

## **APPENDIX**

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1a

**United States Court of Appeals  
For the First Circuit**

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No. 24-1090

UNITED STATES,

Appellee,

v.

JOHN A. SAM,

Defendant - Appellant.

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Before

Montcalvo, Kayatta and Aframe,  
Circuit Judges.

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**JUDGMENT**

Entered: April 22, 2025

This is an appeal from a judgment in the District Court for the District of Maine. The appellant has filed an opening brief. The Government has filed a motion for summary disposition.

At the district court, the appellant entered into a plea agreement that contained a broad waiver-of-appeal provision. The appellant bears the burden to show that the waiver-of-appeal provision does not cover his appeal. See generally United States v. Borrero-Acevedo, 533 F.3d 11, 18 (1st Cir. 2008) ("It is defendant's burden to show that the waiver of appellate rights was deficient and that he would otherwise not have pled guilty.").

On review of the arguments in the appellant's opening brief and the points raised in the Government's motion, we conclude that the waiver-of-appeal term in the plea agreement is valid and presumptively enforceable as to this appeal and the appellant's as-applied constitutional challenge to his conviction.

The appellant also has conceded that he did not raise his constitutional challenge below. The Government by its motion argues for waiver of this challenge based on the appellant's failure

## 2a

to file a motion to dismiss the indictment at the district court under Federal Rule of Criminal Procedure 12(b)(3). See United States v. Turner, 124 F.4th 69, 75 (1st Cir. 2024) (deeming appellant to have waived an as-applied constitutional challenge to a felon-in-possession count under 18 U.S.C. § 922(g)(1) because of a failure to file a timely motion to dismiss under Rule 12(b)(3)). The appellant, for his part, would have the court treat the omission as a mere forfeiture (conceding that this still would require review under the rubric of plain error). Even if we assume for present purposes that the appellant merely forfeited their challenge, however, see United States v. Langston, 110 F.4th 408, 423 (1st Cir. 2024) ("We need not resolve the parties' forfeiture versus waiver disagreement. 'Where a defendant's claim would fail even if reviewed for plain error, we have often declined to decide whether the defendant's failure to raise the issue below constituted waiver or mere forfeiture.'" (quoting United States v. Acevedo-Sueros, 826 F.3d 21, 24 (1st Cir. 2016))), as the appellant concedes, he still would need to show plain error.

With that standard in mind, we conclude that it would not constitute a miscarriage of justice to enforce the waiver of appeal to bar the contemplated challenge because the appellant cannot satisfy the requirements for that exception. In order to show plain error, the appellant would need to show that any error "was clear or obvious." See United States v. Sansone, 90 F.4th 1, 7 (1st Cir. 2024). The appellant cannot make that showing here. See, e.g., Langston, 110 F.4th at 419–20 (rejecting under plain error review an as-applied constitutional challenge to a conviction under 18 U.S.C. § 922(g)(1)); see also United States v. Thompson, 62 F.4th 37, 43 (1st Cir. 2023) (declining to rely on the miscarriage-of-justice exception to avoid an otherwise valid waiver-of-appeal provision because the contemplated constitutional challenge did not identify a sufficiently clear error).

Separately from the waiver's applicability to any challenge to his conviction, based on the term of imprisonment imposed, the waiver-of-appeal also bars any challenge to the appellant's sentence. The appellant in any event develops no sentencing-based challenge.

The Government's motion for summary disposition is **GRANTED**. The appeal is hereby **DISMISSED**. See Local Rule 27.0(c).

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Jamesa J. Drake

John A. Sam

Joel B. Casey

Andrew Kenney Lizotte

Lindsay Feinberg

3a

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

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UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NUMBER:

-vs-

1:21-cr-00194-LEW

JOHN A. SAM,

Change of Plea Hearing

Defendant.

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Margaret Chase Smith United States Courthouse  
 202 Harlow Street  
 Bangor, Maine 04401  
 April 14, 2023

B E F O R E:

THE HONORABLE LANCE E. WALKER  
 UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

DARCIE N. MCELWEE, UNITED STATES ATTORNEY  
 BY: ANDREW K. LIZOTTE, ASSISTANT UNITED STATES ATTORNEY  
 On behalf of the Government.

DRAKE LAW, LLC  
 BY: JAMESA J. DRAKE, ESQUIRE  
 On behalf of the Defendant.

Cathy J. Ford, Official Court Reporter  
 cfordccr@gmail.com  
 609.367.2777

Proceedings recorded by manual stenography; transcript  
 produced by computer-aided transcription.

## 4a

1 THE DEPUTY COURT CLERK: The United States District  
2 Court is now in session. The Honorable Lance Walker,  
3 presiding.

4 THE COURT: Good morning. Have a seat, folks.

5 We're here in the matter of United States versus John  
6 Sam. This is Criminal Case Number 1:21-cr-194.

7 Counsel, would you introduce yourselves, please.

8 MR. LIZOTTE: Good morning, your Honor. Andrew  
9 Lizotte for the government.

10 THE COURT: Good morning.

11 MS. DRAKE: Good morning. Jamesa Drake for John Sam.

12 THE COURT: Good morning. And good morning, Mr. Sam.

13 You're the same John Sam named as a defendant in the  
14 indictment?

15 THE DEFENDANT: I am, sir.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: I got a GED, but I went to the tenth  
18 grade.

19 THE COURT: Can you read and write?

20 THE DEFENDANT: I can.

21 THE COURT: Are you currently taking any medications?

22 THE DEFENDANT: Yes, sir. I'm taking Remeron for  
23 sleep and a couple of blood pressure pills. I'm not sure of  
24 the names but.

25 THE COURT: Any other medications?

## 5a

1 THE DEFENDANT: No.

2 THE COURT: Do those medications make it more  
3 difficult for you to understand what's taking place today?

4 THE DEFENDANT: They do not, sir.

5 THE COURT: Other than those medications, have you  
6 consumed any drugs in the last 24 hours?

7 THE DEFENDANT: I have not.

8 THE COURT: Have you consumed any alcohol in the last  
9 24 hours?

10 THE DEFENDANT: No, sir.

11 THE COURT: And did Ms. Drake explain to you what  
12 might happen as a result of the hearing today and your change  
13 of plea?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you authorize Ms. Drake to speak on  
16 your behalf today?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: I understand you wish to change your plea  
19 to Count 1 of the indictment; is that accurate?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, Ms. Drake, do you approve of the  
22 change of plea and recommend I accept it?

23 MS. DRAKE: I do, your Honor.

24 THE COURT: Thank you. The clerk may proceed.

25 THE DEPUTY COURT CLERK: John Sam, on December 9,

## 6a

1 2021, you entered a plea of not guilty to Count 1 of the  
2 indictment bearing Criminal Docket Number 1:21-cr-194-LEW.  
3 How do you now plead to the Count 1 of the indictment, do you  
4 plead guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE DEPUTY COURT CLERK: The defendant pleads guilty  
7 to Count 1 of the indictment, your Honor.

8 THE COURT: Thank you.

9 Mr. Sam, a couple of quick ground rules before we  
10 start asking questions. The first ground rule is if at any  
11 time you don't understand a question that I've asked or a  
12 concept that I've explained, I want you to interrupt me  
13 straight away so that I know that and I'll rephrase until you  
14 do understand. Does that make sense to you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The other ground rule I'd like you to  
17 keep in mind is if you need to speak with Attorney Drake at  
18 any time and for any reason, likewise, let me know that right  
19 away. I'll give you that opportunity. Does that also make  
20 sense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Thank you.

23 So I have a few questions I need to ask you before I  
24 can accept your plea. The very first of those questions is:  
25 Did you plead guilty to the charge contained in the indictment

## 7a

1 because you are actuality guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, Ms. Drake, are you so satisfied?

4 MS. DRAKE: I am, your Honor.

5 THE COURT: Thank you.

6 Mr. Sam, did you receive a copy of the indictment?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you have enough time to discuss the  
9 charge contained in that document with your lawyer?

10 THE DEFENDANT: I did, sir.

11 THE COURT: Did your lawyer explain to you the  
12 elements and nature of the crime charged as well as the  
13 penalties that might be imposed?

14 THE DEFENDANT: Yes, she did.

15 THE COURT: And, Ms. Drake, are you satisfied that  
16 Mr. Sam understands the charge contained in Count 1?

17 MS. DRAKE: I am, your Honor.

18 THE COURT: Mr. Sam, you're charged in a single-count  
19 indictment. It charges you with a felon in possession of a  
20 firearm. Do you understand that charge?

21 THE DEFENDANT: I do, sir.

22 THE COURT: If you're not a United States citizen, by  
23 pleading guilty to this crime, you may be removed from the  
24 United States, denied citizenship, and denied admission to the  
25 United States in the future.

## 8a

1           Let me review with you the potential penalties that  
2 are associated with this particular offense. By pleading  
3 guilty to this crime, you may be imprisoned for not more than  
4 10 years; you may be placed on supervised release of not more  
5 than three years to follow any term of imprisonment. If you  
6 violate the terms of supervised release, you could be put back  
7 into prison for not more than two years. You may be required  
8 to pay fines in an amount not to exceed \$250,000. You will be  
9 required to pay a mandatory special assessment of \$100.

10           Do you understand those potential penalties, Mr. Sam?

11           THE DEFENDANT: I do, sir.

12           THE COURT: Let me review with you your trial rights,  
13 sir. You could, if you wish, still plead not guilty. Do you  
14 understand that?

15           THE DEFENDANT: I do.

16           THE COURT: You have the right to a speedy and public  
17 trial by a judge or a jury; you have the right to the  
18 assistance of your lawyer throughout that trial. And as you  
19 know, if you cannot afford a lawyer, you have a right to have  
20 one appointed to you at government expense.

21           At trial, you would not have to prove that you are  
22 innocent. That is true because you would be presumed  
23 innocent. The burden of proof is only and always on the  
24 government to prove you guilty beyond a reasonable doubt.  
25 Does that make sense to you?

## 9a

1 THE DEFENDANT: Yes, it does, sir.

2 THE COURT: At trial, the government's witnesses  
3 would have to come into open court and testify in front of you  
4 and your lawyer. Your lawyer in turn will have the  
5 opportunity to cross-examine, question all of the government's  
6 witnesses, object to any of the government's witnesses,  
7 object to any evidence the government wished to offer, offer  
8 evidence favorable to you, and compel witnesses to come to  
9 court who might be reluctant to do so.

10 At trial, you'd had have the right, Mr. Sam, to  
11 testify if you wanted to do that. Equally important, however,  
12 you'd have the right not to testify. No one can make you  
13 testify at your own criminal trial. If you chose not to  
14 testify, what I would do is instruct the jury that it could  
15 draw no inference or suggestion of your guilt merely from the  
16 fact that you've decided not to testify. In plain English  
17 what that means is, I would tell the jury it could not hold  
18 that decision against you or consider it in any way in its  
19 deliberations as to whether the government met its burden of  
20 proof. Does that make sense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: At trial, you could be found guilty only  
23 on a unanimous vote of the jury.

24 If I accept your guilty plea today, Mr. Sam, you'll  
25 have given up your right to a trial and all the associated

## 10a

1 rights to the right to trial that we've just discussed, and  
2 there will be no trial of any kind on this charge. I'll enter  
3 a judgment of guilty and sentence you on the basis of your  
4 guilty plea. If all of that happens, you'll have virtually no  
5 right of appeal from your conviction. Do you understand all  
6 of those trial rights that I've just reviewed with you?

7 THE DEFENDANT: I do, sir.

8 THE COURT: And in light of that understanding, Mr.  
9 Sam, do you still choose to plead guilty to Count 1 of the  
10 indictment?

11 THE DEFENDANT: I do, sir.

12 THE COURT: Very good. I'm going to have a few more  
13 questions for you. But for the time being, I'll turn my  
14 attention to AUSA Lizotte and ask him to provide us with a  
15 summary of the evidence the government would expect to produce  
16 should your matter proceed to trial.

17 Mr. Lizotte.

18 MR. LIZOTTE: Thank you, your Honor.

19 On April 11th, earlier this week, we filed a  
20 prosecution version of the offense citing the evidence -- the  
21 admissible evidence that we'd be relying on, proof beyond a  
22 reasonable doubt, that there was a violation of 922(g)(1).  
23 Essentially, Mr. Sam was previously convicted in  
24 February 2017, a serious felony in the State of Maine. He  
25 knew he was a felon at the time he possessed, in May of 2021,

## 11a

1 in Caribou, Maine, a Jimenez Arms, .380 ACP pistol. He was  
2 found stopped at a traffic stop in Caribou, Maine. The  
3 firearm was recovered. It's remaining in ATF custody. It was  
4 manufactured out of the State of Maine and, therefore,  
5 traveled in interstate commerce to the great State of Maine.  
6 Thank you.

7 THE COURT: Thank you.

8 Ms. Drake, have you reviewed the prosecution version  
9 with Mr. Sam?

10 MS. DRAKE: I have, your Honor.

11 THE COURT: Are you satisfied the government can, in  
12 fact, produce the evidence that's described in that document?

13 MS. DRAKE: Yes, your Honor.

14 THE COURT: Are you further satisfied the admissible  
15 part of that evidence would permit a properly instructed jury  
16 to determine that your client is guilty beyond a reasonable  
17 doubt for the crime to which he has pled guilty today?

18 MS. DRAKE: I am, your Honor.

19 THE COURT: Mr. Sam, do you understand the evidence  
20 the prosecutor would produce should your matter proceed to  
21 trial?

22 THE DEFENDANT: I do, sir.

23 THE COURT: We're referring to the document called  
24 "the prosecution version." Have you read that document in its  
25 entirety?

## 12a

1 THE DEFENDANT: I have, sir.

2 THE COURT: Have you discussed it with Attorney  
3 Drake?

4 THE DEFENDANT: I have.

5 THE COURT: And has she answered all of your  
6 questions to your satisfaction?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you disagree with any of the  
9 information that is contained in that document?

10 THE DEFENDANT: I do not.

11 THE COURT: Thank you, sir.

12 I do find that there is a sufficient factual basis  
13 for Mr. Sam's guilty plea to Count 1 of the indictment.

14 Mr. Sam, has anyone threatened you or tried to force  
15 you in any way to plead guilty?

16 THE DEFENDANT: They have not, sir.

17 THE COURT: I understand that as a result of  
18 conversations between you and Ms. Drake and Mr. Lizotte that  
19 there's a written plea agreement in this case. Is that also  
20 your understanding?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Any prior formal plea offers extended to  
23 the defendant, Mr. Lizotte?

24 MR. LIZOTTE: Your Honor, there were two. The most  
25 recent of which is filed on the docket. The only material

## 13a

1 difference was the appellate waiver was set at a higher month  
2 total. The current total is now 77.

3 THE COURT: Thank you.

4 And, Ms. Drake, does that square with your  
5 understanding of the history of the prior formal offers?

6 MS. DRAKE: Yes, your Honor.

7 THE COURT: Very good.

8 Mr. Sam, do you have a copy of the plea agreement in  
9 front of you right now? Or if Mr. Lizotte would be so kind  
10 to, perhaps, furnish a copy.

11 Thank you, Mr. Lizotte.

12 All right. Turn to page 5. That's the last page of  
13 the document.

14 You let me know when you're there, Mr. Sam.

15 THE DEFENDANT: Okay. I'm there.

16 THE COURT: Is that your signature on page 5?

17 THE DEFENDANT: It is, sir.

18 THE COURT: Did you sign that document voluntarily?

19 THE DEFENDANT: I did.

20 THE COURT: Did you read and understand everything in  
21 the document before you signed it?

22 THE DEFENDANT: I did, sir.

23 THE COURT: In signing the document, did you intend  
24 to agree to all of its terms and conditions?

25 THE DEFENDANT: Yes, sir.

## 14a

1 THE COURT: I want to review a couple of provisions  
2 with you specifically. One of those occurs at page 2,  
3 paragraph 3. It's entitled "agreements regarding sentencing."

4 Do you see what I'm referring to?

5 THE DEFENDANT: I do, sir.

6 THE COURT: All right. You'll be happy to know that  
7 I'm not going to read that provision to you, which consumes  
8 the bulk of page 2 and some of page 3.

9 What that provision tells me is that the attorneys  
10 have agreed, and you have agreed, that the attorneys will be  
11 making certain sentencing recommendations to me at the time of  
12 your sentencing. The only thing I want you to bear in mind  
13 about that is that those are non-binding recommendations.  
14 Meaning, I'm free to accept as little or as much of those  
15 recommendations as I think it's deserved under the law and the  
16 facts of your case. Does that make sense?

17 THE DEFENDANT: It does, sir.

18 THE COURT: Very good.

19 The next provision I'd like to review with you is at  
20 the very next page, page 3, paragraph 4. It's entitled  
21 "appeal waivers."

22 Do you see what I'm referring to?

23 THE DEFENDANT: I do, sir.

24 THE COURT: That provision says that you understand  
25 that federal law affords you the right to appeal any sentence

## 15a

1 I impose. However, knowing that, you're giving up your right  
2 to appeal any sentence of imprisonment that does not exceed  
3 77 months.

4 Do you see what I'm reading?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. So I want to make sure that you're  
7 understanding and my understanding are in league.

8 My understanding of what that means is if I impose a  
9 sentence of 77 months or something less than 77 months, you  
10 would not have the right to appeal that type of sentence.

11 Is that your understanding?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Conversely, if I happen to impose a  
14 sentence of 77 months and a day or something greater than  
15 that, you would in fact have the right to appeal that type of  
16 sentence.

17 Is that also your understanding?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Thank you, sir. That's all I wanted to  
20 review with respect to the plea agreement.

21 Sir, there are advisory Sentencing Commission  
22 guidelines that will affect your sentence. And I have two do  
23 two things, generally speaking. One is, I have to figure out  
24 what the guideline range is in your case. I am required to  
25 consider that range, although, it's not binding on me. And

## 16a

1 I'm also required to consider all of the other sentencing  
2 factors that you will often hear the lawyers refer to as  
3 3553(a) factors. And that's all quite a mouthful, Mr. Sam.

4 My only question to you about all of that is, have  
5 you and Ms. Drake discussed how those factors may affect your  
6 sentence?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you in pain while standing or in  
9 discomfort?

10 THE DEFENDANT: No.

11 THE COURT: Are you sure?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. I thought you were leaning to  
14 one side. I don't want to you stand if it's uncomfortable  
15 for --

16 THE DEFENDANT: I have a bad leg but it doesn't hurt.  
17 It's just I'm standing funny.

18 THE COURT: If you're in any discomfort or pain,  
19 you're free to sit while answering my questions.

20 THE DEFENDANT: Okay.

21 THE COURT: Very good.

22 THE DEFENDANT: Thank you.

23 THE COURT: Mr. Sam, I don't know what the guidelines  
24 are in your case until I'm able to read a presentence  
25 investigation report or a presentence report. That's a fairly

## 17a

1 comprehensive report that the probation office will author for  
2 all of us to read. After that is done, I'll give you and Ms.  
3 Drake and Mr. Lizotte an opportunity all to object to any of  
4 the information that is contained in that report. To the  
5 extent that those objections can't be resolved by agreement,  
6 and very often they can, I'll resolve any remaining objections  
7 usually at the time of your sentencing hearing. It's  
8 important that you understand I may not follow the guideline  
9 range. I may impose a sentence that is less severe than that  
10 called for by the guidelines or a sentence that is more severe  
11 than that called for by the guidelines.

12           If I happen to impose a sentence that is more severe  
13 than the guideline range, it's important also that you know  
14 that would not be a reason for you to be permitted to withdraw  
15 your guilty plea. Do you understand that?

16           THE DEFENDANT: Yes, sir.

17           THE COURT: Very good.

18           Both you and the government have the right to appeal  
19 any sentence I impose, unless that right has been limited by  
20 the written plea agreement that we reviewed together. You'll  
21 be required to serve in a jail or prison all of any  
22 imprisonment term I impose except for good-time deductions.  
23 Aside from the written plea agreement that we reviewed  
24 together, Mr. Sam, has anyone made any promise to you in an  
25 effort to get you to plead guilty?

## 18a

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone made any promise to you as to  
3 what sentence I'll impose?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anyone made any promise to you as to  
6 what the prosecutor's sentencing recommendation will be other  
7 than what is contained in the plea agreement?

8 THE DEFENDANT: No, sir.

9 THE COURT: And then I'm going to ask you for the  
10 very last time, Mr. Sam, do you still choose to plead guilty  
11 to Count 1 of the indictment?

12 THE DEFENDANT: I do, sir.

13 THE COURT: Ms. Drake, do you still recommend I  
14 accept the plea?

15 MS. DRAKE: Yes, your Honor.

16 THE COURT: Thank you.

17 Mr. Sam, I find that you've understood my questions  
18 and provided appropriate responses. It's apparent to me that  
19 you're not under the influence of any substance that might  
20 otherwise affect your judgment. You acknowledge that you are  
21 in fact guilty as charged in Count 1 of the indictment. You  
22 know of your right to a trial and the associated rights with  
23 the right to trial. You know the maximum possible punishment  
24 that may be imposed if you were convicted. And I also find  
25 that you've not been coerced but that you have voluntarily and

## 19a

1 knowingly pleaded guilty to Count 1 of the indictment. I,  
2 therefore, accept your guilty plea and adjudicate you guilty.

3 I'm also ordering the preparation of the presentence  
4 investigation report. A very quick word about that, Mr. Sam.  
5 As you may have gathered by now, that's the most important  
6 document I'll have available to me as I think about a fair and  
7 just sentence in your case. It's critical that you, when  
8 probation reaches out to you and your lawyer with questions  
9 about information that will find its way into that report,  
10 that you be as candid and forthright as you can be so that I  
11 have the very best information in that report specifically  
12 about you. Do you understand?

13 THE DEFENDANT: I do, sir.

14 THE COURT: Very good.

15 Mr. Lizotte, anything else from the government this  
16 morning?

17 MR. LIZOTTE: Only one matter, your Honor.

18 THE COURT: Yes.

19 MR. LIZOTTE: The firearm and ammunition were both  
20 administratively forfeited in December of last year.  
21 Actually, December of 2021. I correct myself. I seek leave  
22 of the Court to dismiss the forfeiture allegation from the  
23 indictment, please.

24 THE COURT: I take it no objection to that, Ms.  
25 Drake?

## 20a

1 MS. DRAKE: No, your Honor.

2 THE COURT: Dismissed.

3 Anything else, Mr. Lizotte?

4 MR. LIZOTTE: No. Thank you, your Honor.

5 THE COURT: Thank you.

6 Ms. Drake?

7 MS. DRAKE: No, your Honor. Thank you.

8 THE COURT: Thank you, Mr. Sam. Good luck to you.

9 We'll see you at sentencing.

10 Court's in recess.

11 THE DEPUTY COURT CLERK: All rise.

12 (Court concludes at 10:21 a.m.)

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**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

UNITED STATES OF AMERICA

v.

JOHN A. SAM

No. 1:21-cr-00194-LEW

**AGREEMENT TO PLEAD GUILTY**

The United States of America, by and through Darcie N. McElwee, United States Attorney for the District of Maine, and Andrew K. Lizotte, Assistant United States Attorney, and John A. Sam (hereinafter "Defendant"), acting for himself and through his counsel, Jamesa Drake, Esquire, enter into the following Agreement based upon the promises and understandings set forth below.

1. **Guilty Plea.** Defendant agrees to plead guilty to the Indictment herein pursuant to Rule 11 of the Federal Rules of Criminal Procedure (Fed. R. Crim. P.). The Indictment charges Defendant with being a Felon-in-Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1).

2. **Sentencing/Penalties.** Defendant agrees to be sentenced on the charges described above. Defendant understands that the penalties that are applicable to the charges described above are as follows:

- A. A maximum prison term of 10 years;
- B. A maximum fine of \$250,000
- C. A mandatory special assessment of \$100.00 for the count of conviction which Defendant agrees to pay at or before the time that Defendant enters a guilty plea; and
- D. A term of supervised release of not more than 3 years. Defendant understands that Defendant's failure to comply with any of the

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conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve up to 2 additional years in prison for any such revocation of supervised release pursuant to 18 U.S.C. § 3583.

In addition to the other penalties provided by law, the Court may order Defendant to pay restitution to the victim or victims of the offenses.

3. Agreements Regarding Sentencing. The parties agree to make the following non-binding recommendation as to sentencing:

The parties agree to recommend that the Court find that the Defendant has accepted responsibility for the offenses of conviction, and that the Court should reduce the Defendant's Adjusted Offense Level pursuant to U.S.S.G. § 3E1.1. The Government reserves the right not to recommend a reduction under U.S.S.G. § 3E1.1 if, at any time between the Defendant's execution of this Agreement and sentencing, the Defendant: (a) fails to admit a complete factual basis for the plea; (b) fails to truthfully admit the Defendant's conduct in the offense of conviction; (c) engages in conduct which results in an adjustment under U.S.S.G. § 3C 1.1; (d) falsely denies or frivolously contests relevant conduct for which the Defendant is accountable under U.S.S.G. § 1B1.3 or previous convictions that the Defendant has sustained; or (e) engages in new criminal conduct. Defendant understands that Defendant may not withdraw the guilty plea if, for any of the reasons listed above, the Government does not recommend that the Defendant receive a reduction in Offense Level for acceptance of responsibility.

The parties expressly agree and understand that should the Court reject the recommendation of the parties, Defendant will not thereby be permitted to withdraw

Defendant's plea of guilty. The parties agree and understand that the Court has the discretion to impose any lawful sentence.

4. Appeal Waivers. Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Knowing that, Defendant waives the right to appeal the following:

- A. Defendant's guilty plea and any other aspect of Defendant's conviction in the above-captioned case; and
- B. A sentence of imprisonment that does not exceed 77 months.

Defendant's waiver of Defendant's right to appeal shall not apply to appeals based on a right that has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.

The number of months mentioned in this paragraph does not necessarily constitute an estimate of the sentence that the parties expect will be imposed.

5. New Criminal Conduct. Defendant agrees that Defendant will not commit any other federal or state crime.

6. Consequences of Breach. If Defendant violates or fails to perform any obligations under this Agreement ("a breach"), the United States will be released from its obligations hereunder, including its obligation to make a sentencing recommendation under Paragraph 3, and may fully prosecute Defendant on all criminal charges that can be brought against Defendant. With respect to such a prosecution:

- A. The United States may use any statement that Defendant made pursuant to this Agreement, including statements made during plea discussions and plea colloquies, and the fact that Defendant pleaded guilty, and Defendant hereby waives any claim under Rule 410 of the Federal Rules of Evidence or Rule 11(f) of the Federal

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Rules of Criminal Procedure that such statements and guilty plea are inadmissible.

- B. Defendant waives any and all defenses based on the statute of limitations with respect to any such prosecution that is not time-barred on the date that this Agreement is signed by the parties.

If the United States chooses to exercise its rights under this paragraph, the determination of whether Defendant has committed a breach shall be made by the Court upon an appropriate motion. In a proceeding on such motion, the United States shall have the burden to establish Defendant's breach by a preponderance of the evidence.

7. Speedy Trial Waiver. Defendant agrees to waive, and hereby does waive, any and all rights Defendant might have under the Speedy Trial Act, 18 U.S.C. §§ 3161-64, from the date of the execution of this Agreement and continuing thereafter through and including the date upon which sentence is imposed. In the event that the Court determines that Defendant has breached this Agreement, as set forth in Paragraph 6 of this Agreement, then the waiver described in this Paragraph shall continue through and including the date on which the Court determines that such a breach has occurred. Defendant expressly consents to the entry of an Order by the Court excluding such periods of time from such consideration.


8. Validity of Other Agreements; Signature. This Agreement supersedes any prior understandings, promises, or conditions between this Office and Defendant. However, in the event that Defendant fails to enter a guilty plea or is allowed to withdraw Defendant's guilty plea entered hereunder, and the Court determines that Defendant has not breached this Agreement, then any proffer agreement between the parties shall remain in effect. No additional understandings, promises, or conditions

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will be entered into unless in writing and signed by all parties. The signature of Defendant in the space designated signifies Defendant's full and voluntary acceptance of this Agreement.


I have read this Agreement and have carefully reviewed every part of it. I understand it and I have voluntarily agreed to it.

Date: 4-12-23

  
John A. Sam, Defendant

I am legal counsel for John A. Sam. I have carefully reviewed every part of this Agreement with John A. Sam. To my knowledge, John A. Sam's decision to enter into this Agreement is an informed and voluntary one.

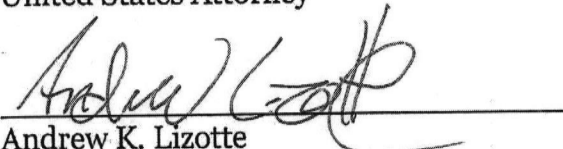
Date: 4/12/2023

  
Jamesa Drake, Esquire  
Attorney for Defendant

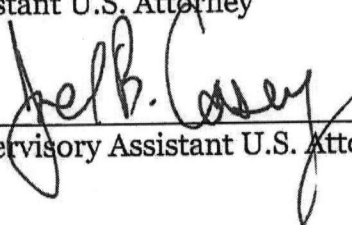
FOR THE UNITED STATES:

Darcie N. McElwee  
United States Attorney

Date: 12 April 2023

  
Andrew K. Lizotte  
Assistant U.S. Attorney

Approved: \_\_\_\_\_

  
Supervisory Assistant U.S. Attorney

Revised 7/30/20