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7

8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11 Plaintiff,

12 v.

13 CARLOS ENRIQUEZ,,  
14 Defendants.  
15

CASE NO. 1:11-CR-00354 LJO

MEMORANDUM OF PLEA AGREEMENT  
PURSUANT TO RULE 11(C) OF THE FEDERAL  
RULES OF CRIMINAL PROCEDURE

DATE: To be determined  
TIME: To be determined  
COURT: Hon. Lawrence J. O'Neill

16 Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of America,  
17 by and through Benjamin B. Wagner, the United States Attorney for the Eastern District of California,  
and Assistant United States Attorneys Kimberly A. Sanchez and Kathleen A. Servatius, and Defendant,  
18 Carlos Enriquez, and his attorney, Salvatore Sciandra, have agreed as follows:

19 **1. Charges.**

20 The defendant acknowledges that he has been charged in an indictment as follows:

21 COUNT 1: 21 U.S.C. " 846, 841(a)(1) - Conspiracy to Distribute and Possess With Intent to  
22 Distribute Methamphetamine and Cocaine;

23 COUNTS 2-5, 7, 9-10: 21 U.S.C. ' 841(a)(1) B Distribution of Methamphetamine

24 **2. Nature, Elements and Possible Defenses.**

25 The defendant has read the charges against him contained in the indictment and those charges  
26 have been fully explained to him by his attorney. Further, the defendant fully understands the nature  
27 and elements of the crime in Count One of indictment to which he is pleading guilty, together with the  
28 possible defenses thereto, and has discussed them with his attorney.

1           COUNT 1:

2           The elements of the crime of Conspiracy to Distribute methamphetamine and cocaine are:

3           First, there was an agreement between two or more persons, to distribute methamphetamine  
4 and/or cocaine;

5           Second, the defendant became a member of the conspiracy knowing of at least one its objects  
6 and intending to help accomplish it; and

7           Third, the amount of methamphetamine involved was 50 grams or more of actual  
8 methamphetamine.

9           3. Agreements by the Defendant.

10          (a) Defendant agrees that this plea agreement shall be filed with the court and become a part  
11 of the record of the case.

12          (b) Defendant agrees to enter a plea of guilty to Count 1 of the indictment which charges him  
13 with conspiracy to distribute methamphetamine and cocaine, in violation of Title 21, United States  
14 Code, Sections 846 and 841(a)(1).

15          (c) Defendant recognizes that pleading guilty may have consequences with respect to his  
16 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes  
17 are removable offenses, including the offense to which defendant is pleading guilty. Removal and other  
18 immigration consequences are the subject of a separate proceeding, however, and defendant understands  
19 that no one, including his attorney or the district court, can predict to a certainty the effect of his  
20 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty  
21 regardless of any immigration consequences that his plea may entail, even if the consequence is his  
22 automatic removal from the United States.

23          (d) Defendant understands and agrees that he will not be allowed to withdraw his plea should  
24 the Court fail to follow the government's sentencing recommendations.

25          (e) Defendant knowingly and voluntarily waives his Constitutional and statutory rights to appeal  
26 his plea, sentence and conviction except as set forth within this paragraph. The defendant is aware that  
27 Title 18, United States Code, Section 3742 affords a defendant the right to appeal any sentence imposed.  
28 Acknowledging this, the defendant knowingly and voluntarily agrees to waive all Constitutional and

1 statutory rights to appeal his conviction and sentence, including, but not limited to an express waiver of  
2 appeal of this plea (including any venue and statute of limitations issues) and to attack collaterally his  
3 mental competence, and his plea, or his sentence, including but not limited to, filing a motion under 28  
4 U.S.C. §2255, 28 U.S.C. §2241, or 18 U.S.C. §3742, or otherwise. The defendant reserves the right to  
5 appeal the Court's ruling should the Court rule that his 1999 conviction Transportation of a Controlled  
6 Substance While Armed is a drug trafficking offense or a crime of violence.

7 If the defendant's conviction on the counts to which he is pleading guilty is ever vacated at the  
8 defendant's request, or his sentence is ever reduced at his request, the government shall have the  
9 following rights : (1) to prosecute the defendant on any count to which he pleaded guilty; (2) to reinstate  
10 any counts that may be dismissed under this agreement; and (3) to file any new charges that would  
11 otherwise be barred by this agreement. The decision to pursue any or all of these options is solely in the  
12 discretion of the United States Attorney's Office. By signing this agreement, the defendant agrees to  
13 waive any objections, motions, and defenses he might have to the government's decision, including  
14 Double Jeopardy. In particular, he agrees not to raise any objections based on the passage of time with  
15 respect to such counts including, but not limited to, any statutes of limitation or any objections based on  
16 the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

17 This waiver includes a waiver of any claim that the defendant's sentence should be reduced  
18 based upon any change in the sentencing guidelines with respect to the amount of cocaine base ("crack"  
19 or "rock") involved in the offense, regardless of whether such change includes a provision making it  
20 retroactive or whether any court ever holds that the application is retroactive.

21 (f) Defendant further acknowledges that his plea of guilty is voluntary and that no force,  
22 threats, promises or representations have been made to anybody, nor agreement reached, other than  
23 those set forth expressly in this agreement, to induce the defendant to plead guilty.

24 (g) Defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L.  
25 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
26 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
27 (including without limitation any charges to be dismissed pursuant to this Agreement and any charges  
28 previously dismissed).

1 (h) The defendant understands that the Court must consult the Federal Sentencing Guidelines  
2 (as promulgated by the Sentencing Commission pursuant to the Sentencing Reform Act of 1984, 18  
3 U.S.C. " 3551-3742 and 28 U.S.C. " 991-998, and as modified by United States v. Booker and United  
4 States v. Fanfan, 543 U.S. 220 (2005), and must take them into account when determining a final  
5 sentence. Defendant understands that the Court will determine a non-binding and advisory guideline  
6 sentencing range for this case pursuant to the Sentencing Guidelines. Defendant further understands that  
7 the Court will consider whether there is a basis for departure from the guideline sentencing range (either  
8 above or below the guideline sentencing range) because there exists an aggravating or mitigating  
9 circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing  
10 Commission in formulating the Guidelines. Defendant further understands that the Court, after  
11 consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable  
12 in light of the factors set forth in 18 U.S.C. ' 3553(a).

13 4. Agreements by the Government.

14 (a) If the United States Probation Office determines that a three-level reduction in  
15 defendant's offense level for full and clear demonstration of acceptance of responsibility is appropriate  
16 under U.S.S.G. § 3E1.1, the government will not oppose such a reduction and will so move under  
17 '3E1.1(b), so long as the defendant pleads guilty, meets with and assists the probation officer in the  
18 preparation of the pre-sentence report, is truthful and candid with the probation officer, and does not  
19 otherwise engage in conduct that constitutes obstruction of justice within the meaning of U.S.S.G §  
20 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

21 **Recommendations**

22 (b) The government agrees to recommend that the defendant be sentenced to the mandatory  
23 minimum sentence or the low-end of the sentencing guidelines, whichever is greater.

24 (c) The government is not seeking an enhancement to the offense level for possession of a  
25 dangerous weapon.

26 (d) The defendant acknowledges and understands that the government makes no other  
27 representations to him regarding fines, whether any other specific offense characteristics apply to his  
28 conduct his criminal history or criminal history points under Chapter Four or whether additional

1 enhancements or reductions under Chapter Three or Five of the United States Sentencing Guidelines  
2 apply and defendant understands that the government is free to comment and to make recommendations  
3 to the court and the probation office regarding those matters.

4 (e) The government agrees to dismiss the remaining counts of the indictment as to this  
5 defendant at the time of sentencing.

6 5. Factual Basis.

7 Defendant will plead guilty because he is in fact guilty of the crimes set forth in Count 1 of the  
8 indictment. Defendant also agrees that the following are the facts of this case, although he  
9 acknowledges that, as to other facts, the parties may disagree:

10 During December 2009 through June 2010, the defendant was a member of the Kings County  
11 regiment of Nuestra Familia (hereinafter "NF"). During that time, the defendant assisted members of  
12 the NF in delivering methamphetamine and collecting payment therefore.

13 On January 19, 2010, the defendant along with another coconspirator delivered 13.5 grams of  
14 86.5 percent pure methamphetamine (11.6 grams of actual methamphetamine to a confidential  
15 informant. The defendant did so at the direction of two coconspirators.

16 On January 19, 2010, the defendant delivered 27.8 grams of 96% pure methamphetamine (26.6  
17 grams of actual methamphetamine) to the CI.

18 On January 25, 2010, the defendant and a coconspirator collected payment for the  
19 methamphetamine the defendant delivered to the CI on January 19, 2010.

20 On January 27, 2010, the defendant delivered 27.3 grams of 96.3% pure methamphetamine (26.2  
21 grams of actual methamphetamine) to the CI and collected \$250 in monthly regiment dues from the CI.  
22 During the meeting, the defendant was armed with a handgun which he displayed during the meeting  
23 "joking" around with the CI. The defendant gave the money to a coconspirator and knew that the  
24 money would ultimately go to the NF "bank."

25 On February 5, 2010, the defendant spoke with a coconspirator and told the coconspirator that he  
26 had two more deliveries of methamphetamine to make. The coconspirator told the defendant that it was  
27 a Friday night and the CI was out of dope. The defendant along with another coconspirator then  
28 delivered 27.7 grams of 98.8% pure methamphetamine (27.3 grams of actual methamphetamine) to the

1 CI. During the delivery, the defendant showed the CI a .380 caliber pistol and the coconspirator showed  
2 the CI a nickel-plated .45 caliber pistol.

3 On February 26, 2012, the defendant delivered 28 grams of 99.2% pure methamphetamine (27.7  
4 grams of actual methamphetamine) to the CI. The defendant also collected \$1,150 (\$900 for previously  
5 obtained methamphetamine and \$250 for monthly dues) from the CI.

6 6. Potential Sentence.

7 The following is the maximum potential sentence which defendant faces:

8 (a) Imprisonment.

9 Mandatory Minimum: Ten years.

10 Maximum: Life.

11 (b) Fine.

12 Maximum: \$10,000,000

13 (c) Both such fine and imprisonment.

14 (d) Term of Supervised Release:

15 Minimum: Five years.

16 Maximum: Life.

17 (Should the defendant violate any of the terms of his supervised release, he can be returned to  
18 prison for the period of supervised release actually imposed by the Court or five years, whichever is  
19 less.)

20 (f) Penalty Assessment.

21 Mandatory: One Hundred dollars (\$100.00).

22 (g) Pursuant to 21 U.S.C. ' 862, the defendant may become temporarily or permanently  
23 ineligible for any and all federal benefits and, pursuant to 21 U.S.C. ' 862a, shall be ineligible for the  
24 following government benefits:

25 (1) assistance under any State program funded under part A of title IV of the Social Security Act  
26 (42 U.S.C. § 601 et seq.);

27 (2) benefits under the food stamp program (as defined in section 3h of the Food Stamp Act) (7  
28 U.S.C. § 2012(h)) or any State program carried out under the Food Stamp Act of 1977 (7 U.S.C. § 2011

1 et seq.).

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3 **7. Waiver of Rights.**

4 Defendant understands that by pleading guilty he surrenders certain rights, including the  
5 following:

6 (a) If defendant persisted in a plea of not guilty to the charges against him, he would have the  
7 right to be represented by an attorney at all stages of the proceedings, and would have a right to a public  
8 and speedy trial. The trial could be either a jury trial or a trial by a judge sitting without a jury.

9 Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting  
10 without a jury, defendant, the government and the judge all must agree that the trial be conducted by the  
11 judge without a jury.

12 (b) If the trial were a jury trial, the jury would be composed of twelve lay persons selected at  
13 random. Defendant and his attorney would have a say in who the jurors would be by removing  
14 prospective jurors for cause where actual bias or other disqualification is shown, or without cause by  
15 exercising peremptory challenges. The jury would have to agree unanimously before it could return a  
16 verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent  
17 and that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt  
18 beyond a reasonable doubt.

19 (c) If the trial were held before a judge without a jury, the judge would find the facts and  
20 determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt  
21 beyond a reasonable doubt.

22 (d) At a trial, whether by a jury or a judge, the government would be required to present its  
23 witnesses and other evidence against defendant. Defendant would be able to confront those government  
24 witnesses and his attorney would be able to cross-examine them. In turn, defendant could present  
25 witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear  
26 voluntarily, he could require their attendance through the subpoena power of the Court. At trial, the  
27 defendant would also have the right to assistance of legal counsel. If he could not afford legal counsel,  
28 one would be appointed for him by the court at no expense to him.

1 (e) At a trial, defendant would have a privilege against self-incrimination so that he could  
2 decline to testify, and no inference of guilt could be drawn from this refusal to testify.

3 Defendant understands that by pleading guilty he is waiving all of the rights set forth above and  
4 defendant's attorney has explained those rights to him and the consequences of his waiver of those  
5 rights.

6 **8. Questions by Court.**

7 Defendant understands that if the court questions him under oath, on the record and in the  
8 presence of counsel, about the offense to which he has pleaded guilty, his answers, if false, may later be  
9 used against him in a prosecution for perjury.

10 **9. Entire Agreement.**

11 This plea of guilty is freely and voluntarily made and not the result of force or threats or of  
12 promises apart from those set forth in this plea agreement. There have been no representations or  
13 promises from anyone as to what sentence this Court will impose.

14 **10. Court not a Party.**

15 It is understood by the parties that the sentencing court is neither a party to nor bound by this  
16 agreement and the sentencing judge is free to impose the maximum penalties as set forth in paragraph 6.  
17 Further, in making its sentencing decision, the Court may take into consideration any and all facts and  
18 circumstances concerning the criminal activities of defendant, including activities which may not have  
19 been charged in the indictment.

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3 **11. Presentence Report.**

4 Defendant understands that the United States Probation Office is not a party to this agreement  
5 and will conduct an independent investigation of defendant's activities and his background. It will then  
6 prepare a presentence report which it will submit to the Court as its independent sentencing  
7 recommendation. In addition, the government will fully apprise the Probation Office, as well as the  
8 Court, of the full and true nature, scope and extent of the defendant's criminal activities, including  
9 information on his background and criminal history.

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11 BENJAMIN B. WAGNER  
12 United States Attorney

13 DATED: 1-24-14

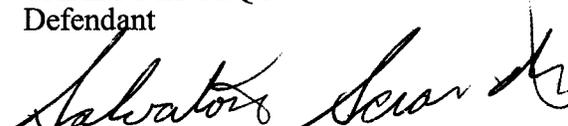
14 By

  
15 KIMBERLY A. SANCHEZ  
16 KATHLEEN A. SERVATIUS  
17 MELANIE L. ALSWORTH  
18 Assistant U.S. Attorneys

19 DATED: 1-19-2014.

  
20 CARLOS ENRIQUEZ  
21 Defendant

22 DATED: 1-20-14

  
23 SALVATORE SCIANDRA  
24 Attorney for Defendant  
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