

ORIGINAL

1 THOMAS E. MOSS
2 UNITED STATES ATTORNEY
3 RAFAEL M. GONZALEZ, JR.
4 ASSISTANT UNITED STATES ATTORNEY
5 DISTRICT OF IDAHO
6 WELLS FARGO BUILDING
7 877 WEST MAIN STREET, SUITE 201
8 BOISE, IDAHO 83702
9 TELEPHONE: (208) 334-1211
10 MAILING ADDRESS:
11 BOX 32
12 BOISE, IDAHO 83707

UNITED STATES COURTS
DISTRICT OF IDAHO

SEP 26 2003

_____ M.REC'D _____
LODGED _____ FILED do

10 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 vs.)
16 FLORENTINO VILLEGAS-DELGADILLO (01),)
17 Defendant.)

Case No. CR 03-109-(03)-S-BL
RULE 11 PLEA AGREEMENT

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

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

I.	GUILTY PLEA	2
A.	<u>Summary of Terms</u>	2
B.	<u>Elements of the Crime</u>	2
1.	<u>Conspiracy</u>	2
2.	<u>Distribution of Controlled Substances</u>	3
3.	<u>Deported Alien Found in the United States</u>	3
C.	<u>Factual Basis</u>	3
II.	SENTENCING FACTORS	5
A.	<u>Maximum and Minimum Penalties</u>	5
B.	<u>Application of Sentencing Guidelines</u>	5
C.	<u>No Right to Withdraw Plea</u>	6
D.	<u>Recommendations and Requests</u>	6
1.	<u>Acceptance of Responsibility</u>	6
2.	<u>Downward Departure Request by Defendant</u>	7
E.	<u>Fines, Costs, and Restitution</u>	7
F.	<u>Special Assessment</u>	7
G.	<u>Supervised Release</u>	8
H.	<u>Providing Information for the Presentence Report</u>	8
III.	WAIVER OF APPEAL RIGHTS	8
IV.	CONSEQUENCES OF VIOLATING AGREEMENT	9
A.	<u>Government's Options</u>	9
B.	<u>Defendant's Waiver of Rights</u>	10
V.	MISCELLANEOUS	11
A.	<u>No Other Terms</u>	11
B.	<u>Plea Agreement Acceptance Deadline</u>	11

1 VI. UNITED STATES' APPROVAL 11
2 VII. ACCEPTANCE BY DEFENDANT AND COUNSEL 12

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

1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules
3 of Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree
4 that the defendant will plead guilty to Counts One, Thirteen, Fourteen and Twenty-One of the
5 Superseding Indictment. More specifically, the parties agree as follows:

6 Count One charges the defendant with Conspiracy to Possess With Intent to Distribute
7 and Distribute Heroin and Methamphetamine, in violation of Title 21, United States Code,
8 Section 846.

9 Count Thirteen charges the defendant with Distribution of Methamphetamine, in
10 violation of Title 21, United States Code, Section 841(a)(1).

11 Count Fourteen charges the defendant with Distribution of Heroin, in violation of
12 Title 21, United States Code, Section 841(a)(1).

13 Count Twenty-One charges the defendant with Deported Alien Found in the United
14 States, in violation of Title 8, United States Code, Section 1326(a).

15 Upon acceptance of the defendant's guilty plea(s), and the defendant's full compliance
16 with the other terms of this Agreement, ~~including the terms of cooperation set forth below~~, ^{G.T. F.V.D.} the
17 Government agrees to recommend a sentence within the Guidelines Range. Moreover, the
18 Government will forego the filing of an Information pursuant to Title 21, United States Code,
19 Section 851. Defendant acknowledges, agrees and waives objection to the fact that the Court
20 may consider "relevant conduct" alleged in these dismissed counts in arriving at an appropriate
21 sentence pursuant to Section 1B1.3 of the Sentencing Guidelines.

22 **B. Elements of the Crime.** The elements of the crimes to which the defendant is
23 pleading guilty are as follows:

24 1. **Conspiracy.** The defendant is charged in Count One of the Superseding
25 Indictment with conspiring to possess with intent to distribute and distribute methamphetamine
26 and heroin, in violation of Title 21, United States Code, Section 846. The elements of the crime

27 _____
28 ¹The word "Government" in this Agreement refers to the United States Attorney for the District
of Idaho.

1 of possessing with intent to distribute and distributing methamphetamine and heroin are as
2 follows:

3 First, beginning on or about October, 2001, and continuing to on or about
4 June 13, 2003, there was an agreement between two or more persons to commit at least one
5 crime as charged in the Superseding Indictment; and

6 Second, the defendant became a member of the conspiracy knowing of at least
7 one of its objects and intending to help accomplish it.

8 2. Distribution of Controlled Substances. The defendant is charged in
9 Count Thirteen with distribution of methamphetamine; the defendant is charged in Count
10 Fourteen with distribution of heroin. The elements of the crime of distribution of heroin and/or
11 methamphetamine are as follows:

12 First, the defendant knowingly delivered heroin and/or methamphetamine; and

13 Second, the defendant knew that methamphetamine and heroin were controlled
14 substances or some other prohibited drug.

15 3. Deported Alien Found in the United States. The defendant is charged
16 in Count Twenty-One with being a deported alien that was found in the United States. The
17 elements of the crime of deported alien found in the United States are as follows:

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

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

20 Third, the defendant reentered the United States without the consent of the
21 Secretary of the Department of Homeland Security/Bureau of Immigration and Customs
22 Enforcement (DHS/BICE).

23 An alien is a person who is not a natural-born or naturalized citizen of the United
24 States.

25 C. Factual Basis. If this matter were to proceed to trial, the Government and the
26 defendant agree that the following facts would be proven beyond a reasonable doubt, which
27 facts accurately represent the defendant's readily provable offense conduct. This factual
28 summary is not intended to detail all relevant conduct, or cover all specific offense

1 characteristics, which will be determined by the Court after its consideration of the Presentence
2 Report. Count One: From the dates of October 2001, to on or about June 13, 2003, the
3 defendant, along with his co-defendants, agreed and conspired to sell heroin and
4 methamphetamine in and around southwest Idaho. From a base of operations and using cellular
5 telephones, the defendants would receive orders from consumers of controlled substances.
6 Usually, two defendants would then deliver the controlled substances as ordered and receive
7 payments. The defendants would drive around southwest Idaho, taking orders and selling until
8 they ran out of product. The defendants would then return to the base of operations to resupply
9 and deliver the proceeds to a secure location. Sometimes, a car would be dispatched from the
10 base to resupply and collect the proceeds. Counts Thirteen and Fourteen: On or about
11 September 9, 2002, an undercover detective called a juvenile male co-conspirator and requested
12 to speak with the co-conspirator's "boss" to request a lower price on an ounce of
13 methamphetamine. Shortly thereafter, the defendant called the undercover detective and the
14 two negotiated the price of an ounce of methamphetamine down to \$450.00 from the \$500.00
15 quoted by the juvenile. On September 11, 2002, the undercover detective called the defendant
16 to confirm that price. On September 12, 2002, the undercover detective called to place his order
17 of four ounces of methamphetamine. That afternoon, two "runners," the juvenile co-conspirator
18 and an unindicted co-conspirator, arrived at the undercover detective's apartment in Meridian,
19 Idaho, and delivered approximately four (4) ounces of methamphetamine--112 grams of a
20 mixture containing 26.8 grams pure methamphetamine--at the price agreed to by the defendant,
21 \$450.00 per ounce. Immediately before this meeting, law enforcement agents observed the two
22 "runners" meeting with the defendant outside a Mexican restaurant in Meridian, Idaho.

23 On September 19, 2003, the undercover detective called the defendant and ordered a
24 quantity of heroin. Later that afternoon, the defendant drove the juvenile co-conspirator to the
25 undercover detective's apartment in Meridian, where the juvenile co-conspirator delivered to
26 the detective 7.6 grams of heroin, which was packaged in several balloons. The undercover
27 detective paid \$800 for the heroin. The defendant stayed in the vehicle during the transaction
28 and did not enter the undercover detective's apartment where the transaction took place.

1 The defendant is a native and citizen of Mexico. He was lawfully deported from the
2 United States on or about October 8, 1999. He thereafter entered the United States without
3 obtaining the express consent of the Secretary of DHS/BICE to reapply for admission to the
4 United States prior to returning to the United States, where he remained illegally and without
5 authority. The defendant was encountered in the District of Idaho on many occasions, including
6 September 17, 2002, on which date the defendant had a meeting with the undercover detective.

7 **II. SENTENCING FACTORS**

8 **A. Maximum and Minimum Penalties.**

9 1. Conspiracy to possess with intent to distribute and distribute
10 methamphetamine and/or heroin, in violation of Title 21, United States Code, Section 846, as
11 charged in Count One, is punishable by a mandatory minimum term of imprisonment of five (5)
12 years and a maximum term of imprisonment of forty (40) years, a maximum fine of \$2,000,000,
13 a term of supervised release of at least four (4) years, and a special assessment of \$100.00.

14 2. Distribution of methamphetamine, in violation of Title 21, United States
15 Code, Section 841(a)(1), as charged in Count Thirteen, is punishable by a mandatory minimum
16 term of imprisonment of five (5) years and a maximum term of imprisonment of forty (40)
17 years, a maximum fine of \$2,000,000, a term of supervised release of a least four (4) years, and
18 a special assessment of \$100.00.

19 3. Distribution of heroin, in violation of Title 21, United States Code,
20 Section 841(a)(1), as charged in Count Fourteen, is punishable by a maximum term of
21 imprisonment of twenty (20) years, a maximum fine of \$1,000,000, a term of supervised release
22 of a least three (3) years, and a special assessment of \$100.00.

23 4. Deported alien found in the United States, in violation of Title 8, United
24 States Code, Section 1326(a), as charged in Count Twenty-One, is punishable by a maximum
25 term of imprisonment of twenty (20) years, a maximum fine of \$250,000, a term of supervised
26 release of not more than three (3) years, and a special assessment of \$100.00.

27 **B. Application of Sentencing Guidelines.** Defendant understands that defendant
28 will be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet

1 been determined by the District Judge; (2) any estimate of the likely sentence received from any
2 source is a prediction and not a promise, and (3) the District Judge has the final authority to
3 decide what the sentence will be.

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

10 C. No Right to Withdraw Plea. The defendant understands that the Court is not
11 bound to follow any recommendations or requests made by the parties. Furthermore, the
12 defendant understands that if the Court refuses to follow such recommendations or requests, the
13 defendant will not be given the opportunity to withdraw his plea of guilty, under Rule 11(e)(2)
14 of the Federal Rules of Criminal Procedure.

15 D. Recommendations and Requests. Pursuant to Rule 11(c)(1)(B) of the Federal
16 Rules of Criminal Procedure, the Government agrees to recommend a sentence within the
17 Guidelines Range.

18 1. Acceptance of Responsibility. Unless the Government learns of new
19 information to the contrary, defendant will be entitled to a reduction of two levels in the
20 combined adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the
21 defendant accepts responsibility for the offense by truthfully admitting the defendant's
22 participation in the offense. The Government will move for an additional one-level reduction in
23 the combined offense level, under section 3E1.1(b), if the following conditions are met: the
24 defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or greater; and
25 the defendant has assisted authorities in the investigation or prosecution of his own misconduct
26 by taking one or more of the following steps: (1) timely providing complete information to the
27 government concerning his own involvement in the offense; or (2) timely notifying authorities

1 of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing
2 for trial and permitting the Court to allocate its resources efficiently.

3 If, at any time prior to imposition of sentence, the defendant fails to meet the criteria set
4 out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner inconsistent with
5 acceptance of responsibility, the Government will not make such a recommendation and/or
6 motion or, if one has already been made, it will withdraw the recommendation and/or motion.

7 The criteria and acts which are inconsistent with acceptance of responsibility include: (1)
8 failure to admit a complete factual basis for the plea at the time it is entered, or (2) denial of
9 involvement in the offense, giving conflicting statements about that involvement, or being
10 untruthful with the Court or Probation Officer, or (3) failure to appear in Court, or (4) engaging
11 in any additional criminal conduct prior to sentencing, or (5) attempting to withdraw the plea(s).

12 **2. Downward Departure Request by Defendant.** The defendant will not
13 seek a downward departure without first notifying the Government of defendant's intent to seek
14 a downward departure and his reasons and basis therefor, 21 days before sentencing.

15 **E. Fines, Costs, and Restitution.** Unless the Court determines that the defendant
16 will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of the
17 defendant's dependents, a fine shall be imposed. There is no agreement as to the amount of the
18 fine. The Court may also order the defendant to pay the costs of imprisonment, probation, and
19 supervised release. In addition to imposing a fine, the Court, pursuant to Title 18, United States
20 Code, Sections 3563(b)(3), 3583, and 3663-64, and Section 5E1.1 of the Sentencing Guidelines,
21 may order defendant to pay restitution in an amount equal to the loss caused to any victim(s) of
22 the offense(s) charged in the Superseding Indictment.

23 **F. Special Assessment.** Defendant will pay a special assessment of \$100.00 per
24 count, in addition to any fine imposed. This assessment will be paid by defendant before
25 sentence is imposed, and defendant will furnish a receipt at sentencing. Payment is to be made
26 to the United States District Court, Clerk's Office, Federal Building and United States
27 Courthouse, 550 W. Fort Street, Fourth Floor, Boise, ID 83724.

28

1 **G. Supervised Release.** Defendant will be sentenced to a term of supervised
2 release, to be served after incarceration, of at least four (4) years on Counts One and Thirteen, at
3 least three (3) years on Count Fourteen, and not more than three (3) years on Count Twenty-
4 One.

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

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

19 **III. WAIVER OF APPEAL RIGHTS**

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

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

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

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

16 IV. CONSEQUENCES OF VIOLATING AGREEMENT

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

26 The defendant further understands and agrees that if defendant does not enter a valid and
27 acceptable plea, the Government will move to further continue the trial now set. The defendant
28 agrees not to contest such a continuance, and agrees that the resulting delay would be

1 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or
2 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to
3 prepare for trial.

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

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

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

1 hearing, at which only matters concerning the nature of the sentence to be imposed by the Court
2 are to be heard and decided by the Court.

3 **V. MISCELLANEOUS**

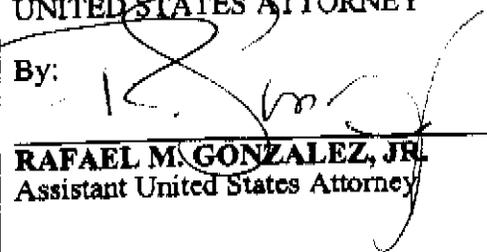
4 **A. No Other Terms.** This Agreement incorporates the complete understanding
5 between the parties, and no other promises have been made by the Government to the defendant
6 or to the attorney for the defendant. This Agreement does not prevent any governmental agency
7 from pursuing civil or administrative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

12 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
13 on acceptance of this plea Agreement no later than 5:00 p.m. on September 8, 2003. It is
14 defendant's sole and complete responsibility to notify the U.S. Attorney's Office of the
15 acceptance of this Agreement by the date specified above in order for this offer to be effectively
16 accepted.

17 **VI. UNITED STATES' APPROVAL**

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

21 THOMAS E. MOSS
22 UNITED STATES ATTORNEY

23 By: 

24 **RAFAEL M. GONZALEZ, JR.**
25 Assistant United States Attorney

12 Sept 2003
DATE

26
27
28

VII. ACCEPTANCE BY DEFENDANT AND COUNSEL

I have read, or have had read to me by an interpreter, and carefully reviewed every part of 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 indirectly, by any agent of the Government, including any Assistant United States Attorney, concerning any plea to be entered in this case. In addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from doing, anything in connection with any aspect of this case, including entering a plea of guilty. I am satisfied with my attorney's advice and representation in this case.

I ALSO CONSENT TO A CHANGE OF PLEA HEARING BEYOND MY CURRENT TRIAL DATE OF 9/22/03.

F.V.D
(57)

Florentino Villegas Delgado
FLORENTINO VILLEGAS-DELCADILLO
Defendant

9/11/03
DATE

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

George F. Trejo, Jr.
GEORGE F. TREJO, JR.
Attorney for the Defendant

9/11/03
DATE

mgv11plea.fvd.wpd