

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No.: 20-cr-28-RM-16

UNITED STATES OF AMERICA,

Plaintiff,

v.

16. OMAR RIVAS-SAENZ,

Defendant.

PLEA AGREEMENT

The United States of America, by and through Cyrus Y. Chung, Assistant United States Attorney, and the defendant, Omar Rivas-Saenz, personally and by counsel, Sean McDermott, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees to: (1) plead guilty to Count Two of the First Superseding Indictment [ECF No. 72], charging a violation of 21 U.S.C. § 846, conspiracy to distribute and possess with intent to distribute controlled substances; (2) admit the forfeiture allegation contained in the First Superseding Indictment [ECF No. 72]; and, (3) waive certain appellate rights as described below.

B. Government's Obligations:

In exchange for the defendant's plea of guilty, the United States agrees to:

Court Exhibit

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(1) recommend the Court give the defendant full credit for acceptance of responsibility per U.S. SENTENCING GUIDELINES MANUAL § 3E1.1, unless the defendant engages in conduct that qualifies for the obstruction of justice enhancement under §§ 3C1.1 and 3E1.1, cmt. n.4, between the time of the guilty plea and sentencing; and (2) move to dismiss the remaining counts of the First Superseding Indictment (counts 8, 9, 10, 11, 12, 13, 29, and 30) as to the defendant at the time of sentencing.

C. Defendant's Waiver of Appeal

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the Government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence unless it meets one of the following criteria: (1) the sentence exceeds the advisory guideline range that applies to a total offense level of 35; or (2) the Government appeals the sentence imposed. If any of these criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255). This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds: (1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute; (2) the defendant

was deprived of the effective assistance of counsel; or (3) the defendant was prejudiced by prosecutorial misconduct.

Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement.

D. Forfeiture of Assets

The defendant agrees to admit the forfeiture allegation in the First Superseding Indictment [ECF #72]. The defendant agrees to forfeit to the United States immediately and voluntarily any and all property, or portions thereof, subject to forfeiture, pursuant to 21 U.S.C. § 853, whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees, or elsewhere. The assets to be forfeited specifically include, but are not limited to the items identified in the United States' First Bill of Particulars for Forfeiture of Property [ECF #280]:

- a. The Springfield Arms 1911, .45 caliber pistol, serial number WW48474, that was seized on or about May 16, 2019 in the State and District of Colorado;
- b. The Glock 19, 9 mm pistol, serial number ZFV767, that was seized on or about May 16, 2019 in the State and District of Colorado;
- c. The Masterpiece Arms 45ACP, serial number unknown, that was seized on or about May 16, 2019 in the State and District of Colorado;

- d. The Smith & Wesson M&P15 .556 caliber semi-automatic rifle, serial number SV54712, that was seized on or about May 16, 2019 in the State and District of Colorado; and
- e. Any and all ammunition associated with the firearms referenced above.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have.

The defendant understands that pursuant to 18 U.S.C. § 983, the seizing agency is required to send notice in non-judicial civil forfeiture matters. Having been advised of said rights regarding notice, the defendant hereby knowingly and voluntarily waives his rights to notice being sent within the time frames in 18 U.S.C. § 983 and to having the property returned to him if notice is not sent within the prescribed time frames. The defendant waives all constitutional, legal, and equitable claims arising out of and/or defenses to the forfeiture of this property in any proceeding, including any claim of innocent ownership and any claim or defense under the Eighth Amendment, including any claim of excessive fine. The defendant agrees not to petition or assist anyone else in petitioning for the remission or mitigation of the forfeiture.

The defendant admits and agrees that the conduct described in the Stipulation of Facts below provides a sufficient factual and statutory basis to establish that the requisite nexus exists between the specific property subject to forfeiture and the offense to which defendant is pleading guilty. Pursuant to Fed. R. Crim. P. 32.2(b)(1), the

United States and the defendant request that at the time of accepting this plea agreement, the Court find that the government has established the requisite nexus and enter a preliminary order of forfeiture.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above pursuant to 21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(e). This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

In addition to forfeiture, the defendant consents to the vesting of title to the listed property to the United States Government, pursuant to Title 41, Code of Federal Regulations, Section 128-48.102-1. The defendant also consents to the destruction of the property, or other disposition of the property in accordance with law, and without further notice to defendant.

The defendant further agrees to hold the United States of America, its agents and employees, harmless from any claims whatsoever in connection with the seizure, abandonment, disposition, and destruction of the listed property.

II. ELEMENTS OF THE OFFENSE

The parties agree that the elements of Count 2, to which this plea is being tendered are as follows:

- First:** Two or more persons agreed to violate the federal drug laws;
- Second:** The defendant knew the essential objective of the conspiracy;
- Third:** The defendant knowingly and voluntarily involved himself in the conspiracy;
- Fourth:** There was interdependence among the members of the conspiracy; and
- Fifth:** The overall scope of the conspiracy involved at least 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine.¹

III. STATUTORY PENALTIES

The statutory penalty for Count 2 is not less than 10 years, not more than life imprisonment; not more than a \$10,000,000 fine, or both; not less than 5 years, not more than a lifetime of supervised release; and a \$100 special assessment fee. If a term of probation or supervised release is imposed, any violation of the terms and/or conditions of supervision may result in an additional term of imprisonment.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury. If the defendant is

¹ *10th Circuit Pattern Jury Instructions* § 2.87, Controlled Substances—Conspiracy (2018).

an alien, the conviction may cause the defendant to be deported and removed from the United States, to be denied admission to the United States, and to be denied citizenship.

V. STIPULATION OF FACTS

The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties agree the facts are as follows:

From at least March 19, 2019 until February 12, 2020, Candelaria Vallejo-Gallo, based in Aurora and Denver, within the District of Colorado, organized the interstate transportation and local distribution of large quantities of illegal drugs. Candelaria Vallejo-Gallo worked with Mexico-based sources of supply to arrange pickups of illegal drugs from California-based intermediaries working with and for those Mexico-based sources of supply and, during the course of the FBI's investigation into her activities,

arranged for the transport of large quantities of methamphetamine, heroin, cocaine, and fentanyl. To effectuate her scheme of drug distribution, Candelaria Vallejo-Gallo employed a network of co-conspirators, including interstate load runners, local runners, local multi-pound drug customers (who would, in turn, distribute to lower-level drug distributors), and lieutenants to coordinate the activities of the aforementioned co-conspirators.

The defendant served as one of Candelaria Vallejo-Gallo's lieutenants from at least May 2019 until his arrest in September 2019, conducting a number of different tasks for Vallejo-Gallo's organization. On May 16, 2019, for example, an FBI confidential human source (CHS) had contacted Vallejo-Gallo to purchase one pound of methamphetamine. Vallejo-Gallo told the CHS that she could not get in contact with her courier, who was driving a grey BMW. That same day, a Denver police officer had observed the defendant leaving a residence at 4641 N. Leaf Ct. with a black backpack, entering a gray BMW, and driving to the parking lot of a 7-11. Having learned that the defendant had state warrants for failures to appear and that his license was suspended, Denver detectives placed the defendant under arrest. A K9 was called to the scene and alerted to the presence of narcotics in the vehicle. Officers conducted a probable-cause search of the vehicle, which revealed that the backpack contained 6.97 pounds of methamphetamine in seven roughly one-pound packages, as well as \$4620 in cash. The defendant also had \$1796 in cash in his wallet. The methamphetamine was tested at the Denver Crime Lab, revealing positive results for methamphetamine.

A Denver detective then applied for and received a state search warrant authorizing the search of 4641 N. Leaf Ct., the defendant's residence. There, in the south closet, officers located a Springfield Arms .45 caliber pistol (serial number WW48474), a Glock 9 mm pistol (serial number ZFV767), and a .45 caliber MasterPiece Arms 45 ACP Auto caliber pistol with its serial numbers scratched off. The firearms were in a backpack that also contained magazines for them. In a hall closet, officers and a DEA agent found \$3000 cash, a Smith & Wesson firearm, 67 grams of heroin, 400 fentanyl pills, and three digital scales.

At the Denver Crime Laboratory, the Springfield Arms .45 caliber pistol, the Glock 9 mm pistol, and the Smith & Wesson were successfully test-fired. A firearms enforcement officer from the Bureau of Alcohol, Tobacco, Firearms, and Explosives Firearms Technology Criminal Branch examined and test-fired the MasterPiece 45 ACP Auto caliber pistol and determined that it was a firearm as defined in 18 U.S.C. § 921(a)(3)(A) and (B). All were manufactured outside of the State and Federal District of Colorado, and by necessity were imported into Colorado prior to being found on May 16, 2019.

At the time, the defendant had no legal status in the United States. A citizen of Mexico, the defendant gained entry into the United States by virtue of a B-2 visa Border Crossing card, which limited the distance the defendant was allowed to travel into the country without an I-94 visa and was also expired at the time of the offense. The defendant had previously sought and obtained an I-94 visa for traveling into the interior of the United States, but it expired on August 11, 2009.

Following the defendant's arrest by the Denver Police Department, he was charged in case 19CR03688 out of the Denver County Court. As a condition of bond, the Defendant, Mr. Rivas-Saenz, was required to wear a GPS monitoring device. Mr. Rivas-Saenz removed the GPS monitoring device. He did not appear for a scheduled state court appearance in Case No. 19CR03688, Denver Colorado.²

On May 22, 2019, an FBI CHS contacted Vallejo-Gallo to arrange a controlled purchase of methamphetamine. The CHS later entered a blue Pontiac G6 where the defendant provided the CHS with methamphetamine in exchange for \$2,200. DEA lab testing showed the substance to be 453.0 g of 98% pure methamphetamine for a total of 443.9 g of methamphetamine (actual).

On July 14, 2019, Candelaria Vallejo-Gallo called the defendant, stating that she needed to leave early from an event because "Gorda," co-defendant Grecia Stephanie Torres-Pablo, wanted "10 plates of food," code for 10 pounds of methamphetamine. The defendant asked if she wanted him to get things ready, and Vallejo-Gallo stated that she told Adriana, co-defendant Beatriz Adriana Martinez-Meza, to take the "food" home. Intercepted calls between Candelaria and the defendant, as well as others, followed in which they discussed the timing of Martinez-Meza's arrival. Surveillance agents subsequently observed Torres-Pablo and Hernandez-Reyes in a Red Dodge truck at a Walgreens, where Vallejo-Gallo provided the 10 pounds of methamphetamine to Hernandez-Reyes.

² Mr. Rivas-Saenz asserts that at sentencing he will show that there were extenuating circumstances that gave rise to the removal of his GPS device and non-appearance in Court.

On July 31, 2019, intercepted calls indicated the delivery of 46 pounds of methamphetamine in a load carried by co-defendant Jesus Ruiz Velasco-Ochoa. Velasco-Ochoa met the defendant, Vallejo-Gallo, and co-defendant Mario Ibanez-Montes at a location in Aurora. At a garage at 10550 E. Iowa Ave., Aurora, CO, agents observed the load, carried in a black and yellow storage container, being transferred into Ibanez-Montes's vehicle. The defendant and Ibanez-Montes then traveled to Ibanez-Montes's apartment complex at 425 S. Galena Way, Aurora, CO, and carried the load into Ibanez-Montes's apartment.

On September 3, 2019, Vallejo-Gallo called the defendant, indicating that she was awaiting his arrival so that they could together weigh a load of methamphetamine that arrived. Vallejo-Gallo indicated that she sent co-defendant Eber Uriel Perez-Ramirez to retrieve the load and that 50 pounds of methamphetamine had come in, wrapped in large packages. Vallejo-Gallo discussed redistribution of the load and customers to whom the load should go with the defendant. As observed by surveillance agents, the defendant met with Vallejo-Gallo and Perez-Ramirez that day in Aurora, CO to accomplish the aforementioned objectives with the 50-pound load of methamphetamine that had arrived.

After a federal arrest warrant issued for charges based upon the defendant's May 2019 state arrest described above, on September 12, 2019, at around 5:45 p.m., Immigration and Customs Enforcement's Special Response Team approached the defendant as he was driving in a Dodge Durango toward 4340 Genoa St., Denver, Colorado. Officers activated their emergency lights and sirens to effect a stop. After a

confrontation involving collisions between the defendant's car and police vehicles, the defendant's vehicle became inoperable.

The defendant then fled on foot, jumping fences through the backyards of several residences and evading capture until 7:30 p.m., at which time an individual approached officers and advised them that he believed that the individual officers were looking for was in the backyard of a house on Ensenada Street. Officers found the defendant crouched down behind objects in a neighboring yard and commanded the defendant to stop. The defendant fled over another fence, leading officers on a foot chase for several yards before he was Tased and taken into custody on Espana Way.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

The Guideline calculation below is the good-faith estimate of the parties, but it is only an estimate. The parties understand that the government has an independent obligation to assist the Court in making an accurate determination of the correct

guideline range. To that end, the government may make legal or factual arguments that affect the estimate below.

A. Base Offense Level: The base offense level is **38** because the defendant was responsible for over 90,000 kilograms of converted drug weight.

USSG §2D1.1(a)(5)(B).

B. Specific Offense Characteristics:

- The government contends that a **2-level** upward adjustment should apply because the defendant possessed a firearm. USSG §2D1.1(b)(1).
- The defendant contends that this adjustment does not apply.

C. Adjustments:

- The government contends that a **2-level** upward adjustment should apply because the defendant obstructed justice by cutting off his GPS monitor and failed to appear in 19CR03688. USSG §3C1.1; see *United States v. Contreras*, 506 F.3d 1031, 1038 (10th Cir. 2007).
- The defendant contends that this adjustment does not apply because the state case is distinct from this federal case.

D. Acceptance of Responsibility: The parties agree that the defendant should receive a **3-level** adjustment for acceptance of responsibility.

USSG § 3E1.1(b).

E. Adjusted Total Offense Level:

- In the government's view, the defendant's adjusted total offense level is **39**.
- In the defendant's view, his adjusted total offense level is **35**.

F. Criminal History Category: The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions.

Based on the information currently available to the parties, the government estimates that the defendant's criminal history category is **II**. USSG § 4B1.1(b).

G. Imprisonment:

- For the offense level of **39** that the government believes applies, the advisory guideline range of imprisonment based on a criminal history category of **II** is **292 to 365 months' imprisonment**. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level estimated above could conceivably result in a range from 262 months (bottom of Category I) to life (top of Category VI).
- For the offense level of **35** that the defendant believes applies, the advisory guideline range of imprisonment based on a criminal history category of **II** is **188 to 235 months' imprisonment**. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level estimated above could

conceivably result in a range from 168 months (bottom of Category I) to 365 months (top of Category VI).

- In any event, the guideline range would not exceed the statutory maximum applicable to the count of conviction.

H. Fine Range:

- For an offense level of 39, the fine range would be \$50,000 to \$10,000,000. USSG § 5E1.2 and 21 U.S.C. § 841(b)(1)(A).
- For an offense level of 35, the fine range would be \$40,000 to \$10,000,000. USSG § 5E1.2 and 21 U.S.C. § 841(b)(1)(A).

I. Supervised Release: If the Court imposes a term of supervised release, that term shall be at least five years. USSG § 5D1.2(c); 21 U.S.C. § 841(b)(1)(A).

J. Restitution: The parties agree that there is no restitution in this case.

The parties understand that although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.

No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties

regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. § 3553 factors.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

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VII. ENTIRE AGREEMENT

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the Government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 6/22/21



Omar Rivas-Saenz
Defendant

Date: 6/22/21



Sean McDermott
Attorney for Defendant

Date: 6/28/21



Cyrus Y. Chung
Attorney for the United States