

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-20001-CR-LENARD/TORRES(s)

UNITED STATES OF AMERICA

v.

JULIO CESAR LOPEZ,
a/k/a "HERNAN MEDINA OCHOA,"

Defendant.

PLEA AGREEMENT

The United States of America and JULIO CESAR LOPEZ, a/k/a "HERNAN MEDINA OCHOA," (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count 1 of the superseding indictment, which count charges the defendant with Conspiracy to Provide Material Support to a Foreign Terrorist Organization, in violation of Title 18, United States Code, Section 2339B.
2. The United States agrees to seek dismissal of Counts 6, 16, and 17 of the superseding indictment, as to this defendant, after sentencing. The defendant agrees and acknowledges, however, that the charges to be dismissed at the time of sentencing were based in fact.
3. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court

will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the Court may impose a **statutory maximum term of imprisonment of up to 15 years**, followed by a term of **supervised release of up to 5 years**. In addition to a term of imprisonment and supervised release, the Court may impose a **fine of up to \$250,000**.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a **special assessment in the amount of \$100** will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The Domestic Security Section of the Criminal Division of the U.S.

Department of Justice (hereinafter "Office") reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the Court **reduce by two levels** the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting **an additional one-level decrease pursuant to Section 3E1.1(b)** of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The United States further agrees to recommend that the defendant be sentenced at the **low end of the guideline range**, as that range is determined by the Court. The United States, however, will not be required to make this motion and these recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant

offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The United States agrees that it will not recommend an upward departure from the guidelines as determined by the Court based upon the nature of the offense, the defendant's relevant offense conduct, or the background of the defendant.

9. The United States and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following finding and conclusion as to the sentence to be imposed:

a. Overall guideline range: That the applicable guideline range, excluding decreases in levels as provided in paragraph 7, under all of the circumstances of the offense committed by the defendant is Level 26.

10. The defendant agrees that he shall cooperate fully with this Office by:

(a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other Court proceeding;

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and

(c) if requested by this Office, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct under the supervision of, and in compliance with, law enforcement officers and agents.

11. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the Court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from *the advisory sentence* calculated under the Sentencing Guidelines, **this Office may at or before sentencing make a motion consistent with the intent of Section 5K1.1 of the Sentencing Guidelines** prior to sentencing, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending that the defendant's sentence be reduced from the advisory sentence suggested by the Sentencing Guidelines. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file any such motion and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding insofar as the appropriateness of this Office's filing of any such motion is concerned.

12. The defendant understands and acknowledges that the Court is under no obligation to grant the motion referred to in paragraph 10 of this agreement should the government exercise its discretion to file any such motion. The defendant also understands and acknowledges that the Court is under no obligation to reduce the defendant's sentence because of the defendant's cooperation.

13. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case.

Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, **the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed**, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or a variance from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the District Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

14. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the Court. The defendant understands further that any recommendation that the government makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that

the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

15. The defendant agrees not to object to this Office's recommendation to the Court at the time of the plea of guilty in this case that, pursuant to Title 18, United States Code, Section 3143, he should be detained without bond pending his sentencing in this case.

16. In entering this plea of guilty, the defendant understands and agrees to waive certain rights afforded by the Constitution of the United States and/or by statute, including the right against self-incrimination with respect to the offenses to which he is pleading guilty; the right to be tried by a jury, or by a judge sitting without a jury; the right to be assisted by an attorney at trial; and the right to confront and cross-examine witnesses.

17. The defendant agrees to the entry of a stipulated judicial order of removal pursuant to 8 U.S.C. § 1228(c)(5). Specifically, the defendant agrees that he is removable from the United States and consents to the entry and immediate execution of an order of removal issued by this Court. The defendant waives the right to the notice and hearing provided for in 8 U.S.C. § 1228(c)(2) and further waives any and all rights to appeal, reopen, reconsider, or otherwise challenge this stipulated removal. The United States represents that it has sought and received the Secretary of Homeland Security's permission to seek the defendant's stipulated removal pursuant to 8 U.S.C. § 1228(c)(5).

18. The defendant agrees to waive the defendant's rights to any and all forms of relief or protection from removal, deportation, or exclusion under the

Immigration and Nationality Act (as amended) and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: (a) voluntary departure; (b) asylum; (c) withholding of deportation or removal; (d) cancellation of removal; (e) suspension of deportation; (e) adjustment of status; and (f) protection under Article 3 of the Convention Against Torture.

19. **The defendant agrees that upon entry of this plea agreement, the defendant abandons any existing immigration benefit the defendant may hold.** The defendant further agrees that any application for relief from removal, deportation, or exclusion the defendant filed prior to the completion of this plea agreement shall be deemed abandoned. The defendant further understands and agrees that the filing of any applications for relief from removal, deportation, or exclusion, either written or oral, or the prosecution of any pending applications, before any federal court, the Board of Immigration Appeals, an immigration judge, or the DHS, shall breach this plea agreement.

20. **The defendant agrees to assist the DHS in the execution of the defendant's removal.** Specifically, the defendant agrees to assist the DHS in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of the country or countries to which the defendant's removal is directed; and to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant further understands that the defendant's failure or refusal to assist the DHS in the execution of

the defendant's removal shall breach this plea agreement and may subject the defendant to criminal penalties under Title 8, United States Code, Section 1253.

21. This is the entire agreement and understanding between the United States

and the defendant. There are no other agreements, promises, representations, or understandings. *kept for ¶ 22 below.*

The United States agrees that, pursuant to 18 U.S.C. § 3585(b), the defendant will be given credit toward the service of a term of imprisonment for any time served in official Colombian government detention after his arrest on May 29, 2006 and continuing through sentence imposed.

Date: 10.15.07

By: *Brian D. Skaret*
BRIAN D. SKARET
TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE

By: *Martin Feigenbaum*
MARTIN FEIGENBAUM
ATTORNEY FOR DEFENDANT

Date: 10/15/07

By: *Hernan Medina Ochoa*
JULIO CESAR LOPEZ
a/k/a HERNAN MEDINA OCHOA
DEFENDANT