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7



8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,  
11 Plaintiff,  
12  
13 v.  
14 Franklin Daniel Hernandez-Cruz,  
15 Defendant.

Case No. CR-24-00328-PHX-DGC (DMF)  
Mag. No. 24-05059MJ

**PLEA AGREEMENT**  
**(Modified Fast Track § 5K3.1)**

16 Plaintiff, United States of America, and the defendant, Franklin Daniel  
17 Hernandez-Cruz, hereby agree to dispose of this matter on the following terms and  
18 conditions:

19 **1. PLEA**

20 The defendant will plead guilty to an Information charging a violation of Title 8,  
21 United States Code (U.S.C.), Section 1326(a), with a possible sentencing enhancement  
22 under Section 1326(b)(1), Reentry of Removed Alien.

23 **2. MAXIMUM PENALTIES**

24 a. A violation of 8 U.S.C. § 1326(a), a Class E felony, is punishable by a  
25 maximum term of imprisonment of two years and a maximum term of supervised release  
26 of one year. If a sentencing enhancement under 8 U.S.C. § 1326(b)(1), a Class C felony,  
27 is applicable, then the maximum term of imprisonment is 10 years and the maximum term  
28 of supervised release is three years. If a sentencing enhancement under 8 U.S.C.

1 § 1326(b)(2), a Class C felony, is applicable, then the maximum term of imprisonment is  
2 20 years and the maximum term of supervised release is three years. A maximum fine of  
3 \$250,000 may be imposed in addition to any sentence of imprisonment. A maximum term  
4 of probation is five years, including a minimum term of one year if probation is imposed.

5 b. According to the Sentencing Guidelines issued pursuant to the Sentencing  
6 Reform Act of 1984, the Court shall order the defendant to:

7 (1) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a  
8 fine is not appropriate;

9 (2) serve a term of supervised release when required by statute or when a  
10 sentence of imprisonment of more than one year is imposed (with the understanding that  
11 the Court may impose a term of supervised release in all other cases); and

12 (3) pay upon conviction a \$100 special assessment for each count to  
13 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

14 c. The Court is required to consider the Sentencing Guidelines in determining  
15 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court  
16 is free to exercise its discretion to impose any reasonable sentence up to the maximum set  
17 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that  
18 the Court accepts.

19 d. The defendant recognizes that pleading guilty may have consequences with  
20 respect to the defendant's immigration status if the defendant is a recently naturalized  
21 United States citizen or is not a citizen of the United States. Under federal law, a broad  
22 range of crimes are removable offenses, including the offense to which the defendant is  
23 pleading guilty. Although there may be exceptions, the defendant understands that the  
24 defendant's guilty plea and conviction for this offense make it practically inevitable and a  
25 virtual certainty that the defendant will be removed or deported from the United States.  
26 The defendant agrees that the defendant has discussed this eventuality with the defendant's  
27 attorney. The defendant nevertheless affirms that the defendant wants to plead guilty  
28

1 regardless of any immigration consequences that this plea entails, even if the consequence  
2 is the defendant's automatic removal from the United States.

3 **3. AGREEMENTS REGARDING SENTENCING**

4 a. Stipulation: Acceptance of Responsibility. Pursuant to Fed. R. Crim. P.  
5 11(c)(1)(C), if the defendant makes full and complete disclosure to the U.S. Probation  
6 Office of the circumstances surrounding the defendant's commission of the offense, and if  
7 the defendant demonstrates an acceptance of responsibility for this offense up to and  
8 including the time of sentencing, the United States will stipulate and agree to a two-level  
9 reduction pursuant to U.S.S.G. § 3E1.1. If the defendant has an offense level of 16 or more,  
10 the United States will move for an additional one-level reduction pursuant to U.S.S.G.  
11 § 3E1.1.

12 b. Stipulated Sentence Under Early Disposition Program. Although the parties  
13 understand that the Sentencing Guidelines are only advisory, and just one of the factors the  
14 Court will consider under 18 U.S.C. § 3553(a), pursuant to Fed. R. Crim. P. 11(c)(1)(C)  
15 the United States and the defendant stipulate and agree that the following is an appropriate  
16 disposition of this case:

17 (1) The defendant shall receive a two-level downward departure under  
18 U.S.S.G. § 5K3.1. The United States and the defendant stipulate and agree that the  
19 defendant's sentence shall not exceed the high end of the final adjusted Sentencing  
20 Guidelines range. If the defendant requests or the Court authorizes any adjustments or  
21 departures pursuant to the Sentencing Guidelines other than the two-level departure  
22 provided under this subparagraph, the United States may withdraw from this agreement.  
23 However, nothing in this agreement shall preclude the defendant from arguing for, or the  
24 Court from granting, a variance under 18 U.S.C. § 3553(a) in support of a sentence below  
25 the final advisory Sentencing Guideline range. The United States reserves the right to  
26 oppose any variance.

27 (2) If the defendant does not qualify for an increase to the defendant's  
28 base offense level pursuant to U.S.S.G. § 2L1.2(b), then in lieu of the departures listed in

1 subparagraph (1) above, the defendant's sentence shall not exceed the greater of time  
2 served or the following caps:

- 3 Three months of imprisonment if defendant's Criminal History Category is I;  
4 Four months of imprisonment if defendant's Criminal History Category is II;  
5 Five months of imprisonment if defendant's Criminal History Category is III;  
6 Six months of imprisonment if the defendant's Criminal History Category is IV;  
7 Nine months of imprisonment if defendant's Criminal History Category is V; and  
8 Twelve months and one day of imprisonment if the defendant's Criminal History  
9 Category is VI.

10 **4. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

11 a. If the Court, after reviewing this plea agreement, concludes that any  
12 provision contained herein is inappropriate, it may reject the plea agreement and give the  
13 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.  
14 11(c)(5).

15 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,  
16 vacated, or reversed at any time, this agreement shall be null and void, the United States  
17 shall be free to prosecute the defendant for all crimes of which it then has knowledge and  
18 any charges that have been dismissed because of this plea agreement shall automatically  
19 be reinstated. In such event, the defendant waives any and all objections, motions, and  
20 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional  
21 restrictions in bringing later charges or proceedings. The defendant understands that any  
22 statements made at the time of the defendant's change of plea or sentencing may be used  
23 against the defendant in any subsequent hearing, trial, or proceeding subject to the  
24 limitations of Fed. R. Evid. 410.

25 **5. WAIVER OF DEFENSES AND APPEAL RIGHTS**

26 The defendant waives (1) any and all motions, defenses, probable cause  
27 determinations, and objections that the defendant could assert to the indictment or  
28 information; and (2) any right to file an appeal, any collateral attack, and any other writ or

1 motion that challenges the conviction, an order of restitution or forfeiture, the entry of  
2 judgment against the defendant, or any aspect of the defendant's sentence, including the  
3 manner in which the sentence is determined, including but not limited to any appeals under  
4 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255  
5 (habeas petitions), and any right to file a motion for modification of sentence, including  
6 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under  
7 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall  
8 result in the dismissal of any appeal, collateral attack, or other motion the defendant might  
9 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.  
10 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective  
11 assistance of counsel or of “prosecutorial misconduct” (as that term is defined by Section  
12 II.B of Ariz. Ethics Op. 15-01 (2015)).

13 **6. REINSTATEMENT OF REMOVAL, DEPORTATION OR EXCLUSION OR**  
14 **STIPULATION TO REMOVAL; EFFECT ON OTHER PROCEEDINGS**

15 The defendant admits that the defendant was the subject of a previous order of  
16 removal, deportation or exclusion. The defendant agrees to the reinstatement of that  
17 previous order of removal, deportation or exclusion. The defendant admits that the  
18 defendant does not have a fear of returning to the country designated in the previous order.  
19 If this plea agreement is accepted by the Court, the defendant agrees not to contest, either  
20 directly or by collateral attack, the reinstatement of the prior order of removal, deportation  
21 or exclusion. The defendant understands that this agreement does not preclude the United  
22 States from instituting any civil or administrative proceedings as may be appropriate now  
23 or in the future.

24 **7. DISCLOSURE OF INFORMATION**

25 a. The United States retains the unrestricted right to provide information and  
26 make any and all statements it deems appropriate to the U.S. Probation Office and to the  
27 Court in connection with the case.  
28

1           b. Any information, statements, documents, and evidence that the defendant  
2 provides to the United States pursuant to this agreement may be used against the defendant  
3 at any time.

4           c. The defendant shall cooperate fully with the U.S. Probation Office. Such  
5 cooperation shall include providing complete and truthful responses to questions posed by  
6 the U.S. Probation Office including, but not limited to, questions relating to:

- 7                   (1) criminal convictions, history of drug abuse, and mental illness; and  
8                   (2) financial information, including present financial assets or liabilities  
9 that relate to the ability of the defendant to pay a fine or restitution.

10 **8. ELEMENTS**

11 **Reentry of Removed Alien**

12 On or about February 1, 2024, in the District of Arizona:

- 13 1. The defendant was an alien;  
14 2. The defendant had been previously denied admission, excluded, deported, or  
15 removed from the United States;  
16 3. The defendant knowingly and voluntarily reentered or was present after a  
17 voluntary entry and found in the United States in the District of Arizona; and  
18 4. The defendant did not obtain the express consent of the Attorney General or  
19 the Secretary of Homeland Security to reapply for admission to the United States prior to  
20 returning to the United States.

21 **9. FACTUAL BASIS**

22 a. The defendant admits that the following facts are true and that if this matter  
23 were to proceed to trial the United States could prove the following facts beyond a  
24 reasonable doubt:

25  
26 I, Franklin Daniel Hernandez-Cruz, am not a citizen or national of the United  
27 States. I was removed from the United States through Mesa, Arizona on  
28 October 19, 2023. I was voluntarily present and found in the United States  
at or near Casa Grande, Arizona on February 1, 2024. I was not under the  
constant, continuous observation of immigration authorities from the time I  
crossed the border until the time I was found on February 1, 2024. I did not

1 obtain the express consent of the United States government to reapply for  
admission to the United States prior to returning to the United States.

2 For sentencing purposes, I admit I was convicted of Possession with the  
3 Intent to Distribute Fentanyl, a felony, on October 5, 2023 in the Northern  
District of California. I was represented by an attorney, and I was sentenced  
4 to time served imprisonment and three years of supervised release.

5 b. The defendant shall swear under oath to the accuracy of this statement and,  
6 if the defendant should be called upon to testify about this matter in the future, any  
7 intentional material inconsistencies in the defendant's testimony may subject the defendant  
8 to additional penalties for perjury or false swearing, which may be enforced by the United  
9 States under this agreement.

10 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

11 This agreement has been read to me in Spanish, and I have carefully reviewed every  
12 part of it with my attorney. I understand it and I voluntarily agree to it.

13 I have discussed the case and my constitutional and other rights with my attorney.  
14 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,  
15 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to  
16 present evidence in my defense, to remain silent and refuse to be a witness against myself  
17 by asserting my privilege against self-incrimination, all with the assistance of counsel, and  
18 to be presumed innocent until proven guilty beyond a reasonable doubt.

19 I agree to enter my guilty plea as indicated above on the terms and conditions set  
20 forth in this agreement.

21 I have been advised by my attorney of the nature of the charges to which I am  
22 entering my guilty plea. I have further been advised by my attorney of the nature and range  
23 of the possible sentence and that my ultimate sentence shall be determined by the Court  
24 after consideration of the advisory Sentencing Guidelines.

25 My guilty plea is not the result of force, threats, assurances, or promises, other than  
26 the promises contained in this agreement. I voluntarily agree to the provisions of this  
27 agreement and I agree to be bound according to its provisions.  
28

1 I understand that if I am granted probation or placed on supervised release by the  
2 Court, the terms and conditions of such probation/supervised release are subject to  
3 modification at any time. I further understand that if I violate any of the conditions of my  
4 probation/supervised release, my probation/supervised release may be revoked and upon  
5 such revocation, notwithstanding any other provision of this agreement, I may be required  
6 to serve a term of imprisonment or my sentence otherwise may be altered.

7 This written plea agreement, and any written addenda filed as attachments to this  
8 plea agreement, contain all the terms and conditions of the plea. Any additional  
9 agreements, if any such agreements exist, shall be recorded in a separate document and  
10 may be filed with the Court under seal; accordingly, additional agreements, if any, may not  
11 be in the public record.

12 I further agree that promises, including any predictions as to the Sentencing  
13 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone  
14 (including my attorney) that are not contained within this written plea agreement, are null  
15 and void and have no force and effect.

16 I am satisfied that my defense attorney has represented me in a competent manner.

17 I fully understand the terms and conditions of this plea agreement. I am not now  
18 using or under the influence of any drug, medication, liquor, or other intoxicant or  
19 depressant that would impair my ability to fully understand the terms and conditions of this  
20 plea agreement.

21  
22 2/23/24  
Date

21  
22 FHC  
FRANKLIN DANIEL HERNANDEZ-CRUZ  
Defendant

23  
24 **APPROVAL OF DEFENSE COUNSEL**

25 I have discussed this case and the plea agreement with my client in detail and have  
26 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the  
27 constitutional and other rights of an accused, the factual basis for and the nature of the  
28 offense to which the guilty plea will be entered, possible defenses, and the consequences

1 of the guilty plea including the maximum statutory sentence possible. I have further  
2 discussed the concept of the advisory Sentencing Guidelines with the defendant. No  
3 assurances, promises, or representations have been given to me or to the defendant by the  
4 United States or any of its representatives that are not contained in this written agreement.  
5 I concur in the entry of the plea as indicated above and that the terms and conditions set  
6 forth in this agreement are in the best interests of my client. I agree to make a bona fide  
7 effort to ensure that the guilty plea is entered in accordance with all the requirements of  
8 Fed. R. Crim. P. 11.

9 I translated or had translated this agreement from English into Spanish to the  
10 defendant on the 23 day of February, 2024.

11  
12 2/23/24  
13 Date

11  
12   
13 MICHAEL REEVES  
14 Attorney for Defendant

15 **APPROVAL OF THE UNITED STATES**

16 I have reviewed this matter and the plea agreement. I agree on behalf of the United  
17 States that the terms and conditions set forth herein are appropriate and are in the best  
18 interests of justice.

19 GARY M. RESTAINO  
20 United States Attorney  
21 District of Arizona

22 2/12/2024  
23 Date

22 Vanessa A. Kubota  
23 VANESSA A. KUBOTA  
24 Assistant U.S. Attorney

25 **ACCEPTANCE BY THE COURT**

26  
27 \_\_\_\_\_  
28 Date

26  
27 \_\_\_\_\_  
28 United States District Judge