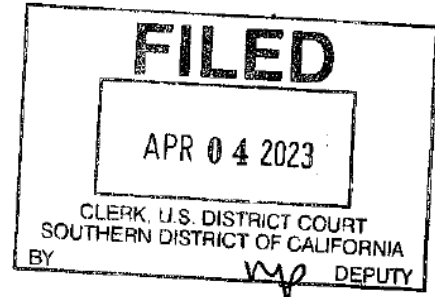


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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

Case No. 20-CR-2110-WQH

11 Plaintiff,

12 v.

PLEA AGREEMENT

13 OTTO FERNANDO GODOY-CORDON,

14 Defendant.

15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
16 AMERICA, through its counsel, Randy S. Grossman, United States Attorney,
17 and Kyle B. Martin, Assistant United States Attorney, and Defendant
18 OTTO FERNANDO GODOY-CORDON, with the advice and consent of Meghan A.
19 Blanco, counsel for Defendant, as follows:

20 I

21 THE PLEA

22 Defendant agrees to plead guilty to Count 1 of the Indictment
23 charging Defendant with:

24 Beginning on a date unknown to the grand jury and continuing
25 up to and including February 8, 2018, in the countries of
26 Colombia, Venezuela, Guatemala, Mexico, and elsewhere,
27 defendant OTTO FERNANDO GODOY-CORDON, who will first enter
28 the United States in the Southern District of California, did
knowingly and intentionally conspire with other persons known
and unknown to the grand jury to distribute and cause the
distribution of 5 kilograms and more of a mixture and
substance containing a detectable amount of cocaine, a

Plea Agreement

Def. Initials GC
20-CR-2110-WQH

1 Schedule II Controlled Substance; intending, knowing, and
2 having reasonable cause to believe that such cocaine would be
unlawfully imported into the United States; all in violation
of Title 21, United States Code, Sections 959, 960, and 963.

3 Defendant further agrees to the administrative and/or civil
4 forfeiture of all properties seized in connection with this case which
5 the defendant agrees are subject to forfeiture to the United States
6 pursuant to 18 U.S.C. § 983(a). Defendant further waives his right to
7 receive timely notice of administrative forfeiture as set forth in 18
8 U.S.C. § 983(a) and waives receipt of all notice of forfeiture in this
9 an all other administrative and civil proceedings. Defendant waives and
10 disclaims Defendant's interest, if any, in the properties to be
11 forfeited as described above. Defendant further agrees not to contest
12 or to assist any other person or entity in contesting the forfeiture of
13 the property(ies) seized in connection with this case.

14 **II**

15 **NATURE OF THE OFFENSE**

16 **A. ELEMENTS EXPLAINED**

17 The offense to which Defendant is pleading guilty has the following
18 elements:

- 19 (1) There was an agreement between two or more persons to
20 distribute cocaine outside the United States;
21 (2) Defendant joined in the agreement knowing of its purpose
22 to distribute cocaine and intending to help accomplish
23 that purpose; and
24 (3) The conspiracy intended, knew, or had reasonable cause
25 to believe that the cocaine be unlawfully brought into
26 the United States.

1 In addition, for purposes of sentencing, the Government would have
2 to prove beyond a reasonable doubt that the amount of cocaine involved
3 in the agreement was at least 5 kilograms of a mixture and substance
4 containing a detectable amount of cocaine.

5 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

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

10 1. Beginning no later than on or about October 2017 and
11 continuing until February 8, 2018, Defendant knowingly and
12 intentionally agreed and conspired with others to distribute
13 cocaine in Guatemala and elsewhere, knowing and having
14 reasonable cause to believe that the cocaine would be
15 unlawfully imported into the United States.

16 2. As part of and in furtherance of these agreements, Defendant
17 participated in a drug trafficking venture wherein he and
18 others coordinated the transportation of cocaine via
19 aircraft from South America to Guatemala, where said cocaine
20 was further transported to Mexico and ultimately to the
21 United States.

22 3. Defendant's specific role in the conspiracy was to drive the
23 person responsible for coordinating the transportation of
24 cocaine from South America to Guatemala (the "Transportation
25 Coordinator") from hotels within Guatemala to hidden
26 airstrips in remote parts of the country. Defendant would use
27 his military credentials to ensure that law enforcement in
28 Guatemala would not stop or detain the transportation

1 coordinator as he traveled to and from the airstrips. A
2 member of the conspiracy would provide defendant with
3 general locations of airstrips in remote areas, and
4 defendant would locate the airstrips' specific GPS
5 coordinates and dimensions to ensure planes containing
6 cocaine could land safely. On one occasion, Defendant
7 advised members of the conspiracy of the existence of a
8 remote airstrip in the town of El Naranjo.

- 9
10 4. Defendant agrees that the United States could prove beyond a
11 reasonable doubt that the amount of cocaine involved in the
12 offense was at least 5 kilograms of a mixture and substance
13 containing a detectable amount of cocaine, a Schedule II
14 Controlled Substance. Defendant also admits that it was
15 reasonably foreseeable that the amount of cocaine involved in
16 the offense was over 450 kilograms of cocaine.

17 **III**

18 **PENALTIES**

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

- 21 A. a maximum of life in prison and a mandatory minimum 10 years;
22 B. a maximum \$10,000,000 fine;
23 C. a mandatory special assessment of \$100 per count; and
24 D. a term of supervised release of at least 5 years and up to
25 life. Failure to comply with any condition of supervised
26 release may result in revocation of supervised release,
27 requiring Defendant to serve in prison, upon revocation, all
28 or part of the statutory maximum term of supervised release.

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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;
 - D. Confront and cross-examine adverse witnesses;
 - E. Testify and present evidence and to have witnesses testify on behalf of Defendant; and,
 - F. Not testify or have any adverse inferences drawn from the failure to testify; and
 - G. Defendant knowingly and voluntarily waives any rights and defenses Defendant may have under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution to the forfeiture of property in this proceeding or any related civil proceeding.

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

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

Any information establishing the factual innocence of Defendant known to the undersigned prosecutor in this case has been turned over

1 to Defendant. The Government will continue to provide such information
2 establishing the factual innocence of Defendant.

3 If this case proceeded to trial, the Government would be required
4 to provide impeachment information for its witnesses. In addition, if
5 Defendant raised an affirmative defense, the Government would be
6 required to provide information in its possession that supports such a
7 defense. By pleading guilty Defendant will not be provided this
8 information, if any, and Defendant waives any right to this information.
9 Defendant will not attempt to withdraw the guilty plea or to file a
10 collateral attack based on the existence of this information.

11 **VI**

12 **DEFENDANT'S REPRESENTATION THAT GUILTY**

13 **PLEA IS KNOWING AND VOLUNTARY**

14 Defendant represents that:

- 15 A. Defendant has had a full opportunity to discuss all the facts
16 and circumstances of this case with defense counsel and has
17 a clear understanding of the charges and the consequences of
18 this plea. By pleading guilty, Defendant may be giving up,
19 and rendered ineligible to receive, valuable government
20 benefits and civic rights, such as the right to vote, the
21 right to possess a firearm, the right to hold office, and the
22 right to serve on a jury. The conviction in this case may
23 subject Defendant to various collateral consequences,
24 including but not limited to revocation of probation, parole,
25 or supervised release in another case; debarment from
26 government contracting; and suspension or revocation of a
27 professional license, none of which can serve as grounds to
28 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 Defendant is guilty and
for no other reason.

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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 authorities in any type of matter, although the Government will bring this plea agreement to the attention of other authorities if requested by Defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). 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. 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. The sentence cannot be determined until a presentence report is prepared by the U.S. Probation Office and defense counsel and the Government have an opportunity to review and challenge the presentence report. Nothing in this plea agreement limits 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). The sentence is within the sole discretion of

1 the sentencing judge who may impose the maximum sentence provided by
2 statute. It is uncertain at this time what Defendant's sentence will
3 be. The Government has not made and will not make any representation
4 about what sentence Defendant will receive. Any estimate of the probable
5 sentence by defense counsel is not a promise and is not binding on the
6 Court. Any recommendation by the Government at sentencing also is not
7 binding on the Court. If the sentencing judge does not follow any of
8 the parties' sentencing recommendations, Defendant will not withdraw
9 the plea.

10 X

11 PARTIES' SENTENCING RECOMMENDATIONS

12 A. SENTENCING GUIDELINE CALCULATIONS

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

17

1. Base Offense Level [USSG § 2D1.1]	38
18 2. Safety Valve [USSG § 5C1.2]	-2
19 3. Acceptance of Responsibility [§ 3E1.1]	-3
20 4. Combination of Circumstances [§ 2.0]	-3 ¹

21 B. ACCEPTANCE OF RESPONSIBILITY

22 Despite paragraph A above, the Government need not recommend an
23 adjustment for Acceptance of Responsibility if Defendant engages in

24

25 ¹ The three point combination of circumstances departure is based on:
26 (1) Defendant's timely waiver of extradition hearings in Guatemala which
27 saved significant time and expenses in litigating his extradition; (2)
28 Defendant's expeditious resolution of the case in that he did not file
any substantive motions; and (3) Defendant's waiver of appeal and
collateral attack.

1 conduct inconsistent with acceptance of responsibility including, but
2 not limited to, the following:

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

11 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING THOSE
12 UNDER 18 U.S.C. § 3553

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

18 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

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

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

22 The facts in the "factual basis" paragraph of this agreement are
23 true and may be considered as "relevant conduct" under USSG § 1B1.3 and
24 as the nature and circumstances of the offense under 18 U.S.C.
25 § 3553(a)(1).

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1 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

2 The Government will recommend that Defendant be sentenced to the
3 low end of the guideline range recommended by the Government at
4 sentencing.

5 If Defendant is eligible and applies to transfer his sentence
6 pursuant to the international prisoner transfer program, the United
7 States Attorney's Office for the Southern District of California agrees
8 not to oppose the defendant's transfer application. Defendant
9 acknowledges and understands, however, that the transfer decision rests
10 in the sole discretion of the Office of Enforcement Operations (OEO) of
11 the Criminal Division of the United States Department of Justice and
12 that the position of the Southern District of California is neither
13 binding nor determinative of the positions of other federal agencies or
14 on OEO's final decision to transfer. Defendant further understands that
15 in addition to OEO, federal law and the underlying transfer treaties
16 require that the foreign government must also approve the transfer.
17 Defendant agrees not to make any such request to the international
18 prisoner transfer program until he has completed 50% of his sentence in
19 the United States.

20 G. SPECIAL ASSESSMENT/FINE

21 1. Special Assessment

22 The parties will jointly recommend that Defendant pay a special
23 assessment in the amount of \$100.00 per felony count of conviction to
24 be paid forthwith at time of sentencing. Special assessments shall be
25 paid through the office of the Clerk of the District Court by bank or
26 cashier's check or money order made payable to the "Clerk, United States
27 District Court."

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2. Fine

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

H. SUPERVISED RELEASE

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

XIII

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. This waiver includes, but is not limited to, any argument that the statute of conviction or Defendant's prosecution is unconstitutional and any argument that the facts of this case do not constitute the crime charged. The only exception is that Defendant may collaterally attack the conviction or sentence on the basis that Defendant received ineffective assistance of counsel. Defendant also waives, to the full extent of the law, any right to appeal or to collaterally attack the sentences imposed.

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XIV

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.

If Defendant breaches this plea agreement, Defendant will not be able to enforce any provisions, and the Government will be relieved of all its obligations under this plea agreement. For example, the Government may proceed to sentencing but recommend a different sentence

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

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

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XV

CONTENTS AND MODIFICATION OF AGREEMENT

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

XVI

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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XVII

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.

RANDY S. GROSSMAN
United States Attorney



KYLE B. MARTIN
Assistant U.S. Attorney

4/3/23

DATED

3-24-23

DATED



MEGHAN A. BLANCO
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.

3-24-23

DATED



OTTO FERNANDO GODOY-CORDON
Defendant