No. ___________

IN THE
SUPREME COURT OF THE UNITED STATES

JACQUELINE BUSTAMANTE ,

Petitioner,

v.

UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

APPENDIX

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XV. APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12250
Non-Argument Calendar

D.C. Docket No. 1:16-cr-00018-WS-B-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JACQUELINE BUSTAMANTE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(February 28, 2018)

Before TJOFLAT, NEWSOM and HULL, Circuit Judges.

PER CURIAM:

The Government's motion to dismiss this appeal pursuant to the appeal waiver in Appellant's plea agreement is GRANTED. *See United States v. Bushert*, 997 F.2d 1343, 1350-51 (11th Cir. 1993) (sentence appeal waiver will be enforced

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if it was made knowingly and voluntarily); *United States v. Grinard-Henry*, 399 F.3d 1294, 1296 (11th Cir. 2005) (waiver of the right to appeal includes waiver of the right to appeal difficult or debatable legal issues or even blatant error). Furthermore, and in any event, Appellant Bustamante's unconditional guilty plea waived her right to challenge the district court's denial of her motion to suppress. *United States v. Ternus*, 598 F.3d 1251, 1254 (11th Cir. 2010); *United States v. Charles*, 757 F.3d 1222, 1227 n.4 (11th Cir. 2014); *United States v. McCoy*, 477 F.2d 550, 551 (5th Cir. 1973).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**CRIMINAL NO. 16-0018-WS**
	)	
PEDRO PICASSO GARCIA and	)	
JACQUELINE BUSTAMANTE,	)	**PUBLISH**
	)	
Defendants.	)	

ORDER

This matter is before the Court on the defendants' motions to suppress. (Docs. 54, 57). The government has filed a response, (Doc. 60), and the defendants a reply. (Docs. 63, 66).

On December 15, 2015, defendant Garcia was driving a vehicle east on Interstate 10; defendant Bustamante was his passenger. The defendants were pulled over by Lieutenant Cayton for changing lanes without signaling, and a search of the stopped vehicle uncovered suspected narcotics. The defendants are charged with drug offenses, and Garcia is also charged with an immigration offense.

The defendants raise the following challenges: (1) the traffic stop was illegal; (2) the detention was illegally extended; (3) the defendants were seized/arrested without probable cause; and (4) the search was conducted without a warrant or valid consent.[1] The first of these challenges implicates a purely legal threshold issue, which the Court resolves herein. Resolution of the remainder of the first challenge, and resolution of the other challenges, depends upon a determination of facts, for which an evidentiary hearing is required.

As the defendants concede, (Doc. 55 at 3), "[a]s a general matter, the decision to stop an automobile is reasonable [under the Fourth Amendment] where the police have

[1] In her reply brief, Bustamante extends her challenge to the search of her purse. (Doc. 63 at 7).

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probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810 (1996). "An officer's mistake of fact may provide the objective basis for reasonable suspicion or probable cause under the Fourth Amendment …." *United States v. Chanthasouxat*, 342 F.3d 1271, 1276 (11th Cir. 2003). However, "a mistake of law cannot provide reasonable suspicion or probable cause to justify a traffic stop." *Id.* at 1279. The defendants argue it is not illegal under Alabama law to change lanes without signaling, such that Lt. Cayton made a mistake of law that cannot justify the initial detention.

"A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Ala. Code § 32-5A-88(1). The defendants correctly note that nothing in this provision requires the use of a signal when changing lanes, (Doc. 55 at 4), but they have cited the wrong provision. As the government points out, (Doc. 60 at 5), the provision at issue is Section 32-5A-133.

"No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided." Ala. Code § 32-5A-133(a). The defendants do not deny that "moving right or left upon a roadway" includes changing lanes, and it clearly does so.[2] They argue, however, that Section 32-5A-133(a) does not require a signal if "such movement can be made with reasonable safety" without one. (Doc. 63 at 3, 5).

For this proposition, the defendants first rely on *United States v. One 1993 Ford F150 Pickup*, 148 F. Supp. 2d 1258 (M.D. Ala. 2001). Judge Thompson, without discussion, described Section 32-5A-133(a) as "requir[ing] a motorist to use his turn signal whenever moving his vehicle left or right 'unless and until such movement can be

[2] Indeed, the defendants insist that the phrase encompasses "even the most miniscule migration of a vehicle in either direction." (Doc. 63 at 2).

made with reasonable safety.'" *Id.* at 1262.[3] He then ruled that the arresting officer had probable cause to stop the defendant when he merged into a turn-only lane without giving an appropriate signal. *Id.* at 1262-63. The arresting officer "also could conclude reasonably that the lane change could not be made with reasonable safety absent the use of a turn signal." *Id.* at 1263. The defendants glean from *1993 Ford* "the implication … that if the lane change could occur with reasonable safety, a turn signal would not be required." (Doc. 63 at 5).[4]

As a matter of policy, the defendants' position may be defensible; there may or may not be a good reason to require motorists to signal a lane change when, for example, no one else is there to see it.[5] The Court, however, has not been commissioned to develop Alabama policy; its function is only to construe Section 32-5A-133(a) as it is written. And the Court can discern no principled way to construe the clear language of that provision as requiring a signal only when a lane change cannot safely be negotiated without one.

Section 32-5A-133(a) identifies two restrictions on turning or changing lanes. First, the movement must be capable of being made with reasonable safety. Second, the driver must give an appropriate signal. The two restrictions are introduced by "[n]o person shall" and connected with "nor." The word "nor" means "[a]nd not; or not; not either."[6] It therefore denotes a second, additional negative. Section 32-5A-133(a) thus signifies that a driver shall not change lanes when it is unsafe *and* shall not change lanes

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[3] Several years later, Judge Thompson reached a different conclusion in *United States v. Dorsey*, 2003 WL 23306149 (M.D. Ala. 2003). *See infra* note 15.

[4] It is not clear that the defendants seriously advance this argument, since they elsewhere acknowledge that Section 32-5A-133(a) "states that once a driver is confident reasonable safety exists to either turn or move right or left upon a roadway, he must give an appropriate signal." (Doc. 63 at 1-2). Since the argument is asserted, however, the Court addresses it.

[5] On the other hand, it might not be prudent policy to encourage motorists not to use turn signals whenever they decide one is unnecessary.

[6] American Heritage Dictionary of the English Language 1201 (5th ed. 2011); Webster's New College Dictionary 763 (3rd ed. 2008).

without a signal. Nothing in the statutory language supports the idea that the two provisions are alternative restrictions rather than cumulative restrictions. Indeed, if they were alternative restrictions, as the defendants propose, it would be equally permissible for a driver to change lanes when it is manifestly unsafe, so long as he uses a signal. The text of Section 32-5A-133(a) does not support such a nonsensical reading.

The Alabama Legislature did not create Section 32-5A-133 from whole cloth. Rather, that section – and much of the 1980 Alabama Rules of the Road Act[7] generally – was derived from the Uniform Vehicle Code ("UVC"). *See, e.g., Swann v. City of Huntsville*, 455 So. 2d 944, 948 (Ala. Crim. App. 1984) (Section 32-5A-194(a)(4) was derived from the UVC).[8] Section 32-5A-133(a) is itself a verbatim repetition of Section 11-604 of the UVC as it existed in 1979. Traffic Laws Annotated 1979 at 197 ("TLA 1979").[9] Prior to 1962, Section 11-604 provided that "[n]o person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided *in the event any other traffic may be affected by such movement.*" *Id.* (emphasis added).[10] A 1962 amendment deleted the italicized language, and "[t]he purpose of this amendment was to require a turn signal even though a turning movement may not apparently affect other traffic." *Id.* A 1971 amendment produced the language adopted by the Alabama Legislature in 1980, and after that amendment "[t]he important rule that remains is that drivers should *always* give a signal before turning or before moving right or left upon a

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[7] Ala. Code §§ 32-5A-1 *et seq.*

[8] *See also* Ala. Code §§ 32-5A-7 to -11, -30, -36, -54, -56 to -59, -89, -113, -115, -136, -151, -154, -155, -178, -215, -243 commentary (noting derivation from UVC).

[9] TLA 1979 was produced by the National Committee on Uniform Traffic Laws and Ordinances ("the Committee") and is available online at Google Books.

[10] Prior to the 1980 revisions, Alabama law used identical language. *Cox v. Miller*, 361 So. 2d 1044, 1047 (Ala. 1978).

roadway." *Id.* (emphasis added).[11] Because Section 32-5A-133(a) is a verbatim adoption of Section 11-604, it inescapably is subject to the same, textually obvious construction.

Unable to support their construction within the four corners of Section 32-5A-133(a), the defendants turn to subsection (b), which provides that "[a] signal of intention to turn right or left *when required* shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning." Ala. Code § 32-5A-133(b) (emphasis added). The defendants rely on *Bowers v. State*, 473 S.E.2d 201 (Ga. App. 1996), which, in interpreting Georgia's similar (but not identical) statute, concluded that the quoted phrase would be superfluous if a signal were always required. *Id.* at 203. The *Bowers* Court avoided this superfluity by construing the statute to require a signal only if the lane change cannot be accomplished with reasonable safety. *Id.*[12]

The *Bowers* Court, like the defendants, failed to address the UVC from which the lane-changing statute was derived. Section 11-604(b) has included the phrase, "when required," since 1944. TLA 1979 at 198. The phrase was added when Section 11-604(a) still required a signal only when "other traffic may be affected by such movement," and it was never deleted by the Committee after the 1962 deletion of the qualifying language from Section 11-604(a). Because, in the post-1962 world, Section 11-604(a) always requires a signal when changing lanes, the "when required" language of Section 11-604(b) and Section 32-5A-133(b) is indeed a superfluous artifact of that earlier period.[13] But precisely because the clear intent of Section 11-604(a) and Section 32-5A-133(a) is

[11] Consistent with the defendants' concession, TLA 1979 confirms that "moving right or left upon a roadway" includes "when a driver changes lanes." *Id.* at 198.

[12] "As [a] decisio[n] not concurred in by all panel members, *Bowers* … do[es] not constitute binding precedent." *Morgan v. State*, 710 S.E.2d 922, 925 (Ga. App. 2011). However, because the Eleventh Circuit has assumed that *Bowers* reflects Georgia law, *see Hudson v. Hall*, 231 F.3d 1289, 1296 n.6 (11th Cir. 2000), the Court does so as well.

[13] While "there is a presumption … that no superfluous words … were used" in a legislative enactment, *State Superintendent of Education v. Alabama Education Association*, 144 So. 3d 265, 273 (Ala. 2013) (internal quotes omitted), the discussion in text rebuts that presumption.

to "always" require a signal, it would be improper to nullify that clear intent for the mere sake of avoiding a nominal superfluity. It is, after all, "th[e] Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent in manifested in the wording of the statute ...." *City of Prichard v. Baizer*, 95 So. 3d 1, 3 (Ala. 2012) (internal quotes omitted). Following *Bowers* as the defendants suggest would violate that duty.[14]

The defendants complain that the cases cited by the government do not actually state that a signal is required even when it is safe to change lanes without one. (Doc. 63 at 3-4). Given the clarity of the result, the absence of such authority would not be significant but, in any event, several federal cases have in fact reached the same conclusion as the Court, albeit with less analysis.[15]

Finally, the defendants argue that Section 32-5A-133, even if it requires a signal with each lane change, does not provide drivers with constitutionally sufficient notice as to what sort of signal is adequate and is thus unconstitutionally vague. The asserted vagueness arises because, while subsection (a) states that the "appropriate signal" will be described "hereinafter," subsection (b) addresses only the appropriate signal when turning, not when changing lanes, leaving motorists to guess at how much signal is needed. (Doc. 63 at 1-3).

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[14] Even were the Court to adopt the *Bowers* approach, under Georgia law a turn signal is always required when another vehicle is in the vicinity. *United States v. Frazier*, 2008 WL 5245876 at *3 (S.D. Ga. 2008); *accord United States v. Woods*, 385 Fed. Appx. 914, 916 (11th Cir. 2010). The defendants have not suggested that no vehicles were in the vicinity when Garcia changed lanes.

[15] *See Brown v. Endo Pharmaceuticals, Inc.*, 38 F. Supp. 3d 1312, 1325 n.13 (S.D. Ala. 2014) ("Alabama drivers are not permitted to change lanes without activating their turn signals ...."); *United States v. Scott*, 2014 WL 948471 at *3 (N.D. Ala. 2014) ("Based on the court's finding that Scott activated his turn signal at the same time he began to move into the turn lane, the court finds Captain Amos had probable cause to stop Scott for failing to signal his move into the turn lane in accordance with Alabama law."); *United States v. Dorsey*, 2003 WL 23306149 at *3 (M.D. Ala. 2003) ("Rather than creating an exception to the turn signal requirement when a turn can be executed safely, the statute provides that a driver must both turn only when it is safe to do so and signal his turn before making it.").

Assuming without deciding that Section 32-5A-133 is impermissibly vague in this regard, the defendants do not explain how such vagueness could help them. They do not assert that Garcia gave a signal that Lt. Cayton deemed inadequate, and the government represents without contradiction that Garcia gave no signal at all. (Doc. 60 at 1).[16] In the absence of *any* signal, Garcia unquestionably violated the statute's clear command to give *some* signal, and that clear violation provided Lt. Cayton probable cause for the stop, regardless of whether he could have lawfully stopped Garcia under different circumstances.

For the reasons set forth above, the Court rules that it is a violation of Alabama law to change lanes without a signal, even if the lane change can be safely accomplished without such a signal. To the extent Lt. Cayton stopped the vehicle for changing lanes without a signal, he did not act under a mistake of law such as to eliminate probable cause justifying a traffic stop.

The defendants' motions to suppress are hereby set for an evidentiary hearing on **April 25, 2016** at **10:00 a.m.** in Courtroom 2-A.

DONE and ORDERED this 14th day of April, 2016.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE

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[16] Without asserting that Garcia signaled his lane change, the defendants state that Lt. Cayton was parked alongside the interstate and so could not have observed whether Garcia signaled. (Doc. 57 at 2, 3). (According to the government, Lt. Cayton was not stopped but was driving behind Garcia's vehicle. (Doc. 60 at 1).) What Lt. Cayton did observe or could have observed cannot be determined prior to an evidentiary hearing, but in any event the defendants' assertion does not undermine the government's position that the stop was based on the failure to give any signal at all, not on the giving of an inadequate signal.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	*	
	*	
v.	*	CRIMINAL NO. 16-00018-WS
	*	
JACQUELINE BUSTAMANTE	*	

PLEA AGREEMENT

The defendant, **JACQUELINE BUSTAMANTE**, represented by her counsel, and the United States of America have reached a plea agreement in this case, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the terms and conditions of which are as follows:

RIGHTS OF THE DEFENDANT

1. The defendant understands her rights as follows:

   a. To be represented by an attorney;

   b. To plead not guilty;

   c. To have a trial by an impartial jury;

   d. To confront and cross-examine witnesses and to call witnesses and produce other evidence in her defense; and

   e. To not be compelled to incriminate herself.

WAIVER OF RIGHTS AND PLEA OF GUILTY

2. The defendant waives rights b through e, listed above, and pleads guilty to Count One of the Indictment, charging a violation of Title 21, United States Code, Section 846, Conspiracy to Possess with Intent to Distribute Methamphetamine.

3. The defendant understands that the statements she makes under oath in the plea of guilty must be completely truthful and that she can be prosecuted for making false

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statements or perjury, or receive a perjury enhancement at sentencing, for any false statements she makes intentionally in this plea of guilty.

4. The defendant expects the Court to rely upon her statements here and her response to any questions that she may be asked during the guilty plea hearing.

5. The defendant is not under the influence of alcohol, drugs, or narcotics. She is certain that she is in full possession of her senses and is mentally competent to understand this Plea Agreement and the guilty plea hearing which will follow.

6. The defendant has had the benefit of legal counsel in negotiating this Plea Agreement. She has discussed the facts of the case with her attorney, and her attorney has explained to the defendant the essential legal elements of the criminal charge which has been brought against her. The defendant's attorney has also explained to the defendant her understanding of the United States' evidence and the law as it relates to the facts of her offense.

7. The defendant understands that the United States has the burden of proving each of the legal elements of the criminal charge beyond a reasonable doubt. The defendant and her counsel have discussed possible defenses to the charge. The defendant believes that her attorney has represented her faithfully, skillfully, and diligently, and she is completely satisfied with the legal advice of her attorney.

8. Defendant recognizes that pleading guilty may have consequences with respect to immigration status if she is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which she is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no

one, including her attorney or the district court, can predict to a certainty the effect of her conviction on her immigration status. Defendant nevertheless affirms that she wants to plead guilty regardless of any immigration consequences that her plea may entail, even if the consequence is his automatic removal from the United States.

9. A separate document, entitled Factual Resume, will be submitted to the Court as evidence at the guilty plea hearing. The Factual Resume is incorporated by reference into this Plea Agreement. The defendant and the United States agree that the Factual Resume is true and correct. Alterations to the Plea Agreement or Factual Resume initialed only by the defendant and her counsel are not part of this agreement and are not agreed to by the United States.

10. This plea of guilty is freely and voluntarily made and is not the result of force, threats, promises, or representations, apart from those representations set forth in this Plea Agreement. There have been no promises from anyone as to the particular sentence that the Court will impose. The defendant is pleading guilty because she is guilty.

11. The defendant also knowingly and voluntarily waives all rights, whether asserted directly or through a representative, to receive from the United States after sentencing any further records, reports, or documents pertaining to the investigation or prosecution of this matter. This waiver includes, but is not limited to, rights under the Freedom of Information Act and the Privacy Act of 1974.

PENALTIES

12. The maximum penalty the Court could impose as to Count One of the Indictment is:

a. 10 years mandatory minimum to life imprisonment;

b. A fine not to exceed $10,000,000;

c. A term of supervised release of five (5) years, which would follow any term of imprisonment. If the defendant violates the conditions of supervised release, she could be imprisoned for the entire term of supervised release;

d. A mandatory special assessment of $100.00; and

e. Such restitution as may be ordered by the Court.

SENTENCING

13. The Court will impose the sentence in this case. The United States Sentencing Guidelines are advisory and do not bind the Court. The defendant has reviewed the application of the Guidelines with her attorney and understands that no one can predict with certainty what the sentencing range will be in this case until after a pre-sentence investigation has been completed and the Court has ruled on the results of that investigation. The defendant understands that at sentencing, the Court may not necessarily sentence the defendant in accordance with the Guidelines. The defendant understands that she will not be allowed to withdraw her guilty plea if the advisory guideline range is higher than expected, or if the Court departs or varies from the advisory guideline range.

14. The defendant understands that this Plea Agreement does not create any right to be sentenced in accordance with the Sentencing Guidelines, or below or within any particular guideline range, and fully understands that determination of the sentencing range or guideline level, or the actual sentence imposed, is solely the discretion of the Court.

15. The United States will provide all relevant sentencing information to the Probation Office for purposes of the pre-sentence investigation. Relevant sentencing information includes, but is not limited to, all facts and circumstances of this case and information concerning the defendant's conduct and background.

16. Both the defendant and the United States are free to allocute fully at the time of sentencing.

17. The defendant agrees to tender $100.00 to the U.S. District Court Clerk in satisfaction of the mandatory special assessment in this case. The United States reserves the right to withdraw any favorable recommendations it may agree to within this document if the defendant fails to pay the special assessment prior to or at the time of her sentencing.

RESTITUTION

18. Pursuant to 18 U.S.C. §§ 3556 and 3663(A), restitution is mandatory. The defendant agrees to make full restitution in an amount to be determined by the Court at sentencing as to all relevant conduct regardless of whether it relates to the count of conviction.

FORFEITURE

19. The defendant agrees to confess the forfeiture to the United States of all properties which represent proceeds of his criminal activities or which facilitated any aspect of these illegal activities.

FINANCIAL OBLIGATIONS

20. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees to disclose fully all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party.

UNITED STATES' OBLIGATIONS

21. The United States will not bring any additional charges against the defendant related to the facts underlying the Indictment and will move to dismiss any remaining charges against the defendant once sentence is imposed in this case. This agreement is limited to the United States Attorney's Office for the Southern District of Alabama and does not bind any other federal, state, or local prosecuting authorities.

22. The United States will recommend to the Court that the defendant be sentenced at the low end of the advisory sentencing guideline range per count of conviction as determined by the Court.

APPLICATION OF USSG § 5K1.1 AND/OR FED. R. CRIM. P. 35

23. The defendant understands and agrees that she has no right to cooperate, and that the decision whether to allow him to cooperate is reserved solely to the United States in the exercise of its discretion. If the United States agrees to allow the defendant to cooperate, and if the defendant agrees to cooperate, the following terms and conditions apply:

   a. The defendant shall fully, completely, and truthfully respond to all questions put to her by law enforcement authorities regarding the underlying facts of the offense(s) with which she is charged, as well as the underlying facts of any criminal offense(s), state or federal, of which she has information or knowledge.

   b. The defendant acknowledges that she understands that she shall provide truthful and complete information regarding any offense about which she has knowledge or information regardless of whether law enforcement authorities question him specifically about any such offense. This provision requires the defendant to divulge all information available to him even when law enforcement authorities do not know about the defendant's involvement, knowledge or information relating to any particular offense. This requirement extends to any and all persons about whom the defendant has such knowledge or information.

   c. The defendant agrees to cooperate completely with all law enforcement authorities in any matters to which her cooperation may be deemed relevant by any law enforcement authority. The defendant agrees to fully comply with all instructions from law enforcement authorities regarding the specific assistance she shall provide. This includes, but is not limited to, consenting to monitored and/or recorded telephone conversations, participating in undercover operations, testifying completely and truthfully before any grand jury, at any pre-trial proceeding, during any trial, and any post-trial proceeding.

d. If the United States deems it necessary, the defendant may be required to take a polygraph examination(s) which will be administered by a government polygrapher. The defendant agrees that the results of any polygraph examination may be used by the United States in its evaluation of whether there has been substantial assistance, and are admissible at sentencing to rebut an assertion by the defendant of bad faith or unconstitutional motive on the part of the United States.

e. The defendant agrees to turn over to the United States any and all documents, tapes and other tangible objects which are in her possession or under her control and which are relevant to his participation in and knowledge of criminal activities, regardless of whether it relates to the charged offense. This obligation is a continuing one and includes materials that the defendant may acquire, obtain or have access to after the execution of this agreement.

f. The defendant also agrees to identify the assets of any other person which were obtained through or facilitated the defendant's illegal activities or the illegal activities of another.

g. If the defendant provides full, complete, truthful and substantial cooperation to the United States, which results in substantial assistance to the United States in the investigation or prosecution of another criminal offense, a decision specifically reserved by the United States in the exercise of its sole discretion, then the United States agrees to move for a downward departure in accordance with Section 5K1.1 of the United States Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, whichever the United States deems applicable. The United States specifically reserves the right to make the decision relating to the extent of any such departure request made under this agreement based upon its evaluation of the nature and extent of the defendant's cooperation. The defendant understands that the United States will make no representation or promise with regard to the exact amount of reduction, if any, the United States might make in the event that it determines that the defendant has provided substantial assistance. The defendant understands that a mere interview with law enforcement authorities does not constitute substantial assistance. The defendant also understands that, should she provide untruthful information to the United States at any time, or fail to disclose material facts to the United States at any time, or commits a new criminal offense, the United States will not make a motion for downward departure. If the defendant's effort to cooperate with the United States does not amount to substantial assistance as determined solely by the

United States, the United States agrees to recommend that the defendant receive a sentence at the low end of the advisory guideline range.

h. The United States and the defendant agree that any breach of this agreement by the defendant, including but not limited to committing a new offense, failing to cooperate, intentionally withholding information, giving false information, committing perjury, failing to identify assets obtained by her from her illegal activities or obtained by others associated with her or of which he has knowledge, refusing to take a polygraph examination, failing a polygraph examination, or refusing to testify before the grand jury or at any judicial proceeding, would:

(1) permit the United States to reinstate and proceed with prosecution on any other charges arising from the matters underlying the Indictment; and

(2) permit the United States to initiate and proceed with the prosecution on any other charges arising from a breach of this agreement. The United States will not be limited, in any respect, in the use it may make against the defendant of any information provided by the defendant during her breached cooperation. Such breach will constitute a waiver of any claim the defendant could make under the United States Constitution, the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, or any statute or case law by which the defendant seeks to suppress the use of

such information or any evidence derived from such information.

i. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement, including perjury, false declaration, false statement, and obstruction of justice, should the defendant commit any of these offenses during his cooperation. The defendant acknowledges and agrees that the information that she discloses to the United States pursuant to this agreement may be used against her in any such prosecution.

j. The United States and the defendant agree that the defendant will continue her cooperation even after she is sentenced in the instant matter. Her failure to continue his cooperation will constitute a breach of this agreement, and the defendant agrees that under such conditions, the United States will be free to reinstate the charges and the prosecution of the charges in the Indictment, which are to be dismissed in accordance with this agreement. Under these circumstances, the defendant expressly waives any rights she may have under the statute of limitations and the speedy trial provisions.

LIMITED WAIVER OF RIGHT TO APPEAL AND WAIVER OF COLLATERAL ATTACK

24. As part of the bargained-for exchange represented in this plea agreement, and subject to the limited exceptions below, the defendant knowingly and voluntarily waives the right to file any direct appeal or any collateral attack, including a

motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Accordingly, the defendant will not challenge her guilty plea, conviction, or sentence in any district court or appellate court proceedings.

a. **EXCEPTIONS.** The defendant reserves the right to timely file a direct appeal challenging:

(1) any sentence imposed in excess of the statutory maximum;

(2) any sentence which constitutes an upward departure or variance from the advisory guideline range.

The defendant also reserves the right to claim ineffective assistance of counsel in a direct appeal or § 2255 motion.

25. If the United States files a notice of appeal and such appeal is authorized by the Solicitor General, the defendant is released from the appellate waiver.

26. The defendant further reserves the right to timely move the district court for an amended sentence under 18 U.S.C. § 3582 in the event of a future retroactive amendment to the Sentencing Guidelines which would affect the sentence.

27. If the defendant receives a sentence within or below the advisory guideline range, this plea agreement shall serve as the defendant's express directive to defense counsel to timely file a "Notice of Non-Appeal" following sentencing, signed by the defendant.

VIOLATION OF AGREEMENT

28. The defendant understands that if she breaches any provision of this Plea Agreement, the United States will be free from any obligations imposed by this

agreement, but all provisions of the agreement remain enforceable against the defendant. In the exercise of its discretion, the United States will be free to prosecute the defendant on any charges of which it has knowledge. In such event, the defendant agrees not to assert any objections to prosecution that she might have under the Sixth Amendment and/or Speedy Trial Act.

29. In addition, if the defendant is released from detention prior to sentencing, she understands that the United States will no longer be bound by this agreement if she violates any condition of his release prior to sentencing or prior to serving her sentence after it is imposed.

ENTIRETY OF AGREEMENT

30. This document is the complete statement of the agreement between the defendant and the United States and may not be altered unless done so in writing and signed by all the parties.

Respectfully submitted,

KENYEN R. BROWN
UNITED STATES ATTORNEY

Date: November 22, 2016

GEORGE F. MAY
Assistant United States Attorney

Date: 11/22/16

VICKI M. DAVIS
Assistant United States Attorney
Chief, Criminal Division

I have consulted with my counsel and fully understand all my rights with respect to the offense charged in the Indictment pending against me. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this agreement, and I voluntarily agree to it. I hereby stipulate that the Factual Resume, incorporated herein, is true and accurate in every respect, and that had the matter proceeded to trial, the United States could have proved the same beyond a reasonable doubt.

Date: 1/20/17

JACQUELINE BUSTAMANTE
Defendant

I am the attorney for the defendant. I have fully explained her rights to her with respect to the offense(s) charged in the Indictment in this matter. I have carefully reviewed every part of this Plea Agreement with her. To my knowledge, her decision to enter into this agreement is an informed and voluntary one. I have carefully reviewed the Factual Resume, incorporated herein, with the defendant and to my knowledge, her decision to stipulate to the facts is an informed, intelligent and voluntary one.

Date: 1/20/17

RICHARD E. SHIELDS
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	*	
	*	
v.	*	CRIMINAL NO. 16-00018-WS
	*	
JACQUELINE BUSTAMANTE	*	

FACTUAL RESUME

The defendant, **JACQUELINE BUSTAMANTE**, admits the allegation of Count One of the Indictment.

ELEMENTS OF THE OFFENSE

JACQUELINE BUSTAMANTE understands that in order to prove violation of Title 21, United States Code, Section 846, as charged in Count One of the Indictment, the United States must prove:

1. That two or more persons in some way or manner, came to a mutual understanding to distribute methamphetamine, or to possess methamphetamine with intent to distribute it;
2. That the defendant knowingly and willfully became a member of such conspiracy.

OFFENSE CONDUCT

Defendant, **JACQUELINE BUSTAMANTE**, admits in open court and under oath that the following statement is true and correct and constitutes evidence in this case. This statement of facts is provided solely to assist the Court in determining whether a factual basis exists for **JACQUELINE BUSTAMANTE's** plea of guilty. The statement of facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's involvement in the charges set forth in the plea agreement.

On December 15, 2015, the Mobile County Sheriff's Office (MCSO) conducted a traffic stop of a white 1997 Ford F-250 bearing a Texas license plate number heading eastbound on Interstate 10 near the three-mile marker for the traffic violation of failure to signal. The vehicle was being driven by the co-defendant, Pedro Picasso-Garcia and was also occupied by the defendant, **JACQUELINE BUSTAMANTE**, and her infant child. The defendant gave officers consent to search the vehicle as she claimed the vehicle was given to her as a gift. The defendant spoke English and even tried to interpret for the defendant GARCIA during the stop.

MCSO officers looked under the passenger seat of the vehicle where the defendant was sitting and could visibly see several brick-sized packages wrapped in duct tape located in the bottom of the seat. Through knowledge, training, and experience, it is known that drug smugglers typically package illegal contraband in this manner. MCSO officers transported the vehicle, the co-defendant, **JACQUELINE BUSTAMANTE**, and her infant child to the MCSO South Side substation located at 5808 U.S. Highway 90 in Theodore, Alabama, for further examination of the vehicle.

A MCSO K-9 alerted on the vehicle indicating that illegal narcotics were inside the vehicle. MCSO officers searched the vehicle and found two (2) packages wrapped in duct tape underneath the front passenger seat. During the search, MCSO officers noticed the backs of the driver and passenger seats did not appear to be the same as other Ford model pickup trucks. MCSO officers removed the clasp, which held the back seat cover in place. A piece of cardboard was removed and two (2) containers were found inside a natural void behind the driver's and passenger's seats. Both seats contained two (2) duct taped packages similar in size

Respectfully submitted,

AGREED TO AND SIGNED.

KENYEN R. BROWN
UNITED STATES ATTORNEY

Date: January 20, 2017

GEORGE F. MAY
Assistant United States Attorney

Date: 1/20/17

VICKI M. DAVIS
Assistant United States Attorney
Chief, Criminal Division

Date: 1/20/17

JACQUELINE BUSTAMANTE
Defendant

Date: 1/20/17

RICHARD E. SHIELDS
Attorney for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA § **JUDGMENT IN A CRIMINAL CASE**
§
v. §
§ Case Number: **1:16-CR-00018-WS-B(2)**
JACQUELINE BUSTAMANTE § USM Number: **16307-003**
§ **Richard E. Shields**
§ Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment.
☐ pleaded nolo contendere to count(s) which was accepted by the court
☐ was found guilty on count(s) after a plea of not guilty

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section / Nature of Offense	Offense Ended	Count
21:846=Cd.F Conspiracy To Distribute Methamphetamine	12/15/2015	1

The defendant is sentenced as provided in pages 2 through _____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)
☒ Count(s) Two ☒ is ☐ are dismissed on the motion of the United States

IT IS FURTHER 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 restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

May 11, 2017
Date of Imposition of Judgment

s/WILLIAM H. STEELE
Signature of Judge

WILLIAM H. STEELE
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

May 12, 2017
Date

tabbies EXHIBIT D

DEFENDANT: JACQUELINE BUSTAMANTE
CASE NUMBER: 1:16-CR-00018-WS-B(2)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

188 months as to count 1.

☐ The court makes the following recommendations to the Bureau of Prisons:

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: JACQUELINE BUSTAMANTE
CASE NUMBER: 1:16-CR-00018-WS-B(2)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **five (5) years.**

☒ Special Conditions:

1) immediately after incarceration, the defendant is to be delivered to a duly-authorized Immigration official for possible deportation. If deported, the defendant is to remain outside of the United States, pursuant to 18 U.S.C. Section 3583(d). If not deported, within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district of which she is released, and abide by their instructions; to include:

2) the defendant shall participate in a mental health evaluation and comply with any treatment consistent with the findings of said evaluation, as directed by the Probation Office.

3) the defendant shall submit her person, house, residence, vehicle(s), papers, [computers (as defined by 18 U.S.C. Section 1030(e)(1)) or other electronic communications or data storage devices of media], business or place of employment, and any other property under the defendant's control to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

4) the drug testing requirement is WAIVED, as to this defendant.

For offenses committed on or after September 13, 1994: 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 directed by the probation officer.

☒ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.
The defendant shall not illegally possess a controlled substance.
The defendant shall comply with the standard conditions that have been adopted by this court.
The defendant shall also comply with the additional conditions on the attached page.

See Page 4 for the
"STANDARD CONDITIONS OF SUPERVISION"

DEFENDANT: JACQUELINE BUSTAMANTE
CASE NUMBER: 1:16-CR-00018-WS-B(2)

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. the defendant shall cooperate, as directed by the probation officer, in the collection of DNA, if applicable, under the provisions of 18 U.S.C. §§ 3563(a)(9) and 3583(d) for those defendants convicted of qualifying offenses.

DEFENDANT: JACQUELINE BUSTAMANTE
CASE NUMBER: 1:16-CR-00018-WS-B(2)

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

	Assessment	Fine	Restitution
TOTALS	$100.00	$.00	$.00

☐ The determination of restitution is deferred until ___________. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

☐ If applicable, restitution amount ordered pursuant to plea agreement $ ____________

☐ The defendant must pay interest on any fine or restitution of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Page 6 may be subject to penalties for default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JACQUELINE BUSTAMANTE
CASE NUMBER: 1:16-CR-00018-WS-B(2)

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payments of $ $100.00 (special assessment) due immediately, balance due not later than ____________, or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal ____________ *(e.g., weekly, monthly, quarterly)* installments of $ ____________ over a period of ____________ *(e.g., months or years)*, to commence _________ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ ____________ over a period of ____________ *(e.g., months or years)*, to commence _________ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ____________ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

☐ Defendant shall receive credit on her restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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