

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

**MAR 08 2017**

**MATTHEW J. DYKMAN**  
CLERK

**UNITED STATES OF AMERICA,** )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
**ROSENDO FLORES ANGULO,** )  
 )  
 Defendant. )

Case 1:15-cr-3766-MV

**PLEA AGREEMENT**

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (C), the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico and the Defendant, ROSENDO FLORES ANGULO, with the advice and counsel of his attorney, Santiago Juarez.

**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 be prosecuted by indictment;
  - b. to plead not guilty, or having already so pleaded, to persist in that plea;
  - c. to have a trial by jury; and

- d. 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 an Information charging that on or about April 29, 2015, the Defendant conspired with CURTIS HUTCHINSON to distribute heroin in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C).

**DEFENDANT'S ADMISSION OF FACTS**

4. By the Defendant's signature on this plea agreement, Defendant is acknowledging that he is pleading guilty because he is, in fact, guilty of the offense to which he is pleading guilty. The Defendant admits and accepts responsibility for that criminal conduct. Moreover, in pleading guilty, the Defendant acknowledges that if he chose to go to trial instead of entering a guilty plea, the United States could prove facts sufficient to establish his guilt of the offense to which he is pleading guilty beyond a reasonable doubt, including any facts alleged in the Information that increase the statutory minimum or maximum penalties.

5. The Defendant specifically admits the following facts related to the charged offense and declares under penalty of perjury that all of these facts are true and correct:

- a. I, ROSENDO FLORES ANGULO, admit that I distributed heroin to other persons in and around Albuquerque, New Mexico, in 2014 and 2015. During

that span, I worked as a mid-level heroin distributor using several aliases including the name "Luis Lara."

- b. I, ROSENDO FLORES ANGULO, received heroin from my suppliers which I distributed to other heroin dealers and heroin users in and around Albuquerque, New Mexico. I typically distributed the heroin in small balls wrapped in aluminum foil. I sold multiple balls of heroin to low-level heroin dealers for sale to others.
- c. I, ROSENDO FLORES ANGULO, admit that CURTIS HUTCHINSON (who I previously knew as "Charlie" or "Carlito") was one of the low-level heroin dealers who I supplied with heroin. CURTIS HUTCHINSON would call me--- often several times a day---to arrange to purchase heroin for himself and his friends and acquaintances.
- d. I, ROSENDO FLORES ANGULO, admit that I conspired with CURTIS HUTCHINSON to distribute heroin on or about April 29, 2015. As part of and in furtherance of that conspiracy, I supplied heroin to CURTIS HUTCHINSON on April 29, 2015, and/or in the preceding days, for distribution to others.
- e. Based upon evidence and information provided to me in discovery, I, ROSENDO FLORES, acknowledge and admit that a young man (referred to herein as "D.J.") was one of the other persons to whom CURTIS HUTCHINSON distributed the heroin that I had supplied. I, ROSENDO FLORES ANGULO, further acknowledge and admit that the evidence shows on the evening of April 29, 2015, CURTIS HUTCHINSON sold a portion of the heroin that I had supplied to him---

more specifically, one of the small balls of heroin---to D.J.

- f. I, ROSENDO FLORES ANGULO, further acknowledge and admit that the evidence shows that after obtaining the heroin from CURTIS HUTCHINSON, D.J. returned to the home that he shared with his parents and sister where he used the heroin. Upon using the heroin, D.J. collapsed and died. The forensic evidence---including the expert opinion of a medical toxicologist---shows that the heroin was a but-for cause of D.J.'s death, that is, D.J. would not have died if he had not used the heroin.
- g. I, ROSENDO FLORES ANGULO, admit that I conspired with CURTIS HUTCHINSON to distribute heroin on or about April 29, 2015. I further admit that D.J.'s death resulted from his use of heroin that I distributed as part of that conspiracy.
6. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which the Defendant is pleading 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.

#### **SENTENCING**

7. The Defendant understands that the minimum and maximum penalties provided by law for this offense are:
- a. imprisonment for a period of not more than 20 years;
  - b. a fine not to exceed the greater of \$1,000,000 or twice the pecuniary gain to the Defendant or pecuniary loss to a victim;

- c. a term of supervised release of not less than 3 years to 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.

#### RECOMMENDATIONS

8. 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.

9. The United States and the Defendant offer the following recommendations regarding the calculation of the Defendant's Offense Level under the advisory United States Sentencing Guidelines (USSG).

- a. Base Offense Level: USSG § 2D1.1(a)(2): 38

Death resulted from use of the heroin distributed by the Defendant. Defendant's Base Offense Level is therefore 38 under § 2D1.1(a)(2) of the United States Sentencing Guidelines.

- b. Specific Offense Characteristic - USSG § 2D1.1(b)(17) (safety-valve): N/A

The "safety-valve" provisions set forth in 18 U.S.C. § 3553(f) and Sentencing Guidelines § 5C1.2 are inapplicable here because the offense of conviction resulted in death of another person.



c. Aggravating / Mitigating Role - USSG §§ 3B1.1 & 3B1.2: N/A

The parties agree that although this Defendant was a mid-level distributor who supplied heroin to low-level heroin dealers, he was not an organizer, leader, manager or supervisor of others. However, defendant was not substantially less culpable than his co-conspirators; as a mid-level distributor, defendant was higher in the supply chain than his co-conspirator. The parties accordingly recommend neither an Aggravating Role adjustment nor a Mitigating Role adjustment.

d. Acceptance of Responsibility – USSG § 3E1.1: - 3

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. Provided that the Defendant continues to accept responsibility, the Defendant will be entitled to a reduction of 2 levels from the base offense level as calculated under the sentencing guidelines pursuant to Sentencing Guidelines § 3E1.1(a). If the defendant fulfills his promises and responsibilities under this plea agreement and timely enters his guilty plea, the United States will move for an additional 1-Level reduction pursuant to Sentencing Guidelines § 3E1.1(b). Further, the United States is free to withdraw this recommendation if Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

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10. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties agree that a sentence of imprisonment in the range of 168 to 210 months is the appropriate term of imprisonment in this case. This recommendation takes into account the Defendant's Acceptance of Responsibility, and the parties agree that no further reduction is warranted. The parties each remain free to make recommendations and argument and to present evidence regarding an appropriate term of imprisonment of not less than 168 months and not more than 210 months. The remaining components of the Defendant's sentence (including, but not limited to, any fine, restitution, and the length and conditions of supervised release) shall be determined by the Court after the presentation of evidence and argument by the parties.

11. The parties are aware that the Court will decide whether to accept or reject this plea agreement. The Court may defer its decision as to acceptance or rejection until there has been an opportunity to consider the Presentence Report. If the Court accepts this plea agreement, the Court would be bound by the terms of the plea agreement including the imprisonment term or range recommended by the parties. *See* Fed.R.Crim.P. 11(c)(1)(C). Additionally, if the Court accepts this plea agreement, the government agrees to move to dismiss the charges pending in the Superseding Indictment and not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the Information. *See* Fed.R.Crim.P. 11(c)(1)(A). Conversely, if the Court rejects this plea agreement, the parties acknowledge and agree that: the Defendant would have the right to withdraw the Defendant's plea of guilty; the government would not move to dismiss the Superseding Indictment, and the charges pending in the Superseding Indictment would not be dismissed; and the Defendant would be subject to prosecution on all counts of the Superseding Indictment that pertain to him.

12. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under U.S.S.G. § 1B1.3.

**DEFENDANT'S ADDITIONAL AGREEMENT**

13. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and 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.

14. Except under circumstances where the Court, acting on its own, rejects 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 change-of-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.

15. 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 sentencing range of 168 to 210 months as agreed to by the parties pursuant to



Rule 11(c)(1)(C) of the Federal rules of Criminal Procedure. If the Defendant should nevertheless seek a downward departure or variance, 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.

**IMMIGRATION CONSEQUENCES AND CONSENT TO REMOVAL**

16. The Defendant recognizes that pleading guilty may have consequences with respect to the Defendant's immigration status if the Defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which the Defendant is pleading guilty. Indeed, because the Defendant is pleading guilty to conspiring to distribute a controlled substance, removal is presumptively mandatory.

17. The Defendant consents to removal from the United States following the completion of the Defendant's sentence. The Defendant further agrees to waive rights relating to any and all forms of relief from removal or exclusion, to abandon any pending applications for such relief, and to cooperate with the Department of Homeland Security during removal proceedings.

**WAIVER OF APPEAL RIGHTS**

18. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant 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, including any fine, at or under the maximum statutory penalty authorized by law. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241, 2255, or any other extraordinary

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writ, except on the issue of defense counsel's ineffective assistance.

**GOVERNMENT'S ADDITIONAL AGREEMENT**

19. Provided that the Defendant fulfills the Defendant's obligations as set out above and that the Court accepts the plea agreement and sentences defendant to a term of imprisonment within the range of 168-210 months, the United States agrees pursuant to Fed.R.Crim.P.

11(c)(1)(A) that:

- a. Following sentencing, the United States will move to dismiss the indictment pending in this case as to defendant ROSENDO FLORES ANGULO; and
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the Information.

20. 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**

21. 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 and any addenda). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

**VIOLATION OF PLEA AGREEMENT**

22. The Defendant agrees that if the Defendant violates any provision of this

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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(s) or offense(s) 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.

**SPECIAL ASSESSMENT**

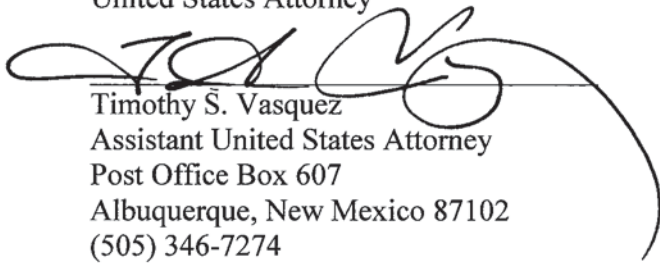
23. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100 in payment of the special penalty assessment described above.

**ENTIRETY OF AGREEMENT**

24. 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. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 3rd day of March 2017.

Damon P. Martinez  
United States Attorney



Timothy S. Vasquez  
Assistant United States Attorney  
Post Office Box 607  
Albuquerque, New Mexico 87102  
(505) 346-7274

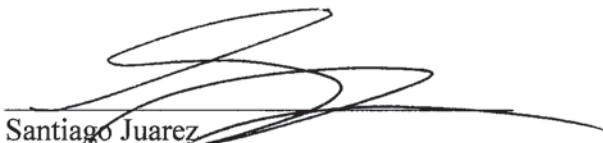
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This agreement has been read to me in a language I understand. I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of 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.

  
\_\_\_\_\_  
ROSENDO FLORES ANGULO  
Defendant

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, 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.

  
\_\_\_\_\_  
Santiago Juarez  
Attorney for the Defendant