

**USING YOUR POWER IN
PLEA NEGOTIATIONS**

Callie Glanton Steele
Supervising Deputy Federal Public Defender
Central District of California

POST BOOKER PLEA AGREEMENT STRATEGIES

- I. How have plea negotiations changed since Booker?
 - A. The defense has more leverage--remember post-Blakely.
 - B. There may be no reason to enter into a plea agreement because the defense does not want to be bound by a guideline range in light of 18 U.S.C. §3553(a) - your client may want to plead guilty to the indictment or to certain counts in the indictment.
 - C. The defense is no longer forced to accept plea agreement waivers (waiver of appeal, statute of limitations waivers, collateral attack waivers, Federal Rule of Evidence 410 waivers, DNA waivers).

- II. How do we get a beneficial offer for our client in this post-Booker world?
 - A. Make your request early, in writing, so that you can later show the judge that you have been trying to negotiate a plea offer for a long time.
 - B. If the government agrees to offer something that benefits your client (more than the 3rd point for acceptance and the low-end), consider entering into a plea agreement.
 1. If government offers a misdemeanor.
 2. If the government agrees to allow your client to plead guilty to an offense with a much lower guideline range.
 3. If the government agrees to recommend that certain guideline enhancements do not apply.
 4. If the government offers you a deal that the judge may not follow, consider a binding plea agreement.
 - C. If the government does not agree to offer you something more than the 3rd point for acceptance of responsibility, follow up with several letters that you can use for exhibits.

- D. If the government does not accept your offer, you may consider pleading guilty on the day of trial, or the day before trial so that the government is forced to prepare for trial.
1. Consider filing a jury waiver a few days before trial.
 2. Consider calling the judge's clerk on the Friday before a Tuesday trial to tell him/her that you will not need a jury.
 3. Keep in mind that you may lose the third point for acceptance of responsibility.
 4. In cases in which your client's advisory guidelines are 15 or less, you do not risk losing the 3rd point for acceptance.
 5. Know your judge - make sure he/she will not punish your client for pleading guilty on the day of trial.
 6. At sentencing, attach as exhibits the paper trial you made in which you tried to make a deal so the judge will see that you tried to negotiate a plea agreement from the beginning of the case.

III. Write your own plea agreement and send it to the AUSA early in the case.

- A. Include as much of the government's format as possible so that it more likely that they will accept it.
- B. Do not include the waivers.
- C. If you do include an appeal waiver, make it a limited appeal waiver and mutual.
- D. Make sure that your client benefits from the agreement - more than just the 3rd point for acceptance.
- E. Consider adding §3553(a) factors.

IV. Persuade the probation officer to follow your recommendation.

- A. In this post-Booker world, it is extremely important to get the probation officer to go along with your recommendation.
 - B. Consider using a mitigation specialist to assist in gathering information.
 - C. Obtain letters from client, family and friends and submit them to the probation officer early so that they can be incorporated in the Presentence Report.
 - D. Consider sending the USPO a letter that includes the reasons why your client should receive a lower sentence, citing §3553(a) factors.
 - E. Know your probation officer - if you have a probation officer that will use your information to become a second prosecutor, you may want to save your arguments for the judge.
- V. Review sample plea agreements.

PLEA AGREEMENTS

1. PLEA AGREEMENT FROM THE DISTRICT OF MARYLAND
SOUTHERN DIVISION
2. PLEA AGREEMENT FROM THE DISTRICT OF MARYLAND
SOUTHERN DIVISION
3. PLEA AGREEMENT FROM THE WESTERN DISTRICT OF NEW
YORK
4. PLEA AGREEMENT FROM THE WESTERN DISTRICT OF NEW
YORK
5. PLEA AGREEMENT FROM THE DISTRICT OF ARIZONA
6. PLEA AGREEMENT FROM THE DISTRICT OF ARIZONA
7. PLEA AGREEMENT FROM THE SOUTHERN DISTRICT OF
ALABAMA SOUTHERN DIVISION
8. PLEA AGREEMENT FROM THE SOUTHERN DISTRICT OF
ALABAMA SOUTHERN DIVISION
9. PLEA AGREEMENT FROM THE CENTRAL DISTRICT OF
CALIFORNIA
10. PLEA AGREEMENT FROM THE CENTRAL DISTRICT OF
CALIFORNIA
11. PLEA AGREEMENT FROM THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
12. PLEA AGREEMENT FROM THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PLEA AGREEMENT NO. 1
FROM THE DISTRICT OF MARYLAND
SOUTHERN DIVISION



U.S. Department of Justice

United States Attorney
District of Maryland
Southern Division

 Rod J. Rosenstein
United States Attorney

Jonathan C. Su
Assistant United States Attorney

400 United States Courthouse
6500 Cherrywood Lane
Greenbelt, MD 20770-1249

301-344-4433

FAX 301-344-4516
Jonathan.Su@usdoj.gov

July 25, 2007

Daniel Stiller, Esq.
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770

Re: United States of America v. [REDACTED]
Crim. No. PJM-07 [REDACTED]

Dear Mr. Stiller:

This letter confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by August 8, 2007, it will be deemed withdrawn. The terms of the agreement are as follows:

Offenses of Conviction

1. The Defendant agrees to enter conditional guilty pleas pursuant to Fed. R. Crim. P. 11(a)(2) to the indictment now pending against him, charging him with possession with intent to distribute 5 grams or more of cocaine base, in violation of Title 21, United States Code, Section 841, and possession of a firearm by a convicted felon, in violation of Title 18, United States Code, Section 922(g). The Defendant admits that he is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offenses

2. The elements of the offenses to which the Defendant has agreed to plead guilty and which the Government would prove if the case went to trial are:

Count One: (1) the Defendant knowingly possessed 5 grams or more of a mixture or substance containing a detectable amount of cocaine base; (2) the Defendant knew that he possessed

Daniel Stiller, Esq.
July 25, 2007
Page 2

a controlled substance; and (3) the Defendant intended to distribute the mixture or substance.

Count Two: (1) the Defendant previously had been convicted of a crime punishable by imprisonment for a term exceeding one year, and his civil rights, including the right to possess a firearm, had not been restored; (2) the Defendant knowingly possessed a firearm; and (3) the firearm affected interstate commerce.

Penalties

3. The maximum sentences provided by statute for the offenses to which the Defendant is pleading guilty are:

Count One: imprisonment for at least five years and for not more than 40 years, a term of supervised release of at least four years, and a fine not to exceed \$2,000,000;

Count Two: imprisonment for not more than ten years, a term of supervised release of not more than three years, and a fine not to exceed \$250,000.

In addition, the Defendant must pay \$200 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

Daniel Stiller, Esq.
July 25, 2007
Page 3

(a) If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

(b) If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. You and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and you would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

(c) If the Defendant went to trial, the Government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the Government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

(d) The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

(e) If the Defendant were found guilty after a trial, he would have the right to appeal the verdict to see if any errors were committed which would require a new trial or dismissal of the charges against him.

(f) By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

(g) If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

(h) By pleading guilty, the Defendant will also be giving up certain valuable civil rights.

Daniel Stiller, Esq.
July 25, 2007
Page 4

Advisory Sentencing Guidelines Apply

5. The Defendant understands that a sentencing guidelines range for this case (henceforth the "advisory guidelines range") will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991-998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto and to the following applicable sentencing guidelines factors which would be proved beyond a reasonable doubt:

(a) Count One:

(i) The base offense level is 26, pursuant to U.S.S.G. § 2D1.1(c)(7), because at least 5 grams but less than 20 grams of cocaine base were involved in the offense.

(ii) A 2-level upward adjustment applies, pursuant to U.S.S.G. § 2D1.1(b)(1), because the Defendant possessed a firearm, bringing the base offense level to 28.

(b) Count Two: Pursuant to U.S.S.G. § 2K2.1(a)(4)(A), the base offense level is 20, because the Defendant committed the instant offense subsequent to sustaining at least one felony conviction of either a crime of violence or a controlled substance offense.

(c) Counts One and Two are closely related offenses, pursuant to U.S.S.G. § 3D1.2.

(d) This Office does not oppose a 2-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office or the United States Probation Officer; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any

Daniel Stiller, Esq.
July 25, 2007
Page 5

criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. The adjusted offense level is 26.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that, with respect to the calculation of the advisory guideline range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments (set forth in either the United States Sentencing Guidelines or 18 U.S.C. § 3553) will be raised or are in dispute.

Obligations of the United States Attorney's Office

9. At the time of sentencing, this Office will recommend a sentence within the advisory sentencing guidelines range, but not less than the applicable mandatory minimum sentence.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct.

Forfeiture of Firearm

11. The Defendant understands and agrees that he is not permitted to own, possess, or use a firearm. He forfeits all right, title, and interest in a Ruger P95DC 9mm handgun, serial number 315-45744.

Public Benefits in Drug Cases

12. Under 21 U.S.C. §§ 862 and 862a, a person who has been convicted of a federal offense involving the distribution or possession of controlled substances may be denied certain federal and state benefits such as loans, grants, or food stamps.

Daniel Stiller, Esq.
July 25, 2007
Page 6

Filing of § 851 Enhancement Notice

13. In exchange for the Defendant's plea of guilty pursuant to this plea agreement, this Office agrees not to file a notice regarding any of the Defendant's prior felony drug convictions pursuant to 21 U.S.C. § 851. Nothing in this paragraph, however, shall be construed to prevent the Court from relying on any of the Defendant's prior convictions to calculate the Defendant's criminal history under the sentencing guidelines or in determining whether he is a career offender or an armed career criminal.

Waiver of Appeal

14. As provided by Fed. R. Crim. P. 11(a)(2), your client reserves the right to appeal the district court's order denying the Defendant's motion to suppress evidence. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the advisory guidelines range, as follows: the Defendant waives any right to appeal from any sentence within or below the advisory guidelines range resulting from an adjusted base offense level of 26 and this Office waives any right to appeal from any sentence within or above the advisory guidelines range resulting from an adjusted base offense level of 26. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Court Not a Party

15. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the advisory guidelines range, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The judge may consider any reliable evidence, including hearsay, in fashioning

Daniel Stiller, Esq.
July 25, 2007
Page 7

the sentence. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Obstruction or Other Violations of Law

16. The Defendant agrees that he will not commit any offense in violation of federal, state, or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement that would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state, or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Entire Agreement

17. This agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of the Defendant to the attention of other prosecuting offices, if requested by him. This agreement constitutes the complete plea agreement in this case. There are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties.

Daniel Stiller, Esq.
July 25, 2007
Page 8

If the Defendant fully accepts each and every term and condition of this letter, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By:



Jonathan C. Su
Assistant United States Attorney

I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I understand this plea agreement, and I voluntarily agree to it. I am completely satisfied with the representation of my attorney.

Date

~~DATE~~

I am ~~DATE~~ ~~DATE~~'s attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

Date

Daniel Stiller, Esquire

ATTACHMENT A:
STATEMENT OF FACTS -

The United States and Defendant [REDACTED] stipulate and agree that if this case proceeded to trial, the United States would prove the facts set forth below beyond a reasonable doubt. They further stipulate and agree that these are not all of the facts that the United States would prove if this case proceeded to trial.

On November 21, 2006, at approximately 8:30 p.m., officers of the Seat Pleasant, Maryland Police Department conducted a traffic stop of a car driven by Jermaine Mitchell due to a broken headlight. The defendant, [REDACTED], was a passenger in the car. After discovering that Mitchell's driver's license was suspended, the officers asked the other passengers if they had a valid driver's license to drive the car. [REDACTED] presented his driver's license. When [REDACTED]'s information was run through law enforcement databases, the officers discovered that he had a prior arrest for armed robbery. [REDACTED] was asked to exit the car and, while being patted down for officer safety, [REDACTED] attempted to flee. The officers regained control of [REDACTED] and placed him in handcuffs.

The officers then searched the area of the car where [REDACTED] was sitting at the time of the traffic stop. In this area, officers discovered a bookbag that had been between [REDACTED]'s legs at the time of the traffic stop. Inside the bookbag was a Ruger P95DC 9mm handgun (serial number 315-45744) loaded with fifteen rounds of ammunition concealed in a grey sock.

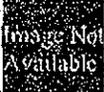
[REDACTED] was placed under arrest for possession of the handgun. Upon searching [REDACTED], incident to arrest, officers discovered approximately sixteen and one-half grams of cocaine base (packaged in four separate bags) and three grams of marijuana in his right front pants pocket. [REDACTED] knowingly possessed the cocaine base with intent to distribute it and knowingly possessed the firearm and ammunition, which were manufactured outside of Maryland and affected interstate commerce.

At the time [REDACTED] possessed the handgun, he had been convicted of a crime punishable by imprisonment for a term exceeding one year, and his civil rights had not been restored following his conviction. [REDACTED] was convicted on September 6, 1994, in the Circuit Court for Prince Georges County, Maryland, of possession of a controlled, dangerous substance with intent to distribute (Case No. CT940556A), a crime under Maryland law punishable by imprisonment for a term exceeding one year.

I have reviewed this statement of facts and agreed that it is correct.

Date _____
[REDACTED]

PLEA AGREEMENT No. 2
FROM THE DISTRICT OF MARYLAND
SOUTHERN DIVISION



U.S. Department of Justice

United States Attorney
District of Maryland
Northern Division

Rod J. Rosenstein
United States Attorney

36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

410-209-4800
TTY/TDD: 410-962-4462
410-209-4817
FAX 410-962-3174
Paul.Tiao@usdoj.gov

Paul M. Tiao
Assistant United States Attorney

December 18, 2006

Mr. Dan Stiller, Esq.
Federal Public Defender's Office
6411 Ivy Lane, Suit 710
Greenbelt, MD 20770

Re: Plea Agreement in United States v. [REDACTED]
Criminal No. WDQ-06-[REDACTED]

Dear Mr. Stiller:

This letter confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by December 28, 2006, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to plead guilty to the single count Indictment now pending against him, which charges him with possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g). The Defendant admits that he is, in fact, guilty of that offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which the Government would prove if the case went to trial are as follows:

a. Mr. [REDACTED] was convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year, as charged, and Mr. [REDACTED] civil rights have not been restored

following that conviction;

b. Mr. ██████ knowingly possessed the firearm, as charged; and

c. The possession charged was in or affecting interstate commerce.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: ten years, followed by a term of supervised release of three years, and a fine of \$250,000. In the event that the Defendant is determined to have three previous convictions by any court referred to in 18 U.S.C. 922(g)(1) for a violent felony or serious drug offense, or both, committed on separate occasions different from one another, the Defendant shall be fined under title 18 and imprisoned for a term not less than fifteen years, and notwithstanding any other provision of the law, the court shall not suspend the sentence of, or grant a probationary sentence to the Defendant with respect to the conviction under section 922(g). In addition, the Defendant must pay \$100 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664. If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this

Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. You and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and you would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the Government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the Government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict to see if any errors were committed which would require a new trial or dismissal of the charges against him.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Obligations of Defendant

5. The Defendant agrees to cooperate with this Office on the following terms and conditions:

a. The Defendant shall fully and truthfully respond to all questions put to him by federal law enforcement authorities and other designated law enforcement officers. The Defendant shall fully and truthfully disclose to the Government all information with respect to his activities and the activities of others concerning all matters as to which the Government may choose to inquire. The Defendant shall promptly turn over to the Government any documents or other tangible evidence in his possession or under his control that are in any way relevant to any such matters.

b. The Defendant shall cooperate completely with federal law enforcement authorities and any other law enforcement agency designated by this Office in any matter as to which his cooperation may be required. The Defendant shall comply with any and all reasonable instructions from such authorities with respect to the specific assistance that he shall provide.

c. In connection with criminal investigations by federal law enforcement authorities, the Defendant shall act in an undercover capacity to the best of his ability, and allow such authorities to monitor and tape record conversations with persons who are believed to be engaged in criminal conduct. The Defendant will fully comply with all reasonable instructions and directions of law enforcement authorities in this connection. Any such assistance the Defendant may provide to federal criminal investigators must be pursuant to the specific instructions and control of this Office and designated investigators.

d. The Defendant shall testify fully and truthfully before grand juries and at any trial and other court proceeding with respect to any matters about which this Office may require his testimony.

e. The Defendant shall bring to this Office's

attention all crimes which he has committed, and all proceedings, investigations, or prosecutions in which he knows he has been or is a subject, target, party, or witness.

f. The Defendant shall not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case, and shall not violate any regulation of the institution in which he is detained.

g. The Defendant agrees to waive and relinquish any right or entitlement to all transportation, housing, per diem and witness fees relative to all grand jury and Court appearances which may be required as part of his cooperation.

h. To the extent that counsel is not present during the course of the Defendant's cooperation, the Defendant knowingly and expressly waives his right to have counsel present during communications with federal, state, and local law enforcement authorities.

Advisory Sentencing Guidelines Apply

6. The Defendant understands that a sentencing guidelines range for this case (henceforth the "advisory guidelines range") will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range.

Factual and Advisory Guidelines Stipulation

7. This Office and the Defendant understand, agree and stipulate to the following Statement of Facts and to the following applicable sentencing guidelines factors which would be proved beyond a reasonable doubt:

a. Statement of Facts

On February 1, 2006, police officers effected a traffic stop of a car driven by ██████████, in the 2700 block of McElderry Street, in Baltimore. Mr. ██████████ exited his car and was searched by officers. They recovered a loaded handgun in his waistband.

The handgun was an F.I.E. Titanium Tiger .38 Special revolver, serial number 801322. It was manufactured in

Florida and had traveled in interstate commerce prior to February 1, 2006. Prior to February 1, 2006, Mr. [REDACTED] had sustained a felony conviction in Maryland for a crime punishable by imprisonment for a term exceeding one year. The state of Maryland has not restored Mr. [REDACTED] civil rights following that conviction.

b. The parties agree and stipulate that based on facts readily provable by the government, the offense of felon in possession of a firearm results in a base offense level of 24, pursuant to Section 2K2.1(a)(2) of the November 1, 2005 Sentencing Guidelines. This base offense level applies in this case because the Defendant committed the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense. However, the Government believes that the Defendant is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(a) as an armed career criminal due to a prior conviction in 2003 for possession with intent to distribute CDS, a prior conviction in 1994 for possession with intent to distribute CDS, and a prior conviction in 1991 for robbery. If correct, the felon in possession offense would result in a base offense level of 33 pursuant to U.S.S.G. Section 4B1.4(b)(3)(B).

c. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

8. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

9. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range and application of the 18 U.S.C. § 3553(e) factors, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines or in 18 U.S.C. § 3553(e) will be raised or are in dispute.

Immunity

10. In order to permit the Defendant to make disclosures to the Government under this agreement, any information and documents that he fully and truthfully discloses to the Government during the course of his cooperation pursuant to this agreement will not be used against him, directly or indirectly, by this Office in any federal criminal case, except as set forth below.

Obligations of the United States Attorney's Office

11. If the Defendant fully complies with all of the terms of this agreement, then in connection with the Defendant's sentencing, this Office will inform the Probation Office and the Court of (i) the nature and extent of the Defendant's cooperation with this Office; and (ii) all other information with respect to the Defendant's background, character, and conduct which this Office deems relevant to sentencing, including the conduct that is the subject of any counts of the indictment that this Office has agreed to dismiss at sentencing.

12. If this Office determines that the Defendant has provided substantial assistance in an investigation or prosecution of others, and if he has fully complied with all of his obligations under this agreement, this Office will make a motion, pursuant to U.S.S.G. § 5K1.1, requesting the Court to sentence the Defendant in light of the advisory factors set forth in § 5K1.1(a)(1)-(5) and requesting a downward departure of up to four levels. The Court is authorized to grant such a downward departure pursuant to 18 U.S.C. § 3553(e). This Office shall have sole discretion in determining whether the Defendant has provided such substantial assistance and, therefore, whether any motion pursuant to § 5K1.1 should be made. This Office's determination of whether the Defendant has provided substantial assistance will not depend in any way on the outcome of any trial or other proceeding at which the Defendant testifies. If this Office makes such a motion, the Defendant is not bound by the departure level recommended by this Office. It is understood that should this Office determine that the Defendant has not provided substantial assistance in an investigation or prosecution, such a determination will release this Office from any obligation to make

a motion pursuant to § 5K1.1, but will not entitle the Defendant to withdraw his guilty plea once it has been entered. It is understood that, even if such a motion is made, the sentence to be imposed on the Defendant remains within the sole discretion of the Court.

13. At the time of sentencing, this Office will recommend a sentence within the applicable guideline range. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

14. This agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of the Defendant to the attention of other prosecuting offices, if requested by him.

Waiver of Appeal

15. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the advisory guidelines range, as follows: the Defendant waives any right to appeal from any sentence within or below the advisory guidelines range resulting from an adjusted base offense level of 30, and this Office waives any right to appeal from any sentence within or above the advisory guidelines range resulting from an adjusted base offense level of 21. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Court Not a Party

16. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing.

The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Remedies for Breach

17. It is understood that if the Defendant commits any further crimes, or if it is determined that the Defendant has knowingly withheld information; given false, incomplete, or misleading testimony or information; falsely implicated an innocent person in the commission of a crime, exaggerated the involvement of any person in the commission of a crime in order to appear cooperative, or falsely minimized the involvement of any person or himself in the commission of a crime; engaged in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1; or failed to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report; or if the Defendant otherwise fails in any way to fulfill completely each and every one of his obligations under this agreement, then this Office will be released from its obligations under this agreement and may recommend to the Court any sentence that this Office considers appropriate, up to and including the maximum possible sentence. In addition, the Defendant shall be subject to prosecution by this Office for any federal criminal violation of which this Office has knowledge, including but not limited to perjury, false declaration, false statement and/or obstruction of justice, and the offenses charged in the other counts of the Indictment that would otherwise have been dismissed at sentencing.

a. In any such prosecution, this Office may use as

evidence in any criminal proceeding all statements made by the Defendant to this Office or other designated law enforcement agents, any testimony given by the Defendant before a grand jury or other tribunal, and any documents or other tangible evidence provided by the Defendant, whether prior to or subsequent to the signing of this agreement, and any leads therefrom. The Defendant shall assert no claim that such statements or any leads therefrom should be suppressed.

b. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against the Defendant, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecution. It is the intent of this agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this agreement is signed.

18. Whether or not the Defendant has violated the terms of this agreement shall be determined by the Court in an appropriate proceeding at which his disclosures and documents shall be admissible and at which this Office shall be required to establish his breach by a preponderance of the evidence. The Defendant understands and agrees that he shall not be relieved of his obligations under this agreement or permitted to withdraw his guilty plea solely because this Office is relieved of any or all of its obligations under this agreement.

No Protection from Perjury Prosecution

19. Nothing in this agreement shall be construed to protect the Defendant in any way from prosecution for perjury, false declaration, or false statement, in violation of 18 U.S.C. §§ 1621, 1623, or 1001; obstruction of justice, in violation of 18 U.S.C. §§ 1503, 1505, 1510, or 1512; any crime of violence, or any other offense committed by him after the date of this agreement. The information and documents that he discloses to the Government pursuant to this agreement may be used against him in any such prosecution.

Sentencing May Be Deferred

20. The Defendant waives and agrees to waive any rights under the Speedy Trial Act, and he understands that his sentencing may be delayed until his cooperation has been completed so that at sentencing the Court will have the benefit of all relevant information. The Defendant hereby consents to such postponements

of his sentence as may be requested by this Office.

Entire Agreement

21. This agreement supersedes any prior understandings, promises, or conditions between this Office and the Defendant and constitutes the complete plea agreement in this case. There are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this letter, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By:

Paul M. Tiao
Assistant United States Attorney

I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I understand this plea agreement, and I voluntarily agree to it. I am completely satisfied with the representation of my attorney.

Date

I am _____' attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

Date

Daniel Stiller, Esq.

PLEA AGREEMENT No. 3
FROM THE WESTERN DISTRICT OF NEW YORK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

[REDACTED] :

Defendant. :

FILED
SEP 08 2006
CLERK, US DISTRICT COURT, WDNY

Plea Agreement and Rule 11 Acknowledgments

In preparation for the Plea Agreement, hereinafter set out, the defendant expressly states that she has discussed with her attorney and understands the following:

- (A) that the government has the right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;
- (B) that the defendant has the right to plead not guilty, or having already so pleaded, to persist in that plea;
- (C) that the defendant has the right to a jury trial;
- (D) that the defendant has the right to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding;
- (E) that the defendant has 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;
- (F) that by entering a plea of guilty the defendant is waiving these trial rights if the court accepts a plea of guilty;

The defendant further states that she has discussed with her attorney and understands:

- (G) the nature of each charge to which the defendant is pleading, including the elements and factual basis for each crime;
- (H) the maximum possible penalty (as set out in Paragraph 1 of the Plea Agreement);
- (I) the court's authority to order restitution (if applicable);

- (J) the court's obligation to impose a special assessment (as set out in Paragraph 1 of the Plea Agreement);
- (K) the court's obligation to consider the Sentencing Guidelines, and the court's discretion to depart from those guidelines; and
- (L) the Plea Agreement's provision waiving the defendant's right to appeal or to collaterally attack the sentence.

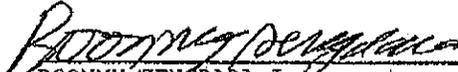
[REDACTED]
Defendant
Dated: September 8, 2006

[REDACTED]
Assistant Federal
Public Defender
Attorney for the Defendant
Dated: September 8, 2006

Interpreter

BOONMY SENG DARA, hereby affirms under penalty of perjury that I am an Interpreter of the Vietnamese language and that I have carefully and fully translated the above "Plea of Guilty - Rule 11 Acknowledgments" to the defendant; further that the defendant has indicated to me that the defendant understands the terms of this acknowledgment and that by signing this acknowledgment, the defendant agrees to all of its terms; the defendant has further specifically acknowledged to me that the defendant is signing the acknowledgment voluntarily and after full consultation with the defendant's attorney, [REDACTED] Esq.

DATED:


BOONMY SENG DARA Interpreter

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

[REDACTED]
Defendant.

PLEA AGREEMENT

The defendant, [REDACTED] and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to plead guilty to count Two of the indictment charging a violation of Title 21, United States Code, Section 846 (conspiracy to possess with intent to distribute and to distribute marijuana), which carries a maximum possible sentence of a term of imprisonment of 5 years, a fine of \$250,000 or both, a mandatory \$100 special assessment and a term of supervised release of at least 2 years and up to life. The defendant understands that

the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

3. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE CRIME

4. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this

case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime: that an agreement existed between two or more persons to commit a controlled substance felony offense, that the defendant knew of the existence of the agreement, and that the defendant intended to participate in the unlawful agreement.

FACTUAL BASIS

5. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

- a) That on or about April 7, 2005, at the Peace Bridge Port of Entry in Buffalo, New York, the defendant entered the United States, along with [REDACTED], in a rented mini-van, bearing Ontario registration [REDACTED].
- b) The defendant, and the vehicle she was driving, were referred over for secondary inspection. During the secondary inspection, agents found, concealed in the door panels, approximately 109 vacuum-sealed plastic bags of marijuana.
- c) The defendant admitted to agents that she was aware of the marijuana in the car and that she agreed with [REDACTED] to deliver the marijuana to New Jersey.

- d) At least 20, but less than 40, kilograms of marijuana is the amount involved in the defendant's relevant conduct encompassed in the Information which could be readily proven by the government against the defendant.

BASE OFFENSE LEVEL

6. The government and the defendant agree that Guidelines §§ 2D1.1(a)(3) and 2D1.1(c)(11) apply to the offense of conviction and provides for a base offense level of 18.

SPECIFIC OFFENSE CHARACTERISTICS
USSG CHAPTER 2 ADJUSTMENTS

7. The government and defendant agree that the following specific offense characteristic does apply:

- (a) the two level decrease pursuant to Guidelines § 2D1.1(b)(7) (safety valve).

ADJUSTED OFFENSE LEVEL

8. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 16.

ACCEPTANCE OF RESPONSIBILITY

9. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility) and further agrees to move the Court to apply the additional one (1) level downward adjustment of Guidelines § 3E1.1(b), which would result in a total offense level of 13.

CRIMINAL HISTORY CATEGORY

10. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

11. It is the understanding of the government and the defendant that, with a total offense level of 13 and criminal

history category of I, the defendant's sentencing range would be a term of imprisonment of 12 to 18 months, a fine of \$3,000 to \$30,000 and a period of supervised release of 2 to 3 years. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in paragraph 1 of this agreement.

12. The government and the defendant reserve the right to recommend a sentence outside the Sentencing Guidelines range set forth above. This paragraph reserves the right to the government and the defendant to bring to the attention of the Court all information deemed relevant to a determination of the proper sentence in this action.

13. The defendant understands that the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

III. STATUTE OF LIMITATIONS

14. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed, pursuant to this agreement, shall be automatically reinstated upon motion of the government and the defendant further agrees not to assert the statute of limitations as a defense to any criminal offense involving or related to the unlawful possession, manufacture or distribution of controlled substances which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

IV. ALIEN STATUS

15. The defendant understands that, as the defendant is not a citizen of the United States, a conviction in this action may affect the defendant's right to enter and/or reside in the United States.

V. GOVERNMENT RIGHTS AND RESERVATIONS

16. The defendant understands that the government has reserved the right to:

- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;
- b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;
- c. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor.
- d. oppose any application for a downward departure and/or sentence outside the Guidelines range made by the defendant.

17. At sentencing, the government will move to dismiss the open counts of the indictment.

18. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

VI. APPEAL RIGHTS

19. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2) and collaterally attack any sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, paragraph 11 above, notwithstanding the manner in which the Court determines the sentence.

20. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence, in the event that in the future

the defendant becomes aware of previously unknown facts or a change in the law, which the defendant believes would justify a decrease in the defendant's sentence.

21. The government waives its right to appeal any sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, paragraph 11 above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

VII. TOTAL AGREEMENT AND AFFIRMATIONS

22. This plea agreement represents the total agreement between the defendant, [REDACTED], and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior

agreements, written or oral, entered into between the government and the defendant.

TERRANCE P. FLYNN
United States Attorney

BY: [REDACTED]

Assistant U.S. Attorney

Dated: September 8th, 2006

I have read this agreement, which consists of 12 pages. I have had a full opportunity to discuss this agreement with my attorney, [REDACTED] AFPD. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

[REDACTED]
Defendant

[REDACTED]
Assistant Federal
Public Defender
Attorney for the Defendant

Dated: September 8, 2006

Dated: September 8, 2006

Boonmy Sengdara, hereby affirms under penalty of perjury that I am an Interpreter and that I have carefully and fully translated the entire plea agreement (set forth above) to the defendant, [REDACTED] further that the defendant has indicated to me that the defendant understands the terms of this plea agreement and that by signing this agreement, the defendant agrees to all of its terms and conditions; the defendant has further specifically acknowledged to me that the defendant is signing the agreement voluntarily and after full consultation with the defendant's attorney, [REDACTED], AEPD.

DATED: September 8, 2006

Boonmy Sengdara
Interpreter

PLEA AGREEMENT No. 4
FROM THE WESTERN DISTRICT OF NEW YORK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
 :
 -v- :
 :
 :
 Defendant. :
 _____ :

FILED
8
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

06-CR-

PLEA AGREEMENT

The defendant, [REDACTED], and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a Plea Agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a one-count Information charging a violation of Title 18, United States Code, Section 1347 (Health Care Fraud), which carries a maximum possible sentence of a term of imprisonment of 10 years, a fine of \$250,000, or both, a mandatory \$100 special assessment, and a term of supervised release of up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that the Court must require restitution in the amount of \$74,305 to be paid to Prudential Insurance Company (\$12,231), Budget Rent-A-Car (\$28,242), and Travelers Insurance Company (\$33,832) as part of the sentence, pursuant to Sentencing Guidelines Section 5E1.1 and Title 18, United States Code, Section 3663A.

3. The defendant understands that, if it is determined that the defendant has violated any of the terms and conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant's serving a sentence of imprisonment longer than the statutory maximum set forth in paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

4. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE CRIME

5. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that, if this case were to proceed to trial, the government would be required to prove beyond a reasonable doubt [18 U.S.C. 1347]:

- (a) The defendant participated in or devised a scheme to defraud;
- (b) The object of the scheme was to obtain money;
- © The victim of the scheme was a health care benefit program; and
- (d) the defendant acted knowingly.

FACTUAL BASIS

6. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

a. In and from July 2001 through June 2004, the defendant participated in a criminal scheme with, among others, [REDACTED] and [REDACTED], in which automobile collisions were staged in order to fraudulently obtain money from insurance companies. It was a part of the scheme that participants in the staged collisions falsely claimed that the collisions were accidental and that they were injured as a result of the collisions, when, in fact, the collisions were pre-arranged and the participants were not injured as a result of the collisions.

b. Thereafter, the participants, who falsely claimed to have been injured in the staged collisions, received treatment at medical clinics, including a clinic in Brooklyn and Williamsville, New York. The treatment provided to the participants, who claimed to be injured, was, in truth, either not medically necessary or not made necessary on account of the staged collisions. Personnel at the facilities generated medical reports, which fabricated or exaggerated the extent of the persons' injuries and need for treatment.

c. Under the New York State No-Fault Insurance system, the insurance company for the driver of a car involved in the accident is responsible for paying for all medically necessary treatment caused by an accidental collision. As such, the insurance company payments were part of health care benefit programs as defined in Title 18, United States Code, Section 24(b).

d. It was also part of the criminal scheme that participants, who falsely claimed to be injured in the staged collisions, were referred to lawyers, who filed bogus personal injury claims based on the staged collisions.

July 10, 2001 Staged Collision

e. On July 10, 2001, pursuant to a prearranged plan with [REDACTED] and [REDACTED], the defendant, [REDACTED], rented a vehicle to be used in a staged collision.

f. It was part of the scheme that on August 11, 2001, on Shirley Avenue, Buffalo, New York, [REDACTED] intentionally crashed the rental vehicle into a vehicle owned by [REDACTED]. At the time of the collision, there were no passengers in the rental vehicle and there was no occupant in [REDACTED] vehicle.

g. It was part of the scheme that when the police arrived at the scene of the collision, the defendant falsely claimed to have been driving the rental vehicle at the time of the collision and falsely claimed that the collision was an accident.

h. It was part of the scheme that [REDACTED] falsely reported to the police that he was in his car at the time of the collision and that three other individuals present at the scene ([REDACTED])

[REDACTED], and [REDACTED]) had been passengers in his car at the time of the collision.

i. It was further part of the scheme that fraudulent no-fault insurance claims on behalf of [REDACTED], [REDACTED], [REDACTED], [REDACTED] were filed with Prudential Insurance Company in which they falsely stated that they were injured in the July 10, 2001, collision when, in fact, they were not in [REDACTED] car at the time of the collision.

j. [REDACTED], [REDACTED], [REDACTED], and [REDACTED] went to, among other providers, [REDACTED] Center ([REDACTED]), a medical clinic operated by [REDACTED] and located in Williamsville, New York. They received treatments at [REDACTED] that were not medically necessary or not medically necessary on account of the staged collision.

k. [REDACTED] and other medical providers then submitted claims for the cost of treatment to Prudential Insurance Company. The claims falsely stated that the treatments were medically necessary as a result of injuries "suffered" by [REDACTED], [REDACTED], [REDACTED] and Sloan in the July 10, 2001, "accident." Prudential paid [REDACTED] and other medical providers a total of \$12,232 for the medical treatments that, if actually rendered, were not made necessary on account of the collision.

l. It was further part of the scheme that personnel at [REDACTED] referred [REDACTED], [REDACTED], and [REDACTED] to an attorney, who filed personal injury claims on their behalf, based on their false claim that the July 10, 2001, staged collision was an accidental collision and that they had been injured as a result of an accident.

m. It was a result of the scheme that in June 2004, Budget Rent-A-Car issued a check for \$6,000 payable to [REDACTED] and [REDACTED], [REDACTED] based on [REDACTED] false claim of being injured in the staged collision. Previously, on August 6, 2001, Budget Rent-A-Car issued a check to [REDACTED] in the amount of \$9,742.06 as payment for damages to [REDACTED] car, based on [REDACTED] false claim that the July 10, 2001, staged collision was accidental.

n. For purposes of relevant conduct, Budget Rent-A-Car paid out an additional \$7,500 to [REDACTED] and \$5,000

to Sloan as settlements for their personal injury claims, also filed by [REDACTED].

o. Based on the above, Prudential and Budget Rent-A-Car suffered losses totaling \$40,473 as a result of the July 10, 2001 staged collision.

p. For purposes of relevant conduct, Prudential suffered losses from the staged collision totaling approximately \$50,663 for payments to [REDACTED] for treatment rendered to a number of the persons participating in the staged collision that was not medically necessary, for the settlement of claims for non-existent personal injuries, and for damages caused to the vehicles involved in the staged collision.

August 31, 2001, Staged Collision

q. For purposes of relevant conduct and restitution, the defendant admitted he participated in another staged collision, which took place in Amherst, New York, on August 31, 2001. As a result of fraudulent no-fault insurance claims filed with Travelers Insurance Company on behalf of the participants in that staged collision, including the defendant, Travelers paid approximately \$19,471 to medical providers for treatment rendered to them that was not medically necessary or not medically necessary on account of the staged collision. In addition, Travelers paid out a total of \$14,361 in settlement of personal injury and vehicular damage claims as a result of the August 31, 2001 staged collision.

Summary of Losses

q. Based on the foregoing, the defendant's criminal conduct resulted in losses to victims totaling \$74,305 as follows:

Prudential Insurance Company - \$12,231
Budget Rent-A-Car - \$28,242
Travelers Insurance Company - \$33,832.

BASE OFFENSE LEVEL

7. The government and the defendant agree that Guidelines Section 2B1.1(a)(2) applies to the offense of conviction and has a base offense level of 6.

SPECIFIC OFFENSE CHARACTERISTICS
USSG CHAPTER 2 ADJUSTMENTS

8. The government and the defendant agree that the following specific offense characteristic does apply:

the eight-level increase pursuant to Guidelines § 2B1.1(b)(1)(E), in that the loss to the victims was between \$70,000 and \$120,000.

ADJUSTED OFFENSE LEVEL

9. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 14.

ACCEPTANCE OF RESPONSIBILITY

10. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward

adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility) which would result in a total offense level of 12.

CRIMINAL HISTORY CATEGORY

11. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that, if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action, the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

12. It is the understanding of the government and the defendant that, with a total offense level of 12 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 10 to 16 months, a fine of \$3,000 to \$30,000, and a period of supervised release of 2 to 3 years. Notwithstanding this, the defendant understands that at sentencing

the defendant is subject to the maximum penalties set forth in paragraph 1 of this agreement.

13. Except as permitted in paragraph 27 of this agreement, the government and the defendant agree to recommend that the defendant be sentenced within the Sentencing Guidelines range set forth above. A breach of this paragraph by one party will relieve the other party of any agreements made in this Plea Agreement with respect to sentencing motions and recommendations.

14. The defendant understands that the Probation Office will make an independent determination of the defendant's total offense level and criminal history category and that the Court will ultimately determine the appropriate total offense level and criminal history category. The defendant will not be entitled to withdraw the plea of guilty because of the Court's failure to adopt any Sentencing Guidelines calculations set forth in this agreement or because of an upward departure made by the Court.

III. STATUTE OF LIMITATIONS

15. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or

otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to health care fraud or mail fraud involving staged collisions as described in Section II, above, which is not time-barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

IV. GOVERNMENT RIGHTS AND RESERVATIONS

16. At sentencing, the government agrees to not oppose a request by the defendant that the Court impose a sentence at the lowest point within the Guidelines range determined by the Court. The government reserves the right to take a position as to the amount and method of payment for restitution and/or fine.

17. The defendant understands that the government has reserved the right to:

a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense

charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government; and

c. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor.

18. The government agrees that the defendant will not be prosecuted by the Office of the United States Attorney for the Western District of New York for any other federal criminal offenses, committed in the Western District of New York in any way involving or related to health care fraud or mail fraud involving staged collisions, as described in Section II, above, committed up to the date of this agreement and about which the defendant has informed the government prior to signing this agreement.

19. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid fine, restitution or special assessment.

**Waiver of Right to Post Conviction
DNA Testing of Physical Evidence**

20. The defendant understands that, pursuant to Title 18, United States Code, Section 3600, the defendant may have the right to request DNA testing of evidence in the possession of the government. As a condition of this agreement, the defendant voluntarily waives, for all purposes, any right to request DNA testing of any such evidence.

V. APPEAL RIGHTS

21. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2), and collaterally attack any sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement. The defendant further agrees not to appeal a restitution order which does not exceed the amount set forth in Section I of this agreement.

22. The government waives its right to appeal any sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence. Further, the government otherwise reserves all of its rights of appeal as provided for in the Sentencing Reform Act of 1984.

VI. COOPERATION

23. The defendant will cooperate with the government by providing complete and truthful information regarding the defendant's knowledge of any and all criminal activity, whether undertaken by the defendant or others, in any way involving or related to health care fraud and mail fraud involving staged collisions. The defendant's cooperation shall also include submitting to interviews by government attorneys and agents, as well as testifying truthfully and completely before grand juries and at such pretrial and trial proceedings as the government shall deem necessary.

24. The defendant's cooperation shall also be provided to any local, state or federal authorities designated by the government and who have agreed to abide by the terms of the "Cooperation" section of this agreement. The defendant's obligation to testify truthfully and completely shall extend to proceedings in federal, state and local courts in jurisdictions, which have agreed to abide by this agreement.

25. In exchange for the defendant's plea of guilty and cooperation as set forth in this agreement, the defendant will not be prosecuted by the Office of the United States Attorney for the Western District of New York for any other federal criminal offenses, committed in the Western District of New York in any way involving or related to health care fraud and mail fraud involving staged collisions, committed up to the date of this agreement and about which the defendant provides complete and truthful information.

26. Further, no testimony, statements or tangible objects provided by the defendant in compliance with this agreement (or any information directly or indirectly derived therefrom) will be used against the defendant in any criminal case, except a prosecution for perjury or making false statements.

27. Upon condition that the defendant has fully complied with all terms and conditions of this agreement, should the government determine that the defendant has provided substantial assistance in the investigation or prosecution of other persons, who have committed offenses, the government will move the Court at sentencing to depart downward from the Guidelines by two levels, as provided for in Guidelines § 5K1.1, which, if granted by the Court, would result in a total offense level of 10 and a sentencing range of 6 to 12 months imprisonment. Further, the government agrees not to oppose a request that the defendant be sentenced to home confinement as a substitute for incarceration. The defendant understands that the decision to make such a motion is within the sole discretion of the government and that the decision to grant such a motion, the extent of any downward departure, and the form of incarceration, are matters solely within the discretion of the Court.

28. This agreement does not preclude the prosecution of the defendant for perjury or making false statements in the event the defendant testifies falsely or provides false information to the government. This agreement is not contingent upon the filing of charges against, the return of an Indictment against, or the successful prosecution of, any person or entity.

29. It is a condition of this agreement that, up through the date of the defendant's sentencing, the defendant shall commit no further crimes. It is also a condition of this agreement that the defendant must, at all times, give complete, truthful and accurate information and testimony and not withhold information from the government or refuse to testify truthfully and completely. Should the defendant be sentenced prior to the completion of the defendant's cooperation with the government, the defendant's obligation to comply with the cooperation provisions of this agreement extends past sentencing.

30. In the event the government believes the defendant has violated any of the conditions in the "Cooperation" section of this agreement, then the government may, before or after sentencing, petition the Court to declare that the defendant has breached this agreement and for an order relieving the government of its obligations under this agreement.

31. Whether or not the defendant has violated any of the conditions of this agreement shall be determined by the Court in an appropriate proceeding, at which any disclosures and documents provided by the defendant shall be admissible and at which the government shall be required to establish any violation by a preponderance of the evidence. In order to establish any violation

by the defendant, the government is entitled to rely on statements and information given by the defendant pursuant to this agreement.

32. If this agreement is declared breached:

a. the defendant shall thereafter be subject to prosecution for any federal criminal violations, of which the government has knowledge including, but not limited to, perjury and obstruction of justice;

b. the government may withdraw any motion, filed pursuant to Sentencing Guidelines § 5K1.1, Title 18, United States Code, Section 3553(e) and/or Rule 35(b);

c. the defendant has no right to withdraw the plea of guilty;

d. the defendant shall waive all rights under Fed. R. Crim. P. 11(f), Fed. R. Evid. 410 and Sentencing Guidelines § 1B1.8 and the defendant expressly agrees that all statements, testimony and tangible objects, provided by the defendant (with the exception of statements made in open court during guilty plea proceedings), whether prior or subsequent to this agreement, can be used directly and indirectly in any and all criminal proceedings against the defendant; and

e. the defendant agrees that any charges, that were dismissed pursuant to this agreement, shall be automatically reinstated upon motion of the government. Furthermore, the defendant agrees not to assert the statute of limitations as a defense to any criminal offense involving or related to health care fraud and mail fraud involving staged collisions which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date, upon which the Court's order declaring the agreement breached by the defendant becomes final.

33. At the time of sentencing, the government will make the nature and extent of the defendant's compliance with this agreement known to the Court. The government and the defendant will request that sentencing be adjourned until full satisfaction by the defendant of the terms of this agreement. In the event the defendant is sentenced prior to the completion of the defendant's cooperation with the government, the government reserves the right to modify any recommendation to be made by the government at sentencing, pursuant to Guidelines § 5K1.1 and/or Title 18, United States Code, Section 3553(e).

34. The defendant's attorney is expressly permitted to be present at any time the defendant is questioned or interviewed by government agents regarding the matters set forth in this agreement.

VII. TOTAL AGREEMENT AND AFFIRMATIONS

35. This Plea Agreement represents the total agreement between the defendant, [REDACTED] and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements,

written or oral, entered into between the government and the defendant.

TERRANCE P. FLYNN
United States Attorney
Western District of New York

BY: [REDACTED]

Assistant U.S. Attorney

Dated: October 18th, 2006

I have read this agreement, which consists of 19 pages. I have had a full opportunity to discuss this agreement with my attorney, [REDACTED] Esq. I agree that it represents the total agreement reached between the government and myself. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

[REDACTED]
Defendant

Dated: October 18, 2006

[REDACTED] Esq.
Attorney for the Defendant

Dated: October 18, 2006

PLEA AGREEMENT No. 5
FROM THE DISTRICT OF ARIZONA

1 PAUL K. CHARLTON
United States Attorney
2 District of Arizona
3 FIELD(AUSA)
Assistant U.S. Attorney
4 Two Renaissance Square
40 North Central Avenue, Suite 1200
5 Phoenix, Arizona 85004-4408
Arizona State Bar No. FIELD(AUSA Bar No.)
6 Telephone (602) 514-7500
FIELD(AUSA e-mail address)
7

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10
11 United States of America,
12 Plaintiff,

13 v.

14 FIELD(Def First Name) FIELD(Def
Surname),
15 FIELD(Alias 1)
FIELD(Alias 2)
16 FIELD(Alias 3)
FIELD(Alias 4)

17 Defendant.
18

CR-FIELD(CR No.)

PLEA AGREEMENT

19 The United States of America and the defendant agree to the following disposition of this
20 matter:

21 PLEA

22 The defendant agrees to plead guilty to an Indictment charging a violation of 8 U.S.C.
23 Section 1326(a), enhanced by Title 8, United States Code, Section 1326(b)(2), Illegal Reentry
24 After Deportation, a class C felony.

25 STIPULATIONS, TERMS AND AGREEMENTS

26 Defendant understands that the guilty plea is conditioned upon the following terms,
27 stipulations, and requirements:
28

1 Specific Offense Characteristics and Sentences

2 Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the government and the defendant
3 stipulate and agree that the following is an appropriate disposition of this case:

4 (A) **Level 24 Offenses.** Under the Sentencing Guidelines, as set forth in U.S.S.G.
5 § 2L1.2(a) and (b)(1)(A), Unlawful Reentry After Deportation by an alien with a prior
6 aggravated felony conviction for (i) a drug trafficking offense for which the sentence imposed
7 exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography
8 offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an
9 alien smuggling offense committed for profit, is classified as a crime with an offense level of
10 twenty-four (24), and carries a sentence between 51 and 125 months incarceration, which will
11 be precisely determined by the court, based upon the defendant's criminal record. If the
12 defendant has a conviction which falls under those enumerated in U.S.S.G. § 2L1.2(b)(1)(A),
13 the government and the defendant agree that the defendant shall receive a three-level downward
14 adjustment for acceptance of responsibility and an additional three-level downward departure
15 pursuant to U.S.S.G. § 5K3.1. This will result in a total offense level reduction under the plea
16 agreement of six (6), which will classify the defendant in offense level eighteen (18), which
17 carries a sentence of between 27 and 71 months, depending on defendant's criminal history.

18 (B) **Level 20 Offenses.** Under the Sentencing Guidelines, as set forth in U.S.S.G.
19 § 2L1.2(a) and (b)(1)(B), Unlawful Reentry After Deportation by an alien with a prior
20 aggravated felony conviction for a drug trafficking offense for which the sentence imposed was
21 13 months or less is classified as a crime with an offense level of twenty (20), and carries a
22 sentence between 33 and 87 months incarceration, which will be precisely determined by the
23 court, based upon the defendant's criminal record. If the defendant has a conviction which falls
24 under U.S.S.G. § 2L1.2(b)(1)(B), the government and the defendant agree that the defendant
25 shall receive a three (3) level downward adjustment for acceptance of responsibility and an
26 additional one (1) level downward departure pursuant to U.S.S.G. § 5K3.1. This will result in
27 a total offense level reduction under the plea agreement of four (4), which will classify the

28

1 defendant in offense level sixteen (16), which carries a sentence of between 21 and 57 months,
2 depending on defendant's criminal history.

3 **(C) Level 16 Offenses.** Under the Sentencing Guidelines, as set forth in U.S.S.G.
4 § 2L1.2(a) and (b)(1)(C), Unlawful Reentry After Deportation by an alien with a prior
5 aggravated felony conviction for any offense other than those enumerated in U.S.S.G. §§
6 2L1.2(b)(1)(A) or (B) is classified as a crime with an offense level of sixteen (16), and carries
7 a sentence between 21 and 57 months incarceration, which will be precisely determined by the
8 court, based upon the defendant's criminal record. If the defendant has a conviction which falls
9 under U.S.S.G. § 2L1.2(b)(1)(C), the government and the defendant agree that the defendant
10 shall receive a three (3) level downward adjustment for acceptance of responsibility and a
11 stipulated sentence at the bottom end of the sentencing range. This will result in a sentence at
12 the bottom of offense level thirteen (13), which carries a sentence of between 12 and 41 months,
13 depending on defendant's criminal history.

14 If the defendant has multiple convictions, which fall under more than one specific offense
15 classification level (i.e. U.S.S.G. § 2L1.2(b)(1)(A),(B), and/or (C)), the highest specific offense
16 classification level will be used in calculating the sentence which will be imposed upon the
17 defendant. The precise level of offense and number of months sentence imposed will be
18 determined by the court based upon the defendant's criminal record.

19 This agreement is conditioned on the defendant having less than 18 criminal history
20 points. If the defendant has 18 or more criminal history points, the government shall have the
21 right to withdraw from this agreement.

22 If it is discovered that the defendant is on supervised release, the government reserves the
23 right to withdraw from this agreement.

24 The defendant understands and agrees that this plea agreement contains all the terms,
25 conditions and stipulations regarding sentencing. If the defendant requests or if the court
26 authorizes (a) any downward departure; (b) any reduction of criminal history category which
27 differs from that set forth in the Presentence report; or (c) any other reduction of sentence not
28

1 specifically agreed to in writing by the parties, the government may withdraw from the plea
2 agreement.

3 If the court, after reviewing this plea agreement, concludes any provision is inappropriate,
4 it may reject the plea agreement, giving either party, in accordance with Rule 11(d)(2)(A), Fed.
5 R. Crim. P., an opportunity to withdraw from the guilty plea and this agreement.

6 If the court departs from the terms and conditions set forth in this plea agreement, either
7 party may withdraw.

8 Waiver of Defenses and Appeal Rights

9 The defendant waives any and all motions, defenses, probable cause determinations, and
10 objections which the defendant could assert to the information or indictment or to the Court's
11 entry of judgment against the defendant and imposition of sentence upon the defendant
12 providing the sentence is consistent with this agreement. The defendant further waives: (1) any
13 right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the
14 imposition of sentence upon defendant under Title 18, United States Code, Section 3742
15 (sentence appeals); and (3) any right to collaterally attack defendant's conviction and sentence
16 under Title 28, United States Code, Section 2255, or any other collateral attack. The defendant
17 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the
18 defendant might file challenging his conviction or sentence in this case.

19 Reinstitution of Prosecution

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

27 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court in
28 a later proceeding, the government will be free to prosecute the defendant for all charges as to

1 which it has knowledge, and any charges that have been dismissed because of this plea
2 agreement will be automatically reinstated. In such event, the defendant waives any objections,
3 motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment to the
4 Constitution as to the delay occasioned by the later proceedings. Defendant agrees that the
5 stipulated sentencing ranges set forth under "Agreements Regarding Sentence" will not be
6 offered if prosecution is re-instituted.

7 Disclosure of Information to U.S. Probation Office

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

12 Effect on Other Proceedings

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

15 WAIVER OF DEFENDANT'S RIGHTS

16 I have read each of the provisions of the entire plea agreement with the assistance of
17 counsel and understand its provisions. I have discussed the case and my constitutional and other
18 rights with my attorney. I understand that by entering my plea of guilty I will be giving up my
19 right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance
20 of witnesses; to present evidence in my defense; to remain silent and refuse to be a witness
21 against myself by asserting my privilege against self-incrimination; all with the assistance of
22 counsel, to be presumed innocent until proven guilty beyond a reasonable doubt, and to appeal.

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

25 I have been advised by my attorney of the nature of the charge to which I am entering my
26 guilty plea. I have further been advised by my attorney of the nature and range of the possible
27 sentence and that my ultimate sentence will be determined after consideration of the advisory
28

1 Sentencing Guidelines. I agree that any guideline range discussed with my attorney is not
2 binding on the court and is merely an estimate.

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

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

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

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

13 ELEMENTS OF THE OFFENSE

14 1. The defendant is an alien;

15 2. The defendant has been previously denied admission, excluded, deported, or
16 removed from the United States;

17 3. The defendant entered or was found in the United States on or about FIELD(Arrest
18 Date);

19 4. The defendant did not obtain the express consent of the Secretary of the Department
20 of Homeland Security to reapply for admission to the United States prior to returning to the
21 United States; and

22 5. The offense occurred within the District of Arizona.
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

FACTUAL BASIS AND SENTENCING FACTORS

I admit 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 through FIELD(Deport Loc) on FIELD(Deport Date). I was voluntarily present and found in the United States in or near FIELD(Found Near), Arizona on FIELD(Found Date). I did not obtain the express consent of the Secretary of the Department of Homeland Security to reapply for admission to the United States prior to returning to the United States.

Furthermore, for sentencing purposes, I admit I was convicted of FIELD(Conv of) , a felony, on FIELD(Conv Date) and I was represented by an attorney. I was sentenced to FIELD(sentence).

_____ Date FIELD(Def First Name) FIELD(Def Surname)
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. I have further discussed the concept of the advisory sentencing guidelines with the defendant. 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.

1 I translated or caused to be translated this agreement from English into Spanish to the
2 defendant on the _____ day of _____,

3
4 _____
5 Date FIELD(Def Atty 1st Name) FIELD(Def Atty Surname)
6 Attorney for Defendant

7 GOVERNMENT'S APPROVAL

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

10 PAUL K. CHARLTON
11 United States Attorney
12 District of Arizona

13 _____
14 Date FIELD(AUSA)
15 Assistant U.S. Attorney

16 COURT'S ACCEPTANCE

17 _____
18 Date United States District Judge

19
20
21
22
23
24
25
26
27
28

PLEA AGREEMENT No. 6
FROM THE DISTRICT OF ARIZONA

1 [REDACTED]

2 United States Attorney
District of Arizona

3
4 Special Assistant U.S. Attorney
Two Renaissance Square
40 North Central Avenue, Suite 1200
5 Phoenix, Arizona 85004-4408
6 Arizona State Bar No. [REDACTED]

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10
11 United States of America,
12 Plaintiff,
13 v.
14 [REDACTED]
15 Defendant.

No. CR-
MAGISTRATE NO. [REDACTED]
PLEA AGREEMENT
(Fast Track 5K3.1)
(Defendant Not on Supervised Release)

16 The United States of America and the defendant agree to the following disposition of this
17 matter:

18 PLEA

19 The defendant agrees to plead guilty to the Information charging the defendant with a
20 violation of Title 8, United States Code, Section 1326(a), enhanced by Title 8, United States
21 Code, Section 1326(b)(1), Reentry After Deportation, a class C felony.

22
23 STIPULATIONS, TERMS AND AGREEMENTS

24 Defendant understands that the guilty plea is conditioned upon the following terms,
25 stipulations, and requirements:
26
27
28

1 acceptance of responsibility and an additional four-level downward departure pursuant to
2 U.S.S.G. § 5K3.1. This will result in a total offense level reduction under the plea agreement
3 of 7, which will classify the defendant in offense level 17, which carries a sentence of between
4 24 and 63 months of incarceration, depending on the defendant's criminal history.

5 **(B) Level 12 Offenses.** Under the Sentencing Guidelines, as set forth in U.S.S.G. §
6 2L1.2(a) and (b)(1)(D) and (b)(1)(E), Unlawful Reentry After Deportation by an alien with a
7 prior felony conviction or three or more convictions for misdemeanors that are crimes of
8 violence or drug trafficking offenses, is classified as a crime with an offense level of 12, and
9 carries a sentence between 10 and 37 months of incarceration, which will be precisely
10 determined by the court, based upon the defendant's criminal record.

11 If the defendant has a conviction which falls under U.S.S.G. § 2L1.2(b)(1)(D) or (b)(1)(E)
12 and is not on supervised release, the government and the defendant agree that the defendant shall
13 receive a two-level downward adjustment for acceptance of responsibility and an additional two
14 month downward departure from the low end of the guideline range pursuant to U.S.S.G. §
15 5K3.1. This will result in a total offense level reduction under the plea agreement of level 10
16 less two months, which carries a stipulated sentence of between 4 and 22 months of
17 incarceration, depending on the defendant's criminal history category.

18 If it is discovered that the defendant is on supervised release, the government reserves the
19 right to withdraw from this agreement.

20 This agreement is conditioned on the defendant having less than 18 criminal history
21 points. If the defendant has 18 or more criminal history points the government shall have the
22 right to withdraw from this agreement.

23 This agreement is conditioned upon the defendant having no aggravated felony
24 convictions. If the government determines that the defendant has any aggravated felony
25 convictions, the government reserves the right to withdraw from this agreement.

26 Defendant understands and agrees that this plea agreement contains all the terms,
27 conditions and stipulations regarding sentencing. If defendant requests or if the court authorizes
28 (a) any downward departure; (b) any reduction of criminal history category which differs from

1 that set forth in the presentence report; or (c) any other reduction of sentence not specifically
2 agreed to in writing by the parties, the government may withdraw from the plea agreement.

3 If the court, after reviewing this plea agreement, concludes any provision is inappropriate,
4 it may reject the plea agreement, giving either party, in accordance with Rule 11(d)(2)(A), Fed.
5 R. Crim. P., an opportunity to withdraw from the guilty plea and this agreement.

6 If the court departs from the terms and conditions set forth in this plea agreement, either
7 party may withdraw.

8 Waiver of Defenses and Appeal Rights

9 Defendant waives any and all motions, defenses, probable cause determinations, and
10 objections which defendant could assert to the information or indictment, or to the court's entry
11 of judgment against defendant and imposition of sentence upon defendant, provided that the
12 sentence is consistent with this agreement. Defendant further waives: (1) any right to appeal the
13 court's entry of judgment against defendant; (2) any right to appeal the imposition of sentence
14 upon defendant under Title 18, United States Code, Section 3742 (sentence appeals); and (3) any
15 right to collaterally attack defendant's conviction and sentence under Title 28, United States
16 Code, Section 2255, or any other collateral attack. Defendant acknowledges that this waiver
17 shall result in the dismissal of any appeal or collateral attack defendant might file challenging
18 his conviction or sentence in this case.

19 Perjury and Other False Statements or Other Offenses

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

1 against myself by asserting my privilege against self-incrimination; to be presumed innocent
2 until proven guilty beyond a reasonable doubt; and to appeal, all with the assistance of counsel.

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

5 I have been advised by my attorney of the nature of the charge to which I am entering my
6 guilty plea. I have further been advised by my attorney of the nature and range of the possible
7 sentence and that my ultimate sentence will be determined after consideration of the advisory
8 Sentencing Guidelines. I agree that any guideline range discussed with my attorney is not
9 binding on the court and is merely an estimate.

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

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

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

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

20 ELEMENTS OF THE OFFENSE

- 21 1. The defendant is an alien;
- 22 2. The defendant has been previously denied admission, excluded, deported, or
23 removed from the United States;
- 24 3. The defendant entered or was found in the United States on or about May 1, 2007;
- 25 4. The defendant did not obtain the express consent of the Secretary of the
26 Department of Homeland Security to reapply for admission to the United States prior to
27 returning to the United States; and
- 28 5. The offense occurred within the District of Arizona.

1 FACTUAL BASIS AND SENTENCING FACTORS

2 I agree that the following facts accurately describe my conduct in connection with the
3 offense to which I am pleading guilty and that if this matter were to proceed to trial the
4 government could prove these facts beyond a reasonable doubt:

5 I am not a citizen or national of the United States. I was deported, excluded, or
6 removed from the United States through Nogales, Arizona on April 26, 2007. I
7 was voluntarily present and found in the United States in or near Eloy, Arizona on
8 May 1, 2007. I did not obtain the express consent of the Secretary of the
9 Department of Homeland Security to reapply for admission to the United States
10 prior to returning to the United States.

11 Furthermore, for sentencing purposes, I admit I was convicted of Possession of
12 Methamphetamine, a felony, on January 11, 2007, and I was represented by an
13 attorney. Entry of judgment was deferred and I was ordered to enroll in a drug
14 program.

15 _____
16 Date

17 
18 Defendant

19 DEFENSE ATTORNEY'S APPROVAL

20 I have discussed this case and the plea agreement with my client in detail and have
21 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the
22 constitutional and other rights of an accused, the factual basis for and the nature of the offense
23 to which the guilty plea will be entered, possible defenses, and the consequences of the guilty
24 plea, including the defendant's waiver of the right to appeal. I have further discussed the concept
25 of the advisory sentencing guidelines with the defendant. No assurances, promises, or
26 representations have been given to me or to the defendant by the government or by any of its
27 representatives which are not contained in this written agreement. I concur in the entry of the
28 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.

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

I translated or caused to be translated this agreement from English into Spanish to the defendant on the _____ day of _____.

Date
[Redacted]
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.

DANIEL G. KNAUSS
United States Attorney
District of Arizona

Date
[Redacted]
Special Assistant U.S. Attorney

COURT'S ACCEPTANCE

Date
United States District Judge

1 DANIEL G. KNAUSS
2 United States Attorney
3 District of Arizona

4 [REDACTED]
5 Special Assistant U.S. Attorney
6 Two Renaissance Square
7 40 North Central Avenue, Suite 1200
8 Phoenix, Arizona 85004-4408
9 Arizona State Bar No. [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF ARIZONA

14 United States of America,
15 Plaintiff,

16 v.

17 [REDACTED]
18 Defendant.

19 NO.

20 MAGISTRATE NO. [REDACTED]

21 INFORMATION

22 VIO: 8 U.S.C. § 1326(a) and enhanced
23 by (b)(1)

24 (Reentry after Deportation)

25 THE UNITED STATES ATTORNEY CHARGES:

26 That on or about May 1, 2007, [REDACTED], an alien, entered and
27 was found in the United States of America at or near Eloy, in the District of Arizona, after
28 having been previously denied admission, excluded, deported, and removed from the United
States at or near Nogales, Arizona on or about April 26, 2007, and not having obtained the
express consent of the Secretary of the Department of Homeland Security to reapply for
admission.

In violation of Title 8, United States Code, Sections 1326(a) and enhanced by (b)(1).

Dated this _____ day of _____, 2007.

29 [REDACTED]
30 United States Attorney
31 District of Arizona

32 [REDACTED]
33 Special Assistant U.S. Attorney

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

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
[REDACTED]
Defendant.

CR-
Magistrate No. [REDACTED]
WAIVER OF INDICTMENT

[REDACTED] the above-named defendant, who is accused of violating Title 8, United States Code. Sections 1326(a) and enhanced by (b)(1) (Reentry After Deportation) being advised of the nature of the charge and of his/her rights, waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

[REDACTED]
Defendant

[REDACTED]
Counsel for Defendant.

Date _____, 2007.

PLEA AGREEMENT No. 7
FROM THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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

UNITED STATES OF AMERICA

CRIMINAL NO. [REDACTED]

v.

[REDACTED]

*
*
*
*
*

PLEA AGREEMENT

The defendant, [REDACTED], represented by his counsel, and the United States of America have reached a Plea Agreement in this case, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the terms and conditions of which are as follows:

RIGHTS OF THE DEFENDANT

1. The defendant understands his/her rights as follows:
 - a. To be represented by an attorney;
 - b. To plead not guilty;
 - c. To have a trial by an impartial jury;
 - d. To confront and cross-examine witnesses and to call witnesses and produce other evidence in his/her defense;
 - e. To not be compelled to incriminate himself/herself.

WAIVER OF RIGHTS AND PLEA OF GUILTY

2. The defendant waives rights b through e, listed above, and pleads guilty to Count One of the Indictment. Count One charges a violation of Title 21 United States Code, Section 841(a)(1), possession with intent to distribute crack cocaine.
3. The defendant understands that the statements he/she makes under oath in the plea of

guilty must be completely truthful and that he/she can be prosecuted for making false statements or perjury for any false statements he/she makes intentionally in this plea of guilty.

4. The defendant expects the Court to rely upon his/her statements here and his/her response to any questions that he/she may be asked during the guilty plea hearing.

5. The defendant is not under the influence of alcohol, drugs, or narcotics. He/She is certain that he/she is in full possession of his/her senses and mentally competent to understand this Plea Agreement and the guilty plea hearing which will follow.

6. The defendant has had the benefit of legal counsel in negotiating this Plea Agreement. He/She has discussed the facts of the case with his/her attorney, and his/her attorney has explained to the defendant the essential legal elements of the criminal charge(s) which has/have been brought against him/her. The defendant's attorney has also explained to the defendant his/her understanding of the United States' evidence.

7. The defendant understands that the United States has the burden of proving each of the legal elements of the criminal charge(s) beyond a reasonable doubt. The defendant and his/her counsel have discussed possible defenses to the charge(s). The defendant believes that his/her attorney has represented him/her faithfully, skillfully, and diligently, and he/she is completely satisfied with the legal advice of his/her attorney.

8. A separate document, entitled Factual Resume, will be submitted to the Court as evidence at the guilty plea hearing. The Factual Resume is incorporated by reference into this Plea Agreement. The defendant and the United States agree that the Factual Resume is true and correct.

9. This plea of guilty is freely and voluntarily made and is not the result of force,

threats, promises, or representations apart from those set forth in this Plea Agreement. There have been no promises from anyone as to the particular sentence that the Court may impose. The defendant avers that he/she is pleading guilty because he/she knows that he/she is guilty.

PENALTY

10. The maximum penalty the Court could impose as to Count One of the Indictment is:
 - a. Minimum Mandatory 5-40 years imprisonment;
 - b. A fine not to exceed \$2,000,000.00 dollars,
 - c. A term of supervised release of 5 years, which would follow any term of imprisonment. If the defendant violates the conditions of supervised release, he/she could be imprisoned for the entire term of supervised release; and
 - d. A mandatory special assessment of \$100.00.

However, based upon the Enhancement Information, filed by the United States in the case, the defendant is subject to a minimum mandatory ten years confinement to life imprisonment on Count One; a fine not to exceed \$4,000,000.00; a term of supervised release of 8 years, which would follow any term of imprisonment and a mandatory special assessment of \$100.00. If the defendant violates the conditions of supervised release, he/she could be imprisoned for the entire term of supervised release.

SENTENCING

11. The Court will impose the sentence in this case. The United States Sentencing Guidelines apply in an advisory manner to this case. The defendant has reviewed the application of the Guidelines with his/her attorney and understands that no one can predict with certainty what the sentencing range will be in this case until after a pre-sentence investigation has been

completed and the Court has ruled on the results of that investigation. The defendant understands that at sentencing, the Court may not necessarily sentence the defendant in accordance with the Guidelines. The defendant understands that he/she will not be allowed to withdraw his/her guilty plea if the applicable guideline range is higher than expected, if the Court departs from the applicable advisory guideline range, or if the Court imposes a sentence notwithstanding the Guidelines.

12. The United States may provide all relevant sentencing information to the Probation Office for purposes of the pre-sentence investigation. Relevant sentencing information includes, but is not limited to, all facts and circumstances of this case and information concerning the defendant's conduct and background.

13. The defendant understands that this Plea Agreement does not create any right to be sentenced in accordance with the Sentencing Guidelines, or below or within any particular guideline range, and fully understands that determination of the sentencing range or guideline level, or the actual sentence imposed, is solely the discretion of the Court.

14. Both the defendant and the United States are free to allocute fully at the time of sentencing.

15. The defendant agrees to tender \$100.00 to the U.S. District Court Clerk in satisfaction of the mandatory special assessments in this case. The United States reserves the right to withdraw any favorable recommendations it may agree to within this document if the defendant fails to pay the special assessment prior to or at the time of his/her sentencing.

UNITED STATES' OBLIGATIONS

16. The United States will not bring any additional charges against the defendant related

to the facts underlying the Indictment and will move to dismiss Count Two of the indictment at sentencing. This agreement is limited to the United States Attorney's Office for the Southern District of Alabama and does not bind any other federal, state, or local prosecuting authorities.

17. The United States will recommend to the Court that the defendant be sentenced at the low end of the applicable advisory sentencing guideline range as determined by the Court.

APPLICATION OF U.S.S.G. § 5K1.1 AND/OR FED.R.CRIM.P. 35

18. If the defendant agrees to cooperate with the United States, he/she agrees to the following terms and conditions:
- a. The defendant shall **fully, completely, and truthfully** respond to all questions put to him/her by law enforcement authorities regarding the underlying facts of the offense(s) with which he/she is charged, as well as the underlying facts of **any** criminal offense(s), state or federal, of which he/she has information or knowledge.
 - b. The defendant acknowledges that he/she understands that he/she shall provide **truthful and complete** information regarding **any** offense about which he/she has knowledge or information regardless of whether or not law enforcement authorities question him/her specifically about any such offense. This provision requires the defendant to divulge all information available to him/her even when law enforcement authorities do not know about the defendant's involvement, knowledge or information relating to any particular offense. This requirement extends to **any and all persons** about whom the defendant has

such knowledge or information.

- c. The defendant agrees to cooperate completely with all law enforcement authorities in any matters to which his/her cooperation may be deemed relevant by any law enforcement authority. The defendant agrees to fully comply with all instructions from law enforcement authorities regarding the specific assistance he/she shall provide. This includes, but is not limited to, consenting to monitored and/or recorded telephone conversations, participating in undercover operations, testifying **completely and truthfully** before any grand jury, at any pre-trial proceeding, during any trial, and any post-trial proceeding.
- d. If the United States deems it necessary, the defendant may be required to take a polygraph examination(s) which will be administered by a government polygrapher. The defendant agrees that the results of any polygraph examination may be used by the United States in its evaluation of whether or not there has been substantial assistance, and are admissible at sentencing to rebut an assertion by the defendant of bad faith or unconstitutional motive on the part of the United States.
- e. The defendant agrees to turn over to the United States any and all documents, tapes and other tangible objects which are in his/her possession or under his/her control and which are relevant to his/her participation in and knowledge of criminal activities whether relating to the charged offense or not. This obligation is a continuing one and includes materials that the defendant may acquire, obtain or have access to after the execution of this agreement.

- f. [If applicable] The defendant agrees to confess the forfeiture to the United States of all properties which represent proceeds of his/her criminal activities or which facilitated any aspect of these illegal activities. The defendant also agrees to identify the assets of any other person which were obtained through or facilitated the defendant's illegal activities or the illegal activities of another.
- g. If the defendant provides full, complete, truthful and substantial cooperation to the United States, which results in substantial assistance to the United States in the investigation or prosecution of another criminal offense, a decision specifically reserved by the United States in the exercise of its sole discretion, then the United States agrees to move for a downward departure in accordance with Section 5K1.1 of the United States Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, whichever the United States deems applicable. The United States specifically reserves the right to make the decision relating to the extent of any such departure request made under this agreement based upon its evaluation of the nature and extent of the defendant's cooperation. The defendant understands that the United States will make no representation or promise with regard to the exact amount of reduction, if any, the United States might make in the event that it determines that the defendant has provided substantial assistance. The defendant understands that a mere interview with law enforcement authorities does not constitute substantial assistance for this purpose. The defendant also understands that should he/she provide untruthful information to the United

States at any time, or should he/she fail to disclose material facts to the United States at any time, the United States will not make a motion for downward departure. If the defendant's effort to cooperate with the United States does not amount to substantial assistance as determined solely by the United States, the United States agrees to recommend to the district court judge who sentences the defendant that the defendant receive a sentence at the low end of the applicable advisory guideline range.

h. The United States and the defendant agree that any breach of this agreement by the defendant, including but not limited to committing a new offense, failing to cooperate, intentionally withholding information, giving false information, committing perjury, failing to identify assets obtained by him/her from his/her illegal activities or obtained by others associated with him/her or of which he/she has knowledge, refusing to take a polygraph examination, failing a polygraph examination, or refusing to testify before the grand jury or at any judicial proceeding, would:

- (1) permit the United States to reinstate and proceed with prosecution on any other charges arising from the matters underlying the Indictment; and
- (2) permit the United States to instigate and proceed with the prosecution on any other charges arising from a breach of this agreement. The United States will not be limited, in any respect, in the use it may make against the defendant of any information provided by the defendant during his/her breached cooperation. Such breach will constitute a waiver of

any claim the defendant could make under the United States Constitution, the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, or any statute or case law by which the defendant seeks to suppress the use of such information or any evidence derived from such information.

- i. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement, including perjury, false declaration, false statement, and obstruction of justice, should the defendant commit any of these offenses during his/her cooperation. The defendant acknowledges and agrees that the information and documents that he/she discloses to the United States pursuant to this agreement may be used against him/her in any such prosecution.
- j. [If applicable] The United States and the defendant agree that the defendant will continue his/her cooperation even after he/she is sentenced in the instant matter. His/Her failure to continue his/her cooperation will constitute a breach of this agreement, and the defendant agrees that under such conditions, the United States will be free to reinstate the charges and the prosecution of the charges in the Indictment, which are to be dismissed in accordance with this agreement. Under these circumstances, the defendant expressly waives any rights he/she may have under the status of limitations and the speedy trial provisions.

LIMITED WAIVER OF RIGHT TO APPEAL SENTENCE

19. The defendant acknowledges that he/she is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. In exchange for the recommendations made by the United States in this Plea Agreement, the defendant knowingly and voluntarily waives the right to appeal any sentence imposed in this case.

20. With the limited exceptions noted below, the defendant also waives his/her right to challenge any sentence so imposed, or the manner in which it was determined, in any collateral attack, including but not limited to, a motion brought under 28 U.S.C. § 2255.

21. The defendant reserves the right to contest in an appeal or post-conviction proceeding any of the following:

- a. Any punishment imposed in excess of the statutory maximum;
- b. Any punishment that constitutes an upward departure from the guideline range; ~~OR AN UPWARD VARIANCE FROM THE ADULTERY GUIDELINE SENTENCE;~~ OR
or
- c. A claim of ineffective assistance of counsel.

22. In addition, the defendant reserves the right to petition the Court for resentencing pursuant to 18 U.S.C. § 3582 in the event of a future retroactive amendment to the Sentencing Guidelines which would affect the defendant's sentence.

VIOLATION OF AGREEMENT

23. The defendant understands that if he/she violates any provision of this agreement, the United States will be free from any obligations imposed by this agreement and will be free to prosecute the defendant on any charges of which it has knowledge. In such event, the defendant agrees not to assert any objections to prosecution that he/she might have under the 6th Amendment and/or Speedy Trial Act.

24. In addition, if the defendant is released from detention prior to sentencing, he/she understands that the United States will no longer be bound by this agreement if he/she violates any condition of his/her release prior to sentencing or prior to serving his/her sentence after it is imposed.

ENTIRETY OF AGREEMENT

25. This document is the complete statement of the agreement between the defendant and the United States and may not be altered unless done so in writing and signed by all the parties.

Respectfully submitted,

DEBORAH J. RHODES
UNITED STATES ATTORNEY

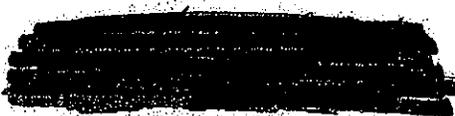
Assistant United States Attorney

Date:

3/19/07

I have consulted with my counsel and fully understand all my rights with respect to the offense(s) charged in the Indictment pending against me. 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. I hereby stipulate that the Factual Resume, incorporated herein, is true and accurate in every respect, and that had the matter proceeded to trial, the United States could have proved the same beyond a reasonable doubt.

Date: 3-20-07


DEFENDANT

I am the attorney for the defendant. I have fully explained his/her rights to him/her with respect to the offense(s) charged in the Indictment in this matter. I have carefully reviewed every part of this Plea Agreement with him/her. To my knowledge, his/her decision to enter into this agreement is an informed and voluntary one. I have carefully reviewed the Factual Resume, incorporated herein, with the defendant and to my knowledge, his/her decision to stipulate to the facts is an informed, intelligent and voluntary one.

Date: 3/20/07


Counsel for 

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

UNITED STATES OF AMERICA

CRIMINAL NO. [REDACTED]

v.
[REDACTED]

*
*
*
*
*

FACTUAL RESUME

The defendant, [REDACTED] admits the allegations of Count One of the Indictment.

ELEMENTS OF THE OFFENSE

[REDACTED] understands that in order to prove a violation of Title 21, United States Code, Section 841(a)(1), as charged in Count One of the Indictment, the United States must prove:

First: That the defendant knowingly and willfully possessed the controlled substance charged; and

Second: That he possessed the substance with the intent to distribute it.

OFFENSE CONDUCT

Defendant, [REDACTED], admits in open court and under oath that the following statement is true and correct and constitutes evidence in this case.

On May 12, 2006, Mobile County Street Enforcement Narcotics Team (MCSSENT) set up a controlled buy of cocaine from the defendant, [REDACTED]. During the transaction the defendant offered to "rock up" (i.e. cook into crack cocaine) the cocaine for the MCSSENT CL [REDACTED] then left and returned approximately 30 minutes later with the crack

cocaine and sold it to the CI for \$925.00. The crack cocaine weighed approximately 35.7 grams.

On May 22, 2006, MCSSENT again used a CI who purchased approximately one ounce of powder cocaine from the defendant.

The United States and the defendant do not have an agreement as to the total amount of cocaine and crack cocaine attributable to the defendant for purposes of relevant conduct and both parties are free to represent their respective positions at sentencing.

AGREED TO AND SIGNED.

Respectfully submitted,

DEBORAH J. RHODES
UNITED STATES ATTORNEY

Date:

3/19/07


Assistant United States Attorney

Date:

3-20-07


Defendant

Date:

3/20/07


Counsel for Defendant

PLEA AGREEMENT No. 8
FROM THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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

UNITED STATES OF AMERICA

*
*
*
*
*

CRIMINAL NO. [REDACTED]

v.
[REDACTED]

PLEA AGREEMENT

The defendant, [REDACTED] represented by his counsel, and the United States of America have reached a Plea Agreement in this case, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the terms and conditions of which are as follows:

RIGHTS OF THE DEFENDANT

1. The defendant understands his/her rights as follows:
 - a. To be represented by an attorney;
 - b. To plead not guilty;
 - c. To have a trial by an impartial jury;
 - d. To confront and cross-examine witnesses and to call witnesses and produce other evidence in his/her defense;
 - e. To not be compelled to incriminate himself/herself.

WAIVER OF RIGHTS AND PLEA OF GUILTY

2. The defendant waives rights b through e, listed above, and pleads guilty to Count 1 of the Superseding Information, charging a violation of 18 United States Code, Section 922(g)(1), Prohibited Person in Possession of Ammunition.
3. The defendant understands that the statements he/she makes under oath in the plea of

guilty must be completely truthful and that he/she can be prosecuted for making false statements or perjury for any false statements he/she makes intentionally in this plea of guilty.

4. The defendant expects the Court to rely upon his/her statements here and his/her response to any questions that he/she may be asked during the guilty plea hearing.

5. The defendant is not under the influence of alcohol, drugs, or narcotics. He/She is certain that he/she is in full possession of his/her senses and mentally competent to understand this Plea Agreement and the guilty plea hearing which will follow.

6. The defendant has had the benefit of legal counsel in negotiating this Plea Agreement. He/She has discussed the facts of the case with his/her attorney, and his/her attorney has explained to the defendant the essential legal elements of the criminal charge(s) which has/have been brought against him/her. The defendant's attorney has also explained to the defendant his/her understanding of the United States' evidence.

7. The defendant understands that the United States has the burden of proving each of the legal elements of the criminal charge(s) beyond a reasonable doubt. The defendant and his/her counsel have discussed possible defenses to the charge(s). The defendant believes that his/her attorney has represented him/her faithfully, skillfully, and diligently, and he/she is completely satisfied with the legal advice of his/her attorney.

8. A separate document, entitled Factual Resume, will be submitted to the Court as evidence at the guilty plea hearing. The Factual Resume is incorporated by reference into this Plea Agreement. The defendant and the United States agree that the Factual Resume is true and correct.

9. This plea of guilty is freely and voluntarily made and is not the result of force, threats,

promises, or representations apart from those set forth in this Plea Agreement. There have been no promises from anyone as to the particular sentence that the Court may impose. The defendant avers that he/she is pleading guilty because he/she knows that he/she is guilty.

PENALTY

10. The maximum penalty the Court could impose as to Count One of the Superseding Information is:

- a. 10 years imprisonment;
- b. A fine not to exceed \$250,000;
- c. A term of supervised release of 3 years, which would follow any term of imprisonment. If the defendant violates the conditions of supervised release, he/she could be imprisoned for the entire term of supervised release; and,
- d. A mandatory special assessment of \$100.00.

SENTENCING

11. The Court will impose the sentence in this case. The United States Sentencing Guidelines apply in an advisory manner to this case. The defendant has reviewed the application of the Guidelines with his/her attorney and understands that no one can predict with certainty what the sentencing range will be in this case until after a pre-sentence investigation has been completed and the Court has ruled on the results of that investigation. The defendant understands that at sentencing, the Court may not necessarily sentence the defendant in accordance with the Guidelines. The defendant understands that he/she will not be allowed to withdraw his/her guilty plea if the applicable guideline range is higher than expected, if the Court departs from the applicable advisory guideline range, or if the Court imposes a sentence notwithstanding the

Guidelines.

12. The United States may provide all relevant sentencing information to the Probation Office for purposes of the pre-sentence investigation. Relevant sentencing information includes, but is not limited to, all facts and circumstances of this case and information concerning the defendant's conduct and background.

13. The defendant understands that this Plea Agreement does not create any right to be sentenced in accordance with the Sentencing Guidelines, or below or within any particular guideline range, and fully understands that determination of the sentencing range or guideline level, or the actual sentence imposed, is solely the discretion of the Court.

14. Both the defendant and the United States are free to allocute fully at the time of sentencing.

15. The defendant agrees to tender \$100.00 to the U.S. District Court Clerk in satisfaction of the mandatory special assessment in this case. The United States reserves the right to withdraw any favorable recommendations it may agree to within this document if the defendant fails to pay the special assessment prior to or at the time of his/her sentencing.

UNITED STATES' OBLIGATIONS

16. The United States will not bring any additional charges against the defendant related to the facts underlying the Superseding Information. This agreement is limited to the United States Attorney's Office for the Southern District of Alabama and does not bind any other federal, state, or local prosecuting authorities.

17. The United States will ask the Court to impose a sentence within the applicable advisory sentencing guideline range as determined by the Court.

LIMITED WAIVER OF RIGHT TO APPEAL SENTENCE

18. The defendant acknowledges that he/she is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. In exchange for the recommendations made by the United States in this Plea Agreement, the defendant knowingly and voluntarily waives the right to appeal any sentence imposed in this case.

19. With the limited exceptions noted below, the defendant also waives his/her right to challenge any sentence so imposed, or the manner in which it was determined, in any collateral attack, including but not limited to, a motion brought under 28 U.S.C. § 2255.

20. The defendant reserves the right to contest in an appeal or post-conviction proceeding any of the following:

- a. Any punishment imposed in excess of the statutory maximum;
- b. Any punishment that constitutes an upward departure from the guideline range; *or*
Any upward variance from the guideline range;
or
- c. A claim of ineffective assistance of counsel.

21. In addition, the defendant reserves the right to petition the Court for resentencing pursuant to 18 U.S.C. § 3582 in the event of a future retroactive amendment to the Sentencing Guidelines which would affect the defendant's sentence.

VIOLATION OF AGREEMENT

22. The defendant understands that if he/she violates any provision of this agreement, the United States will be free from any obligations imposed by this agreement and will be free to prosecute the defendant on any charges of which it has knowledge. In such event, the defendant agrees not to assert any objections to prosecution that he/she might have under the 6th Amendment

and/or Speedy Trial Act.

23. In addition, if the defendant is released from detention prior to sentencing, he/she understands that the United States will no longer be bound by this agreement if he/she violates any condition of his/her release prior to sentencing or prior to serving his/her sentence after it is imposed.

ENTIRETY OF AGREEMENT

24. This document is the complete statement of the agreement between the defendant and the United States and may not be altered unless done so in writing and signed by all the parties.

Respectfully submitted,

DEBORAH J. RHODES
UNITED STATES ATTORNEY

Date: _____

Assistant United States Attorney

I have consulted with my counsel and fully understand all my rights with respect to the offense(s) charged in the Superseding Information pending against me. 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. I hereby stipulate that the Factual Resume, incorporated herein, is true and accurate in every respect, and that had the matter proceeded to trial, the United States could have proved the same beyond a reasonable doubt.

Date: _____

DEFENDANT

I am the attorney for the defendant. I have fully explained his/her rights to him/her with respect to the offense(s) charged in the Superseding Information in this matter. I have carefully reviewed every part of this Plea Agreement with him/her. To my knowledge, his/her decision to enter into this agreement is an informed and voluntary one. I have carefully reviewed the Factual Resume, incorporated herein, with the defendant and to my knowledge, his/her decision to stipulate to the facts is an informed, intelligent and voluntary one.

Date: _____

Counsel for _____

On February 2, 2007, [REDACTED] was arrested at the residence located at [REDACTED] in the [REDACTED] area of Baldwin County, by Special Agents and Task Force Agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives, along with Deputies of the Baldwin County Sheriff's Office. [REDACTED] was arrested on an outstanding warrant stemming from a May 2006 Federal Indictment. When [REDACTED] was taken into custody, Special Agents Pittman and Thompson patted him down for safety and found nine (9) assorted rounds of ammunition in multiple pockets of the jacket [REDACTED] was wearing. [REDACTED] spontaneously stated that he had picked up the ammunition in a shed behind the house.

The ammunition found in his pockets was identified as follows: three (3) rounds of Winchester 12 gauge shotgun ammunition (manufactured by Winchester in East Alton, Illinois); one (1) round of Remington Arms 12 gauge shotgun ammunition (manufactured by Remington Arms - Peters Cartridge Company, in either Bridgeport, Connecticut or Lonoke, Arkansas); three (3) rounds of CCI .22 caliber ammunition (manufactured by CCI (Cascade Cartridge, Inc./Ormark Industries) located in Lewiston, Idaho); one (1) round of Winchester .270 caliber rifle ammunition (manufactured by Winchester in East Alton, Illinois); and, one (1) round of Starline .270 caliber rifle ammunition (manufactured by Starline (California or Missouri) for Frontier Cartridge Co., a Division of Hornady Mfg. Co., Grand Island, Nebraska).

In summary, on February 2, 2007, within the Southern District of Alabama, Southern Division, [REDACTED] after having been previously convicted of the above-referenced felony offense, knowingly possessed the above-referenced ammunition which was manufactured outside of the State of Alabama and therefore affected commerce by its importation into the State of Alabama.

AGREED TO AND SIGNED.

Respectfully submitted,

DEBORAH J. RHODES
UNITED STATES ATTORNEY

Date: _____

Assistant United States Attorney

Date: _____

Defendant

Date: _____

Counsel for Defendant

PLEA AGREEMENT No. 9
FROM THE CENTRAL DISTRICT OF CALIFORNIA

1 GEORGE S. CARDONA
United States Attorney
2 THOMAS P. O'BRIEN
Assistant United States Attorney
3 Chief, Criminal Division
ELLYN MARCUS LINDSAY (Cal. State Bar No.: 116847)
4 Assistant United States Attorney
Major Frauds Section
5 1100 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-2041
7 Facsimile: (213) 894-6269
E-mail: ellyn.lindsay@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
13 UNITED STATES OF AMERICA,) CR No. 07-_____
14 Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
15 v.)
16 , et al.,)
17 Defendants.)
18)

19 1. This constitutes the plea agreement between
20 "defendant") and the United States Attorney's Office for
21 the Central District of California ("the USAO") in the above-
22 captioned case. This agreement is limited to the USAO and cannot
23 bind any other federal, state or local prosecuting,
24 administrative or regulatory authorities.

25 PLEA

26 2. Defendant agrees to plead guilty to a one-count
27 information in a form substantially similar to the one attached
28 hereto.

1 NATURE OF THE OFFENSES

2 3. In order for defendant to be guilty of the offense
3 charged in the information, a violation of United
4 States Code, Section the government must prove the
5 following beyond a reasonable doubt: (1)

6
7 ; (2)

8 ; (3)

9
10 (4)

11 (5)

12
13
14
15 PENALTIES AND RESTITUTION

16 4. The statutory maximum sentence that the Court can impose
17 a violation of , United States Code, Section , is:
18 twenty years imprisonment; a three-year period of supervised
19 release; a fine of \$250,000 or twice the gross gain or gross loss
20 resulting from the offense, whichever is greatest; and a
21 mandatory special assessment of \$100.

22 5. Supervised release is a period of time following
23 imprisonment during which defendant will be subject to various
24 restrictions and requirements. Defendant understands that if
25 defendant violates one or more of the conditions of any
26 supervised release imposed, defendant may be returned to prison
27 for all or part of the term of supervised release, which could
28 result in defendant serving a total term of imprisonment greater

1 than the statutory maximum stated above.

2 6. Defendant understands that defendant will be required
3 to pay full restitution to the victims of the scheme alleged in
4 the Indictment. Defendant agrees that, in return for the U.S.
5 Attorney's Office's compliance with its obligations under this
6 agreement, the amount of restitution is not restricted to the
7 amount alleged in the count to which defendant is pleading
8 guilty, and may include losses arising from counts dismissed
9 and/or charges not prosecuted pursuant to this agreement as well
10 as all relevant conduct in connection with those counts and
11 charges. Defendant further agrees that defendant will not seek
12 the discharge of any restitution obligation, in whole or in part,
13 in any present or future bankruptcy proceeding.

14 7. Defendant also understands that, by pleading guilty,
15 defendant may be giving up valuable government benefits and
16 valuable civic rights, such as the right to vote, the right to
17 possess a firearm, the right to hold office, and the right to
18 serve on a jury.

19 8. Defendant further understands that the conviction in
20 this case may subject defendant to various collateral
21 consequences, including but not limited to, deportation,
22 revocation of probation, parole, or supervised release in another
23 case, and suspension or revocation of a professional license.
24 Defendant understands that unanticipated collateral consequences
25 will not serve as grounds to withdraw defendant's guilty plea.

26 FACTUAL BASIS

27 9. Defendant and the USAO agree and stipulate to the
28 statement of facts provided below. This statement of facts

1 includes facts sufficient to support a plea of guilty to the
2 charge described in this agreement and to establish the
3 sentencing guideline factors set forth in paragraph 12 below. It
4 is not meant to be a complete recitation of all facts relevant to
5 the underlying criminal conduct or all facts known to either
6 party that relate to that conduct:

7
8
9
10
11
12
13
14
15
16
17 WAIVER OF CONSTITUTIONAL RIGHTS

18 10. By pleading guilty, defendant gives up the following
19 rights:

- 20 a) The right to persist in a plea of not guilty.
21 b) The right to a speedy and public trial by jury.
22 c) The right to the assistance of legal counsel at
23 trial, including the right to have the Court appoint counsel for
24 defendant for the purpose of representation at trial. (In this
25 regard, defendant understands that, despite defendant's pleas of
26 guilty, defendant retains the right to be represented by counsel
27 -- and, if necessary, to have the court appoint counsel if
28 defendant cannot afford counsel -- at every other stage of the

1 proceeding.)

2 d) The right to be presumed innocent and to have the
3 burden of proof placed on the government to prove defendant
4 guilty beyond a reasonable doubt.

5 e) The right to confront and cross-examine witnesses
6 against defendant.

7 f) The right, if defendant wished, to testify on
8 defendant's own behalf and present evidence in opposition to the
9 charges, including the right to call witnesses and to subpoena
10 those witnesses to testify.

11 g) The right not to be compelled to testify, and, if
12 defendant chose not to testify or present evidence, to have that
13 choice not be used against defendant.

14 By pleading guilty, defendant also gives up any and all
15 rights to pursue any affirmative defenses, Fourth Amendment or
16 Fifth Amendment claims, and other pretrial motions that have been
17 filed or could be filed.

18 SENTENCING FACTORS

19 11. Defendant understands that the Court is required to
20 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
21 including the kinds of sentence and sentencing range established
22 under the United States Sentencing Guidelines ("U.S.S.G." or
23 "Sentencing Guidelines"), in determining defendant's sentence.
24 Defendant further understands that the Sentencing Guidelines are
25 advisory only, and that after considering the Sentencing
26 Guidelines and the other § 3553(a) factors, the Court may be free
27 to exercise its discretion to impose any reasonable sentence up
28 to the maximum set by statute for the crimes of conviction.

1 12. Defendant and the USAO agree and stipulate to the
2 following applicable Sentencing Guidelines factors:

- 3 a) The parties agree that pursuant to Sentencing
4 Guidelines Section 2B1.1(a) the base offense level
5 for defendant's offenses is 7;
- 6 b) The parties agree that defendant's offense level
7 should be increased by 6 levels pursuant to
8 Sentencing Guidelines Section 2B1.1(b) (1) (D)
9 because the loss in the offense was greater than
10 \$30,000 but less than \$70,000;
- 11 c) The parties further agree that defendant's offense
12 level should be increased by 2 levels pursuant to
13 Section 2B1.1(b) (2) (A) because the offense
14 involved more than ten victims and was committed
15 through mass-marketing;
- 16 d) The USAO agrees to recommend a two-level reduction
17 in the applicable sentencing guideline offense
18 level, pursuant to Sentencing Guidelines § 3E1.1,
19 provided the conditions specified in paragraph
20 17(c) are met. If defendant's offense level is 16
21 or higher prior to the application of the
22 adjustment for acceptance of responsibility, the
23 USAO agrees to recommend an additional one-point
24 reduction in the applicable sentencing guideline
25 offense level, pursuant to Sentencing Guidelines
26 § 3E1.1(b), provided the conditions specified in
27 paragraph 17(c) are met.

28 The parties agree that pursuant to the factors in 18 U.S.C.

1 § 3553(a), a three-level downward adjustment is appropriate. The
2 parties agree that no additional specific offense
3 characteristics, adjustments and departures apply. However, if
4 after the signing of this agreement but prior to sentencing, the
5 defendant were, in the judgment of the government, to commit an
6 act constituting obstruction of justice within the meaning of
7 Sentencing Guideline § 3C1.1, the government would be free to
8 seek the enhancement set forth in that section.

9 14. There is no agreement as to defendant's criminal
10 history or criminal history category.

11 15. The stipulations in this agreement do not bind either
12 the United States Probation Office or the Court. Both defendant
13 and the USAO are free to: (a) supplement the facts by supplying
14 relevant information to the United States Probation Office and
15 the Court, (b) correct any and all factual misstatements relating
16 to the calculation of the sentence, and (c) argue on appeal and
17 collateral review that the Court's Sentencing Guidelines
18 calculations are not error, although each party agrees to
19 maintain its view that the calculations in paragraph 12 are
20 consistent with the facts of this case.

21 DEFENDANT'S OBLIGATIONS

22 16. Defendant agrees that defendant will:

23 a) Plead guilty as set forth in this agreement.

24 b) Not knowingly and willfully fail to abide by all
25 sentencing stipulations contained in this agreement.

26 c) Not knowingly and willfully fail to: (i) appear for
27 all court appearances, (ii) surrender as ordered for service of
28 sentence, (iii) obey all conditions of any bond, and (iv) obey

1 any other ongoing court order in this matter.

2 d) Not commit any crime; however, offenses which would
3 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
4 not within the scope of this agreement.

5 e) Not knowingly and willfully fail to be truthful at
6 all times with Pretrial Services, the U.S. Probation Office, and
7 the Court.

8 f) Pay the applicable special assessments at or before
9 the time of sentencing unless defendant lacks the ability to pay.

10 THE USAO'S OBLIGATIONS

11 17. If defendant complies fully with all defendant's
12 obligations under this agreement, the USAO agrees:

13 a) To abide by all sentencing stipulations contained in
14 this agreement.

15 b) Except for criminal tax violations (including
16 conspiracy to commit such violations chargeable under 18 U.S.C.
17 § 371), not to further prosecute defendant for violations arising
18 out of defendant's conduct described in the stipulated factual
19 basis set forth in paragraph 9 above. Defendant understands that
20 the USAO is free to prosecute defendant for any other unlawful
21 past conduct or any unlawful conduct that occurs after the date
22 of this agreement. Defendant agrees that at the time of
23 sentencing the Court may consider the uncharged conduct in
24 determining the applicable Sentencing Guidelines range, where the
25 sentence should fall within that range, the propriety and extent
26 of any departure from that range, and the determination of the
27 sentence to be imposed after consideration of the sentencing
28 guidelines and all other relevant factors.

1 c) At the time of sentencing, provided that defendant
2 demonstrates an acceptance of responsibility for the offenses up
3 to and including the time of sentencing, to recommend a two-level
4 reduction in the applicable sentencing guideline offense level,
5 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
6 move for an additional one-level reduction if available under
7 that section.

8 d) To recommend a probationary sentence including 6
9 months home detention.

10 BREACH OF AGREEMENT

11 18. If defendant, at any time after the execution of this
12 agreement, knowingly violates or fails to perform any of
13 defendant's obligations under this agreement ("a breach"), the
14 USAO may declare this agreement breached. If the USAO declares
15 this agreement breached at any time between the execution of this
16 agreement and defendant's sentencing on a non-custodial sentence
17 or surrender for service on a custodial sentence, and the Court
18 finds such a breach to have occurred, defendant will not be able
19 to withdraw defendant's guilty pleas, and the USAO will be
20 relieved of all of its obligations under this agreement. If the
21 USAO declares this agreement breached at any time after
22 defendant's sentencing on a non-custodial sentence or surrender
23 for service on a custodial sentence, and the Court finds such a
24 breach to have occurred, the USAO will be relieved of all of its
25 then-remaining obligations under this agreement.

26 19. Following a knowing and willful breach of this
27 agreement by defendant, should the USAO elect to pursue any
28 charge or any civil or administrative action that was either

1 dismissed or not filed as a result of this agreement, then:

2 a) Defendant agrees that any applicable statute of
3 limitations is tolled between the date of defendant's signing of
4 this agreement and the commencement of any such prosecution or
5 action.

6 b) Defendant gives up all defenses based on the statute
7 of limitations, any claim of pre-indictment delay, or any speedy
8 trial claim with respect to any such prosecution or action,
9 except to the extent that such defenses existed as of the date of
10 defendant's signing this agreement.

11 c) Defendant agrees that: (i) any statements made by
12 defendant, under oath, at the guilty plea hearing; (ii) the
13 stipulated factual basis statement in this agreement; and (iii)
14 any evidence derived from such statements, are admissible against
15 defendant in any future prosecution of defendant, and defendant
16 shall assert no claim under the United States Constitution, any
17 statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
18 the Federal Rules of Criminal Procedure, or any other federal
19 rule, that the statements or any evidence derived from any
20 statements should be suppressed or are inadmissible.

21 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

22 20. Defendant gives up the right to appeal any sentence
23 imposed by the Court, including any order of restitution, and the
24 manner in which the sentence is determined, provided that (a) the
25 sentence is within the statutory maximum specified above and is
26 constitutional, (b) the Court in determining the applicable
27 guideline range does not depart upward in offense level or
28 criminal history category and determines that the total offense

1 level is 13 or below, and (c) the Court imposes a sentence within
2 or below the range corresponding to the determined total offense
3 level and criminal history category. Defendant also gives up any
4 right to bring a post-conviction collateral attack on the
5 convictions or sentence, including any order of restitution,
6 except a post-conviction collateral attack based on a claim of
7 ineffective assistance of counsel, a claim of newly discovered
8 evidence, or an explicitly retroactive change in the applicable
9 Sentencing Guidelines, sentencing statutes, or statutes of
10 conviction.

11 21. The USAO gives up its right to appeal the sentence,
12 provided that (a) the Court in determining the applicable
13 guideline range does not depart downward in offense level or
14 criminal history category, (b) the Court determines that the
15 total offense level is 13 or above, and (c) the Court imposes a
16 sentence within or above the range corresponding to the
17 determined total offense level and criminal history category.

18 COURT NOT A PARTY

19 22. The Court is not a party to this agreement and need not
20 accept any of the USAO's sentencing recommendations or the
21 parties' stipulations. Even if the Court ignores any sentencing
22 recommendation, finds facts or reaches conclusions different from
23 any stipulation, and/or imposes any sentence up to the maximum
24 established by statute, defendant cannot, for that reason,
25 withdraw defendant's guilty pleas, and defendant will remain
26 bound to fulfill all defendant's obligations under this
27 agreement. No one -- not the prosecutor, defendant's attorney,
28 or the Court -- can make a binding prediction or promise

1 regarding the sentence defendant will receive, except that it
2 will be within the statutory maximum.

3 NO ADDITIONAL AGREEMENTS

4 23. Except as set forth herein, there are no promises,
5 understandings or agreements between the USAO and defendant or
6 defendant's counsel. Nor may any additional agreement,
7 understanding or condition be entered into unless in a writing
8 signed by all parties or on the record in court.

9 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

10 24. The parties agree and stipulate that this Agreement
11 will be considered part of the record of defendant's guilty plea
12 hearing as if the entire Agreement had been read into the record
13 of the proceeding.

14 This agreement is effective upon signature by defendant and
15 an Assistant United States Attorney.

16 AGREED AND ACCEPTED

17 UNITED STATES ATTORNEY'S OFFICE
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 GEORGE S. CARDONA
20 United States Attorney

21
22 _____
23 ELLYN MARCUS LINDSAY
24 Assistant United States Attorney
Major Frauds Section

Date

25 I have read this agreement and carefully discussed every
26 part of it with my attorney. I understand the terms of this
27 agreement, and I voluntarily agree to those terms. My attorney
28 has advised me of my rights, of possible defenses, of the

1 Sentencing Guideline provisions, and of the consequences of
2 entering into this agreement. No promises or inducements have
3 been made to me other than those contained in this agreement. No
4 one has threatened or forced me in any way to enter into this
5 agreement. Finally, I am satisfied with the representation of my
6 attorney in this matter.

7

8

_____ Date
9 Defendant

10 I am _____ attorney. I have carefully discussed
11 every part of this agreement with my client. Further, I have
12 fully advised my client of his rights, of possible defenses, of
13 the sentencing factors set forth in
14 including the relevant Sentencing Guidelines provisions, and of
15 the consequences of entering into this agreement. To my
16 knowledge, my client's decision to enter into this agreement is
17 an informed and voluntary one.

18

19

_____ Date
20 Deputy Federal Public Defender
21 Counsel for Defendant

21

22

23

24

25

26

27

28

PLEA AGREEMENT No. 10
FROM THE CENTRAL DISTRICT OF CALIFORNIA

1 DEBRA WONG YANG
 United States Attorney
 2 THOMAS O'BRIEN
 Assistant United States Attorney
 3 Chief, Criminal Division
 [REDACTED]
 4 Assistant United States Attorney
 California Bar Number [REDACTED]
 5 1200 United States Courthouse
 312 North Spring Street
 6 Los Angeles, California 90012
 Telephone: [REDACTED]
 7 Facsimile: [REDACTED]
 Email: [REDACTED]

FILE COPY

8 Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10
 11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) SA CR No. [REDACTED]
 14 Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
 15 v.) [REDACTED]
 16 [REDACTED],)
 17 Defendant.)

18
 19
 20
 21 1. This constitutes the plea agreement between [REDACTED]
 22 [REDACTED] ("defendant") and the United States Attorney's
 23 Office for the Central District of California ("the USAO") in the
 24 above-captioned case. This agreement is limited to the USAO and
 25 cannot bind any other federal, state or local prosecuting,
 26 administrative or regulatory authorities.

27 //
 28 //

1 whichever is greatest; and a mandatory special assessment of
2 \$200.

3 5. Defendant understands that defendant will be required
4 to pay full restitution to the victims of the offense. Defendant
5 agrees that, in return for the USAO's compliance with its
6 obligations under this agreement, the amount of restitution is
7 not restricted to the amounts alleged in the counts to which
8 defendant is pleading guilty and may include losses arising from
9 charges not prosecuted pursuant to this agreement as well as all
10 relevant conduct in connection with those charges. The parties
11 currently believe that the applicable amount of restitution is
12 \$83,500, but recognize and agree that this amount could change
13 based on facts that come to the attention of the parties prior to
14 sentencing. Defendant further agrees that defendant will not
15 seek the discharge of any restitution obligation, in whole or in
16 part, in any present or future bankruptcy proceeding.

17 6. Supervised release is a period of time following
18 imprisonment during which defendant will be subject to various
19 restrictions and requirements. Defendant understands that if
20 defendant violates one or more of the conditions of any
21 supervised release imposed, defendant may be returned to prison
22 for all or part of the term of supervised release, which could
23 result in defendant serving a total term of imprisonment greater
24 than the statutory maximum stated above.

25 7. Defendant also understands that, by pleading guilty,
26 defendant may be giving up valuable government benefits and
27 valuable civic rights, such as the right to vote, the right to
28 possess a firearm, the right to hold office, and the right to

1 serve on a jury.

2 8. Defendant further understands that the conviction in
3 this case may subject defendant to various collateral
4 consequences, including but not limited to, deportation,
5 revocation of probation, parole, or supervised release in another
6 case, and suspension or revocation of a professional license.
7 Defendant understands that unanticipated collateral consequences
8 will not serve as grounds to withdraw defendant's guilty plea.

9 FACTUAL BASIS

10 9. Defendant and the USAO agree and stipulate to the
11 statement of facts provided below. This statement of facts
12 includes facts sufficient to support a plea of guilty to the
13 charges described in this agreement and to establish the
14 sentencing guideline factors set forth in paragraph 12 below. It
15 is not meant to be a complete recitation of all facts relevant to
16 the underlying criminal conduct or all facts known to defendant
17 that relate to that conduct.

18 Defendant stole money from two federally insured financial
19 institutions in Orange County, California: Orange County
20 Teachers Federal Credit Union ("OCTFCU") and Bank of the
21 West as follows:

22
23 Prior to May 4, 2005, defendant purchased a prepaid credit
24 card issued by Columbus Bank and Trust. The prepaid credit
25 could be used like a credit card and could also be used to
26 access bank automated teller machines (ATMs) to withdraw
27 cash up to the amount deposited on the prepaid credit card.
28

1 On May 5, 2005, defendant had spent all of the money that he
2 had deposited to that prepaid credit card. Nevertheless, on
3 May 5, 2005, defendant used the prepaid card to attempt a
4 cash withdrawal and discovered that there was a malfunction
5 with the now-exhausted card that allowed him to withdraw
6 cash. Thereafter, between May 4, 2005 and May 5, 2005, and
7 despite knowing that the card was exhausted and that it did
8 not lawfully contain any more funds, defendant used his
9 prepaid credit card to make withdrawals from the ATMs of
10 numerous different branches of the OCTFCU and Bank of the
11 West. OCTFCU is a credit union whose deposits are federally
12 insured, and Bank of the West is a bank whose deposits are
13 federally insured. By making these unauthorized withdrawals
14 from Bank of the West and OCTFCU, defendant obtained a total
15 of at least \$83,500, including approximately \$9,500 from
16 Bank of the West and approximately \$70,500 from OCTFCU.
17 Defendant's withdrawals included (1) a withdrawal of \$500
18 from Bank of the West in Irvine, California on May 5, 2005;
19 (2) a withdrawal of \$500 from OCTFCU in Irvine, California
20 on May 5, 2005; (3) a withdrawal of \$1,000 from OCTFCU in
21 Tustin, California on May 5, 2005; and (4) a withdrawal of
22 \$1,000 from OCTFCU in Santa Ana, California on May 5, 2005.

23
24 When defendant made the above-described ATM withdrawals
25 totaling more than \$83,500 using his prepaid credit card, he
26 knew the card was exhausted, that he was not authorized to
27 use the card to withdraw money, and he intended to steal
28 money from the banks.

WAIVER OF CONSTITUTIONAL RIGHTS

10. By pleading guilty, defendant gives up the following rights:

a) The right to persist in a plea of not guilty.

b) The right to a speedy and public trial by jury.

c) The right to the assistance of legal counsel at trial, including the right to have the Court appoint counsel for defendant for the purpose of representation at trial. (In this regard, defendant understands that, despite his or her plea of guilty, he or she retains the right to be represented by counsel — and, if necessary, to have the court appoint counsel if defendant cannot afford counsel — at every other stage of the proceedings.)

d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses against defendant.

f) The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed

1 or could be filed.

2 SENTENCING FACTORS

3 11. Defendant understands that the Court is required to
4 consider the United States Sentencing Guidelines ("U.S.S.G." or
5 "Sentencing Guidelines") among other factors in determining
6 defendant's sentence. Defendant understands, however, that the
7 Sentencing Guidelines are only advisory, and that after
8 considering the Sentencing Guidelines, the Court may be free to
9 exercise its discretion to impose any reasonable sentence up to
10 the maximum set by statute for the crimes of conviction.

11 12. Defendant and the USAO agree and stipulate to the
12 following applicable sentencing guideline factors:

13	Base Offense Level:	6	[U.S.S.G. § 2B1.1(a)(1)]
14			
15	Loss more than \$70,000 but less than \$120,000	+8	[U.S.S.G. § 2B1.1(b)(1)(E)]
16	Acceptance of Responsibility	-2	[U.S.S.G. § 3E1.1(a)]
17			
18	Total Offense Level:	12	

19 Defendant and the USAO agree not to seek, argue, or suggest in
20 any way, either orally or in writing, that any other specific
21 offense characteristics, adjustments or departures, from either
22 the applicable Offense Level or Criminal History Category, be
23 imposed, other than as set forth in paragraph 14. If, however,
24 after signing this agreement but prior to sentencing, defendant
25 were to commit an act, or the USAO were to discover a previously
26 undiscovered act committed by defendant prior to signing this
27 agreement, which act, in the judgment of the USAO, constituted
28 obstruction of justice within the meaning of U.S.S.G. § 3C1.1,

1 the USAO would be free to seek the enhancement set forth in that
2 section.

3 13. There is no agreement as to defendant's criminal
4 history or criminal history category.

5 14. Subject to paragraph 12, defendant and the USAO agree
6 to make the joint recommendation to the Court that the
7 appropriate sentence in this case is 5 years probation, with the
8 conditions that: (1) defendant pay full restitution to the
9 victims of his offense; and (2) defendant serve ten months of
10 home detention with electronic monitoring, or if defendant is
11 found unsuitable for electronic monitoring, ten months of
12 detention in a Community Corrections Center. Defendant and the
13 USAO agree and stipulate that pursuant to Title 18, United States
14 Code, Section 3553, this sentence, which varies from the
15 recommended sentence under the United States Sentencing
16 Guidelines, is appropriate and accounts for (1) the unusual
17 circumstances under which the offense took place (i.e., the fact
18 that defendant, to obtain funds to which he knew he was not
19 entitled, exploited an unusual credit card system malfunction
20 that allowed him to withdraw funds beyond the limit of his
21 prepaid credit card balance); (2) the sentence includes a lengthy
22 probation period that both provides adequate deterrence to
23 criminal conduct and protects the public from further crimes of
24 the defendant; (3) the sentence would allow the defendant to seek
25 and retain gainful employment that will allow him to provide
26 restitution to victims of the offense.

27 15. The stipulations in this agreement do not bind either
28 the United States Probation Office or the Court. Both defendant

1 and the USAO are free to: (a) supplement the facts by supplying
 2 relevant information to the United States Probation Office and
 3 the Court, (b) correct any and all factual misstatements relating
 4 to the calculation of the sentence, and (c) argue on appeal and
 5 collateral review that the Court's sentencing guidelines
 6 calculations are not error, although each party agrees to
 7 maintain its view that the calculations in paragraph 12 are
 8 consistent with the facts of this case.

9 DEFENDANT'S OBLIGATIONS

10 16. Defendant agrees that he or she will:

11 a) Plead guilty as set forth in this agreement.

12 b) Not knowingly and willfully fail to abide by all
 13 sentencing stipulations contained in this agreement.

14 c) Not knowingly and willfully fail to: (i) appear as
 15 ordered for all court appearances, (ii) surrender as ordered for
 16 service of sentence, (iii) obey all conditions of any bond, and
 17 (iv) obey any other ongoing court order in this matter.

18 d) Not commit any crime; however, offenses which would be
 19 excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
 20 not within the scope of this agreement.

21 e) Not knowingly and willfully fail to be truthful at all
 22 times with Pretrial Services, the U.S. Probation Office, and the
 23 Court.

24 f) Pay the applicable special assessment at or before the
 25 time of sentencing unless defendant lacks the ability to pay.

26 THE USAO'S OBLIGATIONS

27 17. If defendant complies fully with all defendant's
 28 obligations under this agreement, the USAO agrees:

1 a) To abide by all sentencing stipulations contained in this
2 agreement.

3 b) At the time of sentencing to move to dismiss the
4 underlying indictment. Defendant agrees, however, that at the
5 time of sentencing the Court may consider the dismissed counts in
6 determining the applicable Sentencing Guidelines range, where the
7 sentence should fall within that range, the propriety and extent
8 of any departure from that range, and the determination of the
9 sentence to be imposed after consideration of the sentencing
10 guidelines and all other relevant factors.

11 c) At the time of sentencing, provided that defendant
12 demonstrates an acceptance of responsibility for the offense up
13 to and including the time of sentencing, to recommend a two-level
14 reduction in the applicable sentencing guideline offense level,
15 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
16 move for an additional one-level reduction if available under
17 that section.

18 d) On request by defendant, to request jointly with
19 defendant that the United States Probation Office determine,
20 prior to sentencing, whether defendant is suitable for
21 participation in home detention with electronic monitoring.

22 BREACH OF AGREEMENT

23 18. If defendant, at any time between the execution of this
24 agreement and defendant's sentencing on a non-custodial sentence
25 or surrender for service on a custodial sentence, knowingly
26 violates or fails to perform any of defendant's obligations under
27 this agreement ("a breach"), the USAO may declare this agreement
28 breached. If the USAO declares this agreement breached, and the

1 Court finds such a breach to have occurred, defendant will not be
2 able to withdraw defendant's guilty plea, and the USAO will be
3 relieved of all of its obligations under this agreement.

4 19. Following a knowing and willful breach of this
5 agreement by defendant, should the USAO elect to pursue any
6 charge that was either dismissed or not filed as a result of this
7 agreement, then:

8 a) Defendant agrees that any applicable statute of
9 limitations is tolled between the date of defendant's signing of
10 this agreement and the commencement of any such prosecution or
11 action.

12 b) Defendant gives up all defenses based on the statute of
13 limitations, any claim of preindictment delay, or any speedy
14 trial claim with respect to any such prosecution, except to the
15 extent that such defenses existed as of the date of defendant's
16 signing of this agreement.

17 c) Defendant agrees that: i) any statements made by
18 defendant, under oath, at the guilty plea hearing; ii) the
19 stipulated factual basis statement in this agreement; and iii)
20 any evidence derived from such statements, are admissible against
21 defendant in any future prosecution of defendant, and defendant
22 shall assert no claim under the United States Constitution, any
23 statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
24 the Federal Rules of Criminal Procedure, or any other federal
25 rule, that the statements or any evidence derived from any
26 statements should be suppressed or are inadmissible.

27 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

28 20. Defendant gives up the right to appeal any sentence

1 imposed by the Court, including any order of restitution, and the
2 manner in which the sentence is determined, provided that (a) the
3 sentence is within the statutory maximum specified above and is
4 constitutional, (b) the Court in determining the applicable
5 guideline range does not depart upward in offense level or
6 criminal history category and determines that the total offense
7 level is 12 or below, and (c) the Court imposes a sentence within
8 or below the range corresponding to the determined total offense
9 level and criminal history category. Defendant also gives up any
10 right to bring a post-conviction collateral attack on the
11 conviction or sentence, including any order of restitution,
12 except a post-conviction collateral attack based on a claim of
13 ineffective assistance of counsel, a claim of newly discovered
14 evidence, or an explicitly retroactive change in the applicable
15 Sentencing Guidelines, sentencing statutes, or statutes of
16 conviction. Notwithstanding the foregoing, defendant retains the
17 ability to appeal the court's imposition of a sentence that does
18 not follow the parties' joint recommendation for home detention
19 contained in paragraph 14, the court's determination of
20 defendant's criminal history category, and the conditions of
21 supervised release imposed by the court, with the exception of
22 the following: standard conditions set forth in district court
23 General Orders 318 and 01-05; the drug testing conditions
24 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol
25 and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

26 21. The USAO gives up its right to appeal the sentence,
27 provided that (a) the Court in determining the applicable
28 guideline range does not depart downward in offense level or

1 criminal history category, (b) the Court determines that the
2 total offense level is 12 or above, and (c) the Court imposes a
3 sentence within or above the range corresponding to the
4 determined total offense level and criminal history category.

5 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

6 22. Defendant agrees that if any count of conviction is
7 vacated, reversed, or set aside, the USAO may: (a) ask the Court
8 to resentence defendant on any remaining counts of conviction,
9 with both the USAO and defendant being released from any
10 stipulations regarding sentencing contained in this agreement,
11 (b) ask the Court to void the entire plea agreement and vacate
12 defendant's guilty pleas on any remaining counts of conviction,
13 with both the USAO and defendant being released from all of their
14 obligations under this agreement, or (c) leave defendant's
15 remaining convictions, sentence, and plea agreement intact.
16 Defendant agrees that the choice among these three options rests
17 in the exclusive discretion of the USAO.

18 COURT NOT A PARTY

19 23. The Court is not a party to this agreement and need not
20 accept any of the USAO's sentencing recommendations or the
21 parties' stipulations. Even if the Court ignores any sentencing
22 recommendation, finds facts or reaches conclusions different from
23 any stipulation, and/or imposes any sentence up to the maximum
24 established by statute, defendant cannot, for that reason,
25 withdraw defendant's guilty plea, and defendant will remain bound
26 to fulfill all defendant's obligations under this agreement. No
27 one — not the prosecutor, defendant's attorney, or the Court —
28 can make a binding prediction or promise regarding the sentence

1 defendant will receive, except that it will be within the
2 statutory maximum.

3 NO ADDITIONAL AGREEMENTS

4 24. Except as set forth herein, there are no promises,
5 understandings or agreements between the USAO and defendant or
6 defendant's counsel. Nor may any additional agreement,
7 understanding or condition be entered into unless in a writing
8 signed by all parties or on the record in court.

9 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

10 25. The parties agree and stipulate that this Agreement
11 will be considered part of the record of defendant's guilty plea
12 hearing as if the entire Agreement had been read into the record
13 of the proceeding.

14 This agreement is effective upon signature by defendant and an
15 Assistant United States Attorney.

16 AGREED AND ACCEPTED

17

18 UNITED STATES ATTORNEY'S OFFICE
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 DEBRA WONG YANG
21 United States Attorney

21

22 _____ Date
23 Assistant United States Attorney

24 I have read this agreement and carefully discussed every
25 part of it with my attorney. I understand the terms of this
26 agreement, and I voluntarily agree to those terms. My attorney
27 has advised me of my rights, of possible defenses, of the
28 Sentencing Guideline provisions, and of the consequences of

1 entering into this agreement. No promises or inducements have
 2 been made to me other than those contained in this agreement. No
 3 one has threatened or forced me in any way to enter into this
 4 agreement. Finally, I am satisfied with the representation of my
 5 attorney in this matter,

6 [REDACTED]
 7 [REDACTED]

12/12/05
 Date

8 Defendant

9 I am [REDACTED] attorney. I have carefully
 10 discussed every part of this agreement with my client. Further,
 11 I have fully advised my client of his/her rights, of possible
 12 defenses, of the Sentencing Guidelines' provisions, and of the
 13 consequences of entering into this agreement. To my knowledge,
 14 my client's decision to enter into this agreement is an informed
 15 and voluntary one.

16 [REDACTED]
 17 [REDACTED]

12/12/05
 Date

18 DEPUTY FEDERAL PUBLIC DEFENDER

19 Counsel for Defendant
 20 [REDACTED]

21
 22
 23
 24
 25
 26
 27
 28

PLEA AGREEMENT No. 11
FROM THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,

Plaintiff,

v.

[REDACTED]

Defendant.

CRIMINAL NO. 2005 [REDACTED]

PLEA AGREEMENT

1. PARTIES TO AGREEMENT

This agreement is entered into by and between defendant [REDACTED]

[REDACTED] THURSTON MCKELVIN, Attorney for [REDACTED]
[REDACTED]

and

the United States Attorney for the District of the Virgin Islands. This agreement specifically excludes and does not bind any other state or federal agency, including other United States Attorneys and the Internal Revenue Service, from asserting any civil, criminal or administrative claim against the defendant.

2. TERMS

The parties agree to the following terms:

a. Defendant [REDACTED] will plead guilty to

Count 1 (Possession of Firearm by Alien) of the Information in Criminal No. 2005 [REDACTED]

USA v [REDACTED]
Plea Agreement
Page 2

and faces a maximum possible penalty of ten years imprisonment, a \$250,000 fine, a term of supervised release of not more than three years, and a \$100 special monetary assessment, pursuant to 18 U.S.C. §§1546(a), 3571(b)(3), 3583(b)(2), 3013(a)(2)(A).

b. The essential elements of Possession of Firearm by Alien are that:

- i. Defendant knowingly possessed a firearm, i.e., a Remington shotgun;
- ii. The possession was in or affecting commerce; and
- iii. Defendant was an alien and unlawfully within the United States.

c. Defendant is pleading guilty because Defendant is in fact guilty of the charges contained in Count 1 of the Information. In pleading guilty to this offense, defendant acknowledges that should the case go to trial, the government could present evidence to support this charge beyond a reasonable doubt. In this regard, Defendant agrees that the following factual basis exists to support his plea. doubt.

On August 7, 2005, police officer LaPlace observed Defendant walking with another male individual in Frederiksted via street cameras. Officer LaPlace saw Defendant retrieve a shotgun and show it to the other individual. Subsequently Defendant secreted the firearm in an abandoned vehicle. He was an alien at the time and illegally within the United States. The firearm had traveled in interstate commerce.

d. Upon the District Court's adjudication of guilt of Defendant for a violation of Count 1 in the Information, the United States Attorney, District of the Virgin Islands, will dismiss the remaining counts against Defendant and will not file

USA v. [REDACTED]
Plea Agreement
Page 3

any further criminal charges against Defendant arising out of the same transactions or occurrences to which the defendant has pled, as well as dismiss all counts in U.S. v. [REDACTED] Criminal No. 2005 [REDACTED].

e. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement.

f. If the defendant agrees to provide substantial assistance in the investigation or prosecution of another person, as defined in Fed. R. Crim. P. 35, or otherwise agrees to cooperate with the United States Attorney, a supplement to this Plea Agreement shall be submitted to the Court by the parties, in camera or under seal, and shall specifically refer to this Plea Agreement and shall define the terms of such assistance or cooperation, if any.

g. Defendant agrees to be charged by Information in this matter.

3. SENTENCING GUIDELINES

a. The parties understand and agree that pursuant to United States v. Booker, 125 U.S. 738 (2005), the Court is not bound by the Guidelines, but it must consult the Guidelines and take them into account at sentencing in determining the "sentencing range established for . . . the applicable category of offense committed by the applicable category of the defendant" *Id.* at *24. Adverse rulings shall not be grounds for withdrawal of defendant's plea. The Court is not limited to consideration of the facts and events provided by the parties.

USA v. [REDACTED]
Plea Agreement
Page 4

b. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, 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 Title 18, United States Code, Section 3742(b).

c. The United States Attorney agrees to recommend that the defendant receive credit for acceptance of responsibility at the time of sentencing, assuming the defendant does in fact clearly demonstrate acceptance of responsibility, in accordance with USSG §3E1.1. Both parties reserve the right to fully allocute at sentencing. Both parties reserve the right to fully allocute at sentencing. Both parties also agree, and will recommend, that an appropriate sentence is one at the lower end of the Guideline range determined by the Probation Office.

CONCLUSION

There are no other agreements between the United States Attorney, District of the Virgin Islands, and defendant [REDACTED] enters this agreement knowingly, voluntarily, and upon advice of counsel.

USA v. [REDACTED]
Plea Agreement
Page 5

ANTHONY J. JENKINS
United States Attorney

Dated: October 14, 2005

By: *[Signature]*
ALPHONSO G. ANDREWS, JR.
Assistant United States Attorney
District of the Virgin Islands

Dated: _____, 2005

THURSTON MCKELVIN
Attorney for Defendant

Dated: _____, 2005

[REDACTED]
Defendant

PLEA AGREEMENT No. 12
FROM THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 2005 [REDACTED]

v.

[REDACTED]

Defendant.

PLEA AGREEMENT

1. PARTIES TO AGREEMENT

This agreement is entered into by and between defendant [REDACTED]

[REDACTED] PATRICIA SCHRADER-COOKE, Attorney for [REDACTED]
[REDACTED]

and

the United States Attorney for the District of the Virgin Islands. This agreement specifically excludes and does not bind any other state or federal agency, including other United States Attorneys and the Internal Revenue Service, from asserting any civil, criminal or administrative claim against the defendant.

2. TERMS

The parties agree to the following terms:

USA [REDACTED]
Plea Agreement
Page 2

a. Defendant [REDACTED] will plead guilty to Count 2 (False Personation and Use of False Documents For Employment Purposes) of the Indictment in Criminal No. 2005/45 and faces a maximum possible penalty of five years imprisonment, a \$250,000 fine, a term of supervised release of not more than three years, and a \$100 special monetary assessment, pursuant to 18 U.S.C. §§1546(b), 3571(b)(3), 3583(b)(2), 3013(a)(2)(A).

b. The essential elements of False Personation and Use of False Identity Documents for Employment Purposes are that:

- i. Defendant knowingly used a social security card not lawfully issued to him to obtain employment;
- ii. The social security card was lawfully assigned to a Luis E. Morales, Jr.;
- iii. Defendant acted wilfully and knowingly; and
- iv. Defendant used the social security card of another to verify his eligibility for employment on Form I-9.

c. Defendant is pleading guilty because Defendant is in fact guilty of the charge contained in Count 2 of the Indictment. In pleading guilty to this offense, defendant acknowledges that should the case go to trial, the government could present evidence to support this charge beyond a reasonable doubt. In this

USA v. [REDACTED]
Plea Agreement
Page 3

regard, Defendant agrees that the following factual basis exists to support his plea beyond a reasonable doubt.

On March 11, 2005, in St. Croix, District of the Virgin Islands, Defendant presented an identification document, a social security card, to employment officials at Triangle Construction & Maintenance, Inc., a HOVENSA contractor, to verify his identity and eligibility for employment in the U.S. Virgin Islands. The social security card bore the name of Luis E. Morales, Jr. The Defendant purported to be Luis E. Morales, Jr. and used the social security card to fill out Form I-9, a form that requires employers in the United States to certify that it has examined documents presented by an individual seeking employment to verify the individual's identity and eligibility for employment. Defendant was able to secure employment using the false social security card.

On September 6, 2005, ICE Agents received a call from the local Social Security Administration office of the fraudulent use of the social security number, lawfully assigned to Luis E. Morales, Jr., at Triangle Construction Company. The official at the local Social Security office stated that he knew Luis E. Morales, Jr., to be a disabled individual who was not in the territory for the time the employment activity was reported. The ICE Agent, who also has personal knowledge of Luis E. Morales, Jr., and his disability, confirmed that Luis E. Morales had traveled away from St. Croix. ICE Agents proceeded to the HOVENSA Refinery to confirm the identity of the Luis E. Morales working for Triangle Construction. Contact was made with the defendant, who when asked for identification, produced a social security card, and V.I. Voter's Registration card bearing the name Luis E. Morales, Jr. Defendant was read his rights in Spanish and agreed to answer questions. Defendant admitted that his true name was [REDACTED] and that he was from Venezuela.

d. Upon the District Court's adjudication of guilt of Defendant for a violation of Count 2 of the Indictment, the United States Attorney, District of the Virgin Islands, will dismiss the remaining counts against Defendant and will not

USA [REDACTED]
Plea Agreement
Page 4

file any further criminal charges against Defendant arising out of the same transactions or occurrences to which the defendant has pled.

e. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement.

f. If the defendant agrees to provide substantial assistance in the investigation or prosecution of another person, as defined in Fed. R. Crim. P. 35, or otherwise agrees to cooperate with the United States Attorney, a supplement to this Plea Agreement shall be submitted to the Court by the parties, in camera or under seal, and shall specifically refer to this Plea Agreement and shall define the terms of such assistance or cooperation, if any.

3. SENTENCING GUIDELINES

a. The parties understand and agree that pursuant to United States v. Booker, 125 U.S. 738 (2005), the Court is not bound by the Guidelines, but it must consult the Guidelines and take them into account at sentencing in determining the "sentencing range established for . . . the applicable category of offense committed by the applicable category of the defendant" *Id.* at *24. Adverse rulings shall not be grounds for withdrawal of defendant's plea. The Court is not limited to consideration of the facts and events provided by the parties.

USA v. [REDACTED]
Plea Agreement
Page 6

ANTHONY J. JENKINS
United States Attorney

Dated: November __, 2005

By:
Angela P. Tyson-Floyd
Assistant United States Attorney
District of the Virgin Islands

Dated: _____, 2005

PATRICIA SCHRADER-COOKE
Attorney for Defendant

Dated: _____, 2005

[REDACTED]
Defendant