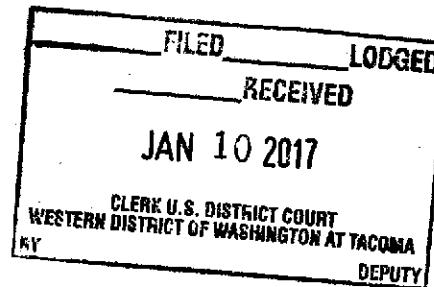


A P P E N D I X 3
Written Plea Agreement



UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

NO. CR16-5358RJB

PLEA AGREEMENT

v.

GEORGE EDWARD HERNANDEZ, JR.,

Defendant.

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Michael Dion and Siddharth Velamoor, Assistant United States Attorneys, Defendant GEORGE EDWARD HERNANDEZ, JR., and his attorney, Colin Fieman, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the following charges contained in the Indictment: Possession of controlled substances with intent to distribute, a lesser-included offense of the offense charged in Count 1, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(B); and Possession of a firearm during and in furtherance of a drug trafficking crime, as charged in Count 6, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

1 By entering pleas of guilty, Defendant hereby waives all objections to the form of
2 the charging document. Defendant further understands that before entering his guilty
3 pleas, he will be placed under oath. Any statement given by Defendant under oath may
4 be used by the United States in a prosecution for perjury or false statement.

5 **2. Elements Of The Offenses.** The elements of the offense of Possession of
6 controlled substances with intent to distribute, a lesser-included offense of the offense
7 charged in Count 1, in violation of Title 21, United States Code, Section 841(a)(1) and
8 (b)(1)(B), are as follows:

9 a. First, that the Defendant knowingly and intentionally possessed
10 controlled substances; and

11 b. Second, the Defendant possessed the controlled substances with the
12 intent to distribute them to another person.

13 The elements of the offense of Possession of a firearm during and in furtherance of
14 a drug trafficking crime, as charged in Count 6, in violation of Title 18, United States
15 Code, Section 924(c)(1)(A)(i), are as follows:

16 a. First, that the Defendant committed a drug trafficking crime as
17 charged in Count 1 of the Indictment;

18 b. Second, that the Defendant knowingly possessed a firearm; and

19 c. Third, that the Defendant knowingly possessed the firearm in
20 furtherance of the drug trafficking crime charged in Count 1 of the Indictment.

21 **3. The Penalties.** Defendant understands that the statutory penalties
22 applicable to the offense of Possession of controlled substances with intent to distribute, a
23 lesser-included offense of the offense charged in Count 1 of the Indictment, in violation
24 of Title 21, United States Code, Section 841(a)(1) and (b)(1)(B), are as follows:
25 imprisonment for not less than five (5) years and not more than forty (40) years, a fine of
26 up to five million dollars (\$5,000,000.00), a period of supervision following release from
27 prison of not less than four (4), and up to five (5) years, and a one hundred dollar
28 (\$100.00) penalty assessment.

1 The statutory penalties for the offense of Possession of a firearm in furtherance of
2 a drug trafficking crime, as charged in Count 6 in violation of Title 18, United States
3 Code, Section 924(c)(1)(A)(i), are as follows: a mandatory minimum sentence of five (5)
4 years of imprisonment, and up to life, and the sentence must be served consecutively, a
5 fine of up to two hundred and fifty thousand dollars (\$250,000), a period of supervision
6 following release from prison of not more than five (5) years, and a one hundred dollar
7 (\$100.00) penalty assessment.

8 Defendant understands that supervised release is a period of time following
9 imprisonment during which he will be subject to certain restrictive conditions and
10 requirements. Defendant further understands that if supervised release is imposed and he
11 violates one or more of the conditions or requirements, Defendant could be returned to
12 prison for all or part of the term of supervised release that was originally imposed. This
13 could result in Defendant's serving a total term of imprisonment greater than the statutory
14 maximum stated above.

15 Defendant understands that as a part of any sentence, in addition to any term of
16 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
17 restitution to any victim of the offense, as required by law.

18 Defendant further understands that a consequence of pleading guilty may include
19 the forfeiture of certain property either as a part of the sentence imposed by the Court, or
20 as a result of civil judicial or administrative process.

21 Defendant agrees that any monetary penalty the Court imposes, including the
22 special assessment, fine, costs, or restitution, is due and payable immediately and further
23 agrees to submit a completed Financial Statement of Debtor form as requested by the
24 United States Attorney's Office.

25 **4. Drug Offense - Proof of Drug Quantity for Mandatory Minimum.**

26 Defendant further understands that, in order to invoke the statutory sentence set
27 forth above for Count 1, the United States must prove beyond a reasonable doubt that the
28 offense charged in Count 1 involved fifty or more grams of a mixture or substance

1 containing methamphetamine. Defendant waives Defendant's right to require the United
2 States to make this proof at trial and stipulates that this plea of guilty includes
3 Defendant's acknowledgment that the offense involved fifty grams or more of a mixture
4 or substance containing methamphetamine.

5 **5. Drug Offenses - Program Eligibility.** Defendant understands that by
6 pleading guilty to a felony drug offense, Defendant will become ineligible for certain
7 food stamp and Social Security benefits as directed by Title 21, United States Code,
8 Section 862a.

9 **6. Rights Waived by Pleading Guilty.** Defendant understands that by
10 pleading guilty, he knowingly and voluntarily waives the following rights:

- 11 a. The right to plead not guilty and to persist in a plea of not guilty;
- 12 b. The right to a speedy and public trial before a jury of his peers;
- 13 c. The right to the effective assistance of counsel at trial, including, if
14 Defendant could not afford an attorney, the right to have the Court
15 appoint one for him;
- 16 d. The right to be presumed innocent until guilt has been established
17 beyond a reasonable doubt at trial;
- 18 e. The right to confront and cross-examine witnesses against Defendant
19 at trial;
- 20 f. The right to compel or subpoena witnesses to appear on his behalf at
21 trial;
- 22 g. The right to testify or to remain silent at trial, at which trial such
23 silence could not be used against Defendant; and
- 24 h. The right to appeal a finding of guilt or any pretrial rulings.

25 **7. Ultimate Sentence.** Defendant acknowledges that no one has promised or
26 guaranteed what sentence the Court will impose.

27 **8. Statement of Facts.** The parties agree on the following facts. Defendant
28 admits he is guilty of the charged offense or offenses:

1 a. On August 11, 2015, law enforcement officers searched several
2 residences and vehicles used by GEORGE HERNANDEZ, JR., to store controlled
3 substances and firearms. The officers found the following at the locations listed
4 below:

5 4602 45th Ave NE, Unit 367, Tacoma: Approximately 1,000 grams of a
6 mixture or substance containing methamphetamine, 297 grams of cocaine,
7 1,000 grams of heroin, and a loaded Glock .40 caliber semi-automatic
8 pistol.

9 2845 19th Street SE, Auburn: Approximately four kilograms of heroin, three
10 kilograms of cocaine, three kilograms of a mixture or substance containing
11 methamphetamine, and an AK-47 semi-automatic rifle, caliber 7.62x39mm.

12 27419 42nd Ave South, Auburn: A Norinco, .308 Winchester/7.62x51
13 caliber, rifle; and a Kel-Tec, 5.56x45mm/.223 Remington caliber, rifle. In
14 a Lexus belonging to HERNANDEZ that was found outside the house,
15 officers found a loaded Springfield Firearms, .40 caliber, semi-automatic
16 pistol.

17 143 331st Place South, Federal Way: A Taurus, 9mm caliber, semi-
18 automatic pistol, and a Smith and Wesson, 9mm caliber, semi-automatic
19 pistol (the latter of which was found in a car parked at the residence).

20 The officers also seized \$53,332 in U.S. currency from the various
21 locations, all of which was the proceeds of HERNANDEZ's drug dealing.

22
23 b. HERNANDEZ knowingly possessed all of the controlled substances
24 and firearms found at the various locations, as he had stored them at those
25 locations. HERNANDEZ intended to distribute the controlled substances to
26 others. HERNANDEZ possessed the Springfield Firearms .40 caliber pistol in
27 furtherance of his drug trafficking business, as he would have had it available to
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1 protect him from robbery and other hazards of drug dealing in connection with his
2 intended distribution of the controlled substances found at the various locations.

3 **9. United States Sentencing Guidelines.** Defendant understands and
4 acknowledges that the Court must consider the sentencing range calculated under the
5 United States Sentencing Guidelines and possible departures under the Sentencing
6 Guidelines together with the other factors set forth in Title 18, United States Code,
7 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the
8 history and characteristics of the defendant; (3) the need for the sentence to reflect the
9 seriousness of the offenses, to promote respect for the law, and to provide just
10 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to
11 criminal conduct; (5) the need for the sentence to protect the public from further crimes
12 of the defendant; (6) the need to provide the defendant with educational and vocational
13 training, medical care, or other correctional treatment in the most effective manner; (7)
14 the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the
15 need to avoid unwarranted sentence disparity among defendants involved in similar
16 conduct who have similar records. Accordingly, Defendant understands and
17 acknowledges that:

18 a. The Court will determine applicable Defendant's Sentencing
19 Guidelines range at the time of sentencing;

20 b. After consideration of the Sentencing Guidelines and the factors in
21 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
22 maximum term authorized by law;

23 c. The Court is not bound by any recommendation regarding the
24 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
25 range offered by the parties or the United States Probation Department, or by any
26 stipulations or agreements between the parties in this Plea Agreement; and

27 d. Defendant may not withdraw his guilty plea solely because of the
28 sentence imposed by the Court.

1 10. **Acceptance of Responsibility.** At sentencing, if the district court
 2 concludes Defendant qualifies for a downward adjustment acceptance for acceptance of
 3 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
 4 greater, the United States will make the motion necessary to permit the district court to
 5 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
 6 because Defendant has assisted the United States by timely notifying the United States of
 7 his intention to plead guilty, thereby permitting the United States to avoid preparing for
 8 trial and permitting the Court to allocate its resources efficiently.

9 11. **Sentencing Recommendation.** The parties agree to recommend jointly a
 10 total term of imprisonment of one-hundred-and-thirty-two (132) months. The United
 11 States may recommend that the sentence run consecutively with any other pending
 12 sentences.

13 Defendant understands that the parties' recommendations are not binding on the
 14 Court and the Court may reject the recommendations and may impose any term of
 15 imprisonment up to the statutory maximum penalty authorized by law. Defendant
 16 further understands that he cannot withdraw his guilty plea simply because of the
 17 sentence imposed by the district court. Except as otherwise provided in this plea
 18 agreement, the parties are free to present arguments regarding any other aspect of
 19 sentencing.

20 12. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 21 the United States Attorney's Office for the Western District of Washington agrees not to
 22 prosecute Defendant for any additional offenses – other than crimes of violence
 23 (including but not limited to kidnapping, unlawful imprisonment, assault, and homicide) –
 24 known to it as of the time of this Agreement that are based upon evidence in its
 25 possession at this time, and that arise out of the conduct giving rise to this investigation.
 26 The United States also agrees to move to dismiss the remaining counts in the Indictment
 27 at the time of sentencing. In this regard, Defendant recognizes the United States has
 28 agreed not to prosecute all of the criminal charges the evidence establishes were

1 committed by Defendant solely because of the promises made by Defendant in this
2 Agreement. Defendant agrees, however, that for purposes of preparing the Presentence
3 Report, the United States Attorney's Office will provide the United States Probation
4 Office with evidence of all conduct committed by Defendant.

5 Defendant agrees that any charges to be dismissed before or at the time of
6 sentencing were substantially justified in light of the evidence available to the United
7 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
8 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
9 (1997).

10 **13. Forfeiture of Contraband And Other Items.**

11 Defendant agrees that if any law enforcement agency seized any vehicles,
12 currency, firearms, ammunition, or illegal contraband that was in Defendant's direct or
13 indirect control, Defendant consents to the administrative forfeiture, official use, and/or
14 destruction of said firearms or contraband by any law enforcement agency involved in the
15 seizure of these items.

16 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
17 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
18 Agreement and Defendant may be prosecuted for all offenses for which the United States
19 has evidence. Defendant agrees not to oppose any steps taken by the United States to
20 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
21 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
22 Defendant has waived any objection to the re-institution of any charges in the Indictment
23 that were previously dismissed or any additional charges that had not been prosecuted.

24 Defendant further understands that if, after the date of this Agreement, Defendant
25 should engage in illegal conduct, or conduct that violates any conditions of release or the
26 conditions of his confinement, (examples of which include, but are not limited to,
27 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
28 pending sentencing, and false statements to law enforcement agents, the Pretrial Services

1 Officer, Probation Officer, or Court), the United States is free under this Agreement to
2 file additional charges against Defendant or to seek a sentence that takes such conduct
3 into consideration by requesting the Court to apply additional adjustments or
4 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
5 advisory Guidelines range, and/or by seeking an upward departure or variance from the
6 calculated advisory Guidelines range. Under these circumstances, the United States is
7 free to seek such adjustments, enhancements, departures, and/or variances even if
8 otherwise precluded by the terms of the plea agreement.

9 **16. Waiver of Appellate Rights and Rights to Collateral Attacks.**

10 Defendant acknowledges that by entering the guilty plea required by this plea
11 agreement, Defendant waives all rights to appeal from his conviction and any pretrial
12 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
13 sentence that is within or below the Sentencing Guidelines range (or the statutory
14 mandatory minimum, if greater than the Guidelines range) as determined by the court at
15 the time of sentencing, Defendant waives to the full extent of the law:

16 a. Any right conferred by Title 18, United States Code, Section 3742,
17 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
18 restitution order, probation or supervised release conditions, or forfeiture order (if
19 applicable); and

20 b. Any right to bring a collateral attack against the conviction and
21 sentence, including any restitution order imposed, except as it may relate to the
22 effectiveness of legal representation.

23 This waiver does not preclude Defendant from bringing an appropriate motion
24 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
25 decisions of the Bureau of Prisons regarding the execution of his sentence.

26 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
27 attacking (except as to effectiveness of legal representation) the conviction or sentence in
28 any way, the United States may prosecute Defendant for any counts, including those with

1 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
 2 Agreement.

3 **17. Voluntariness of Plea.** Defendant agrees that he has entered into this plea
 4 and Plea Agreement freely and voluntarily and that no threats or promises, other than the
 5 promises contained in this Plea Agreement, were made to induce Defendant to enter his
 6 plea of guilty.

7 **18. Statute of Limitations.** In the event this Agreement is not accepted by the
 8 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
 9 the statute of limitations shall be deemed to have been tolled from the date of the Plea
 10 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
 11 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
 12 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

13 **19. Enhanced Penalty.** Pursuant to this Plea Agreement, and conditioned
 14 upon Defendant's fulfillment of all of its terms and conditions, the United States Attorney
 15 for the Western District of Washington agrees not to file an enhanced penalty information
 16 alleging Defendant's prior felony drug convictions pursuant to 21 U.S.C. § 851.

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20. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 10th day of January, 2017.

GEORGE E. HERNANDEZ, JR.
Defendant

GEORGE E. HERNANDEZ, JR.
Defendant

~~COLIN FIEMAN~~
Attorney for Defendant

Attorney for Defendant

MICHAEL DION
Assistant United States Attorney

MICHAEL DION
Assistant United States Attorney

SIDDHARTH VELAMOOR
Assistant United States Attorney

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