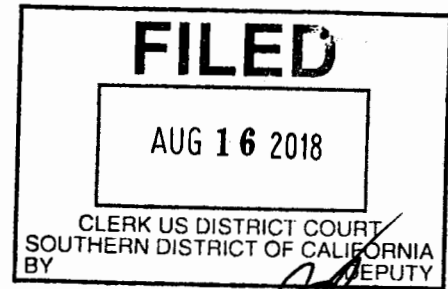


DECLASSIFIED

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. 15CR2818-H

Plaintiff,

v.

PLEA AGREEMENT

MARTIN RENE DURAN,

Defendant.

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Adam L. Braverman, United States Attorney, and Colin M. McDonald, Assistant United States Attorney, and defendant, MARTIN RENE DURAN, with the advice and consent of Michelle Betancourt, counsel for defendant, as follows:

I

THE PLEA

Defendant agrees to plead guilty to Counts Two and Five of the Superseding Indictment in Criminal Case No. 15CR2818-H, charging defendant with: deprivation of civil rights, in violation of 18 U.S.C. § 242.

The parties have negotiated a "global resolution" in this case and Criminal Case No. 15CR2817-H. This Plea Agreement is contingent on defendant and the government entering into a Sentencing Agreement in

Plea Agreement

Def. Initials

17CR4809-JLS

1 Criminal Case No. 15CR2817-H. If defendant fails to perform or breaches  
2 any part of this Plea Agreement or the Sentencing Agreement in Criminal  
3 Case No. 15CR2817-H, the Government will be relieved from and not bound  
4 by any terms in either this Plea Agreement or the Sentencing Agreement.

5 As part of this plea, the United States agrees to (1) dismiss  
6 Counts 1, 3, 4, 6, 7, 8, 9, and 10 of the Superseding Indictment without  
7 prejudice when Defendant is sentenced, and (2) not prosecute Defendant  
8 thereafter on such dismissed charges unless Defendant breaches the plea  
9 agreement or the guilty plea entered pursuant to this plea agreement is  
10 set aside for any reason. If Defendant breaches this agreement or the  
11 guilty plea is set aside, Section XII below shall apply. Defendant  
12 agrees further that, following entry of defendant's guilty plea, the  
13 Government need not hold or preserve any evidence seized in connection  
14 with this case and Criminal Case No. 15CR2817-H.

15 II

16 **NATURE OF THE OFFENSE**

17 A. **ELEMENTS EXPLAINED**

18 Defendant understands that the offense to which defendant is  
19 pleading guilty has the following elements:

- 20 1. The defendant acted under color of law when he committed the  
21 acts charged.
- 22 2. The defendant deprived another individual of the right to  
23 liberty, which is a right secured by the Constitution or laws  
24 of the United States.
- 25 3. The defendant acted willfully, that is, the defendant acted  
26 intending to deprive the person of this right.

27 ///

28 ///

Plea Agreement

1        B.    ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

2        Defendant has fully discussed the facts of this case with defense  
3        counsel. Defendant has committed each of the elements of the crime,  
4        and admits that there is a factual basis for this guilty plea. The  
5        following facts are true and undisputed:

6        1.    At all relevant times defendant was a United States Border  
7        Patrol Agent ("BPA"). In 2013, defendant was a Supervisory BPA at the  
8        Imperial Beach Border Patrol Station in San Diego, California.

9        2.    As a supervisory BPA, defendant had access to the Treasury  
10       Enforcement Communications System ("TECS"), a government database, and  
11       could enter information in the TECS system that would be available to  
12       other government officials, including Customs and Border Protection  
13       ("CBP") officers at the San Ysidro Port of Entry.

14       3.    On or about May 5, 2013, defendant caused a subordinate BPA  
15       to generate an "Officer Alert" for the San Ysidro Port of Entry advising  
16       that an individual, R.C., was an auto mechanic who worked on vehicles  
17       that were known to enter the United States from Mexico at the San Ysidro  
18       Port of Entry. The alert stated that R.C. was frequently armed with a  
19       .45 caliber handgun and directed that defendant be notified if CBP  
20       officers encountered R.C. At the time defendant directed the BPA to  
21       create the "Officer Alert" for R.C., defendant knew that the information  
22       contained therein regarding R.C. was false.

23       4.    On or about May 22, 2013, defendant created a TECS record  
24       pertaining to R.C. The TECS record created by defendant stated:

25       SUBJ ASSOC TO AUTO SHOP IN MX MANUFACTURES COMPARTMENTS FOR  
26       NARCO INFO RECEIVED SUBJ KNOWN TO CARRY FIREARMS IN MX/LIVING  
27       IN MX. CONDUCT 7PT INSPECTION CONTACT SBPA DURAN 24/7 @ 619-  
28       XXX-XXXX FOR FURTHER

1        5. At the time defendant created this TECS record on or about  
2 May 22, 2013, defendant knew that the information contained therein  
3 regarding R.C.'s association with narcotics traffickers and being  
4 "known to carry firearms" was false. Defendant knew that R.C. entered  
5 the United States from Mexico through the San Ysidro Port of Entry.  
6 Defendant's purpose in creating the TECS record was to cause CBP  
7 officials to seize R.C. at the Port of Entry when R.C. attempted to  
8 enter the United States from Mexico so defendant could question R.C.  
9 about a personal matter involving R.C. and defendant's brother-in-law  
10 in Mexico. Defendant acted willfully and under color of law in creating  
11 the TECS record to cause the detention and seizure of R.C. at the Port  
12 of Entry.

13        6. On or about May 27, 2013, CBP officers detained R.C. at the  
14 San Ysidro Port of Entry pursuant to the TECS record created by  
15 defendant on or about May 22, 2013. Defendant responded to the Port of  
16 Entry and questioned R.C. regarding the personal matter involving R.C.  
17 and defendant's brother-in-law.

18        7. On or about July 25, 2013, defendant created another TECS  
19 record pertaining to R.C. The TECS record created by defendant stated:

20        SUBJ ASSOC TO TCO WITH RECENT THREATS TO CBP PERSONNEL.

21        SECONDARY AND CONDUCT 7PT INSPECTIONS CONTACT IMB 1<sup>ST</sup> DUTY

22        PHONE 24/7 619-XXX-XXXX.

23        8. When defendant created this TECS record on or about July 25,  
24 2013, defendant knew that the information contained therein regarding  
25 R.C., including his alleged "threats to CBP personnel" was false.  
26 Defendant's purpose in creating the TECS record was to cause CBP  
27 officials to seize R.C. at the Port of Entry when R.C. attempted to  
28 enter the United States from Mexico Defendant acted willfully and under

1 color of law in creating the TECS record to cause the detention and  
2 seizure of R.C. at the Port of Entry.

3 9. On or about July 28, 2013, CBP officers detained R.C. at the  
4 San Ysidro Port of Entry pursuant to the TECS record created by  
5 defendant on or about July 25, 2013.

6 **III**

7 **PENALTIES**

8 Defendant understands that the crime to which defendant is pleading  
9 guilty carries the following penalties:

- 10 A. a maximum of 12 months in prison;  
11 B. a maximum \$100,000 fine;  
12 C. a mandatory special assessment of \$25 per count; and  
13 D. a term of supervised release of up to one year. Defendant  
14 understands that failure to comply with any of the conditions  
15 of supervised release may result in revocation of supervised  
16 release, requiring defendant to serve in prison, upon any  
17 such revocation, all or part of the statutory maximum term of  
18 supervised release for the offense that resulted in such term  
19 of supervised release.

20 **IV**

21 **DEFENDANT'S WAIVER OF TRIAL RIGHTS**

22 Defendant understands that this guilty plea waives the right to:

- 23 A. Continue to plead not guilty and require the Government to  
24 prove the elements of the crime beyond a reasonable doubt;  
25 B. A speedy and public trial by jury;  
26 C. The assistance of counsel at all stages of trial;  
27 D. Confront and cross-examine adverse witnesses;

28 ///

Plea Agreement



1 E. Testify and present evidence and to have witnesses testify  
2 on behalf of defendant; and,

3 F. Not testify or have any adverse inferences drawn from the  
4 failure to testify.

5 G. Defendant knowingly and voluntarily waives any rights and  
6 defenses defendant may have under the Excessive Fines  
7 Clause of the Eighth Amendment to the United States  
8 Constitution to the forfeiture of property in this  
9 proceeding or any related civil proceeding.

10 V

11 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE**  
12 **PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

13 The Government represents that any information establishing the  
14 factual innocence of defendant known to the undersigned prosecutor in  
15 this case has been turned over to defendant. The Government will  
16 continue to provide such information establishing the factual innocence  
17 of defendant.

18 Defendant understands that if this case proceeded to trial, the  
19 Government would be required to provide impeachment information  
20 relating to any informants or other witnesses. In addition, if defendant  
21 raised an affirmative defense, the Government would be required to  
22 provide information in its possession that supports such a defense.  
23 Defendant acknowledges, however, that by pleading guilty defendant will  
24 not be provided this information, if any, and defendant also waives the  
25 right to this information. Finally, defendant agrees not to attempt to  
26 withdraw the guilty plea or to file a collateral attack based on the  
27 existence of this information.

28 ///

Plea Agreement

VI

**DEFENDANT'S REPRESENTATION THAT GUILTY  
PLEA IS KNOWING AND VOLUNTARY**

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel and has a clear understanding of the charges and the consequences of this plea. Defendant understands that, by pleading guilty, defendant may be giving up, and rendered ineligible to receive, valuable government benefits and civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. Defendant further understands that the conviction in this case may subject defendant to various collateral consequences, including but not limited to revocation of probation, parole, or supervised release in another case; debarment from government contracting; and suspension or revocation of a professional license, none of which will serve as grounds to withdraw defendant's guilty plea.
- B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the Court.
- C. No one has threatened defendant or defendant's family to induce this guilty plea.
- D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA**

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

## VIII

APPLICABILITY OF SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

## IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court,



1 and it is uncertain at this time what defendant's sentence will be.  
 2 Defendant also has been advised and understands that if the sentencing  
 3 judge does not follow any of the parties' sentencing recommendations,  
 4 defendant nevertheless has no right to withdraw the plea.

5 X

6 **PARTIES' SENTENCING RECOMMENDATIONS**

7 A. SENTENCING GUIDELINE CALCULATIONS

8 Although the parties understand that the Guidelines are only  
 9 advisory and just one of the factors the Court will consider under 18  
 10 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly  
 11 recommend the following Base Offense Level, Specific Offense  
 12 Characteristics, Adjustments and Departures:

- |    |   |    |
|----|---|----|
| 13 | 1. Base Offense Level [§ 2H1.1(a)(4)]     | 6  |
| 14 | 2. Under Color of Law [§ 2H1.1(b)(1)(B)]  | +6 |
| 15 | 3. Acceptance of Responsibility [§ 3E1.1] | -2 |

16 B. ACCEPTANCE OF RESPONSIBILITY

17 Notwithstanding paragraph A.3 above, the Government will not be  
 18 obligated to recommend any adjustment for Acceptance of Responsibility  
 19 if defendant engages in conduct inconsistent with acceptance of  
 20 responsibility including, but not limited to, the following:

- 21 1. Fails to truthfully admit a complete factual basis as
- 22 stated in the plea at the time the plea is entered, or
- 23 falsely denies, or makes a statement inconsistent
- 24 with, the factual basis set forth in this agreement;
- 25 2. Falsely denies prior criminal conduct or convictions;
- 26 3. Is untruthful with the Government, the Court or
- 27 probation officer; or
- 28 4. Materially breaches this plea agreement in any way.

Plea Agreement

9

Def. Initials

15CP2818-H

1           5.    Contests or assists any third party in contesting the  
2               forfeiture of property(ies) seized in connection with  
3               this case, and any property(ies) to which the  
4               defendant has agreed to forfeit as set forth in the  
5               attached forfeiture addendum.

6           C.    FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING  
7               THOSE UNDER 18 U.S.C. § 3553

8               Defendant may request or recommend additional downward  
9               adjustments, departures, or variances from the Sentencing Guidelines  
10              under 18 U.S.C. § 3553. The Government may oppose any downward  
11              adjustments, departures, or variances not set forth in Section X,  
12              paragraph A above.

13           D.    NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

14              The parties have **no** agreement as to defendant's Criminal History  
15              Category.

16           E.    "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

17              The parties agree that the facts in the "factual basis" paragraph  
18              of this agreement are true, and may be considered as "relevant conduct"  
19              under USSG § 1B1.3 and as the nature and circumstances of the offense  
20              under 18 U.S.C. § 3553(a)(1).

21           F.    PARTIES' RECOMMENDATIONS REGARDING CUSTODY

22              Defendant will recommend a total sentence of at least 6 months in  
23              prison in this case and Criminal Case No. 15CR2817-H. The Government  
24              will recommend a total sentence of no more than 44 consecutive months  
25              in prison in this case and Criminal Case No. 15CR2817-H.

26              ///

27              ///

1           G.    SPECIAL ASSESSMENT/FINE

2               1.    Special Assessment.

3           The parties will jointly recommend that defendant pay a special  
4 assessment in the amount of \$25.00 per count of conviction to be paid  
5 forthwith at time of sentencing. The special assessment shall be paid  
6 through the office of the Clerk of the District Court by bank or  
7 cashier's check or money order made payable to the "Clerk, United States  
8 District Court."

9               2.    Fine.

10          The parties will jointly recommend that no fine be imposed.

11          H.    SUPERVISED RELEASE

12          If the Court imposes a term of supervised release, defendant agrees  
13 that he will not later seek to reduce or terminate early the term of  
14 supervised release until he has served at least 2/3 of his term of  
15 supervised release and has fully paid and satisfied any special  
16 assessments, fine, criminal forfeiture judgment and restitution  
17 judgment.

18   XI

19                   DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

20          In exchange for the Government's concessions in this plea  
21 agreement, defendant waives (gives up), to the full extent of the law,  
22 all rights to appeal and collaterally attack every aspect of his  
23 conviction and sentence, including any restitution order, in this matter  
24 and in Criminal Case No. 15CR2817-H. The only exceptions are:  
25 (1) defendant may collaterally attack the conviction or sentence on the  
26 basis that defendant received ineffective assistance of counsel; and  
27 (2) defendant may appeal his sentence if the Court imposes a total  
28 custodial sentence for this case and Criminal Case No. 15CR2817-H which

1 exceeds 63 consecutive months. If defendant's total sentence exceeds 63  
2 consecutive months, the Government may support on appeal the sentence  
3 actually imposed.

4 If defendant believes the Government's recommendation is not in  
5 accord with this plea agreement, defendant will object at the time of  
6 sentencing; otherwise the objection will be deemed waived.

7 If at any time defendant files a notice of appeal, appeals or  
8 collaterally attacks the conviction or sentence in violation of this  
9 plea agreement, said violation shall be a material breach of this  
10 agreement as further defined below.

## 11 XII

### 12 BREACH OF THE PLEA AGREEMENT

13 Defendant and defendant's attorney know the terms of this agreement  
14 and shall raise, before the sentencing hearing is complete, any claim  
15 that the Government has not complied with this agreement. Otherwise,  
16 such claims shall be deemed waived (that is, deliberately not raised  
17 despite awareness that the claim could be raised), cannot later be made  
18 to any court, and if later made to a court, shall constitute a breach  
19 of this agreement.

20 Defendant acknowledges, understands and agrees that if defendant  
21 violates or fails to perform any of defendant's obligations under this  
22 agreement, such violation or failure to perform may constitute a  
23 material breach of this agreement.

24 Defendant acknowledges, understands and agrees further that the  
25 following non-exhaustive list of conduct by defendant unquestionably  
26 constitutes a material breach of this plea agreement:

- 27 1. Failing to plead guilty pursuant to this agreement;

2. Failing to fully accept responsibility as established in Section X, paragraph B, above;
3. Failing to appear in court;
4. Attempting to withdraw the plea;
5. Failing to abide by any lawful court order related to this case;
6. Appealing or collaterally attacking the sentence or conviction in violation of Section XI of this plea agreement; or
7. Engaging in additional criminal conduct from the time of arrest until the time of sentencing.

In the event of defendant's material breach of this plea agreement, defendant will not be able to enforce any of its provisions, and the Government will be relieved of all its obligations under this plea agreement. For example, the Government may pursue any charges including those that were dismissed, promised to be dismissed, or not filed as a result of this agreement, including charges under 18 U.S.C. § 924(c) (defendant agrees that any statute of limitations relating to such charges is tolled as of the date of this agreement; defendant also waives any double jeopardy defense to such charges). In addition, the Government may move to set aside defendant's guilty plea. Defendant may not withdraw the guilty plea based on the Government's pursuit of remedies for defendant's breach.

Additionally, defendant agrees that in the event of defendant's material breach of this plea agreement: (i) any statements made by defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a District Judge); (ii) the stipulated factual basis statement in this agreement; and (iii) any evidence derived from such



statements, are admissible against defendant in any prosecution of, or any action against, defendant. This includes the prosecution of the charge(s) that is the subject of this plea agreement or any charge(s) that the prosecution agreed to dismiss or not file as part of this agreement, but later pursues because of a material breach by the defendant. Additionally, defendant knowingly, voluntarily, and intelligently waives any argument under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and/or any other federal rule, that the statements or any evidence derived from any statements should be suppressed or are inadmissible.

#### XIII

#### ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

#### XIV

#### MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

#### XV

#### DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

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Plea Agreement


XVI

DEFENDANT SATISFIED WITH COUNSEL


Defendant has consulted with counsel and is satisfied with counsel's representation. This is defendant's independent opinion, and his counsel did not advise him about what to say in this regard.

ADAM L. BRAVERMAN  
United States Attorney

8/16/18  
DATED

  
COLIN M. McDONALD  
Assistant U.S. Attorney

8/14/18  
DATED

  
MICHELLE BETANCOURT  
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.

8/14/18  
DATED

  
MARTIN RENE DURAN  
Defendant

Approved:

s/Peter Ko  
PETER KO  
Assistant U.S. Attorney

Plea Agreement