney

22 I have read this Plea Agreement and have carefully reviewed and discussed  
23 every part of the agreement with my attorney. I understand and voluntarily enter  
24

25 Plea Agreement  
(Fast Track U.S.S.G. § 5K3.1) - 9  
Fast Track PA 2012.wpd

1 into this Plea Agreement. Furthermore, I have consulted with my attorney about  
2 my rights, I understand those rights, and I am satisfied with the representation of  
3 my attorney in this case. No other promises or inducements have been made to  
4 me, other than those contained in this Plea Agreement and no one has threatened  
5 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead  
6 guilty because I am guilty.

7 \*\*\*

\_\_\_\_\_ Date

8 Defendant

9 I have read the Plea Agreement and have discussed the contents of the  
10 agreement with my client. The Plea Agreement accurately and completely sets  
11 forth the entirety of the agreement between the parties. I concur in my client's  
12 decision to plead guilty as set forth in the Plea Agreement. There is no legal reason  
13 why the Court should not accept the Defendant's plea of guilty.

15 \*\*\*

\_\_\_\_\_ Date

16 Attorney for the Defendant

17  
18 I hereby certify that I have read and translated the entire foregoing  
19 document to the Defendant in a language with which he is conversant. If  
20 questions have arisen, I have notified the Defendant's counsel of the questions and  
21 have not offered nor given legal advice nor personal opinions.

22 \_\_\_\_\_  
23 Interpreter

\_\_\_\_\_ Date