

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 11 CR 50026
vs.)	Judge Frederick J. Kapala
)	
ANTONIO PEREZ-SOTO)	
also known as "Gabriel Abarca")	

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant ANTONIO PEREZ-SOTO, also known as "Gabriel Abarca," and his attorney, KRISTIN J. CARPENTER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with mail fraud, in violation of Title 18, United States Code, Section 1341 (Count One), aggravated identity theft, in violation of Title 18, United States Code, Section 1028A(a)(1) (Count Two), and aggravated illegal re-entry after deportation, in violation of Title 8, United States Code, Section 1326(a) and (b)(2), and Title 6, United States Code, Section 202(4) (Count Three).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the indictment: Count One, which charges defendant with mail fraud, in violation of Title 18, United States Code, Section 1341; and Count Three, which charges defendant with aggravated illegal re-entry after deportation, in violation of Title 8, United States Code, Section 1326(a) and (b)(2), and Title 6, United States Code, Section 202(4).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Three of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. In general, with respect to Count One of the indictment, defendant admits that from approximately January 16, 2011, through approximately April 19, 2011, at Rockford, Illinois, he knowingly devised and participated in a scheme to defraud the Illinois Department of Employment Security (“IDES”) and the United States of America, and to obtain money by means of materially false and fraudulent pretenses, representations, and promises, and that he caused the United States mails to be used in furtherance of this scheme.

Specifically, defendant admits that during the time period covered by the indictment, IDES operated the State of Illinois unemployment insurance program, which was an employer-funded program providing temporary income replacement for individual workers who lost their jobs through no fault of their own. The administrative costs incurred by IDES

were funded primarily by the federal government. The unemployment benefits paid by IDES were funded primarily by contributions from employers and, during times of high unemployment, by the United States Treasury. Illinois law required that IDES pay unemployment benefits in accordance with regulations prescribed by IDES.

When a worker became involuntarily unemployed, he or she was entitled to make a claim for unemployment benefits. To make a claim, the worker could either submit an application online or at an IDES office. The worker was required complete and sign (or verify) a Unemployment Insurance Application form, which required the worker to provide, among other things, the name of the worker's employer, the worker's name, and the worker's Social Security number.

To be eligible for unemployment benefits, the worker must have: (1) either been a United States citizen or had valid alien registration documents; and (2) had a valid social security number. If IDES determined that the worker was eligible to receive unemployment benefits, the benefits were subsequently provided to the worker in one of two ways: (1) through a IDES issued debit card; or (2) through direct deposits into the worker's bank account. If the worker chose to receive their unemployment benefits through a debit card, IDES mailed the debit card to the address the worker listed on his application.

Defendant further admits that on January 16, 2011, he completed and submitted to IDES an Unemployment Insurance Application. On his Unemployment Insurance Application defendant falsely stated that his name was "Gabriel G. Abarca." In addition, defendant falsely stated on this Unemployment Insurance Application that his social security

number was: xxx-xx-8009. Defendant also falsely stated that he was a citizen of the United States. On his application, defendant requested that IDES pay his unemployment benefits through the debit card option.

Defendant further admits that from approximately February 3, 2011, through approximately April 14, 2011, he collected approximately \$3,866 in unemployment benefits which he was not entitled to receive.

On January 24, 2011, at Rockford, in the Northern District of Illinois, Western Division, for the purpose of executing his scheme to defraud, defendant knowingly caused to be delivered by the United States Postal Service, according to direction thereon, an envelope addressed to "Gabriel Abarca," at the address in Rockford, Illinois, that defendant had listed on his Unemployment Insurance Application, that envelope containing an IDES issued unemployment benefits debit card.

b. In general, with respect to Count Three of the indictment, defendant admits he was present and found in the United States on April 19, 2011, at Rockford, Illinois, and that at that time, he was an alien who had previously been deported from the United States after being convicted of an aggravated felony and was present in the United States without previously obtaining the express consent of the Secretary of the Department of Homeland Security, for reapplication for admission into the United States.

Specifically, defendant admits that he is a citizen of Mexico and is not a citizen of the United States. On March 31, 1994, defendant was deported from the United States. Shortly thereafter, defendant illegally re-entered the United States without first obtaining the consent

of the United States Attorney General for reapplication for admission to the United States. Defendant was deported again from the United States again on August 29, 1995. Once again, shortly thereafter, defendant illegally re-entered the United States without first obtaining the consent of the Attorney General for reapplication for admission to the country.

Defendant further admits that on January 6, 1997, he was convicted of aggravated battery in case number 96C22044302, in the Circuit Court of Cook County, Illinois, and sentenced to 6 months of imprisonment. On January 4, 2000, defendant was convicted of burglary in case number 99 CF 160, in the Circuit Court for Sauk County, Wisconsin. On December 22, 2000, defendant was convicted of illegal possession of a weapon by a felon in case number 00 C 330641, in the Circuit Court for Cook County, Illinois. On July 23, 2001, defendant was convicted of failing to report to serve a prison sentence in case number 00 CF 36, in the Circuit Court for Sauk County, Wisconsin.

On December 2, 2006, defendant was once again deported from the United States. Defendant further admits that sometime after December 2, 2006, he illegally re-entered the United States without obtaining the express consent of the Secretary of the Department of Homeland Security for reapplication for admission into the United States. On April 19, 2011, defendant was present and found in the United States when he was arrested in Rockford, Illinois, by Special Agents of the United States Bureau of Immigration and Customs Enforcement (“ICE”).

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count One carries a maximum sentence of 20 years' imprisonment. Count One also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count One the judge also may impose a term of supervised release of not more than three years.

b. Count Three carries a maximum sentence of 20 years' imprisonment. Count Three also carries a maximum fine of \$250,000. Defendant further understands that with respect to Count Three the judge also may impose a term of supervised release of not more than three years.

c. Defendant further understands that the Court must order restitution to the victim of the offense in the amount of \$3,866.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 40 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2010 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for Count One is 7, pursuant to Guideline § 2B1.1(a).

ii. The offense level for Count One must be increased by 0 levels, pursuant to Guideline §2B1.1(b)(1)(A), because the loss caused by defendant's offense was \$3,866.

iii. The base offense level for Count Three is 8, pursuant to Guideline §2L1.2(a).

iv. The offense level for Count Three must be increased by 16 levels, pursuant to Guideline §2L1.2(b)(1)(A)(ii), because the defendant previously was deported after a conviction for a crime of violence.

v. Pursuant to Guideline 3D1.4, one unit must be assigned for Count Three, and zero units must be assigned for Count One, resulting in a combined offense level of 24.

vi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal 12 and defendant's criminal history category is V:

i. On or about August 5, 1993, in case number 93 CM 4642, defendant was convicted of battery and theft in the Circuit Court of Cook County, Illinois, and sentenced to 9 days in jail. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

ii. On or about November 2, 1993, in case number 93300542201, defendant was convicted of criminal trespass to land in the Circuit Court of Cook County, Illinois, and sentenced to 11 months and 9 days of court supervision. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

iii. On or about December 13, 1993, in case number 93 CM 4916, defendant was convicted of mob action and battery in the Circuit Court of Dupage County, Illinois, and sentenced to 6 months of conditional discharge. On June 29, 1995, defendant's conditional discharge in this case was revoked and defendant was re-sentenced to 23 days of imprisonment. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

iv. On or about June 29, 1995, in case number 94 CF 183, defendant was convicted of theft in the Circuit Court of DuPage County, Illinois, and sentenced to 90

days of imprisonment. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

v. On or about November 28, 1995, in case number 95300839001, defendant was convicted of retail theft in the Circuit Court of Cook County, Illinois, and sentenced to 60 days of imprisonment. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

vi. On or about January 6, 1997, in case number 96C22044302 defendant was convicted of aggravated battery in the Circuit Court of Cook County, Illinois, and sentenced to 6 months of imprisonment. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

vii. On or about January 4, 2000, in case number 99 CF 152, defendant was convicted of fleeing to elude a police officer in the Circuit Court of Sauk County, Wisconsin, and sentenced to 1 year of imprisonment. Pursuant to Guideline 4A1.2(e)(3), defendant receives 0 criminal history points for this conviction.

viii. On or about January 4, 2000, in case number 99 CF 160, defendant was convicted of burglary in the Circuit Court of Sauk County, Wisconsin, and sentenced to 3 years of imprisonment. Pursuant to Guideline 4A1.1(a), defendant receives 3 criminal history points for this conviction.

ix. On or about December 22, 2000, in case number 00 C 330641, defendant was convicted of illegal possession of a weapon by a felon and possession of a controlled substance in the Circuit Court of Cook County, Illinois, and sentenced to 2 years

of imprisonment. Pursuant to Guideline 4A1.1(a), defendant receives 3 criminal history points for this conviction.

x. On or about July 23, 2001, in case number 00 CF 36, defendant was convicted of failing to report to serve a prison sentence in the Circuit Court of Sauk County, Wisconsin, and sentenced to 21 months of imprisonment. Pursuant to Guideline 4A1.1(a), defendant receives 3 criminal history points for this conviction.

xi. On or about July 9, 2003, in case number 02 CR 00157, defendant was convicted of aggravated illegal re-entry after deportation in the United States District Court for the Eastern District of Wisconsin, and sentenced to 30 months of imprisonment. Pursuant to Guideline 4A1.1(a), defendant receives 3 criminal history points for this conviction.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 21, which, when combined with the anticipated criminal history category of V, results in an anticipated advisory Sentencing Guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation

Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government is free to recommend whatever sentence it deems appropriate within the applicable guidelines range.

11. The parties agree that there exist no aggravating or mitigating circumstances of any kind or to any degree that should result in a sentence outside the applicable advisory Guidelines range. Accordingly, the parties agree not to seek or support, directly or indirectly, any variance from or sentence outside of the applicable guidelines range.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Regarding restitution, defendant acknowledges that the Court must order restitution in the amount of \$3,866 to the victim of his offense, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution in the amount outstanding at the time of sentencing.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

15. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining count of the indictment as to defendant.

17. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

18. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 11 CR 50026.

19. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

20. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant.

Waiver of Rights

21. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count

separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, in exchange for the

concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

22. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of

defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

24. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

25. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

26. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including one or more offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States.

Conclusion

27. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

28. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the

Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

29. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

30. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

31. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

ANTONIO PEREZ-SOTO
Defendant

SCOTT A. VERSEMAN
Assistant U.S. Attorney
308 West State Street – Room 300
Rockford, Illinois 61101
815-987-4444

KRISTIN J. CARPENTER
Attorney for Defendant
202 West State Street – Suite 600
Rockford, Illinois 61101
815-961-0800