



**U.S. Department of Justice**

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September 27, 2007

James G. Pyne  
The Law Office of James G. Pyne, PA  
305 West Chesapeake Avenue  
Suite 209  
Towson, Maryland 21204

Re: United States v. William A. Mendez, Crim. No. 07-0052

Dear Mr. Pyne:

This letter 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 If this offer has not been accepted by October 12, 2007, it will be deemed withdrawn. The terms of the agreement are as follows:

**Offense of Conviction**

1. The Defendant agrees to plead guilty to a Superseding Information charging him with committing a violent crime in aid of racketeering activity, in violation of 18 U.S.C. § 1959(a). The Defendant admits that he is, in fact, guilty of that 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) an enterprise existed; (2) the enterprise engaged in, or its activities affected, interstate or foreign commerce; (3) the enterprise engaged in racketeering activity; (4) the Defendant committed an assault with a dangerous weapon; and (5) the assault was committed for the purpose of gaining entrance to or maintaining or increasing the Defendant's position in the charged enterprise.

**Penalties**

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: twenty years (20) imprisonment, a fine of \$250,000 and a period of supervised release not to exceed five (5) years. In addition, the Defendant must pay \$100 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.<sup>1</sup> 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 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

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<sup>1</sup> 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).

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.

#### **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. § 1959(a) is driven by the greater of 12 or the offense levels applicable to the underlying racketeering activity. U.S.S.G. § 2E1.3(a)(2); Application Notes 1 and 2. The Defendant's personal conduct in this case involved an assault with a dangerous weapon. Accordingly, the parties agree that the Sentencing Guidelines for Aggravated Assault apply and the base offense level is **14**. U.S.S.G. § 2A2.2(a).

b. Because a firearm was discharged during the commission of this crime, the offense level is increased by five (5) levels. U.S.S.G. § 2A2.2(b)(2)(A). In addition, because the victim sustained serious bodily injury, the offense level is increased by five (5) levels. U.S.S.G. § 2A2.2(b)(3)(B). Accordingly, the adjusted offense level is **24**.

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. If the defendant's offense level is determined by the Court to be at least 16, this Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional (one) 1-level decrease in recognition of your client's acceptance of personal responsibility for his conduct. 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.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. 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, 4 or 5 of the United States Sentencing Guidelines will be raised or are in dispute. Either party may raise arguments pursuant to 18 U.S.C. § 3553(a) and each party will give the other 10 days notice about the arguments to be raised under § 3553(a).

#### **Waiver of Appeal**

9. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever 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, as follows: the Defendant waives any right to appeal from any sentence within or below the advisory guidelines range resulting from an adjusted base offense level of 21, and this Office waives any right to appeal from any sentence within or above the advisory guidelines range resulting from an adjusted base offense level of 21. 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 or that is less than any applicable statutory mandatory minimum provision. 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.

#### **Court Not a Party**

10. 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. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

#### **Obstruction or Other Violations of Law**

11. 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.

#### **Entire Agreement**

12. This agreement supersedes any prior understandings, promises, or conditions between this Office and the Defendant and 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 agreement, 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: \_\_\_\_\_  
Chan Park  
Assistant United States Attorney

I have read this agreement 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

\_\_\_\_\_  
William Mendez

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
James G. Pyne, Esq.

**EXHIBIT A**  
**Statement of Facts**  
**U.S. v. Mendez**

*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 facts that would have been proven had this matter proceeded to trial.*

La Mara Salvatrucha, also known as the MS-13 gang (hereafter "MS-13"), is a gang composed primarily of immigrants or descendants of immigrants from El Salvador, with members operating throughout Prince George's County and Montgomery County, Maryland, and elsewhere. In the United States, the MS-13 gang originated in Los Angeles, California, where MS-13 members engaged in turf wars for the control of drug distribution locations. MS-13 quickly spread to states across the country, including Maryland.

MS-13 is a national and international criminal organization with approximately 10,000 members regularly conducting gang activities in at least ten states and the District of Columbia, Guatemala, Mexico, Honduras and El Salvador. MS-13 is one of the largest street gangs in the United States. Gang members actively recruit members, including juveniles, from communities with a large number of immigrants from El Salvador. In the United States, MS-13 has been functioning since at least the 1980s.

At all times relevant to this Superseding Indictment, **WILLIAM MENDEZ, a/k/a "Pitufo"** was a member of MS-13.

In order to join MS-13, members are required to complete an initiation process, often referred to as being "jumped in" or "beat in" to the gang. During that initiation, other members of MS-13, some of who are juveniles, beat the new member until a gang member finishes counting aloud to 13.

Members of MS-13 from time to time signify their membership by wearing tattoos reading "MARA SALVATRUCHA," "MS," "MS-13," or similar tattoos, often written in gothic lettering. The gang colors of MS-13 are blue, black and white, and members often wear clothing, particularly sports jerseys, with the number "13" or with numbers that, when added together, total 13, such as "76." MS-13 members refer to one another by their gang names and often do not know fellow gang members except by their gang names.

Members of MS-13 frequently engage in criminal activity, including, but not limited to, murders, assaults, robberies, kidnappings, and threatening and intimidating of witnesses. MS-13 members are required to commit acts of violence to maintain membership and discipline within the gang and against rival gangs. Participation in criminal activity by a member, particularly violent acts directed at rival gangs or as directed by the gang leadership, increase the respect accorded to that member, resulting in that member maintaining or increasing his position in the gang, and could result in a promotion to a leadership position.

MS-13 is organized in “cliques,” including, but not limited to, the Fulton Locos Salvatruchos (“FLS”), the Sailors Locos Salvatruchos Westside (“SLSW” or “Sailors”), the Teclas Locos Salvatruchos (“TLS”), and the Langley Park Salvatruchos (“LPS”). **MENDEZ** was a member of the FLS or Fulton clique. The MS-13 cliques work together cooperatively to commit acts of violence. Members of some MS-13 cliques occasionally attend meetings of other MS-13 cliques. The cliques operate under the umbrella rules of MS-13. MS-13 members meet on a regular basis to, among other things, report on acts of violence committed by their members with the goal of inciting and encouraging further violence. Leaders of cliques of MS-13 from across the United States and within regions of the United States meet to discuss gang rules and gang business, to resolve problems or issues among gang members of different cliques, and to unite gang members from across the country. MS-13 members pay dues which are collected at gang meetings. MS-13 members collect dues for the benefit of, and to be provided to, MS-13 gang members who are imprisoned in the United States, both inside and outside of the District of Maryland, and in El Salvador. MS-13 gang members routinely communicate about gang activities with gang members in other states using cellular telephones and the United States mails. MS-13 members also use transnational and international money wire transfers to conduct and promote gang activities.

MS-13, including its leadership, members and associates, constitute an “enterprise” as defined in Section 1959(b)(2) of Title 18, United States Code, that is, a group of individuals associated in fact that engage in, and the activities of which affect, interstate and foreign commerce. The enterprise constitutes an ongoing organization whose members function as a continuing unit for the common purpose of achieving the objectives of the enterprise. The purposes of the enterprise include the following:

- a. Preserving and protecting the power, territory and profits of the enterprise through the use of intimidation, violence, including assaults and murder, and threats of violence;
- b. Promoting and enhancing the enterprise and its members’ and associates’ activities;
- c. Keeping victims and potential victims in fear of the enterprise and in fear of its members and associates, through violence and threats of violence;

On December 30, 2005, **MENDEZ** and two other individuals associated with the MS-13 enterprise knocked on the door of 104 Duvall Lane, Apartment #204, Gaithersburg, Maryland. When the occupants of the apartment opened the door, **MENDEZ** brandished a handgun and announced a robbery. During the course of the robbery, one of the occupants of the apartment stated to **MENDEZ** and his accomplices that he did not believe that the handgun was real. **MENDEZ** then pointed the handgun at that individual and shot him once, striking him in the neck. **MENDEZ** and his accomplices then proceeded to rob the occupants of the apartment of approximately \$3,000 in currency, assorted jewelry, and their cell phones.

This robbery and assault were part of an ongoing effort by MS-13 to rob and extort individuals and businesses in the community, and that they were committed for the purpose of maintaining or increasing the Defendant’s position within his clique, and within the overall MS-13



enterprise.

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

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Date

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William Mendez