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 UNITED STATES OF AMERICA
 9

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DONOVAN PHAM NGUYEN,

16 Defendant.

No. ED CR 20-00161-DMG

PLEA AGREEMENT FOR DEFENDANT
DONOVAN PHAM NGUYEN

17
 18 1. This constitutes the plea agreement between Donovan Pham
 19 Nguyen ("defendant") and the United States Attorney's Office for the
 20 Central District of California (the "USAO") in the above-captioned
 21 case. This agreement is limited to the USAO and cannot bind any
 22 other federal, state, local, or foreign prosecuting, enforcement,
 23 administrative, or regulatory authorities.

24 DEFENDANT'S OBLIGATIONS

25 2. Defendant agrees to:

26 a. At the earliest opportunity requested by the USAO and
 27 provided by the Court, appear and plead guilty to count 1 of the
 28 indictment in United States v. Donovan Pham Nguyen, ED CR No. 20-

1 00161-DMG, which charges defendant with Impersonation of a Federal
2 Officer in violation of 18 U.S.C. § 912.

3 b. Not contest facts agreed to in this agreement.

4 c. Abide by all agreements regarding sentencing contained
5 in this agreement.

6 d. Appear for all court appearances, surrender as ordered
7 for service of sentence, obey all conditions of any bond, and obey
8 any other ongoing court order in this matter.

9 e. Not commit any crime; however, offenses that would be
10 excluded for sentencing purposes under United States Sentencing
11 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
12 within the scope of this agreement.

13 f. Be truthful at all times with the United States
14 Probation and Pretrial Services Office and the Court.

15 g. Pay the applicable special assessment at or before the
16 time of sentencing unless defendant has demonstrated a lack of
17 ability to pay such assessments.

18 h. Agree that all court appearances, including his change
19 of plea hearing and sentencing hearing, may proceed by video-
20 teleconference ("VTC") or telephone, if VTC is not reasonably
21 available, so long as such appearances are authorized by General
22 Order 20-043 or another order, rule, or statute. Defendant
23 understands that, under the Constitution, the United States Code, the
24 Federal Rules of Criminal Procedure (including Rules 11, 32, and 43),
25 he may have the right to be physically present at these hearings.
26 Defendant understands that right and, after consulting with counsel,
27 voluntarily agrees to waive it and to proceed remotely. Defense
28 counsel also joins in this consent, agreement, and waiver.

1 Specifically, this agreement includes, but is not limited to, the
2 following:

3 i. Defendant consents under Section 15002(b) of the
4 CARES Act to proceed with his change of plea hearing by VTC or
5 telephone, if VTC is not reasonably available.

6 ii. Defendant consents under Section 15002(b) of the
7 CARES Act to proceed with his sentencing hearing by VTC or telephone,
8 if VTC is not reasonably available.

9 iii. Defendant consents under 18 U.S.C. § 3148 and
10 Section 15002(b) of the CARES Act to proceed with any hearing
11 regarding alleged violations of the conditions of pretrial release by
12 VTC or telephone, if VTC is not reasonably available.

13 THE USAO'S OBLIGATIONS

14 3. The USAO agrees to:

15 a. Not contest facts agreed to in this agreement.

16 b. Abide by all agreements regarding sentencing contained
17 in this agreement.

18 c. At the time of sentencing, move to dismiss the
19 remaining count of the indictment as against defendant. Defendant
20 agrees, however, that at the time of sentencing the Court may
21 consider any dismissed charges in determining the applicable
22 Sentencing Guidelines range, the propriety and extent of any
23 departure from that range, and the sentence to be imposed.

24 d. At the time of sentencing, provided that defendant
25 demonstrates an acceptance of responsibility for the offense up to
26 and including the time of sentencing, recommend a two-level reduction
27 in the applicable Sentencing Guidelines offense level, pursuant to
28

1 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
2 additional one-level reduction if available under that section.

3 e. Because the justice system is facing an unprecedented
4 crisis through the backlog of cases, the parties agree that the
5 defendant is entitled to a two-level downward variance as recognition
6 of defendant's early acceptance of responsibility, which will lessen
7 the burden on the court system by: (1) waiving any right to presence
8 and pleading guilty at the earliest opportunity by VTC (or telephone,
9 if VTC is not reasonably available); (2) waiving any right to
10 presence and agreeing to be sentenced by VTC (or telephone, if VTC is
11 not reasonably available) should the Central District of California's
12 General Order allow for it; (3) agreeing to appear at all other times
13 by VTC or telephone; and (4) waiving all appellate rights.

14 f. Should the Court sentence defendant to a term of
15 imprisonment, recommend that defendant not be required to self-
16 surrender to serve his sentence until on or after February 1, 2021,
17 unless defendant violates the conditions of his bond.

18 NATURE OF THE OFFENSE

19 4. Defendant understands that for defendant to be guilty of
20 the crime charged in count one, that is, Impersonation of a Federal
21 Officer, in violation of Title 18, United States Code, Section 912,
22 the following must be true:

23 a. First: The defendant falsely pretended to be an
24 officer or employee acting under the authority of the Department of
25 Homeland Security, Homeland Security Investigations; and

26 b. Second: The defendant acted as such.

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PENALTIES

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2 5. Defendant understands that the statutory maximum sentence
3 that the Court can impose for a violation of Title 18, United States
4 Code, Section 912, is: 3 years' imprisonment; a 1-year period of
5 supervised release; a fine of \$250,000 or twice the gross gain or
6 gross loss resulting from the offense, whichever is greatest; and a
7 mandatory special assessment of \$100.

8 6. Defendant understands that supervised release is a period
9 of time following imprisonment during which defendant will be subject
10 to various restrictions and requirements. Defendant understands that
11 if defendant violates one or more of the conditions of any supervised
12 release imposed, defendant may be returned to prison for all or part
13 of the term of supervised release authorized by statute for the
14 offense that resulted in the term of supervised release, which could
15 result in defendant serving a total term of imprisonment greater than
16 the statutory maximum stated above.

17 7. Defendant understands that, by pleading guilty, defendant
18 may be giving up valuable government benefits and valuable civic
19 rights, such as the right to vote, the right to possess a firearm,
20 the right to hold office, and the right to serve on a jury. Defendant
21 understands that he is pleading guilty to a felony and that it is a
22 federal crime for a convicted felon to possess a firearm or
23 ammunition. Defendant understands that the conviction in this case
24 may also subject defendant to various other collateral consequences,
25 including but not limited to revocation of probation, parole, or
26 supervised release in another case and suspension or revocation of a
27 professional license. Defendant understands that unanticipated
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1 collateral consequences will not serve as grounds to withdraw
2 defendant's guilty plea.

3 8. Defendant understands that, if defendant is not a United
4 States citizen, the felony conviction in this case may subject
5 defendant to: removal, also known as deportation, which may, under
6 some circumstances, be mandatory; denial of citizenship; and denial
7 of admission to the United States in the future. The Court cannot,
8 and defendant's attorney also may not be able to, advise defendant
9 fully regarding the immigration consequences of the felony conviction
10 in this case. Defendant understands that unexpected immigration
11 consequences will not serve as grounds to withdraw defendant's guilty
12 plea.

13 FACTUAL BASIS

14 9. Defendant admits that defendant is, in fact, guilty of the
15 offense to which defendant is agreeing to plead guilty. Defendant
16 and the USAO agree to the statement of facts provided below and agree
17 that this statement of facts is sufficient to support a plea of
18 guilty to the charge described in this agreement and to establish the
19 Sentencing Guidelines factors set forth in paragraph 11 below but is
20 not meant to be a complete recitation of all facts relevant to the
21 underlying criminal conduct or all facts known to either party that
22 relate to that conduct.

23 In or around 2015, defendant began working as a security
24 employee for Village Management Services ("VMS") at Laguna Woods
25 Village in Laguna Woods, California. In his time there, he falsely
26 told his co-workers that he was a Special Agent with the Department
27 of Homeland Security, Homeland Security Investigations ("HSI"). On
28 different occasions, he used that falsely assumed title to conduct

1 traffic stops on his co-workers and search them, neither of which he
2 could do under his position with VMS.

3 In May 2019, while working for VMS, defendant met Special Agents
4 with the Department of State, Diplomatic Security Service ("DSS"),
5 while the agents prepared to execute an arrest warrant at Laguna
6 Woods Village. Defendant falsely told the agents that defendant was
7 a Special Agent with HSI. On or about May 30, 2019, defendant acted
8 as an HSI Special Agent by attending a briefing with the assigned DSS
9 agents regarding execution of the warrant. Defendant was permitted
10 to attend the briefing because he posed as an HSI Special Agent. On
11 May 30, 2019, still in his falsely assumed character and wearing
12 clothing indicating he was an HSI Special Agent, defendant entered
13 and remained in a private residence at Laguna Woods Village while DSS
14 agents executed the arrest warrant there. Again, he acted as an HSI
15 Special Agent and was therefore permitted to enter and remain in the
16 private residence during the execution of the warrant.

17 On June 1, 2020, defendant spoke with an investigator from the
18 Riverside County District Attorney's Office in Riverside, California,
19 and falsely told the investigator that he was a Special Agent with
20 HSI. Defendant then discussed a pending investigation with the
21 investigator, including HSI's potential involvement in that
22 investigation.

23 SENTENCING FACTORS

24 10. Defendant understands that in determining defendant's
25 sentence the Court is required to calculate the applicable Sentencing
26 Guidelines range and to consider that range, possible departures
27 under the Sentencing Guidelines, and the other sentencing factors set
28 forth in 18 U.S.C. § 3553(a). Defendant understands that the

1 Sentencing Guidelines are advisory only, that defendant cannot have
2 any expectation of receiving a sentence within the calculated
3 Sentencing Guidelines range, and that after considering the
4 Sentencing Guidelines and the other § 3553(a) factors, the Court will
5 be free to exercise its discretion to impose any sentence it finds
6 appropriate up to the maximum set by statute for the crime of
7 conviction.

8 11. Defendant and the USAO agree to the following applicable
9 Sentencing Guidelines factors:

10 Base Offense Level: 6 U.S.S.G. § 2J1.4(a)

11 The impersonation was
12 committed for the purpose of
13 conducting an unlawful
arrest, detention, or search: +6 U.S.S.G. § 2J1.4(b) (1)

14 Defendant and the USAO reserve the right to argue that additional
15 specific offense characteristics, adjustments, and departures under
16 the Sentencing Guidelines are appropriate.

17 12. Defendant understands that there is no agreement as to
18 defendant's criminal history or criminal history category.

19 13. Defendant and the USAO reserve the right to argue for a
20 sentence outside the sentencing range established by the Sentencing
21 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a) (1),
22 (a) (2), (a) (3), (a) (6), and (a) (7).

23 WAIVER OF CONSTITUTIONAL RIGHTS

24 14. Defendant understands that by pleading guilty, defendant
25 gives up the following rights:

26 a. The right to persist in a plea of not guilty.

27 b. The right to a speedy and public trial by jury.

1 c. The right to be represented by counsel -- and if
2 necessary have the Court appoint counsel -- at trial. Defendant
3 understands, however, that, defendant retains the right to be
4 represented by counsel -- and if necessary have the Court appoint
5 counsel -- at every other stage of the proceeding.

6 d. The right to be presumed innocent and to have the
7 burden of proof placed on the government to prove defendant guilty
8 beyond a reasonable doubt.

9 e. The right to confront and cross-examine witnesses
10 against defendant.

11 f. The right to testify and to present evidence in
12 opposition to the charges, including the right to compel the
13 attendance of witnesses to testify.

14 g. The right not to be compelled to testify, and, if
15 defendant chose not to testify or present evidence, to have that
16 choice not be used against defendant.

17 h. Any and all rights to pursue any affirmative defenses,
18 Fourth Amendment or Fifth Amendment claims, and other pretrial
19 motions that have been filed or could be filed.

20 i. Understanding that the government has in its
21 possession digital devices and/or digital media seized from
22 defendant, defendant waives any right to the return of digital data
23 contained on those digital devices and/or digital media and agrees
24 that if any of these digital devices and/or digital media are
25 returned to defendant, the government may delete all digital data
26 from those digital devices and/or digital media before they are
27 returned to defendant.

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1 post-conviction collateral attack based on a claim of ineffective
2 assistance of counsel or an explicitly retroactive change in the
3 applicable Sentencing Guidelines, sentencing statutes, or statutes of
4 conviction. Defendant understands that this waiver includes, but is
5 not limited to, arguments that the statute to which defendant is
6 pleading guilty is unconstitutional, that newly discovered evidence
7 purportedly supports defendant's innocence, and any and all claims
8 that the statement of facts provided herein is insufficient to
9 support defendant's plea of guilty.

10 18. The USAO agrees that, provided all portions of the sentence
11 are at or below the statutory maximum specified above, the USAO gives
12 up its right to appeal any portion of the sentence.

13 RESULT OF WITHDRAWAL OF GUILTY PLEA

14 19. Defendant agrees that if, after entering a guilty plea
15 pursuant to this agreement, defendant seeks to withdraw and succeeds
16 in withdrawing defendant's guilty plea on any basis other than a
17 claim and finding that entry into this plea agreement was
18 involuntary, then (a) the USAO will be relieved of all of its
19 obligations under this agreement; and (b) should the USAO choose to
20 pursue any charge that was either dismissed or not filed as a result
21 of this agreement, then (i) any applicable statute of limitations
22 will be tolled between the date of defendant's signing of this
23 agreement and the filing commencing any such action; and
24 (ii) defendant waives and gives up all defenses based on the statute
25 of limitations, any claim of pre-indictment delay, or any speedy
26 trial claim with respect to any such action, except to the extent
27 that such defenses existed as of the date of defendant's signing this
28 agreement.

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 c. Defendant agrees that: (i) any statements made by
5 defendant, under oath, at the guilty plea hearing (if such a hearing
6 occurred prior to the breach); (ii) the agreed to factual basis
7 statement in this agreement; and (iii) any evidence derived from such
8 statements, shall be admissible against defendant in any such action
9 against defendant, and defendant waives and gives up any claim under
10 the United States Constitution, any statute, Rule 410 of the Federal
11 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
12 Procedure, or any other federal rule, that the statements or any
13 evidence derived from the statements should be suppressed or are
14 inadmissible.

15 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

16 OFFICE NOT PARTIES

17 23. Defendant understands that the Court and the United States
18 Probation and Pretrial Services Office are not parties to this
19 agreement and need not accept any of the USAO's sentencing
20 recommendations or the parties' agreements to facts or sentencing
21 factors.

22 24. Defendant understands that both defendant and the USAO are
23 free to: (a) supplement the facts by supplying relevant information
24 to the United States Probation and Pretrial Services Office and the
25 Court, (b) correct any and all factual misstatements relating to the
26 Court's Sentencing Guidelines calculations and determination of
27 sentence, and (c) argue on appeal and collateral review that the
28 Court's Sentencing Guidelines calculations and the sentence it

1 chooses to impose are not error, although each party agrees to
2 maintain its view that the calculations in paragraph 11 are
3 consistent with the facts of this case. While this paragraph permits
4 both the USAO and defendant to submit full and complete factual
5 information to the United States Probation and Pretrial Services
6 Office and the Court, even if that factual information may be viewed
7 as inconsistent with the facts agreed to in this agreement, this
8 paragraph does not affect defendant's and the USAO's obligations not
9 to contest the facts agreed to in this agreement.

10 25. Defendant understands that even if the Court ignores any
11 sentencing recommendation, finds facts or reaches conclusions
12 different from those agreed to, and/or imposes any sentence up to the
13 maximum established by statute, defendant cannot, for that reason,
14 withdraw defendant's guilty pleas, and defendant will remain bound to
15 fulfill all defendant's obligations under this agreement. Defendant
16 understands that no one -- not the prosecutor, defendant's attorney,
17 or the Court -- can make a binding prediction or promise regarding
18 the sentence defendant will receive, except that it will be within
19 the statutory maximum.

20 NO ADDITIONAL AGREEMENTS

21 26. Defendant understands that, except as set forth herein,
22 there are no promises, understandings, or agreements between the USAO
23 and defendant or defendant's attorney, and that no additional
24 promise, understanding, or agreement may be entered into unless in a
25 writing signed by all parties or on the record in court.

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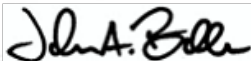
PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

27. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA


NICOLA T. HANNA
United States Attorney



JERRY C. YANG
JOHN A. BALLA
Assistant United States Attorneys

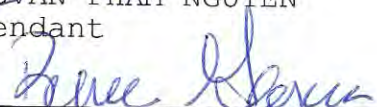
10/13/2020

Date


DONOVAN PHAM NGUYEN
Defendant

10/8/2020

Date


RENEE GARCIA
Attorney for Defendant
DONOVAN PHAM NGUYEN

10/8/2020

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or

1 representations of any kind have been made to me other than those
2 contained in this agreement. No one has threatened or forced me in
3 any way to enter into this agreement. I am satisfied with the
4 representation of my attorney in this matter, and I am pleading
5 guilty because I am guilty of the charges and wish to take advantage
6 of the promises set forth in this agreement, and not for any other
7 reason.

8 
9 _____
DONOVAN PHAM NGUYEN
Defendant

10 _____
Date 10/8/2020

11 CERTIFICATION OF DEFENDANT'S ATTORNEY

12 I am Donovan Pham Nguyen's attorney. I have carefully and
13 thoroughly discussed every part of this agreement with my client.
14 Further, I have fully advised my client of his rights, of possible
15 pretrial motions that might be filed, of possible defenses that might
16 be asserted either prior to or at trial, of the sentencing factors
17 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
18 provisions, and of the consequences of entering into this agreement.
19 To my knowledge: no promises, inducements, or representations of any
20 kind have been made to my client other than those contained in this
21 agreement; no one has threatened or forced my client in any way to
22 enter into this agreement; my client's decision to enter into this
23 agreement is an informed and voluntary one; and the factual basis set
24 forth in this agreement is sufficient to

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1 support my client's entry of a guilty plea pursuant to this
2 agreement.

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4 RENEE GARCIA
Attorney for Defendant
5 DONOVAN PHAM NGUYEN

10/8/2020
Date

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