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September 26, 2008

MEMORANDUM OF PLEA NEGOTIATIONS

TO: Honorable Brian E. Sandoval
United States District Judge

FROM: Bill Reed
Asst. United States Attorney

SUBJECT: U.S. v. Juan Ramon Sepulveda-Leon
03:08-cr-068-BES-(RAM)

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COUNSEL/PARTIES OF RECORD	
OCT - 8 2008	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

I. PLEA NEGOTIATION

The defendant, JUAN RAMON SEPULVEDA-LEON, is charged in an indictment filed August 6, 2008, with Unlawful Reentry by a Deported, Removed and/or Excluded Alien, in violation of Title 8, United States Code, Section 1326(a). The Government and the defendant have agreed to the following:

1. The defendant will plead guilty to the Indictment, charging him with Unlawful Reentry by a Deported, Removed and/or Excluded Alien, in violation of Title 8, United States Code, Section 1326(a).

2. This plea is made pursuant to Rule 11(c) (1) (A) and (B) of the Federal Rules of Criminal Procedure and is not intended to be binding upon the Court.

3. The parties agree that, pursuant to United States v. Booker, 125 S.Ct. 738 (U.S.S.C. 2005), the United States Sentencing Commission Guidelines are advisory and should be used by the Court in determining a reasonable sentence along with the

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factors to be considered in imposing a sentence set forth at Title 18, United States Code, Section 3553.

4. The parties agree that the Base Offense Level is 8, pursuant to U.S.S.G. §2L1.2(a).

5. The parties agree that because the defendant has previously been convicted of a felony offense, a 4-level increase applies under §2L1.2(b)(1)(D).

6. The Government agrees to not oppose the defendant's request for a reduction of 2 levels for Acceptance of Responsibility under U.S.S.G. §3E1.1(a) as long as the defendant continues to clearly demonstrate Acceptance of Responsibility in all further criminal proceedings.

7. The Parties agree that the United State Attorney's Office is not bound by the United States Probation Office's decision as to whether the defendant has accepted responsibility and it is understood that the United States Attorney's Office will make its own independent evaluation of this adjustment to the offense level.

9. The defendant will seek neither a downward departure pursuant to U.S.S.G. 5K1.1 nor a downward adjustment pursuant to 18 U.S.C. 3553 from any sentence that may be imposed within the applicable sentencing range if the court accepts the calculations agreed upon by the parties in paragraphs 4, 5 and 6.

10. The parties agree that the Offense Level and the possible Criminal History Category are based upon information concerning this offense and the defendant as it is known at the present time and could change based upon the investigation by the United States Probation Office and the findings of the District Court at the time of sentencing. Specifically, the parties have made no agreement concerning the defendant's prior criminal history.

11. The defendant is aware that the sentence will be imposed in accordance with the advisory Federal Sentencing Guidelines and Policy Statements, the provisions of Title 18, United States Code, Section 3553(a), and any other evidence presented to the Court at the time of sentencing. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty.

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12. The defendant is also aware that Title 18, United States Code, Section 3742 gives the defendant a right to appeal the sentence to be imposed and that other federal laws give the defendant rights to appeal other aspects of the conviction. In exchange for the concessions made by the United States in the instant plea agreement, the defendant knowingly and expressly waives the right to appeal any sentence to be imposed that is within the applicable sentencing guideline range, further waives the right to appeal the manner in which that sentence was determined on the grounds set forth in Title 18, United States Code, Section 3742, and further waives the right to appeal any other aspect of the 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 range established by the applicable sentencing guidelines as determined by the Court or a sentence at an offense level higher than that predicted by the parties in paragraphs 4 and 5 of this agreement.

13. The parties agree that no promises, agreements, and conditions have been entered into other than those set forth in this plea memorandum, and will not be entered into unless in writing and signed by all parties.

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:

Offense Level 12

Criminal History Category II - 12-18 months
Criminal History Category VI - 30-37 months

Offense Level 10

Criminal History Category II - 8-14 months
Criminal History Category VI - 24-30 months

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Pursuant to U.S.S.G. §5D1.2(a)(1), the term of supervised release imposed shall be at least 2 years, but not more than 3 years. If the defendant does not have a prior felony conviction, the maximum term of supervised release is 1 year. Pursuant to U.S.S.G. §5D1.2(c), the term of supervised release imposed shall not be less than any statutorily required term of supervised release.

Pursuant to U.S.S.G. §5E1.2, a fine may be imposed and the advisory guidelines recommend the following: at offense level 12 the allowable fine range is between \$3,000 and \$30,000 and at offense level 10 the range is between \$2,000 and \$20,000. The advisory guidelines also provide, however, that the Court may waive any fine, impose a lesser fine or an alternative sanction, such as community service, if a defendant establishes he does not have the ability to pay a fine.

Title 18, United States Code, Section 3663, and U.S.S.G. §5E1.1 permit restitution as deemed appropriate by the Court.

A mandatory special assessment under Title 18, United States Code, Section 3013, and U.S.S.G. §5E1.3 of \$100.00 for each count of conviction must be imposed.

III. ESSENTIAL ELEMENTS OF THE OFFENSE:

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

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

Second: That the defendant was removed or deported from the United States; and

Third: That the defendant was found voluntarily and unlawfully in the United States, that is, without proper permission.