

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

2024 JAN 30 PM 3:35

CLERK-LAS CRUCES

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

UNITED STATES OF AMERICA,

Plaintiff,

**VS.**

**ROBERTO ESQUIVEL,**

**Defendant.**

CRIMINAL NO. 23-CR-516-MIS

PLEA AGREEMENT

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, **ROBERTO ESQUIVEL**, and the defendant's counsel, **DARREN ROBINSON**:

## 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 following rights:

- a. to be charged and prosecuted by indictment;
- b. to plead not guilty;
- c. to have a trial by jury;
- d. to confront and cross-examine witnesses and to call witnesses to testify for the defense; and
- e. 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 the Information charging in **Count 1** a violation of 18 U.S.C. § 1114(a)(3): Attempted Murder of an Officer of the United States; charging in **Count 2** a violation of 18 U.S.C. § 111(a)(1) and (b): Aggravated Assault of an Officer of the United States with a Deadly Weapon; charging in **Count 3** a violation of 18 U.S.C. § 924(c)(1)(A)(iii): Discharge of a Firearm in Furtherance of a Crime of Violence; and charging in **Count 4** a violation of 18 U.S.C. § 1324(a)(1)(A)(ii) and (v)(I): Conspiracy to Transport Illegal Aliens.

ELEMENTS OF THE OFFENSE

4. If this matter proceeded to trial, the defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for a violation of 18 U.S.C. § 1114(a)(3), Attempted Murder of an Officer of the United States, as charged in **Count 1** are:

- a. The defendant specifically intended to cause the death of the victim named in the information;
- b. The defendant acted with malice aforethought;
- c. The defendant took a substantial step toward commission of the crime; and
- d. The victim named in the information was a federal law enforcement agent engaged in official duties at the time of Defendant's actions.

5. If this matter proceeded to trial, the defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for a violation of 18 U.S.C. § 111(a)(1) and (b), Aggravated Assault of an Officer of the United States with a Deadly Weapon, as charged in **Count 2** are:

- a. The defendant forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with the person named in the information;
- b. The person named in the information was a federal law enforcement officer who was then engaged in the performance of his official duties;

c. The defendant did such acts intentionally; and

d. In doing such acts, the defendant used a deadly or dangerous weapon.

6. If this matter proceeded to trial, the defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for a violation of 18 U.S.C. § 924(c)(1)(A)(iii), Discharge of a Firearm in Furtherance of a Crime of Violence, as charged in **Count 3** are:

a. The defendant committed the crime of assault against a federal officer and/or attempted murder, which are crimes of violence;

b. The defendant brandished and possessed a firearm;

c. during and in relation to, and in furtherance of, that crime of violence; and

d. and the firearm was discharged.

7. If this matter proceeded to trial, the defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for a violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(I), Conspiracy to Transport Illegal Aliens, as charged in **Count 4** are:

a. Two or more persons agreed to violate immigration laws relating to the transportation of an illegal alien;

b. The defendant knew the essential objective of the conspiracy;

c. The defendant knowingly and voluntarily involved himself in the conspiracy; and

d. There was interdependence among the members of the conspiracy such that the members intended to act for their shared mutual benefit within the scope of the conspiracy.

#### SENTENCING

8. The defendant understands that the minimum and maximum penalties the Court can impose as to **Count 1** are:

a. imprisonment for a period of 20 years;

b. a fine not to exceed \$250,000.00;

- c. a mandatory term of supervised release of not more than 3 years. (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.

9. The defendant understands that the minimum and maximum penalties the Court can impose as to **Count 2** are:

- a. imprisonment for a period of 20 years;
- b. a fine not to exceed \$250,000.00;
- c. a mandatory term of supervised release of not more than 3 years. (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.

10. The defendant understands that the minimum and maximum penalties the Court can impose as to **Count 3** are:

- a. imprisonment for a period of not less than 10 years;
- b. a fine not to exceed \$250,000.00;
- c. a mandatory term of supervised release of not more than 5 years. (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); and
- d. a mandatory special penalty assessment of \$100.00.



11. The defendant understands that the minimum and maximum penalties the Court can impose as to **Count 4** are:

- a. imprisonment for a period of 10 years;
- b. a fine not to exceed \$250,000.00;
- c. a mandatory term of supervised release of not more than 3 years. (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. an additional special penalty assessment of \$5,000.00 pursuant to 18 U.S.C. § 3014.

12. 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.

13. The parties are aware that the Court may accept or reject this plea agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the defendant shall have the right to withdraw Defendant's plea of guilty.

14. The United States hereby expressly reserves the right to make known to the United States Probation Office and to the Court, for inclusion in the presentence report prepared pursuant to Federal Rule of Criminal Procedure 32, any information that the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under USSG § 1B1.3.

15. Except under circumstances where the Court, acting on its own, rejects this plea agreement (or functionally rejects it, as described below under the heading Violation or Rejection

of 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 below, 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. The Court has not acted on its own if its rejection of the plea agreement occurs after Defendant has expressly or implicitly suggested to the Court a desire or willingness to withdraw his or her plea or not to be bound by the terms of this plea agreement.

#### DEFENDANT'S ADMISSION OF FACTS

16. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) 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 facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the Information that increase the statutory minimum or maximum penalties. 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:

**On or about January 5, 2023, in Hidalgo County, in the District of New Mexico, I knowingly and intentionally agreed with other persons to transport, within the United States, via motor vehicle, five illegal aliens who had unlawfully come to the United States in furtherance of said aliens' illegal stay within the United States. My specific role in the conspiracy was to pick up the aliens in El Paso, Texas, and transport them to Deming, New Mexico. I knew that the aliens were unlawfully present in the United States and expected to be paid for transporting them. After picking up the aliens, I was driving on New**

Mexico State Road 146, when I was pulled over by a Border Patrol Agent. As the Agent was approaching my vehicle to conduct an immigration inspection, I removed a gun from the center console and placed it under my right leg. When it became apparent to the Agent that I was transporting aliens, he asked me to exit the vehicle. I partially opened the door but instead of getting out of the vehicle, I pulled out the gun and began shooting. I shot at the Agent at least four times, hitting him twice in the torso-area. After shooting the agent, I sped off. While fleeing, I lost control of the vehicle and rolled it multiple times. I ran from the crash scene and threw the gun in the desert, where it was subsequently recovered by law enforcement officers.

I shot the Agent to prevent him from arresting me and to enable me to flee the scene. Based on my previous experience with firearms, I knew that shooting the Agent, especially in the torso area, would kill or seriously injure him. But for the ballistic vest he was wearing, that would have been the result. I shot him regardless.

17. By signing this agreement, the defendant admits that there is a factual basis for each element of the crime(s) 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

18. The United States and the defendant stipulate as follows:

a. The defendant and the United States agree, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that a specific sentence of 19 years of imprisonment is the appropriate sentence in this case. The remaining components of the defendant's sentence, including but not limited to any fine or restitution and the length and conditions of supervised release, shall be imposed by the Court after the presentation of evidence and/or argument by the parties.

b. If the Court accepts the plea agreement, it must inform the Defendant that the agreed upon disposition will be included in the judgment, and the Court is bound by the terms of the plea agreement once the Court accepts the plea agreement.



DEFENDANT'S ADDITIONAL AGREEMENT

19. The defendant understands the defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information, including, but not limited to defendant's true identity, citizenship status, and any prior criminal convictions. The defendant hereby represents that the defendant has complied with and will continue to comply with this obligation. The defendant understands that any misrepresentation with respect to the above obligations may be considered a breach of this plea agreement.

20. The Defendant agrees that any financial records and information provided by the Defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

21. By signing this plea agreement, the defendant waives the right to withdraw the defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless: (1) the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal. Furthermore, defendant understands that if the court rejects the plea agreement, whether or not defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

22. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant. Consequently, in return for the benefit conferred on the Defendant by entering into this agreement, the Defendant agrees not to seek a downward departure or variance from the specific sentence of 19 years of imprisonment as agreed to by the parties pursuant to Rule 11(c)(1)(C) of the Federal rules of Criminal Procedure. If the Defendant, in violation of this



paragraph, should nevertheless seek a downward departure or variance, including a departure or variance from the guideline Criminal History Category, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on all charges before the Court.

#### RESTITUTION

23. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A.

24. No later than July 1 of each year after sentencing, until restitution is paid in full, the Defendant shall provide the Asset Recovery Unit, United States Attorney's Office, P.O. Box 607, Albuquerque, New Mexico 87103, (1) a completed and signed financial statement provided to the Defendant by the United States Attorney's Office and/or the United States Probation Office and (2) a copy of the Defendant's most recent tax returns.

25. The defendant further agrees that whatever monetary penalties are imposed by the Court will be due immediately and will be subject to immediate enforcement by the United States as provided for in 18 U.S.C. § 3613. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

#### FORFEITURE

26. The defendant agrees to forfeit, and hereby forfeits, whatever interest the defendant may have in any asset derived from or used in the commission of the offense(s) in this case. The defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such

assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which the defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

27. The defendant voluntarily and immediately agrees to forfeit to the United States all of the defendant's right, title, and interest in the following assets and properties:

- a. A Smith & Wesson .40 caliber handgun, Serial Number: FZE4560 and
- b. Approximately 54 .40 caliber cartridges.

28. The defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the defendant's interest in the above-described property to the United States.

29. The defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

30. The defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States or any State or its subdivisions.

IMMIGRATION REMOVAL AND OTHER IMMIGRATION CONSEQUENCES

31. Defendant recognizes that pleading guilty may have consequences with respect to defendant's immigration status if defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) 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 defendant's attorney or the district court, can predict to a certainty the effect of defendant's conviction on defendant's immigration consequences that defendant's plea may entail, even if the consequences include defendant's automatic removal from the United States.

#### WAIVER OF APPEAL AND POST-CONVICTION RIGHTS

32. The defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford the right to appeal a conviction and the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal the defendant's conviction(s) and any sentence, imposed in conformity with this Fed. R. Crim. P. 11(c)(1)(C) plea agreement, as well as any order of restitution entered by the Court. This waiver extends to any challenge to the manner in which the sentence was determined or imposed, including the district court's authority to make findings supporting the sentence. The defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this cause number but may nonetheless appeal the determination of the revocation Guideline range. The defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). In addition, the defendant agrees to waive any collateral attack to the defendant's conviction(s) and any sentence, pursuant to 28 U.S.C. §§ 2241, 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

GOVERNMENT'S AGREEMENT

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

- a. not to bring additional criminal charges against the defendant arising out of the facts forming the basis of the present Information; and
- b. to move, at the time of sentencing, to dismiss the Indictment filed in this matter.

34. 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

35. 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 plea agreement and any addenda). The defendant also represents that the defendant is pleading guilty because the defendant is in fact guilty.

VIOLATION OR REJECTION OF PLEA AGREEMENT

36. The defendant understands and agrees that if the Court finds that the defendant or the defendant's attorney has violated any provision of this plea agreement, the United States may declare this plea agreement null and void. In such a case, or where the Court has rejected the plea agreement or has functionally rejected it by failing to accept the agreement within six months of its entry (except where the United States, in its sole discretion, agrees to an extension of that time) the United States is released from its obligations under the plea agreement, 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 charges in this case, as well as perjury, false



statement, and obstruction of justice, and any other crime committed by the defendant during prosecution of this case.

SPECIAL ASSESSMENT

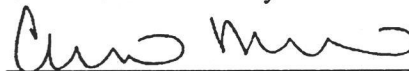
37. At this time of sentencing, the defendant will tender a money order or certified check payable to the order of the United States District Court, District of New Mexico, 333 Lomas Boulevard, NW, Albuquerque, New Mexico 87102, in the amount of \$400.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

38. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 12th day of January, 2024.

ALEXANDER M.M. UBALLEZ  
United States Attorney




CHRISTOPHER S. MCNAIR  
Assistant U.S. Attorney  
200 N. Church Street  
Las Cruces, NM 88001  
(575) 522-2304 – Tel.  
(575) 522-2391 – Fax

This agreement has been read to me in the language I understand, and I have carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of the elements of the offense, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

  
\_\_\_\_\_  
ROBERTO ESQUIVEL  
Defendant

I am the attorney for ROBERTO ESQUIVEL. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of the elements of the offense, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

  
\_\_\_\_\_  
DARREN ROBINSON  
Attorney for Defendant