

United States District Court  
Southern District of Texas  
FILED

MAR 06 2013 2A

David J. Bradley, Clerk  
Laredo Division

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

UNITED STATES OF AMERICA

v.

GLORIA ESTHER ALMANZA

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§  
§

CRIMINAL NO. L-13-0061-3

**PLEA AGREEMENT**

The United States of America, by and through KENNETH MAGIDSON, United States Attorney for the Southern District of Texas and JOSE HOMERO RAMIREZ, Assistant United States Attorney, and defendant, GLORIA ESTHER ALMANZA, and defendant's counsel, pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

**The Defendant's Agreement**

1. The Defendant agrees to plead guilty to **COUNT THREE** of the Criminal Indictment. The Criminal Indictment charges defendant with **False Statement During the Purchase of a Firearm** in violation of Title 18, United States Code § 924(a)(1)(A). The Defendant, by entering this plea and plea agreement agrees that he/she is waiving any right to have the facts the law makes essential to the punishment either charged in the Criminal Indictment or proven to a jury.

### **Punishment Range**

2. The statutory maximum penalty for each violation of Title 18, United States Code, § 924(a)(1)(A), is a maximum term of imprisonment of not more than five (5) years; a fine of not more than \$250,000.00; and, a period of supervised release of not more than three (3) years. Title 18, U.S.C. §§ 3559(a) and 3583(b). Defendant acknowledges and understands that if he/she should violate the conditions of any period of supervised release which may be imposed as part of his/her sentence, then defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. Title 18, U.S.C. §§ 3559(a) and 3583(e)(3). Defendant understands that he/she cannot have the imposition or execution of the sentence suspended, nor is he/she eligible for parole.

### **Mandatory Special Assessment**

3. Pursuant to Title 18, U.S.C. § 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

### **Fine and Reimbursement**

4. Defendant understands that under the relevant statutes and United States Sentencing Guidelines, the Court is permitted to order Defendant to pay a fine that is

sufficient to reimburse the government for the costs of any imprisonment or term of supervised release; if any is ordered.

5. Defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately, and defendant will not attempt to avoid or delay payment. Defendant understands the Court will determine the amount of full restitution to compensate all victim(s).

6. Defendant agrees to make complete financial disclosure to the United States by truthfully executing a sworn financial statement (Form OBD-500), by the deadline set by the United States, or if no deadline is set, no later than sentencing. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms for the United States to obtain tax information, bank account records, credit history, and social security information. Defendant agrees to discuss or answer any questions by the United States relating to the Defendant's complete financial disclosure. Further, the Defendant agrees to make full restitution to any and all victim(s) of the offenses the Criminal Indictment charges against the Defendant regardless of the count(s) of conviction.

#### **Potential Immigration Consequences**

7. The defendant understands if he/she is not a citizen of the United States, the defendant's plea of guilty to COUNT THREE will result in a criminal conviction that could lead to the defendant's subsequent deportation, removal and/or exclusion from the United States. This conviction could also lead to the defendant being permanently barred

from legally entering the United States after being deported or removed. In addition, the defendant's attorney has advised the defendant of the potential immigration consequences that could come about as a result of the defendant's plea of guilty to COUNT THREE. After understanding the potential immigration consequences of pleading guilty to COUNT THREE, the defendant still wishes to plead guilty as detailed in this plea agreement.

### **Cooperation**

8. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentence Guidelines. The defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas. Should the defendant's cooperation, if any, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statement. The defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, not oppose the forfeiture of assets contemplated in paragraphs 20 and 21 of this agreement. The defendant understands and agrees that the United States may request that sentencing be deferred until that cooperation is complete.

9. The defendant understands and agrees that "fully cooperate" as used herein, includes providing all information relating to any criminal activity known to defendant, including but not limited to any other individuals involved in harboring and/or transporting aliens illegally in the United States. The defendant understands that such information

includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this plea agreement binds only the United States Attorney for the Southern District of Texas and defendant; it does not bind any other United States Attorney or any other unit of the Department of Justice;
- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (d) Defendant agrees to provide truthful, complete and accurate information and testimony and understands any false statements made by the defendant to the Grand Jury or at any court proceeding (criminal or civil), or to a government agent or attorney can and will be prosecuted under the appropriate perjury, false statement or obstruction statutes;
- (e) Defendant agrees to provide to the United States all documents in his/her possession or under his/her control relating to all areas of inquiry and investigation.
- (f) Should the recommended departure, if any, not meet the defendant's expectations, the defendant understands he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his plea.

#### **Waiver of Appeal**

10. Defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal a conviction and appeal the sentence imposed. Defendant agrees to waive the right to appeal the conviction, the sentence imposed or the manner in which the sentence was determined. Additionally, Defendant is aware that Title 28, U.S.C. § 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the conviction or

sentence has become final. Defendant waives the right to contest his/her conviction or sentence by means of any post-conviction proceeding.

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11. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he/she may have received from his/her counsel, the United States or the Probation Office, is a prediction, not a promise, **did not induce his/her guilty plea**, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence Defendant will receive.

12. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

#### **The United States' Agreements**

13. The United States agrees to each of the following:
- (a) If Defendant pleads guilty to **COUNT THREE** of the Criminal Indictment and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will move to dismiss any remaining counts of the Criminal Indictment at the time of sentencing;
  - (b) At the time of sentencing, the United States agrees not to oppose Defendant's anticipated request to the Court and the United States Probation Office that he/she receive a two (2) level downward adjustment pursuant to U.S.S.G. Section 3E1.1(a) should Defendant accept responsibility as contemplated by the Sentencing Guidelines;
  - (c) If Defendant qualifies for an adjustment under U.S.S.G. Section 3E1.1(a), and Defendant's guideline offense level prior to applying U.S.S.G. Section

3E1.1(a) is 16 or higher, the United States agrees to move the Court grant Defendant an additional one (1) level reduction in the defendant's guideline offense level for acceptance of responsibility pursuant to U.S.S.G. Section 3E1.1(b) based on the defendant timely notifying authorities of Defendant's intention to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources effectively.

### **United States' Non-Waiver of Appeal**

14. The United States reserves the right to carry out its responsibilities under statutory and guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2 and Title 18, U.S.C. § 3553(a);
- (e) to request the maximum sentence allowable by law, and to present evidence so supporting the maximum sentence;
- (f) to appeal the sentence imposed or the manner in which it was determined.

### **Sentence Determination**

15. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, as well as the provisions of

Title 18, U.S.C. § 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range. Defendant understands and agrees the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for any of those reasons alone or in combination, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

### **Rights at Trial**

16. Defendant represents to the Court that he/she is satisfied that his/her attorney has rendered effective assistance. Defendant understands that by entering into this agreement, he/she surrenders certain rights as provided in this plea agreement. Defendant



understands that the rights of a Defendant include the following:

- (a) If Defendant persisted in a plea of not guilty to the charges, Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the Court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his/her attorney would be allowed to cross-examine them. In turn, the defendant could, but would not be required, to present witnesses and other evidence on his/her own behalf. If the witnesses for Defendant would not appear voluntarily, he/she could require their attendance through the subpoena power of the court.
- (c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired to do so, he/she could testify on his/her own behalf.

#### **Factual Basis for Guilty Plea**

17. Defendant is pleading guilty because he/she is guilty of the charges contained in **COUNT THREE** of the Criminal Indictment, and the facts set forth for by the United States meet the elements of the crime he/she is pleading guilty to on this date. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish the Defendant's guilt:

In the course of an investigation, United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agents obtained ATF Forms 4473 for four (4) firearms that Defendant GLORIA ESTHER ALMANZA ("ALMANZA") had purchased

between 2011 and 2012.

<i>Purchase Date</i>	<i>Manufacturer</i>	<i>Model</i>	<i>Serial #</i>	<i>Caliber</i>	<i>FFL</i>
10/24/2011	Century International Arms	WASR-3		.223	Jacaman Guns & Ammo
10/26/2011	DPMS	A-15		.223	Kirkpatrick G&A
12/22/2011	Beretta	92FS		9mm	Academy #73
<i>1/5/2012</i>	<i>Century Arms</i>	<i>WASR-10</i>		<i>7.62x39mm</i>	<i>Jacaman Guns &amp; Ammo</i>

Agents met with ALMANZA on March 28, 2012 at her place of employment, the "El Oasis" Café, in Laredo, Texas. She was not Mirandized, but was advised she was free to end the interview or leave at any time. She agreed to talk to the agents.

She told agents that JOSE LUIS ESTRADA ("ESTRADA"), who is a Defendant named in 5:12-750, asked her to purchase each rifle for him. ESTRADA paid her between \$100-150 for each straw purchase. She claimed that ESTRADA accompanied her to the stores for each purchase, and told her which firearm to purchase. She filled out the ATF Form 4473, certifying falsely that she was the actual buyer, when she knew that she was making the straw purchase for ESTRADA. Each time ESTRADA paid the sales clerk directly and took possession of the firearm from the sales clerk.

She agreed to straw purchase the firearms because she needed the money.

The defendant judicially confesses and admits that on January 5, 2012, she knowingly made a false statement or representation to Jacaman Guns and Ammo, a federal

firearms licensee, during the purchase of a firearm, by falsely stating that she was the actual buyer of a Century Arms semi-automatic rifle, model WASR-10, in 7.62 x 39 millimeter, serial number \_\_\_\_\_, causing a false record to be entered by Jacaman Guns and Ammo.

### **Breach of Plea Agreement**

18. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, can and will be used against Defendant in any prosecution. Additionally, all statements made pursuant to this plea agreement will be admissible against Defendant who hereby waives the provisions of Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence.

19. Whether Defendant has breached any provision of this plea agreement, if contested by the parties, shall be determined by the Court in an appropriate proceeding during which Defendant's disclosures and documentary evidence shall be admissible and

during which the United States shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

### **Forfeiture**

20. This plea agreement is being entered into by the United States on the basis of Defendant's express representation that he/she will make a full and complete disclosure of all assets over which he/she exercises direct or indirect control, or in which he/she has any financial interest. Defendant agrees to forfeit whatever interest he/she may have in assets related to this case, including those assets listed in the Criminal Indictment. In addition, Defendant agrees to waive any and all interest in any asset which is the subject of any related administrative or judicial forfeiture proceeding, whether such proceeding is criminal or civil, or based on state or federal law.


21. Defendant consents to any agreed order of forfeiture or judgment, and further Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of Defendant's assets to deliver all funds and records of such assets to the United States. Defendant agrees to forfeit whatever interest Defendant has in assets related to this case. Defendant further stipulates and agrees that the property listed in the Criminal Indictment is subject to forfeiture.

### Complete Agreement

22. This written plea agreement, consisting of 16 pages, including the attached addendum of Defendant and his/her attorney, constitutes the complete plea agreement between the United States, Defendant and his/her counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him/her and that he/she is pleading guilty freely and voluntarily because he/she is guilty.

23. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Laredo, Texas, on March 6, , 2013.

  
GLORIA ESTHER ALMANZA  
Defendant

Subscribed and sworn to before me on March 6, , 2013.

DAVID J. BRADLEY  
UNITED STATES DISTRICT CLERK

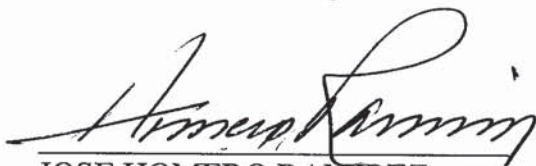
By:   
Deputy United States District Clerk

APPROVED:

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KENNETH MAGIDSON  
United States Attorney

By:



JOSE HOMERO RAMIREZ  
Assistant United States Attorney



EMILIO CHITO DAVILA  
Attorney for Defendant