

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

ISMAEL SALINAS a.k.a.

MIKE SALINAS

Defendant.

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Criminal No. **H-10-438**

PLEA AGREEMENT

The United States of America, by and through Jose Angel Moreno, United States Attorney for Southern District of Texas, Houston Division, the Fraud Section, Criminal Division of the Department of Justice, the Defendant, Ismael Salinas a.k.a. Don Ervin and the defendant's counsel, Mike Lamson, have entered into the following plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure:

The Agreements

1. The defendant agrees to plead guilty to Count One of the Information and the Criminal Forfeiture. Count One charges the defendant with Conspiracy to pay or receive kickbacks, in violation of 18 U.S.C. § 371 and 41 U.S.C. § 53. By entering into this Agreement, the defendant waives the right to have this case presented to a grand jury and any right to have the facts that the law makes essential to the punishment either charged in the Information, proved to a jury, or proven beyond a reasonable doubt.

2. As part of this agreement, the United States Attorney's Office for the Southern District of Texas, Houston Division and the Fraud Section, Criminal Division of the Department of Justice agrees to refrain from prosecuting the defendant for any other criminal offense(s) arising from his activities in connection with the offense of conspiring to pay or receive kickbacks.

Punishment Range

3. The statutory maximum penalty for each violation of 18 U.S.C. § 371 is imprisonment of not more than five years and/or 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. 18 U.S.C. §§ 3559(a)(3) and 3583(b)(2). The 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 the 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. 18 U.S.C. §§ 3559(a)(3) and 3583(e)(3). The defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

4. Pursuant to 18 U.S.C. § 3013(a)(2)(A), immediately after sentencing the defendant will pay to the Clerk of the United States District Court a special assessment in the amount of \$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

5. The defendant understands that under the *United States Sentencing Commission Guidelines Manual* (hereafter referred to as "*Sentencing Guidelines*" or "U.S.S.G."), the Court is permitted to order the defendant to pay a fine that is sufficient to reimburse the United States for the costs of any imprisonment or term of supervised release, if any is ordered.

6. In addition to the other penalties provided by law, restitution may be mandatory under 18 U.S.C. Section 3663. Restitution is payable immediately unless otherwise required by the Court. Restitution will not exceed \$847,000.00. In the event that U.S. Immigration and Customs Enforcement (ICE) grants a petition for remission or otherwise transfers to the U.S. Department of Defense the monies forfeited by the Defendant, the parties agree to stipulate that such remission or transfer will constitute full restitution and that the Court need not order restitution. Alternatively, if ICE does not grant a petition for remission or transfer to the Department of Defense of the monies forfeited by the Defendant, the government agrees to request that the Asset Forfeiture and Money Laundering Section of the Criminal Division at the Department of Justice grant restoration of the forfeited funds to the Department of Defense “towards satisfaction of any restitution ordered by the Court”. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately, and the defendant will not attempt to avoid or delay payment.

7. The 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.

Waiver of Appeal

8. The defendant is aware that 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 on any grounds set forth in 18 U.S.C. § 3742. Additionally, the defendant is aware that 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, including but not limited to proceedings authorized by 28 U.S.C. § 2255. In the event that the defendant files a notice of appeal following sentencing, the United States will assert its rights under this Agreement and seek specific performance of this waiver.

In exchange for this Agreement with the United States, the defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed, in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates any provision of this Agreement, or (c) the defendant's plea is later withdrawn.

9. In agreeing to these waivers, the 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. The defendant further understands and agrees that the *Sentencing Guidelines* are "effectively advisory" to the Court. *United States v. Booker*, 543 U.S. 220 (2005). Accordingly, the defendant understands that, although the Court must consult the *Sentencing Guidelines* and must take them into account when sentencing him, the Court is bound neither to follow the *Sentencing Guidelines* nor to sentence the defendant within the guideline range calculated by use of the *Sentencing Guidelines*.

10. The defendant understands and agrees that each and all of his waivers contained in

this Agreement are made in exchange for the corresponding concessions and undertakings to which this Agreement binds the United States.

United States' Non-Waiver of Appeal

11. The United States reserves the right to carry out its responsibilities under the *Sentencing Guidelines*. 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 the defendant's counsel and the Probation Office; and
 - (d) to file a pleading relating to these issues, in accordance with U.S.S.G. § 6A1.2 and 18 U.S.C. § 3553(a).

Sentence Determination

12. The defendant is aware that the sentence will be imposed by the Court after consideration of the *Sentencing Guidelines*, which are only advisory, as well as the provisions of 18 U.S.C. § 3553(a). The 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 the 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*. The defendant understands and agrees that 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, the defendant

cannot, for that reason alone, withdraw a guilty plea, and he will remain bound to fulfill all of his obligations under this Agreement.

Rights at Trial

13. The defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. The defendant understands that by entering into this Agreement, he surrenders certain rights as provided herein. The defendant understands that the rights of a defendant include the following:

- (a) If the defendant persisted in a plea of not guilty to the charges, the 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. The 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 the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.
- (c) At a trial, the 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

14. By my signature of this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense 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 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:

From at least as early as April 2005, until December 3, 2007, I was employed by Laguna Construction Company (LCC), a New Mexico-based company, and was assigned to its office in Baghdad, Iraq. LCC was a prime contractor providing contracting services to the United States. Projects in Iraq on which LCC served as prime contractor included, but were not limited to: construction, restoration, and renovation projects involving the Multi-National Security Transition Command-Iraq (MNSTC-I) Phoenix Base; the Iraq Ministry of Defense; the Baghdad Police College; Civilian Police Assistance Training Team (CPATT); Medical Aid Stations; the Independent Electoral Commission Building; the International Zone Fire Station and the International Zone Sanitary Sewer System, located in Baghdad; the An Numaniyah Military Base and the An Numaniyah Military Training Base West Pods, located in An Numaniyah; and the Charlie Forward Operating Base (CFOB), located in Al Hillah. These projects were under the authority of the Air Force Center for Engineering and the Environment (AFCEE), which is a field operating agency of the Air Force Civil Engineer Support Agency within the U.S. Department of Defense (DOD). From December 2007 through March 2008, while still employed by LCC in Iraq, I also performed duties for M Company, a Lebanese company which is owned and operated by MA, a Lebanese citizen.

LCC hired numerous subcontractors to complete the work on these projects. Under the terms of LCC's cost-plus contracts with DOD, LCC would submit its subcontractors' invoices to DOD, which subsequently would reimburse LCC for the amounts of the invoices plus a percentage. LCC, in turn, would reimburse its subcontractors for the amounts specified in their invoices.

From April 2005 until March 2008, I agreed with others to accept kickbacks from LCC

subcontractors, specifically: money payments for the purpose of improperly facilitating the award of LCC subcontracts and favorably rating the performance of subcontractors. In one-on-one meetings, I met with MA and representatives of H Company, T Group, AAS, ASB, AB, and others to discuss illegal subcontractor kickbacks. I provided assistance to these individuals and companies by facilitating the award of LCC subcontracts and by reporting favorable subcontractor performance to LCC. In order to make contract funds available for kickbacks, I would cause subcontractors to submit inflated invoices to LCC for presentment to the government, but to agree to accept lesser amounts than those specified in their subcontractor invoices so that contract funds were available to pay me kickbacks. Through this practice, I caused the subcontracts paid by the United States Government to be inflated by the amounts I would receive as kickbacks. I am aware that I caused LCC to submit kickback-inflated billings from its corporate headquarters in New Mexico to AFCEE in Texas causing an over-billing to the United States Government, namely, DOD, of \$847,904.00.

After project billings were paid by the United States Government, and after LCC had made payments to the subcontractors willing to pay me kickbacks, I personally met with the subcontractor to receive payment. I hid the kickbacks, received in U.S. currency, in my personal belongings and smuggled the illegal kickback payments into the United States.

In 2005 or 2006, I received approximately \$100,000 cash from MA from M Company for facilitating the award of LCC contracts and for favorably reporting subcontractor performance. During that same time, I received approximately \$14,000 cash from ASB for facilitating the award of a sewer contract and for favorably reporting subcontractor performance. In 2006 or 2007, I received approximately \$100,000 cash from the H Company for facilitating its award of a LCC contract and for favorably reporting subcontractor performance. In 2008, I received approximately

\$20,000 cash from the T Group for facilitating its award of a LCC subcontract and for favorably reporting subcontractor performance. In about 2007 or 2008, I received approximately \$150,000 from AAS Company for facilitating its award of a LCC subcontract and for favorably reporting subcontractor performance.

I maintained \$40,000 of kickback proceeds from AAS Company in a wall locker located in the LCC compound in the International Zone in Baghdad, Iraq. I admit that I have no legal claim to these funds currently held by the Federal Bureau of Investigation (FBI) because they are part of the proceeds of my illegal activities.

By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the pre-sentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

Breach of Plea Agreement

15. If the defendant fails in any way to fulfill completely all of his obligations under this Agreement, the United States will be released from its obligations hereunder, and the defendant's plea and sentence will stand. If at any time the defendant retains, conceals, or disposes of assets in violation of this Agreement, or if the defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may ask the Court to set aside his guilty plea and reinstate prosecution. Any information and documents that have been disclosed by the defendant, whether prior to or subsequent to execution of this Agreement, and all leads derived therefrom, will be used against the defendant in any prosecution.

Forfeiture

16. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offense in this case. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons. The Defendant agrees to waive any right and complete any required legal process to forfeit these assets to the United States.

17. The Defendant voluntarily and immediately agrees to forfeit to the United States all of the Defendant's right, title, and interest in the following assets and properties:

- (a) Forty thousand dollars currently held by the FBI and specifically identified in paragraph 14 above.

18. The Defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the Defendant's interest in the above-described property to the United States.

19. The Defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

20. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all

constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States or any State or its subdivisions.

Parties Bound by this Agreement

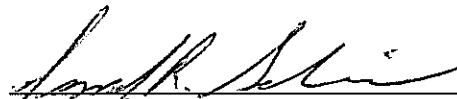
21. The defendant agrees that this Agreement binds the United States Attorney for the Southern District of Texas, Houston Division, the District of New Mexico and the Fraud Section, Criminal Division of the Department of Justice, the defendant, Ismael Salinas a.k.a. Mike Salinas and the defendant's counsel, Mike Lamson.

Complete Agreement

22. This Agreement, consisting of 13 pages, together with the attached addendum signed by the defendant and her attorney, constitutes the complete plea agreement between the United States, the defendant, and his counsel. No promises or representations have been made by the United States except as set forth in writing in this Agreement. The defendant acknowledges that no threats have been made against her and that he is pleading guilty freely and voluntarily because he is guilty.

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


Signed at Houston, Texas, on October 1, 2010.



ISMAEL SALINAS
Defendant

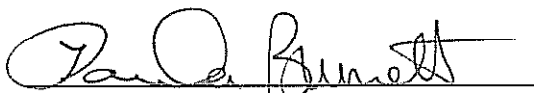
Subscribed and sworn to before me on October 1, 2010.


CLERK OF COURT

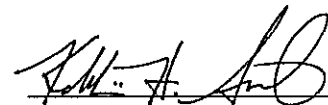
By: 
Deputy United States District Clerk

APPROVED:

JOSE ANGEL MORENO
United States Attorney

By: 
PAULA BURNETT
Assistant United States Attorney


DON ERVIN
Attorney for Defendant

By: 
KEBHARU H. SMITH
Assistant United States Attorney

