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District of Arizona

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SEP 30 2009
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

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CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Jesus M. Torres-Alvillar,
a.k.a.: Jesus Torres,

Defendant.

No. CR-09-1172-PHX-ROS
Mag. No. 09-7328M
PLEA AGREEMENT
(Fast Track 5K3.1)

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

PLEA

The defendant will plead guilty to an Indictment charging a violation of Title 8, United States Code (U.S.C.), Section 1326(a) with a sentencing enhancement under 1326(b)(1), Reentry of Removed Alien, a class C felony offense.

1. MAXIMUM PENALTIES

a. A violation of 8 U.S.C. § 1326(a) with a sentencing enhancement under 8 U.S.C. § 1326(b)(1) is punishable by a maximum fine of \$250,000.00, a maximum term of imprisonment of 10 years, or both, and a term of supervised release of up to 3 years.

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

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

1 (2) Order the defendant to serve a term of supervised release when required by
2 statute or when a sentence of imprisonment of more than one year is imposed. The Court may
3 impose a term of supervised release in all other cases.

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

6 **2. AGREEMENTS REGARDING SENTENCING**

7 a. Stipulation: Acceptance of Responsibility. Pursuant to Fed. R. Crim. P.
8 11(c)(1)(C), if the defendant makes full and complete disclosure to the Probation Office of the
9 circumstances surrounding the defendant's commission of the offense, and if the defendant
10 demonstrates an acceptance of responsibility for this offense up to and including the time of
11 sentencing, the United States will stipulate and agree to a two-level reduction pursuant to
12 U.S.S.G. § 3E1.1. If the defendant has an offense level of 16 or more, the United States will
13 stipulate and agree to an additional one-level reduction pursuant to U.S.S.G. § 3E1.1.

14 b. Stipulated Sentence Under Early Disposition Program. Although the Sentencing
15 Guidelines are only advisory, the parties stipulate and agree pursuant to Fed. R. Crim. P.
16 11(c)(1)(C) that the defendant will be sentenced in accordance with the Sentencing Guidelines
17 after a reduction under U.S.S.G. § 5K3.1, the Attorney General's Early Disposition Program, as
18 follows:

19 1) A four-level reduction in offense level and a sentence within the adjusted
20 guideline range, if the crime is classified as a level 24 offense under U.S.S.G. §
21 2L1.2(a) and (b)(1)(A). The guideline range at offense level 24 is 51-125 months,
22 depending on criminal history. After the three-level reduction for acceptance of
23 responsibility and four-level reduction for early disposition, the guideline range
24 at offense level 17 is 24-63 months, depending on criminal history.

25 2) A two-level reduction in offense level and a sentence within the adjusted
26 guideline range, if the crime is classified as a level 20 offense under U.S.S.G. §
27 2L1.2(a) and (b)(1)(B). The guideline range at offense level 20 is 33-87 months,
28 depending on criminal history. After the three-level reduction for acceptance of

1 responsibility and two-level reduction for early disposition, the guideline range at
2 offense level 15 is 18-51 months, depending on criminal history.

3 3) A one-level reduction in offense level and a sentence within the adjusted
4 guideline range, if the crime is classified as a level 16 offense under U.S.S.G. §
5 2L1.2(a) and (b)(1)(C). The guideline range at offense level 16 is 21-57 months,
6 depending on criminal history. After the three-level reduction for acceptance of
7 responsibility and one-level reduction for early disposition, the guideline range at
8 offense level 12 is 10-37 months, depending on criminal history.

9 4) A stipulated sentence two months below the low end of the adjusted guideline
10 range, if the crime is classified as a level 12 offense under U.S.S.G. § 2L1.2(a) and
11 (b)(1)(D) or (b)(1)(E). The guideline range at offense level 12 is 10-37 months,
12 depending on criminal history. After the two-level reduction for acceptance of
13 responsibility and stipulation for a sentence two months below the low end of the
14 guideline range at level 10, the resulting sentence will be between 4 and 22
15 months, depending on criminal history.

16 c. Multiple Offense Levels. If more than one offense level under U.S.S.G. §
17 2L1.2(b)(1) applies because the defendant has multiple prior convictions, the highest applicable
18 offense level will be used in calculating the downward departure and sentencing range.

19 d. Supervised Release. The defendant is on Supervised Release in 09-CR-00097-
20 MSK from the United States District Court for the District of Colorado. The parties have no
21 agreement on the resolution of that matter.

22 e. Criminal History Points. If the defendant has 18 or more criminal history points,
23 the government shall have the right to withdraw from this agreement.

24 f. No Other Departure or Reduction. The defendant understands and agrees that this
25 plea agreement contains all of the terms, conditions, and stipulations regarding the sentencing
26 range. If the defendant requests or if the Court grants (a) any downward departure, (b) any
27 reduction in criminal history category under U.S.S.G. § 4A1.3, or (c) any other reduction of the
28

1 sentencing range not specifically agreed to in writing by the parties, the government may
2 withdraw from the plea agreement.

3 g. Rejection of Plea Agreement. If the Court concludes that any provision in this plea
4 agreement is inappropriate, it may reject the plea agreement, giving the defendant an opportunity
5 to withdraw his guilty plea in accordance with Fed. R. Crim. P. 11(c)(5), and the defendant and
6 the government an opportunity to withdraw from the plea agreement.

7 **3. WAIVER OF DEFENSES AND APPEAL RIGHTS**

8 Providing the sentence is consistent with this agreement, the defendant waives: (1) any
9 and all motions, defenses, probable cause determinations, and objections that the defendant could
10 assert to the indictment or information; (2) any right to file an appeal, any collateral attack, or
11 any other writ or motion that challenges the conviction, the Court's entry of judgment against
12 defendant, or the imposition of sentence, including the manner in which the sentence is
13 determined, including but not limited to any appeals under 18 U.S.C. § 3742 and motions under
14 28 U.S.C. §§ 2241 and 2255. The defendant acknowledges that if the court has sentenced
15 defendant according to the terms of the agreement, this waiver shall result in the dismissal of any
16 appeal, collateral attack, or other motion the defendant might file challenging the conviction or
17 sentence in this case.

18 **4. PERJURY AND OTHER OFFENSES**

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

24 **5. REINSTITUTION OF PROSECUTION**

25 If the defendant's plea agreement is rejected or withdrawn or the guilty plea is rejected,
26 withdrawn, vacated, or reversed at any time, the United States shall be free to prosecute the
27 defendant for all crimes of which it then has knowledge, and any charges that have been
28 dismissed because of this plea agreement shall be automatically reinstated. In such event, the

1 defendant waives any and all objections, motions, or defenses based upon the Statute of
2 Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later charges
3 or proceedings. The defendant understands that any statements made at the time of the
4 defendant's change of plea or sentencing may be used against the defendant in any subsequent
5 hearing, trial, or proceeding to the extent permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid.
6 410.

7 **6. DISCLOSURE OF INFORMATION TO U.S. PROBATION OFFICE**

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

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

14 i. Criminal convictions, history of drug abuse, and history of mental illness;
15 and

16 ii. Financial information, including present financial assets or liabilities that
17 relate to the ability of the defendant to pay a fine or restitution.

18 **7. EFFECT ON OTHER PROCEEDINGS**

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

21 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

22 I have read the entire plea agreement with the assistance of counsel and understand each
23 of 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 shall waive my rights to plead not guilty; to trial
26 by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence
27 in my defense; to remain silent and refuse to be a witness against myself by asserting my
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1 privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a
2 reasonable doubt, 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 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 shall be determined after consideration of the
8 advisory Sentencing Guidelines. I understand that the Sentencing Guidelines are only advisory
9 and that without this agreement the Court would be free to exercise its discretion to impose any
10 reasonable sentence up to the maximum set by statute for the crimes of conviction.

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

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

20 I agree that this written plea agreement contains all of the terms and conditions of my plea
21 and that promises made by anyone (including my attorney), and specifically any predictions as
22 to the Sentencing Guidelines range or Sentencing Guidelines factors that will apply, that are not
23 contained within this written plea agreement are merely an estimate, are without force and effect,
24 and are null and void.

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

26 I am fully capable of understanding the terms and conditions of this plea agreement. I am
27 not now using or under the influence of any drug, medication, liquor, or other intoxicant or
28

1 depressant that would impair my ability to fully understand the terms and conditions of this plea
2 agreement.

3 **ELEMENTS**

4 **Reentry of Removed Alien**

5 On or about June 28, 2009, in the District of Arizona:

6 1. The defendant was an alien;

7 2. The defendant had been previously denied admission, excluded, deported, or
8 removed from the United States;

9 3. The defendant knowingly and voluntarily reentered or was present after a
10 voluntary entry and found in the United States in the District of Arizona; and

11 4. The defendant did not obtain the express consent of the Attorney General or the
12 Secretary of Homeland Security to reapply for admission to the United States prior to returning
13 to the United States.

14 **FACTUAL BASIS**

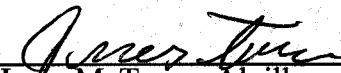
15 I further admit the following facts are true and that if this matter were to proceed to trial
16 the United States could prove the following facts beyond a reasonable doubt:

17 I am not a citizen or national of the United States. I was removed from the United
18 States through Laredo, Texas, on December 22, 2008. I was voluntarily present
19 and found in the United States at or near Phoenix, Arizona, on June 28, 2009. I did
not obtain the express consent of the United States government to reapply for
admission to the United States prior to returning to the United States.

20 For sentencing purposes, I admit I was convicted of Distribution of Mixture and
21 Substances Containing Methamphetamine, a felony, on April 25, 2001, in the
United States District Court, District of New Mexico. I was represented by an
attorney, and I was sentenced to three (3) years probation.

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

24
25 9-30-09
26 Date


27 _____
28 Jesus M. Torres-Alvillar
Defendant

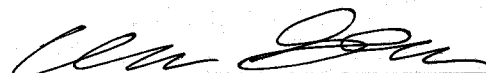
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UNITED STATES' APPROVAL

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.

DENNIS K. BURKE
United States Attorney
District of Arizona

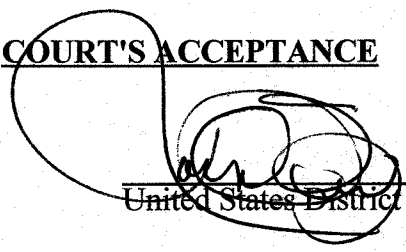
9/30/09
Date



CHARLES W. GALBRAITH
Assistant U.S. Attorney

COURT'S ACCEPTANCE

12/15/09
Date



United States District Judge