

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
) NO. S1-4:09CR794 HEA (FRB)
)
)
)
MANUEL ARNULFO BARRERA-)
GUERRERO,)
)
)
 Defendant.

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties pursuant to Section 6B1.4, Sentencing Guidelines and Policy Statements (October 1987), and the Administrative Order of this Court (July 19, 2006) and hereby stipulate and agree that the following are the parties' agreements, recommendations and stipulations:

1. THE PARTIES:

The parties to the agreements, recommendations and stipulations contained herein are the defendant Manuel Arnulfo BARRERA-GUERRERO, defense counsel John D. Stobbs, II, and the Office of the United States Attorney for the Eastern District of Missouri (hereinafter "the government"). This document and the agreements, recommendations and stipulations contained herein do not, and are not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri. It is understood by the parties that the Court is neither a party to nor bound by these agreements, recommendations and stipulations.

2. **PLEA AGREEMENTS:**

A. The Plea:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Count I of the superseding information, the government agrees to move for the dismissal as to the defendant of the indictment at the time of sentencing. Moreover, the Office of the United States Attorney for the Eastern District of Missouri agrees that no further federal prosecution will be brought in this District relative to the defendant's interstate travel in aid of the distribution and possession with intent to distribute methamphetamine, participation in a conspiracy to distribute and possess with intent to distribute methamphetamine as described in paragraph 4 below, of which the Office of the United States Attorney for the Eastern District of Missouri is aware at this time.

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant fully understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects those portions of the plea agreement which deal with charges the government agrees to dismiss or not to bring.

B. The Sentence:

Pursuant to Rule 11(c)(1)(B), Federal Rules of Criminal Procedure, in this document the parties have addressed the United States Sentencing Guidelines, the factors set forth in Title 18, United States Code, Section 3553(a), and other factors relevant to sentencing. The parties agree that the recommendations contained herein fairly and accurately set forth the Guidelines applicable to this case. The parties believe that the Court should use these recommendations in *determining the defendant's sentence, along with any other factors specified in this agreement.*

The parties acknowledge that the Guidelines application recommendations set forth herein are the result of negotiations between the parties as to the Guidelines applications they address; that these negotiated recommendations, as well as the agreements the government made in paragraph 2A, led to the guilty plea in this case; and that each party has a right to rely upon and hold the other party to the recommendations at the time of sentencing. The parties further agree that neither party shall request a sentence above or below the applicable guideline range pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553(a), or any other provision or rule of law, unless that request or facts which support that request are addressed in this document or the request is made with the consent of both parties. The parties understand that the District Court is neither a party to nor bound by the Guidelines recommendations agreed to in this document.

C. Waiver of Post-Conviction Rights:

(1) **Appeal:** The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(a) **Non-Sentencing Issues:** In the event the Court accepts the plea, as part of this agreement, both the defendant and the government hereby waive all rights to appeal all non-jurisdictional issues including, but not limited to, any issues relating to pretrial motions, hearings and discovery and any issues relating to the negotiation, taking or acceptance of the guilty plea or the factual basis for the plea.

(b) **Sentencing Issues:** In the event the Court accepts the plea and, in sentencing the defendant, 1) applies the recommendations agreed to by the parties herein, and 2)

after determining a Sentencing Guideline range, sentences the defendant within that range, then, as part of this agreement, both the defendant and the government hereby waive all rights to appeal all sentencing issues, including any issues relating to the determination of the Total Offense Level, the Criminal History Category, and Career Offender Status.

(2) **Habeas Corpus:** The defendant acknowledges being guilty of the crime to which a plea is being entered, and further states that neither defense counsel nor the government has made representations which are not included in this document as to the sentence to be imposed. The defendant further agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

(3) **Right to Records:** The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 522, or the Privacy Act, Title 5, United States Code, Section 552(a).

D. Disclosures Required by the United States Probation Office:

The defendant agrees to complete and sign forms as required by the United States Probation Office prior to sentencing, including a Net Worth Statement (Probation Form 48); or a Net Worth Short Form Statement (Probation Form 48 EZ); a Cash Flow Statement (Probation Form 48B); a Declaration of Defendant or Offender Net Worth and Cash Flow Statements (Probation Form 48D); a Customer Consent and Authorization for Access to Financial Records

(Probation Form 48E); and an Authorization to Release Government (State or Federal) Information to Probation Officer (Probation Form 11-H). The defendant agrees to provide complete, truthful and accurate information on these forms and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government. The defendant also agrees to complete and sign forms, including a Customer Consent Authorization for Access to Financial Records During Supervision (Probation Form 48I), as required by the United States Probation Office during the defendant's term of supervised release or probation. The defendant agrees to provide complete, truthful and accurate information on these forms and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

E. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies:

The defendant has discussed with defense counsel and understands that nothing contained in this document is meant to limit the rights and authority of the United States of America to take any civil, tax or administrative action against the defendant including, but not limited to, asset forfeiture, deportation and any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with government agencies. Further, any recommendation in this document as to the amount of loss or restitution is not binding upon the parties in any civil or administrative action by the government against the defendant.

F. Forfeiture of Interest in Property Seized:

The defendant agrees to forfeit all of the defendant's interest in all items seized by law-enforcement officials during the course of their investigation and will not contest the forfeiture to law enforcement of such items. The defendant specifically admits that all United States

currency, weapons, property and assets seized by law enforcement officials during their investigation constitute the proceeds of the defendant's illegal activity, were commingled with illegal proceeds or were used to facilitate the illegal activity and agrees not to file a claim in any forfeiture proceeding or to contest, in any manner, the forfeiture of said currency, weapons, property or assets.

The defendant further agrees not to assist any other individual in contesting those forfeitures on the defendant's behalf and agrees that there was reasonable cause to seize the aforementioned currency, weapons, property or assets. The defendant agrees to prevent the disbursement of any and all monies, property or assets derived from unlawful activities, if said disbursements are within the defendant's direct or indirect interest or control. The defendant agrees to take all steps necessary and to execute any documents needed, to transfer title or ownership of these items to the government, to include truthful testimony to rebut the claims of nominees and/or alleged third party owners of any of these seized items.

The defendant further agrees that any and all seized items may be disposed of by law enforcement officials in accordance with the established practices and policies of the respective law enforcement agency.

3. **GUIDELINES RECOMMENDATIONS (NOT BINDING ON THE COURT):**

A. **Manual to be Used:** The parties recommend that the 2009 version of the Guidelines Manual applies.

B. **Offense Conduct:**

(1) **Base Offense Level:** The parties recommend that the base offense level is 30 as found in Section 2E1.2(a)(2) because the offense level applicable to the underlying unlawful

activity in respect to which the travel or transportation was undertaken involved more than 350 grams but less than 500 grams of a mixture or substance containing methamphetamine, resulting in the recommended base offense level pursuant to Section 2D1.1.

(2) **Chapter 2 Specific Offense Characteristics:** The parties make the following recommendations regarding Specific Offense Characteristics:

Safety Valve: Two levels may be deducted pursuant to Section 2D1.1(b)(11), because the parties recommend that the defendant meets the criteria set forth in Section 5C1.2(a)(2), (3), and (4). Whether the defendant meets the criteria set forth in Section 5C1.2(a)(1), relating to the defendant's criminal history, is left to the determination of the Court as stated in ¶3F herein. Additionally, defendant has not yet truthfully provided to the Government all information and evidence the defendant has concerning the offense and therefore it is unknown whether defendant will meet the criteria set forth in Section 5C1.2(a)(1) Defendant understands that he must meet all five criteria to receive the two-level reduction.

C. **Chapter 3 Adjustments:** The parties recommend that the following adjustments, other than acceptance of responsibility, apply:

Minimal Role: Four levels should be deducted pursuant to Section 3B1.2 because defendant was a minimal participant in the criminal activity.

D. **Acceptance of Responsibility:** The parties recommend that two levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility.

The parties agree that if the defendant does not abide by all of the agreements made within this document, the defendant's failure to comply is grounds for the loss of acceptance of

responsibility pursuant to Section 3E1.1. The parties further agree that the defendant's eligibility for a reduction pursuant to Section 3E1.1 is based upon the information known at the present time and that any actions of the defendant which occur or which become known to the government subsequent to this agreement and are inconsistent with the defendant's acceptance of responsibility including, but not limited to criminal conduct, are grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1. In any event, the parties agree that all of the remaining provisions of this agreement remain valid and in full force and effect.

If the deduction pursuant to Section 3E1.1(a) is applied, the government moves to deduct one additional level pursuant to Section 3E1.1(b), because the defendant "timely notified authorities of the intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently."

F. Estimated Total Offense Level: Based on these recommendations, the parties estimate that the Total Offense Level is either 23 or 21 depending on defendant's eligibility under the safety valve provisions.

G. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court after it reviews the Presentence Report. The Criminal History Category determination will be made only after the United States Probation Office obtains and evaluates the records it can find of the defendant's criminal history. Prior convictions can affect the sentence and usually result in a harsher sentence. Both parties retain their right to challenge, before sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category.

The defendant's criminal history is known to the defendant, who also acknowledges having had an opportunity to consult the preliminary Pretrial Services Report regarding the defendant's criminal history.

H. Acknowledgment of Effect of Recommendations:

The parties recognize that they may not have addressed or foreseen all the Guidelines provisions applicable in this case. Guidelines applications not expressly addressed by the parties' recommendations, but which are addressed by the Presentence Report or the Court, may be presented to the Court for consideration. The parties agree and understand that the Court, in its discretion, may apply any Guidelines not addressed in this document.

Furthermore, this Court is not bound by these recommendations. The refusal of this Court to follow the recommendations of the parties shall not serve as a basis to withdraw the plea.

4. STIPULATION OF FACTS RELEVANT TO SENTENCING:

The parties stipulate and agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt:

On November 18, 2009, co-defendant Francisco Perez-Govea and defendant Manuel Arnulfo BARRERA-GUERRERO were in a 2004 Ford pick up truck and were stopped for traffic violations by St. Charles County Sheriff's Department (SCCSD) Deputies Hojsik and Lineback on Interstate 70 in St. Charles County.

During the course of the traffic stop, both defendant BARRERA-GUERRERO and co-defendant Perez-Govea appeared to officers to be extremely nervous. When asked the purpose of their travels, Perez-Govea told officers that they had been in Virginia helping a friend move.

BARRERA-GUERRERO told officers that he had been in Virginia working on a dairy farm.

In light of the nervousness of the defendant and co-defendant as well as the conflicting stories, deputies asked Perez-Govea, the driver of the vehicle, whether they could search the vehicle. Perez-Govea voluntarily consented to the requested search. The deputies utilized a narcotics detection trained canine to examine the vehicle. The narcotics detection canine alerted positively for the presence of a narcotics odor on the vehicle.

A subsequent search of the vehicle revealed religious items on the dashboard. The plastic dashboard appeared to deputies to have been recently altered. Underneath the dashboard, deputies located a switch. Upon activating the switch, deputies noticed the back seat release. In the area of the back seat, officers located several bundles of United States currency and a plastic container. The container held a clear, crystal-like substance. The substance was forwarded to the St. Charles County Sheriff's Department Criminalistics Laboratory where it was weighed and tested and found to be 383.9 grams of methamphetamine. The currency was counted and found to be \$208,870.

Defendant BARRERA-GUERRERO admits that on or before November 18, 2009, he knowingly traveled from the state of Virginia to St. Charles County, Missouri with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the distribution and possession with intent to distribute methamphetamine as defined by the Controlled Substances Act; and thereafter, defendant did attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

The defendant and the government agree that the facts set forth above are true and may

be considered as "relevant conduct" pursuant to Section 1B1.3.

5. ELEMENTS OF THE OFFENSE:

As to Count 1 of the superseding indictment, the defendant admits to knowingly violating Title 18, United States Code, Section 1952(a)(3), and admits there is a factual basis for the plea and further fully understands that the elements of the crime are: (1) on or before November 18, 2009, defendant knowingly traveled from the state of Virginia to St. Charles County, Missouri; (2) defendant traveled in interstate commerce with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the distribution and possession with intent to distribute methamphetamine as defined by the Controlled Substances Act; (3) and thereafter, defendant did attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

6. PENALTIES:

A. Statutory Penalties: The defendant fully understands that the maximum possible penalty provided by law for the crime to which the defendant is pleading guilty is imprisonment of not more than five years, a fine of not more than \$250,000, or both such imprisonment and fine. The Court may also impose a period of supervised release of not more than five years.

B. Sentencing Guidelines Effect on Penalties: The defendant understands that except for Title 18, Sections 3553(b)(1) and Section 3742 (e), this offense is affected by the provisions and Guidelines of the "Sentencing Reform Act of 1984," Title 18, United States Code, Sections 3661 *et. seq.* and Title 28, United States Code, Section 994.

C. Supervised Release: The defendant understands that the Court may impose a term of

"supervised release" to follow incarceration pursuant to Title 18, United States Code, Section 3583 (Sentencing Guidelines, Chap. 5, Part D). The defendant further understands that pursuant to the supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions upon the defendant which relate to the crime the defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. The defendant further understands that violation of the conditions of the term of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

D. Mandatory Special Assessment: The defendant further acknowledges that this offense is subject to the provisions of the Criminal Fines Improvement Act of 1987 and that the Court is required to impose a mandatory special assessment of \$100 per count for a total of \$100, which the defendant agrees to pay at the time of sentencing. The defendant further agrees that if the mandatory special assessment imposed by the Court is not paid at the time of sentencing, until the full amount of the mandatory special assessment is paid, money paid by the defendant toward any restitution or fine imposed by the Court shall be first used to pay the mandatory special assessment.

E. Possibility of Detention: The defendant acknowledges that upon entering the plea of guilty as contemplated in this document, the defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

7. FINES AND COSTS:

The defendant understands that the Court may impose a fine, costs of incarceration and costs of supervision. The defendant agrees that any fine or cost imposed by the Court will be due and payable immediately.

Effect of Bankruptcy on Fines or Costs: The defendant hereby stipulates that any fine or cost obligation imposed by the Court is not dischargeable in any case commenced by the defendant or the defendant's creditors pursuant to the Bankruptcy Code. The defendant agrees not to attempt to avoid paying any fine or cost imposed by the Court through any proceeding pursuant to the United States Bankruptcy Code, and stipulates that enforcement of any fine or cost obligation by the United States or a victim is not barred or affected by the automatic stay provisions of the United States Bankruptcy Code (Title 11, United States Code, Section 362).

8. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

The defendant acknowledges and fully understands the following rights: The right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the entire case against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the

proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

9. PRESENTENCE REPORT AND SENTENCING:

Following defendant's guilty plea, a Presentence Report will be prepared. At the time of sentencing, the parties reserve the right to allocution regarding the appropriate sentence to be imposed. Each party also reserves the right to bring any misstatements of fact made either by the other party or on that party's behalf to the attention of the Court at the time of sentencing.

10. STANDARD OF INTERPRETATION:

In interpreting this document, any drafting errors or ambiguities shall not automatically be construed against any party, whether or not the party was involved in drafting this document.

11. VOLUNTARY NATURE OF THE PLEA AND THE PLEA AGREEMENT, RECOMMENDATIONS AND STIPULATIONS:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In

addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty. The defendant's agreements, recommendations and stipulations as set forth above are made in exchange for the United States' agreements, recommendations and stipulations set forth in this document.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and these agreements, recommendations and stipulations. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the conduct specified in sections four and five above.

12. CONSEQUENCES OF FURTHER CRIMINAL CONDUCT OR WITHDRAWAL OF PLEA BY DEFENDANT:

The defendant agrees that if, between the time of signing this document and the sentencing, the defendant engages in any criminal activity, the government shall be released from any obligations or limits on its power to prosecute the defendant created by this document, and

any such conduct shall be grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1.

1-25-09
Date

Tiffany G. Becker
TIFFANY G. BECKER, #77631
Assistant United States Attorney

12-31-09
Date

Manuel Barrera G.
MANUEL ARNULFO BARRERA-GUERRERO
Defendant

12-31-09
Date

John D. Stobbs II
JOHN D. STOBBS, II
Attorney for Defendant