

IN THE UNITED STATES DISTRICT COURT **FILED**

FOR THE DISTRICT OF NEW MEXICO UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

NOV 2 2010

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
FIDEL R. GARZA,)
)
Defendant.)

MATTHEW J. DYKMAN
CLERK
Cr. No. 08-2845 WP

SECOND AMENDED PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **FIDEL R. GARZA**, and the Defendant's counsel, Jacquelyn Robins:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to be prosecuted by indictment;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. at a trial:
 - 1) to confront and cross-examine adverse witnesses,

- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to a Second Amended Information, charging a violation of 18 U.S.C. § 1343, that being Wire Fraud.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose is:
 - a. imprisonment for a period of not more than twenty years;
 - b. a fine not to exceed the greater of \$250,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;
 - c. a mandatory term of supervised release of not more than five years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - e. restitution as may be ordered by the Court.
5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. In this case, the Defendant agrees to pay restitution in the total principal approximate amount in excess of \$70,000.00 to the American Federation of Government Employees (AFGE) AFL-CIO Local Union (LU) 2063.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

AFGE Local Union 2063 President Thomas Driber alleged that former AFGE Local Union 2063 (LU 2063) President **Fidel Garza** used union funds for personal benefit by having devised a scheme to defraud the union. It was determined that the defendant, **Garza**, knowingly caused to be transmitted wire communications in making numerous cash withdrawals

by using the union's debit card and charging personal expenses on the union's credit card.

Garza retired in August 2004.

Garza held the office of AFGE LU 2063 President from at least January 1, 2000 through August 13, 2004. AFGE LU 2063 Bylaws stated that the president's duties were contained in Article XV, Section 1 of the Standard Constitution, which states, in part, the local presidents shall exercise general supervision over the affairs of their respective locals.

The investigation disclosed that **Garza** used two LU 2063 debit cards to make personal purchases and cash withdrawals on debit cards No. 000154901045 and No. 4635860000141889, which required wire transmissions across New Mexico state lines to complete the transactions. The debits and withdrawals totaled in excess of \$70,000.00 and were for **Garza's** personal benefit from January 1, 2003 through August 13, 2004. Also, the investigation showed that **Garza** unlawfully defrauded LU 2063 of a combined total in excess of \$70,000.00.

Local Union 2063 is a labor organization covered by the Civil Service Reform Act of 1978 (CSRA). AFGE LU 2063 met the definition of United States Code Title 5, Part III, Subpart F, Chapter 71, Subchapter 1, §7103(a)(4) because its members participated and paid dues and the local union bargained through AFGE National Union with a sole employer, which is the New Mexico Veterans Administration Health-Care Systems Hospital (NMVAHCS).

Labor Organization Annual Report Form LM-3 for fiscal years ending December 31, 2000, through December 31, 2003 listed **Garza** as the president for that time period, **Garza** signed the reports as president, and the form for fiscal year ending December 31, 2004 showed **Garza** as the past president. **Garza** was AFGE LU 2063 President from at least January 1, 2000 until his resignation on August 13, 2004.

Investigation showed that two debit cards were issued on AFGE LU 2063 account number 000154901045 held at Bank of America. The cards account numbers were 4635860000141889 and 4635860000141897. The total personal debits on debit card account number 4635860000141889 and debit card account number 4635860000141897 was an approximate total in excess of \$70,000.00.

STIPULATIONS

9. The United States and the Defendant stipulate as follows:

- a. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of ~~three~~ ^{TWO} levels from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement in which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes,

failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

- b. The Defendant agrees to pay full restitution to the American Federation of Government Employees (AFGE) AFL-CIO Local Union (LU) 2063. As of the date of the signing of this plea agreement, the parties estimate the approximate total principal loss to be in excess of \$70,000.00.
- c. Apart from the stipulations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

10. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. The Defendant understands that if the Court does not accept any one or more of the above stipulations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

12. If requested to do so by the United States Attorney's Office, the Defendant will submit a personal financial statement under oath and/or submit to interviews by the United States Attorney's Office regarding the Defendant's capacity to satisfy any fines and/or restitution.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction(s) and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal his conviction(s) and any sentence, including any order of restitution, within the applicable advisory guideline range as determined by the Court. The Defendant specifically agrees not to appeal the Court's resolution of any contested sentencing factor in determining the advisory sentencing guideline range. In other words, the Defendant waives the right to appeal both the Defendant's conviction(s) and the right to appeal any sentence imposed in this case except to the extent, if any, that the Court may depart or vary upward from the advisory sentencing guideline range as determined by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

GOVERNMENT'S AGREEMENT

14. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing on Second Amended Information CR 08-2845 WPJ, the United States will move to dismiss Indictment CR 08-2845 WPJ, Information CR 08-2845 WPJ and Amended Information CR 08-2845 WPJ.
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment and the Information to which he pleads .

15. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

16. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

17. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false

statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

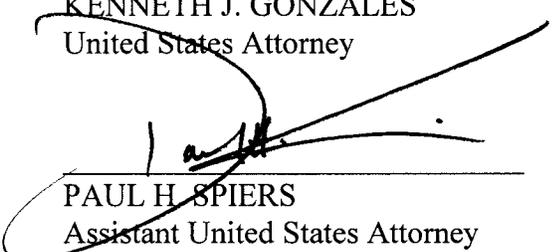
18. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the United States District Court in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

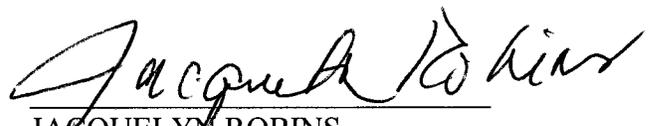
19. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 2nd day of November, 2010.

KENNETH J. GONZALES
United States Attorney



PAUL H. SPIERS
Assistant United States Attorney
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JACQUELYN ROBINS
Attorney for the Defendant

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.