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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 **United States of America,**)
11 **Plaintiff,**)
12 **v.**)
13 **Manuel Osorio-Arellanes,**)
14 **Defendant.**)

CR-11-0150-TUC-DCB-BPV
PLEA AGREEMENT

15
16 The United States of America and the defendant agree to the following disposition
17 of this matter:

18 PLEA

19 The defendant agrees to plead guilty to Count One of the Fourth Superseding
20 Indictment, charging a violation of Title 18, United States Code, Sections 1111 and 1114,
21 first degree murder, a felony.

22 The United States agrees to (1) not seek the death penalty, (2) move to dismiss the
23 remaining charges without prejudice when the defendant is sentenced, and (3) not prosecute
24 the defendant thereafter on such dismissed charges unless the defendant breaches the plea
25 agreement or the guilty plea entered pursuant to this plea agreement is set aside for any
26 reason. The defendant expressly waives all constitutional and statutory defenses to the
27 reinstatement of any charges dismissed pursuant to this agreement.

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Breach of the Agreement

If the defendant fails to comply with any obligation or promise pursuant to this agreement, the United States:

a. May, in its sole discretion, declare any provision of this agreement null and void and the defendant understands that the defendant shall not be permitted to withdraw the plea of guilty made in connection with this agreement;

b. May prosecute the defendant for any offense known to the United States for which the defendant is responsible, and defendant waives any statute of limitations, Speedy Trial Act, and constitutional restrictions for bringing charges after the execution of this agreement;

c. May argue for a maximum statutory sentence for the offense to which defendant has pled guilty.

Waiver of Defenses and Appeal Rights

The defendant waives any and all motions, defenses, probable cause determinations, and objections which the defendant could assert to the information or indictment, or to the petition to revoke, or to the Court's entry of judgment against the defendant and imposition of sentence upon the defendant. The defendant further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the imposition of sentence upon defendant under Title 18, United States Code, Section 3742 (sentence appeals); (3) any right to collaterally attack defendant's conviction and sentence under Title 28, United States Code, Section 2255, or any other collateral attack; and (4) any right to file a motion for modification of sentence, including under Title 18, United States Code, Section 3582(c). The defendant acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might file challenging his/her conviction or sentence in this case. If the defendant files a notice of appeal or a habeas petition, notwithstanding this agreement, defendant agrees that this case shall, upon motion of the government, be

1 remanded to the district court to determine whether defendant is in breach of this agreement
2 and, if so, to permit the government to withdraw from the plea agreement.

3 If on supervised release at the time the present offense was committed, the defendant
4 waives his/her right to a revocation hearing on any allegations of supervised release
5 violations.

6 Reinstatement of Removal, Deportation, or Exclusion

7 The defendant admits that the defendant was the subject of a previous order of
8 removal, deportation or exclusion. The defendant agrees to the reinstatement of that previous
9 order of removal, deportation or exclusion. The defendant admits that he does not have a
10 fear of returning to the country designated in the previous order. If this plea agreement is
11 accepted by the Court, the defendant agrees not to contest, either directly or by collateral
12 attack, the reinstatement of the prior order of removal, deportation or exclusion.

13 Reinstitution of Prosecution

14 Nothing in this agreement shall be construed to protect the defendant in any way from
15 prosecution for perjury, false declaration or false statement, or any other offense committed
16 by the defendant after the date of this agreement. In addition, if the defendant commits any
17 criminal offense between the date of this agreement and the date of sentencing, the
18 government will have the right to withdraw from this agreement. Any information,
19 statements, documents and evidence which the defendant provides to the United States
20 pursuant to this agreement may be used against the defendant in all such proceedings.

21 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court
22 in a later proceeding, the government will be free to prosecute the defendant for all charges
23 and/or allegations of supervised release violations as to which it has knowledge, and any
24 charges and/or allegations of supervised release violations that have been dismissed or not
25 alleged because of this plea agreement will be automatically reinstated. In such event, the
26 defendant waives any objections, motions or defenses based upon the Speedy Trial Act or
27 the Sixth Amendment to the Constitution as to the delay occasioned by the later proceedings.

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Disclosure of Information to U.S. Probation Office

The defendant understands the government's obligation to provide all information in its file regarding the defendant to the United States Probation Office. The defendant fully understands and agrees to cooperate fully and truthfully with the United States Probation Office in providing all information requested by the probation officer.

Effect on Other Proceedings

This agreement does not preclude the United States from instituting any civil or administrative proceedings as may be appropriate now or in the future.

The defendant understands that if the defendant violates any of the conditions of the defendant's supervised release, the supervised release may be revoked. Upon such revocation, notwithstanding any other provision of this agreement, the defendant may be required to serve a term of imprisonment or the defendant's sentence may otherwise be altered.

WAIVER OF DEFENDANT'S RIGHTS

I have read each of the provisions of the entire plea agreement with the assistance of counsel and understand its provisions. I have discussed the case and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I will be giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination; all with the assistance of counsel, to be presumed innocent until proven guilty beyond a reasonable doubt, and to appeal.

I agree to enter my guilty plea as indicated above on the terms and conditions set forth in this agreement.

I have been advised by my attorney of the nature of the charge to which I am entering my guilty plea. I have further been advised by my attorney of the nature and range of the possible sentence.

1 My guilty plea is not the result of force, threats, assurance or promises other than the
2 promises contained in this agreement. I agree to the provisions of this agreement as a
3 voluntary act on my part, rather than at the direction of or because of the recommendation
4 of any other person, and I agree to be bound according to its provisions.

5 I agree that this written plea agreement contains all the terms and conditions of my
6 plea and that promises made by anyone (including my attorney) that are not contained within
7 this written plea agreement are without force and effect and are null and void.

8 I am satisfied that my defense attorney has represented me in a competent manner.

9 I am not now on or under the influence of any drug, medication, liquor, or other
10 intoxicant or depressant, which would impair my ability to fully understand the terms and
11 conditions of this plea agreement.

12 ELEMENTS OF THE OFFENSE

- 13 1. The defendant or another individual unlawfully killed United States Border
14 Patrol Brian Terry;
- 15 2. The killing of Agent Terry was committed while the defendant was knowingly
16 and willfully engaged in the perpetration of or attempt to perpetrate the crime
17 of robbery; and
- 18 3. Agent Terry was killed while he was engaged in or on account of the
19 performance of his official duties.

20 FACTUAL BASIS AND SENTENCING FACTORS

21 I agree that the following facts accurately describe my conduct in connection with the
22 offense to which I am pleading guilty and that if this matter were to proceed to trial the
23 government could prove, by competent and admissible evidence, the following facts beyond
24 a reasonable doubt:

- 25 1. In 2010, Heraclio Osorio-Arellanes and Jesus Favela-Astorga told Manuel
26 Osorio-Arellanes that they had previously traveled from Mexico to the United
27 States to steal loads of marijuana from individuals who were attempting to
smuggle the marijuana into the United States. In order to accomplish this,
28 Heraclio Osorio-Arellanes and Jesus Favela-Astorga told Manuel Osorio-

1 Arellanes that they used firearms to intimidate the smugglers into giving up
2 their loads of marijuana.

3 2. Heraclio Osorio-Arellanes and Jesus Favela-Astorga informed Manuel Osorio-
4 Arellanes that they had entered the United States illegally and had retrieved
5 firearms that had been hidden for them inside the United States near the
6 border. Once they had the firearms, they would search for individuals
7 smuggling marijuana and intimidate and threaten those smugglers with the
8 firearms until the smugglers gave up their loads of marijuana. After obtaining
9 the marijuana, Heraclio Osorio-Arellanes and Jesus Favela-Astorga would
10 transport the loads of marijuana to another location inside the United States
11 and give it to other individuals who would then take the marijuana elsewhere.

12 3. After robbing the marijuana smugglers and delivering the marijuana, Heraclio
13 Osorio-Arellanes and Jesus Favela-Astorga would eventually make their way
14 back to Vinateria, Sinaloa, Mexico, where they would be paid thousands of
15 dollars for their participation in the marijuana load robberies. Prior to leaving
16 the United States and returning to Mexico, Heraclio Osorio-Arellanes and
17 Jesus Favela-Astorga would hide the firearms to be used again for future
18 robberies.

19 4. Both Heraclio Osorio-Arellanes and Jesus Favela-Astorga told Manuel Osorio-
20 Arellanes and Rito Osorio-Arellanes how they would rob smugglers of
21 marijuana. Manuel Osorio-Arellanes and Rito Osorio-Arellanes asked to go
22 with Heraclio Osorio-Arellanes and Jesus Favela-Astorga the next time they
23 traveled to the United States to steal marijuana from smugglers. Heraclio
24 Osorio-Arellanes and Jesus Favela-Astorga agreed to bring Manuel Osorio-
25 Arellanes and Rito Osorio-Arellanes with them the next time they traveled to
26 the United States to rob marijuana smugglers.

27 5. Around December 7, 2010, Manuel Osorio-Arellanes, traveled with Heraclio
28 Osorio-Arellanes, Jesus Rosario Favela-Astorga, Rito Osorio-Arellanes,
Lionel Portillo-Meza and Ivan Soto-Barraza from Vinateria, Sinaloa, Mexico,
to Nogales, Sonora, Mexico. From Nogales, Sonora, Mexico, Manuel Osorio-
Arellanes and the other five individuals entered the United States without
obtaining the consent of United States authorities. The purpose of that illegal
entry into the United States was to rob marijuana loads from smugglers and to
provide the stolen marijuana to other individuals in the United States.

6. In order to accomplish the above-noted robberies, Heraclio Osorio-Arellanes
and Jesus Favela-Astorga informed the remaining four members of the group,
including Manuel Osorio-Arellanes, that firearms had been hidden inside the
United States and that the group would retrieve those firearms in order to rob
the marijuana smugglers.

7. On December 12, 2010, after illegally entering the United States and as the
above-named six individuals were hiking to retrieve the hidden firearms, the
group was encountered by United States Border Patrol agents. Defendant Rito
Osorio-Arellanes was apprehended by the agents. The remaining five
individuals – defendants Heraclio Osorio-Arellanes, Jesus Rosario Favela-
Astorga, Manuel Osorio-Arellanes, Lionel Portillo-Meza and Ivan Soto-
Barraza – were able to avoid being captured.

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8. After the agents left with Rito Osorio-Arellanes, the remaining five defendants – Heraclio Osorio-Arellanes, Jesus Rosario Favela-Astorga, Manuel Osorio-Arellanes, Lionel Portillo-Meza and Ivan Soto-Barraza – returned and retrieved their backpacks. They then retrieved firearms and food supplies that had been hidden in the area for us by others. Each of the five defendants, including Manuel Osorio-Arellanes, carried a firearm. After robbing the drug smugglers, the plan was to hide the weapons before they left the area.

9. Once defendants Heraclio Osorio-Arellanes, Jesus Rosario Favela-Astorga, Manuel Osorio-Arellanes, Lionel Portillo-Meza and Ivan Soto-Barraza had secured firearms and food supplies, they began looking for drug smugglers to rob. On December 14, 2010, while they were looking for drug smugglers to rob, the defendant’s group encountered several U.S. Border Patrol agents. Members of the defendant’s group exchanged fire with the agents. One of the shots fired by a member of the defendant’s group killed Border Patrol Agent Brian Terry. Agents shot Manuel Osorio-Arellanes, and he was captured at the scene. The remaining four defendants – Heraclio Osorio-Arellanes, Jesus Rosario Favela-Astorga, Lionel Portillo-Meza and Ivan Soto-Barraza – fled to Mexico.

10. Agent Terry was killed in the District of Arizona while he was engaged in the performance of his official duties.

10/3/12
Date

Manuel Osorio Arellanes
MANUEL OSORIO-ARELLANES
Defendant

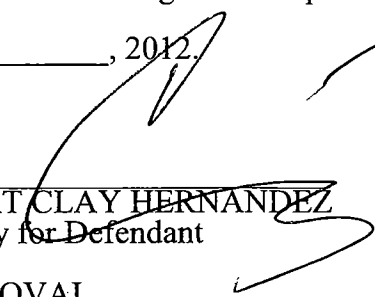
DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea, including the defendant's waiver of the right to appeal. No assurances, promises, or representations have been given to me or to the defendant by the government or by any of its representatives which are not contained in this written agreement. I concur in the entry of the plea as indicated above and on the terms and conditions set forth in this agreement as in the best interests of my client. I agree to make a bona fide effort to ensure the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim. P.

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I translated or caused to be translated this agreement from English into Spanish to the defendant on the _____ day of _____, 2012.

10/4/12
Date

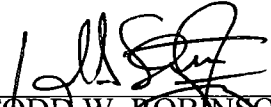

ROBERT CLAY HERNANDEZ
Attorney for Defendant

GOVERNMENT'S APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

LAURA E. DUFFY
United States Attorney
Southern District of California

10/5/2012
Date


TODD W. ROBINSON
DAVID D. LESNER
FRED A. SHEPPARD
Special Attorneys