

FILED

MAY 22 2018

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK



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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 DAVID A. TURCIOS,
16 Defendant.

CASE NO. 2:17-CR-00123-JAM
PLEA AGREEMENT
DATE: MAY 22, 2018
TIME: 9:15 A.M.
COURT: Hon. John A. Mendez

17
18 **I. INTRODUCTION**

19 **A. Scope of Agreement.**

20 The indictment in this case charges the defendant with violation(s) of 18 U.S.C. § 201(b)(2)(A) –
21 being a public official, receiving and agreeing to receive a bribe (“Count Two”). This document
22 contains the complete plea agreement between the Fraud Section, Criminal Division, United States
23 Department of Justice (“the government” or “the United States”) and the defendant regarding this case.
24 This plea agreement is limited to the Fraud Section, Criminal Division, United States Department of
25 Justice and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory
26 authorities.

27 **B. Court Not a Party.**

28 The Court is not a party to this plea agreement. Sentencing is a matter solely within the

1 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
2 concerning the criminal activities of defendant, including activities which may not have been charged in
3 the indictment. The Court is under no obligation to accept any recommendations made by the
4 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
5 including the statutory maximum stated in this plea agreement.

6 If the Court should impose any sentence up to the maximum established by the statute, the
7 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
8 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
9 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
10 receive.

11 II. DEFENDANT'S OBLIGATIONS

12 A. Guilty Plea.

13 The defendant will plead guilty to Count Two in the indictment, 18 U.S.C. § 201(b)(2)(A). The
14 defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis
15 for Plea attached hereto as Exhibit A are accurate.

16 The defendant agrees that this plea agreement will be filed with the Court and become a part of
17 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
18 plea should the Court not follow the government's sentencing recommendations.

19 The defendant agrees that the statements made by him in signing this Agreement, including the
20 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
21 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
22 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
23 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
24 Agreement generally.

25 B. Restitution.

26 The parties agree that restitution is not owed in this matter because the loss to the victim, the United
27 States, is mostly intangible and hard to quantify. Forfeiture, however, the disgorging of the bribe amount
28 paid, is applicable, and will be discussed in Section I.F below.

1 **C. Fine.**

2 Pursuant to the United States Sentencing Guidelines § 5E1.2, the defendant might be required by
3 the Court to pay a criminal fine. The maximum fine range under the Guidelines is \$5,500 to \$55,000.
4 The defendant understands that this plea agreement is voidable at the option of the government if he
5 fails to pay the fine as required by the Court.

6 **D. Special Assessment.**

7 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
8 a check or money order payable to the United States District Court to the United States Probation Office
9 immediately before the sentencing hearing. The defendant understands that this plea agreement is
10 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
11 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
12 to pay the assessment, if necessary, by participating in the Inmate Financial Responsibility Program.

13 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

14 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,
15 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The
16 government will no longer be bound by its representations to the defendant concerning the limits on
17 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the
18 plea agreement is to commit any crime or provide any statement or testimony which proves to be
19 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant
20 constituting obstruction of justice will also be a violation of the agreement. The determination whether
21 the defendant has violated the plea agreement will be under a probable cause standard.

22 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
23 government shall have the right to file any new charges that would otherwise be barred by this plea
24 agreement. The defendant shall thereafter be subject to prosecution for any federal criminal violation of
25 which the government has knowledge, including perjury, false statements, and obstruction of justice.
26 The decision to pursue any or all of these options is solely in the discretion of the government.

27 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
28 defenses that the defendant might have to the government's decision. Any prosecutions that are not

1 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
2 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
3 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
4 The defendant agrees not to raise any objections based on the passage of time with respect to such
5 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
6 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
7 of the date of this plea agreement.

8 In addition, (1) all statements made by the defendant to the government or other designated law
9 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
10 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
11 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
12 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
13 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
14 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
15 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

16 **F. Forfeiture.**

17 1. The defendant agrees to forfeit to the United States voluntarily and immediately all of his
18 rights, title and interest to any and all assets subject to forfeiture pursuant to pursuant to 18 U.S.C.
19 § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2).

20 The defendant agrees that the asset constitutes property representing the proceeds that the
21 defendant obtained from the conduct to which he is pleading guilty.

22 The defendant agrees to fully assist the government in the forfeiture of the relevant assets and to
23 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,
24 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-
25 discussed assets.

26 The defendant voluntarily stipulates and agrees that as part of his sentence the Court may,
27 pursuant to Fed. R. Crim. P. 32.2(b), order a forfeiture money judgment in a maximum amount up to
28

1 \$500.

2 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
3 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
4 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
5 and agrees to waive any claim or defense under the Eighth Amendment to the United States
6 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
7 the State of California or its subdivisions.

8 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
9 defenses or defects that may pertain to the forfeiture.

10 **G. Asset Disclosure.**

11 The defendant agrees to make a full and complete disclosure of his assets and financial
12 condition, and will complete the United States Attorney's Office's "Authorization to Release
13 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
14 of plea. The defendant also agrees to have the Court enter an order to that effect. The defendant
15 understands that this plea agreement is voidable at the option of the government if the defendant fails to
16 complete truthfully and provide the described documentation to the government within the allotted time.

17 **III. THE GOVERNMENT'S OBLIGATIONS**

18 **A. Dismissals.**

19 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
20 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
21 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
22 of Plea Agreement by Defendant/Withdrawal of Plea(s)), VI.B (Guidelines Calculations), and VII.B
23 (Waiver of Appeal and Collateral Attack) herein.

24 **B. Recommendations.**

25 **1. Incarceration Range.**

26 The government will recommend that the defendant be sentenced at the low end of the applicable
27 guideline range as determined by the Court.

28

1 2. Acceptance of Responsibility.

2 The government will recommend a two-level reduction (if the offense level is less than 16) or a
3 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
4 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G.
5 § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation
6 of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise
7 engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either
8 in the preparation of the pre-sentence report or during the sentencing proceeding.

9 **C. Use of Information for Sentencing.**

10 The government is free to provide full and accurate information to the Court and Probation,
11 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
12 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
13 understands and agrees that nothing in this Plea Agreement bars the government from defending on
14 appeal or collateral review any sentence that the Court may impose.

15 Further, other than as set forth above, the government agrees that any incriminating information
16 provided by the defendant during his cooperation will not be used in determining the applicable
17 guideline range, pursuant to U.S.S.G. § 1B1.8, unless the information is used to respond to
18 representations made to the Court by the defendant, or on his behalf, that contradict information
19 provided by the defendant during his cooperation.

20 **IV. ELEMENTS OF THE OFFENSE**

21 At a trial, the government would have to prove beyond a reasonable doubt the following
22 elements of the offense to which the defendant is pleading guilty, that is, to solicit, receive, or agree to
23 receive bribes in violation of Section 201(b)(2)(A) of Title 18 of the United States Code:

24 First, the defendant was a public official;

25 Second, the defendant solicited, received, and agreed to receive something of value, that is, cash
26 and jewelry, in return for being influenced in the performance of an official act; and

27 Third, the defendant acted corruptly, that is, intending to be influenced in the performance of an
28 official act.

1 The defendant fully understands the nature and elements of the crime charged in the ^{Jan}Indictment information
2 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
3 his attorney.

4 **V. MAXIMUM SENTENCE**

5 **A. Maximum Penalty.**

6 The maximum sentence that the Court can impose is 15 years of incarceration, a fine of
7 \$250,000, a three year period of supervised release, a special assessment of \$100, and may be
8 disqualified from holding any office of honor, trust, or profit under the United States.

9 **B. Violations of Supervised Release.**

10 The defendant understands that if he violates a condition of supervised release at any time during
11 the term of supervised release, the Court may revoke the term of supervised release and require the
12 defendant to serve up to one additional year imprisonment.

13 **VI. SENTENCING DETERMINATION**

14 **A. Statutory Authority.**

15 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
16 must take them into account when determining a final sentence. The defendant understands that the
17 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
18 Sentencing Guidelines and must take them into account when determining a final sentence. The
19 defendant further understands that the Court will consider whether there is a basis for departure from the
20 guideline sentencing range (either above or below the guideline sentencing range) because there exists
21 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
22 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
23 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
24 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

25 **B. Guideline Calculations.**

26 1. Base Offense Level: 14

27 The parties agree defendant was a public official under U.S.S.G. § 2C1.1(a)(1).

28 2. Acceptance of Responsibility: -2

1 Pursuant to U.S.S.G. § 3E1.1(a).

2 3. Criminal History: I

3 4. Sentencing Range: 10-16 in Zone C

4 The parties agree that they will not seek or argue in support of any other specific offense
5 characteristics, Chapter Three adjustments (other than the decrease for “Acceptance of Responsibility”),
6 or cross-references, except that the government may move for a departure or an adjustment based on the
7 defendant’s cooperation (§ 5K1.1) or post-plea obstruction of justice (§ 3C1.1), and defendant may
8 move for a departure based on § 5K2.13. Both parties agree not to move for, or argue in support of, any
9 other departure from the Sentencing Guidelines, and agree that a sentence called for by the advisory
10 Sentencing Guidelines is a reasonable sentence. The defendant is free, however, without violating this
11 agreement, to seek a variance from that sentence called for by the Sentencing Guidelines under 18
12 U.S.C. § 3553(a), and the government is free to oppose such a variance.

13 **VII. WAIVERS**

14 **A. Waiver of Constitutional Rights.**

15 The defendant understands that by pleading guilty he is waiving the following constitutional
16 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
17 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
18 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
19 compelled to incriminate himself.

20 **B. Waiver of Appeal and Collateral Attack.**

21 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
22 conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to
23 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
24 exceed the statutory maximum for the offense to which he is pleading guilty. The defendant specifically
25 gives up the right to appeal any order of restitution the Court may impose. The waiver in this paragraph
26 does not apply to a claim relating to ineffective assistance of counsel.
27

28 Notwithstanding the defendant’s waiver of appeal, the defendant will retain the right to appeal if

1 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
2 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
3 understands that these circumstances occur infrequently and that in almost all cases this Agreement
4 constitutes a complete waiver of all appellate rights.

5 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
6 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
7 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims. In addition, the
8 Defendant waives all rights to argue that the statute to which the Defendant is pleading guilty is
9 unconstitutional and that the admitted conduct does not fall within the scope of the statute.

10 Notwithstanding the agreement in paragraph III.A above that the government will refrain from
11 further prosecution of the defendant on these facts, if the defendant ever attempts to vacate his plea(s),
12 dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is
13 pleading guilty, the government shall have the rights set forth in Section II.E herein.

14 **C. Waiver of Attorneys' Fees and Costs.**

15 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
16 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
17 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
18 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
19 charges previously dismissed).

20 **D. Impact of Plea on Defendant's Immigration Status.**

21 Defendant recognizes that pleading guilty may have consequences with respect to the
22 defendant's immigration status if the defendant is not a natural-born citizen of the United
23 States. Under federal law, a broad range of crimes are removable offenses, including the offenses
24 to which the defendant is pleading guilty. In addition, under certain circumstances,
25 denaturalization may also be a consequence of pleading guilty to a crime. Removal,
26 denaturalization, and other immigration consequences are the subject of a separate proceeding,
27 however, and defendant understands that no one, including the defendant's attorney or the Court,
28 can predict to a certainty the effect of the defendant's conviction on the defendant's immigration

1 status. The defendant nevertheless affirms that the defendant chooses to plead guilty regardless of
2 any immigration consequences that the defendant's plea may entail, even if the consequence is the
3 defendant's denaturalization and automatic removal from the United States.

4 **E. Debarment.**

5 The defendant understands that, upon sentencing, the government will report his conviction to
6 the Department of Justice's Bureau of Justice Assistance pursuant to 10 U.S.C. § 2408 for inclusion in
7 the Defense Procurement Fraud Debarment Clearinghouse database and the System for Award
8 Management of the General Services Administration. The defendant understands that 10 U.S.C. § 2408
9 provides for a mandatory term of debarment of at least five years, which term may only be waived if the
10 Secretary of Defense determines a waiver is in the interests of national security. The defendant
11 understands that he also may be subject to the administrative action by other federal or state agencies,
12 based upon the conviction resulting from this Plea Agreement and upon grounds other than 10 U.S.C.
13 § 2408, and that this Plea Agreement in no way controls whatever action, if any, other agencies may
14 take. The defendant nevertheless affirms that he wants to plead guilty regardless of the debarment or
15 administrative action consequences of his plea. Therefore, the defendant waives any and all challenges
16 to his guilty plea and to his sentence based on the debarment or administrative action consequences of
17 his plea, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of
18 collateral attack challenging his guilty plea, conviction, or sentence based on such consequences of his
19 guilty plea. However, the government agrees that, if requested, it will advise the appropriate officials of
20 any governmental agency considering such administrative action of the fact, manner, and extent of any
21 cooperation of the defendant as a matter for that agency to consider before determining what
22 administrative action, if any, to take.

23 **VIII. ENTIRE PLEA AGREEMENT**

24 Other than this plea agreement, no agreement, understanding, promise, or condition between the
25 government and the defendant exists, nor will such agreement, understanding, promise, or condition
26 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
27 counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel:

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated: 5/22/18

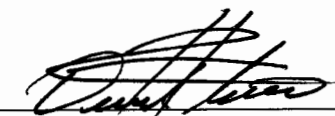


TIMOTHY ZINDEL
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated:



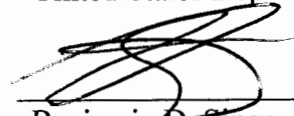
DAVID A. TURCIOS
Defendant

C. Attorney for the United States:

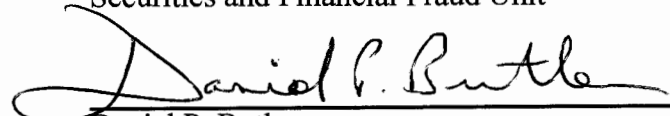
I accept and agree to this plea agreement on behalf of the government.

Dated:

SANDRA L. MOSER
Acting Chief, Fraud Section
Criminal Division
United States Department of Justice



Benjamin D. Singer
Deputy Chief, Fraud Section
Securities and Financial Fraud Unit



Daniel P. Butler
Trial Attorney, Fraud Section

1 EXHIBIT "A"

2 Factual Basis for Plea

3 The parties agree that if this matter proceeded to trial, the United States would establish the
4 following facts beyond a reasonable doubt:

5 At all relevant times, Bagram Airfield ("Bagram") was the largest United States military base in
6 Afghanistan. The Humanitarian Aid ("HA") Yard at Bagram purchased supplies from local Afghan
7 vendors that were then provided as part of the Commander's Emergency Response Program ("CERP").
8 That program enabled U.S. military commanders to respond to urgent humanitarian relief requirements in
9 Afghanistan, and the projects under that program were intended to benefit the local Afghan populace until
10 larger, more formal reconstruction projects could be initiated.

11
12 At all relevant times, defendant DAVID A. TURCIOS' residence in the United States was at Travis
13 Air Force Base in the State and Eastern District of California, where he lived with his wife and daughter.

14
15 From in or about November 2010 until in or about November 2011, TURCIOS worked as a United
16 States Air Force Staff Sergeant (E-5) at the HA Yard. TURCIOS' role at the HA Yard was that of Yard
17 Supervisor, meaning that he was responsible for replenishing supplies such as rice, beans, and clothing at
18 the HA Yard. In addition to ordering supplies, TURCIOS oversaw the loading of trucks that transported
19 the supplies off the base. At the HA Yard, TURCIOS was responsible for procuring food and supplies in
20 support of CERP operations of less than \$500,000. While TURCIOS worked at the HA Yard,
21 approximately nine contracts in which TURCIOS was involved were awarded to Afghan vendors with a
22 value of approximately \$2,058,635.30.

23
24 As part of his duties at the HA Yard, TURCIOS worked closely with, among others, an Afghan
25 contractor ("the Vendor") who sought to obtain contracts to replenish supplies in the HA Yard for
26 companies with which he was associated. In or about September 2011, TURCIOS agreed to allow the
27 Vendor to provide the names of the three companies to be selected on each of the replenishment contracts
28 he oversaw, effectively allowing the Vendor to select the company awarded the respective contract.

1 Because TURCIOS was nearing the end of his deployment in Afghanistan, he only had time to prepare
2 approximately two contracts with the Vendor and, in or about October 2011, approximately two contracts
3 in which TURCIOS was involved were awarded to companies owned by individuals associated with the
4 Vendor.

5
6 In or about late October or early November 2011, just prior to TURCIOS' re-deployment to the
7 United States, the Vendor offered TURCIOS \$3,500 in return for TURCIOS' actions on behalf of the
8 Vendor as to HA Yard replenishment contracts.

9 Between on or about November 1, 2011 and on or about November 16, 2011, TURCIOS sent
10 several emails urging U.S. Army officials to approve payments to the Vendor in connection with the
11 Vendor's HA Yard contracts and obtained from the U.S. Army a voucher authorizing payment to the
12 Vendor.

13
14 On or about November 17, 2011, TURCIOS returned to California.

15 On or about November 20, 2011, TURCIOS used his personal email account to send the Vendor
16 a copy of the payment voucher he obtained from the U.S. Army and asked the Vendor to make a cash
17 payment to TURCIOS's wife.

18 After returning to California, TURCIOS, having not received the \$3,500, continued to
19 communicate with the Vendor by email, using TURCIOS' personal email address, in an effort to receive
20 the money. In those emails, TURCIOS offered the Vendor preferential treatment in being considered and
21 receiving more HA Yard contracts when TURCIOS returned to Afghanistan in exchange for cash
22 payments from the Vendor.

23
24 On or about February 12, 2013, per the direction of TURCIOS, the Vendor caused to be wire
25 transferred from Afghanistan to TURCIOS' wife's bank account in the Eastern District of California \$500
26 of the \$3,500 promised.