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**ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT
(NOVEMBER 22, 2022)**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARQUAY QUAMAIN SHEPPARD,

Defendant-Appellant.

No. 21-4666

(3:20-cr-00201-RJC-DCK-1)

Before: Judge HARRIS, Judge RICHARDSON,
and Senior Judge TRAXLER

ORDER

Marquay Quamaine Sheppard seeks to appeal his sentence, challenging the district court's denial of his motion for a downward variance. The Government has moved to dismiss the appeal as barred by Sheppard's waiver of the right to appeal included in the plea agreement. Upon review of the record, we conclude that Sheppard knowingly and voluntarily waived his right to appeal and that the issue he seeks to raise on appeal falls squarely within the

scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge Harris, Judge Richardson, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor
Clerk

**ENTRY OF JUDGMENT,
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
(NOVEMBER 22, 2022)**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARQUAY QUAMAIN SHEPPARD,

Defendant-Appellant.

No. 21-4666

(3:20-cr-00201-RJC-DCK-1)

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor
Clerk

**ENTRY OF CRIMINAL JUDGMENT,
UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NORTH CAROLINA
(NOVEMBER 18, 2021)**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

MARQUAY QUAMAIN SHEPPARD

Case Number: DNCW320CR000201-001

USM Number: 06875-509

Joseph L Ledford, Defendant's Attorney

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

Before: Hon. Robert J. CONRAD, JR.,
United States District Judge.

THE DEFENDANT:

- Pled guilty to count(s) 5 & 7.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section: 21:841(a)(1) & (b)(1)(B)

Nature of Offense

Possession with Intent to Distribute at
least 28 g Cocaine Base

Date Offense Concluded: 01/03/2020

Counts: 5

Title and Section: 18:922(9)(1) & 924(a)(2)

Nature of Offense

Possession of a Firearm by a Convicted
Felon

Date Offense Concluded: 01/03/2020

Counts: 7

The Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, *United States v. Booker*, 125 S. Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- Count(s) 1-4 & 6 are dismissed on the motion of the United States.

IT IS ORDERED that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 11/15/2021

/s/ Robert J. Conrad, Jr.

United States District Judge

Date: November 18, 2021

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ONE HUNDRED EIGHTY-EIGHT (188) MONTHS ON COUNT 5, ONE HUNDRED TWENTY (120) MONTHS ON COUNT 7, ALL SUCH TERMS TO BE SERVED CONCURRENTLY.

- The Court makes the following recommendations to the Bureau of Prisons:
 1. Placed in FCI Edgefield or Bennettsville, consistent with the needs of BOP.
 2. Participation in any available educational and vocational opportunities.
 3. Participation in any available substance abuse treatment program and, if eligible, receive benefits of 18:3621(e)(2).
 4. Defendant shall support all dependents from prison earnings.
- The Defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FOUR (4) YEARS ON COUNT 5. THREE (3) YEARS ON COUNT 7. ALL SUCH TERMS TO RUN CONCURRENTLY.

CONDITIONS OF SUPERVISION

The defendant shall comply with the mandatory conditions that have been adopted by this court.

App.7a

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court (unless omitted by the Court).
4. The defendant shall cooperate in the collection of DNA as directed by the probation officer (unless omitted by the Court).

The defendant shall comply with the discretionary conditions that have been adopted by this court and any additional conditions ordered.

5. The defendant shall report to the probation office in the federal judicial district where he/she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
6. The defendant shall report to the probation officer in a manner and frequency as directed by the Court or probation officer.
7. The defendant shall not leave the federal judicial district where he/she is authorized to reside without first getting permission from the Court or probation officer.

App.8a

8. The defendant shall answer truthfully the questions asked by the probation officer. However, defendant may refuse to answer a question if the truthful answer would tend to incriminate him/her of a crime. Refusal to answer a question on that ground will not be considered a violation of supervised release.
9. The defendant shall live at a place approved by the probation officer. The probation officer shall be notified in advance of any change in living arrangements (such as location and the people with whom the defendant lives). If advance notification is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
10. The defendant shall allow the probation officer to visit him/her at any time at his/her home or any other reasonable location as determined by the probation office, and shall permit the probation officer to take any items prohibited by the conditions of his/her supervision that the probation officer observes.
11. The defendant shall work full time (at least 30 hours per week) at lawful employment, actively seek such gainful employment or be enrolled in a full time educational or vocational program unless excused by the probation officer. The defendant shall notify the probation officer within 72 hours of any change regarding employment or education.

App.9a

12. The defendant shall not communicate or interact with any persons he/she knows is engaged in criminal activity, and shall not communicate or interact with any person he/she knows to be convicted of a felony unless granted permission to do so by the probation officer.
13. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
14. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.*, anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or lasers).
15. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential informant without first getting the permission of the Court.
16. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or controlled substance or any psychoactive substances (including, but not limited to, synthetic marijuana, bath salts) that impair a person's physical or mental functioning, whether or not intended for human consumption, or any paraphernalia related to such substances, except as duly prescribed by a licensed medical practitioner.

17. The defendant shall participate in a program of testing for substance abuse. The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of the testing. The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity) (unless omitted by the Court).
18. The defendant shall not go to, or remain at any place where he/she knows controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.
19. The defendant shall submit to a search if the Probation Officer has a reasonable suspicion that the defendant has committed a crime or a violation of a condition of supervised release. Such a search may be conducted by a U.S. Probation Officer, and such other law enforcement personnel as the probation officer may deem advisable, without a warrant or the consent of the defendant. Such search may be of any place where evidence of the above may reasonably be expected to be found, including defendant's person, property, house, residence, vehicle, communications or data storage devices or media or office.
20. The defendant shall pay any financial obligation imposed by this judgment remaining

unpaid as of the commencement of the sentence of probation or the term of supervised release in accordance with the schedule of payments of this judgment. The defendant shall notify the court of any changes in economic circumstances that might affect the ability to pay this financial obligation.

21. The defendant shall support all dependents including any dependent child, or any person the defendant has been court ordered to support.
22. The defendant shall participate in transitional support services (including cognitive behavioral treatment programs) and follow the rules and regulations of such program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity). Such programs may include group sessions led by a counselor or participation in a program administered by the probation officer.
23. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	RESTITUTION	FINE
\$200.00	\$0.00	\$0.00

INTEREST

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

- The court has determined that the defendant does not have the ability to pay interest and it is ordered that:
 - The interest requirement is waived.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- Payment to begin immediately (may be combined with

Special instructions regarding the payment of criminal monetary penalties:

- The defendant shall forfeit the defendant's interest in the following property to the United States as

set forth in the Consent Order document (Doc. No. 41) entered 11/15/2021

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 1301, Charlotte, NC 28202, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/
Designated Witness

STATUTORY PROVISION INVOLVED
18 U.S.C. § 3553(A)

18 U.S.C. § 3553(a)

- (a) Factors to be considered in imposing a sentence.**—The court shall impose a sentence sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—
- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
 - (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
 - (3) the kinds of sentences available;
 - (4) the kinds of sentence and the sentencing range established for—

- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines-
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—
- (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the

Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

**PLEA AGREEMENT
(OCTOBER 20, 2020)**

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA, CHARLOTTE DIVISION

UNITED STATES OF AMERICA

v.

MARQUAY QUAMAIN SHEPPARD

Docket No.: 3:20-CR-201

PLEA AGREEMENT

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, and the defendant, MARQUAY QUAMAIN SHEPPARD, (DEFENDANT), in person and through counsel, Joe Ledford, and respectfully inform the Court that they have reached an agreement pursuant to Federal Rule of Criminal Procedure (“Rule”) 11. References to the United States herein shall mean the United States Attorney for the Western District of North Carolina.

I. Plea

1. The defendant agrees to enter a voluntary plea of guilty to Counts Five (5) and Seven (7), as set forth in the Bill of Indictment, and admits to being in fact guilty as charged in Counts Five (5) and Seven (7).

2. If the Court finds the defendant's plea to be voluntary and knowingly made, and accepts the plea, then the United States will move at the appropriate time to dismiss any remaining counts pertaining to this defendant.

3. The defendant understands that each and every provision set forth below is a material term of the Plea Agreement. Each of the following constitutes a breach of the Plea Agreement: (a) defendant's failure to fully comply with any provision of the Plea Agreement; (b) defendant's attempt to withdraw the guilty plea; and (c) defendant's violation of any federal, state or local law or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release.

4. In addition to any other remedy available in law, the defendant's breach: (a) will relieve the United States of its obligations under the Plea Agreement, without relieving the defendant of the defendant's obligations under the Plea Agreement or permitting the defendant to withdraw the guilty plea; (b) may constitute the defendant's failure to accept responsibility under U.S.S.G. § 3E1.1; and (c) will permit the United States to proceed on any dismissed, pending, superseding or additional charges and, if applicable, any Information pursuant to 21 U.S.C. § 851.

II. Sentence

5. The defendant is aware that the statutory minimum and maximum sentences for each count are as follows:

Count Five (5): a violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); a mandatory minimum term of five

(5) years imprisonment and a maximum term of forty (40) years imprisonment, \$5,000,000 fine, or both, and a term of supervised release of at least four (4) years;

In this case, the Government has filed an Information regarding one or more prior felony drug convictions pursuant to 21 U.S.C. 851. The Defendant stipulates, agrees, and affirms that the Information is accurate and valid for purposes of 21 U.S.C. 851, and that the Defendant has no challenge to the same. Thus, the Defendant is facing a mandatory statutory sentence of not less than ten (10) years imprisonment nor more than life imprisonment, \$8,000,000 fine, or both, and a term of supervised release of at least eight (8) years. HOWEVER, as part of the Plea Agreement, if the Defendant complies with each and every provision of this Plea Agreement, the United States will withdraw such Section 851 information at the time of sentencing, so the Defendant will be facing a sentence of no less than five (5) years nor more than forty (40) years imprisonment for Count Five (5); and

Count Seven (7): a violation of 18 U.S.C. §§ 922 (g)(1) and 924; a maximum term of ten (10) years imprisonment, \$ 250,000 fine, or both, and a term of supervised release of not more than three (3) years.

6. The defendant understands that a violation of supervised release may subject the defendant to an additional period of incarceration.

7. The defendant is aware that the Court: (a) will consider the advisory *United States Sentencing Guidelines (U.S.S.G.)* in determining the sentence; (b) has not yet determined the sentence, and any estimate of the likely sentence is a prediction rather than a promise; (c) has the final discretion to impose any sentence up to the statutory maximum for each count; and (d) is not bound by recommendations or agreements by the United States. Knowing this, the defendant understands that the defendant may not withdraw the plea as a result of the sentence imposed.

8. Pursuant to Rule 11(c)(1)(B), the parties agree that they will jointly recommend that the Court make the following findings and conclusions as to the U.S.S.G.:

- a. The United States agrees that if the defendant is found by the Court to have accepted responsibility under U.S.S.G. § 3E1.1(a), the United States will acknowledge that defendant's entry of a guilty plea is timely for purposes of U.S.S.G. § 3E1.1(b), if that section applies to defendant;
- b. The amount of mixture and substance containing a detectable amount of Cocaine, a Schedule II controlled substance that was known to or reasonably foreseeable by the defendant (including relevant conduct) was approximately one-hundred-fifteen (115) grams of Cocaine Base (Crack Cocaine); and

The amount of mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance that was known to or reasonably foreseeable by the

defendant (including relevant conduct) was approximately thirty-four (34) unit doses of Oxycodone;

- c. The United States and Defendant agree that the U.S.S.G. § 2D1.1(b)(1), U.S.S.G. § 2D1.1(b)(12), U.S.S.G. § 2K2.1(a)(4), and U.S.S.G. § 2K2.1(b)(6) enhancements are applicable herein;
- d. The parties agree that either party may argue their respective positions regarding any other specific offense characteristics, cross-references, special instructions, reductions, enhancements, departures, and adjustments to the offense level;
- e. Having fully considered the factors set forth in 18 U.S.C. § 3553(a), the parties agree that the appropriate sentence is one within “the applicable guideline range” (U.S.S.G. § 5C1.1) determined by the district court at sentencing, and that a sentence within that range is sufficient but not greater than necessary. Neither party will seek a departure or variance from that range;
- f. Notwithstanding any other recommendation herein, if the Court determines from the defendant’s criminal history that U.S.S.G. § 4B1.1 (Career Offender) or U.S.S.G. § 4B1.4 (Armed Career Criminal) applies, such provision may be used in determining the sentence; and
- g. The United States will inform the Court and the probation office of all facts pertinent to

the sentencing process and will present any evidence requested by the Court.

9. The defendant agrees to the following with respect to monetary penalties, assets, and financial disclosures:

- a. To entry of an order for monetary penalties due and payable immediately, such penalties including full restitution, regardless of the resulting loss amount, to all victims directly or indirectly harmed by the defendant's "relevant conduct," as defined by U.S.S.G. § 1B1.3, including conduct pertaining to any dismissed counts or uncharged conduct, regardless of whether such conduct constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. Further, Defendant agrees that, should the Court impose a payment schedule, the payment schedule sets forth minimum payments and does not foreclose additional collection of restitution.
- b. To forfeit, via an administrative or judicial proceeding, all assets listed in the charging document and, if applicable, Bill of Particulars, or seized during this investigation or a related investigation; to withdraw any claims and petitions for such assets; to entry of a money judgment in the amount specified in the charging document or Bill of Particulars; to a Magistrate Judge conducting forfeiture proceedings; to waive any rights to notice of forfeiture and to pronouncement of forfeiture at sentencing; and to abandonment of the defendant's interests, if any, in any seized assets not forfeited.

- c. To truthfully complete under penalty of perjury, within thirty days of the execution of this Plea Agreement, a financial statement provided by the United States Attorney's Office and to update the statement within seven days of any material change, and to make full disclosure of all current and projected assets to the United States Probation Office before sentencing and again before termination of supervised release or probation, such disclosures to be shared with the United States Attorney's Office.
- d. That monetary penalties will be subject to immediate enforcement as provided in 18 U.S.C. § 3613; that monetary penalties and the forfeiture money judgment will be submitted to the Treasury Offset Program so that payments to the defendant may be applied to federal debts; and to satisfaction of the 21 U.S.C. § 853(p) factors so that the forfeiture money judgment may be satisfied via forfeiture of substitute property.
- e. To participation in the Inmate Financial Responsibility Program and to waiver of any challenge relating to defendant's participation in the Program.

III. Procedure

10. The defendant agrees that a federal Magistrate Judge may conduct the hearing required by Rule 11.

11. The defendant stipulates that there is a factual basis, as required by Rule 11(b)(3), for the

plea of guilty. The defendant further stipulates that the defendant has read and understood the Factual Basis filed with this Plea Agreement pursuant to Local Criminal Rule 11.2 and that such Factual Basis may be used by the Court, the United States Probation Office, and the United States without objection by the defendant for any purpose, including to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a).

12. The defendant also agrees that the Factual Basis filed with the Plea Agreement does not necessarily represent all conduct relevant to sentencing; the United States may submit to the United States Probation Office a “Statement of Relevant Conduct” pursuant to Local Criminal Rule 32.4; and the United States may present to the Court additional relevant facts prior to or at sentencing.

IV. Waivers

13. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty, has discussed these rights with defense counsel, and knowingly and voluntarily waives any right to withdraw the plea once the Magistrate Judge has accepted it.

14. The defendant acknowledges that Rule 11(f) and Fed. R. of Evid. 408 and 410 are rules that ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions. The defendant knowingly and voluntarily waives these rights and agrees that any statements made in the course of the defendant’s guilty plea or this Plea Agreement (in part or in its entirety, at the sole discretion of the United States) and the Factual Basis

will be admissible against the defendant for any purpose in any criminal or civil proceeding if the defendant fails to enter, or attempts to withdraw, the defendant's guilty plea, or in any post-conviction proceeding challenging the knowing or voluntary nature of the guilty plea.

15. The defendant agrees that by pleading guilty, the defendant is knowingly and voluntarily waiving the right: (a) to be tried by a jury; (b) to be assisted by an attorney at trial; (c) to confront and cross-examine witnesses; and (d) not to be compelled to incriminate him or herself.

16. The defendant has discussed with defense counsel: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction action after entering into a Plea Agreement; (b) whether there are potential issues relevant to an appeal or post-conviction action; and (c) the possible impact of any such issue on the desirability of entering into this Plea Agreement.

17. The defendant, in exchange for the concessions made by the United States in this Plea Agreement, waives all rights to contest the conviction and sentence in any appeal or post-conviction action. Claims of (1) ineffective assistance of counsel and (2) prosecutorial misconduct, and those claims only, are exempt from the waiver. This waiver precludes the defendant from challenging his conviction or sentence on the basis of any other claim, including but not limited to any claim that the statute(s) to which the defendant is pleading guilty is or are unconstitutional and any claim that the admitted conduct does not fall within the scope of the statute(s).

18. The defendant agrees that the United States preserves all its rights and duties as set forth in 18 U.S.C. § 3742(b). Should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to the defendant's offense(s) and explicitly make such an amendment retroactive, the United States agrees that it will not assert this waiver as a bar to the defendant's filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if the defendant files such a motion, the United States reserves the right to oppose the motion on any other grounds, and reserves the right to assert this waiver as a bar to an appeal from the district court's decision regarding the motion.

19. The defendant knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

V. Effects of Plea

20. The defendant understands that upon acceptance of the guilty plea, a judicial officer shall order the defendant to be detained, unless the judicial officer finds that the defendant satisfies one of the statutory exceptions to the detention presumption, permitting the defendant's release.

21. The defendant recognizes that pleading guilty may affect the defendant's immigration status if the defendant is not a citizen of the United States. The

defendant understands that no one can predict with certainty the effect of the defendant's conviction(s) on the defendant's immigration status. The defendant nevertheless seeks to plead guilty, even if the consequence is the defendant's automatic removal from the United States.

VI. Assistance to United States

22. If requested by the United States, but only if so requested, the defendant agrees to cooperate with the United States, including but not limited to the following:

- a. The defendant will provide truthful information about the subject charges and about any other criminal activity within the defendant's knowledge to any United States agent or agency that the United States designates.
- b. The defendant will testify truthfully in any trial, hearing, or grand jury proceeding. This testimony includes, but is not limited to, testimony against any codefendants, as the United States designates. Should the defendant testify at the request of the United States, the defendant hereby waives payment of any witness fees or expenses.
- c. The defendant will be reasonably available for debriefing and pre-trial conferences as the United States may require.
- d. The defendant will provide to the United States all documents or materials of any kind in the defendant's possession or under the defendant's care, custody, or control

relating directly or indirectly to all areas of inquiry and investigation.

- e. The defendant understands that the United States desires only truthful and accurate information and testimony. The defendant understands further that knowingly giving false information or testimony may constitute a breach of the Plea Agreement and/or could be prosecuted as an additional criminal offense.
- f. The defendant's obligation under this section is a continuing one, and will continue after sentencing until all investigations and/or prosecutions to which the defendant's cooperation may be relevant are complete.

23. The United States and the defendant agree that, once this Plea Agreement is effective, any prior agreements are superseded, and further statements of the defendant are governed solely by this Plea Agreement.

24. The United States agrees that information provided by the defendant pursuant to this Plea Agreement and about which the United States had no prior knowledge will not be used against the defendant by the United States in this or any other criminal proceeding, except that the United States may use any information the defendant provides:

- a. Regarding crimes that involve violence;
- b. In a prosecution for any crime committed by the defendant after the effective date of this Plea Agreement;

- c. Derivatively, to pursue investigative leads, identify witnesses or to obtain evidence;
- d. In response to any defense argument or evidence in any hearing or proceeding inconsistent with statements or information provided by the defendant; and
- e. For any other purpose set forth in U.S.S.G. § 1B1.8(b).

25. Nothing in this Plea Agreement places any obligation on the United States to seek the defendant's cooperation or assistance. If the defendant so assists the United States:

- a. The United States, in its sole discretion, will determine whether said assistance has been substantial.
- b. Upon a determination by the United States that the defendant has rendered substantial assistance, the United States may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines or pursuant to Rule 35(b) for a reduction in the defendant's term of imprisonment. The United States may also, within its sole discretion, move the Court pursuant to 18 U.S.C. § 3553(e) and/or Rule 35(b) to impose a sentence below any applicable statutory mandatory minimum.

26. Any determination that the defendant has failed to provide substantial assistance, or has knowingly provided false information, is within the sole discretion of the United States, and the defendant waives all objections and rights of appeal or collateral

attack of such a determination. The defendant understands that if the United States makes a motion for reduction of sentence, the motion is not binding on the District Court.

VII. Conclusion

27. This Plea Agreement is effective and binding once signed by the defendant, the Defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this Plea Agreement at the date and time scheduled by the Court.

28. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement, or as noticed to the Court during the plea colloquy and contained in writing in a separate document signed by all parties.

SO AGREED:

/s/ Sanjeev Bhasker Dated: 10-20-2020
Assistant United States Attorney

/s/ Joe Ledford Dated:10-19-20
Attorney for Defendant

/s/ Marquay Quamaine Sheppard Dated:10-19-20
Defendant