

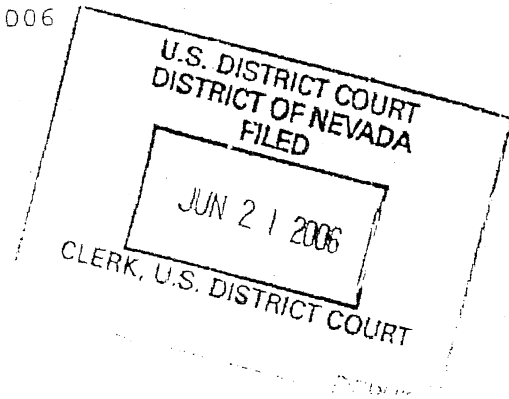


United States Attorney
District of Nevada

100 West Liberty, Suite 600
Reno, Nevada 89501

(775) 784-5438
FAX: (775) 784-5181

June 9, 2006



MEMORANDUM OF PLEA NEGOTIATIONS

TO: Honorable Brian E. Sandoval
United States District Judge

FROM: Sue Fahami
Asst. United States Attorney

SUBJECT: United States v. FIDEL MIRAMONTES-SANCHEZ
3:06-cr-0053-BES(VPC)

I. PLEA NEGOTIATIONS:

The defendant, FIDEL MIRAMONTES-SANCHEZ, is charged in an Indictment filed March 29, 2006, with Unlawful Reentry of Deported Alien in violation of 8 U.S.C. §1326(a).

All references to the federal Sentencing Guidelines are advisory and not binding on the Court. However, the Government will be seeking a sentence within the Guideline range believing that it is reasonable under US v. Booker, 2005 WL 50108 (U.S.) and that such a sentence will reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the public, avoid unwarranted sentencing disparities, provide restitution to victims, and effectively provide the defendant with needed educational or vocational training and medical care.

1. The defendant will plead guilty to the Indictment charging a violation of 8 U.S.C. § 1326(a)--Unlawful Reentry of Deported Alien.

2. The Base Offense Level for this offense is a Level 8 pursuant to U.S.S.G. §2L1.2(a).

3. The parties agree that there must be a 4 level increase in the offense level under U.S.S.G. §2L1.2(b) because the defendant was deported following a felony conviction.

4. The Government agrees to recommend a sentence at the low end of the Guidelines and further agrees to recommend that defendant receive credit for time served since his arrest in July 16, 2003 in Nevada State case number CR 2003-1218.

June 9, 2006

Page 2

5. The parties agree that the defendant is eligible for a 2 level reduction for Acceptance of Responsibility under U.S.S.G. §3E1.1(a) as long as the defendant continues to clearly demonstrate his acceptance of responsibility in all further criminal proceedings.

6. The parties agree that there are no other facts or circumstances that allow for any other Adjustments to the Offense Level under U.S.S.G. Chapters Two or Three.

7. The Criminal History Category will be based upon the investigation by the United States Probation Office and the factual findings and legal decisions of the Court at the time of sentencing.

8. The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense to which he is pleading guilty.

9. In exchange for the concessions made by the United States Attorney in this plea agreement, the defendant knowingly and expressly waives his right to appeal any sentence to be imposed that is within the applicable Sentencing Guideline range. The defendant further waives his right to appeal the manner in which his sentence is determined on the grounds set forth in 18 U.S.C. §3742 and the defendant waives his right to appeal any other aspect of his conviction or sentence. The defendant reserves only the right to appeal any sentence imposed to the extent, but only to the extent, that the sentence is an upward departure and outside the applicable range established by the Sentencing Guidelines. The defendant also reserves the right to appeal any finding by the court that the total offense level, before the adjustment for acceptance of responsibility, is greater than a 12.

II. PENALTY:

Statutory:

8 U.S.C. §1326(a) provides for a penalty of imprisonment of not more than 2 years; (b) (1) (prior felony conviction) provides for a penalty of imprisonment of not more than 10 years; and subsection (b) (2) (prior aggravated felony conviction) a term of imprisonment not more than 20 years, and pursuant to 18 U.S.C. §3571(b) (3), a fine of not more than \$250,000, or both fine and imprisonment.

Sentencing Guidelines:

Pursuant to 18 U.S.C. §3551, et seq., and the Sentencing Reform Act of 1984 and the Sentencing Guidelines, the possible range

June 9, 2006
Page 3

of sentence for this offense, assuming a Criminal History Category of at least II, runs from 1 months incarceration for an Offense Level 6 if the defendant has no prior felony convictions, 8 months imprisonment if the defendant has a prior non-aggravated felony conviction, or up to 41 months incarceration, if deported after a felony conviction listed under 2L1.2(b)(1)(A), depending on the sentence imposed and the nature of any prior aggravated felony conviction, to 125 months incarceration for an Offense Level 24 with a Criminal History Category VI, depending upon the Court's determination of the Offense Level and the Criminal History Category. Pursuant to the 2004 version of the sentencing guidelines the increase in offense level for a prior conviction will depend on the Court's findings as to the nature of the prior conviction and the term of imprisonment imposed for the prior conviction.

A federal prison sentence can no longer be shortened by early release on parole because parole has been abolished. However, under U.S.S.G. §5D1.1, a term of Supervised Release following any period of imprisonment is required when the term of imprisonment is more than 1 year. Under 18 U.S.C. §3559(a)(5), a violation of 8 USC 1326(b)(1) or (b)(2) is a Class C felony and, therefore, pursuant to U.S.S.G. §5D1.2(a)(2), a term of supervised release of 2 years, but not more than 3 years, may be ordered. If the defendant does not have a prior felony conviction, the maximum term of supervised release is 1 year.

Under the provisions of U.S.S.G. §5E1.2, a fine may be imposed, depending upon the Court's finding of the appropriate Offense Level within a range from a minimum of \$500 to a maximum of \$100,000. However, U.S.S.G. §5E1.2(e) allows the Court to waive any fine, impose a lesser fine or an alternative sanction, such as community service, if the defendant establishes that he does not have the ability to pay a fine and is not likely to become able to pay any fine.

18 U.S.C. §3663 and U.S.S.G. §5E1.1 permit restitution as deemed appropriate by the Court.

A mandatory special assessment under 18 U.S.C. §3013 and U.S.S.G. §5E1.3 of \$100.00 must be imposed for this offense.

III. ESSENTIAL ELEMENTS OF THE OFFENSE:

Before a verdict of guilty may be reached, the Government would have to prove the essential elements of the offense of Unlawful Reentry of Deported Alien beyond a reasonable doubt as follows:

First: That the defendant is an alien,
that is, he is not a citizen of