



U.S. Department of Justice

William D. Weinreb
Acting United States Attorney
District of Massachusetts

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John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

October 22, 2017

Joshua Hanye, Esq.
Assistant Federal Public Defender
Federal Public Defender Office
51 Sleeper Street, 5th Floor
Boston, MA 02210

Re: *United States v. Guan Zong Chen*
Criminal No. 15-cr-10348-RWZ

Dear Mr. Hanye:

This letter sets forth the Agreement between the Acting United States Attorney for the District of Massachusetts and the Environmental Crimes Section of the U.S. Department of Justice (collectively “the government” or “the United States”) and your client, Guan Zong Chen (“Defendant”), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall plead guilty to the Superseding Indictment, charging him with conspiracy (Count 1), in violation of 18 U.S.C. § 371, making false wildlife records (Count 2), in violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A), and smuggling (Counts 3 – 8), in violation of 18 U.S.C. §§ 554. Defendant expressly and unequivocally admits that he committed the crimes charged in the Superseding Indictment, did so knowingly and intentionally, and is in fact guilty of those offenses.

Defendant agrees that the accompanying Joint Factual Statement is a true and accurate statement of his criminal conduct.

2. Penalties

Defendant faces the following maximum penalties: Count 1, conspiracy to smuggle protected wildlife from the United States, incarceration for not more than 5 years, supervised

release for 3 years, a fine of \$250,000, or twice the gross gain/loss, whichever is greater, a mandatory special assessment of \$100, restitution, and forfeiture to the extent charged in the Indictment; Count 2, making and submitting false wildlife records, incarceration for not more than 5 years, supervised release for 3 years, a fine of \$250,000, or twice the gross gain/loss, whichever is greater, a mandatory special assessment of \$100, restitution, and forfeiture to the extent charged in the Indictment; and Counts 3 through 8, smuggling goods from the United States, incarceration for not more than 10 years, supervised release for 3 years, a fine of \$250,000, or twice the gross gain/loss, whichever is greater, a mandatory special assessment of \$100, restitution, and forfeiture to the extent charged in the Superseding Indictment.

Defendant also recognizes that pleading guilty may have consequences with respect to Defendant's immigration status if Defendant is not a citizen of the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and Defendant understands that no one, including defense counsel and the District Court, can predict to a certainty the effect of this conviction on Defendant's immigration status. Defendant nevertheless affirms his decision to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is Defendant's removal from the United States. Defendant hereby agrees and consents to removal from the United States pending completion of his sentence, and hereby waives his rights relating to all forms of relief from removal or exclusion. Furthermore, Defendant hereby knowingly abandons any pending applications for relief relating to removal from the United States and agrees to cooperate with the United States Department of Homeland Security during the removal proceedings.

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the District Court ("Court"), subject to the statutory maximum penalties set forth above and the provisions of the Sentencing Reform Act, and the advisory United States Sentencing Guidelines ("USSG" or "Guidelines"). While the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine, it must consult and take into account the USSG and the other factors set forth in 18 U.S.C. §3553(a) in imposing a sentence.

The parties agree that Defendant's total offense level under the USSG (prior to any adjustment for acceptance of responsibility) is calculated as follows:

- in accordance with USSG §2Q2.1(a), Defendant's base offense level is 6, because the offenses involve wildlife;
- in accordance with USSG §2Q2.1(b)(1)(A), Defendant's offense level is increased by 2, because the offenses were committed for pecuniary gain or otherwise involved a commercial purpose;
- in accordance with USSG §2Q2.1(b)(3)(A)(ii) and §2B1.1(b)(1)(H), Defendant's offense level is increased by 14, because the market value of the wildlife exceeded \$550,000; and

- in accordance with USSG §3B1.1(c), Defendant's offense level is increased by 2, because of his role as an organizer, leader, manager and supervisor of the criminal conduct.

If Defendant contends that there is a basis for departure from, or a sentence outside, the otherwise applicable Guidelines sentencing range based on Defendant's medical, mental, and/or emotional condition, or otherwise intends to rely on any such condition at sentencing, Defendant will, forthwith upon request, execute all releases and other documentation necessary to permit the U.S. Attorney and his experts (including Bureau of Prisons medical personnel) to obtain access to Defendant's medical, psychiatric, and psychotherapeutic records and will also provide to the U.S. Attorney forthwith copies of any such records already in Defendant's possession. In addition, Defendant will authorize Defendant's care providers to discuss Defendant's condition with the U.S. Attorney and his agents (including Bureau of Prisons medical personnel), as well as experts retained by the U.S. Attorney. Defendant also agrees to submit to examinations and interviews with experts retained by and chosen by the U.S. Attorney (including Bureau of Prisons medical personnel).

The U.S. Attorney reserves the right to oppose any argument(s) by Defendant's for a departure from, or a sentence outside, the USSG under the factors set forth in 18 U.S.C. § 3553(a).

Based on Defendant's acceptance of personal responsibility for the offenses of conviction in this case, and information known to the United States at this time, the United States agrees to recommend that the Court reduce the guideline range of offense level 24 by three levels pursuant to USSG §3E1.1 for a final adjusted offense level of 21 (37 to 46 months incarceration).

The United States reserves the right not to recommend a reduction under USSG §3E1.1 if, at any time between Defendant's execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit Defendant's conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about Defendant's financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;

- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw Defendant's guilty plea.

Defendant understands and acknowledges that Defendant may not withdraw his plea of guilty if, for any of the reasons listed above, the United States does not recommend that Defendant receive a reduction in offense level for acceptance of responsibility. Defendant also understands and acknowledges that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the United States may seek an upward adjustment pursuant to USSG §3C1.1 if Defendant obstructs justice after the date of this Agreement.

Nothing in this Agreement affects the United States' obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

4. Sentence Recommendation

The United States agrees to recommend the following sentence before the Court:

- (a) Incarceration within the Guidelines sentencing range as calculated by the parties in Paragraph 3;
- (b) A fine within the applicable Guidelines sentencing range, unless the Court finds that Defendant is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay a fine;
- (c) A 24-month period of supervised release;
- (d) A mandatory special assessment of \$800; and
- (e) Forfeiture as set forth in Paragraph 10.

Defendant agrees to provide the United States expert reports, motions, memoranda of law, and documentation of any kind on which Defendant intends to rely at sentencing not later than 3 days before sentencing.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Protection of Assets for Payment of Restitution, Forfeiture and Fine

Defendant agrees not to transfer, or authorize the transfer of, any asset that has been restrained by Order of the Court in this case.

Defendant agrees not to transfer, or authorize the transfer of any other asset in which Defendant has an interest without prior express written consent of the United States, except for:

- (a) Assets subject to superior, secured interests of innocent third parties, in which Defendant has an equity interest of less than \$5,000;
- (b) Ordinary living expenses necessary to house, clothe, transport, and feed Defendant and those to whom Defendant owes a legal duty of support, so long as such assets do not exceed \$ 5,000 per month; and
- (c) Attorney's fees incurred in connection with this criminal case.

This prohibition shall be effective as of the date of Defendant's execution of this Agreement and continue until the fine, forfeiture, and restitution ordered by the Court at sentencing is satisfied in full.

7. Waiver of Rights to Appeal and to Bring Future Challenges

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge both his conviction and his sentence (including any orders relating to supervised release, fines, forfeiture, and restitution) on direct appeal. Defendant also understands that, in some circumstances, Defendant may be able to argue in a future proceeding (collateral or otherwise), such as pursuant to a motion under 28 U.S.C. §2255, 28 U.S.C. §2241, or 18 U.S.C. §3582(c), that Defendant's conviction should be set aside or Defendant's sentence (including any orders relating to supervised release, fines, forfeiture, and restitution) set aside or reduced.
- (b) Defendant waives any right to challenge Defendant's conviction on direct appeal or in a future proceeding (collateral or otherwise).
- (c) This Plea Agreement does not affect the rights of the United States as set forth in 18 U.S.C. §3742(b). Defendant understands and acknowledges the U.S. Attorney has retained all appeal rights.
- (d) Notwithstanding the previous sub-paragraphs, Defendant reserves the right to claim that Defendant's lawyer rendered ineffective assistance of counsel under *Strickland v. Washington*; or (ii) the prosecutor in this case engaged in misconduct that entitles Defendant to relief from Defendant's conviction or sentence.

8. Other Post-Sentence Events

- (a) If Defendant appeals or challenges in a future proceeding (collateral or otherwise) Defendant's sentence, the United States reserves the right to argue the correctness of the sentence imposed by the Court.
- (b) If Defendant seeks re-sentencing, Defendant agrees not to seek to be re-sentenced with the benefit of any change to the Criminal History Category that the Court calculated at the time of Defendant's original sentencing, except to the extent that Defendant has been found actually factually innocent of a prior crime.
- (c) In the event of a re-sentencing following an appeal from or future challenge (collateral or otherwise) to Defendant's sentence, the United States reserves the right to seek a departure from and a sentence outside the USSG if, and to the extent, necessary to reinstate the sentence the United States advocated at Defendant's initial sentencing pursuant to this Plea Agreement.

9. Court Not Bound by Agreement

The parties' sentencing recommendations and their respective calculations under the USSG are not binding upon the U.S. Probation Office or the Court. Within the maximum sentence Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the Court. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw his plea of guilty regardless of what sentence is imposed, or because the U.S. Probation Office or the Court declines to follow the parties' USSG calculations or recommendations. Should the Court decline to follow the government's USSG calculations or recommendations, the United States reserves the right to defend the Court's calculations and sentence in any direct appeal or future challenge (collateral or otherwise).

10. Forfeiture

Defendant understands that the Court will, upon acceptance of Defendant's guilty plea, enter an order of forfeiture as part of Defendant's sentence, and that the order of forfeiture may include assets directly traceable to Defendant's offense, assets used to facilitate Defendant's offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense.

The assets to be forfeited specifically includes a forfeiture money judgment in the amount of \$700,000 in United States currency. Defendant admits that these assets are subject to forfeiture on the grounds that they represent property, real and personal, that constitutes or is derived, directly and indirectly, from proceeds traceable to the commission of the offenses. Defendant agrees to consent to the entry of orders of forfeiture for such property, including the entry of a forfeiture money judgment, and Defendant waives the requirements of Federal Rules of Criminal Procedure

11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands and agrees that forfeiture shall not satisfy or affect any fine, lien, penalty, restitution, cost of imprisonment, tax liability or any other debt owed to the United States.

Defendant acknowledges and agrees that the amount of the forfeiture money judgment represents proceeds of the crimes to which he is pleading guilty and that the proceeds have been transferred to, or deposited with, a third party, spent, cannot be located upon exercise of due diligence, placed beyond the jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty. Accordingly, Defendant agrees that the United States is entitled to forfeit as “substitute assets” any other assets of Defendant up to the value of the now missing directly forfeitable assets.

Defendant agrees to assist fully in the forfeiture of the foregoing assets. Defendant agrees to promptly take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. Defendant further agrees (a) not to assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding, and (b) to testify truthfully in any such proceeding. In addition, if the U.S. Attorney requests, Defendant shall deliver to the U.S. Attorney within 30 days after signing this Plea Agreement a sworn financial statement disclosing all assets in which Defendant currently has any interest and all assets over which Defendant has exercised control, or has had any legal or beneficial interest, at any time from May 2011 to the present. Defendant further agrees to be deposed with respect to Defendant’s assets at the request of the U.S. Attorney.

Defendant also agrees to waive all constitutional, legal, and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement. Defendant agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this Plea Agreement, and will not assist any third party with regard to such challenge or review.

Defendant hereby waives and releases any claims he may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets.

The defendant further agrees to abandon all right, title, and interest that he may have or come to have in the following ivory items:

- a. Two (2) lady figures;
- b. Two (2) seated figures;
- c. One (1) brush pot;

- d. One (1) lady with child;
- e. Two (2) figures in a box;
- f. Six (6) carved birds;
- g. One (1) vase;
- h. One (1) colorful figure on wood stand;
- i. One (1) colorful boat on wood stand;
- j. Two (2) plates on wooden stands;
- k. One (1) lady w/swans and deer; and
- l. One (1) lady w/musical instrument;

And the following coral items:

- a. One (1) red coral carving;
- b. One (1) red coral carved bird; and
- c. One (1) red coral carving of figure w/guitar.

All of the aforementioned items were found and seized from the premises at 60 Thoreau Street, Concord, Massachusetts. The defendant agrees to sign an abandonment form with the U.S. Fish and Wildlife Service memorializing this agreement.

11. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning Defendant's assets.

12. Liability for Additional Offenses

As part of this Plea Agreement and solely because of the promises made by Defendant in this Agreement, the U.S. Attorney's Office for the District of Massachusetts and the Environmental Crimes Section of the U.S. Department of Justice agree not to criminally prosecute Defendant in the District of Massachusetts for any other criminal offenses arising from the conduct underlying this case. Defendant understands and agrees that neither this paragraph nor this Plea Agreement limits the prosecuting authority of any other sections or divisions of the Department of Justice, including the U.S. Attorney of any other judicial district, or any other federal, state or local regulatory or prosecuting authorities. Furthermore, this Plea Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, claims for damages to natural resources, suspension, debarment, listing to restrict rights and opportunities of Defendant to contract with or receive assistance, loans, and benefits from United States agencies, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement.

13. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on Defendant's motion, this Agreement shall be null and void at the option of the

United States.

14. Breach of Agreement

If the United States determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of Defendant's pretrial release, or has committed any crime following Defendant's execution of this Agreement, the United States may, at its sole option, be released from its commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The United States may also pursue all remedies available to it under the law, regardless whether it elects to be released from its commitments under this Agreement. Further, the United States may pursue any and all charges that have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that his breach of any obligation under this Agreement shall not give rise to grounds for withdrawal of Defendant's guilty plea, but will give the United States the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements that Defendant may make, and any information, materials, documents or objects that Defendant may provide to the government subsequent to this Agreement, ~~or pursuant to the proffer agreement dated September 23, 2014, without any limitation.~~ In this regard, Defendant hereby waives any defense to any charges that Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

JF 10/24/17
RAW 10/24/17

15. Who Is Bound By Agreement

This Agreement is limited to the Acting U.S. Attorney for the District of Massachusetts and the Environmental Crimes Section of the U.S. Department of Justice, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

16. Modifications to Plea Agreement


This Plea Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

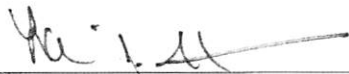
If this letter accurately reflects the agreement between the United States and Defendant, please have Defendant sign the Acknowledgment of Plea Agreement below. Please also sign below and return the original of this letter to the undersigned prosecutors.


Very truly yours,

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

WILLIAM D. WEINREB
Acting United States Attorney
District of Massachusetts

By: 
RICHARD UDELL
Senior Litigation Counsel
Environmental Crimes Section


LORI J. HOLIK
Chief, Major Crimes Unit
ROBERT E. RICHARDSON
Deputy Chief, Major Crimes
Unit

By: 
GARY W. DONNER
Trial Attorney
Environmental Crimes Section

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have had this letter read to me in my native language, Mandarin, in its entirety and discussed it with my attorney. I hereby acknowledge that (a) it accurately sets forth my plea agreement with the United States; (b) there are no unwritten agreements between me and the United States; and (c) no official of the United States has made any unwritten promises or representations to me, in connection with my change of plea. In addition, I have received no prior offers to resolve this case. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses, and the Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Plea Agreement freely, voluntarily, and knowingly, because I am guilty of the offenses to which I am pleading guilty, and I believe this Plea Agreement is in my best interest.



GUAN ZONG CHEN
Defendant

Date: 10/24/17

I certify that Guan Zong Chen had this Agreement read to him in his native language and that we have discussed its meaning. I believe he understands the Plea Agreement and is entering into the Plea Agreement freely, voluntarily, and knowingly. I also certify that the United States has not extended any other offers regarding a change of plea in this case.



JOSHUA R. HANYE
Attorney for Defendant

Date: 10/24/17