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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  
4 that the defendant will plead guilty to the Indictment. More specifically, the parties agree as  
5 follows:

6 The defendant is charged with Illegal Re-Entry, in violation of Title 8 U.S.C. § 1326.

7 Upon acceptance of the defendant's guilty plea, and the defendant's full compliance with  
8 the other terms of this Agreement, the Government agrees to the terms of the Agreement.

9 **B. Elements of the Crime.** The elements of the crime of Illegal Re-Entry, as  
10 charged, are as follows:

- 11 1. The defendant is an alien;
- 12 2. The defendant was arrested and lawfully deported from the United States;
- 13 and
- 14 3. The defendant re-entered the United States without the consent of the  
15 Secretary of the Department of Homeland Security.

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

22 The defendant, Ramon Lopez-Vasquez, an alien and a citizen of Mexico, was arrested  
23 and lawfully deported from the United States on February 23, 2003, at Nogales, Arizona. He  
24 was found in the United States in Bonneville County, on September 10, 2004. He did not  
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26 <sup>1</sup>The word "Government" in this Agreement refers to the United States Attorney for the  
27 District of Idaho.

1 obtain the express consent of the Secretary of the Department of Homeland Security to reapply  
2 for admission to the United States before returning to the United States.

3 **II. SENTENCING FACTORS**

4 **A. Maximum and Minimum Penalties.** A violation of Illegal Re-Entry, as  
5 charged, is punishable by a maximum term of imprisonment of twenty (20) years, a maximum  
6 fine of \$250,000, and a mandatory term of supervised release of three (3) years, and a \$100  
7 special assessment.

8 **B. Application of Sentencing Guidelines.** As consideration for the benefits  
9 conferred by this guilty plea, the defendant specifically waives his *Apprendi* rights that  
10 every fact which is legally essential to punishment be charged in the indictment and  
11 proven to a jury, and consents to judicial fact-finding with respect to any sentencing  
12 enhancements, following the procedures described in the United States Sentencing Commission  
13 Guideline Manual. (See *Blakely v. Washington*, 2004 WL 1402697, \*7 (June 24, 2004),  
14 *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000), *Duncan v. Louisiana*, 391 U.S. 145, 158  
15 (1968).

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

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

26 **C. No Right to Withdraw Plea.** The defendant understands that the Court is not  
27 bound to follow any recommendations or requests made by the parties. If the Court refuses to

1 follow such recommendations or requests, the defendant will not be given the opportunity to  
2 withdraw his plea(s).

3 **D. Recommendations and Requests**

4 1. **Acceptance of Responsibility.** Unless the Government learns of new  
5 information to the contrary, defendant will be entitled to a reduction of two levels in the  
6 combined adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the  
7 defendant accepts responsibility for the offense by truthfully admitting the defendant's  
8 participation in the offense. The Government will recommend an additional one-level reduction  
9 in the combined offense level, under section 3E1.1(6), if the following conditions are met: the  
10 defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or greater; and  
11 the defendant has assisted authorities in the investigation or prosecution of his own misconduct  
12 by taking one or more of the following steps: (1) timely providing complete information to the  
13 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  
15 for trial 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  
17 out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner inconsistent with  
18 acceptance of responsibility, the Government will not make such a recommendation or, if one  
19 has already been made, it will withdraw the recommendation. The criteria and acts which are  
20 inconsistent with acceptance of responsibility include: (1) failure to admit a complete factual  
21 basis for the plea at the time it is entered, or (2) denial of involvement in the offense, giving  
22 conflicting statements about that involvement, or being untruthful with the Court or Probation  
23 Officer, or (3) failure to appear in Court, or (4) engaging in any additional criminal conduct  
24 prior to sentencing, or (5) attempting to withdraw the plea(s).

25 2. **Two-Level Departure Recommendation.** The parties agree to a two-  
26 level departure from the sentencing guideline range that the Court finds to be applicable. This  
27 Agreement is based on the defendant's agreement for reinstatement of removal. The defendant

1 admits that he was the subject of a previous order of removal, deportation, or exclusion entered  
2 on May 11, 2001, at Denver, Colorado, and agrees to the reinstatement of that previous order as  
3 set forth in the Notice of Intent/Decision to Reinstate Prior Order attached to this Plea  
4 Agreement. In the event this Plea Agreement is accepted by the Court, the defendant agrees not  
5 to contest, either directly or by collateral attack, the reinstatement of the prior order of removal,  
6 deportation or exclusion.

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

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 18 U.S.C. §§  
20 3563(b)(3), 3583, and 3663-64, and Section 5E1.1 of the Sentencing Guidelines, may order  
21 defendant to pay restitution in an amount equal to the loss caused to any victim(s) of the  
22 offense(s) charged in the Indictment.

23       **F. Special Assessment.** Defendant will pay a special assessment of \$100 per count,  
24 in addition to any fine imposed. This assessment will be paid by defendant before sentence is  
25 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the  
26 United States District Court, Clerk's Office, Federal Building and United States Courthouse,  
27 550 W. Fort Street, Fourth Floor, Boise, ID 83724.

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

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

16       **III.    WAIVER OF APPEAL RIGHTS**

17           The defendant is pleading guilty voluntarily and intends to give up (waive) all appeal  
18 and post-conviction rights he may have regarding his conviction and his sentence in exchange  
19 for the other terms of this agreement. Therefore, defendant promises not to appeal or otherwise  
20 contest his conviction or sentence on any ground, except those contained in 18 U.S.C. §3742,  
21 and the defendant promises not to file any post-conviction proceeding, except for a proceeding  
22 authorized by Title 18 U.S.C. § 2255, alleging ineffective assistance of counsel.

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

1 The defendant further understands that nothing in this Plea Agreement shall affect the  
2 Government's right and/or duty to appeal as set forth in 18 U.S.C. §3742(b).

3 The government may defend any action of the district court on appeal.

4 **IV. CONSEQUENCES OF VIOLATING AGREEMENT**

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

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

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

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

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

24 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep  
25 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in  
26 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed  
27 under this Agreement; (2) any right under the Constitution and laws of the United States to be

1 charged or tried in a more speedy manner for any charge that is brought as a result of  
2 defendant's failure to keep this Agreement; and (3) the right to be charged within the applicable  
3 statute of limitations period for any charge that is brought as a result of defendant's failure to  
4 keep this Agreement, and on which the statute of limitations expired after defendant entered  
5 into this Agreement.

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

17 The defendant understands that by pleading guilty he waives (gives up) all of the rights  
18 set forth above. The defendant understands that if he enters a plea of guilty, no trial will, in fact,  
19 occur and that the only thing remaining to be done in this case is the sentencing hearing, at  
20 which only matters concerning the nature of the sentence to be imposed by the Court are to be  
21 heard and decided by the Court.

22 **C. Perjury, False Statements, or Other Crimes.** The Government agrees to bring  
23 no further charges against the defendant arising from information learned during the  
24 investigation which brought about this plea, except for crimes of violence as defined in 18  
25 U.S.C. §924(c)(3), if any. Nothing in this Agreement shall be construed to protect the  
26 defendant in any way from prosecution for perjury, obstruction of justice, false declaration, or  
27 false statements, as defined by the law of any sovereign, or any other offense committed by the

1 defendant after the date of this Agreement. Any information, statements, documents, and  
2 evidence which the defendant provides the Government pursuant to this Agreement may be  
3 used against him in any such prosecutions.

4 **V. MISCELLANEOUS**

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

13 **VI. UNITED STATES' APPROVAL**

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

17 THOMAS E. MOSS  
18 UNITED STATES ATTORNEY

19 By:

20   
21 **MICHELLE R. MALLARD**  
Assistant United States Attorney

22  
23  
24  
25  
26  
27  
28 DATE 10/4/04

ACCEPTANCE BY DEFENDANT AND COUNSEL

I have read 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.

Ramón López  
**RAMON LOPEZ-VASQUEZ**  
Defendant

10/19/04  
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.

STEVEN V. RICHERT  
Attorney for the Defendant

10/19/04  
DATE

# Notice of Intent/Decision to Reinstate Prior Order

File No. A078 330 373  
Case No: VIF0409000014  
Date: September 10, 2004

FIN #: 8775688

Name: Ramon LOPEZ-Vasquez AKA: HERNANDEZ-Lima, RICARDO; MARES-Martinez, ULISES

In accordance with section 241(a)(5) of the Immigration and Nationality Act (Act) and 8 CFR241.8, you are hereby notified that the Attorney General intends to reinstate the order of Removal entered against you. This intent is based on the following determinations:  
(Deportation / exclusion / removal)

1. You are an alien subject to a prior order of deportation / exclusion / removal entered on May 11, 2001 at Denver, Colorado  
(Date) (Location)

2. You have been identified as an alien who:

was removed on May 15, 2001 pursuant to an order of deportation / exclusion removal.  
(Date)

departed voluntarily on \_\_\_\_\_ pursuant to an order of deportation / exclusion / removal on or after the date on which such order took effect (i.e., who self-deported).  
(Date)

3. You illegally reentered the United States on or about February 29, 2003 at or near Nogales, Arizona.  
(Date) (Location)

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You do not have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination, and the existence of a right to make a written or oral statement contesting this determination, were communicated to the alien in the SPANISH language.

JAMES BOENING  
(Printed or typed name of official)

[Signature]  
(Signature of officer)  
SPECIAL AGENT  
(Title of officer)

### Acknowledgment and Response

I  do  do not wish to make a statement contesting this determination.  
September 10, 2004  
(Date)

X Ramon Lopez Vasquez  
(Signature of Alien)

### Decision, Order, and Officer's Certification

Having reviewed all available evidence, the administrative file and any statements made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act.

September 10, 2004 IDAHO FALLS, IDAHO  
(Date) (Location)  
SUSAN G. FRIESENBACH  
(Printed or typed name of official)

[Signature]  
(Signature of authorized deciding INS official)  
RESIDENT AGENT IN CHARGE  
(Title)