

FILED
Jan 30 2025
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ BRIANNA Sandoval DEPUTY

1 TARA K. McGRATH
United States Attorney
2 DANIEL F. CASILLAS
Washington State Bar No. 45710
3 Assistant U.S. Attorney
United States Attorney's Office
4 880 Front Street, Room 6293
San Diego, CA 92101
5 Telephone: 619-546-7342
6 Attorneys for Plaintiff
7 UNITED STATES OF AMERICA

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 GILBERTO GARCIA RODRIGUEZ,
15 Defendant.

Case No. 25mj0003
25-cr-00240-BJC
PLEA AGREEMENT

16 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,
17 through its counsel, Tara K. McGrath, United States Attorney, and
18 Daniel F. Casillas, Assistant United States Attorney, and defendant,
19 GILBERTO GARCIA RODRIGUEZ, with the advice and consent of
20 Christian A. Mesa, counsel for defendant, as follows:

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28 DFC:vr:1/21/25

Def. Initials GGR

1 I

2 THE PLEA

3 A. THE CHARGE

4 Defendant agrees to waive Indictment and plead guilty to Count 1
5 of a two-count Information charging defendant with:

6 On or about January 1, 2025, within the Southern District of
7 California, defendant GILBERTO GARCIA RODRIGUEZ, an alien,
8 knowingly and intentionally entered the United States of
9 America at a time and place other than as designated by
10 immigration officers, and having previously committed the
11 offense of illegal entry, as evidenced by his conviction for
12 a violation of Title 8, United States Code, Section 1325; all
13 in violation of Title 8, United States Code, Section
14 1325(a)(1), a felony.

11 B. PARTIES' AGREEMENT AS TO FILINGS

12 In contemplation of this plea agreement, defendant agrees not to
13 file or argue any substantive motions, including those described in Fed.
14 R. Crim. P. 12. Defendant shall not file any motion or appeal as to bond
15 in any Court more than 28 calendar days after the initial appearance in
16 this matter unless defendant has entered a guilty plea in open Court.

17 C. DISMISSAL OF THE REMAINING COUNTS

18 The Government agrees to (1) move to dismiss the remaining counts
19 without prejudice when defendant is sentenced, and (2) not prosecute
20 defendant thereafter on such dismissed charge(s) unless defendant
21 breaches the plea agreement or the guilty plea entered pursuant to this
22 plea agreement is set aside for any reason. If defendant breaches this
23 agreement or the guilty plea is set aside, section XII below shall apply.

24 II

25 NATURE OF THE OFFENSE

26 A. ELEMENTS EXPLAINED

27 The offense to which defendant is pleading guilty has the following
28 elements:

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- 1. Defendant was an alien at the time of the defendant's entry into the United States.
- 2. Defendant knowingly and voluntarily entered the United States free from official restraint at a time or place other than as designated by immigration officers.
- 3. Defendant committed the offense after being convicted of a prior 8 U.S.C. § 1325 offense.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each element of the crime and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

- 1. At the time of the offense, defendant was not a citizen or national of the United States. Defendant is a citizen of Mexico.
- 2. On or about January 1, 2025, within the Southern District of California, defendant, an alien, knowingly and voluntarily entered the United States from Mexico at a place other than a designated port of entry and was found approximately 1 mile east of the Otay Mesa, California port of entry, and 1 mile north of the international border between Mexico and the United States.
- 3. At the moment defendant crossed into the United States, defendant was not under official restraint; that is, defendant was not observed or detected by government authorities and was able to move freely within the United States.
- 4. Defendant committed the offense alleged in Count 1 of the Information subsequent to commission of another offense under Title 8, United States Code, Section 1325, as evidenced by defendant's misdemeanor conviction for Illegal Entry in violation of Title 8, United States Code, Section 1325 on December 17, 2024, in the United States District Court, Southern District of California.

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III

PENALTIES

The crime to which defendant is pleading guilty carries the following penalties:

- A. A maximum 2 years in prison;
- B. A maximum \$250,000.00 fine;
- C. A mandatory special assessment of \$100.00 per count; and
- D. A term of supervised release of 1 year. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison, upon any such revocation, all or part of the statutory maximum term of supervised release for the offense that resulted in such term of supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS
AND UNDERSTANDING OF CONSEQUENCES

This guilty plea waives defendant's right at trial to:

- A. Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- B. A speedy and public trial by jury;
- C. The assistance of counsel at all stages of trial;
- D. Confront and cross-examine adverse witnesses;
- E. Testify and present evidence and to have witnesses testify on behalf of defendant; and
- F. Not testify or have any adverse inferences drawn from the failure to testify.

Defendant has been advised by counsel and understands that because defendant is not a citizen of the United States, defendant's conviction in this case make it practically inevitable and a virtual certainty that defendant will be removed or deported from the United States. Defendant

1 may also be denied United States citizenship and admission to the United
2 States in the future.

3
4 **V**

5 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE**
6 **PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

7 Any information establishing the factual innocence of defendant
8 known to the undersigned prosecutor in this case has been turned over
9 to defendant. The Government will continue to provide such information
10 establishing the factual innocence of defendant.

11 If this case proceeded to trial, the Government would be required
12 to provide impeachment information for its witnesses. In addition, if
13 defendant raised an affirmative defense, the Government would be
14 required to provide information in its possession that supports such a
15 defense. By pleading guilty, defendant will not be provided this
16 information, if any, and defendant waives any right to this information.
17 Defendant will not attempt to withdraw the guilty plea or file a
18 collateral attack on the existence of this information.

19 **VI**

20 **DEFENDANT'S REPRESENTATION THAT GUILTY**
21 **PLEA IS KNOWING AND VOLUNTARY**

22 Defendant represents that:

- 23 A. Defendant has had a full opportunity to discuss all the facts
24 and circumstances of this case with defense counsel and has a
25 clear understanding of the charges and the consequences of
26 this plea. By pleading guilty, defendant may be giving up, and
27 rendered ineligible to receive, valuable government benefits
28 and civic rights, such as the right to vote, the right to
possess a firearm, the right to hold office, and the right to
serve on a jury. The conviction in this case may subject
defendant to various collateral consequences, including but
not limited to revocation of probation, parole, or supervised
release in another case; debarment from government
contracting; and suspension or revocation of a professional
license, none of which can serve as grounds to withdraw
defendant's guilty plea;

- 1 B. No one has made any promises or offered any rewards in return
2 for this guilty plea, other than those contained in this
3 agreement or otherwise disclosed to the court;
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5 C. No one has threatened defendant or defendant's family to
6 induce this guilty plea; and,
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8 D. Defendant is pleading guilty because defendant is guilty and
9 for no other reason.

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VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA**

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other authorities in any type of matter, although the Government will bring this plea agreement to the attention of other authorities if requested by defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). In imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory. The Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction.

The parties will recommend immediate sentencing without a presentence report. The Court may agree if it finds sufficient information in the record to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. § 3553. **Defendant agrees to request that a rap sheet be prepared.** Defendant has been advised and understands

1 that should the sentencing judge order a presentence report, defendant
2 nevertheless has no right to withdraw the plea.

3 Nothing in this plea agreement limits the Government's duty to provide
4 complete and accurate facts to the district court and the U.S. Probation
5 Office.

6 IX

7 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

8 This plea agreement is made pursuant to Federal Rule of Criminal
9 Procedure 11(c)(1)(B). The sentence is within the sole discretion of
10 the sentencing judge who may impose the maximum sentence provided by
11 statute. It is uncertain at this time what defendant's sentence will
12 be. The Government has not made and will not make any representation
13 as to what sentence defendant will receive. Any estimate of the probable
14 sentence by defense counsel is not a promise and is not binding on the
15 Court. Any recommendation made by the Government at sentencing is also
16 not binding on the Court. If the sentencing judge does not follow any
17 of the parties' sentencing recommendations, defendant will not withdraw
18 the plea.

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4 PARTIES' SENTENCING RECOMMENDATIONS

5 A. SENTENCING GUIDELINE CALCULATIONS

6 Although the Guidelines are only advisory and just one of the
7 factors the court will consider under 18 U.S.C. § 3553(a) in imposing a
8 sentence, the parties will jointly recommend the following Base Offense
9 Level, Specific Offense Characteristics, Adjustments and Departures:

- | | | |
|----|---|----|
| 10 | 1. Base Offense Level [USSG § 2L1.2(a)] | 8 |
| 11 | 2. Prior Illegal Reentry/Entry Offense | -1 |
| 12 | [USSG § 2L1.2(b)(1)] | |
| 13 | Specific Offense Characteristic to be
determined following preparation of a
Rap Sheet, up to a +4. | |
| 14 | 3. Pre-Removal Order Felony Conviction | -1 |
| 15 | [USSG § 2L1.2(b)(2)] | |
| 16 | Specific Offense Characteristic to be
determined following preparation of a
Rap Sheet, up to a +10. | |
| 17 | 4. Post-Removal Order Felony Conviction | -1 |
| 18 | [USSG § 2L1.2(b)(3)] | |
| 19 | Specific Offense Characteristic to be
determined following preparation of a
Rap Sheet, up to a +10. | |
| 20 | 5. Acceptance of Responsibility | -2 |
| 21 | [USSG § 3E1.1] | |

22 B. ACCEPTANCE OF RESPONSIBILITY

23 Despite paragraph A above, the Government need not recommend an
24 adjustment for Acceptance of Responsibility if defendant engages in
25

26 _____
27 ¹ The parties are free to argue for the applicability of any Specific
28 Offense Characteristic, pursuant to USSG § 2L1.2(b), based on the
information available at the time of sentencing.

1 conduct inconsistent with acceptance of responsibility including, but
2 not limited to, the following:

- 3 1. Fails to truthfully admit a complete factual basis as
4 stated in the plea at the time the plea is entered, or
5 falsely denies, or makes a statement inconsistent with,
6 the factual basis set forth in this agreement;
- 7 2. Falsely denies prior criminal conduct or convictions;
- 8 3. Is untruthful with the Government, the Court or probation
9 officer; or
- 10 4. Breaches this plea agreement in any way.

11 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS
12 INCLUDING THOSE UNDER 18 U.S.C. § 3553

13 Defendant may request or recommend additional downward adjustments,
14 departures, or variances from the Sentencing Guidelines under 18 U.S.C.
15 § 3553 *with the exception that defendant may not collaterally attack
16 any prior removal order. The Government will oppose any downward
17 adjustments, departures, or variances not set forth in Section X,
18 paragraph A above.

19 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

20 The parties have no agreement as to defendant's Criminal History
21 Category.

22 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

23 The facts in the "factual basis" paragraph of this agreement are
24 true and may be considered as "relevant conduct" under USSG § 1B1.3 and
25 as the nature and circumstances of the offense under 18 U.S.C.
26 § 3553(a)(1).

27 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

28 The Government agrees to recommend that defendant be sentenced to
the greater of: the low end of the advisory Guidelines range as
calculated by the Government after incorporating a downward variance

1 under 18 U.S.C. § 3553(a) that is the equivalent of two levels under the
2 Sentencing Guidelines,^[2] or the time served in custody at the time of
3 sentencing.

4 G. SPECIAL ASSESSMENT AND FINE

5 The parties will jointly recommend that defendant pay a special
6 assessment in the amount of \$100.00 per felony count of conviction to
7 be paid forthwith at time of sentencing. The special assessment shall
8 be paid through the office of the Clerk of the District Court by bank
9 or cashier's check or money order made payable to the "Clerk, United
10 States District Court."

11 The parties will not recommend imposition of a fine due to
12 defendant's limited financial prospects and because the cost of
13 collection, even taking into account the Inmate Responsibility Program,
14 likely would exceed the amounts that could reasonably be expected to be
15 collected.

16 H. SUPERVISED RELEASE

17 The Government is free to recommend a period of supervised release.
18 If the Court imposes a term of supervised release, defendant will not
19 seek to reduce or terminate early the term of supervised release until
20 defendant has served at least two-thirds of the term of supervised
21 release and has fully paid and satisfied any special assessments, fine,
22 criminal forfeiture judgment and restitution judgment.

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25 ^[2] The variance is the equivalent of *two/four levels is based on
26 18 U.S.C. § 3553(a)(4) (the kinds of sentences and established sentencing
27 range), (a)(5) (policy statements) and (a)(6) (similarly-situated
28 defendants with similar records guilty of similar offenses) given the
existence of the early disposition program as applied to other defendants
convicted of criminal immigration offenses within the Southern District
of California.

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XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect of the conviction and sentence, including any restitution order. This waiver includes, but is not limited to, any argument that the statute of conviction or defendant's prosecution is unconstitutional and any argument that the facts of this case do not constitute the crime charged. The only exception is that defendant may collaterally attack the conviction or sentence on the basis that defendant received ineffective assistance of counsel. If defendant appeals, the Government may support on appeal the sentence or restitution order actually imposed.

XII

BREACH OF THE PLEA AGREEMENT

Defendant and defendant's attorney know the terms of this agreement and shall raise, before the sentencing hearing is complete, any claim that the Government has not complied with this agreement. Otherwise, such claims shall be deemed waived (that is, deliberately not raised despite awareness that the claim could be raised), cannot later be made to any court, and if later made to a court, shall constitute a breach of this agreement.

Defendant breaches this agreement if defendant violates or fails to perform any obligation under this agreement. The following are non-exhaustive examples of acts constituting a breach:

- A. Failing to plead guilty pursuant to this agreement;
- B. Failing to fully accept responsibility as established in Section X, paragraph B, above;
- C. Failing to appear in court;

- 1 D. Attempting to withdraw the plea;
- 2 E. Failing to abide by any court order related to this case;
- 3 F. Appealing (which occurs if a notice of appeal is filed) or
4 collaterally attacking the conviction or sentence in violation
of Section XI of this plea agreement; or
- 5 G. Engaging in additional criminal conduct from the time of
6 arrest until the time of sentencing.

7 If defendant breaches this plea agreement, defendant will not be
8 able to enforce any provisions, and the Government will be relieved of
9 all its obligations under this plea agreement. For example, the
10 Government may proceed to sentencing but recommend a different sentence
11 than what it agreed to recommend above. Or the Government may pursue any
12 charges including those that were dismissed, promised to be dismissed,
13 or not filed as a result of this agreement (defendant agrees that any
14 statute of limitations relating to such charges is tolled indefinitely
15 as of the date all parties have signed this agreement; defendant also
16 waives any double jeopardy defense to such charges). In addition, the
17 Government may move to set aside defendant's guilty plea. Defendant may
18 not withdraw the guilty plea based on the Government's pursuit of
remedies for defendant's breach.

19 Additionally, if defendant breaches this plea agreement: (i) any
20 statements made by defendant, under oath, at the guilty plea hearing
21 (before either a Magistrate Judge or a District Judge); (ii) the factual
22 basis statement in Section II.B in this agreement; and (iii) any evidence
23 derived from such statements, are admissible against defendant in any
24 prosecution of, or any action against, defendant. This includes the
25 prosecution of the charge(s) that is the subject of this plea agreement
26 or any charge(s) that the prosecution agreed to dismiss or not file as
27 part of this agreement, but later pursues because of a breach by
28

1 defendant. Additionally, defendant knowingly, voluntarily, and
2 intelligently waives any argument that the statements and any evidence
3 derived from the statements should be suppressed, cannot be used by the
4 Government, or are inadmissible under the United States Constitution,
5 any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
6 the Federal Rules of Criminal Procedure, and any other federal rule.

7 **XIII**

8 **CONTENTS AND MODIFICATION OF AGREEMENT**

9 This plea agreement embodies the entire agreement between the
10 parties and supersedes any other agreement, written or oral. No
11 modification of this plea agreement shall be effective unless in writing
12 signed by all parties.

13 **XIV**

14 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

15 By signing this agreement, defendant certifies that defendant has
16 read it (or that it has been read to defendant in defendant's native
17 language). Defendant has discussed the terms of this agreement with
18 defense counsel and fully understands its meaning and effect.

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2 XV

3 DEFENDANT SATISFIED WITH COUNSEL

4 Defendant has consulted with counsel and is satisfied with
5 counsel's representation. This is defendant's independent opinion, and
6 defendant's counsel did not advise defendant about what to say in this
7 regard.

8 Respectfully submitted,

9 TARA K. McGRATH
United States Attorney

10
11 1/28/2025

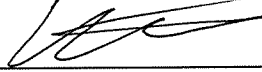
12 DATED

Alexis Smith Aguilar For

DANIEL F. CASILLAS
Assistant U.S. Attorney

13
14 1/22/25

15 DATED


CHRISTIAN A. MESA
Defense Counsel

16
17 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER
18 PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE
19 ARE TRUE.

20 1/22/25

DATED

* *Gilberto Garcia Rodriguez*
GILBERTO GARCIA RODRIGUEZ
Defendant

21
22 Approved by:

23 s/ Charlotte E. Kaiser
CHARLOTTE E. KAISER
24 Assistant U.S. Attorney

25 1/19/2024 cek