



U.S. Department of Justice

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August 12, 2009

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Re: United States v. Jorge Rigoberto Amador,
Crim No. DKC-05-0393

Dear Counsel:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by August 25, 2009, it will be deemed withdrawn. **The plea agreement is entered into and will be submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).** The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to plead guilty to Count One of the Fourth Superseding Indictment, charging him with conspiring to conduct and participate in the activities of a racketeering enterprise, in violation of 18 U.S.C. § 1962(d). The Defendant admits that he is, in fact, guilty of this offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which the Government would prove if the case went to trial, are as follows: (1) that the criminal enterprise set out in the Fourth Superseding Indictment existed; (2) that the enterprise affected interstate or foreign commerce; (3) that the Defendant was associated with or employed by the

enterprise; (4) that the Defendant engaged in a pattern of racketeering activity; and (5) that the Defendant unlawfully, willfully and knowingly conspired with two or more persons to conduct and participate in the affairs of that enterprise through that pattern of racketeering activity.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty are as follows: not more than life imprisonment, a fine of \$250,000 and a period of supervised release not to exceed five years. In addition, the Defendant must pay \$100 per count of conviction as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. You and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and you would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the Government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the Government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict to see if any errors were committed which would require a new trial or dismissal of the charges against him.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the “Waiver of Appeal” paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court’s questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant’s plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that a sentencing guidelines range for this case (henceforth the “advisory guidelines range”) will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range. The Defendant will not seek a sentence outside the Advisory Sentencing Guideline Range determined to be applicable by the Court and explicitly agrees that a sentence within the applicable guideline range is reasonable under 18 U.S.C. § 3553.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto and to the following applicable sentencing guidelines factors which would be proved beyond a reasonable doubt:

a. The base offense level for a violation of 18 U.S.C. § 1962(d) is driven by the greater of 19 or the offense levels applicable to the underlying racketeering activity. U.S.S.G. § 2E1.1(a)(2); Application Note 1. The predicate acts for the RICO charge in the Fourth Superseding Indictment are: (1) the first-degree murder of José Arias on March 26, 2005; (2) the

attempted murder of “C.G.” at the same location and on the same date and time; and the assaults upon (3) Jhony Diaz on September 14, 2004, and (4) Jose Gutierrez, on October 29, 2004.

i. Regarding the first-degree murder of José Arias, the offense level is **43**, pursuant to U.S.S.G. §§ 2A1.1 and 1B1.3(a)(1)(B).

ii. The attempted murder of “C.G.” (same incident as Arias) results in an offense level of **33**, pursuant to U.S.S.G. 2A2.1.

iii. Regarding the attack on Jhony Diaz (9/17/04), the base offense level is 33, since the object of the offense would have constituted first-degree murder. Diaz was hospitalized for his injuries, which included stab wounds to his face and arms. A two-level increase for serious bodily injury is warranted, pursuant to U.S.S.G. § 2A2.1(b)(1)(B), and the adjusted offense level is **35**.

iv. The October 29, 2004 assault on José Gutierrez similarly establishes a base offense level of 33, and an adjusted offense level of **35**.

b. The offense level for each predicate crime must be taken into account under the grouping rules contained in Chapter 3 of the Sentencing Guidelines. U.S.S.G. § 2E1.1(a)(2), application note 1. The Arias murder represents the group with the highest offense level at 43, and thus one unit is assessed. U.S.S.G. § 3D1.4(a). The attempted murder of Gonzalez, at offense level 33, is more than 9 levels less serious, and thus no units are assessed. U.S.S.G. § 3D1.4(c). The Gutierrez and Diaz assaults, at offense level 35, are between 5 to 8 levels less serious than the Arias murder. Under § 3D1.4(b), each constitutes one-half of a unit, for an aggregate one-unit upward adjustment. Accordingly, there are two units under the grouping rules, which results in a two-level increase in the offense level. U.S.S.G. § 3D1.4. The applicable adjusted offense level for Count One is therefore **45**.

c. This Office does not oppose a two-level reduction in the Defendant’s adjusted offense level, based upon the Defendant’s apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant’s timely notification of his intention to plead guilty. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. The final offense level is **42**.

7. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in Chapters 2, 3 or 4 of the United States Sentencing Guidelines will be raised or are in dispute.

Stipulation Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C)

8. The parties stipulate and agree pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that the appropriate disposition of this case is a term of 30 years imprisonment. This agreement does not affect the Court's discretion to impose any lawful term of supervised release or fine or to set any lawful conditions of supervised release. In the event that the Court rejects this plea agreement, *either* party may elect to declare the agreement null and void. Should the Defendant so elect, he will be afforded the opportunity to withdraw his plea pursuant to the provisions of Federal Rule of Criminal Procedure 11(c)(5).

Obligations of the United States Attorney's Office

9. If the Court accepts this plea agreement and imposes the agreed-upon term of imprisonment, this Office will move to dismiss any open counts against the Defendant.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Fourth Superseding Indictment and previous indictments that this Office has agreed to dismiss at sentencing.

Waiver of Appeal

11. If the Court accepts the plea agreement and imposes the agreed-upon sentence, the Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal the sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the advisory guidelines range. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximum allowed under the law. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Dismissal of Motion to Vacate Conviction and Consecutive Sentences

12. The Defendant agrees to move to dismiss with prejudice the motion to vacate conviction filed in Criminal No. AW-5-176 Civil No. AW 08-1330 and to pursue no further collateral challenges of any kind to his conviction and sentence in that case. The Defendant and this Office stipulate and agree that the sentence to be imposed in the instant case shall run consecutive to the sentence imposed in Criminal No. AW-05-176.

Obstruction or Other Violations of Law

13. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Consent to Removal from the United States

14. The Defendant acknowledges that he is subject to removal from the United States and agrees not to contest any removal proceedings brought by the Department of Homeland Security (DHS). If the DHS files a Notice to Appear or other administrative document requiring the Defendant to show cause why he should not be removed, the Defendant agrees to request an expedited removal hearing and to consent to removal. The Defendant acknowledges that by consenting to removal, he will be removed from the United States expeditiously upon completion of his term of incarceration. The Defendant knowingly waives any and all rights to appeal, reopen, reconsider or otherwise challenge his removal.

15. The Defendant agrees to waive any rights he may have to apply for any form of relief or protection from removal, deportation or exclusion under the Immigration and Nationality Act (as amended) and related federal regulations. The rights the Defendant is waiving include, but are not limited to, the ability to apply for voluntary departure, asylum, withholding of deportation or removal, cancellation of removal, suspension of deportation, adjustment of status and protection under the Convention Against Torture. As part of this agreement, the Defendant specifically acknowledges and states that he has not been persecuted or tortured in, and has no present fear of persecution or torture in Honduras on account of race, religion, nationality, political opinion or membership in a particular social or political group.

16. The Defendant agrees that upon entry of this plea agreement, the Defendant abandons any and all applications for relief from deportation, removal or exclusion he may have filed and agreed not to file or prosecute any application for relief from removal, deportation or exclusion before any federal court, immigration court, Board of Immigration Appeals, or DHS prior to the Defendant's removal from the United States.

17. The Defendant agrees to assist the DHS in his removal. Specifically, the Defendant agrees to assist the DHS in procuring travel or other documents necessary for the

Defendant's removal; to cooperate with representatives of the country or countries to which the Defendant's removal is directed; and to execute promptly those documents which are needed to effect the Defendant's removal. The Defendant agrees that his failure or refusal to cooperate in his removal shall constitute a material breach of this agreement and may subject the Defendant to additional criminal penalties.

Court Not a Party

18. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. The Defendant understands that the Court is under no obligation to accept this agreement or impose the parties' agreed-upon sentence. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to whether the Court will accept this agreement. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

19. This agreement does not bind any federal, state, or local prosecuting authority other than this Office. This agreement, together with the Sealed Supplement, constitutes the complete plea agreement in this case. There are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement, and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this letter, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____

James M. Trusty
Robert K. Hur
Assistant United States Attorneys

Laura J. Gwinn
Trial Attorney, U.S. Department of Justice

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I understand this plea agreement, and I voluntarily agree to it. I am completely satisfied with the representation of my attorney.

Date

Jorge Rigoberto Amador

I am Mr. Amador's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

Date

Laura K. Rhodes, Esq.

ATTACHMENT A
Statement of Facts
U.S. v. Jorge Rigoberto Amador

If this matter had proceeded to trial, the government would have proven the following beyond a reasonable doubt. The parties agree that the following facts do not encompass all of the fact that would have been proven had this matter proceeded to trial.

From at least 1999 through 2005, La Mara Salvatrucha, or the “MS-13” gang, was a Hispanic street gang with more than 8,000 members in nearly all of the United States and the District of Columbia. The gang had more than 20,000 members in foreign countries, particularly El Salvador. As such, MS-13 was an enterprise, as defined in 18 U.S.C. § 1961(4), comprised of a group of individuals who associated together for common purposes. The purposes of the enterprise included the following: (a) preserving and protecting the power, territory and profits of the enterprise through the use of intimidation, violence, threats of violence, assaults and murder; (b) promoting and enhancing the enterprise and its members’ and associates’ activities and reputations; and (c) keeping victims in fear of the enterprise and in fear of its members and associates through threats of violence and violence. In this regard, MS-13 members were required to commit acts of violence (a) to maintain membership and discipline within the gang and (b) against rival gangs. Regular meetings of members of MS-13 who functioned, formally and informally, as a continuing unit were held to, among other things, collect dues, recruit new members, impose discipline and report on gang activities. In many instances, different “cliques” were formed within MS-13 based on geographic location, but each clique was required to follow the rules of MS-13 as an international enterprise.

MS-13 engaged in and had an effect on interstate or foreign commerce in the following ways, among others. First, the Maryland cliques of the MS-13 gang collected dues to be used to assist fellow gang members in Maryland to pay legal fees associated with criminal and/or deportation issues. The national enterprise of MS-13 also required the collection of dues from gang members, and some of those proceeds were sent to El Salvador. Second, the gang communicated with associated cliques and gang members in other states in order to collect dues, to maintain a hierarchy, and to maintain rules and discipline within the gang. Third, the gang traveled interstate as an enterprise to commit acts of violence. In addition, the gang possessed firearms that moved in, and affected, interstate commerce.

At all times relevant to the Fourth Superseding Indictment, the defendant, **JORGE RIGOBERTO AMADOR, a/k/a “Santo Diablo,”** was associated with the HLS and LPS cliques of MS-13. **AMADOR** was connected to the enterprise as a member, and knew of the nature of its activities, including acts of violence, murder, and attempted murder. At all times relevant to the Fourth Superseding Indictment, **AMADOR** conspired and agreed to conduct and participate, and did conduct and participate, directly and indirectly, in the conduct of the affairs of the MS-13 enterprise through a pattern of racketeering activity consisting of acts of murder and robbery in violation of Maryland Code, Criminal Law §§ 2-201, 2-204, 2-205, 2-206, 3-402, 3-403, as well as 18 U.S.C. § 1951. Specifically, **AMADOR** agreed that he or a coconspirator would commit at least two acts of racketeering activity involving murder and attempted murder, in the conduct of the affairs of MS-13.

AMADOR resided in Maryland during the 1990's and up until early 2003, when the defendant was deported from the United States to Honduras, his country of citizenship. At some point after January of 2003, **AMADOR** returned to the United States and again resided in Maryland.

At some point prior to 2005, **AMADOR** joined the Hollywood Locos Salvatruchas ("HLS") clique of MS-13. **AMADOR**'s gang name, or street name, was "Santo Diablo." During 2004 and 2005, **AMADOR** associated with the Langley Park Salvatruchos (LPS) clique of MS-13, and he was particularly friendly with Antonio "Buda" Argueta, one of the LPS clique leaders.

On or about September 17, 2004, **AMADOR** and several others members of MS-13 went to the Coco Cabana nightclub in Langley Park, Maryland to assist fellow MS-13 gang members with a fight against a rival gang, "Street Thug Criminals" or "STC." **AMADOR** joined in the fighting by hitting "J.D." as other MS-13 members beat "J.D." and at least one cut "J.D." with either a weapon or broken beer bottle.

On September 19, 2004, **AMADOR** was one of a large group of MS-13 members who attended the Hispanic Heritage Festival in Hyattsville, Maryland. During the day's outdoor events, MS-13 members observed a young man wearing a number 18 jersey, which appeared to the MS-13 members to be an acknowledgment of membership in the 18th Street gang. A skirmish ensued, with **AMADOR** and a number of MS-13 members engaged in a running street fight with the young man and his family members. Police were able to break up the melee after two of the MS-13 members were injured by the father of the young man with the "18" jersey.

On October 29, 2004, **AMADOR** was one of numerous MS-13 members attending a party at the University Boulevard (Hyattsville) apartment of William "Pica" Mendez. During the party, an MS-13 member spotted two individuals whom he believed to be rival gang members, and numerous MS-13 members came outdoors to assault the suspected "chavalas." The two individuals ran, but one was caught by pursuing MS-13 members and beaten. At some point during the chaotic melee, either screwdrivers or beer bottles were used to cut one of the individuals in the abdomen.

On or about March 26, 2005, during daylight hours, Juan "Diabolico" Lopez and other MS-13 members were involved in a confrontation with rival gang members from a group known as the "Lewisdale Crew." The altercation took place outside a strip mall in Prince George's County, Maryland. The gang members contacted Carlos "Lobo" Martinez, who then arrived on the scene with the defendant. **AMADOR** and Martinez went searching for the rival gang members and, upon identifying a car containing some of the young men, **AMADOR** took out a .38-caliber revolver, wrapped in a dark colored bandana, and fired several shots from the driver's seat of his car. A fifteen-year-old named José Arias was killed. A bullet also struck the clothing of a young man, known as "C.G." **AMADOR** drove the vehicle away from the scene of the murder and **AMADOR** and Martinez then met up with Lopez and other participants in the initial verbal confrontation. At that meeting, Lopez and others burned the bandana that had been wrapped around the murder weapon. In addition, the participants in that meeting discussed the shooting and disposing of evidence, including the gun and vehicle.

I have read this statement of facts, and carefully reviewed it with my attorney. I acknowledge that it is true and correct.

Jorge Rigoberto Amador