Appendix A

Judgment and Opinion of the Fifth Circuit Affirming the Conviction

United States Court of Appeals for the Fifth Circuit

No. 24-10113

United States Court of Appeals
Fifth Circuit
FILED
April 21, 2025
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELIJAH MUHAMMAD,

Defendant—Appellant,

CONSOLIDATED WITH

No. 24-10116

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KAREEM MUHAMMAD,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 3:23-CR-450-1,
3:23-CR-450-2

Before JONES and OLDHAM, *Circuit Judges*, and HENDRIX, *District Judge*.*

JAMES WESLEY HENDRIX, *District Judge*:

After pleading guilty to unlawful possession of fentanyl and ammunition, twin brothers Elijah and Kareem Muhammad were convicted of sex-trafficking charges stemming from a separate case. The brothers argue that their plea agreements in the fentanyl and ammunition cases—in which the government promised not to bring additional charges "based upon the conduct underlying and related to the defendant's plea of guilty"—bar their prosecution in the sex-trafficking case. The district court disagreed, denying their motions to dismiss the sex-trafficking case. The brothers appeal, contending that the district court clearly erred when it found that the brothers' sex-trafficking conduct was temporally, geographically, and statutorily distinct from their drug-possession and ammunition-possession pleas. But their arguments underestimate the significant differences between the earlier and later prosecutions, and they ignore the plea agreements' plain language. We AFFIRM.

I.

A.

In 2018, detectives with the Fort Worth Police Department (FWPD) human-trafficking unit began investigating Elijah and Kareem Muhammad

* United States District Judge of the Northern District of Texas, sitting by designation.

for sex trafficking. FWPD arrested Elijah in November 2019 when he brought two victims to a commercial-sex transaction with an undercover officer in Fort Worth, Texas. In April 2023, law enforcement also arrested Kareem on sex-trafficking charges in Tyler, Texas.

The sex-trafficking investigation uncovered conduct dating back to 2011 and involving approximately ten identified victims, several of whom were minors. The sex-trafficking conduct occurred in locations such as Dallas-Fort Worth, East Texas, Austin, Houston, California, and Nevada. Investigators also linked Elijah's phone number to "at least 25 commercial sex ads in California and Texas, as well as Fort Worth" and to four related phone numbers, which were themselves "connected to approximately 153 commercial sex ads online in 16 locations and 3 states." By the summer of 2023, multiple local law-enforcement agencies and Homeland Security Investigations (HSI) were investigating the brothers for sex trafficking.

In June 2023, FWPD detectives in the human-trafficking unit knew that Elijah and Kareem frequented a Days Inn hotel in Fort Worth, so they requested to install a pole camera to surveil it. The request set in motion a deconfliction process where they learned of a separate drug-trafficking investigation into the brothers. The FWPD narcotics unit and the Drug Enforcement Administration (DEA) were conducting the simultaneous narcotics investigation. This investigation began much later—in early 2023—and focused on fentanyl trafficking at the same Days Inn hotel. After the deconfliction process, the human-trafficking investigators and drug-trafficking investigators shared information, and they worked together to some extent.

Soon after, narcotics detectives made a controlled purchase of fentanyl from Elijah at his home in Tarrant County, Texas. The next day, detectives arrested Elijah on an outstanding warrant as he left his house. Detectives conducted a separate traffic stop on Kareem, found loose 9mm

ammunition in his pocket, and arrested him for unlawful possession of ammunition by a felon. Detectives then executed a search warrant at Elijah's house and found 82 grams of fentanyl, a pistol, and cash.

B.

A grand jury indicted the Muhammad brothers in the Fort Worth Division of the Northern District of Texas for conspiracy to possess with intent to distribute a controlled substance. Two months later, Elijah pled guilty to possession with intent to distribute fentanyl, and Kareem pled guilty to unlawful possession of ammunition by a felon.

Both brothers signed plea agreements—identical in all relevant respects—that contained a governmental promise not to bring certain additional charges. Specifically, the parties agreed that "[t]he government will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty."

Soon after the brothers' guilty pleas, an HSI agent presented a separate criminal complaint against Elijah, Kareem, and three additional coconspirators for conspiracy to engage in sex trafficking through force, fraud, and coercion—this time in the Dallas Division of the Northern District of Texas. A separate grand jury returned a superseding indictment against all five defendants—and later a sixth—on several additional sex-trafficking charges. Although the case was initially assigned to a judge in the Dallas Division, this case was later reassigned to the judge in the Fort Worth Division who was presiding over the brothers' earlier cases.

Meanwhile, the drug-trafficking cases proceeded to sentencing. The district court sentenced Kareem to 24 months' imprisonment and Elijah to 84 months' imprisonment—both below-the-guidelines sentences as a result of plea agreements under Federal Rule of Criminal Procedure 11(c)(1)(C).

Later on the same day that the court sentenced Elijah in the drug case, Elijah moved to dismiss the sex-trafficking case, claiming for the first time

that the government breached the plea agreement in the drug-trafficking case by prosecuting him in the sex-trafficking case. Kareem filed an identical motion the next day. The district court decided to carry the motions with trial in anticipation of hearing additional evidence.

Shortly before trial, the parties submitted a Rule 11(c)(1)(C) agreement for 120 months' imprisonment, preserving the brothers' ability to appeal from a denial of the motions to dismiss. The district court accepted that agreement. Elijah and Kareem entered guilty pleas and agreed to proceed to sentencing immediately.

Before imposing the sentences, the court denied the brothers' motions to dismiss. The district court found that the sex-trafficking conduct "is the greater crime" and is "temporally different than the companion Fort Worth Division case" because it "spans a decade or more." The court noted that the guilty pleas in the drug-related cases were for crimes related to "one instance." The court also found that "the geographic differences are distinct" because the sex-trafficking conduct "involved multiple states, multiple districts, multiple divisions." The court highlighted that, in contrast, the guilty pleas in the drug-related cases were for crimes committed in "the one instance, in the one place here, in the Fort Worth Division." Finally, the court found that "[t]he statutory violations are clearly different." The district court sentenced the brothers to 120 months' imprisonment to be served consecutively to their sentences in the drug-trafficking cases.

II.

The defendant bears the burden of proving by a preponderance of the evidence that the government breached a plea agreement. *United States v. McClure*, 854 F.3d 789, 793 (5th Cir. 2017). In determining whether a breach occurred, we consider "whether the government's conduct is consistent with the defendant's reasonable understanding of the agreement." *Id.* (quoting *United States v. Elashyi*, 554 F.3d 480, 501 (5th Cir. 2008)).

We review a claim of breach of a plea agreement *de novo*, but we accept the district court's factual findings as correct unless clearly erroneous. *Id.* at 792. Whether certain criminal conduct is temporally and geographically distinct from other conduct is a question of fact. *See id.* at 793–94. We will not set aside the district court's factual findings unless we are left with the definite and firm conviction that a mistake has been committed. *Appliance Liquidation Outlet, LLC v. Axis Supply Corp.*, 105 F.4th 362, 374 (5th Cir. 2024). Moreover, to be clearly erroneous, the district court's factual findings must be implausible in light of the record as a whole. *United States v. Shah*, 95 F.4th 328, 368 (5th Cir. 2024).

III.

A.

We apply general principles of contract law to interpret the terms of a plea agreement. *McClure*, 854 F.3d at 793; *see also United States v. Perry*, 35 F.4th 293, 348 (5th Cir. 2022). When the plea agreement is unambiguous, we generally do not look beyond the four corners of the contract. *McClure*, 854 F.3d at 793. Thus, we first look to the plea agreements' plain language. *See United States v. Long*, 722 F.3d 257, 262 (5th Cir. 2013).

Here, the government's contractual promise not to bring additional charges against Elijah and Kareem was limited to charges "based upon the conduct underlying and related to the defendant[s'] plea[s] of guilty" to the drug-related offenses. The parties agree that this language is unambiguous, and we agree. Thus, we confine our analysis to the operative language of the government's contractual promise.

Ignoring these standards, the brothers rely heavily on the overlapping nature of the sex-trafficking and drug-trafficking investigations. But because the government's promise focuses "on the *conduct* underlying and related to [the brothers'] guilty plea, not on the government's investigation of that conduct," the brothers' argument that the investigations were inextricably

intertwined "misses the point." *McClure*, 854 F.3d at 795 (cleaned up) (emphasis in original). We reject this argument and find the brothers' reliance on cases with materially different plea-agreement language—such as *United States v. Thomas*, 58 F.4th 964 (8th Cir. 2023)—to be unpersuasive.

Contrary to the brothers' argument, we must focus on the plea agreements' language to determine whether a breach occurred, and we have analyzed identical language before. In *United States v. McClure*, we interpreted identical plea-agreement language and held that there was no breach "where the Government has brought additional charges against a defendant based on conduct that was both temporally and geographically distinct and involved different statutory violations and coconspirators." 854 F.3d at 794.[1] There, McClure conspired with a city marshal to steal drugs from an evidence room and sell them. *Id.* at 790. Fearing detection, McClure and the marshal staged a burglary of drugs and guns from the evidence room. *Id.* During the investigation, law enforcement learned that McClure (a convicted felon) had different guns inside his home and arrested him for that offense. *Id.* at 791. McClure pled guilty to a felon-in-possession charge in the Lufkin Division of the Eastern District of Texas. *Id.* His plea agreement contained the same operative language as the brothers' agreements here. *Id.* The government later charged McClure with drug trafficking in the Tyler Division of the Eastern District of Texas. *Id.* at 792. McClure moved to dismiss the new charges, arguing that the government breached the first plea agreement because the cases were "inextricably intertwined." *Id.* at 795. The district court denied the motion, finding that the conduct underlying the

[1] The parties treat temporal, geographic, and statutory similarity as three distinct "*McClure* factors" to be weighed and balanced against each other when determining whether a breach occurred. To be clear, we resolve this case, as in *McClure*, by analyzing the plea agreement's plain language, the record, and relevant precedent—not through the application of a balancing test.

two cases occurred at different times and places and involved different statutory violations. *Id.* at 794. We agreed with the district court's reasoning and affirmed. *Id.*

We have also addressed this issue in other cases involving nearly identical plea-agreement language.[2] In *United States v. Ramirez*, 555 F. App'x 315 (5th Cir. 2014), we upheld a conviction for a cocaine-distribution conspiracy occurring from 2006 to 2011 despite a prior plea agreement for a smaller methamphetamine-distribution conspiracy occurring from 2007 to 2009. 555 F. App'x at 318. Even though the statutory violations were similar and overlapped in time, we held that "[g]iven the different time frames, co-defendants, controlled substances, and general locations of the two offenses, it would not be reasonable for [the defendant] to believe that his plea agreement in the methamphetamine case barred his prosecution for the instant cocaine offense." *Id.* Likewise, in *United States v. Bevill*, 611 F. App'x 180 (5th Cir. 2015), we rejected the argument that the government was precluded from charging a fraud defendant a second time for using different means to defraud different investors in a similar manner as the original offense to which he pled guilty. 611 F. App'x at 182–83.

Here, the brothers concede that the cases involve different statutory violations. We agree. And the record fully supports the district court's factual findings that the sex-trafficking conduct was temporally and geographically distinct from the drug-trafficking conduct. The sex-trafficking conduct began in 2011, involved multiple victims, and took place in several locations in Texas, California, and Nevada. Additionally, the brothers' sex-trafficking indictment included three additional coconspirators

[2] Although these two decisions are unpublished and therefore non-precedential, we cite them to show consistency among our rulings. *See* 5th Cir. R. 47.5.4.

who were not indicted in the drug-trafficking conspiracy. *See McClure*, 854 F.3d at 794.

In contrast, the indicted drug conduct did not begin until early 2023. And the drug investigation ended with the brothers' arrests just a few months later. Moreover, Elijah and Kareem pled guilty to possession of fentanyl and ammunition on one particular day, in one particular location. They did not plead guilty to conspiracy or distribution charges. Given the significant temporal and geographic distinctions between the brothers' wide-ranging sex-trafficking conduct and the isolated drug-related conduct to which they pled guilty, the additional coconspirators, and the distinct statutory violations, we hold that the sex-trafficking conduct was not "underlying and related to" the defendants' guilty pleas. Therefore, the government did not breach the plea agreements.

We have reached the same result under less compelling circumstances. In *McClure*, *Ramirez*, and *Bevill*, we affirmed the absence of breach because the defendants' conduct was sufficiently distinct in time, place, and substance. And we did so even though the pairs of statutory violations in *Ramirez* and *Bevill* were nearly identical, the crimes in *McClure* and *Ramirez* occurred in the same geographical areas, and the timeframes for the criminal conduct in all three cases were between only three and six years. *See McClure*, 854 F.3d at 790–94; *Ramirez*, 555 F. App'x at 318; *Bevill*, 611 F. App'x at 180–83. Because we have affirmed the absence of breach in cases presenting closer questions—involving greater overlaps in time, location, and the nature of the offenses—we do so again here.

In sum, there is no evidence in the record to suggest that the district court's factual findings were clearly erroneous. The known drug-trafficking conduct was confined to early 2023 and a few locations within Tarrant County, Texas. The sex-trafficking conduct spanned at least 12 years and three different states, and it involved different coconspirators than the

drug-trafficking conspiracy. Thus, the sex-trafficking case was not "based upon the conduct underlying and related to" the fentanyl and ammunition pleas. No breach occurred, and we AFFIRM.

B.

Although we confine our inquiry to the four corners of the plea agreements, the result would be the same even if we were to look beyond them. The record demonstrates that all parties involved understood the agreements to not include the sex-trafficking conduct. Neither Elijah's nor Kareem's presentence investigation reports included any information pertaining to the sex-trafficking allegations as part of their relevant conduct. The sex-trafficking conduct did not factor into either Elijah's or Kareem's sentences, both of which were below the guideline ranges. And the brothers state in their briefs that it was understood that the sex-trafficking charges would be brought in the Eastern District of Texas after the drug charges were brought in the Northern District. Like *McClure*, "everyone . . . seemed to be operating under the understanding that the investigation would continue after the plea." *McClure*, 854 F.3d at 796.

Additionally, as we explained in *McClure*, "given the gravity of the allegations under investigation, it would be unreasonable to assume that the government would decline to pursue future charges against [the brothers] unless it expressly stated such an intention." *Id.* at 796 (cleaned up). Moreover—as in *McClure*—"the government sought no term of sentence beyond the guidelines range for the [fentanyl and ammunition] offenses and [each brother], in fact, received a sentence below the guidelines range." *Id.* (cleaned up). And, of course, the brothers made no claims of breach when the sex-trafficking cases were indicted or during the initial lead-up to trial. The record shows that the brothers expected the sex-trafficking charges to be brought later, just in a different district. Their later attempt to exploit this perceived "misstep" by the government is an effort to secure windfall

dismissals; it is no indication of a genuine misunderstanding of their plea agreements.

* * *

In light of the record as a whole, we are not left with a definite and firm conviction that a mistake has been committed in the district court's findings. *See Appliance Liquidation Outlet,* 105 F.4th at 374; *Shah*, 95 F.4th at 368. On the contrary, the record amply supports those findings. The brothers' sex-trafficking conduct was temporally, geographically, and statutorily distinct from their fentanyl-possession and ammunition-possession pleas, and it involved additional coconspirators. Therefore, the sex-trafficking conduct did not underlie and relate to the initial guilty pleas, and the government did not breach the plea agreements. The judgment of the district court is AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 21, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 24-10113 USA v. Muhammad
USDC No. 3:23-CR-450-1
USDC No. 3:23-CR-450-2

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Jasmine J. Forman, Deputy Clerk

Enclosure(s)

Mr. Sean D. Colston
Mr. Dominic Cruciani
Mr. Stephen S. Gilstrap
Mr. Henry Preston Glasscock
Mrs. Amber Michelle Grand
Mr. Matthew Joseph Smid

Appendix B

Judgment and Sentence of the United States District Court for the Northern District of Texas

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA

v.

ELIJAH MUHAMMAD

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:23-CR-00450-O(01)
U.S. Marshal's No.: 64951-510
Myria Boehm, Assistant U.S. Attorney
Matthew Smid, Attorney for the Defendant

On February 8, 2024 the defendant, ELIJAH MUHAMMAD, entered a plea of guilty as to Count One of the Second Superseding Indictment filed on January 3, 2024. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §1594(c) (18 U.S.C. §1591(a)(1) & (b)(1))	Conspiracy to Commit Sex Trafficking by Force, Fraud, and Coercion	06/30/2023	One

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

pay the assessment imposed in accordance with 18 U.S.C. § 3013The defendant shall pay immediately a special assessment of $100.00 as to Count One of the Second Superseding Indictment filed on January 3, 2024. The Court further orders that any other special assessment that is applicable in this case be set at $0 or waived as the Court finds the defendant indigent.

Upon motion of the government, all remaining counts are dismissed, as to this defendant only.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed February 8, 2024.

REED O'CONNOR
U.S. DISTRICT JUDGE

Signed February 8, 2024.

IMPRISONMENT

The defendant, ELIJAH MUHAMMAD, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **ONE HUNDRED TWENTY (120) MONTHS E** as to Count One of the Second Superseding Indictment filed on January 3, 2024. This sentence to run consecutively to the sentence imposed in Case No. 4:23-cr-00217 in the Northern District of Texas, Fort Worth Division.

The Court makes a non-binding recommendation to the BOP that Defendant, if appropriately classified, be allowed to serve his term of imprisonment as near as geographically possible to an FCI facility within the Northern District of Texas.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **FIFTEEN (15) YEARS** as to Count One of the Second Superseding Indictment filed on January 3, 2024.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

(1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

(2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

(3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

(4) You must answer truthfully the questions asked by your probation officer.

(5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

(6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

(7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If

notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

(8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

(9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

(10) You must 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 tasers).

(11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

(13) You must follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

not commit another federal, state, or local crime;

not illegally possess controlled substances;

cooperate in the collection of DNA as directed by the probation officer;

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

refrain from any unlawful use of a controlled substance. You must 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;

comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense;

make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664;

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

take notice that if this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment;

participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least $25 per month;

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least $25 per month;

participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psycho-physiological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered (copayment) at the rate of at least $25 per month;

have no contact with the victim(s), including correspondence, telephone contact, or communication through third parties except under circumstances approved in advance by the probation officer and not enter onto the premises, travel past, or loiter near the victims' residences, places of employment, or other places frequented by the victims;

participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed $40 per month. The defendant shall consent to the probation officer's conducting ongoing monitoring of his/her computer/computers. The monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. At the discretion of the probation officer, the monitoring software may be disabled or removed at any time during the term of supervision;

submit to periodic, unannounced examinations of his/her computer/computers, storage media, and/or other electronic or Internet-capable devices, performed by the probation officer at reasonable times and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider;

not use any computer other than the one the defendant is authorized to use without prior approval from the probation officer;

not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer;

not use any computer or computer-related equipment owned by his/her employer except for the strict benefit of his/her employer in the performance of his/her job-related duties;

provide the probation officer with accurate information about his/her entire computer system. The defendant's email shall only be accessed through a pre-approved application;

not install new hardware, perform upgrades, or effect repairs on his/her computer system without the prior permission of the probation officer;

not possess, have access to, or utilize a computer or Internet connection device, including, but not limited to Xbox, PlayStation, Nintendo, or similar device, without permission of the probation officer. This condition requires preapproval for categories of computer or Internet access or use; it does not require separate pre-use approval every time the defendant accesses or uses a computer or the Internet; and,

take notice that if, , upon commencement of the term of supervised release, any part of the restitution ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than 10 percent of the defendant's gross monthly income, or at a rate per month to be determined, whichever is greater. Payment shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. Any unpaid balance of the restitution ordered by this judgment shall be paid in full 60 days prior to the termination of the term of supervised release. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990 or any other means available under federal or state law. Furthermore, it is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. § 3612(f)(3).

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

BY _____
Deputy Marshal

Appendix C

Oral Order of the United States District Court for the Northern District of Texas Denying Motion to Dismiss

Dallas courthouse area.

THE COURT: Okay.

MS. EGGERS: So they just have to traverse.

THE COURT: Okay. So as it relates to the motions to dismiss, I will deny the motions to dismiss. I find that the case that we are here on today is the greater crime. It's temporally different than the companion Fort Worth Division case.

This case spans a decade or more. Whereas, the Fort Worth companion case, let's call it, or related case, was one instance. And so, I find that that factor weighs against granting the motion to dismiss.

I also find that the geographic differences are distinct. That is, in this case, this crime involved multiple states, multiple districts, and multiple divisions.

Whereas, the Fort Worth Division case involved just, again, the one instance, in the one place here, in the Fort Worth Division. So I find that this factor weighs against the granting the motion to dismiss.

And then, finally, the statutory crime factor, obviously, I don't think there's any dispute over this one, weighs against granting the motion to dismiss. The statutory violations are clearly different. So I will deny the motions to dismiss.

So why don't we take, then, about a 45-minute

Appendix D

Petitioner's Motion for Specific Performance and Motion to Dismiss

IN THE UNITED STATES DISTRICT COURT OF FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
VS.	§	**No. 3:23-CR-00450-O**
	§	**JUDGE O'CONNOR**
ELIJAH MUHAMMAD (01)	§	

DEFENDANT'S MOTION FOR SPECIFIC PERFORMANCE AND MOTION TO DISMISS

For the reasons that follow, Defendant Elijah Muhammad respectfully moves the Court to (1) order specific performance of the plea agreement between the Government and Defendant in cause number 4-23-CR-217-O, and then (2), subsequent to the order of specific performance, to order that the charges pending against Defendant in the underlying cause number be dismissed because the Government's pursuit of the charges constitutes a breach of the plea agreement.

Factual Background

Since 2020, law enforcement has been investigating Defendant for alleged human trafficking offenses. This investigation is led by the Department of Homeland Security Special Agent John Kochan, who has been assisted by Fort Worth PD officer M. Pfeiffer. In addition to working on the human trafficking investigation, Kochan and Pfieffer worked on a simultaneous drug investigation involving Defendant. In June and July, 2023, Kochan interviewed the alleged victims in this

cause number, AV1, AV2, and AV3. (Doc. 29, ¶ 6; 16.) On June 9, 2023, Kochan took control of Defendant's phone, which was seized by Fort Worth PD on November 3, 2019 for a drug arrest that was later no billed by a Tarrant County Grand Jury. Attachment A: Kochan's Report Siezing Phone. Kochan seems to have taken possession of the phone because he believed it would contain evidence relevant to the drug **and** human trafficking investigations.

On June 13, 2023, Officer G. Miller with the Fort Worth Police Department obtained a search warrant to search what he believed to be Defendant's residence (3241 Oak Timber Drive in Forrest Hill, Texas) for evidence of narcotics distribution. *See* Attachment B: Search Warrant and Accompanying Affidavit of Defendant's Residence. To support a determination of probable cause, Miller discussed Fort Worth PD's investigation of alleged human trafficking by Defendant. Attachment B ¶ 3. Miller said that Fort Worth PD officer M. Pfeiffer told him that she was working hand in hand with HSI in conducting this investigation. Attachment B ¶ 3. She told Miller that, during her investigation, she interviewed several alleged victims of human trafficking who claimed that Defendant and his brother operate a human trafficking and narcotics distribution ring out of a Days Inn Hotel in Fort Worth. Attachment B ¶ 3. On that same day, Kochan and Pfeiffer interviewed AV1, an alleged victim in the human trafficking case, for the pending indictment under this cause number. Attachment C: ROI for Kochan of Interview of AV1.

On June 14, 2023, HSI and Fort Worth PD executed the search warrant. See Attachment D: Kochan's Report of Execution of Search Warrant. Kochan's report detailing the execution of this warrant states that 82 grams of Fentanyl, a firearm, $1,599 in cash, and "various cell phones" were seized. Attachment D. HSI is currently attempting to perform a cell phone analysis to gain evidence in the human trafficking case. Their attempts have been stalled because Fort Worth PD has been unable to turn the phones on.

On June 21, 2023, Kochan arrested Defendant for Conspiracy to Possess With Intent to Distribute a Controlled Substance. See Attachment E: Kochan's Report of Arrest for Defendant. On June 23, 2023, a detention hearing was held on the drug case and Officer Pfeiffer testified. Attachment F: *United States v. Muhammad*, 4:23-CR-217-O (Transcript of the Hearing). Although the charged offense was for narcotics distribution, Pfeiffer testified about Defendant's involvement in human trafficking. Attachment F at 5; 9-13; 41; 42. In fact, Pfeiffer spent more time discussing the human trafficking investigation than she did the drug investigation. Attachment F at 5-14.

Pfeiffer even told the Court that she obtained a pole camera that was placed at the Days Inn near Forrest Hill to surveille Defendant. Attachment F at 5. And she testified that at that time, she knew Fort Worth PD was investigating the narcotics and human trafficking cases simultaneously. Attachment F at 5 ("We had both of

them on our radar for an ongoing investigation into human trafficking."). Two investigations had essentially been merged into one at that time. Although Pfeiffer did not give an exact date for when this pole cam placement occurred, it is clear that the camera was accessed by the investigator prior to the issuance of the search warrant that led to the drug arrest. Attachment F at 5-7.

On September 6, 2023, Defendant was named in a three-count Superseding Indictment filed in the Northern District of Texas, Fort Worth Division. *Id.* at Doc. 79. The Indictment charged Defendant with Conspiracy to Possess With Intent to Distribute a Controlled Substances, in violation of 21 U.S.C. 846 & 841(b)(1)(b). *Id.* On September 7, 2023, Defendant appeared in front of this Court and pled according to a written plea agreement. *Id.* at Doc. 74; Doc. 55. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties agreed that the appropriate term of imprisonment was 84 months. *Id.* at Doc. 55. As part of this plea agreement, the Government agreed that it "will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty." *Id.* at Doc. 55 ¶ 9.

Despite this agreement, on October 23, 2023, Kochan presented a criminal complaint against Defendant to the Honorable Renee Toliver, Federal Magistrate Judge for the Northern District of Texas—Dallas Division, for human trafficking. Doc. 29. On November 7, 2023, Defendant was indicted on the same charges. Doc.

30. Then, on On January 19, 2024, the Court accepted the above-mentioned plea agreement and sentenced Defendant to 84 months.

Argument

The drug and human trafficking cases are inextricably intertwined. As a result, by bringing additional charges of human trafficking, the Government is in violation of the plea agreement entered on September 7, 2023.

I. Legal Standard

"As the Supreme Court has made clear, 'when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.'" *United States v. Purser*, 747 F.3d 284, 290 (5th Cir. 2014) (quoting *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)). The Court must "construe the [plea] agreement like a contract, seeking to determine the defendant's reasonable understanding of the agreement and construing ambiguity against the Government." *United States v. Farias*, 469 F.3d 393, 397 & n.4 (5th Cir. 2006) (internal quotation marks omitted). "A defendant asserting a breach bears the burden of proving, by preponderance of the evidence, the underlying facts establishing a breach." *United States v. Laday*, 56 F.3d 24, 26 (5th Cir. 1995). However, "[t]he plea agreement is construed strictly against the Government as drafter of the agreement." *Purser*, 747 F.3d at 290.

II. Argument

The Human Trafficking charges are inextricably intertwined with the drug case and are therefore "based on the conduct underlying and related." Doc. 55 ¶ 9. The following characteristics establish a strong relationship between the two cases.

- The drug case arose out of the human trafficking investigation. Attachment B. ¶ 3 (explaining that Pfeiffer's trafficking investigation led to the interview of "several underage victims who claimed that [Defendant] also sell[s] various kinds of narcotics") and Attachment D (explaining that "HSI Dallas has identified Elijah Muhammad . . . in the operation of a commercial sex trafficking enterprise" and that "This Report of Investigation will document the arrest of Elijah Muhammad . . . for state violations of Possession of a Conrolled Dangerous Substance.").
- The drug case was investigated by the same agencies which investigated the human trafficking case, specifically HSI and Fort Worth PD. Attachments B ¶ 3, C, D, E & Doc. 29.
- Kochan, the lead investigator for the human trafficking offense, arrested Defendant on the human trafficking **and** the drug case. Doc. 29 & Attachment E.
- Officers alleged human trafficking offenses by Defendant in its probable cause affidavit used to support a search warrant for Defendant's house,

including information directly from Pfeiffer. Drugs were subsequently located pursuant to this search warrant, which supported the drug case conviction. Attachment B ¶ 3, Attachment D.

- Officer Pfeiffer testified at the detention hearing for the drug case and presented evidence of human trafficking to support Defendant's detention on the drug case. Attachment F. Pfeiffer spent more time discussing the human trafficking investigation than she did the drug investigation. Attachment F5-14. She also testified that the drug and human trafficking investigations ran together and essentially merged as one investigation. *Id.* at 5-6 ("Q. did you come to learn of a fentanyl investigation into Elijah Muhammad as well as Ciara Davenport? A. Yes, I did. Q And what did you know in regards to that investigation or the happenings in that investigation before June 14th? A. We had both of them on our radar for an ongoing investigation into human trafficking.").
- The guilty plea to the drug charge and arrest for the human trafficking case were in close proximity to each other. Defendant pled to the drug charge on September 7, 2023, and less than two months later, October 21, 2023, he was charged with human trafficking in the same federal district. *United States v. Muhammad*, 4:23-CR-217-O; at Doc. 55 &74; Doc. 29.) At the time of the plea for the drug case, Pfeiffer and Kochan had already (1) interviewed all

three of the alleged victims, and (2) seemingly obtained all evidence they felt they needed to secure the charges they waited to bring until October 21, 2023. *Id.*

The Government may argue that both sides understood the human trafficking case would not be part of this plea agreement. But this reasoning contradicts the face of the plea agreement. The last page states that "this document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and agreed to by both parties." *United States v. Muhammad*, 4:23-CR-217-O; Doc. 55 ¶ 15. If it were true that potential charges from the human trafficking case were not covered by this agreement, the Government, as the drafter of this agreement, could easily have stated such. They chose not to do that. Instead, the Government specifically agreed that **it "will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty**." *Id.* at Doc. 55 ¶ 9 (emphasis added). Further, the Government did not define in the agreement "conduct underlying and related to the defendant's plea." *Id.* at Doc. 55 ¶ 9. As the drafter, any ambiguity in the agreement is construed strictly against the Government.

This brief explains, at length, that the trafficking investigation resulted in the the drug charge plea. The Government failed to except the trafficking investigation from its plea agreement, and failed to specifically define "conduct underlying."

Indeed, a highly similar case out of the Eight Circuit came to the same conclusion Defendant urges the Court to come to here. *See United States v. Thomas*, 58 F.4th 964 (2023). In *Thomas*, Defendant pled guilty to a drug distribution offense, and the plea agreement contained a "No Further Prosecution" clause, which read;

> The Government agrees that Defendant will not be charged in the Southern District of Iowa with any other federal criminal offense arising from or directly relating to this investigation. This paragraph and this Plea Agreement do not apply to (1) any criminal act occurring after the date of this agreement, (2) any crime of violence, or (3) any criminal offense which Defendant did not fully disclose to law enforcement during Defendant's interviews pursuant to any proffer or other agreements with the United States.

Id. at 966. The trial court found "that the plea agreement's reference to 'this investigation' meant only a separate heroin investigation. The court characterized it as a standard drug case consisting of three controlled buys and the search of Thomas's apartment." *Id.* at 970. As a result,

> "[t]he court . . . concluded that a reasonable person in Thomas's position would have believed that 'this investigation' referred only to the information gathered . . . related to Thomas's drug activity because the complaint, indictment, and guilty-plea factual basis involved only drug offenses and facts, with no mention of sex-trafficking. As a result, the court denied Thomas's motion as to all counts but one, Count 14, which involved G.B. (who was found in Thomas's apartment when it was searched)."

Id. But the appellate court reversed, because the drug and sex trafficking charges were part of the same investigation, and "the Government's arguments at the

detention hearing included references to sex trafficking and specific facts that could support federal sex trafficking charges." *Id.* at 971.

Here, too the record demonstrates the inextricably intertwined nature of the drug and sex trafficking charges. These matters were investigated by the same agencies, the same agents, and at the same time. Kochan arrested Defendant on both charges. At the time of the plea agreement, the Government already had all of its existing evidence against Defendant for human trafficking, including interviews of the alleged victims, AV1, AV2, and AV3. (Doc. 29. ¶¶ 6; 16; 24.) Defendant was fully aware of the human trafficking investigation at the time he pled guilty, and a reasonable person in his position would think that his agreement with the Government in the drug case would also take care of any pending human trafficking investigation. As a result, the only fair reading of the plea agreement between the parties is that any additional charges based on the trafficking investigation were barred when the parties entered the plea agreement.[1]Therefore, specific performance of the plea agreement in the drug charge is warranted, along with a dismissal of the human trafficking charges.

[1] The Government may also argue that the drug case was prosecuted by the Fort Worth Division, while the human trafficking case is being prosecuted by the Dallas Division, and that, therefore the agreement does not apply. This argument, too, would be contrary to the plea agreement. The agreement specifically states that it "is limited to the United States Attorney's Office for the Northern District of Texas." Id. at Doc. 55 ¶ 14. The agreement did was not limited to the Fort Worth Division. *Id.* Therefore, it is applicable to any prosecution in the Northern District of Texas "based on the conduct underlying and related" to the drug case.

Conclusion

For these reasons, Defendant respectfully moves for the Court to order specific performance of the plea agreement between the Government and Defendant and then order that the underlying cause number be dismissed.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on January 19, 2024, I conferenced with AUSA Nicole Hammond via email regarding this motion and Ms. Hammon stated the government was opposed.

/s/ *Matthew J. Smid*
Matthew J. Smid

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, a true and correct copy of the foregoing document was filed with the Clerk of the Court for the United States District Court, Northern District of Texas using the electronic case filing system, which provides for service upon all counsel of record.

/s/ *Matthew J. Smid*
Matthew J. Smid