



### **Punishment Range**

2. The statutory maximum penalty for each violation of Title 18, United States Code, Section 554(A), is imprisonment of not more than ten years and a fine of not more than \$250,000. Additionally, the defendant may receive a term of supervised release after imprisonment of up to three years. Title 18, U.S.C. §§ 3559(a)(3) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then defendant may be imprisoned for the entire term of supervised release up to two years, without credit for time already served on the term of supervised release prior to such violation. Title 18, U.S.C. §§ 3559(a)(3) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he 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 Sentencing Guidelines, the Court is permitted to order the 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.

6. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing if he is requested to do so. In the event that the Court imposes a fine or orders the payment of restitution as part of the Defendant's sentence, the Defendant shall make complete financial disclosure by truthfully executing a sworn financial statement immediately following his sentencing. Further, the Defendant agrees to full restitution to the victim(s) regardless of the counts of conviction.

### **Immigration Consequences**

7. If the defendant is not a citizen of the United States, a plea of guilty may result in deportation, exclusion from admission to the United States, or the denial of naturalization.

### **Waiver of Appeal**

8. Defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The defendant agrees to waive the right to appeal the sentence imposed or the manner in which it was determined. The defendant may appeal only a sentence imposed above the statutory maximum. Additionally, the 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. The defendant waives the right to contest his conviction or sentence by means of any post-conviction proceeding.

9. In agreeing to these waivers, defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he may have received from his counsel, the United States or the Probation Office, is a prediction, not a promise, **did not induce his 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 the defendant will receive. 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.

10. The 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. **If the defendant instructs his attorney to file a notice of appeal at the time sentence is imposed or at any time thereafter, the United States will seek specific performance of these provisions.**

#### **The United States’ Agreements**

11. The United States agrees to each of the following:
  - (a) If defendant pleads guilty to Count Six (6) of the First Superseding Indictment and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will dismiss Counts One (1) through Five (5) of the First Superseding Indictment

and the underlying Indictment against the Defendant;

- (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 receive a two (2) level downward adjustment pursuant to U.S.S.G. Section 3E1.1(a) should the defendant accept responsibility as contemplated by the Sentencing Guidelines; and
- (c) If the defendant qualifies for an adjustment under U.S.S.G. Section 3E1.1(a), the offense level determined prior to the operation of 3E1.1(a) is level 16 or greater, and the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate resources efficiently, the United States agrees to request an additional one level downward adjustment.

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

12. The United States reserves the right to carry out its responsibilities under 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); and,
- (e) to appeal the sentence imposed or the manner in which it was

determined.

### **Sentence Determination**

13. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, 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 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 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 that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

### **Rights at Trial**

14. Defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. Defendant understands that by entering into

this agreement, he 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 the 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 the defendant. Defendant would have the opportunity to confront those witnesses and his 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 own behalf. If the witnesses for defendant would not appear voluntarily, he 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 could testify on his own behalf.

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

15. Defendant is pleading guilty because he is guilty of the charges contained in Count Six (6) of the First Superseding Indictment. 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:

Beginning on or about June 1, 2010 and continuing until February 25, 2011,



in the Houston Division of the Southern District of Texas and elsewhere, Manuel Gomez Barba (BARBA) would and did recruit straw buyers to purchase Century Arms WASR-10 7.62x39mm caliber semi-automatic rifles, which traveled in foreign commerce since the firearm were manufactured in Romania, from Federally licensed firearms dealers (FFLs) and falsely represent that they were the actual buyers of the firearms. The straw buyers would mark that they were the actual buyers of the firearms on the ATF 4473 form, when in fact they were purchasing the firearms for BARBA. The straw buyers would be directed to a particular FFL, and then would buy multiple Century Arms WASR-10 7.62x39mm caliber semi-automatic rifles. Once the straw buyer purchased the firearms, they would deliver the firearms to BARBA, who would in turn provide the firearms to others. BARBA informed the straw buyers not to worry about the firearms being traced back to them because the serial numbers were obliterated. He would also inform the straw buyers the firearms were being sent to Mexico.

Ten of the firearms purchased at J&J's Pawn Shop on August 20, 2010 were transported to BARBA's house in Baytown, Texas, in the Houston Division of the Southern District of Texas, where the serial numbers were obliterated before the firearms were picked up to be delivered to Mexico. On February 25, 2011, one of these firearms was recovered in Mexico. It was determined through ballistic

testing of the shell casings, and the raising of the obliterated serial number from one of the Century Arms WASR-10 7.62 x 39mm semi-automatic rifles, that this weapon was used in the shooting incident which killed Special Agent Zapata, ICE in Mexico on February 15, 2011. BARBA facilitated the purchase and exportation of at least forty-four (44) firearms during this time period.

A check with the United States Department of State and the United States Department of Commerce revealed that BARBA did not have the approval required to export or facilitate the exportation of firearms from the United States into Mexico.

#### **Breach of Plea Agreement**

16. 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 the 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 the United States 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, will be

used against defendant in any prosecution.

17. Whether the defendant has breached any provision of this plea agreement shall be determined solely by the United States through the United States Attorney's Office, whose judgment in that regard is final.

### **Forfeiture**

18. This plea agreement is being entered into by the United States on the basis of defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant agrees to forfeit whatever interest he may have in assets related to the commission of Federal firearm violations.

19. Defendant consents to any agreed order of forfeiture or judgment, and further agrees to take all steps necessary to pass clear title to forfeitable assets to the United States, including, but not limited to, surrendering of title, signing a consent decree, stipulating 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.

**Complete Agreement**

20. This written plea agreement, consisting of 15 pages, including the attached addendum of defendant and his attorney, constitutes the complete plea agreement between the United States, defendant and his 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 and that he is pleading guilty freely and voluntarily because he is guilty.

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

Filed at Houston, Texas, on October 31, 2011.

Manuel Barba  
Defendant

Subscribed and sworn to before me on October 31, 2011.

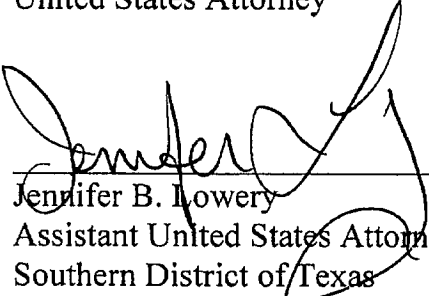
UNITED STATES DISTRICT CLERK  
DAVID J. BRADLEY

By: [Signature]  
Deputy United States District Clerk

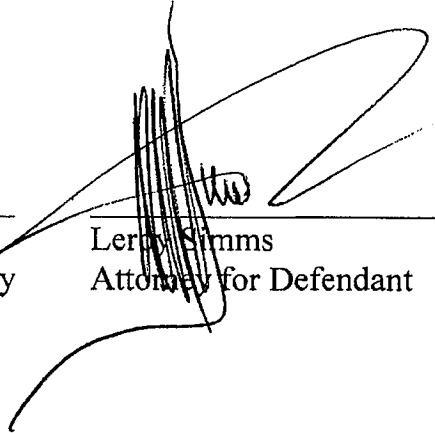
APPROVED:

KENNETH MAGIDSON  
United States Attorney

By:



Jennifer B. Lowery  
Assistant United States Attorney  
Southern District of Texas  
Telephone: 713/567-9830  
Facsimile: 713/718-3406



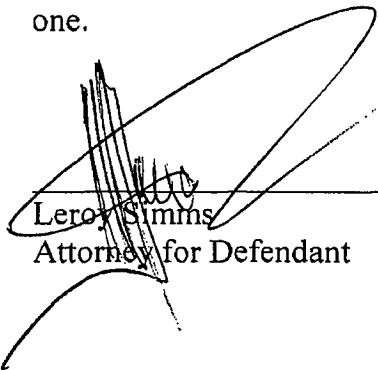
Leroy Simms  
Attorney for Defendant

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**UNITED STATES OF AMERICA** §  
v. § **CRIMINAL NO. H-11-87-S (01)**  
**MANUEL GOMEZ BARBA** §  
§

**PLEA AGREEMENT - ADDENDUM**

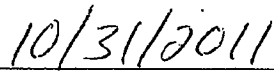
I have fully explained to defendant his rights with respect to the pending Indictment. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant's decision to enter into this agreement is an informed and voluntary one.

  
\_\_\_\_\_  
Leroy Simms  
Attorney for Defendant

\_\_\_\_\_  
10-31-2011  
Date

I have consulted with my attorney and fully understand all my rights with respect to the Indictment pending against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

  
\_\_\_\_\_  
MANUEL GOMEZ BARBA  
Defendant

  
\_\_\_\_\_  
Date