

FILED LODGED
 RECEIVED COPY
 SEP 15 2009
 CLERK U S DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ DEPUTY

FILED LODGED
 RECEIVED COPY
 DEC - 7 2009
 CLERK U S DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ Z DEPUTY

MMS
 JJR
 John J. Tucki

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

~~DIANE J. HUMETEWA~~
 United States Attorney
 District of Arizona

MARNIE HODAHKWEN
 Assistant U.S. Attorney
 Two Renaissance Square
 40 N. Central Avenue, Suite 1200
 Phoenix, Arizona 85004-4408
 Arizona State Bar No.021823
 Telephone (602) 514-7500
marnie.hodahkwen@usdoj.gov

UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

United States of America,

 Plaintiff,

 v.

 Jose Cruz Zepeda-Rivera,

 Defendant.

CR 09-0727-PHX-MHM (LOA)

PLEA AGREEMENT

Plaintiff, United States of America, and defendant, Jose Cruz Zepeda-Rivera, hereby agree to the following disposition of this matter:

PLEA

Defendant will plead guilty to Count 1 of the Indictment: Possession with the Intent to Distribute 5 Kilograms or More of Cocaine, charging defendant with a violation of Title 21, United States Code, Sections 841(a)(1), and 841(b)(1)(A)(ii)(II), a class A felony offense, and admit the forfeiture allegation.

TERMS

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

1 **1. Maximum Penalties**

2 a. A violation of Title 21, United States Code, Sections 841(a)(1), and
3 841(b)(1)(A)(ii)(II) is punishable by a maximum fine of \$4,000,000, a maximum term of life
4 imprisonment, (a minimum term of 10 years imprisonment), or both a fine and imprisonment,
5 and a term of supervised release of at least five years.

6 b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform
7 Act of 1984, the court shall:

8 (1) Order the defendant to make restitution to any victim of the offense unless,
9 pursuant to Title 18, United States Code, Section 3663, the court determines that restitution
10 would not be appropriate in this case;

11 (2) Order the defendant to pay a fine, which may include the costs of probation,
12 supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section
13 3572, the Court finds upon consideration of the factors therein and in Section 3553 that a fine
14 is not appropriate;

15 (3) Order the defendant, pursuant to Title 18, United States Code, Section 3583,
16 to serve a term of supervised release when required by statute or when a sentence of
17 imprisonment of more than one year is imposed, and the court may impose a term of supervised
18 release in all other cases.

19 c. Pursuant to Title 18, United States Code, Section 3013, the court is required to
20 impose a special assessment on the defendant of \$100. The special assessment is due at the time
21 the defendant enters the plea of guilty, but in no event shall it be paid later than the time of
22 sentencing.

23 **2. Agreements Regarding Sentencing**

24 a. Acceptance of Responsibility - Stipulation By The Government

25 Assuming the defendant makes full and complete disclosure to the Probation Department
26 of the circumstances surrounding the defendant's commission of the offense, if the defendant
27 would be eligible for a recommended two-point reduction pursuant to Section 3E1.1 of the
28

1 Sentencing Guidelines and, if the defendant demonstrates an acceptance of responsibility for this
2 offense up to and including the time of sentencing, the United States will stipulate to a three-
3 point reduction in the advisory Sentencing Guideline offense level, pursuant to Section 3E1.1
4 of the Sentencing Guidelines.

5 b. Safety Valve - Recommendation By The Government

6 In determining the sentence in this case, pursuant to Fed. R. Crim. P. 11(c)(1)(B), and 18
7 U.S.C. § 3553(f), if the defendant meets the eligibility requirements for the limitation on
8 applicability of the statutory minimum sentence pursuant to Section 5C1.2 of the Sentencing
9 Guidelines, the United States will recommend that the defendant receive a two level decrease
10 to the applicable offense level pursuant to Section 2D1.1(b)(11) of the Sentencing Guidelines.

11 c. Mitigating Role - Recommendation by The Government

12 Assuming no additional facts come to light regarding the defendant's role in this matter
13 and if the defendant would be eligible for a recommend two level reduction pursuant to Section
14 3B1.2 of the Sentencing Guidelines, the United States will in its sole discretion, at the time of
15 sentencing, recommend that the court apply a two level reduction to the range of the sentence
16 called for by the Sentencing Guidelines.

17 d. Withdrawal Rights if Plea Rejected. If the court, after reviewing the plea
18 agreement, concludes that any provision is inappropriate, it may reject the plea agreement giving
19 the defendant, in accordance with Fed. R. Crim. P. 11(c)(5), an opportunity to withdraw the
20 guilty plea.

21 **3. Agreement to Dismiss or Not to Prosecute**

22 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States will dismiss Count 2
23 of the Indictment.

24 b. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States agrees to bring no
25 further charges against the defendant arising out of the investigation which brought about this
26 plea, except for crimes of violence as defined in 18 U.S.C. §16, if any.

27
28

1 c. This agreement does not, in any manner, restrict the actions of the United States
2 in any other district nor bind any other United States Attorney's Office.

3 **4. Waiver of Defenses and Appeal Rights**

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

14 **5. Perjury and Other False Statement Offenses or Other Offenses**

15 Nothing in this agreement shall be construed to protect the defendant in any way from
16 prosecution for perjury, false declaration or false statement, or any other offense committed by
17 defendant after the date of this agreement. Any information, statements, documents, and
18 evidence which defendant provides to the United States pursuant to this agreement may be used
19 against the defendant in all such prosecutions.

20 **6. Reinstitution of Prosecution**

21 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the
22 United States will be free to prosecute the defendant for all charges of which it has knowledge,
23 and any charges that have been dismissed because of this plea agreement will be automatically
24 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the
25 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later
26 charges or proceedings. The defendant understands that any statements made at the time of the
27
28

1 defendant's change of plea or sentencing may be used against the defendant in any subsequent
2 hearing, trial, or proceeding as permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

3 **7. Loss of Certain Federal Benefits**

4 The defendant understands and acknowledges that a conviction may result in the
5 defendant losing eligibility for certain Welfare, Food Stamp, and Social Security benefits.

6 **8. Disclosure of Information to U.S. Probation Office**

7 The defendant will cooperate fully with the United States Probation Office. Such
8 cooperation will include truthful statements in response to any questions posed by the Probation
9 Department including, but not limited to:

10 (1) All criminal history information, i.e., all criminal convictions as defined
11 under the Sentencing Guidelines.

12 (2) All financial information, e.g., present financial assets or liabilities that
13 relate to the ability of the defendant to pay a fine or restitution.

14 (3) All history of drug abuse which would warrant a treatment condition as part
15 of sentencing.

16 (4) All history of mental illness or conditions which would warrant a treatment
17 condition as a part of sentencing.

18 **9. Forfeiture, Civil, and Administrative Proceedings**

19 a. Nothing in this agreement shall be construed to protect the defendant from civil
20 forfeiture proceedings or prohibit the United States from proceeding with and/or initiating an
21 action for civil forfeiture.

22 b. Defendant will identify all assets and identify the source of income used to obtain
23 the assets. Defendant will identify all assets used to facilitate the commission of any crime
24 charged in this indictment. Defendant will testify truthfully in any civil forfeiture proceeding.

25 c. Further, this agreement does not preclude the United States from instituting any
26 civil or administrative proceedings as may be appropriate now or in the future.

27
28

1 d. Pursuant to Title 21, United States Code, Sections 853 and 970, the defendant shall
2 forfeit to the United States all the defendant's right, title, and interest in, and hereby withdraws
3 any claim to, any property that (1) constitutes, or is derived from, any proceeds obtained, directly
4 or indirectly, as the result of the offense to which the defendant shall plead guilty as set forth
5 above, and/or (2) was used, or intended to be used, in any manner or part, to commit, or to
6 facilitate the commission of, the offense to which the defendant shall plead guilty as set forth
7 above, and/or (3) is a substitute for property that is subject to forfeiture as described in (1)
8 and/or (2) above, but is no longer available for any of the reasons set forth in 21 U.S.C. § 853(p).
9 This includes, but is not limited to the following "Specified Property:"

10 (A) a 2003 Honda Accord bearing Sonora Mexico license plate number
11 146SXS8 (Vehicle Identification Number 1HGCM66523A059574),

12 (B) any other property seized on or about June 10, 2009 in the course of the
13 government's investigation and/or prosecution of the defendant.

14 e. The defendant states that he is the sole and rightful owner of the Specified
15 Property and that to the best of his knowledge no one else has any ownership or other interest
16 in the property. In the event any federal, state or local law enforcement agency having custody
17 of the property decides not to pursue forfeiture of the property due to its minimal value, the
18 defendant hereby abandons any interest he has in such property and consents to the destruction
19 or any other disposition of the property by the federal, state or local agency without further
20 notice or obligation whatsoever owing to the defendant.

21 f. The defendant agrees to fully assist the government in the forfeiture of the
22 Specified Property and to take whatever steps are necessary to pass clear title to the United
23 States, including, but not limited to, surrendering title and executing any documents necessary
24 to transfer the defendant's interest in any of the Specified Property to the United States, assisting
25 in bringing any assets located outside of the United States within the jurisdiction of the United
26 States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not
27 sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture.

28

1 g. The defendant consents to the entry of a preliminary order of forfeiture of the
2 Specified Property prior to sentencing and a final order of forfeiture of the Specified Property
3 at sentencing and judgment. At the time of the entry of the court's judgment, any preliminary
4 order of forfeiture shall automatically be made final and be incorporated into the sentence and
5 judgment.

6 h. Defendant agrees to hold the United States, its agents and employees harmless
7 from any claims whatsoever in connection with the seizure, storage, forfeiture and/or disposal
8 of property covered by this agreement.

9 i. Defendant knowingly and voluntarily waives any right, challenge, defense,
10 argument, and/or claim arising under (1) the U.S. Constitution, including without limitation the
11 clauses thereof relating to due process, excessive fine, excessive punishment, double jeopardy,
12 and/or trial by jury; (2) any statutory provision, including without limitation any provision in the
13 Civil Asset Forfeiture Reform Act of 2000 or any statute of limitations, and/or relating to trial
14 by jury, service of process, notice to the defendant or the defendant's attorney or other agent
15 (whether in the charging instrument, during the plea colloquy, at sentencing, or at any other time
16 or in any other document), and/or any other process or proceeding; (3) any rule of practice or
17 procedure, including without limitation Fed. R. Crim. P. 7(c)(2), 11(b)(1)(J), and 32.2; and/or
18 (4) any principle of equity. Such waivers shall apply irrespective of whether the right, challenge,
19 defense, argument and/or claim at issue is brought or asserted through motion, appeal, habeas
20 corpus proceeding, or any other means.

21 j. Any criminal, civil or administrative forfeiture of the defendant's right,
22 title, and interest in any property shall not now or in the future be treated as satisfaction of any
23 assessment, fine, restitution, cost of imprisonment, or any other penalty that the court may
24 impose upon the defendant in addition to forfeiture.

25 k. Nothing in this agreement shall prevent the United States from instituting
26 civil judicial or administrative forfeiture proceedings against any additional forfeitable assets in
27 which the defendant has an interest.

28

1 l. Defendant agrees not to file a claim or assist others in filing a claim to any
2 of the Specified Property in any criminal or civil proceeding, administrative or judicial, which
3 may be initiated and agrees to abandon any claims already made in such proceedings.

4 m. Defendant understands and agrees that, by virtue of his plea of guilty, defendant
5 will waive any rights or cause of action that defendant might otherwise have had to claim that
6 he is a “substantially prevailing party” for the purpose of recovery of attorney fees and other
7 litigation costs in any related civil forfeiture proceeding.

8 n. The defendant agrees to fully and truthfully disclose the existence, nature and
9 location of all assets forfeitable to the United States, either directly or as a substitute asset, in
10 which he has or had any direct or indirect financial interest, or exercise or exercised control,
11 directly or indirectly, during the period from May 1, 2009 to the present. The defendant also
12 agrees to fully and completely assist the United States in the recovery and forfeiture of all such
13 forfeitable assets. As part of this cooperation, the defendant agrees to undergo any polygraph
14 examination the United States might choose to administer concerning the identification and
15 recovery of all such forfeitable assets. The defendant understands and agrees that the United
16 States will use the financial information when making its recommendation to the Court regarding
17 the defendant’s acceptance of responsibility for the offense charged in the indictment.

18 o. The defendant understands and agrees that in the event the United States learns of
19 a knowing misrepresentation by the defendant on, or in connection with, the financial
20 information disclosed to the United States, and in the event that such nondisclosure or
21 misrepresentation involves assets valued at more than \$1,000, the United States may, at its
22 option: (1) be released from all of its obligations under this plea agreement, or (2) let the plea
23 agreement stand and take other action as it deems appropriate.]

ELEMENTS OF THE OFFENSE

24
25 I understand that the elements of the offense to which I am pleading guilty are as follows:

26 (1) In the District of Arizona, the defendant knowingly possessed 5 kilograms or more
27 of a controlled substance, specifically cocaine; and

28

1 (2) The defendant possessed the cocaine with the intent to deliver it to another person.

2 **FACTUAL BASIS**

3 I further admit that if this matter were to proceed to trial the United States could prove
4 the following facts beyond a reasonable doubt:

5 On or about June 10, 2009, I, Jose Cruz Zepeda-Rivera drove a 2003 Honda
6 Accord bearing Sonora Mexico license plate number 146SXS8 (Vehicle
7 Identification Number 1HGCM66523A059574) from Mexico into the United
8 States, and into the District of Arizona, through the San Luis Port of Entry. I
9 knew the vehicle contained cocaine within a hidden, non-factory compartment.
10 When I arrived at the San Luis Port of Entry, I told a Customs and Border
11 Protection officer that I owned the vehicle and that only my wife and I drove it.
12 When Customs and Border Protection officers searched the vehicle, they found 15
13 packages of cocaine weighing approximately 16.8 kilograms or 39.96 pounds. I
14 was to be paid \$1,500 to bring this cocaine into the United States and deliver the
15 vehicle containing the cocaine to an individual who would be waiting for it at the
16 Del Sol Market in San Luis, Arizona.

17 I understand that I will have to swear under oath to the accuracy of this statement, and if
18 I should be called upon to testify about this matter in the future, any intentional material
19 inconsistencies in my testimony may subject me to additional penalties of perjury or false
20 swearing which may be enforced by the United States under this agreement.

21 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

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

24 I have discussed the case and my constitutional and other rights with my attorney. I
25 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,
26 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present
27 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting
28

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

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

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

10 My guilty plea is not the result of force, threats, assurances 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 fully understand that, if I am granted probation or placed on supervised release by the
14 court, the terms and conditions of such probation/supervised release are subject to modification
15 at any time. I further understand that, if I violate any of the conditions of my
16 probation/supervised release, my probation/supervised release may be revoked and upon such
17 revocation, notwithstanding any other provision of this agreement, I may be required to serve
18 a term of imprisonment or my sentence may otherwise be altered.

19 I agree that this written plea agreement contains all the terms and conditions of my plea
20 and that promises made by anyone (including my attorney), and specifically any predictions as
21 to the guideline range applicable, that are not contained within this written plea agreement are
22 without force and effect and are null and void.

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

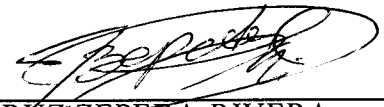
24 I am fully capable of understanding the terms and conditions of this plea agreement. I am
25 not now on or under the influence of any drug, medication, liquor, or other intoxicant or
26 depressant, which would impair my ability to fully understand the terms and conditions of this
27 plea agreement.

28

1 This agreement has been read to me in **Spanish** and I have carefully reviewed every part
2 of it with my attorney. I understand it, and I voluntarily agree to it.

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

3/ Agosto / 2009
Date


JOSE ~~JESUS~~ CRUZ-ZEPEDA-RIVERA
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 Fed. R. Crim. P. 11, 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 maximum statutory sentence possible. 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 United States 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 that the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P. 11. I translated or caused to be translated this agreement from English into **Spanish** for the defendant on 3 day of August, 2009.

8/3/2009
Date


GREGORY A. BARTOLOMEI
Attorney for Defendant

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' 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.

John J. Tuchi

JJR
MAD
~~DIANE J. HUMETEWA~~
United States Attorney
District of Arizona

9/15/09
Date

Marnie Hodahkwen

MARNIE HODAHKWEN
Assistant U.S. Attorney

COURT'S ACCEPTANCE

12-7-09
Date

Mary H. Murguia
HONORABLE MARY H. MURGUIA
United States District Judge