IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 12-06001-13-CR-SJ-GAF
	)	
LUIS ADALBERTO FELIPE-LOPEZ,	)	
a/k/a "Joel," "Jorge Luis Nieves-Rivera,"	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Tammy Dickinson, United States Attorney, and Jess Michaelsen, Assistant United States Attorney, and the defendant, Luis Adalberto Felipe-Lopez, a/k/a "Jorge Luis Nieves-Rivera," "Joel," ("the defendant"), represented by David H. Johnson.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count One of the superseding indictment charging him with a violation of 18 U.S.C. § 371, that is, conspiracy to transport illegal aliens, to unlawfully produce identification documents, to unlawfully transfer the means of identification of another person, and to commit social security fraud. The defendant also agrees to and hereby does plead guilty to Count Thirty-Five of the

superseding indictment charging him with a violation of 18 U.S.C. § 1028A, that is, aggravated identity theft. The defendant also agrees to forfeit to the United States the property described in the Forfeiture Allegation of the indictment. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses, and that the identified property is forfeitable by the government.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offenses to which he is pleading guilty are as follows:

LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," is a citizen and national of Guatemala, who is unlawfully present in the United States and resided in North Carolina.

From on or about November 2009, and continuing until January 10, 2012, in the Western District of Missouri and elsewhere, defendant LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly and willfully conspired, combined, confederated and agreed with defendants SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, BRENDA DE LA CRUZ, MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ, ELDER ENRIQUE ORDONEZ-CHANAS a/k/a "Flaco," NELSON DARISEO BAUTISTA-OROZCO, RANFE ADAIAS HERNANDEZ-FLORES a/k/a "Miguel," MARTIN LARA-RODRIGUEZ, RAFAEL HERNANDEZ-ORTIZ a/k/a "Hugo," CHRISTOPHER ESCOBAR, SHAYNA VANVACTER, JON GRIPPANDO, MELISSA SCALLIONS and others, to violate the laws of the United States, specifically, to commit the following offenses:

a) Transporting illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii);

b) Unlawful production of an identification document in violation of 18 U.S.C. § 1028(a)(1);

c) Unlawful transfer of the means of identification of another person in violation of 18 U.S.C. § 1028(a)(7); and,

d) Social security fraud in violation of 42 U.S.C. § 408(a)(7).

It was part of the conspiracy that illegal aliens would travel from across the United States to St. Joseph, Missouri, to obtain either a Missouri driver's or non-driver's license at the St. Joseph license office, with unlawfully obtained birth certificates and Social Security cards. From November 2009, until January 10, 2012, it is estimated that over 3,500 Missouri driver and non-driver licenses have been unlawfully issued to illegal aliens as part of this conspiracy.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, CHRISTOPHER ESCOBAR, SHAYNA VANVACTER, JON GRIPPANDO, MELISSA SCALLIONS and others would accompany illegal aliens into the St. Joseph license office, under the guise of being translators, in order to assist them with obtaining a Missouri driver's or non-driver's license that was in the name of another person who was listed on unlawfully obtained birth certificates and Social Security cards.

It was further part of the conspiracy that illegal aliens would request assistance from SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, ELDER ENRIQUE ORDONEZ-CHANAS a/k/a "Flaco," RANFE ADAIAS HERNANDEZ-FLORES a/k/a "Miguel," LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," MARTIN LARA-RODRIGUEZ, RAFAEL HERNANDEZ-ORTIZ a/k/a "Hugo," CHRISTOPHER ESCOBAR, SHAYNA VANVACTER, JON GRIPPANDO, MELISSA SCALLIONS and others in obtaining birth certificates and Social Security cards in the names of others. These birth

certificates and Social Security cards would then be used by the illegal aliens to obtain Missouri driver's or non-driver's licenses, all of which could then be used by the illegal aliens to remain unlawfully in the United States, to unlawfully obtain employment and for other unlawful purposes.

It was further part of the conspiracy that ELDER ENRIQUE ORDONEZ-CHANAS a/k/a "Flaco" would request document sets from MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ, and BRENDA DE LA CRUZ to be of a specific age range for either a male or a female that corresponded with the illegal alien who was the customer.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, CHRISTOPHER ESCOBAR, SHAYNA VANVACTER, JON GRIPPANDO, MELISSA SCALLIONS and others would usually instruct and assist the illegal aliens to practice memorizing the names on the birth certificates, the names of the parents on the birth certificates, the dates of birth, the social security numbers and also practice signing the name similar to the signature that appeared on the Social Security card.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," and others would sometimes alter the Social Security cards by chemically removing the signatures from the Social Security cards to allow the illegal alien to sign the cards.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, CHRISTOPHER ESCOBAR, SHAYNA VANVACTER, JON GRIPPANDO, MELISSA SCALLIONS and others would assist the illegal aliens to prepare for potential questions from the license office employees.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ, CHRISTOPHER ESCOBAR, SHAYNA VANVACTER, JON GRIPPANDO, MELISSA SCALLIONS and others would assist the illegal aliens who did not live in Missouri, by providing them with a Missouri residential address to use in order to obtain the Missouri driver's or non-driver's license.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ and others would usually collect money from the illegal aliens for the document sets and Missouri driver's or non-driver's license. The money would usually then be paid to ELDER ENRIQUE ORDONEZ-CHANAS a/k/a "Flaco," or NELSON DARISEO BAUTISTA-OROZCO who would then pay MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ, or BRENDA DE LA CRUZ. The illegal aliens were usually charged between $1,500 and $1,600 for the document sets and the Missouri driver's and non-driver's licenses. From November 2009, until the date of this indictment it is estimated that over $5,250,000 in gross proceeds have been paid by illegal aliens to members of this conspiracy.

It was part of the conspiracy that MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ and BRENDA DE LA CRUZ would obtain state issued birth certificates, usually from the State of Texas, and they would also obtain a Social Security card in the name of the individual on the birth certificate, so they would have a matching document set.

It was further part of the conspiracy that MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ and BRENDA DE LA CRUZ would purchase birth certificates and social security cards from individuals, who were willing to

sell their identification documents to MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ, BRENDA DE LA CRUZ and others.

It was further part of the conspiracy that SHERRI GUTIERREZ, DEBORAH FLORES, STEPHEN VANVACTER, SARA GONZALEZ, CHRISTINA GONZALEZ, JESSICA GONZALEZ and others would usually receive birth certificates and Social Security cards from MARTIN ALEJANDRO LLANAS-RODRIGUEZ, JULIO CESAR LLANAS-RODRIGUEZ, BRENDA DE LA CRUZ, ELDER ENRIQUE ORDONEZ-CHANAS a/k/a "Flaco," and others via U.S. express mail packages.

On January 24, 2011, SHERRI GUTIERREZ knowingly transported illegal aliens from the Motel 6 in St. Joseph, Missouri, to the St. Joseph license office.

On January 24, 2011, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly transported illegal aliens from St. Joseph, Missouri, to North Carolina.

On February 21, 2011, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly transported illegal aliens from North Carolina to St. Joseph, Missouri. In Particular, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly transported Reyna Veronica Coutino-Dominguez, an illegal alien who had come to, entered and remained unlawfully in the United States. LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," transported the illegal alien within the United States to further her unlawful presence and for the purpose of private financial gain.

On February 22, 2011, SHERRI GUTIERREZ knowingly transported illegal aliens from the Motel 6 in St. Joseph, Missouri, to the St. Joseph license office.

On February 22, 2011, in the Western District of Missouri, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly transferred without lawful authority, a means of identification of another person, to wit, a Texas birth certificate in the name of Jennifer Sarah Gutierrez, in connection with, an unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in and affected interstate commerce, and the offense involved the transfer of an identification document that was a birth certificate.

On February 22, 2011, in the Western District of Missouri, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly possessed a Social Security card with the intent to sell or alter it, to wit, a Social Security card in the name of Jennifer Sarah Gutierrez, for the purpose of obtaining anything of value from any person or for any other purpose.

On February 22, 2011, in the Western District of Missouri, SHERRI GUTIERREZ and LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly and without lawful authority, produced an identification document, to wit, a Missouri nondriver's license in the name of Jennifer Sarah Gutierrez, the production of the identification was in and affected interstate commerce, and the offense involved the production of an identification document that was a Missouri nondriver's license or personal identification card.

On February 22, 2011, in the Western District of Missouri, SHERRI GUTIERREZ and LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly transferred, possessed and used without lawful authority, a means of identification of another person, to wit, a Missouri nondriver's license in the name of Jennifer Sarah Gutierrez, during and in relation to a felony offense, that being the unlawful production of an identification document.

SHERRI GUTIERREZ and LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knew that the unlawfully produced identification document was produced with the means of identification of another real person and that the person was not a fictitious person.

On February 23, 2011, LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," knowingly transported illegal aliens from St. Joseph, Missouri, to North Carolina.

LUIS ADALBERTO FELIPE-LOPEZ, a/k/a "Jorge Luis Nieves-Rivera," "Joel LNU," agrees that the sum of at least $5,250,000 in U.S. currency is property that is subject to forfeiture by the United States, in that it represents proceeds from the above-described criminal activity and is subject to forfeiture.

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Count One of the superseding indictment charging him with conspiracy in violation of 18 U.S.C. § 371, the maximum penalty the Court may impose is not more than five years of imprisonment, a

$250,000 fine, and three years of supervised release. The defendant further understands that this offense is a Class D felony.

The defendant understands that upon his plea of guilty to Count Thirty-Five of the superseding indictment charging him with aggravated identity theft in violation of 18 U.S.C. § 1028A, the penalty the Court shall impose is two years of imprisonment which shall run consecutive to any other term of imprisonment imposed by the Court, a fine of up to $250,000, and one year of supervised release, and an order of restitution. The defendant further understands that this offense is a Class E felony.

A $100 mandatory special assessment per felony count of conviction shall also be imposed, which must be paid in full at the time of sentencing.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";

b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;

d. if the defendant violates a condition of his supervised release, the Court may revoke his supervised release and impose an additional period of imprisonment of up to two years on any such revocation, without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's supervised release;

e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

f. any sentence of imprisonment imposed by the Court will not allow for parole;

g. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office;

h. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court;

i. The defendant agrees that the United States may institute civil, judicial or administrative forfeiture proceedings against all forfeitable assets in which the defendant has an interest, and that he will not contest any such forfeiture proceedings;

j. The defendant agrees to forfeit all interests he owns or over which he exercises control, directly or indirectly, in any asset that is subject to forfeiture to the United States either directly or as a substitute for property that was subject to forfeiture but is no longer available for the reasons set forth in 21 U.S.C. § 853(p) (which is applicable to this action pursuant to 18 U.S.C. § 982(b)(1), including but not limited to the following specific property: a money judgment in the sum of at least $5,250,000. With respect to any asset which the defendant has agreed to forfeit, the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution;

k. The defendant agrees to fully and truthfully disclose the existence, nature and location of all assets forfeitable to the United States, either directly or as a substitute asset, in which he, his co-defendants and his co-conspirators have or had any direct or indirect financial interest, or exercise or exercised control, directly or indirectly, during the period from November 2009 to the present. The defendant also agrees to fully and completely assist the United States in the recovery and forfeiture of all such forfeitable assets;

l. The defendant agrees to take all necessary steps to comply with the forfeiture matters set forth herein before his sentencing; and

m. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information

Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that the United States will use the financial information when making its recommendation to the Court regarding the defendant's acceptance of responsibility.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to the identity document fraud for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss counts 2, 3, 7, 8, 16, 17, 26, 36, 44 and 45, of the superseding indictment as they pertain to this defendant at the time of sentencing.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant

further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the counts to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw his pleas of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2L2.1(a), which provides for a base offense level of 11;

c. The defendant is subject to a 9-level enhancement for the offense involving more than 100 identity documents pursuant to U.S.S.G. § 2L2.1(b)(2)(C);

d. The parties reserve the right to argue at the time of sentencing whether the defendant is subject to an enhancement for being an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1(a);

e. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his 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. Therefore, he is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines, unless he (1) fails to abide by all of the terms and conditions of this plea agreement; or (2) attempts to withdraw his guilty pleas, violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility;

f. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

g. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in Paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

h. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's

sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and

i. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed-upon Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;

b. comment on the evidence supporting the charges in the indictment;

c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and

d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

a. the right to plead not guilty and to persist in a plea of not guilty;

b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;

c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;

d. the right to confront and cross-examine the witnesses who testify against him;

e. the right to compel or subpoena witnesses to appear on his behalf; and

f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to

possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct.

b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An "illegal sentence" includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. Financial Obligations. By entering into this plea agreement, the defendant represents that he understands and agrees to the following financial obligations:

a. The Court may order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order restitution in connection with the conduct charged in any counts of the indictment which are to be dismissed and all other uncharged related criminal activity.

b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine.

c. The defendant will fully and truthfully disclose all assets and property in which he has any interest, or over which the defendant exercises control directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant's disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full.

d. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information

Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant's acceptance of responsibility.

e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution.

f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to him to assist the USAO in evaluating the defendant's ability to satisfy any financial obligations imposed as part of the sentence.

g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of $200 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of his fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that he has made no transfer of assets or property for the purpose of (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; nor (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that he will make no such transfers in the future.

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars ($10,000) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution, and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

17. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive 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, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

19. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

20. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of

counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

21. Immigration Consequences. The defendant understands that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which defendant is pleading guilty. Indeed, because defendant is pleading guilty to the above-referenced felony offenses, removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States. Further, the defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea and regardless of any advice the defendant has received from his counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on those consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or collateral attack of any kind challenging his guilty plea, conviction or sentence, based on the immigration consequences of his guilty plea, conviction and sentence.

22. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any

written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. <u>Standard of Interpretation</u>. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Tammy Dickinson
United States Attorney

Dated: 3/28/13 */s/ Jess E. Michaelsen*
Jess Michaelsen
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the superseding indictment. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated: 3/28/13 */s/ Luis Felipe*
Luis Adalberto Felipe-Lopez, a/k/a
"Jorge Luis Nieves-Rivera," "Joel,"
Defendant

I am defendant Luis Adalberto Felipe-Lopez's attorney. I have fully explained to him his rights with respect to the offenses charged in the superseding indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Luis Adalberto Felipe-Lopez's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 3/28/13 */s/ David H. Johnson*
David H. Johnson
Attorney for Defendant