



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
 :
 -v- :
 :
 NABIL AL-MARABH, :
 :
 :
 Defendant. :

01-CR-244-A

FILED



JUL 8 2002

CLERK OF DISTRICT COURT, W.D.N.Y.
OF 12 1/2 YEARS OF SERVICE
IN WESTERN NEW YORK
SLS/STB

PLEA AGREEMENT

The defendant, NABIL AL-MARABH, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to plead guilty to Count 1 of the Indictment against him, which charges a violation of Title 18, United States Code, Section 371 (conspiracy to smuggle an alien into the United States), which carries a maximum possible sentence of a term of imprisonment of 5 years, a fine of \$250,000, or both, a mandatory \$100 special assessment and a term of supervised release of at least 2 and up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

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2. The defendant understands that, if it is determined that the defendant has violated any of the terms and conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

3. The defendant understands that the sentence in this action will be determined pursuant to the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE OFFENSE

4. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this case had proceeded to trial, the government would have been required to prove, beyond a reasonable doubt, each of the following elements of such offense:



a) that the defendant and other persons conspired to unlawfully smuggle the defendant, an alien, into the United States in violation of law;

b) that the defendant or another member of the conspiracy committed at least one of the overt acts charged in the Indictment; and

c) that such overt act or acts were committed to further an objective of the conspiracy.

FACTUAL BASIS

5. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

On or about June 27, 2001, in the Western District of New York and elsewhere, the defendant unlawfully conspired with ALI ABDULRAHMAN and AHMED MURSHED to commit an offense against the United States, namely, smuggling of the defendant, an alien, into the United States, in violation of Title 8, United States Code, Section 1324(a)(2).

In furtherance of the conspiracy, the defendant and the other conspirators committed the following overt acts in the Western District of New York and elsewhere on or about June 27, 2001:

a) In Toronto, Ontario, Canada, the defendant, who was not a citizen of the United States, met with AHMED MURSHED at a market located on Dundas Street in Toronto.



b) The defendant and MURSHED drove to a donut shop in Woodbridge, Ontario. MURSHED left the defendant at the donut shop and departed.

c) Thereafter, a tractor-trailer truck arrived at the donut shop. The defendant left the donut shop and met with the driver of the truck, ALI ABDULRAHMAN. The defendant placed his luggage in the cab portion of the truck.

d) Thereafter, MURSHED drove another tractor-trailer truck to the donut shop. The defendant entered the cab section of this truck.

e) Thereafter, both trucks drove to a cargo distribution center in Ontario, Canada. Both trucks subsequently left the distribution center and drove toward the Lewiston Port of Entry from Canada to the United States at Lewiston, New York.

f) MURSHED drove his truck into the United States from Canada at the Lewiston Port of Entry at approximately 5:00 p.m. The defendant concealed himself in the sleeper section of the truck. The truck was sent from the primary inspection area to a secondary inspection location.

g) At the secondary inspection location, the defendant exited the truck and attempted to walk away from the area.



n) The defendant, when confronted by a United States Customs official, falsely claimed to be a Canadian citizen. The defendant possessed what were thereafter determined to be counterfeit Canadian identification documents, including a Canadian passport containing a counterfeit biographical/photograph page, in support of his claim of Canadian citizenship.

BASE OFFENSE LEVEL

6. The government and the defendant agree that Guidelines §2L1.1(a) applies to the offense of conviction and provides for a base offense level of 12.

SPECIFIC OFFENSE CHARACTERISTICS

USSG CHAPTER 2 ADJUSTMENTS

7. The government and the defendant agree that specific offense characteristic 2L1.1(b) (1) (A) applies because the defendant committed this offense other than for profit. Thus, the offense level is reduced by 3 levels to level 9.

ADJUSTED OFFENSE LEVEL

8. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 9.



ACCEPTANCE OF RESPONSIBILITY

9. At sentencing, the government agrees to recommend that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility), which would result in a total offense level of 7.

CRIMINAL HISTORY CATEGORY

10. The parties have reviewed the defendant's criminal history. It is the understanding of the government and the defendant that the defendant's criminal history category is II. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's ultimate determination of her criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

11. It is the understanding of the government and the defendant that with an adjusted offense level of 7 and criminal history category of II. Thus, the defendant's sentencing range would be a term of imprisonment of 2 to 8 months, a fine of \$500 to \$5,000, and a period of supervised release of at least 2, and up to 3 years.



Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in paragraph 1 of this agreement.

12. The defendant understands that the Probation Office will make an independent determination of the defendant's total offense level and criminal history category and that the Court will ultimately determine the appropriate total offense level and criminal history category. The defendant will not be entitled to withdraw the plea of guilty because of the Court's failure to adopt any Sentencing Guidelines calculations set forth in this agreement or because of an upward departure made by the Court.

III. STATUTE OF LIMITATIONS

13. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees not to assert the statute of limitations as a defense to any criminal offense involving or related to alien smuggling which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.



IV. MISCELLANEOUS

14. The defendant understands that a conviction in this matter will have consequences regarding his ability to enter the United States in the future. The defendant acknowledges that he is subject to deportation from the United States and he agrees to assist the government in obtaining any necessary travel documents required to effectuate his deportation.

V. GOVERNMENT RIGHTS AND RESERVATIONS

15. The defendant understands that the government has reserved the right to:

a. provide information and evidence to the Probation Office and the Court which the government deems relevant about the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

c. modify its position with respect to any recommendation the government has agreed to make, to refrain from making, or to not oppose, including making a motion for an upward departure in the event that subsequent to this agreement the government receives previously unknown information regarding the defendant and any recommendations, however,

d. the government will not oppose a sentence which represents the time-served by the defendant in this case as of the date of sentencing.



16. At sentencing, the government will move to dismiss the remaining counts in the Indictment pending against the defendant.

17. The government agrees that this plea is in full satisfaction of any other federal criminal offenses committed in the Western District of New York involving or related to the defendant's involvement in the alien smuggling, making of false statements and possession of false identification documents on or about June 27, 2001, underlying the Indictment in this case.

VI. APPEAL RIGHTS

18. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2) and collaterally attack any sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement.

19. The government waives its right to appeal any sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release



set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement.

VII. TOTAL AGREEMENT AND AFFIRMATIONS

20. This plea agreement represents the total agreement between the defendant and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

MICHAEL A. BATTLE
 United States Attorney
 Western District of New York

BY: Marc Gromis
 MARC GROMIS
 Assistant U.S. Attorney
 Dated: June 28, 2002

I have read this agreement which consists of 10 pages. I have had a full opportunity to discuss this agreement with my attorney. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement and am signing this agreement voluntarily and of my own free will.

Nabil Al-Marabh
 NABIL AL-MARABH
 Defendant
 Dated: July 8, 2002

Marianne Mariano
 MARIANNE MARIANO, Esq.
 Attorney for the Defendant
 Dated: July 8, 2002