

1 BENJAMIN B. WAGNER
United States Attorney
2 KAREN A. ESCOBAR
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5 Attorneys for Plaintiff
United States of America
6

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

9 UNITED STATES OF AMERICA,
10
11 Plaintiff,
12 v.
13 JAVIER RIOS MORALES,
14 Defendant.

CASE NO. 1:13-CR-340 LJO-SKO
PLEA AGREEMENT
DATE: TBD
TIME: 8:30 a.m.
COURT: Hon. Lawrence J. O'Neill

15 I. INTRODUCTION

16 A. Scope of Agreement

17 The indictment in this case charges the defendant with a violation of 21 U.S.C. §§ 846,
18 841(a)(1), 841(b)(1)(A), and 841(b)(1)(B) - Conspiracy to Manufacture, to Distribute and/or to Possess
19 with the Intent to Distribute Marijuana (“Count One”); 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A),
20 841(b)(1)(B), 18 U.S.C. § 2 - Manufacture of Marijuana and Aiding and Abetting (“Count Two”); 21
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 841(b)(1)(B), 18 U.S.C. § 2 - Possession with the Intent to Distribute
22 Marijuana and Aiding and Abetting (“Count Three”); 18 U.S.C. §§ 1361, 2 - Depredation of Public
23 Lands and Resources and Aiding and Abetting (“Count Four”). The indictment also contains a general
24 criminal forfeiture allegation, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 981(a)(1)(G), 21 U.S.C. § 853, 28
25 U.S.C. § 2461(c). This document contains the complete plea agreement between the United States
26 Attorney’s Office for the Eastern District of California (the “government”) and the defendant regarding
27 this case. This plea agreement is limited to the United States Attorney’s Office for the Eastern District
28

1 of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory
2 authorities.

3 **B. Court Not a Party**

4 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
5 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
6 concerning the criminal activities of defendant, including activities that may not have been charged in
7 the indictment. The Court is under no obligation to accept any recommendations made by the
8 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
9 including the statutory maximum stated in this plea agreement.

10 If the Court should impose any sentence up to the maximum established by the statute, the
11 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
12 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
13 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
14 receive.

15 **II. DEFENDANT'S OBLIGATIONS**

16 **A. Guilty Plea**

17 The defendant will plead guilty to 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B) -Conspiracy to
18 Manufacture, to Distribute, and to Possess with the Intent to Distribute 100 Kilograms or More of
19 Marijuana, a Lesser Included Offense of Count One, as charged in the Indictment. The defendant agrees
20 that he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached
21 hereto as Exhibit A are accurate.

22 The defendant agrees that this plea agreement will be filed with the Court and become a part of
23 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
24 plea should the Court not follow the government's sentencing recommendations.

25 The defendant agrees that the statements made by him in signing this Agreement, including the
26 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
27 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
28 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal

1 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these
2 rules are inconsistent with this paragraph or with this Agreement generally.

3 The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C.
4 § 3143(a)(2), and agrees that he will be remanded into custody upon the entry of his plea.

5 **B. Restitution**

6 The defendant agrees to pay \$6,572.14 in restitution to the U.S. Forest Service for the Hazmat
7 removal and dump fees incurred in the investigation of this case. He further acknowledges that he is
8 jointly and severally liable with his co-defendants for the amount of restitution.

9 **C. Special Assessment**

10 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
11 a check or money order payable to the United States District Court to the United States Probation Office
12 immediately before the sentencing hearing. The defendant understands that this plea agreement is
13 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
14 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
15 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

16 **D. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

17 If the defendant, violates this plea agreement in any way, withdraws his plea, or tries to withdraw
18 his plea, this plea agreement is voidable at the option of the government. The government will no longer
19 be bound by its representations to the defendant concerning the limits on criminal prosecution and
20 sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any crime
21 or provide any statement or testimony which proves to be knowingly false, misleading, or materially
22 incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a
23 violation of the agreement. The determination whether the defendant has violated the plea agreement
24 shall be decided under a probable cause standard.

25 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
26 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded
27 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
28 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter

1 be subject to prosecution for any federal criminal violation of which the government has knowledge,
2 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
3 options is solely in the discretion of the United States Attorney's Office.

4 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
5 defenses that the defendant might have to the government's decision to exercise the options stated in the
6 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as
7 of the date of this plea agreement may be commenced in accordance with this paragraph,
8 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement
9 and the commencement of any such prosecutions. The defendant agrees not to raise any objections
10 based on the passage of time with respect to such counts including, but not limited to, any statutes of
11 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
12 Amendment to any counts that were not time-barred as of the date of this plea agreement.

13 In addition: (1) all statements made by the defendant to the government or other designated law
14 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
15 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
16 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
17 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
18 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
19 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
20 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

21 **E. Forfeiture**

22 The defendant agrees not to contest the forfeiture of any assets seized out of district in
23 connection with the underlying investigation.

24 **F. Mitigating Role**

25 The defendant reserves the right to argue for a mitigating role.

26 **III. THE GOVERNMENT'S OBLIGATIONS**

27 **A. Dismissals**

28 The government agrees to move, at the time of sentencing, to dismiss without prejudice the

1 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
2 count except if this agreement is voided as set forth herein, or as provided in II.D (Defendant's Violation
3 of Plea Agreement), VI.B (Guidelines Calculations), and VII.B (Waiver of Appeal) herein.

4 **B. Recommendations**

5 1. Incarceration Range

6 The government will recommend that the defendant be sentenced to the low end of the
7 applicable guideline range for his offense based on 500 kilograms of marijuana derived from 341
8 kilograms attributable to the marijuana plant count of 3,405 and 159 kilograms or 350 pounds of
9 processed marijuana. This drug quantity triggers a base offense level of 28.

10 2. Acceptance of Responsibility

11 The government will recommend a two-level reduction (if the offense level is less than 16) or a
12 three-level reduction (if the offense level reaches 16) in the computation of defendant's offense level if
13 he clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1.
14 This includes the defendant meeting with and assisting the probation officer in the preparation of the
15 pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in
16 conduct that constitutes obstruction of justice within the meaning of U.S.S.G. § 3C1.1, either in the
17 preparation of the pre-sentence report or during the sentencing proceeding.

18 3. Safety Valve

19 The government will recommend safety valve relief, if the defendant qualifies for such relief.
20 The government will not argue that he was in possession of a firearm and will not seek an enhancement
21 under Guideline Section 2D1.1 for the possession of any firearms seized in this case.

22 4. Maintaining Premises

23 The government will not recommend a two-level enhancement for maintaining premises for the
24 purpose of manufacturing or distributing a controlled substance, pursuant to U.S.S.G. § 2D1.1(b)(12).

25 **C. Use of Information for Sentencing**

26 The government is free to provide full and accurate information to the Court and the United
27 States Probation Office ("Probation"), including answering any inquiries made by the Court and/or
28 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,

1 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement
2 bars the government from defending on appeal or collateral review any sentence that the Court may
3 impose.

4 **IV. ELEMENTS OF THE OFFENSE**

5 At a trial, the government would have to prove beyond a reasonable doubt the following
6 elements of the offense(s) to which the defendant is pleading guilty:

7 As to Count One, alleging a violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B) -
8 Conspiracy to Manufacture, to Distribute and/or to Possess with the Intent to Distribute 100 Kilograms
9 or More of Marijuana]:

- 10 1. There was an agreement between two or more persons to manufacture, to distribute
11 and/or to possess with intent to distribute a controlled substance; and
12 2. The defendant became a member of this conspiracy knowing of at least one of its
13 criminal objectives and intending to help accomplish it.

14 In addition, the government is required to prove the offense involved 100 or more kilograms of
15 marijuana and that the drug quantity was reasonably foreseeable to him.

16 The defendant fully understands the nature and elements of the crimes charged in the indictment
17 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
18 his attorney.

19 **V. MAXIMUM SENTENCE**

20 **A. Maximum penalty**

21 The maximum sentence that the Court can impose is 40 years of incarceration, a fine of \$5
22 million, a mandatory minimum 4 year period of supervised release, a maximum life term of supervised
23 release, and a special assessment of \$100. The charge to which defendant is pleading guilty carries a
24 five-year mandatory minimum sentence, absent a motion by the government for reduction pursuant to 18
25 U.S.C. § 3553(e). In addition, the defendant may be ineligible for certain federal and/or state assistance
26 and/or benefits, pursuant to 21 U.S.C. § 862. By signing this plea agreement, the defendant also agrees
27 that the Court can order the payment of restitution for the full loss caused by the defendant's wrongful
28 conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the

1 specific counts to which the defendant is pleading guilty. The defendant further agrees, as noted above,
2 that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution
3 imposed by the Court.

4 **B. Violations of Supervised Release**

5 The defendant understands that if he violates a condition of supervised release at any time during
6 the term of supervised release, the Court may revoke the term of supervised release and require the
7 defendant to serve up to 5 years of additional imprisonment.

8 **VI. SENTENCING DETERMINATION**

9 **A. Statutory Authority**

10 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
11 must take them into account when determining a final sentence. The defendant understands that the
12 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
13 Sentencing Guidelines and must take them into account when determining a final sentence. The
14 defendant understands that the Court will determine a non-binding and advisory guideline sentencing
15 range for this case pursuant to the Sentencing Guidelines. The defendant further understands that the
16 Court will consider whether there is a basis for departure from the guideline sentencing range (either
17 above or below the guideline sentencing range) because there exists an aggravating or mitigating
18 circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing
19 Commission in formulating the Guidelines. The defendant further understands that the Court, after
20 consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable
21 in light of the factors set forth in 18 U.S.C. § 3553(a).

22 **B. Guideline Calculations**

23 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
24 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence.

25 **VII. WAIVERS**

26 **A. Waiver of Constitutional Rights**

27 The defendant understands that by pleading guilty he is waiving the following constitutional
28 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to

1 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
2 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
3 compelled to incriminate himself.

4 **B. Waiver of Appeal and Collateral Attack**

5 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
6 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to
7 appeal the guilty plea, conviction, and sentence. The defendant specifically gives up the right to appeal
8 any order of restitution the Court may impose.

9 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
10 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
11 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
12 understands that these circumstances occur infrequently and that in almost all cases this Agreement
13 constitutes a complete waiver of all appellate rights.

14 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
15 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
16 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

17 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will
18 move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss
19 the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading
20 guilty, the government shall have the rights set forth in paragraph II.D (Defendant's Violation of Plea
21 Agreement) herein.

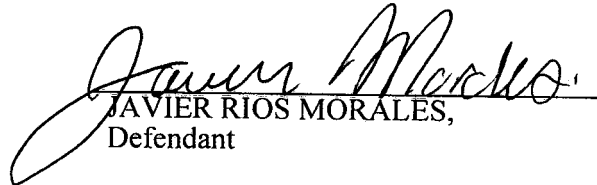
22 **C. Waiver of Attorneys' Fees and Costs**

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

1 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.

2 Finally, I am satisfied with the representation of my attorney in this case.

3
4 Dated: 1-15-14


JAVIER RIOS MORALES,
Defendant

6 **C. Court Certified Interpreter/Translator [REMOVE IF NOT APPLICABLE]**

7 I declare that I am a court-certified Spanish-English interpreter/translator. On
8 _____, I read the entire contents of the foregoing plea agreement to JAVIER RIOS
9 MORALES, translating the document from English to Spanish.

10
11 Dated: _____


Interpreter/Translator

13 **D. Attorney for the United States**

14 I accept and agree to this plea agreement on behalf of the government.

15 Dated: 1/17/14

BENJAMIN B. WAGNER
United States Attorney

17 By: 
18 KAREN A. ESCOBAR
Assistant United States Attorney

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EXHIBIT "A"
Factual Basis for Plea

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

Beginning at a time unknown, but no later than on or about May 1, 2013, and continuing to on or about August 28, 2013, in the Counties of Inyo and Riverside, the defendant and co-defendants Jose Aguilar Santoyo ("Aguilar") and Jose Salvador Garcia Rodriguez ("Garcia") knowingly and intentionally conspired to manufacture, distribute and possess with intent to distribute 3,405 marijuana plants and 159 kilograms or 350 pounds of processed marijuana in the Hogback Creek area of Inyo National Forest.

Specifically, during this time frame, the defendant and Aguilar dropped off supplies and picked up processed marijuana from the Hogback Creek grow site. One of the load vehicles, a Jeep, was registered to Aguilar at an address in Riverside County. The Jeep was tracked from the Hogback Creek drop point to two stash houses [REDACTED], on multiple occasions.

During the execution of a federal search warrant at the grow site, agents found 3,405 marijuana plants, 350 pounds of processed marijuana, 2,200 pounds of trash, illegal rodenticides (uFuran or Carbofuran), three air rifles, and two digital scales. Native vegetation was cut down to make room for the plants. It cost \$6,572.14 to remove the hazardous materials and marijuana from the grow site. The agents also saw three to four men in the grow site. All fled when the agents arrived to execute the warrant, except co-defendant Garcia.

The day after the search, the Jeep returned to the drop point area. The defendant was the right front passenger. He had previously been photographed driving the Jeep, dropping off supplies, and picking up large black plastic garbage bags containing what agents believed was marijuana. Similar bags were found at the grow site containing marijuana. Rios and the driver were clean and wearing clean clothing, in contrast to the back seat passengers who were dirty and smelled of marijuana.

During a search of the defendant's residence in Moreno Valley, agents found paperwork for the defendant in his bedroom, which included an agreement and evidence of payments for one of the Riverside County stash houses located on Minton Road in Homeland, where agents found 450 marijuana plants and marijuana cultivation equipment.

Approximately 500 kilograms of marijuana is the amount involved in the defendant's relevant conduct encompassed in the charge contained in Indictment which could be readily proven by the government at trial against the defendant.

Dated: 1-15-14


JAVIER RIOS MORALES, Defendant