

FILED**NOT FOR PUBLICATION**

OCT 21 2020

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 19-30159

Plaintiff-Appellee,

D.C. No.
2:17-cr-00229-TOR-4

v.

BULMARO CONTRERAS-FIGUEROA,
AKA Israel Contreras,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted October 7, 2020**
Seattle, Washington

Before: GRABER and W. FLETCHER, Circuit Judges, and FREUDENTHAL,***
District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

*** The Honorable Nancy D. Freudenthal, United States District Judge for the District of Wyoming, sitting by designation.

Defendant Bulmaro Contreras-Figueroa appeals his criminal sentence of 220 months' imprisonment for conspiring to distribute methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(l)(A)(viii) and possessing a firearm as an illegally present alien in violation of 18 U.S.C. § 922(g)(5)(A). We affirm.

1. Reviewing de novo, we hold that neither the government nor the district court violated Defendant's Fifth Amendment right to indictment by grand jury.

See United States v. Davis, 854 F.3d 601, 603 (9th Cir. 2017) (holding that we review de novo whether the indictment was constructively amended when a defendant raises that argument before the district court). Defendant pleaded guilty to violating 21 U.S.C. §§ 846, 841(a)(1), 841(b)(l)(A)(viii), that is, conspiring to distribute drugs. The grand jury's charge that Defendant intentionally conspired to violate that very statute was sufficient. See United States v. Cochrane, 985 F.2d 1027, 1031 (9th Cir. 1993) (per curiam) (holding that an indictment need only "provide the essential facts necessary to apprise a defendant of the crime charged").

2. The district court abused its discretion in finding that reliable evidence supports the 15 to 45 kilograms of a methamphetamine mixture it attributed to Defendant—the basis for its base offense level of 36 under the Sentencing Guidelines. See United States v. Vera, 893 F.3d 689, 692 (9th Cir. 2018) (holding that we review for abuse of discretion the district court's "evaluation of the

reliability of evidence at sentencing"). However, that error was harmless because the evidence clearly supports Defendant's base offense level, albeit for a different reason. See United States v. Ali, 620 F.3d 1062, 1074 (9th Cir. 2010) (holding that a harmless error is not a ground for resentencing).

Although the district court and government discussed Defendant's quantity of drugs as a methamphetamine mixture, the presentence investigation report stated, and Defendant did not dispute, that he trafficked in highly pure, or "ice," methamphetamine, which is worth ten times as much as a mixture under the Guidelines. See U.S. Sent'g Guidelines Manual § 2D1.1(c)(2) (showing that 1.5 to 4.5 kilograms of ice is akin to 15 to 45 kilograms of a mixture and that both warrant a base offense level of 36). Police found Defendant with 928.3 grams of undisputed ice, and a wiretap showed that Defendant discussed thousands of dollars in drug payments. Thus, it is clear that he conspired to distribute at least 1.5 kilograms of ice during the 15-month conspiracy and that he fairly received a base offense level of 36. Id.

3. The district court did not clearly err in finding that Defendant knew that the conspiracy involved imported methamphetamine, because Defendant's counsel conceded the matter at sentencing. See United States v. Bernardo, 818 F.3d 983,

985 (9th Cir. 2016) (holding that we review for clear error the district court's factual findings at sentencing).

4. The district court properly grouped Counts 1 and 46 when calculating the total offense level, because possession of a firearm can increase the term of imprisonment in drug cases. See U.S. Sent'g Guidelines Manual § 3D1.2(c) (providing that a sentencing court shall group two offenses when "one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts"); id. § 2D1.1(b)(1) (providing for a two-level increase when a defendant possesses a firearm in a drug case). Thus, because the district court acted properly, the "longstanding intracircuit conflict" as to whether we review "application of the [G]uidelines to the facts de novo or for abuse of discretion," Bernardo, 818 F.3d at 985, is of no consequence.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BULMARO CONTRERAS-FIGUEROA,
AKA Israel Contreras,

Defendant-Appellant.

No. 19-30159

D.C. No.
2:17-cr-00229-TOR-4
Eastern District of Washington,
Spokane

ORDER

Before: GRABER and W. FLETCHER, Circuit Judges, and FREUDENTHAL,* District Judge.

The panel judges have voted to deny Appellant's petition for rehearing.

Judges Graber and Fletcher voted to deny the petition for rehearing en banc, and

Judge Freudenthal recommended denying the petition for rehearing en banc.

The full court has been advised of Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellant's petition for panel rehearing and rehearing en banc, Docket No. 41, is DENIED.

* The Honorable Nancy D. Freudenthal, United States District Judge for the District of Wyoming, sitting by designation.

1 JOSEPH H. HARRINGTON
2 United States Attorney
3 Eastern District of Washington
4 James A. Goeke
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 18 2018

SEAN F. McAVOY, CLERK
SPOKANE, WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 2:17-CR-229-TOR

Plaintiff,

SUPERSEDING INDICTMENT

vs.

BENJAMIN RODRIGUEZ
(a/k/a Demon),
BRANDON DANIEL ROSE,
DEREK THOMAS SAMUELS,
BULMARO CONTRERAS-FIGUEROA
(a/k/a: Israel Contreras),
JUAN DE DIOS SERRANO-GERONIMO,
JON ALLEN LOZEAU
(a/k/a: Kubb),
JESUS MICHAEL SANCHEZ,
ALBERT ISSIAH GARZA
(a/k/a: Lil Wolfie),
JOHNNY G. ROMERO MORENO
(a/k/a: Lo),
TAMMY DENISE GREEN
(a/k/a: Tammy D. Mitchell),
MARK LAWRENCE ELLIOTT,
TAMMY MARIE ALLEN
(a/k/a: Tammy M. Rupert),
CHRISTOPHER LEE SPRINGER,
DANNIE PAUL BOWLING III,
CHRISTOPHER ROBERT COOPER,
JULIE JEANINE MARDIS-RAY,

21 U.S.C. §§ 846, 841(a)(1),
(b)(1)(A)(viii)
Conspiracy to Distribute 500
Grams or More of a Mixture or
Substance Containing a
Detectable Amount of
Methamphetamine
(Count 1)

21 U.S.C. § 841(a)(1),
(b)(1)(B)(viii)
Distribution of 5 Grams or More
of Actual Methamphetamine
(Counts 2, 4, 5, 7, 12, 15, 19,
20, 21)

21 U.S.C. § 841(a)(1),
(b)(1)(A)(viii)
Distribution of 50 Grams or More
of Actual Methamphetamine
(Counts 3, 8, 10, 11, 14, 16, 17,
18, 22, 24)

1 MANUEL AUGUSTINE ERICKSON
2 (a/k/a: Augustine Manuel Erickson)
3 (a/k/a: Auggie),
DUANE EDWARD GRAY, and
CHAD HAROLD SHOEMAKER.

4 Defendants.
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10 18 U.S.C. §§ 922(g)(1),
924(a)(2)
11 Possession of a Firearm by a
Felon
(Counts 6, 9, 13, 26, 27, 28, 30,
33, 36, 38)
12 21 U.S.C. § 841(a)(1),
(b)(1)(A)(viii)
13 Possession with Intent to
Distribute of 50 Grams or More
of Methamphetamine (Actual)
(Counts 23, 25, 32, 35, 37)
14 21 U.S.C. § 841(a)(1),
(b)(1)(B)(viii)
15 Possession with Intent to
Distribute of 5 Grams or More of
Actual Methamphetamine
(Counts 29, 41, 42, 43, 44)
16 18 U.S.C. § 924(c)(1)(A)(i)
17 Possession of a Firearm in
Furtherance of a Drug Trafficking
Crime
(Count 39)
18 26 U.S.C. §§ 5841, 5861(d), 5871
19 Possession of an Unregistered
20 Firearm
(Counts 31, 34, 40)
21 22 18 U.S.C. § 922(g)(5)(A)
23 Possession of a Firearm by an
Alien Illegally Present
(Counts 45, 46)
24 25 Forfeiture Allegation:
26 21 U.S.C. § 853
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28

The Grand Jury Charges:

Count 1

Beginning on a date unknown but at least by on or about September 21, 2016, and continuing until on or about December 13, 2017, in the Eastern District of Washington and elsewhere, the Defendants, BENJAMIN RODRIGUEZ (a/k/a Demon), BRANDON DANIEL ROSE, DEREK THOMAS SAMUELS, BULMARO CONTRERAS-FIGUEROA (a/k/a: Israel Contreras), JUAN DE DIOS SERRANO-GERONIMO, JON ALLEN LOZEAU (a/k/a: Kubb), JESUS MICHAEL SANCHEZ, ALBERT ISSIAH GARZA (a/k/a: Lil Wolfie), JOHNNY G. ROMERO MORENO (a/k/a: Lo), TAMMY DENISE GREEN (a/k/a: Tammy D. Mitchell), MARK LAWRENCE ELLIOTT, TAMMY MARIE ALLEN (a/k/a: Tammy M. Rupert), CHRISTOPHER LEE SPRINGER, DANNIE PAUL BOWLING III, CHRISTOPHER ROBERT COOPER, JULIE JEANINE MARDIS-RAY, MANUEL AUGUSTINE ERICKSON (a/k/a: Augustine Manuel Erickson) (a/k/a: Auggie), DUANE EDWARD GRAY, and CHAD HAROLD SHOEMAKER, did knowingly and intentionally combine, conspire, confederate and agree together with each other and with other persons, both known and unknown, to commit the following offense against the United States: distribution of 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii), all in violation of 21 U.S.C. § 846.

Count 2

On or about September 21, 2016, in the Eastern District of Washington, the Defendant, DEREK THOMAS SAMUELS, did knowingly and intentionally distribute 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii).

Count 3

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1 Joseph H. Harrington
2 United States Attorney
3 Eastern District of Washington
4 James A. Goeke
5 David M. Herzog
6 Assistant United States Attorneys
Post Office Box 1494
Spokane, WA 99210-1494
Telephone: (509) 353-2767

7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 Case No.: 2:17-CR-229-TOR-4

12 v.

13 PLEA AGREEMENT

14 BULMARO CONTRERAS-
FIGUEROA (a/k/a Israel Contreras),

15 Defendant.

16 Plaintiff, United States of America, by and through Joseph H. Harrington,
17 United States Attorney for the Eastern District of Washington, and James A. Goeke
18 and David M. Herzog, Assistant United States Attorneys for the Eastern District of
19 Washington, and Defendant BULMARO CONTRERAS-FIGUEROA (a/k/a Israel
20 Contreras), and Defendant's counsel, Stephen R. Hormel and Zachary L. Ayers, agree
21 to the following Plea Agreement:

22 1. Guilty Plea and Maximum Statutory Penalties:

23 Defendant BULMARO CONTRERAS-FIGUEROA (a/k/a Israel Contreras)
24 (hereinafter "CONTRERAS-FIGUEROA" or "Defendant") agrees to plead guilty to
25 Count 1 and Count 46 of the Superseding Indictment. Count 1 of the Superseding
26 Indictment charges Defendant with Conspiracy to Distribute 500 Grams or More of a
27 Mixture Containing a Detectable Amount of Methamphetamine, in violation of 21
28

1 U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(viii). Count 46 of the Superseding Indictment
2 charges Defendant with Possession of a Firearm by an Alien Illegally Present, in
3 violation of 18 U.S.C. § 922(g)(5)(A). Defendant understands that Conspiracy to
4 Distribute 500 Grams or More of a Mixture Containing a Detectable Amount of
5 Methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(viii), is a
6 Class A felony and carries a mandatory minimum term of imprisonment of 10 years of
7 up to a lifetime term of imprisonment; a fine not to exceed \$10,000,000; at least five
8 years of supervised release up to a lifetime term of supervised release; restitution; and
9 a \$100.00 special penalty assessment. Defendant also understands that Possession of
10 a Firearm by an Alien Illegally Present, in violation of 18 U.S.C. § 922(g)(5)(A), is a
11 Class C felony which carries a term of imprisonment up to 10 years; a fine not to
12 exceed \$250,000; not more than three years of supervised release; restitution; and a
13 \$100.00 special penalty assessment. Defendant further understands that a violation of
14 a condition of supervised release carries an additional penalty of re-imprisonment for
15 all or part of the term of supervised release without credit for time previously served
16 on post-release supervision.

17 2. Denial of Federal Benefits:

18 Defendant understands that by entering a plea of guilty to Count 1 of the
19 Superseding Indictment in this case, Defendant may no longer be eligible for
20 assistance under any state program funded under part A of title IV of the Social
21 Security Act (concerning Temporary Assistance for Needy Families) or benefits under
22 the food stamp program or any state program carried out under the Food Stamp Act
23 pursuant to 21 U.S.C. § 862a. Further, the Court may deny Defendant's eligibility to
24 any grant, contract, loan, professional license, or commercial license provided by an
25 agency of the United States or by appropriated funds of the United States pursuant to
26 21 U.S.C. § 862.

1 3. Effect on Immigration Status:

2 Defendant understands that pleading guilty may have consequences with
3 respect to his immigration status if he is not a citizen of the United States. Under
4 federal law, a broad range of crimes are removable offenses, including the offenses to
5 which Defendant is pleading guilty. Indeed, because Defendant is pleading guilty to
6 with Conspiracy to Distribute 500 Grams or More of a Mixture Containing a
7 Detectable Amount of Methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1),
8 (b)(1)(A)(viii), removal is presumptively mandatory. Removal and other immigration
9 consequences are the subject of a separate proceeding, however, and Defendant
10 understands that while deportation and/or removal from the United States appears to
11 be a virtual certainty, no one, including his attorney or the District Court, can predict
12 with absolute certainty the effect of his convictions on his immigration status.
13 Defendant nevertheless affirms that he wants to plead guilty regardless of any
14 immigration consequences that his guilty plea may entail, even if automatic removal
15 from the United States upon completion of any sentence of incarceration is a virtual
16 certainty.

17 4. The Court is Not a Party to the Plea Agreement:

18 The Court is not a party to this Plea Agreement and may accept or reject this
19 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
20 Court. Defendant understands that the Court is under no obligation to accept any
21 recommendations made by the United States and/or by Defendant; that the Court will
22 obtain an independent report and sentencing recommendation from the U.S. Probation
23 Office; and that the Court may, in its discretion, impose any sentence it deems
24 appropriate up to the statutory maximums stated in this Plea Agreement.

25 Defendant acknowledges that no promises of any type have been made to
26 Defendant with respect to the sentence the Court will impose in this matter.
27 Defendant understands that the Court is required to consider the applicable sentencing

1 guideline range, but may depart or vary upward or downward under the appropriate
2 circumstances.

3 Defendant also understands that should the sentencing judge decide not to
4 accept any of the parties' recommendations, that decision is not a basis for
5 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty
6 unless otherwise set forth in this Plea Agreement.

7 **5. Waiver of Constitutional Rights:**

8 Defendant understands that by entering this plea of guilty Defendant is
9 knowingly and voluntarily waiving certain constitutional rights, including:

10 a. The right to a jury trial;
11 b. The right to see, hear and question the witnesses;
12 c. The right to remain silent at trial;
13 d. The right to testify at trial; and
14 e. The right to compel witnesses to testify.

15 While Defendant is waiving certain constitutional rights, Defendant understands
16 Defendant retains the right to be assisted through the sentencing and any direct appeal
17 of the conviction and sentence by an attorney, who will be appointed at no cost if
18 Defendant cannot afford to hire an attorney. Defendant also acknowledges that any
19 pretrial motions currently pending before the Court are waived.

20 **6. Elements of the Offense:**

21 The United States and Defendant agree that in order to convict Defendant of
22 Count 1, Conspiracy to Distribute 500 Grams or More of a Mixture Containing a
23 Detectable Amount of Methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1),
24 (b)(1)(A)(viii), the United States would have to prove beyond a reasonable doubt the
25 following elements:

26 • First, beginning on a date unknown but by on or about September 21,
27 2016, continuing until on or about December 13, 2017, Defendant,
28 BULMARO-CONTRERAS-FIGUEROA, in the Eastern District of

1 Washington, entered into an agreement with one or more persons to
2 commit the crime of distribution of methamphetamine as charged in
3 the Superseding Indictment;

4 • Second, Defendant became a member of the conspiracy knowing of at
5 least one of its objects and intending to help accomplish it; and,
6 • Third, it was reasonably foreseeable to Defendant that the agreement
7 to distribute involved 500 grams or more of a mixture containing a
8 detectable amount of methamphetamine.

9 The United States and Defendant agree that in order to convict Defendant of
10 Count 46, Possession of a Firearm by an Alien Illegally Present, in violation of 18
11 U.S.C. § 922(g)(5)(A), the United States would have to prove beyond a reasonable
12 doubt the following elements:

13 • First, on or about December 13, 2017 in the Eastern District of
14 Washington, Defendant knowingly possessed a firearm, to wit: a
15 Smith & Wesson, model SD40VE, .40 caliber semi-automatic pistol,
16 bearing serial number FYX5662;
17 • Second, at the time Defendant possessed the firearms, Defendant was
18 an alien present in the United States illegally and unlawfully; and,
19 • Third, the firearm had all been shipped and transported in interstate
20 and foreign commerce.

21 7. Factual Basis and Statement of Facts:

22 The United States and Defendant stipulate and agree that the United States
23 could prove these facts beyond a reasonable doubt at trial; and these facts constitute an
24 adequate factual basis for Defendant BULMARO CONTRERAS-FIGUEROA's
25 guilty plea. This statement of facts does not preclude either party from presenting and
26 arguing, for sentencing purposes, additional facts which are relevant to the guideline
27 computation or sentencing, unless otherwise prohibited in this agreement:

1 Beginning on a date unknown but at least by September 21, 2016, and
2 continuing through December 13, 2017, in the Eastern District of Washington and
3 elsewhere, BULMARO CONTRERAS-FIGUEROA did knowingly and intentionally
4 combine, conspire, confederate and agree with others as charged in the Superseding
5 Indictment to distribute of 500 grams or more of a mixture or substance containing a
6 detectable amount of methamphetamine, a Schedule II controlled substance. During
7 the course of the conspiracy, BULMARO CONTRERAS-FIGUEROA distributed
8 over 500 grams of methamphetamine in the Eastern District of Washington.

9 On December 13, 2017, law enforcement officers executed a search warrant at
10 BULMARO CONTRERAS-FIGUEROA's residence in the Moses Lake, Washington
11 area. At BULMARO CONTRERAS-FIGUEROA's residence, law enforcement
12 officers seized nearly a kilogram of methamphetamine (928.3 grams). The Drug
13 Enforcement Administration later tested the methamphetamine seized at BULMARO
14 CONTRERAS-FIGUEROA's residence and determined the methamphetamine was
15 99% pure. BULMARO CONTRERAS-FIGUEROA admits that methamphetamine
16 found at his residence on December 13, 2017 was his methamphetamine and that he
17 intended to distribute the methamphetamine as part of the conspiracy.

18 In addition to methamphetamine, law enforcement officers also found a Smith
19 & Wesson, model SD40VE, .40 caliber semi-automatic pistol, bearing serial number
20 FYX5662 at BULMARO CONTRERAS-FIGUEROA's residence. Law enforcement
21 officers determined that the firearm was manufactured outside of the state of
22 Washington. BULMARO CONTRERAS-FIGUEROA agrees that he knowingly
23 possessed the firearm on December 13, 2017 and that when he possessed the firearm,
24 he was an alien (a citizen of Mexico) illegally present in the United States.

25 8. The United States Agrees:

26 a. Not to File Additional Charges:

27 The United States Attorney's Office for the Eastern District of Washington
28 agrees not to bring any additional charges against Defendant based upon Defendant's

1 illegal activity charged in the Superseding Indictment in this matter, unless Defendant
2 breaches this Plea Agreement before sentencing. The United States agrees not to file
3 any notices pursuant to 21 U.S.C. § 851.

4 b. To Dismiss Charges:

5 At the time of sentencing, the United States agrees to dismiss the following
6 Counts in the Superseding Indictment: Possession with Intent to Distribute 50 Grams
7 or More of Methamphetamine (Actual) in violation of 21 U.S.C. § 841(a)(1),
8 (b)(1)(a)(viii) (Count 35); and, Possession of a Firearm by a Felon, in violation of 18
9 U.S.C. §§ 922(g)(1), 924(a)(2) (Count 36).

10 9. United States Sentencing Guideline Calculations:

11 Defendant understands and acknowledges that the United States Sentencing
12 Guidelines (hereinafter "USSG" or "Sentencing Guidelines") are applicable to this
13 case and that the Court will determine Defendant's applicable Sentencing Guidelines
14 range at the time of sentencing. Defendant and the United States each reserve the
15 right to advocate for any calculation of the USSG, including any enhancements or
16 reductions either party deems appropriate, unless otherwise prohibited by this Plea
17 Agreement. The United States reserves the right to oppose or support any reductions
18 to the base offense level proposed by Defendant. The United States also reserves the
19 right under this Plea Agreement to advocate for any other enhancements that may
20 apply under the USSG as suggested in the Pre-Sentence Investigative Report
21 ("PSIR").

22 a. Base Offense Level:

23 The parties have no agreement concerning the applicable base offense level
24 under the USSG with regard to Count 1, which charges Defendant with Conspiracy to
25 Distribute 500 Grams or More of a Mixture Containing a Detectable Amount of
26 Methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(viii).
27 Defendant is free to argue for any base offense level under USSG §2D1.1 that he
28 deems appropriate with regard to Count 1. The United States, however, believes the

1 base offense level applicable with regard to Count 1 is 36 pursuant to USSG
2 §2D1.1(c)(2) based on a quantity of 15 to 45 kilograms of methamphetamine.
3 Defendant acknowledges that the United States will advocate for a base offense level
4 of 36 pursuant to USSG §2D1.1(c)(2) and the United States acknowledges that
5 Defendant will advocate for a lesser base offense level pursuant to USSG §2D1.1.

6 The United States and Defendant agree the base offense level applicable in this
7 case with regard to Count 46, which charges Defendant with Possession of a Firearm
8 by an Alien Illegally Present, in violation of 18 U.S.C. § 922(g)(5)(A), may be 20
9 pursuant to USSG §2K2.1(a)(4) and Defendant believes the base offense level is 14
10 pursuant to USSG §2K2.1(a)(6).

11 b. Guideline Adjustments:

12 The United States and Defendant have no agreement regarding any
13 enhancements under the USSG. The United States, however, believes the following
14 enhancements apply with regard to Count 1: a two-level enhancement pursuant to
15 USSG §2D1.1(b)(1) for possession of dangerous weapons (firearms). The United
16 States also believes the following enhancements apply with regard to Count 46: a
17 four-level enhancement pursuant to USSG §2K2.1(b)(6) for possession of the firearm
18 in connection with another felony offense (Count 1). Defendant acknowledges and
19 that the United States will advocate for the USSG enhancements noted in this
20 paragraph. The United States acknowledges that Defendant will advocate against the
21 USSG enhancements noted in this paragraph.

22 Defendant is free to contest the applicability of any other USSG enhancements
23 noted in the PSIR and the United States is free to advocate for or against any other
24 USSG enhancements noted in the PSIR.

25 c. Acceptance of Responsibility:

26 If Defendant pleads guilty and demonstrates a recognition and an affirmative
27 acceptance of personal responsibility for the criminal conduct; provides complete and
28 accurate information during the sentencing process; does not commit any obstructive

PLEA AGREEMENT .

1 conduct; accepts this Plea Agreement; and provides written notification that he intends
2 to enter a plea of guilty no later than December 12, 2018, the United States will move
3 for a two (2) level downward adjustment in the offense level for Defendant's timely
4 acceptance of responsibility, pursuant to USSG §3E1.1(a). The United States agrees
5 to move for an additional one (1) level downward adjustment pursuant to USSG
6 §3E1.1(b) if the Court determines Defendant's adjusted offense level is 16 or higher.
7

7 Defendant and the United States agree that the United States may at its option
8 and upon written notice to Defendant, not recommend a two (2) or three (3) level
9 downward reduction for acceptance of responsibility (depending on Defendant's
10 underlying adjusted offense level) if, prior to the imposition of sentence, Defendant is
11 charged or convicted of any criminal offense whatsoever or if Defendant tests positive
12 for any controlled substance.

13 d. Criminal History:

14 The United States and the Defendant understand that the Defendant's criminal
15 history computation is tentative and that ultimately the Defendant's criminal history
16 category will be determined by the Court after review of the PSIR. As of this date, the
17 facts regarding the Defendant's criminal history are related in the Pretrial Services
18 Report in this case. The United States and the Defendant have made no agreement as
19 to the criminal history category, which shall be determined after the PSIR is
20 completed.

21 e. Guideline Range:

22 The parties have no agreement on the Defendant's advisory range of
23 imprisonment under the USSG.

24 10. Departures:

25 The Defendant is free to move for a departure under the USSG and/or a
26 variance pursuant to 18 U.S.C. § 3553. The United States agrees to not move for an
27 upward departure under the USSG and/or an upward variance pursuant to 18 U.S.C.
28 § 3553.

1 11. Incarceration:

2 a. Length of Imprisonment:

3 The United States agrees to recommend a sentence of imprisonment at the low
4 end of the guideline range as determined by the Court in the PSIR, subject to any
5 applicable mandatory minimum sentence of incarceration. Defendant is free to
6 recommend any legally permissible sentence he deems appropriate.

7 b. Bureau of Prison Recommendations:

8 The United States Attorney's Office for the Eastern District of Washington
9 acknowledges that Defendant may intend to request the Court to write a letter to the
10 United States Bureau of Prisons recommending that Defendant be allowed to serve the
11 sentence at a specific institution. Defendant understands that any decision concerning
12 Defendant's place of incarceration is within the exclusive province of the Bureau of
13 Prisons.

14 12. Criminal Fine:

15 The parties may recommend any fine they deem appropriate within the
16 applicable USSG range determined by the Court.

17 13. Supervised Release:

18 Defendant understands that the United States will request a term of supervised
19 release of at least five years. Defendant is free to request any permissible term of
20 supervised release. The United States is also free to recommend any special
21 conditions of supervision at the time of sentencing and during the period of supervised
22 release that it deems appropriate. Defendant is free to oppose any additional
23 conditions of supervision at the time of sentencing and during the period of supervised
24 release and is free to make any recommendation concerning the length of his
25 supervised release term.

26 14. Mandatory Special Penalty Assessment:

27 Defendant agrees to pay the \$100 mandatory special penalty to the Clerk of
28 Court for the Eastern District of Washington for each count of conviction at or before

1 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to
2 the United States before sentencing as proof of this payment.

3 15. Payments While Incarcerated:

4 If Defendant lacks the financial resources to pay the monetary obligations
5 imposed by the Court, Defendant agrees to earn the money to pay toward these
6 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
7 Program.

8 16. Restitution:

9 The parties have no agreement regarding restitution.

10 17. Additional Violations of Law Can Void Plea Agreement:

11 Defendant and the United States agree that the United States may at its option
12 and upon written notice to Defendant, withdraw from this Plea Agreement or modify
13 its recommendation for sentence if, prior to the imposition of sentence, Defendant is
14 charged or convicted of any criminal offense whatsoever occurring after the entry of a
15 guilty plea in this case or if Defendant tests positive for any controlled substance.

16 18. Waiver of Appeal and Collateral Attack Rights:

17 Defendant understands that he has a limited right to appeal or challenge the
18 conviction and sentence imposed by the Court. Defendant hereby expressly waives
19 his right to appeal his conviction, any restitution order, any fine, and the sentence of
20 incarceration the Court imposes with the exception that Defendant may appeal the
21 procedural and substantive reasonableness of any sentence of incarceration in excess
22 of ten years imprisonment. Defendant further expressly waives his right to file any
23 post-conviction motion attacking his conviction and sentence, including a motion
24 pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance of counsel
25 based on information not now known by Defendant and which, in the exercise of due
26 diligence, could not be known by Defendant by the time the Court imposes the
27 sentence.

19. Integration Clause:

1
2 The United States and Defendant acknowledge that this document constitutes
3 the entire Plea Agreement between the United States and Defendant, and no other
4 promises, agreements, or conditions exist between the United States and Defendant
5 concerning the resolution of the case. This Plea Agreement is binding only upon the
6 United States Attorney's Office for the Eastern District of Washington, and cannot
7 bind other federal, state or local authorities. The United States and Defendant agree
8 that this agreement cannot be modified except in a writing that is signed by the United
9 States and Defendant.

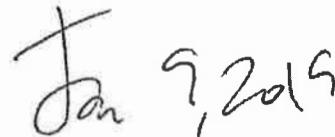
10 Approvals and Signatures

11 Agreed and submitted on behalf of the United States Attorney's Office for the
12 Eastern District of Washington.

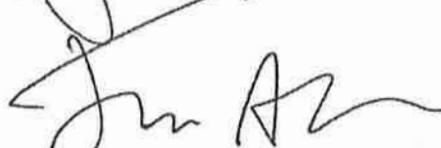
13 Joseph H. Harrington
14 United States Attorney



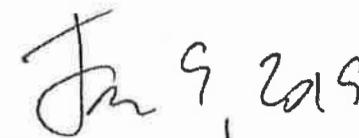
15 Date



16 James A. Goeke
17 Assistant U.S. Attorney



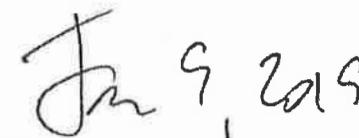
18 Date



19 David M. Herzog
20 Assistant U.S. Attorney



21 Date



22 I have read this Plea Agreement and have carefully reviewed and discussed
23 every part of the agreement with my attorney. I understand and voluntarily enter into
24 this Plea Agreement. I have also consulted with my attorney about my rights, I
25 understand those rights, and I am satisfied with the representation of my attorney in
26 this case. No other promises or inducements have been made to me, other than those
27

1 contained in this Plea Agreement and no one has threatened or forced me in any way
2 to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.
3
4 *Burn*

5 BULMARO CONTRERAS-FIGUEROA
6 Defendant

Date 1-9-19

7 I have read this Plea Agreement and have discussed the contents of the
8 agreement with my client. The Plea Agreement accurately and completely sets forth
9 the entirety of the agreement between the parties. I concur in my client's decision to
10 plead guilty as set forth in the Plea Agreement. There is no legal reason why the
11 Court should not accept Defendant's plea of guilty.
12

13 *Stephen R. Hormel*
14 Stephen R. Hormel
15 Attorney for the Defendant

Date 1/9/18

16 *Zachary L. Ayers*
17 Zachary L. Ayers
18 Attorney for the Defendant
19

1-9-19
Date

20 I certify that this Plea Agreement was read in its entirety to Defendant in a
21 language he understands.
22

23 *Bea Perry*
24 Interpreter

Date 1-9-19

Jul 10, 2019

SEAN F. MCALVOY, CLERK

UNITED STATES DISTRICT COURT
Eastern District of WashingtonUNITED STATES OF AMERICA
v.

BULMARO CONTRERAS-FIGUEROA

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17-CR-00229-TOR-4

USM Number: 20742-085

Stephen R Hormel / Zachary L Ayers

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 and 46 of the Superseding Indictment

pleaded nolo contendere to count(s) _____

which was accepted by the court.

was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>/</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC 846, 841(a)(1), (b)(1)(A)(viii)	CONSPIRACY TO DISTRIBUTE 500 GRAMS OR MORE OF A MIXTURE OR SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF METHAMPHETAMINE		12/13/2017	1s
18 USC 922(g)(5)(A)	POSSESSION OF A FIREARM BY AN ALIEN ILLEGALLY PRESENT		12/13/2017	46s

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

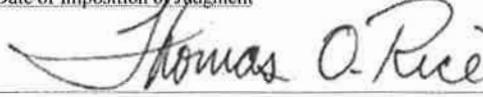
The defendant has been found not guilty on count(s) _____

Count(s) 35 & 36 of the Superseding Indictment is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/10/2019

Date of Imposition of Judgment



Signature of Judge

The Honorable Thomas O. Rice
Name and Title of Judge

Chief Judge, U.S. District Court

7/10/2019

Date

DEFENDANT: BULMARO CONTRERAS-FIGUEROA
Case Number: 2:17-CR-00229-TOR-4

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 220 months as to Count 1s; 120 months as to Count 46s; Terms to run concurrent.

The court makes the following recommendations to the Bureau of Prisons:

Defendant receive credit for the time served in federal custody prior to sentencing in this matter.
Defendant participate in the BOP Inmate Financial Responsibility Program.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BULMARO CONTRERAS-FIGUEROA
Case Number: 2:17-CR-00229-TOR-4**SUPERVISED RELEASE**

Upon release from imprisonment, you shall be on supervised release for a term of: 5 years as to Count 1s; 3 years as to Count 46s; Terms to run concurrent.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance, including marijuana, which remains illegal under federal law.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must be truthful when responding to the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If this judgment imposes restitution, a fine, or special assessment, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment. You shall notify the probation officer of any material change in your economic circumstances that might affect your ability to pay any unpaid amount of restitution, fine, or special assessments.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: BULMARO CONTRERAS-FIGUEROA
Case Number: 2:17-CR-00229-TOR-4

SPECIAL CONDITIONS OF SUPERVISION

1. If removed or deported from the United States, you are prohibited from returning to the United States without advance legal permission from the United States Attorney General or his designee. Should you reenter the United States, you are required to report to the probation office within 72 hours of reentry.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: BULMARO CONTRERAS-FIGUEROA
Case Number: 2:17-CR-00229-TOR-4**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
for the		
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BULMARO CONTRERAS-FIGUEROA
Case Number: 2:17-CR-00229-TOR-4**SCHEDEULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ due immediately, balance due _____, or
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Defendant shall participate in the BOP Inmate Financial Responsibility Program. During the time of incarceration, monetary penalties are payable on a quarterly basis of not less than \$25.00 per quarter.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the following address until monetary penalties are paid in full: Clerk, U.S. District Court, Attention: Finance, P.O. Box 1493, Spokane, WA 99210-1493.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.