

1 BENJAMIN B. WAGNER
United States Attorney
2 JEAN M. HOBLER
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 (916) 554-2700

5 Attorneys for Plaintiff
United States of America
6
7

FILED
JUL 24 2015
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

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

10
11
12 UNITED STATES OF AMERICA,
13 Plaintiff,

14 v.

15 BRYAN H. NISHIMURA,
16 Defendant.
17

CASE NO. **2:15 - CR 145 KJN**

PLEA AGREEMENT PURSUANT TO RULE 11(C)(1)(B) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

DATE:
TIME:
JUDGE:

18 **1. Scope of the Agreement**

19 Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States
20 Attorney's Office for the Eastern District of California (the "government") and the defendant, BRYAN
21 H. NISHIMURA, enter into the following plea agreement. This document contains the complete plea
22 agreement between the government and the defendant regarding this case. This plea agreement is
23 limited to the United States Attorney's Office for the Eastern District of California and cannot bind any
24 other federal, state, or local prosecuting, administrative, or regulatory authorities.

25 **2. Court Not a Party**

26 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
27 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
28 concerning the criminal activities of the defendant, including the activities that may not have been

1 charged in the Information. The Court is under no obligation to accept any recommendations made by
2 the government, and the Court may in its discretion impose any sentence it deems appropriate up to and
3 including the statutory maximum stated in this plea agreement.

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

9 **3. Defendant's Obligations**

10 The defendant will plead guilty to the sole count in the Information, Unauthorized Removal And
11 Retention of Classified Documents and Material, in violation of 18 U.S.C. § 1924, a Class A
12 misdemeanor. The defendant agrees that he is guilty of this charge, and that the facts set forth in the
13 "Factual Basis In Support Of Guilty Plea" attached hereto as Exhibit A are accurate. The defendant
14 also agrees that this plea agreement will be filed with the Court and become a part of the record of the
15 case. To the extent necessary, the defendant agrees to waive any claims based on the statute of
16 limitations in this case. *See* 18 U.S.C. § 3287.

17 **4. Sentencing Recommendation**

18 Under Federal Rule of Criminal Procedure 11(c)(1)(B), the United States and the defendant
19 agree to recommend the following sentence to the Court:

- 20 a. The parties request that upon the defendant's change of plea, a presentence investigation
21 be waived and the matter proceed directly to sentencing;
- 22 b. The defendant shall serve a two-year term of court probation, subject to the following
23 terms and conditions:
- 24 1. The defendant shall pay a \$7,500.00 fine within six months of sentencing;
 - 25 2. The defendant shall pay the \$25.00 mandatory special assessment forthwith;
 - 26 3. The defendant shall forfeit all rights, titles, and interests to the United States in
27 all electronic devices and storage media seized from his residence at 106
28 LaQuart Court, Folsom, CA, on May 24, 2012, that are currently within the

1 possession of the United States;

- 2 4. The defendant shall not seek or obtain any new security clearance to perform
3 work on behalf of the United States or any department or agency thereof, either
4 directly or through a government contractor, and shall surrender any such
5 security clearances that he currently holds;
- 6 5. The defendant shall not commit another federal, state, or local crime;
- 7 6. The defendant shall notify the United States Attorney's Office within seventy-
8 two hours of being cited or arrested for a criminal violation;
- 9 7. The defendant shall notify the United States Attorney's Office ten days prior to
10 any change in residence; and
- 11 8. The defendant shall report to the U.S. Marshals Service for processing forthwith
12 upon conviction.

13 The parties agree that they will not seek or argue in support of any other recommendation.

14 **5. Maximum Penalty**

15 The defendant understands that for his conviction for the offense charged in the sole count in the
16 Information, the Court, in its discretion, may impose a sentence of not more than one year of
17 imprisonment; a fine of not more than \$100,000.00; or both said fine and imprisonment. The Court
18 may additionally impose a term of supervised release of not more than one year. The Court must also
19 impose a mandatory special assessment of \$25.00 for the aforementioned offense.

20 **6. Waiver of Constitutional Rights**

21 The defendant understands that by pleading guilty to the offense charged in the sole count in the
22 Information, he is waiving the following constitutional rights: (a) to plead not guilty and to persist in
23 that plea if already made; (b) to have a jury trial; (c) to be assisted at trial by an attorney, who would be
24 appointed if necessary; (d) to subpoena witnesses to testify on his behalf; (e) to confront and cross-
25 examine adverse witnesses; and (f) not to be compelled to incriminate himself.

26 **7. Waiver of Appeal and Collateral Attack**

27 Although the defendant has been fully informed and understands that he has the right to an
28 appeal in this matter, the defendant waives his right to appeal and collaterally attack his guilty plea,

1 conviction, sentence, or any other matter pertaining to this prosecution, except as to non-waivable
2 claims.

3 **8. Violations of Plea Agreement**

4 Notwithstanding the agreement, if the defendant ever attempts to vacate his plea, dismiss the
5 underlying charges, or reduce or set aside his sentence on the count to which he is pleading guilty, the
6 government shall have the right: (1) to prosecute the defendant on any count to which he pleaded guilty;
7 (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file any
8 new charges that would otherwise be barred by this plea agreement. The decision to pursue any or all
9 of these options is solely in the discretion of the United States Attorney's Office. By signing this plea
10 agreement, the defendant agrees to waive any objections, motions, and defenses he might have to the
11 government's decision.

12 **9. Complete Agreement**

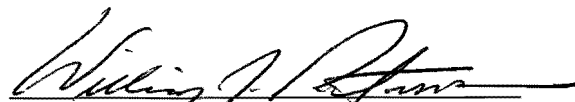
13 The defendant acknowledges that other than this plea agreement, no agreement, understanding,
14 promise, or condition between the government and the defendant exists, nor will such agreement,
15 understanding, promise, or condition exist unless it is committed to writing and signed by the
16 defendant, counsel for the defendant, and counsel for the United States.

17 **10. Approvals and Signatures**

18 By signing this document, the defendant, his counsel, and the attorney for the United States
19 acknowledge that the above plea agreement is properly stated and signifies the entire terms agreed to by
20 all parties.

21 **A. Defense Counsel:** I have read this plea agreement and have discussed it fully with my
22 client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur
23 in my client's decision to plead guilty as set forth herein.

24 Dated: 7/24/15

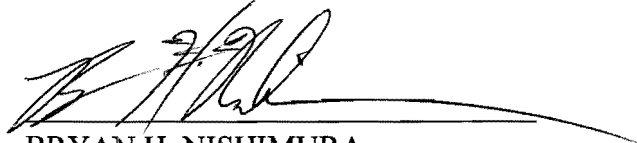
25 
26 Name: WILLIAM J. PORTANOVA
Counsel for Defendant

27 ///

28 ///

1 B. **Defendant:** I have read this plea agreement and carefully reviewed every part of it with
2 my attorney. I understand it, and I voluntarily agree to it. No other promises or inducements have been
3 made to me, other than those contained in this plea agreement. In addition, no one has threatened or
4 forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation
5 of my attorney in this case.

6 Dated: 27 Jul 2015

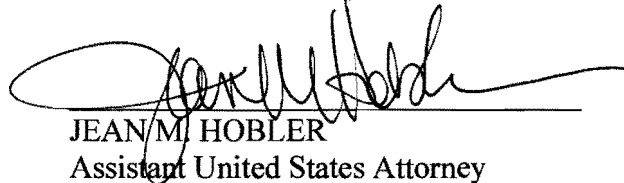


7
8 BRYAN H. NISHIMURA
Defendant

9 C. **Attorney for United States:** I accept and agree to this plea agreement on behalf of the
10 government.

11 Dated: 7/24/2015

12 BENJAMIN B. WAGNER
United States Attorney



13
14 JEAN M. HOBLER
Assistant United States Attorney

Exhibit A: Factual Basis In Support Of Guilty Plea

1
2 If this case were to proceed to trial, the United States would prove the following beyond a
3 reasonable doubt:

4 From on or about 2000 to 2014, the defendant, BRYAN H. NISHIMURA, was enlisted as a
5 service member in the United States Navy Reserve (the "Navy Reserve"). From on or about January
6 2007 to May 2008, the defendant was deployed by the Navy Reserve on active military duty to
7 Afghanistan, as part of Operation Enduring Freedom, where he served as a Navy Reserve Commander
8 and a Regional Engineer for the U.S. military. In this capacity, the defendant had access to
9 CLASSIFIED briefings and CLASSIFIED digital and hard copy records of the United States including,
10 but not limited to, CLASSIFIED United States Army records. The defendant knew that he was only
11 authorized to view such CLASSIFIED data in digital format on authorized government computers, and
12 was not permitted to remove CLASSIFIED data from such authorized government computers. The
13 defendant disregarded this restriction throughout his tour in Afghanistan by downloading and storing
14 CLASSIFIED data that he obtained from authorized government computers onto his personal,
15 unclassified electronic devices and storage media. The defendant then removed this CLASSIFIED data
16 from the authorized premises, and transported it off-base when he traveled throughout Afghanistan.

17 On or about May 2008 when the defendant's tour of duty in Afghanistan ended, the defendant
18 returned to the United States with several United States CLASSIFIED digital files, including
19 CLASSIFIED U.S. Army records which remain CLASSIFIED through the present, which he had
20 received in his official capacity while in Afghanistan, without authorization to do so. The defendant
21 transported these CLASSIFIED digital files on his personal, unclassified electronic devices and storage
22 media from Afghanistan to his residence in Folsom, California, County of Sacramento, State and
23 Eastern District of California. The defendant, variously, transferred, stored, and retained these
24 CLASSIFIED digital files on numerous unclassified, personal electronic devices and storage media
25 located inside of his Folsom, California, residence until between approximately February and April
26 2012. Operation Enduring Freedom ended on December 28, 2014, by proclamation of the President of
27 the United States.

28 In January and February 2012, the defendant admitted to National Reconnaissance Office


1 personnel that he had transported, stored, and collected CLASSIFIED (Secret and Secret/NATO
2 RESTRICTED) information on unclassified devices throughout his 2007–2008 tour in Afghanistan, and
3 was currently storing and retaining such CLASSIFIED information at his Folsom, California, residence
4 on personal, unclassified electronic devices and storage media.

5 In May 2012, the Federal Bureau of Investigation (“FBI”) performed a consensual search of the
6 defendant’s Folsom, California, residence and recovered numerous United States CLASSIFIED and
7 unclassified military records, stored both digitally and in hard copy. Among the CLASSIFIED records
8 recovered were at least four digitally-stored CLASSIFIED U.S. Army records dating from the
9 defendant’s 2007–2008 Afghanistan tour. The U.S. Army verified that these four documents remain
10 CLASSIFIED through the present.

11 In May 2012, the defendant also admitted to FBI and Naval Criminal Investigative Service
12 agents that he had stored, viewed, and transported approximately 200 MB of United States
13 CLASSIFIED data and satellite imagery in the abovementioned manner during his 2007–2008 tour in
14 Afghanistan; returned from Afghanistan to the United States with such CLASSIFIED data stored on
15 personal electronic devices and storage media in May 2008; stored and retained this CLASSIFIED data
16 on personal electronic devices and storage media at his residence in Folsom, California, following his
17 return to the United States in May 2008; and destroyed and disposed of personal electronic devices and
18 storage media containing such CLASSIFIED data between approximately February and April 2012.
19 The defendant admitted that he knew that the manner in which he had destroyed these United States
20 CLASSIFIED records was not a method approved or sanctioned by the U.S. Navy.

21 I, BRYAN H. NISHIMURA, have read and reviewed the stipulated factual basis with my
22 attorney and agree to the truth and accuracy of the facts set forth in Exhibit A: Factual Basis In Support
23 Of Guilty Plea.

24 Dated: 24 Jul 2015

25 
26 _____
27 BRYAN H. NISHIMURA
28 Defendant