



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

ORIGINAL

October 22, 2018

By Email

George Goltzer
152 West 57th Street 8th Floor
New York, NY 10019
Email: grgoltzer@gmail.com

**Re: *United States v. Baktash Akasha Abdalla, a/k/a "Baktash Akasha," et al.,*
S11 14 Cr. 716 (VM)**

Dear Mr. Goltzer:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Baktash Akasha Abdalla, a/k/a "Baktash Akasha" ("the defendant") to Counts One through Six of the above-referenced proposed Superseding Information (the "Information").

Count One of the Information charges the defendant with participating in a conspiracy, from at least in or about March 2014 up to and including at least in or about January 2017, to manufacture and distribute one kilogram and more of heroin, knowing and intending that such substances would be unlawfully imported into the United States, in violation of Title 21, United States Code, Sections 812, 963, 959(a), 960(a)(3), and 960(b)(1)(A). Count One carries a maximum term of life imprisonment; a mandatory minimum term of 10 years' imprisonment; a maximum term of supervised release of life; a mandatory minimum term of five years' supervised release; a maximum fine, pursuant to Title 21, United States Code, Section 960(b)(1), and Title 18, United States Code, Section 3571, of the greatest of \$10,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

Count Two of the Information charges the defendant with participating in a conspiracy, from at least in or about March 2014 up to and including at least in or about January 2017, to manufacture and distribute 50 grams and more of methamphetamine and 500 grams and more of a mixture or substance containing a detectable amount of methamphetamine, knowing and intending that such substances would be unlawfully imported into the United States, in violation of Title 21, United States Code, Sections 812, 963, 959(a), 960(a)(3), and 960(b)(1)(H). Count Two carries a maximum term of life imprisonment; a mandatory minimum term of 10 years' imprisonment; a maximum term of supervised release of life; a mandatory minimum term of five years' supervised release; a maximum fine, pursuant to Title 21, United States Code, Section 960(b)(1), and Title 18, United States Code, Section 3571, of the greatest of \$10,000,000, twice

the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

Count Three of the Information charges the defendant with manufacturing and distributing one kilogram and more of heroin, from at least in or about March 2014 up to and including at least in or about November 2014, knowing and intending that such substances would be unlawfully imported into the United States, in violation of Title 21, United States Code, Sections 812, 959(a), 960(a)(3), and 960(b)(1)(A). Count Three carries a maximum term of life imprisonment; a mandatory minimum term of 10 years' imprisonment; a maximum term of supervised release of life; a mandatory minimum term of five years' supervised release; a maximum fine, pursuant to Title 21, United States Code, Section 960(b)(1), and Title 18, United States Code, Section 3571, of the greatest of \$10,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

Count Four of the Information charges the defendant with manufacturing and distributing 50 grams and more of methamphetamine, and 500 grams and more of a mixture or substance containing a detectable amount of methamphetamine, from at least in or about March 2014 up to and including at least in or about November 2014, knowing and intending that such substances would be unlawfully imported into the United States, in violation of Title 21, United States Code, Sections 812, 959(a), 960(a)(3), and 960(b)(1)(H). Count Four carries a maximum term of life imprisonment; a mandatory minimum term of 10 years' imprisonment; a maximum term of supervised release of life; a mandatory minimum term of five years' supervised release; a maximum fine, pursuant to Title 21, United States Code, Section 960(b)(1), and Title 18, United States Code, Section 3571, of the greatest of \$10,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

Count Five of the Information charges the defendant with participating in a conspiracy, from at least in or about March 2014 up to and including at least in or about January 2017, to carry and use machineguns and destructive devices during and in relation to, and to possess machineguns and destructive devices in furtherance of, the drug-trafficking offenses charged in Counts One, Two, Three, and Four of the Information, in violation of Title 18, United States Code, Sections 924(o), 924(c)(1)(A)(i), and 924(c)(1)(B)(ii). Count Five carries a maximum term of imprisonment of life imprisonment; a maximum term of five years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

Count Six of the Information charges the defendant with knowingly corruptly obstructing, influencing, and impeding an official proceeding, in violation of Title 18, United States Code, Sections 1512(c)(2). Count Six carries a maximum term of imprisonment of 20 years; a maximum term of three years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

The total maximum term of imprisonment on Counts One through Six is life, with a mandatory minimum term of imprisonment of 10 years.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for (i) participating in the manufacturing and distribution of heroin, knowing and intending that it would be imported into the United States, between in or about March 2014 and January 2017, as well as conspiring to do so, as charged in Counts One and Three of the Information; (ii) participating in the manufacturing and distribution of methamphetamine, knowing and intending that it would be imported into the United States, between in or about March 2014 and January 2017, as well as conspiring to do so, as charged in Count Two and Four of the Information; (iii) conspiring to carry and use machineguns and destructive devices during and in relation to, and to possess machineguns and destructive devices in furtherance of, the drug-trafficking crimes charged in Counts One, Two, Three, and Four, as charged in Count Five of the Information; and (iv) efforts to obstruct justice by avoiding extradition from Kenya to face prosecution in this case, as charged in Count Six of the Information, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to Title 18, United States Code, Sections 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges, he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegation with respect to Counts One, Two, Three, and Four of the Information and agrees to forfeit to the United States, pursuant to Title 21, United States Code, Sections 853 and 970, any and all property constituting or derived from any proceeds the defendant obtained directly or indirectly as a result of the offenses described in Counts One, Two, Three, and Four of the Information, as well as any and all property used or intended to be used to facilitate the commission of the offenses alleged in One, Two, Three, and Four of the Information. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The Guidelines Manual in effect as of November 1, 2016 applies in this case.

Counts One Through Four

2. Pursuant to U.S.S.G. § 3D1.2(d), Counts One, Two, Three, and Four are grouped together into a single Group ("Group One").

3. The applicable Guideline to the offenses included in Group One is U.S.S.G. § 2D1.1.

4. Pursuant to U.S.S.G. §§ 2D1.1(a)(5) and 2D1.1(c)(1), because the offenses included in Group One involved more than 90 kilograms of heroin and more than 45 kilograms of methamphetamine, which pursuant to U.S.S.G. §§ 2D1.1 application note 8(B) is collectively equivalent to more than 90,000 kilograms of marijuana, the base offense level is 38.

5. Pursuant to U.S.S.G. § 2D1.1(b)(1), the offense level is increased by 2 because the defendant possessed a firearm.

6. Pursuant to U.S.S.G. § 2D1.1(b)(2), the offense level is increased by 2 because the defendant used violence.

7. Pursuant to U.S.S.G. § 2D1.1(b)(5), the offense level is increased by 2 because the offenses in Counts Two and Four involved the importation of methamphetamine, and the defendant is not subject to an adjustment under U.S.S.G. § 3B1.2.

8. Pursuant to U.S.S.G. § 2D1.1(b)(11), the offense level is increased by 2 because the defendant bribed a law enforcement officer to facilitate the commission of the offenses in Group One, to wit, the defendant bribed and caused others to bribe law enforcement personnel in Tanzania, Kenya, and elsewhere in connection with the transportation of heroin and methamphetamine to Nairobi, Kenya.

9. Pursuant to U.S.S.G. § 2D1.1(b)(15)(E), the offense level is increased by 2 because the defendant receives an adjustment under U.S.S.G. § 3B1.1, and the defendant committed the offenses in Group One as part of a pattern of criminal conduct engaged in as a livelihood.

10. Pursuant to U.S.S.G. § 3C1.1, the offense level is increased by 2 because the defendant willfully obstructed and impeded the administration of justice with respect to the prosecution of the offenses of conviction in Group One, and the obstructive conduct related to the defendant's offenses of conviction in Group One. *See* U.S.S.G. § 3C1.1, application note 8.

11. Accordingly, the offense level applicable to Group One is 50.

Count Five

12. The applicable Guideline to the offense charged in Count Five is U.S.S.G. § 2K2.1.

13. Pursuant to U.S.S.G. § 2K2.1(a)(5), the base offense level is 18 because the offense involved a firearm described in Title 26, United States Code, Section 5845(a).

14. Pursuant to U.S.S.G. § 2K2.1(b)(1)(A), the offense level is increased by 2 because the offense involved between three and seven firearms.

15. Pursuant to U.S.S.G. § 2K2.1(b)(3)(B), the offense level is increased by 2 because the

offense involved a destructive device other than a destructive device referred to in U.S.S.G. § 2K2.1(b)(3)(A).

16. Pursuant to U.S.S.G. § 2K2.1(b)(6)(B), the offense level is increased by 4 because the defendant used and possessed a firearm and ammunition in connection with another felony offense, to wit, the drug-trafficking offenses charged in Counts One through Four of the Information.

17. Pursuant to U.S.S.G. §§ 2K2.1(c)(1)(A) and 2X1.1, the offense level for Count Five is 50.

Count Six

18. The applicable Guideline to the offense charged in Count Six is U.S.S.G. § 2J1.2.

19. Pursuant to U.S.S.G. § 2J1.2(a), the base offense level is 14.

20. Pursuant to U.S.S.G. § 2J1.2(b)(2), the offense level is increased by 3 because the offense resulted in substantial interference with the administration of justice, to wit, judicial determinations in Kenya in connection with the extradition request of the United States that were based on false evidence, and the unnecessary expenditure of substantial governmental and court resources. *See* U.S.S.G. § 2J1.2, application note 1.

21. Pursuant to U.S.S.G. § 2J1.2(b)(3)(C), the offense level is increased by 2 because the offense was extensive in scope, planning, and preparation.

22. Accordingly, the offense level applicable to Count Six is 19.

Grouping

23. Pursuant to U.S.S.G. § 3D1.2(c), Group One, Count Five, and Count Six are grouped together into a single group because Counts Five and Six embody conduct that is treated as specific offense characteristics in the guidelines applicable to the counts in Group One. *See also* U.S.S.G. § 2J1.2, application note 3.

24. Pursuant to U.S.S.G. § 3D1.3(b), the offense level is the offense level, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, for the most serious of the counts comprising the Group, *i.e.*, the highest offense level of the counts in the Group, which is 50.

25. Pursuant to U.S.S.G. § 3B1.1(a), the offense level is increased by 4 because the defendant was an organizer or leader of criminal activity that involved five or more participants and was otherwise extensive.

26. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a).

In accordance with the above, the applicable Guidelines offense level is 50, which is capped at 43 pursuant to U.S.S.G. Ch. 5, part A, application note 2.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history points and is in Criminal History Category I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines sentence is life imprisonment, with a mandatory minimum term of 120 months' imprisonment (the "Stipulated Guidelines Sentence"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 43, the applicable fine range is \$50,000 to \$10,000,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Sentence set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence above or below the Stipulated Guidelines Sentence based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Guidelines range determined by the Court the defendant should be sentenced, and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from

those stipulated to above, or contemplates any sentence different from the stipulated Guidelines Sentence, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be different from the Guidelines Sentence set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence at or below the Stipulated Guidelines Sentence of life imprisonment, and (ii) that the Government will not appeal any sentence at or above the Stipulated Guidelines Sentence. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$10,000,000, and the Government agrees not to appeal any fine that is greater than or equal to \$50,000. The defendant also agrees not to appeal any special assessment that is less than or equal to \$100. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, or impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse

immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.


It is further agreed that should the convictions following the defendant's pleas of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

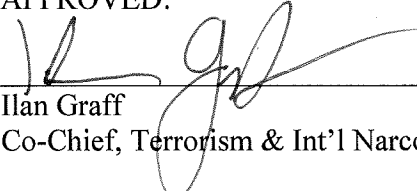
Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney


By: 

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APPROVED:


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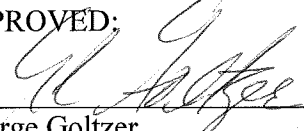
AGREED AND CONSENTED TO:



Baktash Akasha Abdalla

10-24-18

DATE

APPROVED:


George Goltzer
Attorney for Baktash Akasha Abdalla

10-24-18

DATE