

1 THOMAS E. MOSS  
UNITED STATES ATTORNEY  
2 LYNNE W. LAMPRECHT  
ASSISTANT UNITED STATES ATTORNEY  
3 DISTRICT OF IDAHO  
MK PLAZA, PLAZA IV  
4 800 PARK BOULEVARD  
BOISE, IDAHO 83712-9903  
5 TELEPHONE: (208) 334-1211

U. S. COURTS

JUL - 6 2004

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CAMERON S. BURKE  
CLERK IDAHO

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8 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO  
9

10 UNITED STATES OF AMERICA, )

11 Plaintiff, )

12 vs. )

13 JUAN DELGADO-DELGADO, )

14 Defendant. )  
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Case No. CR 04-046-S-EJL

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(B) of the Federal Rules of  
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government<sup>1</sup> agree that  
4 the defendant will plead guilty to Counts One and Two of the Superseding Information. The  
5 defendant acknowledges that the plea is voluntary and did not result from force, threats, or  
6 promises, other than any promise made in this Plea Agreement. More specifically, the parties  
7 agree as follows:

8 Count One of the Superseding Information charges that the defendant, an unlawful user of  
9 a controlled substance, that is, methamphetamine, knowingly and intentionally possessed firearms  
10 that traveled in interstate and foreign commerce; namely, a Chinese SKS 7.62 mm rifle, serial  
11 number 20049788; a 1929 "Mauser style" Spanish-made 7 mm bolt action-rifle, serial number  
12 U7711; and a Savage Arms bolt-action .22 rifle with the serial number filed off; all in violation of  
13 Title 18, United States Code, Section 922(g)(3).

14 Count Two of the Superseding Information charges that the defendant shall forfeit the three  
15 firearms that were involved in the commission of the offense charged in Count One, and that were  
16 in the defendant's possession at the time he committed the offense, including a Chinese SKS 7.62  
17 mm rifle, serial number 20049788; a 1929 "Mauser style" Spanish-made 7 mm bolt-action rifle,  
18 serial number U7711; and, a Savage Arms bolt-action .22 rifle with the serial number filed off; all  
19 pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section  
20 2461(c).

21 **B. Acceptance.** Upon acceptance of the defendant's guilty plea, and the defendant's  
22 full compliance with the other terms of this Agreement, the Government, under Rule 11(c)(1)(B)  
23 of the Federal Rules of Criminal Procedure, agrees to recommend that the defendant receive a  
24 three-level downward departure for acceptance of responsibility, pursuant to Guidelines Section  
25 3E1.1(a) and (b). Defendant acknowledges, agrees and waives objection to the fact that the Court

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

1 may consider "relevant conduct" in arriving at an appropriate sentence pursuant to Section 1B1.3  
2 of the Sentencing Guidelines.

3 Upon the Court's acceptance of the defendant's plea of guilty to the Superseding  
4 Information, the Government agrees that it will dismiss the Indictment now pending against him.

5  
6 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

7 Defendant understands that he will be placed under oath at the plea hearing and that the  
8 government, in a prosecution for perjury or false statement, has the right to use against the  
9 defendant any statement that the defendant gives under oath. Moreover, the defendant understands  
10 and waives (gives up) the following rights: 1) the right to plead not guilty to the offenses charged  
11 against the defendant and to persist in that plea; 2) the right to a trial by jury; 3) the right to be  
12 represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every  
13 stage of the proceeding; and 4) the rights, at trial, to confront and cross-examine adverse  
14 witnesses, to be protected from compelled self-incrimination, to testify, to present evidence and to  
15 compel the attendance of witnesses. The defendant understands that by pleading guilty he waives  
16 (gives up) all of the rights set forth above. The defendant fully understands that by entering a plea  
17 of guilty, if that plea is accepted by the District Court, there will be no trial and the defendant will  
18 have waived (given up) these trial rights.

19 **III. NATURE OF THE CHARGES**

20 **A. Elements of the Crime.** The elements of the crime of possession of firearms by an  
21 illegal user of the controlled substance, methamphetamine, as charged in Count One of the  
22 Superseding Information, are as follows:

- 23 1. First, the defendant knowingly possessed firearms, namely, a Chinese, SKS rifle,  
24 serial number 20049788; a 1929 "Mauser style" Spanish-made 7 mm bolt-action  
25 rifle, serial number U7711; and a Savage Arms bolt-action .22 rifle with the serial  
26 number filed off;

1           2.     Second, the firearms had been shipped or transported in interstate and foreign  
2           commerce; and

3           3.     Third, that at some time when the defendant possessed the firearms, he was an  
4           unlawful user of methamphetamine.

5           To prove that the defendant was an unlawful user of the controlled substance,  
6           methamphetamine, the government does not need to prove that the defendant was actually using  
7           methamphetamine at the time of his arrest. The government need only prove that the defendant  
8           was an unlawful user of methamphetamine during the time he possessed the firearm charged in the  
9           Superseding Information.

10          As additional consideration for the benefits conferred by this guilty plea, the defendant  
11          specifically waives any rights that he has under *Apprendi*, to have every fact which is legally  
12          essential to punishment charged in the indictment and proven to a jury, and consents to judicial  
13          fact-finding with respect to any enhancements under the procedures described in the United States  
14          Sentencing Guidelines.

15                **B.     Factual Basis.**

16          If this matter were to proceed to trial, the Government and the defendant agree that the  
17          following facts would be proven beyond a reasonable doubt, which facts accurately represent the  
18          defendant's readily provable offense conduct. This factual summary is not intended to detail all  
19          relevant conduct, or cover all specific offense characteristics, which will be determined by the  
20          Court after its consideration of the Presentence Report.

21          On January 28, 2004, Payette County Sheriff's Deputies went to the apartment complex in  
22          New Plymouth, Idaho, where Mr. Delgado was the apartment manager. The officers had a warrant  
23          for another person whom they believed lived in the apartment complex. They could not locate this  
24          individual, so they knocked on Mr. Delgado's door for assistance. The door was opened by a  
25          female with white powder around her nose. She told them that they could come in, but that she  
26          could not give them permission to search the premises, as she was only living there temporarily.  
27          She told them that she was alone, and that the apartment manager, whom she knew only as "Joe,"  
28

1 would not be back for at least another day. Although the female assured the officers several times  
2 that there was no one else in the apartment, they heard a person coughing in the bedroom. The  
3 officers became concerned for their safety and opened the bedroom door. They found  
4 Mr. Delgado in the bed. Next to his bed, in plain view, they saw drug paraphernalia, including a  
5 small glass vial containing residue, and a Chinese-made, SKS rifle leaning against the bed. Mr.  
6 Delgado's eyes were glazed, his pupils were pinpoints, and he appeared to be under the influence  
7 of a drug. The officers handcuffed Mr. Delgado and removed him and the female from the  
8 premises for their own safety. They then had a Spanish-speaking neighbor, Romero Santiago,  
9 inform Mr. Delgado that the officers wanted to search the defendant's apartment for drugs, and  
10 they had the neighbor read Mr. Delgado a consent to search card in Spanish. Mr. Delgado, after  
11 having been read his rights, agreed to let the officers search the apartment.

12 The officers used a drug dog, and the dog alerted on Mr. Delgado's bed in the bedroom in  
13 which he had been sleeping. Under the covers, the officers found a red pouch that contained two  
14 bags, one large and one small, each containing a white, crystalline substance that appeared to be  
15 methamphetamine. Also in the pouch was a small set of scales. The SKS rifle, serial number  
16 20049788, was leaning against the side of the bed next to the place where the red pouch was  
17 found. In the bedroom closet, officers found a 1929 Spanish-style Mauser 7 mm rifle, serial  
18 number U7711, and a Savage Arms bolt-action 22 caliber rifle with an obliterated serial number.  
19 Officers also found two glass pipes containing residue, a spoon, and a small glass vial with  
20 residue, all of which items are used for taking methamphetamine.

21 None of the rifles found in Mr. Delgado's bedroom were manufactured in Idaho. All have  
22 traveled in interstate and foreign commerce.

23 Mr. Delgado was transported to jail by Officer Weber of the Payette County Sheriff's  
24 Office, and Mr. Delgado agreed to provide a urine sample. Officer Weber took the sample  
25 following prescribed procedures, and had it sent to the Idaho State Police Forensic laboratory for  
26 testing.

1 The suspected methamphetamine found in Mr. Delgado's bedroom was weighed and  
2 analyzed by a forensic chemist at the Idaho State Police offices, who found that the smaller bag  
3 contained a mixture and substance containing methamphetamine that weighed 5.3 grams. Of this  
4 amount, 4.2 grams were pure methamphetamine. The defendant's urine sample tested positive for  
5 the presence of methamphetamine/amphetamines. Shannon Larson, an Idaho State Police  
6 Forensic Chemist, would testify that amphetamines are a metabolite for methamphetamine; the  
7 fact that there were amphetamines in the defendant's system indicated that the methamphetamine  
8 had been in his body long enough to start to metabolize. She would also testify that the amount of  
9 methamphetamine/amphetamine found in the defendant's urine exceeded the standard necessary to  
10 find the presence of that drug by quite a lot, which would indicate to her that the defendant had  
11 taken a large amount of methamphetamine.

12 Mr. Delgado is an alien who is illegally and unlawfully in the United States. He was born  
13 in, and is a citizen of, Mexico. He admitted to Special Agent Darcn Boyd of the Department of  
14 Homeland Security, Bureau of Immigration and Customs Enforcement, that he had entered the  
15 United States illegally, without permission from the Department of Homeland Security.

#### 16 **IV. SENTENCING FACTORS**

17 **A. Maximum and Minimum Penalties.** A violation of Title 18, United States Code  
18 Section 922(g)(3), as charged in Count One of the Superseding Information, is punishable by a  
19 maximum, statutory term of imprisonment of ten years, a term of supervised release of at least  
20 three years, a maximum fine of \$250,000, and a special assessment of \$100.

21 A plea of guilty to Count Two, the forfeiture count, will result in the forfeiture of the  
22 firearms listed in Count Two, as described above.

23 **B. Supervised Release.** Defendant will be sentenced to a term of supervised release,  
24 to be served after incarceration, of at least three years. The defendant will be sentenced to a term  
25 of supervised release to be served after incarceration.

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

5 **C. Fines and Costs.** Unless the Court determines that the defendant will not  
6 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's  
7 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The  
8 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised  
9 release.

10 **D. Special Assessment.** Defendant will pay a special assessment of \$100, in addition  
11 to any fine imposed. This assessment will be paid by defendant before sentence is imposed, and  
12 defendant will furnish a receipt at sentencing. Payment is to be made to the United States District  
13 Court, Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort Street, Fourth  
14 Floor, Boise, ID 83724.

15 **V. UNITED STATES SENTENCING GUIDELINES**

16 **A. Application of Sentencing Guidelines.** Defendant understands that defendant will  
17 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been  
18 determined by the District Judge; (2) any estimate of the likely sentence received from any source  
19 is a prediction and not a promise; and (3) the District Judge has the final authority to decide what  
20 the sentence will be.

21 The defendant also understands that the Court will determine the applicable sentencing  
22 factors at sentencing and that the Court's determination will affect the sentence range under the  
23 Sentencing Guidelines. While the Court may take the defendant's cooperation and the  
24 recommendations of the parties into account in determining the sentence to be imposed, the Court  
25 has complete discretion to impose a sentence other than the sentence recommended, including the  
26 maximum sentence possible for the crimes to which defendant has pled.

1           **B.     Sentencing Guidelines Recommendations and Requests.**

2           1.     Acceptance of Responsibility. Unless the government learns of new  
3 information to the contrary, defendant will be entitled to a reduction of two levels in the combined  
4 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant  
5 clearly accepts responsibility for the offense. The government will move for an additional one-  
6 level reduction in the combined offense level under section 3E1.1(b) if the following conditions  
7 are met: the defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or  
8 greater; and the defendant has assisted authorities in the investigation or prosecution of  
9 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea  
10 of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court  
11 to allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant  
12 fails to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner  
13 inconsistent with acceptance of responsibility, the government will not make such a  
14 recommendation and/or motion or, if one has already been made, it will withdraw the  
15 recommendation and/or motion.

16           2.     Downward Departure Request by Defendant. The defendant will not  
17 seek a downward departure without first notifying the government of defendant's intent to seek a  
18 downward departure and defendant's reasons and basis therefor, 21 days before the date set for  
19 sentencing.

20       **VII.    WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

21           The defendant is aware that Title 18, United States Code, Section 3742, affords defendant  
22 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the  
23 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all  
24 appeal rights defendant may have regarding both defendant's conviction and sentence, including  
25 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,  
26 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect  
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1 application of the sentencing guidelines to which the defendant filed a proper and timely  
2 objection.

3 The defendant is also aware that under certain circumstances a defendant has the right to  
4 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to  
5 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms  
6 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to  
7 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any  
8 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal  
9 claiming ineffective assistance of counsel based upon facts discovered after the entry of  
10 defendant's guilty pleas.

11 The defendant further understands that nothing in this Plea Agreement shall affect the  
12 government's right and/or duty to appeal as set forth in Title 18, United States Code,  
13 Section 3742(b).

14 **VIII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT**

15 The defendant agrees to provide all material financial and other information as may be  
16 requested by a representative of the United States Probation Office for use in preparing a  
17 Presentence Report. Failure to execute releases and/or to provide such material information as  
18 may be required is a violation of the terms of this Agreement, and will relieve the government of  
19 its obligations as set forth in this Agreement, and may subject the defendant to an enhancement  
20 under Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0  
21 of the Sentencing Guidelines, but at the option of the government, may not constitute grounds for  
22 withdrawing the plea of guilty.

23 **IX. NO RIGHT TO WITHDRAW PLEA**

24 The defendant understands that the Court is not bound to follow any recommendations or  
25 requests made by the parties at the time of sentencing. If the Court decides not to follow any of  
26 the parties recommendations or requests, the defendant cannot withdraw from this Plea Agreement  
27 or the guilty plea.

1 **X. CONSEQUENCES OF VIOLATING AGREEMENT**

2 **A. Government's Options.** If defendant fails to keep any promise in this Agreement,  
3 including any promise to cooperate, or commits a new crime, the Government is relieved of any  
4 obligation not to prosecute defendant on other charges, including any charges dismissed as part of  
5 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the  
6 government determines after sentence is imposed under this Agreement that defendant's breach of  
7 the Agreement warrants further prosecution, the government will have the choice between letting  
8 the conviction under this Plea Agreement stand or vacating such conviction, so that any available  
9 charges against the defendant may be re-prosecuted. If the government makes its determination  
10 before sentencing, it may withdraw from the Plea Agreement in its entirety.

11 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep  
12 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in  
13 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed  
14 under this Agreement; (2) any right under the Constitution and laws of the United States to be  
15 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's  
16 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of  
17 limitations period for any charge that is brought as a result of defendant's failure to keep this  
18 Agreement, and on which the statute of limitations expired after defendant entered into this  
19 Agreement.

20 Furthermore, the defendant further understands and agrees that if defendant does not enter  
21 a valid and acceptable plea, the government will move to continue the trial now set. The  
22 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be  
23 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or  
24 (h)(8)(A). This continuance will be necessary to allow the government adequate time to prepare  
25 for trial.

1 **XI. MISCELLANEOUS**

2 **A. No Other Terms.** This Agreement incorporates the complete understanding  
3 between the parties, and no other promises have been made by the government to the defendant or  
4 to the attorney for the defendant. This Agreement does not prevent any governmental agency from  
5 pursuing civil or administrative actions against defendant or any property. Unless an exception to  
6 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or  
7 obligate governmental entities other than the United States Attorney's Office for the District of  
8 Idaho. If requested to do so by the defendant or defendant's counsel, the government will bring  
9 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

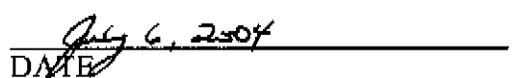
10 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned  
11 on acceptance of this plea Agreement **no later than 5:00 p.m. on July 2, 2004**, unless the defense  
12 files a motion for a continuance prior to that date. It is defendant's sole and complete  
13 responsibility to notify the U.S. Attorney's Office of the acceptance of this Agreement by the date  
14 specified above in order for this offer to be effectively accepted.

15 **XII. UNITED STATES' APPROVAL.**

16 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States  
17 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

18 THOMAS E. MOSS  
19 UNITED STATES ATTORNEY  
20 By:

21   
22 Lynne W. Lamprecht  
23 Assistant United States Attorney

24   
25 DME

26 **XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL.**

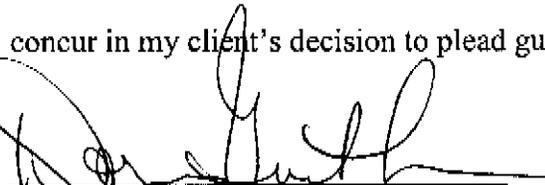
27 I have read, or have had read to me by an interpreter, and carefully reviewed every part of  
28 this Plea Agreement with my attorney. I understand the Agreement and its effect upon the  
potential sentence. Furthermore, I have discussed all of my rights with my attorney and I  
understand those rights. No other promises or inducements have been made to me, directly or

1 indirectly, by any agent of the Government, including any Assistant United States Attorney,  
2 concerning any plea to be entered in this case. In addition, no person has, directly or indirectly,  
3 threatened or coerced me to do, or refrain from doing, anything in connection with any aspect of  
4 this case, including entering a plea of guilty. I am satisfied with my attorney's advice and  
5 representation in this case.

6   
7 **Juan Delgado-Delgado**  
8 Defendant

7-6-04  
DATE

9 I have read this Plea Agreement and have discussed the contents of the agreement with my  
10 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I  
11 concur in my client's decision to plead guilty as set forth above.

12   
13 **Doreen Guenther, Esq.**  
14 Attorney for the Defendant

7-6-04  
DATE

15 lw\pleagrec2.jdd.wpd