

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

RICHARD IRIZARRY

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: **CRIMINAL NO. 99-180**
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GOVERNMENT’S CHANGE OF PLEA MEMORANDUM

I. INTRODUCTION/BACKGROUND

On April 6, 1999, defendant Richard Irizarry was charged in a One Count Indictment with possession of a firearm by a convicted felon in violation of 18 U.S.C. Section 922(g)(1).

II TERMS OF THE PLEA AGREEMENT

A plea agreement has been reached between defendant and the government and is incorporated by reference (attached as Exhibit A). In summary, the agreement provides that:

A. The defendant will:

1. Plead guilty to Count One of the Indictment charging him with unlawful possession of a firearm following a felony conviction, in violation of Title 18, United States Code, Section 922(g)(1) arising from the defendant’s possession of a Strum Ruger & Company 9 millimeter Luger semi-automatic pistol with an obliterated serial number which was loaded with four rounds of 9 millimeter ammunition.

2. The defendant agrees to voluntarily abandon all rights and claims to the Strum Ruger & Company 9 millimeter Luger semi-automatic pistol with an obliterated serial and the four rounds of 9 millimeter ammunition.
3. At the time of sentencing, the government will:
 - a. Make whatever sentencing recommendation as to fines and other matters the government deems appropriate
 - b. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to the sentencing and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the pre-sentence report or sentencing record; and rebut any statement of fact made by or on behalf of the defendant at sentencing.
 - c. Stipulate that as of the date of the guilty plea agreement, defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for the offense for which he is pleading guilty and, therefore, qualifies for the 2-level offense level reduction set forth in Section 3E1.1 of the Sentencing Guidelines.

III STATUTE INVOLVED

A. Title 18, U.S.C. Section 922(g)(1)

“[i]t shall be unlawful for any person. . . (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition. . .”.

To establish a *prima facie* violation of Section 922(g)(1) by the defendant, the government must present evidence which proves beyond a reasonable doubt the following three elements:

- (1) the defendant had been convicted at the time of his arrest of a crime punishable by imprisonment for more than one year;
- (2) the defendant possessed a firearm;
- (3) the firearm possessed by the defendant traveled in, or affected, interstate commerce.

IV MAXIMUM SENTENCE

The maximum sentence for violation of Section 922(g)(1) is 10 years, a \$250,000.00 fine, a \$100.00 special assessment and a 3 year period of supervised release.

V EVIDENCE IN SUPPORT OF THE ALLEGATIONS

The government's evidence would prove the following essential facts, among other facts, if this case proceeded to trial:

On October 31, 1998, at approximately 10:30 p.m., Philadelphia Police Officers Eugene Harris and Yvette Smothers saw the defendant fire a pistol in the air three times while the officers were traveling southbound in a Philadelphia Police patrol car on 5th Street near the intersection of 5th and Wyoming Streets. The defendant, who was wearing a plaid shirt, was standing on the eastside of south 5th street – approximately 1/4 of a block south of the intersection of Wyoming and South 5th Streets.

When the defendant saw the police patrol car, he started running north toward the corner of 5th & Wyoming Streets. Officer Harris made a U-turn so that the police patrol car could travel northbound on 5th Street toward Wyoming Street, followed by a right-hand turn onto Wyoming Street, where the officer saw a bar on the right hand side of the street.

Having temporarily lost sight of the defendant after turning onto Wyoming Street, the

officers decided to go inside the bar because it was the only commercial establishment that the defendant could have entered within a minute or less of the officers' observation of him firing the pistol. When the officer entered, approximately 30 people were in the bar; several bar patrons pointed toward the rear of the establishment in the direction of the restroom. In response to the patrons' pointing, the officers entered the restroom. They saw the defendant standing at the urinal. The officers also saw a plaid shirt, similar to the defendant they had seen the defendant wearing, lying on the floor near the toilet. The defendant was restrained and frisked; no gun was found on his person.

The officers, accompanied by the defendant, went outside the bar to search for the weapon. Located several feet from the front of the bar between two cars, the officers found a semi-automatic handgun whose serial number had been obliterated laying on the ground . The officers also found a magazine, which could be inserted into the pistol, laying on the ground partially underneath another vehicle. The officers took the defendant into custody having concluded that he was the individual they had seen firing the pistol and because the gun they found outside the bar was similar to the gun they had seen him firing. An examination of the police by the Philadelphia Police Department's Firearms Inspection Unit also revealed that the pistol had recently been fired.

In addition to proving the foregoing facts through the testimony of Police Officers Eugene Harris and Yvette Smothers, the government would also offer the trial testimony of Bureau of Alcohol Tobacco & Firearms ("ATF") Special Agent Jim Uvena that the pistol the defendant possessed was not manufactured in the Commonwealth of Pennsylvania. Finally, the government would prove that the defendant, prior to October 31, 1998, had been convicted of a felony in the Commonwealth of Pennsylvania punishable by one or more years of imprisonment by offering into

evidence a certified copy of this prior conviction in the absence of a stipulation by the defendant.

Respectfully submitted,

MICHAEL R. STILES
United States Attorney

FLOYD J. MILLER
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certified that a copy of the Government's Change of Plea Memorandum was served upon counsel for the defendant this _____ day of June, 1999 by United States Mail at the address listed below by affixing a sufficient amount of postage to the mailing:

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