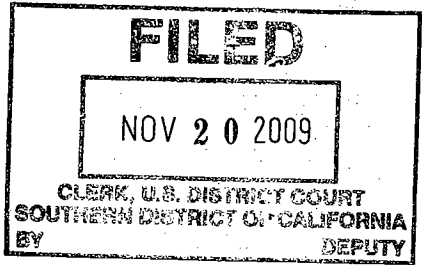


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10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Criminal Case No. 09CR4203-L
12)
Plaintiff,)
13)
v.) PLEA AGREEMENT
14)
CHRISTIAN DANIEL)
15)
CASTRO-ALVAREZ,)
16)
Defendant.)
17

18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
19 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,
20 and Michelle M. Pettit, Assistant United States Attorney, and
21 Defendant, CHRISTIAN DANIEL CASTRO-ALVAREZ, with the advice and
22 consent of Ezekiel E. Cortez, counsel for Defendant, as follows:

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1 I

2 THE PLEA

3 A. THE CHARGE. Defendant agrees to plead guilty to the
4 Information charging Defendant with murder of a federal officer
5 committed in perpetration of a robbery and aiding and abetting in
6 violation of 18 U.S.C. §§ 2, 1111(a), and 1114.

7 II

8 NATURE OF THE OFFENSE

9 A. ELEMENTS EXPLAINED

10 Defendant understands that the offense to which Defendant is
11 pleading guilty has the following elements:

- 12 1. The victim named in the Information was killed;
- 13 2. The victim was engaged in, or on account of, the
14 performance of his official duties;
- 15 3. Defendant, or another participant whom he aided and
16 abetted, unlawfully killed the victim named in the
17 Information; and
- 18 4. The death of the victim occurred as a consequence of
19 and while defendant was knowingly and wilfully engaged
20 in perpetrating the crime of robbery.

21 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

22 Defendant has fully discussed the facts of this case with defense
23 counsel. Defendant has committed each of the elements of the crime,
24 and admits that there is a factual basis for this guilty plea. The
25 parties agree that the following facts are true and undisputed and may
26 be considered as relevant conduct under United States Sentencing
27 Guidelines (Guidelines or USSG) § 1B1.3 and as the nature and
28

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1 circumstances of the offense under 18 U.S.C. § 3553(a)(1).

2 Specifically, Defendant admits and agrees:

- 3 1. On or about July 23, 2009, within the Southern
4 District of California, specifically Campo,
5 California, Defendant entered the United States with
6 other co-conspirators for the purpose of knowingly and
7 willfully robbing a Border Patrol Agent of government
8 property.
- 9 2. While Border Patrol Agent Robert W. Rosas, Jr. was
10 engaged in the performance of his duties as a Border
11 Patrol Agent, Defendant and his co-conspirators lured
12 Agent Rosas out of his vehicle for the purpose of
13 knowingly and willfully robbing him.
- 14 3. During the perpetration of robbing Agent Rosas,
15 Defendant struggled with Agent Rosas over a firearm,
16 and Agent Rosas was shot multiple times by Defendant
17 and one or more of the co-conspirators.
- 18 4. During the robbery, Agent Rosas died as a result of
19 the shots fired by one or more of the co-conspirators.

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III

PENALTIES

Defendant understands that the crime to which Defendant is pleading guilty carries the following penalties:

- A. a maximum life in prison;
- B. a maximum \$250,000.00 fine;
- C. a mandatory special assessment of \$100.00; and
- D. a term of supervised release of at least 5 years but no more than 5 years.

Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison all or part of the term of supervised release.

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1 IV

2 DEFENDANT'S WAIVER OF TRIAL RIGHTS

3 Defendant understands that this guilty plea waives the right to:

- 4 A. continue to plead not guilty and require the United States
5 to prove the elements of the crime beyond a reasonable
6 doubt;
- 7 B. a speedy and public trial by jury;
- 8 C. the assistance of counsel at all stages of trial;
- 9 D. confront and cross-examine adverse witnesses;
- 10 E. present evidence and to have witnesses testify on behalf of
11 Defendant; and
- 12 F. not testify or have any adverse inferences drawn from the
13 failure to testify.

14 V

15 DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
16 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

17 The United States represents that any information establishing
18 the factual innocence of Defendant known to the undersigned prosecutor
19 in this case has been turned over to Defendant. The United States
20 will continue to provide such information establishing the factual
21 innocence of Defendant.

22 Defendant understands that if this case proceeded to trial, the
23 United States would be required to provide impeachment information
24 relating to any informants or other witnesses. In addition, if
25 Defendant raised an affirmative defense, the United States would be
26 required to provide information in its possession that supports such
27 a defense. Defendant acknowledges, however, that by pleading guilty
28 Defendant will not be provided this information, if any, and
Defendant also waives the right to this information. Finally,

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1 Defendant agrees not to attempt to withdraw the guilty plea or to file
2 a collateral attack based on the existence of this information.

3 VI

4 **DEFENDANT'S REPRESENTATION THAT GUILTY**
5 **PLEA IS KNOWING AND VOLUNTARY**

6 Defendant represents that:

- 7 A. Defendant has had a full opportunity to discuss all the
8 facts and circumstances of this case with defense counsel,
9 and has a clear understanding of the charges and the
10 consequences of this plea;
- 11 B. No one has made any promises or offered any rewards in
12 return for this guilty plea, other than those contained in
13 this agreement or otherwise disclosed to the Court;
- 14 C. No one has threatened Defendant or Defendant's family to
15 induce this guilty plea; and
- 16 D. Defendant is pleading guilty because in truth and in fact
17 Defendant is guilty and for no other reason.

18 VII

19 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 This plea agreement is limited to the United States Attorney's
22 Office for the Southern District of California, and cannot bind any
23 other federal, state or local prosecuting, administrative, or
24 regulatory authorities, although the United States will bring this
25 plea agreement to the attention of other authorities if requested by
26 the Defendant.

27 VIII

28 **APPLICABILITY OF SENTENCING GUIDELINES**

Defendant understands the sentence imposed will be based on the
factors set forth in 18 U.S.C. § 3553(a). Defendant understands
further that in imposing the sentence, the sentencing judge must
consult the United States Sentencing Guidelines (Guidelines) and take

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1 them into account. Defendant has discussed the Guidelines with
2 defense counsel and understands that the Guidelines are only advisory,
3 not mandatory, and the court may impose a sentence more severe or less
4 severe than otherwise applicable under the Guidelines, up to the
5 maximum in the statute of conviction. Defendant understands further
6 that the sentence cannot be determined until a presentence report has
7 been prepared by the U.S. Probation Office and defense counsel and the
8 United States have had an opportunity to review and challenge the
9 presentence report. Nothing in this plea agreement shall be construed
10 as limiting the United States' duty to provide complete and accurate
11 facts to the district court and the U.S. Probation Office.

12 IX

13 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

14 This plea agreement is made pursuant to Federal Rule of Criminal
15 Procedure 11(c)(1)(B). Defendant understands that the sentence is
16 within the sole discretion of the sentencing judge. The United States
17 has not made and will not make any representation as to what sentence
18 Defendant will receive. Defendant understands that the sentencing
19 judge may impose the maximum sentence provided by statute, and is also
20 aware that any estimate of the probable sentence by defense counsel
21 is a prediction, not a promise, and is not binding on the Court.
22 Likewise, the recommendation made by the United States is not binding
23 on the Court, and it is uncertain at this time what Defendant's
24 sentence will be. Defendant also has been advised and understands
25 that if the sentencing judge does not follow any of the parties'
26 sentencing recommendations, Defendant has no right to withdraw the
27 plea.

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2 PARTIES' SENTENCING RECOMMENDATIONS

3 A. SENTENCING GUIDELINE CALCULATIONS

4 Although the parties understand that the Guidelines are only
5 advisory and just one of the factors the court will consider under 18
6 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
7 recommend the following Base Offense Level, Specific Offense
8 Characteristics, Adjustments and Departures (if applicable):

9	1. Base Offense Level [§ 2A1.1]	43
10	2. Official Victim [§ 3A1.2(b)]	+6
11	3. Acceptance of Responsibility [§ 3E1.1]	-3
12	4. Combination of Circumstances [§ 5K2.0]	<u>-4*</u>
13	Total Offense Level	42

14 *The parties agree that Defendant should receive a departure for
15 his voluntary surrender to the United States and for his voluntary
16 transfer to adult status. The United States will recommend a 4-level
17 departure for an adjusted offense level of 42, and Defendant may argue
18 for up to a 6-level departure for an adjusted offense level of 40.

19 B. ACCEPTANCE OF RESPONSIBILITY

20 Notwithstanding paragraph A.4 above, the United States will not
21 recommend any adjustment for Acceptance of Responsibility if
22 Defendant:

- 23 1. Fails to admit a complete factual basis for the plea
24 at the time it is entered, or
- 25 2. Denies involvement in the offense, gives conflicting
26 statements about that involvement, fails to cooperate
27 in accurately identifying and admitting prior
28 convictions, is untruthful with the United States, or
is untruthful with the Court or probation officer, or
- 3. Fails to appear in court, or
- 4. Engages in additional criminal conduct, or

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1 5. Attempts to withdraw the plea, or

2 6. Refuses to abide by any lawful court order.

3 C. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

4 The parties have **no** agreement as to Defendant's Criminal History
5 Category.

6 D. ADJUSTMENTS AND DEPARTURES

7 The parties agree that Defendant may not request additional
8 downward adjustments or departures other than the departures listed
9 in Section X, Paragraph A, and the Defendant's age at the time of the
10 offense under 18 U.S.C. § 3553(a)(1).

11 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

12 The parties agree that the facts in the "factual basis" paragraph
13 of this agreement are true, and may be considered as "relevant
14 conduct" under USSG § 1B1.3 and as the nature and circumstances of the
15 offense under 18 U.S.C. § 3553(a)(1).

16 F. UNITED STATES' RECOMMENDATIONS REGARDING CUSTODY

17 The United States will recommend that Defendant be sentenced
18 within the resulting adjusted guideline range as calculated by the
19 United States pursuant to this Plea Agreement. However, if the Court
20 adopts an offense level or downward adjustment or departure below the
21 United States' recommended adjusted guideline range, the United States
22 will recommend a sentence as near as possible to what the sentence
23 would have been if the United States' recommendations had been
24 followed.

25 G. SPECIAL ASSESSMENT

26 The parties will jointly recommend that Defendant pay a special
27 assessment in the amount of \$100.00 to be paid forthwith at time of
28 sentencing. The special assessment shall be paid through the office

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1 of the Clerk of the District Court by bank or cashier's check or money
2 order made payable to the "Clerk, United States District Court."

3 H. FINE/RESTITUTION

4 The parties do not have any agreement regarding the imposition
5 of a fine or a restitution order.

6 I. SUPERVISED RELEASE

7 If the Defendant is placed on a term of supervised release
8 (18 U.S.C. § 3583), the Defendant shall not seek to modify the terms
9 or length of supervised release without the advance consent of the
10 United States.

11 XI

12 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

13 In exchange for the United States' concessions in this plea
14 agreement, Defendant waives, to the full extent of the law, any right
15 to appeal or to collaterally attack the conviction and sentence,
16 including any restitution order, unless the Court imposes a custodial
17 sentence above the greater of the high end of the guideline range
18 recommended by the United States pursuant to this agreement at the
19 time of sentencing or statutory mandatory minimum term, if applicable.
20 If the custodial sentence is greater than the high end of that range,
21 the Defendant may appeal, but the United States will be free to
22 support on appeal the sentence actually imposed. If Defendant
23 believes the United States' recommendation is not in accord with this
24 agreement, Defendant will object at the time of sentencing; otherwise
25 the objection will be deemed waived.

26 If Defendant breaches this plea agreement, at any time, by
27 appealing or collaterally attacking the conviction or sentence, in any
28 way, the United States may prosecute Defendant for any counts,

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1 including those with mandatory minimum sentences, dismissed or not
2 charged pursuant to this plea agreement. Additionally, the United
3 States may use any factual admissions made by Defendant pursuant to
4 this plea agreement in any such prosecution.

5 **XII**

6 **CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT**
7 **THE UNITED STATES TO RECOMMEND A HIGHER SENTENCE OR SET**
8 **ASIDE THE PLEA**

9 This plea agreement is based on the understanding that, prior to
10 Defendant's sentencing in this case, Defendant has not committed or
11 been arrested for any offense not known to the United States prior to
12 Defendant's sentencing. This plea agreement is further based on the
13 understanding that Defendant has committed no criminal conduct since
14 Defendant's arrest on the present charges, and that Defendant will
15 commit no additional criminal conduct before sentencing. If Defendant
16 has engaged in or engages in additional criminal conduct during this
17 period, or breaches any of the terms of any agreement with the United
18 States, the United States will not be bound by the recommendations in
19 this plea agreement, and may recommend any lawful sentence. In
20 addition, at its option, the United States may move to set aside the
21 plea.

22 **XIII**

23 **ENTIRE AGREEMENT**

24 This plea agreement embodies the entire agreement between the
25 parties and supersedes any other agreement, written or oral.

26 **XIV**

27 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

28 No modification of this plea agreement shall be effective unless
in writing signed by all parties.

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XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, Defendant certifies that Defendant has read it (or that it has been read to Defendant in Defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney

11/18/09
DATED

Michelle M. Pettit
MICHELLE M. PETTIT
Assistant U.S. Attorney

11/16/09
DATED

Ezekiel E. Cortez
EZEKIEL E. CORTEZ
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

11-16-09
DATED

CHRISTIAN DANIEL CASTRO-ALVAREZ
CHRISTIAN DANIEL CASTRO-ALVAREZ
Defendant

Def. Initials C.D.C