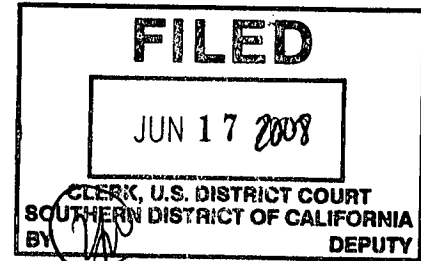


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6  
7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA



8  
9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

08cr1757-JM

11 UNITED STATES OF AMERICA, )  
12 )  
Plaintiff, )  
13 )  
v. )  
14 )  
MICHAEL DAVID ASHE, )  
15 )  
Defendant. )  
16 )

Magistrate Case No. 08MJ1545

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
19 Caleb E. Mason, Assistant United States Attorney, and defendant MICHAEL DAVID ASHE, by  
20 and through and with the advice and consent of defense counsel, Charles J. Donovan Jr., that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
25 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
26 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

27 //

28 CEM:es:5/21/08

M/W on Bond - No Abstract Needed (y)

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **June 18, 2008**.

6           4. The material witness, Josefina Rojas-Avila, in this case:

7               a. Is an alien with no lawful right to enter or remain in the United States;

8               b. Entered or attempted to enter the United States illegally on or about  
9 May 15, 2008;

10              c. Was found in a vehicle driven by defendant at the Otay Mesa, California Port  
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an  
12 alien with no lawful right to enter or remain in the United States;

13              d. Was paying \$3,000 to others to be brought into the United States illegally  
14 and/or transported illegally to her destination therein; and,

15              e. May be released and remanded immediately to the Department of Homeland  
16 Security for return to her country of origin.

17           5. After the material witnesses are ordered released by the Court pursuant to this  
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
20 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
21 attack, that:

22               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24               b. The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such  
26 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
27 against interest of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
 2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
 3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
 4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
 8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
 10 immediate release and remand of the above-named material witness(es) to the Department of  
 11 Homeland Security for return to her country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT  
 15 United States Attorney

16 Dated: 6/17/08

17   
 18 CALEB E. MASON  
 19 Assistant United States Attorney

20 Dated: 6-5-08

21   
 22 CHARLES J. DONOVAN JR.  
 23 Defense Counsel for Ashe

24 Dated: 06-05-08

25   
 26 MICHAEL DAVID ASHE  
 27 Defendant

**ORDER**

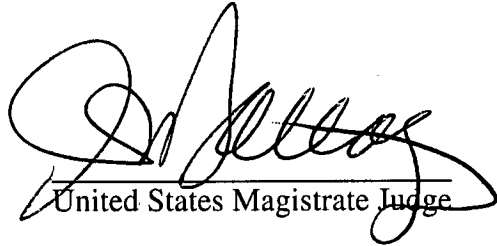
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

**SO ORDERED.**

Dated: 6/17/08

  
United States Magistrate Judge