

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

**FILED**  
10-12-10  
OCT 12 2010

Judge David H. Coar  
United States District Court

UNITED STATES OF AMERICA )

v. )

WESLEY NAVARRO, )

Defendant. )  
\_\_\_\_\_ )

**PLEA AGREEMENT**

Case No.

10-CR-830

Violation: 18 U.S.C. § 201(c)

The United States of America and WESLEY NAVARRO ("defendant") and defendant's counsel hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

**RIGHTS OF DEFENDANT**

1. Defendant understands his rights:

- (a) to be represented by an attorney;
- (b) to be charged by Indictment;
- (c) to plead not guilty to any criminal charge brought against him;
- (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
- (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
- (f) not to be compelled to incriminate himself;
- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY  
AND WAIVE CERTAIN RIGHTS**

2. Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above, and all jurisdictional and venue defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Northern District of Illinois. Defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. §§ 2241 or 2255, that challenges the sentence imposed by the Court unless the sentence imposed by the Court constitutes an upward departure from the Guideline range deemed applicable by the Court, as described in Paragraph 8, in which case defendant's appeal will be expressly limited to contesting the upward departure. Defendant further waives his right to assert the statute of limitations, 18 U.S.C. § 3282, as a defense to the charged offense. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742. Pursuant to Fed. R. Crim. P. 7(b), defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Northern District of Illinois. The Information will charge defendant with receiving and accepting an illegal gratuity in violation of 18 U.S.C. § 201(c). Defendant admits that as a public official, otherwise than as provided by law for the proper discharge of official duty, he knowingly and unlawfully, directly and indirectly, sought, received, and accepted an illegal gratuity for and because of official acts performed by him related to Department of Defense contracts at Bagram Airfield, Afghanistan. Defendant is pleading guilty because he is guilty and understands that he

will be adjudicated guilty of these offenses.

3. Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. Defendant agrees that the facts set forth in Paragraph 4 establish his guilt beyond a reasonable doubt.

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For the purposes of this Plea Agreement, the “relevant period” is that period from in or about December 2003 until in or about July 2004. From in or about December 2003 until in or about April 2004, defendant was a Staff Sergeant in the United States Air Force, deployed as a Contracting Officer to Bagram Airfield (“BAF”), Afghanistan. As a Staff Sergeant in the United States Air Force, defendant was a public official within the meaning of 18 U.S.C. § 201(a)(1).

(b) As a Contracting Officer at BAF, defendant was responsible for soliciting, reviewing bids for, and awarding Department of Defense contracts for goods and services in support of Operation Enduring Freedom. During the relevant period, defendant reviewed and awarded numerous contracts for, among other things, concrete bunkers and barriers, electric generators, and line haul (*i.e.* trucking) services.

(c) During the relevant period, Person A, an Afghan-U.S. dual citizen, was President of Contractor A, a military contractor that provided, among other things, concrete bunkers and barriers, electric generators, and line haul services at BAF.

(d) During the relevant period, defendant performed numerous official acts on behalf of Contractor A, including the award, modification, and extension of contracts at BAF for among other things, electric generators and line haul services.

(e) In or about July 2004, Person A wired \$20,000 from a bank account in the United Arab Emirates to the bank account of defendant's designee in California.

(f) During the relevant period, otherwise than as provided by law for the proper discharge of official duty, defendant, as a public official, knowingly and unlawfully sought, received, and accepted an illegal gratuity, namely \$20,000 cash, for and because of official acts performed by him related to Contractor A's contracts at BAF.

(g) The value of the illegal gratuity sought, received, and accepted by defendant from Person A was approximately \$20,000.

**POSSIBLE MAXIMUM SENTENCE**

5. Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 201 is:

(a) a term of imprisonment for two (2) years (18 U.S.C. § 201(c));

(b) a fine in an amount equal to the greatest of: (1) \$250,000; (2) twice the gross pecuniary gain derived from the crime; or (3) twice the gross pecuniary loss caused to the victims of the crime; (18 U.S.C. § 3571);

(c) a term of supervised release of not more than one (1) year following any term of imprisonment. If defendant violates any condition of supervised release, defendant could be required to serve the entire term of supervised release in prison. 18 U.S.C. §§ 3559(a)(3); 3583(b)(2) and (e)(3); and United States Sentencing

Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2).

6. In addition, defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. §§ 3663(a)(3) or

3583(d), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to

order defendant to pay a \$100.00 special assessment upon conviction.

#### **SENTENCING GUIDELINES**

7. Defendant understands that the Guidelines are advisory, not mandatory, and that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. Defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant agrees that this Plea Agreement along with any sentencing memoranda and the record that will be created by the United States and defendant at the plea hearing will provide sufficient information concerning defendant, the crime charged, and defendant’s role in the crime to enable the meaningful exercise of the Court’s sentencing authority as required by 18 U.S.C. § 3553.

#### **SENTENCING AGREEMENT**

8. The United States and defendant understand, agree and stipulate to the following applicable Sentencing Guidelines considerations and factors, which the parties agree provides a fair, just, and reasonable resolution of this matter:

- (a) The November 1, 2010 edition of the Guidelines applies;
- (b) Pursuant to Guideline §2C1.2, the base offense level is 11;
- (c) The value of the gratuity sought, received, and accepted totaled more than \$10,000 but less than \$30,000, and therefore, a four-level increase is appropriate pursuant to U.S.S.G. §§2C1.2(b)(2), 2B1.1(b)(1)(c).

(d) The parties agree that either side may tender arguments whether the offense involved a public official in a high-level decision-making or sensitive position, and thus, whether a four-level increase is appropriate pursuant to U.S.S.G. §2C1.2(b)(3).

9. The United States does not oppose a two-level reduction in defendant's combined offense level, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the Court determines defendant's offense level to be 16 or greater prior to the operation of U.S.S.G. §3E1.1(a), the United States agrees to make a motion under U.S.S.G. §3E1.1(b) for an additional one-level decrease in recognition of defendant's timely notification of his intention to plead guilty. The United States may oppose any adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, the United States, or the Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

10. Defendant understands that there is no agreement as to the sentencing provisions set out in Chapter Four of the Guidelines, and that the foregoing sentencing guidelines

calculations could change based upon his criminal history category, or if he is a career offender, or if the instant offense was part of a pattern of criminal conduct from which he derived a substantial portion of his income.

11. The United States and defendant agree that with respect to the calculation of the advisory Guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments as set forth in Chapters 2, 3, 4, or 5 of the Sentencing Guidelines will be raised, argued, or are in dispute.

12. If the United States determines that defendant has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion, pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all the relevant facts pertaining to that determination and requesting the Court to sentence defendant in light of the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5). Defendant acknowledges that the decision with respect to whether he has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement is within the sole discretion of the United States and further agrees that he will not contest the departure level recommended by the United States, if the United States makes a motion pursuant to U.S.S.G. §5K1.1. It is understood that should the United States determine that defendant has not provided substantial assistance in any investigations or prosecutions, or should the United States determine that defendant has violated any provision of this Plea Agreement, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle defendant to withdraw his guilty plea once it has been entered. Defendant further understands that whether the United States files a

motion pursuant to U.S.S.G. §5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

13. Subject to the ongoing, full, and truthful cooperation of defendant, as described in Paragraph 17 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of defendant's cooperation and his commitment to prospective cooperation with the United States's investigations and prosecutions, all material facts relating to defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and defendant will not oppose, that sentencing be postponed until his cooperation is substantially completed.

14. Defendant, his attorney, and the United States acknowledge and agree that the above calculations are preliminary in nature and based on facts known to the United States as of the time of this Plea Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guidelines calculation. The validity of this Plea Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations and defendant has no right to withdraw his Plea Agreement if the probation officer or the Court do not agree or concur with the calculations, stipulations, or recommendations of the parties. Defendant further understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the calculations, stipulations, or recommendations contained in this Plea Agreement, he nevertheless has no right to withdraw his plea of guilty.

**RESTITUTION**

15. Defendant agrees to the entry of a restitution order for the full amount of the victim's losses pursuant to 18 U.S.C. §§ 3556, 3663, and 3664(f)(1)(A). The United States agrees not to oppose the imposition of a reasonable payment schedule, as directed by the Court after its review of the factors enumerated in 18 U.S.C. § 3664. The United States and defendant agree that, at this time, they are aware of restitution owed for the following actual losses:

A. \$20,000 to the United States Department of Defense.

**DEFENDANT'S AGREEMENT TO FILE TAX RETURNS**

16. Defendant agrees that no later than 180 days following the entry of this Plea Agreement, he shall file, as necessary, accurate tax returns or amended tax returns for the tax years 2004 through 2009, and will pay, or will enter into an agreement to pay, taxes due and owing by him to the IRS, including interest and penalties, if imposed, on such terms and conditions as he and the IRS agree. Defendant agrees to cooperate completely and truthfully with the IRS in determining the accuracy and completeness of all such required returns.

**DEFENDANT'S COOPERATION**

17. Defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the investigation of violations of federal criminal laws involving illegal activity at Bagram Airfield or elsewhere in Afghanistan, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Relevant Proceeding"). The ongoing, full, and truthful cooperation of defendant shall include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Relevant Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503 et seq.);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Relevant Proceeding; and

(e) when called upon to do so by the United States in connection with any Relevant Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-02), and obstruction of justice (18 U.S.C. § 1503 et seq.).

#### **GOVERNMENT'S AGREEMENT**

18. Subject to the full, truthful, and continuing cooperation of defendant, as described in Paragraph 17 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the sentence, the United States will not bring further criminal charges against defendant for any act or offense committed before the date of

this Plea Agreement that was undertaken in furtherance of the crimes arising from the facts set forth in the Information and in this Plea Agreement (“Relevant Offense”). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

19. Defendant understands that he may be subject to administrative action by federal or state agencies other than the Department of Justice, Criminal and Antitrust Divisions, based upon the conviction resulting from this Plea Agreement. If requested, however, the Criminal and Antitrust Divisions will bring this Plea Agreement and the defendant’s cooperation to the attention of any other prosecuting jurisdiction or federal or state agency. Defendant understands that other prosecuting jurisdictions or federal or state agencies retain complete discretion over whatever action they may take, and that this Plea Agreement in no way controls the actions of those jurisdictions or agencies.

#### **REPRESENTATION BY COUNSEL**

20. Defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney’s legal representation. Defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

#### **VOLUNTARY PLEA**

21. Defendant’s decision to enter into this Plea Agreement and to tender a plea of

guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

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

22. Defendant agrees that should the United States determine in good faith, during the period that any Relevant Proceeding is pending, that defendant has failed to provide full and truthful cooperation, as described in Paragraph 17 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against defendant for any of the Relevant Offenses, the statute of limitations period for such offenses will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

23. Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on defendant's violation of the Plea Agreement, any documents, statements, information, testimony,

or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

**ENTIRETY OF AGREEMENT**


24. This Plea Agreement constitutes the entire agreement between the United States and defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and defendant.

25. The undersigned attorneys for the United States have been authorized by the Attorney General to enter this Plea Agreement on behalf of the United States.

26. A facsimile or other electronic signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

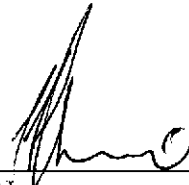
Respectfully submitted,

10/12/10  
Date

  
Mark W. Pletcher  
Emily W. Allen  
Trial Attorneys  
United States Department of Justice  
1400 New York Avenue; Suite 11302  
Washington, D.C. 20530

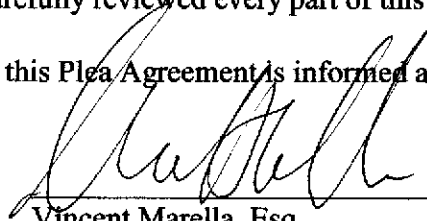
I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. I have reviewed the factual and advisory Guidelines stipulations with my attorney, and I do not wish to change any of them. I am completely satisfied with the representation of my attorney.

2/Jul/2010  
Date

  
\_\_\_\_\_  
Wesley Navarro

I am Wesley Navarro's attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this Plea Agreement is informed and voluntary.

July 26, 2010  
Date

  
\_\_\_\_\_  
Vincent Marella, Esq.  
Counsel for Wesley Navarro