

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AUG 16 2010

me

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 VICTOR VILLALOBOS,)
)
 Defendant.)

CRIMINAL NO. 09-2434 WJ

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **VICTOR VILLALOBOS**, and the Defendant's counsel, Jacquelyn Robins, Esq.:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and
 - c. at a trial:

- 1) to confront and cross-examine adverse witnesses,
- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to count 2 of a three-count indictment, charging a violation of 18 U.S.C. § 922(g)(1), that being felon in possession of firearms and ammunition.

SENTENCING

4. The Defendant understands that the minimum and maximum penalty the Court can impose is:

- a. imprisonment for a period of not more than 10 years; however, the Defendant may be an armed career criminal which carries a minimum sentence of fifteen (15) years and a maximum sentence of life imprisonment;
- b. a fine not to exceed \$250,000;
- c. a mandatory term of supervised release of not less than 2 years nor more than 3 years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- d. a mandatory special penalty assessment of \$100.00; and

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence

report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

SENTENCING AGREEMENT

7. The United States and the Defendant stipulate as follows: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that his period of incarceration shall be 100 (one hundred) months. If the Defendant is determined to be an Armed Career Criminal under 18 U.S.C. § 924(e) by probation, the plea will either be rejected by the Court, or the Defendant will be allowed to withdraw his plea, because this 11(c)(1)(C) plea will not be able to proceed due to the statutory mandatory sentence under the Armed Career Criminal Act.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove the following facts sufficient to establish my guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

a. On July 24, 2009, in Bernalillo County, in the State and District of New Mexico, I also knowingly possessed the following firearms: a Mannlicher-Carcano, model 1934 XII, 6.5 x 52mm caliber rifle; a Westernfield, model M-730, .30-06 caliber rifle; a Westernfield, model M 72, .30-30 caliber rifle; a Norinco, model L 213, 9 x 19mm caliber pistol; a Calwestco, model J-22, .22 LR caliber pistol; a Henry Repeating Arms,

model Lever Action Golden Boy, .22 LR caliber rifle; a Henry Repeating Arms, model Lever Action Golden Boy, .22 LR caliber rifle; and a Talon, model 101, .22 LR caliber derringer; and ammunition, approximately forty-nine CCI .22 LR caliber cartridge ammunition, approximately sixteen Winchester .22 LR caliber cartridge ammunition, approximately sixteen PMC 9mm caliber cartridge ammunition, and approximately eleven Federal .22 LR caliber cartridge ammunition. I knowingly possessed these firearms inside Room 140 of the Motel 6 at 1000 Avenida Cesar Chavez in Albuquerque, where I had been staying and which had been registered under my wife's name, Sharon Aragon. I had purchased the aforementioned firearms in Bayfield, Colorado and placed them inside the motel room and intended them for sale.

b. Prior to July of 2009, I had previously been convicted of the following felony convictions: in the First Judicial District Court, New Mexico, Aggravated battery with a deadly weapon in SF 97-197 (CR), and in the Eleventh Judicial District Court, New Mexico, of escape from jail in CR-675-3, tampering with evidence in CR-94-297-2, forgery in CR-2004-0984-4, and forgery and receiving or transferring a stolen motor vehicle in CR-2004-0991-4, and armed robbery in CR-94-363-2.

c. I have learned that ATF test fired the firearms and determined that they functioned as designed and that they meet the statutory definition of a firearm. I have also learned that the firearms and ammunition were manufactured outside of the state of New Mexico and that the firearms and ammunition had to have been previously shipped or transported in interstate commerce to be physically present and in my possession on July 24, 2009 in the state of New Mexico.

9. By signing this agreement, the Defendant admits all the foregoing facts and admits that there is a factual basis for each element of the crime to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of

these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. The United States and the Defendant stipulate as follows:

a. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for his or her criminal conduct, the Defendant is entitled to a reduction of three levels from the base offense level as calculated under the sentencing guidelines. This reduction depends on the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement in which the Defendant clearly establishes his or her entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing.

b. Except under circumstances where the Court, acting on its own, fails to accept the terms of this plea agreement, the Defendant agrees that upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of

Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

11. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. In other words, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

FORFEITURE

13. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in:

- A. a Mannlicher-Carcano, model 1934 XII, 6.5 x 52mm caliber rifle, serial number obliterated;
- B. a Westernfield, model M-730, .30-06 caliber rifle, serial number obliterated;
- C. a Westernfield, model M 72, .30-06 caliber rifle, serial number obliterated;
- D. a Norinco, model L 213, 9 x 19mm caliber pistol, serial number obliterated;

- E. a Winchester, model 1300 Defender, 12 gauge shotgun, serial number obliterated;
- F. a Calwestco, model J-22, .22 LR caliber pistol, serial number obliterated;
- G. a Henry Repeating Arms, model Lever Action Golden Boy, .22 LR caliber rifle, serial number obliterated
- H. a Henry Repeating Arms, model Lever Action Golden Boy, .22 LR caliber rifle, serial number obliterated;
- I. a Talon, model 101, .22 LR caliber derringer, serial number obliterated;
- J. approximately forty-nine CCI .22 LR caliber cartridge ammunition;
- K. approximately sixteen Winchester .22 LR caliber cartridge ammunition;
- L. approximately sixteen PMC 9 mm caliber cartridge ammunition;
- M. approximately eleven Federal .22 LR caliber cartridge ammunition;
- N. approximately one hundred .45 Colt caliber cartridge ammunition;
- O. approximately five Federal 12 gauge cartridge ammunition;
- P. approximately fifty Federal .22 LR caliber ammunition;
- Q. approximately twenty-six Winchester-Western .45/70 caliber cartridge ammunition;
- R. approximately one thousand Winchester .22 LR caliber cartridge ammunition; and
- S. approximately six 12 gauge Federal cartridge ammunition.

WAIVER OF APPEAL RIGHTS AND POST-CONVICTION

CHALLENGES TO SENTENCE

14. The Defendant is aware that federal law affords a defendant the right to appeal the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal any sentence within the agreement of the parties pursuant to Rule

11(c)(1)(C) as set out in ¶ 7 of this agreement. In addition, the defendant agrees to waive any collateral attack to the Defendant's conviction pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

GOVERNMENT'S AGREEMENT

15. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

b. After the sentencing hearing, the United States will move to dismiss Counts 1 and 3 of the indictment.

16. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

17. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). ~~There have been no representations or promises from anyone as to what sentence the Court will impose.~~ *W. J. E. J. AG* The Defendant represents that the Defendant is pleading guilty because the Defendant is in fact guilty, and for no other reason.

VIOLATION OF PLEA AGREEMENT

18. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation including, but not limited to, any crime or offense contained in or related to the charges in this

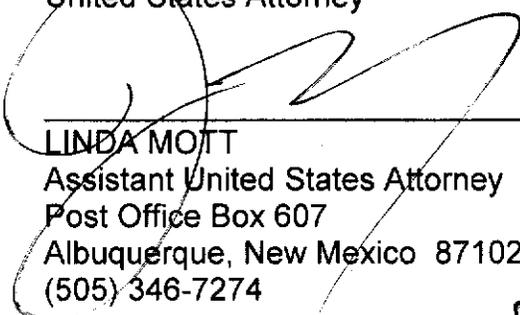
case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

ENTIRETY OF AGREEMENT

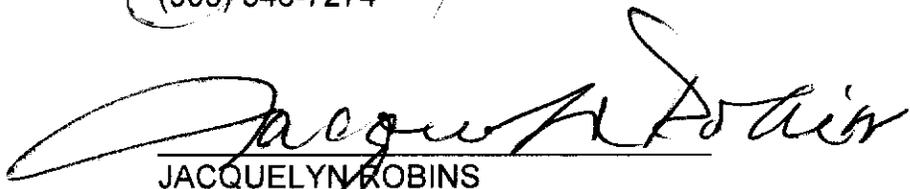
19. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 16 day of August, 2010.

KENNETH J. GONZALES
United States Attorney



LINDA MOTT
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274



JACQUELYN ROBINS
Attorney for Defendant

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.



VICTOR VILLALOBOS
Defendant