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U.S. COURTS

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CAMERON S. BURKE,  
CLERK, IDAHO

*Wang*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, ) Case No. CR-02-003-S-EJL  
 )  
 vs. )  
 )  
 ) CRUZ RUBALCAVA-RODRIGUEZ, )  
 )  
 ) Defendant. )  
 )  
 )

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**RULE 11 PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the defendant, the attorney for the defendant, and the Government<sup>1</sup> agree as follows:

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<sup>1</sup> The word "Government" in this Agreement refers to the United States Attorney for the District of Idaho.

1. **Guilty Plea.**

Defendant shall enter a plea of guilty to Count One of the Indictment, which charges the defendant with Being Found in United States, in violation of Title 8, United States Code, Sections 1326(a) and (b)(1), which carries a maximum penalty of 10 years imprisonment and/or a \$250,000.00 fine.

a. **Elements:**

First, the defendant is not a citizen of the United States;

Second, the defendant was lawfully deported from the United States; and

Third, the defendant reentered the United States without the consent of the Attorney General of the United States (Immigration and Naturalization Service).

b. **Factual Basis:**

The defendant is a citizen of Mexico. He was convicted on August 27, 1998, in the District of Idaho, of Illegal Re-entry After Deportation, in violation of Title 8, United States Code, Section 1326. He was lawfully deported from the United States several times, most recently through the Port of Entry at El Paso, Texas, on December 22, 1998. He was present in the United States in Wendell, Idaho on June 29, 2001. He did not obtain the express consent of the Attorney General to reapply for admission to the United States prior to returning to the United States.

2. **Sentence.**

A. **Sentencing Guidelines.**

The parties acknowledge that the Court will determine the applicable sentencing factors at sentencing and that the Court's determination will affect the sentence range under the Sentencing Guidelines. The Government reserves the right to defend any of the Court's rulings and

findings with respect to any sentencing issue on appeal or in any collateral proceeding, notwithstanding the other terms of this Agreement.

**B. Acceptance of Responsibility.**

Unless the Government learns of new information to the contrary, defendant will be entitled to a reduction of two levels in the combined adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, because defendant will have accepted responsibility for the offense as demonstrated by the expected truthful admission of the defendant's participation in the offense.

Defendant will be entitled to an additional reduction of one level in the combined adjusted offense level, under Section 3E1.1(b), because defendant will have assisted in the investigation and prosecution of defendant's own misconduct by timely providing complete information to the Government concerning defendant's own involvement in the offense and timely notifying the Government of defendant's intention to enter a plea of guilty.

**C. Sentence Agreement.**

Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree to a two-level departure from the Sentencing Guideline range that the Court finds to be applicable. This Agreement is based, in part, on the defendant's agreement for reinstatement of removal, set forth below:

(1) This Agreement is conditioned on the defendant having less than 18 criminal history points. If the defendant has 18 or more criminal history points, the Government reserves the right to withdraw from this Agreement.

(2) The defendant understands and agrees that this Plea Agreement contains all the terms, conditions and stipulations regarding sentencing and if the defendant moves or otherwise

applies for any further downward departures, the Government will have the right to withdraw from this Agreement.

(3) If the Court, after reviewing the Plea Agreement, concludes any provision is inappropriate, it may reject the Plea Agreement, allowing the defendant, under Rule 11(e)(4), an opportunity to withdraw his guilty plea.

#### **Agreement for Reinstatement of Removal**

The defendant admits that he was the subject of a previous order of removal, deportation or exclusion entered on February 13, 1998, at Eloy, Arizona, and agrees to the reinstatement of that previous order as set forth in the **Order of Reinstatement** attached to this Plea Agreement. In the event this Plea Agreement is accepted by the Court, the defendant agrees not to contest, either directly or by collateral attack, the reinstatement of the prior order of removal, deportation or exclusion.

The defendant's acknowledgment of identity and agreement not to contest the reinstatement of the prior order of deportation, exclusion or removal, is given in exchange for the Government's sentence agreement set forth above. **The justification for the two-level departure is that the Sentencing Guidelines do not adequately take into account the savings to the Government resulting from the combination of the fast-track plea and the uncontested reinstatement of the prior order of deportation, exclusion or removal, including reduced expenses for conducting hearings and for housing and transporting the defendant pending hearings in both district court and immigration court.**

Unless the Court determines that defendant will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of defendant's dependents, a fine shall be imposed. There

is no agreement as to the amount of the fine. The Court may also order defendant to pay the costs of imprisonment, probation, and supervised release.

The Court may accept or reject this Agreement, or may defer its decision until it has an opportunity to consider the presentence report. Defendant agrees that the Court may inspect the presentence report before it accepts or rejects the Plea Agreement. If the Court rejects this Agreement, it shall afford the defendant the opportunity to withdraw the plea of guilty, and advise the defendant that if the plea is not withdrawn the sentence may be greater than the maximum provided for in this Agreement.

**D. Nonapplicability of Sentence Agreement.**

Any limitations on the sentence that are contained in this Agreement will not apply if defendant is sentenced to probation and the probation is revoked, or if a court rules that defendant has violated any condition of supervised release that is imposed.

**E. Supervised Release.**

Defendant will be sentenced to a term of supervised release, to be served after incarceration, of between two and three years.

**F. Supervised Release Violations.**

The term of supervised release defendant is sentenced to will be a specific (i.e., a determinate) term chosen by the Court at sentencing. The combination of prison time and supervised release is permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) to which defendant is pleading guilty. Violation of any condition of supervised release may result in defendant being imprisoned for the entire term of supervised release or being prosecuted for contempt of court under Title 18, United States Code, Section 401(3).

**G. Special Assessment.**

Defendant will pay a special assessment of \$100.00 per felony count in addition to any fine imposed. This assessment will be paid by defendant before sentence is imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the United States District Court, Clerk's Office, Third Floor, Federal Building and United States Courthouse, Boise, Idaho, 83707. If the defendant is indigent, the special assessment will be collected according to the provisions of Chapters 227 and 229 of Title 18, United States Code.

**3. Consequences of Violating Agreement.**

**A. Government's Options.**

If defendant fails to keep any promise in this Agreement (including any promise to cooperate), the Government is relieved of any obligation not to prosecute defendant on other charges, including any charges dismissed as part of this Plea Agreement. Such charges may be brought without prior notice. In addition, if the Government determines after sentence is imposed under this Agreement that defendant's breach of the Agreement warrants further prosecution, the Government will have the choice between letting the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such charge(s) may be re-prosecuted as well. If the Government makes its determination before sentencing, it may withdraw from the Plea Agreement in its entirety.

**B. Waiver of Rights.**

Defendant agrees that if he fails to keep any promise made in this Agreement defendant gives up:

- (1) the right not to be placed twice in jeopardy for the offenses(s) to which defendant entered a plea of guilty or which were dismissed under this Agreement;

(2) any right under the Constitution and laws of the United States to be charged or tried in a more speedy manner for any charge that is brought as a result of defendant's failure to keep this Agreement;

(3) the right to be charged within the applicable statute of limitations period for any charge that is brought as a result of defendant's failure to keep this Agreement, and on which the statute of limitations expired after defendant entered into this Agreement.

Furthermore, the defendant understands that by entering a plea of guilty, if that plea is accepted by the court, there will be no trial and he will have waived (give up) his right to a trial as well as the following **rights associated with a trial**: that he has a right to plead not guilty to the offense(s) charged against him and to persist in that plea; that he has the right to a trial by jury; that at trial he would be presumed innocent and the government would have to prove guilt beyond a reasonable doubt; and that he would have the right to assistance of counsel for his defense, the right to see and hear all the witnesses and have them cross-examined in his defense, the right on his own part to decline to testify unless he voluntarily elected to do so in his own defense, and the right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses to testify in his defense or if he decided not to testify or put on any evidence, that these facts would not be held against him.

4. **Unconditional Waiver of Appeal Rights.**

Defendant knows that he will be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been determined by the district judge; (2) any estimate of the likely sentence received from any source is a prediction and not a promise; and (3) the district judge has the final authority to decide what the sentence will be. Defendant has thoroughly reviewed this

Agreement with his lawyer and understands the Agreement and its effect upon the potential sentence. Defendant is satisfied with his lawyer's advice and representation.

Defendant is pleading guilty voluntarily and intends to give up (waive) all appeal and other post-conviction rights he may have regarding both his conviction and sentence in exchange for the other terms of this Agreement. Therefore, defendant promises not to appeal or otherwise contest his conviction or sentence on any ground, ~~including~~ <sup>except</sup> those contained in Title 18, United States Code, Section 3742, <sup>and</sup> ~~or~~ in any post-conviction proceeding, including any proceeding authorized by Title 28, United States Code, Section 2255, <sup>for ineffective assistance of counsel.</sup> JAA

Nothing in this Agreement affects the Government's right to appeal as set forth in Title 18, United States Code, Section 3742(b).

7. **Miscellaneous.**

A. **No Other Terms.**

This Agreement incorporates the complete understanding between the parties, and no other promises have been made by the Government to the defendant or to the attorney for the defendant. This Agreement does not prevent any governmental agency from pursuing civil or administrative actions against defendant or any property. Unless an exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental entities other than the United States Attorney's Office for the District of Idaho.

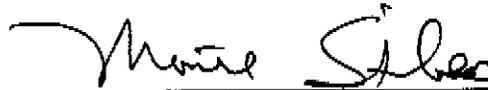
B. **Acceptance.**

This plea offer is explicitly conditioned on receipt by the Office of the United States Attorney of this fully signed Plea Agreement no later than 5:00 P.M. on Tuesday, February 26, 2002.

It is defendant's sole and complete responsibility to provide timely delivery of this signed Agreement by the date specified above in order for this offer to be effectively accepted.

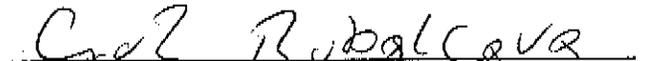
THOMAS E. MOSS  
UNITED STATES ATTORNEY FOR  
THE DISTRICT OF IDAHO  
By:

February 19, 2002



MONTE J. STILES  
Assistant United States Attorney

~~February~~ <sup>April</sup> 2, 2002

  
CRUZ RUBALCAVA-RODRIGUEZ, Defendant

~~February~~ <sup>April</sup> 2, 2002

  
S. RICHARD RUBIN, Attorney for Defendant

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