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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 ELENO FERNANDEZ-GARCIA,
15 Defendant.

CASE NO. 1:20-cr-00138 NONE-SKO
PLEA AGREEMENT
DATE: TBD
TIME: 10:00 a.m.
COURT: Hon. Dale A. Drozd

16
17 **I. INTRODUCTION**

18 **A. Scope of Agreement**

19 The indictment in this case charges the defendant with the following violations: Conspiracy to
20 Manufacture, Distribute, and Possess with Intent to Distribute Marijuana, in violation of 21 U.S.C. §§
21 846, 841(a)(1), and 841(b)(1)(A) (“Count One”); Manufacture of Marijuana and Aiding and Abetting, in
22 violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A); 18 U.S.C. § 2 (“Count Two”); and Depredation of
23 Public Lands and Resources and Aiding and Abetting, in violation of 18 U.S.C. §§ 1361, 2 (“Count
24 Three”). The indictment further contains a forfeiture allegation, pursuant to 18 U.S.C. § 981(a)(1)(C),
25 21 U.S.C. § 853, and 28 U.S.C. § 2461(c). This document contains the complete plea agreement
26 between the United States Attorney’s Office for the Eastern District of California (the “government”)
27 and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s
28 Office for the Eastern District of California and cannot bind any other federal, state, or local

1 prosecuting, administrative, or regulatory authorities.

2 **B. Court Not a Party**

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

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

14 **II. DEFENDANT'S OBLIGATIONS**

15 **A. Guilty Plea**

16 The defendant will plead guilty to Count One, which charges a Conspiracy to Manufacture,
17 Distribute, and Possess with Intent to Distribute 1,000 or More Marijuana Plants. The defendant agrees
18 that he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached
19 hereto as Exhibit A are accurate.

20 The defendant reserves the right to argue for a mitigating role in the offense.

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

24 The defendant agrees that the statements made by him in signing this Agreement, including the
25 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
26 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
27 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal
28 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these

1 rules are inconsistent with this paragraph or with this Agreement generally.

2 The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C.
3 § 3143(a)(2), and agrees that he will be remanded into custody upon the entry of his plea.

4 **B. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

5 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
6 his plea, this plea agreement is voidable at the option of the government. The government will no longer
7 be bound by its representations to the defendant concerning the limits on criminal prosecution and
8 sentencing as set forth herein.

9 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
10 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded
11 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
12 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
13 be subject to prosecution for any federal criminal violation of which the government has knowledge,
14 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
15 options is solely in the discretion of the United States Attorney's Office.

16 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
17 defenses that the defendant might have to the government's decision to exercise the options stated in the
18 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as
19 of the date of this plea agreement may be commenced in accordance with this paragraph,
20 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement
21 and the commencement of any such prosecutions. The defendant agrees not to raise any objections
22 based on the passage of time with respect to such counts including, but not limited to, any statutes of
23 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
24 Amendment to any counts that were not time-barred as of the date of this plea agreement.

25 In addition: (1) all statements made by the defendant to the government or other designated law
26 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
27 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
28 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no

1 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
2 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
3 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
4 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

5 **C. Restitution**

6 The defendant agrees to pay restitution to the U.S. Forest Service, pursuant 18 U.S.C. §
7 3663(a)(3), in the amount of \$45,688.00, for the damage sustained to the environment as a result of the
8 marijuana cultivation activities in the Basin Creek drainage of the Stanislaus National Forest.
9 Restitution is to be sent to the Clerk of the Court, who shall forward it the U.S. Forest Service,
10 Albuquerque Service Center, Claims Management, 101B Sun Avenue NE, Albuquerque, New Mexico
11 87109.

12 If incarcerated, payment of restitution (without interest) is due during imprisonment at the rate of
13 not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial
14 Responsibility Program.

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

16 **A. Dismissals**

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

22 **B. Recommendations**

23 1. Incarceration Range

24 The government will recommend that the defendant be sentenced to the low end of the
25 applicable Guidelines range for his offense and a two-level reduction pursuant to the safety valve
26 provision, if eligible for such relief.

27 2. Acceptance of Responsibility

28 The government will recommend a two-level reduction (if the offense level is less than

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

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

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

14 **IV. ELEMENTS OF THE OFFENSE**

15 At a trial, the government would have to prove beyond a reasonable doubt the following
16 elements of the offense(s) to which the defendant is pleading guilty:

17 As to Count One, Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute
18 1,000 or More Marijuana Plants, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A):

- 19 1. There was an agreement between two or more persons to manufacture, to distribute
20 and/or to possess with intent to distribute a controlled substance, which was marijuana;;
21 and
22 2. The defendant joined in the agreement knowing of its purpose and intending to help
23 accomplish it.

24 9th Cir. Jury Instruction 9.19 (2010).

25 "To manufacture" means to produce, prepare, propagate, compound, or processing a drug. 21
26 U.S.C. § 802(15). In the context of a marijuana conspiracy, "to produce" means to plant, cultivate,
27 grow, or harvest marijuana. 21 U.S.C. § 802(22).

28 "To distribute" means to deliver a controlled substance. 21 U.S.C. §802(11).

1 “To possess with intent to distribute” means to possess with intent to deliver or transfer
2 possession of a controlled substance to another person, with or without any financial interest in the
3 transaction. 9th Cir. Jury Instruction 9.15 (2010).

4 In addition, the government at trial would have to prove beyond a reasonable doubt that the drug
5 quantity involved equaled or exceeded 1,000 marijuana plants.

6 The defendant fully understands the nature and elements of the crimes charged in the indictment
7 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
8 his attorney.

9 **V. MAXIMUM SENTENCE**

10 **A. Maximum Penalty**

11 The maximum sentence that the Court can impose is life in prison, a fine of \$10 million, a 5-year
12 mandatory minimum term and a maximum life term of supervised release, and a special assessment of
13 \$100. The charge to which defendant is pleading guilty carries a ten-year mandatory minimum
14 sentence. In addition, the defendant may be ineligible for certain federal and/or state assistance and/or
15 benefits, pursuant to 21 U.S.C. § 862. By signing this plea agreement, the defendant also agrees that
16 the Court can order the payment of restitution for the full loss caused by the defendant’s wrongful
17 conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the
18 specific counts to which the defendant is pleading guilty. The defendant further agrees, as noted above,
19 that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution
20 imposed by the Court.

21 **B. Violations of Supervised Release**

22 The defendant understands that if he violates a condition of supervised release at any time during
23 the term of supervised release, the Court may revoke the term of supervised release and require the
24 defendant to serve up to 5 years of additional imprisonment.

25 **VI. SENTENCING DETERMINATION**

26 **A. Statutory Authority**

27 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
28 must take them into account when determining a final sentence. The defendant understands that the

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

9 **B. Guideline Calculations**

10 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
11 under 18 U.S.C. § 3553(a).

12 **VII. WAIVERS**

13 **A. Waiver of Constitutional Rights**

14 The defendant understands that by pleading guilty he is waiving the following constitutional
15 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
16 be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative
17 defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of
18 conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to
19 testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be
20 compelled to incriminate himself.

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

22 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
23 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to
24 appeal the guilty plea, conviction, and the sentence imposed in this case. The defendant understands
25 that this waiver includes, but is not limited to, any and all constitutional and/or legal challenges to the
26 defendant's conviction and guilty plea, including arguments that the statutes to which defendant is
27 pleading guilty are unconstitutional, and any and all claims that the statement of facts attached to this
28 agreement is insufficient to support the defendant's plea of guilty. The defendant specifically gives up

1 the right to appeal any order of restitution the Court may impose.

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

7 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
8 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
9 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

10 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will
11 move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss
12 the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading
13 guilty, the government shall have the rights set forth in paragraph II.B (Defendant's Violation of Plea
14 Agreement) herein.

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

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

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

22 Defendant recognizes that pleading guilty may have consequences with respect to his
23 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
24 are removable offenses, including offense(s) to which the defendant is pleading guilty. The defendant
25 and his counsel have discussed the fact that the charge to which the defendant is pleading guilty is an
26 aggravated felony, or a crime that is likely to be determined to be an aggravated felony under 8 USC §
27 1101(a)(43), and that while there may be arguments that defendant can raise in immigration proceedings
28 to avoid or delay removal, it is virtually certain that defendant will be removed. Removal and other

1 immigration consequences are the subject of a separate proceeding, however, and defendant understands
2 that no one, including his attorney or the district court, can predict to a certainty the effect of his
3 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
4 regardless of any immigration consequences that his plea may entail, even if the consequence is his
5 automatic removal from the United States.

6 **VIII. ENTIRE PLEA AGREEMENT**

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

11 **IX. APPROVALS AND SIGNATURES**

12 **A. Defense Counsel:**

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

16 Dated: 5/4/21


17 DAVID TORRES
Counsel for Defendant

18 **B. Defendant:**

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

25 Dated: 5-4-21


26 ELENO FERNANDEZ-GARCIA,
27 Defendant
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C. Court Certified Interpreter/Translator:

I declare that I am a court-certified Spanish-English interpreter/translator. On

5/4/21, I read the entire contents of the foregoing plea agreement to ELENO FERNANDEZ-GARCIA, translating the document from English to Spanish.

Dated: 5/4/21

David A. Torres
Interpreter/Translator

I am bilingual in Spanish - I can read & write in Spanish

D. Attorney for United States:

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

Dated: _____

PHILLIP A. TALBERT
Acting United States Attorney

KAREN A. ESCOBAR
Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

Beginning at a time unknown, but no later than on or about March 1, 2020, and continuing through on or about August 6, 2020, in the Stanislaus National Forest, in the County of Tuolumne within the Eastern District of California, the defendant did knowingly and intentionally conspire with others to manufacture, distribute and possess with the intent to distribute 9,654 marijuana plants, a schedule I controlled substance.

Specifically, on June 25, 2020, while conducting aerial reconnaissance, the U.S. Forest Service located a grow site in the Basin area of the Stanislaus National Forest, which they estimated to contain more than 1,000 marijuana plants. The grow season in this area typically commences on or about March 1, 2020. This area has been the site of numerous grows in the past.

Basin Creek is the main tributary of the Tuolumne River. The grow site was a half mile from recreational activities (hiking, fishing, camping, and swimming) and Sugar Pine Springs, a spring used for bottled water for Arrowhead and Calistoga.

On August 6, 2020, two agents conducted ground reconnaissance to locate the grow site. In the process, they encountered the defendant on an undesignated trail walking toward the grow site. He was carrying shears and two phones covered with marijuana residue. For officer safety, the agents asked whether there were others in the grow site and where the camp site was. He indicated there were three and properly described the location of the camp site. The agents then encountered the three other workers, but they fled.

The agents counted 9,654 marijuana plants and found 200 pounds of processed marijuana, lethal restricted use chemicals (aluminum phosphide), fertilizer, and a dead raccoon. Native vegetation was cut down to make room for the marijuana plants. Besides chemicals and fertilizer, there was a large amount of trash and irrigation tubing. The grow site was in a grazing permit area where cows roamed freely and had access to the plants and chemicals.

Dated: 05/04/21

Eleno F. G
ELENO FERNANDEZ-GARCIA,
Defendant