

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

MAY 10 2024

MITCHELL R. ELFERS  
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**BRET ANTHONY VALLO,**

Defendant.

Cr. No. 22-1012 WJ

**PLEA AGREEMENT**

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, Bret Anthony Vallo, and the Defendant's counsel, Irma Rivas, Esq.

**REPRESENTATION BY COUNSEL**

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

**RIGHTS OF THE DEFENDANT**

2. The Defendant further understands the Defendant's rights:
- a. to be prosecuted by indictment;
  - b. to plead not guilty, or having already so pleaded, to persist in that plea;
  - c. to have a trial by jury; and

- d. at a trial:
  - i. to confront and cross-examine adverse witnesses,
  - ii. to be protected from compelled self-incrimination,
  - iii. to testify and present evidence on the Defendant's own behalf, and
  - iv. to compel the attendance of witnesses for the defense.

**WAIVER OF RIGHTS AND PLEA OF GUILTY**

- 3. The Defendant agrees to waive these rights and to plead guilty to Count Two of the indictment, charging a violation of 18 U.S.C. §§ 1153, 113(a)(8), that being Assault of an Intimate Partner by Strangling and Count Three of the indictment, 18 U.S.C. §§ 1153, 113(a)(3), that being Assault with a Dangerous Weapon.

**SENTENCING**

- 4. The Defendant understands that the **maximum** penalty provided by law for Count Two is:
  - a. imprisonment for a period of not more than 10 years;
  - b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
  - c. a term of supervised release of not more than three years to follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);

- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

5. The Defendant understands that the **maximum** penalty provided by law for Count

Three is:

- a. imprisonment for a period of not more than 10 years;
- b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
- c. a term of supervised release of not more than three years to follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

6. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes. The Defendant further recognizes that while the Defendant's attorney may have made a prediction or estimate of the sentence that the Court may impose, the Defendant understands that the Court is not bound by any such estimate or prediction.

**ELEMENTS OF THE OFFENSE**

7. If this matter proceeded to trial, the Defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for violations of the charges listed below:

Count 2: 18 U.S.C. §§ 1153, 113(a)(8), that being Assault of an Intimate Partner by Strangling

*First:* The defendant assaulted Jane Doe;

*Second:* Jane Doe was a spouse, intimate partner, or dating partner;

*Third:* The assault was by strangling, suffocating, or attempting to strangle or suffocate;

*Fourth:* The defendant is an Indian; and

*Fifth:* The crime occurred in Indian Country.

Count 3: 18 U.S.C. §§ 1153, 113(a)(3), that being Assault with a Dangerous Weapon

*First:* The defendant assaulted Jane Doe;

*Second:* The assault was done with the use of a dangerous weapon;

*Third:* The assault was done with the intent to commit bodily harm;

*Fourth:* The defendant is an Indian; and

*Fifth:* The crime occurred in Indian Country.

**DEFENDANT'S ADMISSION OF FACTS**

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

**On or about the 30<sup>th</sup> of May 2019, in the District of New Mexico on the Acoma Pueblo, which is Indian Country for the purposes of federal law, I engaged in a verbal argument with Jane Doe. The verbal argument then became physical and at that time I approached Jane Doe from behind, wrapped my arm around her neck and strangled her until she lost consciousness. At the time of this event, I was in a dating relationship with Jane Doe. Additionally, at that time, I was an enrolled member of the Pueblo of Laguna, and an Indian for the purposes of federal law.**

**On, about or between the 1<sup>st</sup> and the 15<sup>th</sup> of July 2019, in the District of New Mexico, on the Acoma Pueblo, which is Indian Country for the purposes of federal law, I engaged in a verbal argument with Jane Doe. At that time, the dispute became physical in nature as I punched her in the face and then stuck her several times with a metal futon leg. At the time of this event, I was in a dating relationship with Jane**

**Doe. Additionally, at that time, I was an enrolled member of the Pueblo of Laguna, and an Indian for the purposes of federal law.**

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant is pleading guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

### **RECOMMENDATIONS**

10. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend as follows:

- a. The Defendant and the United States have made an AGREEMENT pursuant to the Federal Rule of Criminal Procedure 11(c)(1)(B), that a sentencing range of 37 - 46 months imprisonment is the applicable disposition in this case and that Defendant should not receive a sentence of greater than 46 months. This recommendation does not extend to any sentence to be imposed upon revocation of probation or supervised release.
- b. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to USSG § 3E1.1(a), so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines, and if

applicable, a reduction of an additional offense level pursuant to USSG § 3E1.1(b). This reduction is contingent upon the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement in which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this recommendation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

c. The Defendant understands that the above recommendations are not binding on the Court and that whether the Court accepts these recommendations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. If the Court does not accept any one or more of the above recommendations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any of the parties' recommendations, the Defendant's final sentence is solely within the discretion of the Court.

11. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under USSG § 1B1.3.

**DEFENDANT'S ADDITIONAL AGREEMENT**

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. The Defendant agrees that any financial records and information provided by the Defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

14. The Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

15. By signing this plea agreement, the Defendant waives the right to withdraw the Defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless (1) the



court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the Defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal. Furthermore, the Defendant understands that if the court rejects the plea agreement, whether or not the Defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and the Defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

16. The Defendant will not willfully fail to appear for any court appearance in this matter, nor willfully fail to surrender as ordered for service of any sentence.

17. The Defendant agrees not to engage in conduct that would constitute a new crime. Offenses that would be excluded for sentencing purposes under the United States Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) § 4A1.2(c) are not within the scope of this paragraph’s agreement.

18. Defendant agrees not to engage in conduct that would constitute obstructing or impeding the administration of justice under U.S.S.G. § 3C1.1.

### **RESTITUTION**

19. The parties agree that, as part of the Defendant’s sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim’s Restitution Act, 18 U.S.C. § 3663A, if applicable; if § 3663A is not applicable, the Court will enter an order of restitution pursuant to 18 U.S.C §§ 3663 and 3664.

**WAIVER OF APPEAL AND POST-CONVICTION RIGHTS**

20. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence within or below the advisory guideline range as determined by the Court, as well as any order of restitution entered by the Court. This waiver extends to any challenge to the manner in which the sentence was determined or imposed, including the district court's authority to make findings supporting the sentence.

21. The Defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this cause number but may nonetheless appeal the determination of the revocation Guideline range.

22. The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a).

23. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, pursuant to 28 U.S.C. §§ 2241, 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

**GOVERNMENT'S ADDITIONAL AGREEMENT**

24. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss Count 1 of the Indictment.

b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

25. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

#### **VOLUNTARY PLEA**

26. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement and any addenda). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

#### **VIOLATION OF PLEA AGREEMENT**

27. The Defendant agrees that if the Court finds that the Defendant has violated any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

#### **SPECIAL ASSESSMENT**

28. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico


87102, a money order, or certified check payable to the order of the **United States District Court** in the amount of \$100<sup>per count</sup> in payment of the special penalty assessment described above.

**ENTIRETY OF AGREEMENT**

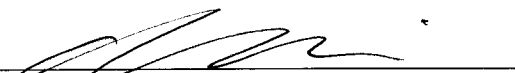
29. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 10<sup>th</sup> day of May, 2024.

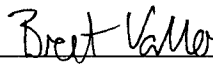
ALEXANDER M.M. UBALLEZ  
United States Attorney

  
Robert James Booth II  
Assistant United States Attorney  
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(505) 346-7274

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. In addition, I have explained to my client the elements to each offense to which she/he is pleading guilty. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

  
Irma Rivas  
Attorney for the Defendant

I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.

  
\_\_\_\_\_  
Bret Anthony Vallo  
Defendant