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CLERK CAMERON S. BURKE
IDAHO

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ISAURO ALMEIDA-ESPINOZA,

Defendant.

Case No. CR 04-¹⁴¹041-S-BLW
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 Government¹ agree that
4 the defendant will plead guilty to Count One of the Indictment, which charges the defendant with
5 Deported Alien Found in the United States, in violation of Title 8, United States Code Section
6 1326(a) and (b)(2). The defendant acknowledges that the plea is voluntary and did not result from
7 force, threats, or promises, other than any promise made in this plea agreement.

8 **B. Acceptance.** Upon acceptance of the defendant's guilty pleas, and the defendant's
9 full compliance with the other terms of this Agreement, the Government, under Rule 11(c)(1)(B)
10 of the Federal Rules of Criminal Procedure, agrees to recommend a two level downward departure
11 pursuant to United States Sentencing Guidelines, Section 5K3.1. Defendant acknowledges, agrees
12 and waives objection to the fact that the Court may consider "relevant conduct" in arriving at an
13 appropriate sentence pursuant to Section 1B1.3 of the Sentencing Guidelines.

14 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

15 Defendant understands that he will be placed under oath at the plea hearing and that the
16 Government, in a prosecution for perjury or false statement, has the right to use against the
17 defendant any statement that the defendant gives under oath. Moreover, the defendant understands
18 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense charged
19 against the defendant and to persist in that plea; 2) the right to a trial by jury; and 3) the rights, at
20 trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-
21 incrimination, to testify, to present evidence and to compel the attendance of witnesses. The
22 defendant understands that by pleading guilty he waives (gives up) all of the rights set forth above.
23 The defendant fully understands that by entering a plea of guilty, if that plea is accepted by the
24 District Court, there will be no trial and defendant will have waived (given up) these trial rights.

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

1 **III. NATURE OF THE CHARGES**

2 **A. Elements of the Crime.** The elements of the crime of Deported Alien Found in the
3 United States, as charged in Count One, are as follows:

- 4 1. First, the defendant is not a citizen of the United States;
- 5 2. Second, the defendant was lawfully deported from the United States; and
- 6 3. Third, the defendant reentered the United States without the consent of the
7 Secretary of the Department of Homeland Security/Bureau of Immigration
8 and Customs Enforcement (DHS/BICE).

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

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

16 The defendant is a native and citizen of Mexico. He was lawfully removed from the
17 United States at or near Otay Mesa, California, on or about September 5, 2003. The defendant
18 was present in the United States in Canyon County, Idaho, on June 10, 2004, where he was
19 encountered by agents of DHS/BICE. The defendant did not obtain the express consent of the
20 Secretary of DHS/BICE to reapply for admission to the United States prior to returning to the
21 United States. On June 10, 2004, the defendant admitted in a sworn statement to being a native
22 and citizen of Mexico; that the defendant had previously been deported from the United States to
23 Mexico; and that he later re-entered the United States in April, 2004, at or near Douglas, Arizona
24 (bordering Agua Prieta, Mexico), and remained in the United States illegally and without
25 authority. The defendant was convicted of forgery, a felony, in violation of Idaho Code Section
26 18-3601, in the District Court of the Third Judicial District of the State of Idaho, in and for the
27 County of Canyon, on May 21, 2003, prior to his removal from the United States.
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1 **IV. SENTENCING FACTORS**

2 **A. Maximum Penalties.** A violation of Title 8, United States Code, Section 1326(a)
3 and (b)(2), as charged in Count One, is punishable by a maximum term of imprisonment of twenty
4 (20) years and/or a \$250,000 fine, a term of supervised release of not more than three (3) years,
5 and a special assessment of \$100.

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

14 **C. Supervised Release.** Defendant will be sentenced to a term of supervised release,
15 to be served after incarceration, of not more than 3 years.

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

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

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

6 **V. UNITED STATES SENTENCING GUIDELINES**

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

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

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

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

4 If, at any time prior to imposition of sentence, the defendant fails to meet the
5 criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner inconsistent with
6 acceptance of responsibility, the Government will not make such a recommendation; or, if one has
7 already been made, it will withdraw the recommendation. The criteria and acts which are
8 inconsistent with acceptance of responsibility include: (1) failure to admit a complete factual basis
9 for the plea at the time it is entered; or (2) denial of involvement in the offense, giving conflicting
10 statements about that involvement, or being untruthful with the Court or Probation officer; or
11 (3) failure to appear in Court; or (4) engaging in any additional criminal conduct prior to
12 sentencing; or (5) attempting to withdraw the plea.

13 **2. Early Disposition (FastTrack) Departure.** Pursuant to Rule 11(c)(1)(B)
14 of the Federal Rules of Criminal Procedure and USSG §5K3.1, the Government agrees to
15 recommend a two-level downward departure from the Sentencing Guidelines range that the court
16 finds to be applicable.

17 This agreement is conditioned on the defendant having less than 13 criminal history points.
18 If the defendant has 13 or more criminal history points, the Government reserves the right to
19 withdraw from this Agreement.

20 **3. Downward Departure Request by Defendant.** The defendant will not
21 seek a downward departure without first notifying the Government of defendant's intent to seek a
22 downward departure and defendant's reasons and basis therefor, 21 days before the date set for
23 sentencing.

24 **VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

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

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

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

17 **VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT**

18 The defendant agrees to provide all material financial and other information as may be
19 requested by a representative of the United States Probation Office for use in preparing a
20 Presentence Report. Failure to execute releases and/or provide such material information as may
21 be required is a violation of the terms of this Agreement, and will relieve the Government of its
22 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under
23 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the
24 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for
25 withdrawing the plea of guilty.
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1 **VIII. NO RIGHT TO WITHDRAW PLEA**

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

6 **IX. CONSEQUENCES OF VIOLATING AGREEMENT**

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

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

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

4 **X. 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 or
7 to the attorney for the defendant. This Agreement does not prevent any governmental agency from
8 pursuing civil or administrative actions against defendant or any property. Unless an exception to
9 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
10 obligate governmental entities other than the United States Attorney's Office for the District of
11 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
12 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

13 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
14 on acceptance of this plea Agreement no later than 5:00 p.m. on October 5, 2004. It is defendant's
15 sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance of this
16 Agreement by the date specified above in order for this offer to be effectively accepted.

17 **XI. UNITED STATES' APPROVAL**

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

20 THOMAS E. MOSS
21 UNITED STATES ATTORNEY
22 By:

23 MONTE J. STILES
24 Assistant United States Attorney

DATE

25 **XII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

26 I have read and/or have had read to me by an interpreter and carefully reviewed every part
27 of this Plea Agreement with my attorney. I understand the Agreement and its effect upon the
28

1 agrees not to contest such a continuance, and agrees that the resulting delay would be excludable
2 time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or (h)(8)(A). This
3 continuance will be necessary to allow the Government adequate time to prepare for trial.

4 **X. MISCELLANEOUS**

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9 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
10 obligate governmental entities other than the United States Attorney's Office for the District of
11 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
12 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

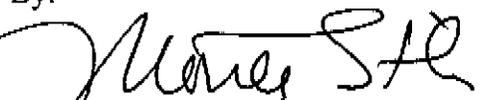
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16 Agreement by the date specified above in order for this offer to be effectively accepted.

17 **XI. UNITED STATES' APPROVAL**

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

20 THOMAS E. MOSS
21 UNITED STATES ATTORNEY

22 By:

23 

24 **MONTE J. STILES**
Assistant United States Attorney

25 9-29-04
26 _____
DATE

27 **XII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

28 I have read and/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

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

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X 
ISAURO ALMEIDA-ESPINOZA
Defendant

10/7/04
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.


TOM MONAGHAN
Attorney for the Defendant

10/7/04
DATE

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