

**FILED**

UNITED STATES DISTRICT COURT  
IN THE UNITED STATES DISTRICT COURT ~~OF~~ <sup>AT</sup> ALBUQUERQUE, NEW MEXICO

FOR THE DISTRICT OF NEW MEXICO SEP 27 2010 *ddr*

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 **FREDERICK GACHUPIN,** )  
 )  
 Defendant. )

**MATTHEW J. DYKMAN**  
CLERK

CRIMINAL NO. 10-1916-WJ

**PLEA AGREEMENT**

Pursuant to Rule 11(c)(2), Fed. R. Crim. P., the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, **FREDERICK GACHUPIN**, and the defendant's counsel, David Plotsky, Esq.:

**REPRESENTATION BY COUNSEL**

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

**RIGHTS OF THE DEFENDANT**

- 2. The Defendant further understands his rights:
  - a. to plead not guilty;
  - b. to have a trial by jury;
  - c. to confront and cross-examine witnesses and to call witnesses in his defense; and
  - d. against compelled self-incrimination.

**WAIVER OF RIGHTS AND PLEA OF GUILTY**

3. The Defendant hereby agrees to waive these rights and to plead guilty to an indictment charging violation of 18 U.S.C. §§ 2, 113(a)(6) and 1153, that being Assault Resulting in Serious Bodily Injury and Aiding and Abetting, occurring in Indian country.

**SENTENCING**

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

- a. imprisonment not to exceed 10 years;
- b. a fine not to exceed \$250,000;
- c. a mandatory term of supervised release for not more than three (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
- e. restitution as may be ordered by the Court.

5. Sentencing is pursuant to the United States Sentencing Guidelines which are in effect advisory.

6. It is expressly understood and agreed by and between the Defendant and the United States that:

- a. The United States has made, and will make, **NO AGREEMENT** pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., that a specific sentence is an appropriate disposition of this case.
- b. The United States has made, and will make, **NO AGREEMENT** to approve, to oppose, or not to oppose pursuant to Rule 11(c)(1)(B), Fed. R. Crim. P., any request made by the Defendant or on behalf of the Defendant for a particular sentence in this case.
- c. The United States hereby expressly reserves the right to make known to the United States Probation Office, for inclusion in the presentence report prepared pursuant to Rule 32(c)(2), Fed. R. Crim. P., any information that the United States believes may be helpful to the Court.

#### **FACTUAL BASIS**

7. The Defendant agrees that if this case were to proceed to trial, the United States would prove the following facts with competent, admissible evidence beyond a reasonable doubt:

On or about August 29, 2008, in Indian Country, in Sandoval County, in the District of New Mexico, the defendants, **TYLER SANDO** and **FREDERICK GACHUPIN**,

both Indians, did knowingly and unlawfully assault the person of Cletis Chavez, and the assault resulted in serious bodily injury.

In violation of 18 U.S.C. §§ 1153, 113(a)(6), and 2.

**STIPULATIONS**

8. The United States and the Defendant stipulate as follows:
  - a. Pursuant to U.S.S.G. § 3E1.1(a), the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. Consequently, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the Defendant providing an appropriate oral or written statement to the United States Probation officer who prepares the presentence report in this case in which the Defendant clearly establishes his entitlement to this reduction by being completely candid and forthcoming in his statement to the probation officer.
  - b. If the Defendant complies with his obligations and provides truthful, accurate and complete information concerning his role in the criminal conduct, his criminal history and all other relevant information requested by the US Probation Office, the United States will file a motion to grant him the additional acceptance point applicable under §3E1.1(b).

- c. The Defendant recognizes and understands that this plea agreement with the United States is expressly contingent on the Defendant's co-defendants, Tyler Sando, John Doe 1 and John Doe 2 also entering a plea of guilty in conformity with his plea agreement with the United States. The United States reserves the right, in its sole discretion, to revoke the plea agreement pertaining to the Defendant and co-defendant, should the Defendant and co-defendants fail to enter guilty pleas in accordance with their individual agreements with the United States, or attempt to withdraw those guilty pleas.
- d. Except under circumstances where the Court, acting on its own, fails to accept the plea agreement, or if the contingency outlined in paragraph 8(c) does not occur, 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.

9. The United States and the Defendant understand 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.

#### **WAIVER OF APPEAL RIGHTS**

10. The Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed.

- a. Acknowledging that, the Defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement.

#### **GOVERNMENT'S AGREEMENT**

11. Provided that the Defendant fulfills his obligations as set out above, the United States agrees that:

- a. The United States will not bring additional charges against the Defendant arising out of the Defendant's conduct relating to the

facts and circumstances of this case now known to the United States Attorney's Office for the District of New Mexico.

12. 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**

13. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the Court will impose.

#### **VIOLATION OF PLEA AGREEMENT**

14. The Defendant understands and agrees that if he violates any provision of this plea agreement, the United States may declare this plea agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the indictment filed in this case, as well as perjury, false statement, and obstruction of justice.

#### **SPECIAL ASSESSMENT**

15. At the time of the sentencing hearing, the Defendant will tender to the United States Attorney's Office a money order or certified check payable to the order of the United States District Court, District of New Mexico, Post Office Box 689,

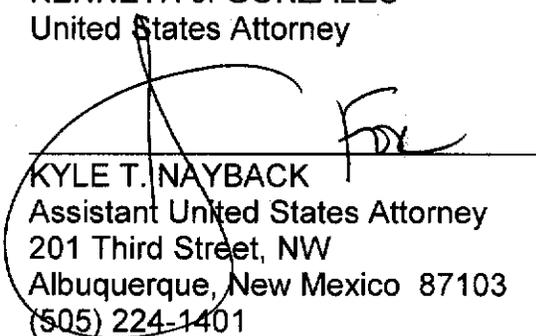
Albuquerque, New Mexico 87103, in the amount of \$100.00 in payment of the special penalty assessment described above.

**ENTIRETY OF AGREEMENT**

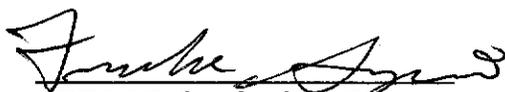
16. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 27<sup>th</sup> day of September, 2010.

KENNETH J. GONZALES  
United States Attorney

  
KYLE T. NAYBACK  
Assistant United States Attorney  
201 Third Street, NW  
Albuquerque, New Mexico 87103  
(505) 224-1401

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

  
FREDERICK GACHUPIN  
Defendant

  
DAVID PLOTSKY  
Attorney for Defendant