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*UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO*

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ILDEFONSO CASTILLO-ARCADIA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 03-254-S-EJL  
**RULE 11 PLEA AGREEMENT**

TABLE OF CONTENTS

1

2 I. GUILTY PLEA ..... 1

3 A. Summary of Terms ..... 1

4 B. Elements of the Crime ..... 1

5 C. Factual Basis ..... 1

6 II. SENTENCING FACTORS ..... 2

7 A. Maximum and Minimum Penalties ..... 2

8 B. Waiver of Application of *Blakely v. Washington* ..... 2

9 C. Application of Sentencing Guidelines ..... 2

10 D. No Right to Withdraw Plea ..... 3

11 E. Recommendations and Requests ..... 3

12 1. Acceptance of Responsibility ..... 3

13 2. Agreement for Reinstatement of Removal ..... 3

14 3. Concurrent Sentence ..... 4

15 F. Fines and Costs ..... 4

16 G. Special Assessment ..... 4

17 H. Supervised Release ..... 5

18 I. Providing Information for the Presentence Report ..... 5

19 III. WAIVER OF APPEAL RIGHTS ..... 5

20 IV. CONSEQUENCES OF VIOLATING AGREEMENT ..... 6

21 A. Government's Options ..... 6

22 B. Defendant's Waiver of Rights ..... 7

23 C. Perjury, False Statements, or Other Crimes ..... 8

24 V. MISCELLANEOUS ..... 8

25 A. No Other Terms ..... 8

26 VI. UNITED STATES' APPROVAL ..... 8

1 ACCEPTANCE BY DEFENDANT AND COUNSEL ..... 9

2  
3  
4  
5  
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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 Criminal  
3 Procedure, the defendant, the attorney for the defendant, and the Government agree that the defendant  
4 will plead guilty to a sole count of the Indictment. More specifically, the parties agree as follows:

5 The Indictment charges that the defendant, being an alien, who had been previously removed from  
6 the United States on or about March 21, 2002, at or near Otay Mesa, California, was found in Ada  
7 County in the District of Idaho on or about July 15, 2003, without first obtaining the consent of the  
8 Secretary of the Department of Homeland Security, in violation of Title 8, United States Code, Section  
9 1326(a) and (b)(2) and Title 6, United States Code, Sections 202(3)(4) and 557.

10 Upon acceptance of the defendant's guilty plea, and the defendant's full compliance with the other  
11 terms of this Agreement, the United States will make the sentencing recommendations set forth in  
12 Paragraph II D below.

13 **B. Elements of the Crime.** The elements of the crime of Illegal Re-entry, as charged in the  
14 indictment, are as follows:

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

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

17 Third, the defendant was found in the United States without having obtained consent of  
18 the Secretary of the Department of Homeland Security to re-enter the United States.

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

24 The defendant is a native and citizen of Mexico. He was lawfully removed from the United States  
25 through Otay Mesa, California, on or about March 21, 2002. On or about July 15, 2003, defendant was  
26 found in the Ada County Jail. He did not obtain the express consent of the Secretary of the Department

1 of Homeland Security to re-apply for admission to the United States prior to returning to the United  
2 States.

3 **II. SENTENCING FACTORS**

4 **A. Maximum and Minimum Penalties.** A violation of Title 8, United States Code, Section  
5 1326(a) and (b)(2), as charged in Count One, is punishable by a term of imprisonment of 20 years, a  
6 maximum fine of \$250,000.00, and a mandatory term of supervised release of not more than three years.

7 **B. Waiver of Application of Blakely v. Washington**

8 The defendant, by entering this plea, also waives any right to have facts that the law makes  
9 essential to the punishment either (1) charged in the indictment, (2) proven to a jury, or (3) proven  
10 beyond a reasonable doubt. The defendant explicitly consents to be sentenced pursuant to the applicable  
11 Sentencing Guidelines and to have the sentence based on facts to be found by the sentencing judge by  
12 a preponderance of the evidence. The defendant explicitly acknowledges that his plea to the charged  
13 offense(s) authorizes the court to impose any sentence, up to and including the statutory maximum  
14 sentence, that is authorized by the Sentencing Guidelines.

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

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

1           **D.     No Right to Withdraw Plea.** The defendant understands that the Court is not bound to  
2 follow any recommendations or requests made by the parties. If the Court refuses to follow such  
3 recommendations or requests, the defendant will not be given the opportunity to withdraw his plea.

4           **E.     Recommendations and Requests**

5                 **1.     Acceptance of Responsibility.** Unless the Government learns of new information  
6 to the contrary, defendant will be entitled to a reduction of two levels in the combined adjusted offense  
7 level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant accepts responsibility for the  
8 offense by truthfully admitting the defendant's participation in the offense. The Government will move  
9 for an additional one-level reduction in the combined offense level, under Section 3E1.1(b), if the  
10 following conditions are met: the defendant qualifies for a decrease under Section 3E1.1(a); the offense  
11 is level 16 or greater; and the defendant has assisted authorities in the investigation or prosecution of his  
12 own misconduct by taking one or more of the following steps: (1) timely providing complete information  
13 to the Government concerning his own involvement in the offense; or (2) timely notifying authorities  
14 of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial  
15 and permitting the court to allocate its resources efficiently.

16           If, at any time prior to imposition of sentence, the Defendant fails to meet the criteria set out in  
17 Section 3E1.1 of the Sentencing Guidelines, or acts in a manner inconsistent with acceptance of  
18 responsibility, the Government will not make such a recommendation and/or motion, if one has already  
19 been made, it will withdraw the recommendation and/or motion. The criteria and acts which are  
20 inconsistent with acceptance of responsibility include: (1) failure to admit a complete factual basis for  
21 the plea at the time it is entered, or (2) denial of involvement in the offense, giving conflicting statements  
22 about that involvement, or being untruthful with the Court or Probation Officer, or (3) failure to appear  
23 in Court, or (4) engaging in any additional criminal conduct prior to sentencing, or (5) attempting to  
24 withdraw the plea.

25                 **2.     Agreement for Reinstatement of Removal.** Pursuant to Rule 11(c)(1)(B) of the  
26 Federal Rules of Criminal Procedure, the parties agree to a two-level downward departure from the

1 Sentencing Guidelines range that the Court finds to be applicable. This Agreement is based, in part, on  
2 the defendant's agreement for reinstatement of removal, set forth below.

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

6 The defendant admits that he was the subject of a previous order of removal, deportation or  
7 exclusion, and agrees to the reinstatement of that previous order as set forth in the Order of Reinstatement  
8 attached to this Plea Agreement. In the event this Plea Agreement is accepted by the Court, the defendant  
9 agrees not to contest, either directly or by collateral attack, the reinstatement of the prior order of  
10 removal, deportation or exclusion.

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

18 3. **Concurrent Sentence.** The United States agrees to recommend that the  
19 defendant's sentence in this case run concurrent with the state sentence he is currently serving.

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

24 G. **Special Assessment.** Defendant will pay a special assessment of \$100.00 per count, in  
25 addition to any fine imposed. This assessment will be paid by defendant before sentence is imposed, and  
26 defendant will furnish a receipt at sentencing. Payment is to be made to the United States District Court,

1 Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort Street, Fourth Floor, Boise,  
2 ID 83724.

3       **H.     Supervised Release.** The defendant will be sentenced to a term of supervised release to  
4 be served after incarceration. The defendant's term of supervised release will be a specific (i.e., a  
5 determinate) term chosen by the Court at sentencing. The combination of prison time and supervised  
6 release is permitted, by law, to exceed the maximum term of incarceration allowed under the statute that  
7 defendant is pleading guilty to violating. Violation of any condition of supervised release may result in  
8 defendant being imprisoned for the entire term of supervised release or being prosecuted for contempt  
9 of court under 18 U.S.C. § 401(3).

10       **I.     Providing Information for the Presentence Report.** The defendant agrees to provide  
11 all material financial and other information as may be requested by a representative of the United States  
12 Probation Department for their use in preparing a Presentence Report. Failure to execute releases and/or  
13 provide such material information as may be required is a violation of the terms of this Agreement, and  
14 will relieve the Government of its obligations as set forth in this Agreement, and may subject the  
15 defendant to an enhancement under Guidelines Section 3C1.1, or provide grounds for an upward  
16 departure under Section 5K2.0 of the Sentencing Guidelines, but will not constitute grounds for  
17 withdrawing the plea of guilty.

18 **III.    WAIVER OF APPEAL RIGHTS**

19       The defendant is aware that 18 U.S.C. §3742 affords him the right to appeal the sentence imposed  
20 in this case. Acknowledging this, in exchange for the other terms of this Agreement, the defendant  
21 knowingly and voluntarily gives up (waives) all appeal rights he may have regarding both his conviction  
22 and sentence, including any restitution or forfeiture order, or to appeal the manner in which the sentence  
23 was imposed, unless the sentence exceeds the maximum permitted by statute, or is the result of an  
24 incorrect application of the Sentencing Guidelines to which the defendant filed a proper and timely  
25 objection.

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

8 If the defendant knowingly violates any of the terms of this Agreement, any guilty plea by the  
9 defendant, and any judgment and/or sentence based thereon, shall remain in full force and effect and will  
10 not be the subject of any legal challenge by the defendant on appeal or collateral attack.

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 18 U.S.C. § 3742(b).

#### 13 **IV. CONSEQUENCES OF VIOLATING AGREEMENT**

14 **A. Government's Options.** If the defendant fails to comply with any obligation or promise  
15 pursuant to this Agreement, the Government may withdraw from the Agreement in its entirety. In such  
16 an event, the defendant understands that he will not be permitted to withdraw his guilty plea.

17 The defendant's violation of this Agreement will also relieve the Government of any obligation  
18 not to prosecute the defendant on other charges, including any charges dismissed as part of this  
19 Agreement, or any other offenses known to the Government for which he is responsible, including  
20 perjury and obstruction of justice.

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

1 If the defendant breaches this Agreement after sentence is imposed, the Government will have  
2 the right to move to vacate the defendant's conviction so that such charge may be re-prosecuted.

3 If there is a dispute regarding the obligations of the parties under this Agreement, the United  
4 States District Court shall determine whether the Government or the defendant has failed to comply with  
5 this Agreement, including whether the defendant has been truthful.

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

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

24 The defendant understands that by pleading guilty he waives (gives up) all of the rights set forth  
25 above. The defendant understands that if he enters a plea of guilty, no trial will, in fact, occur and that  
26 the only thing remaining to be done in this case is the sentencing hearing, at which only matters

1 concerning the nature of the sentence to be imposed by the Court are to be heard and decided by the  
2 Court.

3 C. Perjury, False Statements, or Other Crimes. The Government agrees to bring no  
4 further charges against the defendant arising from information learned during the investigation which  
5 brought about this plea, except for crimes of violence as defined in 18 U.S.C. §924(c)(3), if any. Nothing  
6 in this Agreement shall be construed to protect the defendant in any way from prosecution for perjury,  
7 obstruction of justice, false declaration, or false statements, as defined by the law of any sovereign, or  
8 any other offense committed by the defendant after the date of this Agreement. Any information,  
9 statements, documents, and evidence which the defendant provides the Government pursuant to this  
10 Agreement may be used against him in any such prosecutions.

11 V. MISCELLANEOUS

12 A. No Other Terms. This Agreement incorporates the complete understanding between the  
13 parties, and no other promises have been made by the Government to the defendant or to the attorney for  
14 the defendant. This Agreement does not prevent any governmental agency from pursuing civil or  
15 administrative actions against defendant or any property. Unless an exception to this paragraph is  
16 explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental  
17 entities other than the United States Attorney's Office for the District of Idaho. If requested to do so by  
18 the defendant or his counsel, the Government will bring the defendant's cooperation and pleas to the  
19 attention of other prosecuting authorities.

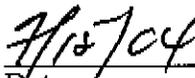
20 VI. UNITED STATES' APPROVAL

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

23 THOMAS E. MOSS  
24 UNITED STATES ATTORNEY

24 By:

25   
26 WENDY J. OLSON  
Assistant United States Attorney

  
Date

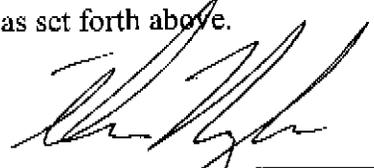
1 ACCEPTANCE BY DEFENDANT AND COUNSEL

2 I have read or had read to me in Spanish, and carefully reviewed every part of this Plea  
3 Agreement with my attorney. I understand the Agreement and its effect upon the potential sentence.  
4 Furthermore, I have discussed all of my rights with my attorney and I understand those rights. No other  
5 promises or inducements have been made to me, directly or indirectly, by any agent of the Government,  
6 including any Assistant United States Attorney, concerning any plea to be entered in this case. In  
7 addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from doing,  
8 anything in connection with any aspect of this case, including entering a plea of guilty. I am satisfied  
9 with my attorney's advice and representation in this case.

10  
11 ILDEFONSO CASTILLO  
12 **ILDEFONSO CASTILLO ARCADIA**  
Defendant

\*7/08/04  
Date

13 I have read this Plea Agreement and have discussed the contents of the Agreement with my client,  
14 either directly or through the services of a Spanish Language interpreter. The Plea Agreement accurately  
15 and completely sets forth the entirety of the Agreement. I concur in my client's decision to plead guilty  
16 as set forth above.

17   
18 **THOMAS MONAGHAN**  
19 Attorney for the Defendant

7/8/04  
Date

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