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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PABLO CESAR SAHAGUN,

Defendant.

CASE NO. 1:15CR 190 DAD

PLEA AGREEMENT

DATE: TBD
TIME: 10:00 a.m. .
COURT: Hon. Dale A. Drozd

I. INTRODUCTION

A. Scope of Agreement

The Indictment in this case charges the defendant with violations of 18 U.S.C. § 39A - Aiming a Laser Pointer at an Aircraft ("Count One" and 26 U.S.C. §§ 5841, 5861(d), and 5871 - Possession of 7 Unregistered Destructive Devices ("Count Two"). The Indictment also contains a forfeiture allegation seeking the forfeiture of one black key-activated laser pointer emitting a green laser beam and bearing the words, "Laser 301" and containing a blue, black and silver danger warning, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 981(a)(1)(G), 26 U.S.C. § 5872, and 28 U.S.C. § 2461(c). This document contains the complete plea agreement between the United States Attorney's Office for the Eastern District of California (the "government") and the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

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1 **B. Court Not a Party**

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

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

13 **II. DEFENDANT'S OBLIGATIONS**

14 **A. Guilty Plea**

15 The defendant will plead guilty to Count One of the Indictment, which charges a violation of 18
16 U.S.C. § 39A - Aiming a Laser Pointer at an Aircraft. The defendant agrees that he is in fact guilty of
17 this charge and that the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are
18 accurate.

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

22 **B. Special Assessment**

23 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
24 a check or money order payable to the United States District Court to the United States Probation Office
25 immediately before the sentencing hearing. The defendant understands that this plea agreement is
26 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
27 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
28 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

1 **C. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

2 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
3 his plea, this plea agreement is voidable at the option of the government. The government will no longer
4 be bound by its representations to the defendant concerning the limits on criminal prosecution and
5 sentencing as set forth herein. One way a cooperating defendant violates the plea agreement is to
6 commit any crime or provide any statement or testimony which proves to be knowingly false,
7 misleading, or materially incomplete. Any post-plea conduct by a defendant constituting obstruction of
8 justice will also be a violation of the agreement. The determination whether the defendant has violated
9 the plea agreement shall be decided under a probable cause standard.

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

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

26 In addition: (1) all statements made by the defendant to the government or other designated law
27 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
28 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or

1 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
2 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
3 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
4 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
5 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

6 **D. Forfeiture**

7 The defendant agrees to surrender the laser pointer that was seized in this case, that is, one black
8 key-activated laser pointer emitting a green laser beam and bearing the words, "Laser 301" and
9 containing a blue, black and silver danger warning.

10 Pursuant to 18 U.S.C. §§ 981(a)(1)(C), 981(a)(1)(G), 26 U.S.C. § 5872, and 28 U.S.C. § 2461(c),
11 the defendant agrees to forfeit to the United States voluntarily and immediately all of his right title and
12 interest to the two laser pointers capable of emitting a green laser that were seized in this case. The
13 defendant agrees that the foregoing assets constitutes property that facilitated a violation of 18 U.S.C. §
14 39A.

15 The defendant agrees not to file a claim to the aforementioned property in any civil proceeding,
16 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
17 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
18 claim in that forfeiture proceeding.

19 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
20 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
21 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
22 and agrees to waive any claim or defense under the Eighth Amendment to the United States
23 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
24 the State of California or its subdivisions.

25 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
26 defenses or defects that may pertain to the forfeiture.
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III. THE GOVERNMENT'S OBLIGATIONS

A. Recommendations

1. Incarceration Range

The government will recommend a base offense level of 9 and a sentence at the high-end of the applicable guideline range. The government will also seek a 6 level enhancement for official victim.

2. Acceptance of Responsibility

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

3. Dismissal of Remaining Count

At the time of sentencing, the government will move to dismiss the remaining count.

B. Use of Information for Sentencing

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

Further, other than as set forth above, the government agrees that any incriminating information provided by the defendant during his cooperation will not be used in determining the applicable guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to representations made to the Court by the defendant, or on his behalf, that contradict information

1 provided by the defendant during his cooperation.

2 **IV. ELEMENTS OF THE OFFENSE**

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

5 As to Count One, Aiming a Laser Pointer at an Aircraft, in violation of 18 U.S.C. § 39A:

- 6 1. The defendant aimed the beam of a laser pointer at an aircraft; and
7 2. He did so knowingly.

8 The defendant fully understands the nature and elements of the crime charged in the Indictment
9 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
10 his attorney.

11 **V. MAXIMUM SENTENCE**

12 **A. Maximum Penalty**

13 The maximum sentence that the Court can impose is 5 years of incarceration, a fine of \$ 250,000,
14 a 3 year period of supervised release and a special assessment of \$100.

15 **B. Violations of Supervised Release**

16 The defendant understands that if he violates a condition of supervised release at any time during
17 the term of supervised release, the Court may revoke the term of supervised release and require the
18 defendant to serve up to 2 years of additional imprisonment.

19 **VI. SENTENCING DETERMINATION**

20 **A. Statutory Authority**

21 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
22 must take them into account when determining a final sentence. The defendant understands that the
23 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
24 Sentencing Guidelines and must take them into account when determining a final sentence. The
25 defendant understands that the Court will determine a non-binding and advisory guideline sentencing
26 range for this case pursuant to the Sentencing Guidelines. The defendant further understands that the
27 Court will consider whether there is a basis for departure from the guideline sentencing range (either
28 above or below the guideline sentencing range) because there exists an aggravating or mitigating

1 circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing
2 Commission in formulating the Guidelines. The defendant further understands that the Court, after
3 consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable
4 in light of the factors set forth in 18 U.S.C. § 3553(a).

5 **B. Guideline Calculations**

6 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
7 under 18 U.S.C. § 3553(a). The government will recommend a sentence of not more than 21 months in
8 custody.

9 **VII. WAIVERS**

10 **A. Waiver of Constitutional Rights**

11 The defendant understands that by pleading guilty he is waiving the following constitutional
12 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
13 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
14 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
15 compelled to incriminate himself.

16 **B. Waiver of Appeal and Collateral Attack and Immigration Consequences**

17 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
18 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to
19 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
20 exceed 60 months. The defendant specifically gives up the right to appeal any order of restitution the
21 Court may impose.

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

27 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
28 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any

1 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

2 Notwithstanding the agreement in paragraph III.A (Dismissal of Remaining Count) above that
3 the government will move to dismiss the remaining count against the defendant, if the defendant ever
4 attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of
5 the counts to which he is pleading guilty, the government shall have the rights set forth in paragraph II.C
6 (Defendant's Violation of Plea Agreement) herein.

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

8 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
9 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
10 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
11 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
12 charges previously dismissed).

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

14 Defendant recognizes that pleading guilty may have consequences with respect to his
15 immigration status if his is not a citizen of the United States. Under federal law, a broad range of crimes
16 are removable offenses, including the offense to which the defendant is pleading guilty. Removal and
17 other immigration consequences are the subject of a separate proceeding, however, and defendant
18 understands that no one, including his attorney or the district court, can predict to a certainty the effect
19 of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
20 regardless of any immigration consequences that his plea may entail, even if the consequence is his
21 automatic removal from the United States.

22 **VIII. ENTIRE PLEA AGREEMENT**

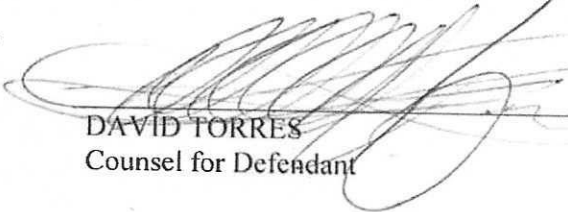
23 Other than this plea agreement, no agreement, understanding, promise, or condition between the
24 government and the defendant exists, nor will such agreement, understanding, promise, or condition
25 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and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

IX. APPROVALS AND SIGNATURES

A. Defense Counsel:

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

Dated: 12/30/15


DAVID TORRES
Counsel for Defendant

B. Defendant:

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

Dated: ☒ 12/30/15


PABLO CESAR SAHAGUN, Defendant

C. Attorney for United States:

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

Dated: 12/31/15

BENJAMIN B. WAGNER
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:

On February 26, 2015, on a clear night at about 7:26 p.m., a Kern County Sheriff's Officer helicopter, Air-1, was diverted from routine air support functions when it was struck by a green laser at 500 feet. The laser tracked the aircraft for 2 to 3 seconds and then struck the cockpit again, causing the tactical flight officer (TFO) to experience flash blindness for 5 to 10 seconds. The TFO also experienced glare, blurry vision, eye discomfort, headache and irritation. The pilot and TFO then put their Night Vision Goggles on (which filters the harmful effects of the laser beam) and were immediately struck again. The laser tracked Air-1 for 2 to 3 seconds more.

As the pilot maneuvered Air-1 toward the source of the laser beam, it was struck again. The laser beam tracked Air-1 for another 2 to 3 seconds.

As Air-1 began to orbit the area of the laser beam source, it was struck again. The laser beam then tracked Air-1 again for 2 to 3 seconds.

The airmen saw that the defendant, a passenger in a moving vehicle, had struck Air-1 four times with the beam of a laser. They kept their eyes on the moving vehicle until it drove to a Fastrip convenience store/gas station nearly 3 miles away from the initial area of the strikes.

Bakersfield Police Officers responded to the Fastrip and were directed to the passenger seat of the vehicle, where they found the defendant. Air-1 confirmed that the defendant was at all times the passenger of the vehicle. The defendant was also holding a backpack between his legs. The officers then asked the defendant to exit the vehicle.

After he exited the vehicle, the officers conducted a patdown search. During the search, the defendant stated he might have a pocket knife. The officer did not find a knife but found a 5 inch green laser pointer in the defendant's front right pants pocket.

The key-operated laser pointer, a Laser 301, is readily available over the internet and purports to emit a 1 watt laser beam, which is 2,000 times more powerful than what is legally permissible for a laser pointer. The danger warning on the laser is prominent and states, "LASER RADIATION—AVOID DIRECT EYE EXPOSURE."

Dated: X _____

X 
PABLO CESAR SAHAGUN, Defendant