



1 DENNIS K. BURKE
 United States Attorney
 District of Arizona
 2 MONTE C. CLAUSEN
 Assistant U.S. Attorney
 State Bar No. 002420
 3 405 West Congress, Suite 4800
 Tucson, Arizona 85701-5040
 Telephone: (520) 620-7300
 5 Email: monte.clausen@usdoj.gov
 Attorneys for Plaintiff
 6

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF ARIZONA**

9 **United States of America,**)
)
 10 **Plaintiff,**)
)
 11 *Ricardo Trinidad Maliez* v.)
 12 ~~Francisco Gomez Lopez,~~)
)
 13 **Defendant.**)

CRO9-2279-T-FRZ-6
 Mag. No. 09-5108M

PLEA AGREEMENT
(Fast Track 5K3.1)

14 The United States of America and the defendant agree to the following disposition
 15 of this matter:

16 PLEA

17 The defendant agrees to plead guilty to an Indictment charging a violation of 8
 18 U.S.C. Section 1326, enhanced by Title 8, United States Code, Section 1326(b)(2), Illegal
 19 Re-entry After Deportation, a felony.

20 STIPULATIONS, TERMS AND AGREEMENTS

21 Maximum Penalties

22 A violation of 8 U.S.C. § 1326, enhanced by 8 U.S.C. § 1326(b)(2), is punishable
 23 by a maximum fine of \$250,000.00, or a maximum term of imprisonment of 20 years, or
 24 both, plus a term of supervised release of up to three years and a special assessment of \$100.
 25 The special assessment is due and payable at the time the defendant enters the plea of guilty,
 26

1 and must be paid by the time of sentencing unless the defendant is indigent. If the
2 defendant is indigent, the special assessment will be collected according to Title 18, United
3 States Code, Chapters 227 and 229.

4 Agreements Regarding Sentence

5 Specific Offense Characteristics and Sentences

6 Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P. and U.S.S.G. § 5K3.1, the government
7 and the defendant stipulate and agree that the following is an appropriate disposition of this
8 case:

9 (A) (1) Level 24 Offenses. Under the sentencing guidelines, as set forth in
10 U.S.S.G. § 2L1.2(a) and (b)(1)(A), if the defendant has a prior felony conviction for (i) a
11 drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime
12 of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security
13 or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense,
14 then the government and defendant agree the defendant's sentence shall be as follows:

- 15 27 to 33 months of imprisonment if defendant's Criminal History Category is I;
16 30 to 37 months of imprisonment if defendant's Criminal History Category is II;
17 33 to 41 months of imprisonment if defendant's Criminal History Category is III;
18 41 to 51 months of imprisonment if defendant's Criminal History Category is IV;
19 51 to 63 months of imprisonment if defendant's Criminal History Category is V;
20 57 to 71 months of imprisonment if defendant's Criminal History Category is VI.

21 (A) (2) Level 24 Offenses Committed Under a Supervised Release Term.

22 Under the sentencing guidelines, as set forth in U.S.S.G. § 2L1.2(a) and (b)(1)(A), if the
23 defendant has a prior felony conviction for (i) a drug trafficking offense for which the
24 sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv)
25 a child pornography offense; (v) a national security or terrorism offense; (vi) a human
26 trafficking offense; or (vii) an alien smuggling offense, **and it is determined that the**

1 **defendant was on supervised release at the time the present offense was committed,**
2 then the government and defendant agree the defendant's sentence shall be as follows:

- 3 30 to 41 months of imprisonment if defendant's Criminal History Category is I;
4 33 to 46 months of imprisonment if defendant's Criminal History Category is II;
5 37 to 51 months of imprisonment if defendant's Criminal History Category is III;
6 46 to 63 months of imprisonment if defendant's Criminal History Category is IV;
7 57 to 78 months of imprisonment if defendant's Criminal History Category is V;
8 63 to 87 months of imprisonment if defendant's Criminal History Category is VI.

9 **(B)(1) Level 20 Offenses.** Under the sentencing guidelines, as set forth in
10 U.S.S.G. § 2L1.2(a) and (b)(1)(B), if the defendant has a prior felony conviction for a drug
11 trafficking offense for which the sentence imposed was 13 months or less, then the
12 government and defendant agree the defendant's sentence shall be as follows:

- 13 15 to 21 months of imprisonment if defendant's Criminal History Category is I;
14 18 to 24 months of imprisonment if defendant's Criminal History Category is II;
15 21 to 27 months of imprisonment if defendant's Criminal History Category is III;
16 27 to 33 months of imprisonment if defendant's Criminal History Category is IV;
17 33 to 41 months of imprisonment if defendant's Criminal History Category is V;
18 37 to 46 months of imprisonment if defendant's Criminal History Category is VI.

19 **(B)(2) Level 20 Offenses Committed Under a Supervised Release Term.**
20 Under the sentencing guidelines, as set forth in U.S.S.G. § 2L1.2(a) and (b)(1)(B), if the
21 defendant has a prior felony conviction for a drug trafficking offense for which the sentence
22 imposed was 13 months or less, **and it is determined that the defendant was on**
23 **supervised release at the time the present offense was committed,** then the government
24 and defendant agree the defendant's sentence shall be as follows:

- 25 18 to 27 months of imprisonment if defendant's Criminal History Category is I;
26 21 to 30 months of imprisonment if defendant's Criminal History Category is II;

1 24 to 33 months of imprisonment if defendant's Criminal History Category is III;
2 30 to 41 months of imprisonment if defendant's Criminal History Category is IV;
3 37 to 51 months of imprisonment if defendant's Criminal History Category is V;
4 41 to 57 months of imprisonment if defendant's Criminal History Category is VI.

5 (C)(1) **Level 16 Offenses.** Under the sentencing guidelines, as set forth in
6 U.S.S.G. § 2L1.2(a) and (b)(1)(C), if the defendant has a prior aggravated felony conviction
7 for any offense other than those enumerated in U.S.C.G. §§ 2L1.2(b)(1)(A) or (B), then the
8 government and defendant agree the defendant's sentence shall be as follows:

9 6 to 12 months of imprisonment if defendant's Criminal History Category is I;
10 8 to 14 months of imprisonment if defendant's Criminal History Category is II;
11 10 to 16 months of imprisonment if defendant's Criminal History Category is III;
12 15 to 21 months of imprisonment if defendant's Criminal History Category is IV;
13 21 to 27 months of imprisonment if defendant's Criminal History Category is V;
14 24 to 30 months of imprisonment if defendant's Criminal History Category is VI.

15 (C)(2) **Level 16 Offenses Committed Under a Supervised Release Term.**
16 Under the sentencing guidelines, as set forth in U.S.S.G. § 2L1.2(a) and (b)(1)(C), if the
17 defendant has a prior aggravated felony conviction for any offense other than those
18 enumerated in U.S.S.G. §§ 2L1.2(b)(1)(A) or (B), **and it is determined that the defendant**
19 **was on supervised release at the time the present offense was committed**, then the
20 government and defendant agree the defendant's sentence shall be as follows:

21 8 to 16 months of imprisonment if defendant's Criminal History Category is I;
22 10 to 18 months of imprisonment if defendant's Criminal History Category is II;
23 12 to 21 months of imprisonment if defendant's Criminal History Category is III;
24 18 to 27 months of imprisonment if defendant's Criminal History Category is IV;
25 24 to 33 months of imprisonment if defendant's Criminal History Category is V;
26 27 to 37 months of imprisonment if defendant's Criminal History Category is VI.

1 It is agreed that the term of supervised release originally imposed shall be
2 unsuccessfully terminated. If jurisdiction for the supervised release term is outside the
3 District of Arizona and opposition to the unsuccessful termination of supervised release
4 exists, the defendant's sentence for the present offense shall be under the initial set of
5 imprisonment ranges outlined above in Sections (A)(1); (B)(1); and, (C)(1).

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

11 This agreement is conditioned on the defendant having one of the above-enumerated
12 aggravated felony convictions, and having less than 18 criminal history points. If the
13 defendant has 18 or more criminal history points, or if the government discovers a
14 conviction other than those disclosed to the defense prior to sentencing, the government
15 shall have the right to withdraw from this agreement.

16 The defendant understands and agrees that this plea agreement contains all the terms,
17 conditions and stipulations regarding sentencing. If the defendant requests or if the court
18 authorizes (a) any downward departure; (b) any reduction of criminal history category which
19 differs from that set forth in the Presentence report; or (c) any other reduction of sentence
20 not specifically agreed to in writing by the parties, the government may withdraw from the
21 plea agreement. If the court departs from the terms and conditions set forth in this plea
22 agreement, either party may withdraw.

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

Waiver of Defenses and Appeal Rights

1
2 The defendant waives any and all motions, defenses, probable cause determinations,
3 and objections which the defendant could assert to the information or indictment, or to the
4 petition to revoke, or to the Court's entry of judgment against the defendant and imposition
5 of sentence upon the defendant providing the sentence is consistent with this agreement.
6 The defendant further waives: (1) any right to appeal the Court's entry of judgment against
7 defendant; (2) any right to appeal the imposition of sentence upon defendant under Title 18,
8 United States Code, Section 3742 (sentence appeals); and (3) any right to collaterally attack
9 defendant's conviction and sentence under Title 28, United States Code, Section 2255, or
10 any other collateral attack. The defendant acknowledges that this waiver shall result in the
11 dismissal of any appeal or collateral attack the defendant might file challenging his/her
12 conviction or sentence in this case. If the defendant files a notice of appeal or a habeas
13 petition, notwithstanding this agreement, defendant agrees that this case shall, upon motion
14 of the government, be remanded to the district court to determine whether defendant is in
15 breach of this agreement and, if so, to permit the government to withdraw from the plea
16 agreement.

17 If on supervised release at the time the present offense was committed, the defendant
18 waives his/her right to a revocation hearing on any allegations of supervised release
19 violations.

Reinstatement of Removal, Deportation, or Exclusion

21 The defendant admits that the defendant was the subject of a previous order of
22 removal, deportation or exclusion. The defendant agrees to the reinstatement of that
23 previous order of removal, deportation or exclusion. The defendant admits that he does not
24 have a fear of returning to the country designated in the previous order. If this plea
25 agreement is accepted by the Court, the defendant agrees not to contest, either directly or

26 ///

1 by collateral attack, the reinstatement of the prior order of removal, deportation or
2 exclusion.

3 Reinstitution of Prosecution

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

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

20 Disclosure of Information to U.S. Probation Office

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

25
26 ///

Effect on Other Proceedings

1
2 This agreement does not preclude the United States from instituting any civil or
3 administrative proceedings as may be appropriate now or in the future.

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

9 WAIVER OF DEFENDANT'S RIGHTS

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

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

20 I have been advised by my attorney of the nature of the charge to which I am entering
21 my guilty plea. I have further been advised by my attorney of the nature and range of the
22 possible sentence.

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

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

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

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

8 ELEMENTS OF THE OFFENSE

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

16 FACTUAL BASIS AND SENTENCING FACTORS

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

20 I am not a citizen or national of the United States. I was deported, excluded,
21 or removed from the United States through Laredo, Texas on July 8, 2009.
22 I was voluntarily present and found in the United States in Amado, Arizona
23 on September 15, 2009. I did not obtain the express consent of the Attorney
24 General or Secretary of the Department of Homeland Security to reapply for
25 admission to the United States prior to returning to the United States.

26 Furthermore, for sentencing purposes, I admit that I was convicted of
possession with intent to deliver a controlled substance - methamphetamine,
an aggravated felony, on July 27, 2006, and that I was represented by an
attorney. I was sentenced to 1 to 2 years prison.

///

I agree that if I am found to have been under a term of supervised release when the present offense was committed, I will be subject to the higher sentencing ranges outlined in this agreement.

1
2
3
4 12/9/09
5 Date

~~Francisco Gomez-Lopez~~
Defendant Ricardo Tirado Malier

6 DEFENSE ATTORNEY'S APPROVAL

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

18 I translated or caused to be translated this agreement from English into Spanish to
19 the defendant on the 9 day of December, 2009.

20
21 12/4/09
22 Date

Mark Willmann
Mark Willmann
Attorney for Defendant

23
24
25 ///

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.

DENNIS K. BURKE
United States Attorney
District of Arizona



MONTE C. CLAUSEN
Assistant U.S. Attorney

12/4/09
Date

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