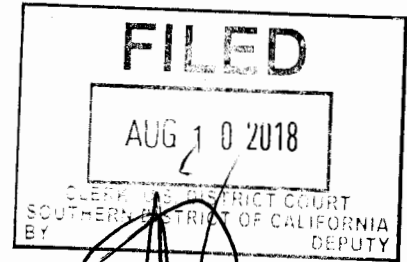


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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA

Case No. 18CR1743-JLS

11 v.

PLEA AGREEMENT

12 ESTEBAN ANTONIO LOAIZA,

13 Defendant.
14

15 IT IS HEREBY AGREED between the UNITED STATES OF AMERICA, through its counsel,
16 Adam L. Braverman, United States Attorney, and Jarad E. Hodes, Assistant United States
17 Attorney, and Defendant ESTEBAN ANTONIO LOAIZA, with the advice and consent of Janice
18 Deaton, counsel for Defendant, as follows:

19 **I**

20 **THE PLEA**

21 Defendant agrees to plead guilty to Count 1 of the Information charging Defendant with
22 Possession of Cocaine with Intent to Distribute:

23 On or about February 9, 2018, in the Southern District of California, defendant
24 ESTEBAN ANTONIO LOAIZA knowingly and intentionally possessed with intent to
25 distribute 5 kilograms and more, to wit: approximately 20 kilograms, of a mixture and
26 substance containing a detectable amount of cocaine, a Schedule II controlled
27 substance, in violation of Title 21, United States Code, Section 841(a)(1).
28

Plea Agreement

Def. Initials EA
18CR1743-JLS

47

1 Defendant agrees that, following entry of Defendant's guilty plea, the Government need not
2 hold or preserve any evidence seized in connection with this case. For any controlled substance
3 seized in connection with this case, Defendant agrees that, following entry of Defendant's guilty
4 plea, the Government may destroy the controlled substance 30 days after the Government has
5 provided Defendant with the laboratory analysis report. If Defendant believes that additional
6 testing is needed, Defendant will arrange for and complete such testing within that 30-day period,
7 unless that period is extended by joint written agreement or Court order, in which case the
8 Government shall preserve the controlled substance for the agreed-upon or judicially mandated
9 period. If the court has issued a preservation order in connection with any seized evidence,
10 Defendant will request that the Court lift or revoke the preservation order following entry of
11 Defendant's guilty plea.

12 II

13 NATURE OF THE OFFENSE

14 A. ELEMENTS EXPLAINED

15 Defendant understands that the offense to which Defendant is pleading guilty has the
16 following elements:

- 17 1. Defendant knowingly possessed cocaine with the knowledge that it was cocaine
18 or some other federally controlled substance; and
- 19 2. Defendant possessed it with the intent to distribute it to another person.

20 In order to trigger enhanced penalties, the United States would also be required to prove:

- 21 1. The offense involved 5 kilograms or more of a mixture or substance containing
22 a detectable amount of cocaine.

23 B. ELEMENTS UNDERSTOOD AND ADMITTED – FACTUAL BASIS

24 Defendant has fully discussed the facts of this case with defense counsel. Defendant has
25 committed each element of the crime and admits that there is a factual basis for this guilty plea.
26 The following facts are true and undisputed:

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- 1. On February 9, 2018, defendant ESTEBAN ANTONIO LOAIZA took possession of a Mercedes-Benz SUV he knew to contain cocaine. He drove the SUV to a townhouse in Imperial Beach, California and parked it in the garage, where he transferred 20 kilograms of cocaine from the SUV to another vehicle parked in the garage.
- 2. Defendant intended for the cocaine to be distributed to another person.

III

PENALTIES

The crime to which Defendant is pleading guilty carries the following penalties:

- A. a maximum of life in prison, and a mandatory minimum 10 years.
- B. a maximum \$10,000,000 fine.
- C. a mandatory special assessment of \$100.
- D. a term of supervised release of at least 5 years and a maximum term of life. Failure to comply with any condition of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison, upon revocation, all or part of the statutory maximum term of supervised release.
- E. forfeiture of all property constituting and derived from proceeds obtained as a result of the violation and property used and intended to be used to commit and to facilitate the commission of the offense.

IV

**DEFENDANT'S WAIVER OF TRIAL RIGHTS AND
UNDERSTANDING OF CONSEQUENCES**

This guilty plea waives Defendant's right at trial to:

- A. Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- B. A speedy and public trial by jury;
- C. The assistance of counsel at all stages;

1 D. Confront and cross-examine adverse witnesses;

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

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

5 Defendant has been advised by counsel and understands that because defendant is not a
6 citizen of the United States, defendant's conviction in this case makes it practically inevitable and a
7 virtual certainty that defendant will be removed or deported from the United States. Defendant may
8 also be denied United States citizenship and admission to the United States in the future.

9 V

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

12 Any information establishing the factual innocence of Defendant known to the undersigned
13 prosecutor in this case has been turned over to Defendant. The Government will continue to provide
14 such information establishing the factual innocence of Defendant.

15 If this case proceeded to trial, the Government would be required to provide impeachment
16 information for its witnesses. In addition, if Defendant raised an affirmative defense, the
17 Government would be required to provide information in its possession that supports such a defense.
18 By pleading guilty Defendant will not be provided this information, if any, and Defendant waives
19 any right to this information. Defendant will not attempt to withdraw the guilty plea or to file a
20 collateral attack based on the existence of this information.

21 VI

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

24 Defendant represents that:

25 A. Defendant has had a full opportunity to discuss all the facts and circumstances of this
26 case with defense counsel and has a clear understanding of the charges and the
27 consequences of this plea. By pleading guilty, Defendant may be giving up, and
28

1 rendered ineligible to receive, valuable government benefits and civic rights, such as
2 the right to vote, the right to possess a firearm, the right to hold office, and the right
3 to serve on a jury. The conviction in this case may subject Defendant to various
4 collateral consequences, including but not limited to revocation of probation, parole,
5 or supervised release in another case; debarment from government contracting; and
6 suspension or revocation of a professional license, none of which can serve as grounds
7 to withdraw Defendant's guilty plea.

8 B. No one has made any promises or offered any rewards in return for this guilty plea,
9 other than those contained in this agreement or otherwise disclosed to the Court.

10 C. No one has threatened Defendant or Defendant's family to induce this guilty plea.

11 D. Defendant is pleading guilty because Defendant is guilty and for no other reason.

12 **VII**

13 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 This plea agreement is limited to the United States Attorney's Office for the Southern District
16 of California, and cannot bind any other authorities in any type of matter, although the Government
17 will bring this plea agreement to the attention of other authorities if requested by Defendant.

18 **VIII**

19 **APPLICABILITY OF SENTENCING GUIDELINES**

20 The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). In imposing
21 the sentence, the sentencing judge must consult the United States Sentencing Guidelines
22 (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense
23 counsel and understands that the Guidelines are only advisory, not mandatory. The Court may
24 impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to
25 the maximum in the statute of conviction. The sentence cannot be determined until a presentence
26 report is prepared by the U.S. Probation Office and defense counsel and the Government have an
27 opportunity to review and challenge the presentence report. Nothing in this plea agreement limits

1 the Government's duty to provide complete and accurate facts to the district court and the U.S.
2 Probation Office.

3 **IX**

4 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

5 This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The
6 sentence is within the sole discretion of the sentencing judge who may impose the maximum
7 sentence provided by statute. It is uncertain at this time what Defendant's sentence will be. The
8 Government has not made and will not make any representation about what sentence Defendant
9 will receive. Any estimate of the probable sentence by defense counsel is not a promise and is not
10 binding on the Court. Any recommendation by the Government at sentencing also is not binding on
11 the Court. If the sentencing judge does not follow any of the parties' sentencing recommendations,
12 Defendant will not withdraw the plea.

13 **X**

14 **PARTIES' SENTENCING RECOMMENDATIONS**

15 **A. SENTENCING GUIDELINE CALCULATIONS**

16 Although the Guidelines are only advisory and just one factor the Court will consider under
17 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base
18 Offense Level, Specific Offense Characteristics, Adjustments, and Departures:

- | | | |
|----|---|-----|
| 19 | 1. Base Offense [§ 2D1.1] | 32 |
| 20 | 2. Maintaining Distribution Premises [§ 2D1.1(b)(12)] | +2 |
| 21 | 3. Safety Valve (if applicable) [§ 2D1.1(b)(17)] | -2* |
| 22 | 4. Acceptance of Responsibility [§ 3E1.1] | -3 |

23 *If Defendant truthfully discloses to the government all information and evidence Defendant
24 has concerning the offense and relevant conduct, and if Defendant otherwise qualifies for the "safety
25 valve" reduction contained in § 5C1.2, the government will recommend a two-level reduction under
26 § 2D1.1(b)(17) and relief from any statutory mandatory minimum sentence pursuant to § 5C1.2. If

1 Defendant does not qualify under § 5C1.2, Defendant may be subject to a statutory mandatory
2 minimum sentence.

3 B. ACCEPTANCE OF RESPONSIBILITY

4 Despite paragraph A above, the Government need not recommend an adjustment for
5 Acceptance of Responsibility if Defendant engages in conduct inconsistent with acceptance of
6 responsibility including, but not limited to, the following:

- 7 1. Fails to truthfully admit a complete factual basis as stated in the plea at the
8 time the plea is entered, or falsely denies, or makes a statement inconsistent
9 with, the factual basis set forth in this agreement;
- 10 2. Falsely denies prior criminal conduct or convictions;
- 11 3. Is untruthful with the Government, the Court or probation officer; or
- 12 4. Breaches this plea agreement in any way.

13 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING
14 THOSE UNDER 18 U.S.C. § 3553

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

18 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

19 The parties have **no** agreement as to Defendant's Criminal History Category.

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

21 The facts in the "factual basis" paragraph of this agreement are true and may be considered
22 as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under
23 18 U.S.C. § 3553(a)(1).

24 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

25 The Government will recommend that Defendant be sentenced at the low end of the advisory
26 guideline range as calculated by the Government at the time sentencing.

1 G. SPECIAL ASSESSMENT/FINE/FORFEITURE

2 1. Special Assessment

3 The parties will jointly recommend that Defendant pay a special assessment in the amount
4 of \$100.00 to be paid forthwith at time of sentencing. Special assessments shall be paid through the
5 office of the Clerk of the District Court by bank or cashier's check or money order made payable to
6 the "Clerk, United States District Court."

7 2. Fine

8 The parties will not recommend imposition of a fine due to Defendant's limited financial
9 prospects and because the cost of collection, even taking into account the Inmate Responsibility
10 Program, likely would exceed the amounts that could reasonably be expected to be collected.

11 3. Forfeiture

12 The Defendant further agrees to the administrative and/or civil forfeiture of all properties
13 seized in connection with this case which the Defendant agrees are subject to forfeiture to the United
14 States pursuant to Title 21, United States Code, Sections 853(a)(1), 853(a)(2). The Defendant further
15 waives Defendant's right to receive timely notice of administrative forfeiture as set forth in 18 U.S.C.
16 § 983(a) and waives receipt of all notice of forfeiture in this and all other administrative and civil
17 proceedings. Defendant waives and disclaims Defendants' interest, if any, in the properties to be
18 forfeited as described above. Defendant further agrees not to contest or to assist any other person or
19 entity in contesting the forfeiture of the property(ies) seized in connection with this case.

20 H. SUPERVISED RELEASE

21 If the Court imposes a term of supervised release, Defendant will not seek to reduce or
22 terminate early the term of supervised release until Defendant has served at least 2/3 of the term of
23 supervised release and has fully paid and satisfied any special assessments, fine, criminal forfeiture
24 judgment, and restitution judgment.

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect of the conviction and sentence, including any restitution order, except for the following: (1) Defendant may collaterally attack the conviction or sentence on the basis that Defendant received ineffective assistance of counsel; and (2) if the Court denies relief from the statutory mandatory minimum sentence for failure to satisfy 18 U.S.C. § 3553(f)(5), Defendant may appeal the denial of such relief.

XII

BREACH OF THE PLEA AGREEMENT

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

Defendant breaches this agreement if Defendant violates or fails to perform any obligation under this agreement. The following are non-exhaustive examples of acts constituting a breach:

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 court order related to this case;
6. Appealing (which occurs if a notice of appeal is filed) or collaterally attacking the conviction or sentence 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.

1 If Defendant breaches this plea agreement, Defendant will not be able to enforce any
2 provisions, and the Government will be relieved of all its obligations under this plea agreement. For
3 example, the Government may proceed to sentencing but recommend a different sentence than what
4 it agreed to recommend above. Or the Government may pursue any charges including those that
5 were dismissed, promised to be dismissed, or not filed as a result of this agreement (Defendant
6 agrees that any statute of limitations relating to such charges is tolled indefinitely as of the date all
7 parties have signed this agreement; Defendant also waives any double jeopardy defense to such
8 charges). In addition, the Government may move to set aside Defendant's guilty plea. Defendant
9 may not withdraw the guilty plea based on the Government's pursuit of remedies for Defendant's
10 breach.

11 Additionally, if Defendant breaches this plea agreement: (i) any statements made by
12 Defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a District
13 Judge); (ii) the factual basis statement in Section II.B in this agreement; and (iii) any evidence
14 derived from such statements, are admissible against Defendant in any prosecution of, or any action
15 against, Defendant. This includes the prosecution of the charge(s) that is the subject of this plea
16 agreement or any charge(s) that the prosecution agreed to dismiss or not file as part of this
17 agreement, but later pursues because of a breach by the Defendant. Additionally, Defendant
18 knowingly, voluntarily, and intelligently waives any argument that the statements and any evidence
19 derived from the statements should be suppressed, cannot be used by the Government, or are
20 inadmissible under the United States Constitution, any statute, Rule 410 of the Federal Rules of
21 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and any other federal rule.

22 **XIII**

23 **CONTENTS AND MODIFICATION OF AGREEMENT**

24 This plea agreement embodies the entire agreement between the parties and supersedes any
25 other agreement, written or oral. No modification of this plea agreement shall be effective unless in
26 writing signed by all parties.

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XIV

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.


XV

DEFENDANT SATISFIED WITH COUNSEL

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

ADAM L. BRAVERMAN
United States Attorney

8/2/18
DATED


JARAD E. HODES
Assistant U.S. Attorney

8/2/18
DATED


JANICE DEATON
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.

8-1-2018
DATED


ESTEBAN ANTONIO LOAIZA
Defendant