

1 TRACY L. WILKISON
Acting United States Attorney
2 BRANDON D. FOX
Assistant United States Attorney
3 Chief, Criminal Division
FARAZ R. MOHAMMADI (Cal. Bar No. 294497)
4 Assistant United States Attorney
8000 United States Courthouse
5 411 West Fourth Street
Santa Ana, California 92701
6 Telephone: (714) 338-3599
Facsimile: (714) 338-3708
7 E-mail: faraz.mohammadi@usdoj.gov

8 Attorneys for Plaintiff
UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 TIMMY DO PHAM,

16 Defendant.

No. SA CR 20-153-CJC

PLEA AGREEMENT FOR DEFENDANT
TIMMY DO PHAM

17
18 1. This constitutes the plea agreement between TIMMY DO PHAM
19 ("defendant") and the United States Attorney's Office for the Central
20 District of California (the "USAO") in the above-captioned case.
21 This agreement is limited to the USAO and cannot bind any other
22 federal, state, local, or foreign prosecuting, enforcement,
23 administrative, or regulatory authorities.

24 DEFENDANT'S OBLIGATIONS

25 2. Defendant agrees to:

26 a. At the earliest opportunity requested by the USAO and
27 provided by the Court, appear and plead guilty to count one of the
28 indictment in United States v. Timmy Do Pham, CR No. 20-153-CJC,

4/22/21 KC TDP

1 which charges defendant with possession with intent to distribute
2 cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C).

3 b. Not contest facts agreed to in this agreement.

4 c. Abide by all agreements regarding sentencing contained
5 in this agreement.

6 d. Appear for all court appearances, surrender as ordered
7 for service of sentence, obey all conditions of any bond, and obey
8 any other ongoing court order in this matter.

9 e. Not commit any crime; however, offenses that would be
10 excluded for sentencing purposes under United States Sentencing
11 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
12 within the scope of this agreement.

13 f. Be truthful at all times with the United States
14 Probation and Pretrial Services Office and the Court.

15 g. Pay the applicable special assessment at or before the
16 time of sentencing unless defendant has demonstrated a lack of
17 ability to pay such assessments.

18 h. Defendant further agrees:

19 1. To forfeit all right, title, and interest in and
20 to any and all monies, properties, and/or assets of any kind, derived
21 from or acquired as a result of, or used to facilitate the commission
22 of, or involved in the illegal activity to which defendant is
23 pleading guilty, including but not limited to the following:

24 A. One Glock 48 9mm caliber pistol, bearing
25 serial number BLRS169 (the "Forfeitable Property").

26 2. To the Court's entry of an order of forfeiture at
27 or before sentencing with respect to the Forfeitable Property and to
28 the forfeiture of the assets.

1 3. To take whatever steps are necessary to pass to
2 the United States clear title to the Forfeitable Property, including,
3 without limitation, the execution of a consent decree of forfeiture
4 and the completing of any other legal documents required for the
5 transfer of title to the United States.

6 4. Not to contest any administrative forfeiture
7 proceedings or civil judicial proceedings commenced against the
8 Forfeitable Property. If defendant submitted a claim and/or petition
9 for remission for all or part of the Forfeitable Property on behalf
10 of himself or any other individual or entity, defendant shall and
11 hereby does withdraw any such claims or petitions, and further agrees
12 to waive any right he may have to seek remission or mitigation of the
13 forfeiture of the Forfeitable Property.

14 5. Not to assist any other individual in any effort
15 falsely to contest the forfeiture of the Forfeitable Property.

16 6. Not to claim that reasonable cause to seize the
17 Forfeitable Property was lacking.

18 7. To prevent the transfer, sale, destruction, or
19 loss of the Forfeitable Property to the extent defendant has the
20 ability to do so.

21 8. To fill out and deliver to the USAO a completed
22 financial statement listing defendant's assets on a form provided by
23 the USAO.

24 9. That forfeiture of Forfeitable Property shall not
25 be counted toward satisfaction of any special assessment, fine,
26 restitution, costs, or other penalty the Court may impose.

27 10. With respect to any criminal forfeiture ordered
28 as a result of this plea agreement, defendant waives: (1) the

1 requirements of Federal Rules of Criminal Procedure 32.2 and 43(a)
2 regarding notice of the forfeiture in the charging instrument,
3 announcements of the forfeiture sentencing, and incorporation of the
4 forfeiture in the judgment; (2) all constitutional and statutory
5 challenges to the forfeiture (including by direct appeal, habeas
6 corpus or any other means); and (3) all constitutional, legal, and
7 equitable defenses to the forfeiture of the Forfeitable Property in
8 any proceeding on any grounds including, without limitation, that the
9 forfeiture constitutes an excessive fine or punishment. Defendant
10 acknowledges that the forfeiture of the Forfeitable Property is part
11 of the sentence that may be imposed in this case and waives any
12 failure by the Court to advise defendant of this, pursuant to Federal
13 Rule of Criminal Procedure 11(b) (1) (J), at the time the Court accepts
14 defendant's guilty plea.

15 THE USAO'S OBLIGATIONS

16 3. The USAO agrees to:

17 a. Not contest facts agreed to in this agreement.

18 b. Abide by all agreements regarding sentencing contained
19 in this agreement.

20 c. At the time of sentencing, move to dismiss the
21 remaining count of the indictment as against defendant. Defendant
22 agrees, however, that at the time of sentencing the Court may
23 consider any dismissed charges in determining the applicable
24 Sentencing Guidelines range, the propriety and extent of any
25 departure from that range, and the sentence to be imposed.

26 d. At the time of sentencing, provided that defendant
27 demonstrates an acceptance of responsibility for the offense, up to and
28 including the time of sentencing, recommend a two-level reduction in the

1 applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. §
2 3E1.1, and recommend and, if necessary, move for an additional one-level
3 reduction if available under that section.

4 e. Recommend that defendant be sentenced to a term of
5 imprisonment no higher than the low end of the applicable Sentencing
6 Guidelines range, provided that the offense level used by the Court
7 to determine that range is 15 or higher. For purposes of this
8 agreement, the low end of the Sentencing Guidelines range is that
9 defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A.

10 NATURE OF THE OFFENSE

11 4. Defendant understands that for defendant to be guilty of
12 the crime charged in count one, that is, possession with intent to
13 distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1),
14 (b)(1)(C), the following must be true: (1) defendant knowingly
15 possessed cocaine; (2) defendant intended to distribute the cocaine
16 to another person; and (3) defendant knew that it was cocaine or some
17 other prohibited drug.

18 PENALTIES

19 5. Defendant understands that the statutory maximum sentence
20 that the Court can impose for a violation of 21 U.S.C. §§ 841(a)(1),
21 (b)(1)(C), is: 20 years' imprisonment; a lifetime period of
22 supervised release; a fine of \$1,000,000 or twice the gross gain or
23 gross loss resulting from the offense, whichever is greatest; and a
24 mandatory special assessment of \$100. *The mandatory minimum*
25 *period of supervised release is 3 years.*

26 6. Defendant understands that supervised release is a period
27 of time following imprisonment during which defendant will be subject
28 to various restrictions and requirements. Defendant understands that
if defendant violates one or more of the conditions of any supervised

1 release imposed, defendant may be returned to prison for all or part
2 of the term of supervised release authorized by statute for the
3 offense that resulted in the term of supervised release.

4 7. Defendant understands that under 21 U.S.C. § 862a,
5 defendant will not be eligible for assistance under state programs
6 funded under the Social Security Act or Federal Food Stamp Act or for
7 federal food stamp program benefits, and that any such benefits or
8 assistance received by defendant's family members will be reduced to
9 reflect defendant's ineligibility.

10 8. Defendant understands that, by pleading guilty, defendant
11 may be giving up valuable government benefits and valuable civic
12 rights, such as the right to vote, the right to possess a firearm,
13 the right to hold office, and the right to serve on a jury.
14 Defendant understands that he is pleading guilty to a felony and that
15 it is a federal crime for a convicted felon to possess a firearm or
16 ammunition. Defendant understands that the conviction in this case
17 may also subject defendant to various other collateral consequences,
18 including but not limited to revocation of probation, parole, or
19 supervised release in another case and suspension or revocation of a
20 professional license. Defendant understands that unanticipated
21 collateral consequences will not serve as grounds to withdraw
22 defendant's guilty plea.

23 9. Defendant and his counsel have discussed the fact that, and
24 defendant understands that, if defendant is not a United States
25 citizen, the conviction in this case makes it practically inevitable
26 and a virtual certainty that defendant will be removed or deported
27 from the United States. Defendant may also be denied United States
28 citizenship and admission to the United States in the future.

1 Defendant understands that while there may be arguments that
2 defendant can raise in immigration proceedings to avoid or delay
3 removal, removal is presumptively mandatory and a virtual certainty
4 in this case. Defendant further understands that removal and
5 immigration consequences are the subject of a separate proceeding and
6 that no one, including his attorney or the Court, can predict to an
7 absolute certainty the effect of his conviction on his immigration
8 status. Defendant nevertheless affirms that he wants to plead guilty
9 regardless of any immigration consequences that his plea may entail,
10 even if the consequence is automatic removal from the United States.

11 FACTUAL BASIS

12 10. Defendant admits that defendant is, in fact, guilty of the
13 offense to which defendant is agreeing to plead guilty. Defendant
14 and the USAO agree to the statement of facts provided below and agree
15 that this statement of facts is sufficient to support a plea of
16 guilty to the charge described in this agreement and to establish the
17 Sentencing Guidelines factors set forth in paragraph 12 below but is
18 not meant to be a complete recitation of all facts relevant to the
19 underlying criminal conduct or all facts known to either party that
20 relate to that conduct.

21 On or about December 21, 2019, in Orange County, within the
22 Central District of California, defendant knowingly possessed, with
23 the intent to distribute to another person, 217 grams of a mixture or
24 substance containing a detectable amount of cocaine. Defendant also
25 knowingly possessed a firearm, namely, a Glock 48 9mm caliber pistol,
26 bearing serial number BLRS169, in furtherance of the above-mentioned
27 drug-trafficking crime.

SENTENCING FACTORS

11. Defendant understands that in determining defendant's sentence the Court is required to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Sentencing Guidelines are advisory only, that defendant cannot have any expectation of receiving a sentence within the calculated Sentencing Guidelines range, and that after considering the Sentencing Guidelines and the other § 3553(a) factors, the Court will be free to exercise its discretion to impose any sentence it finds appropriate up to the maximum set by statute for the crime of conviction.

12. Defendant and the USAO agree to the following applicable Sentencing Guidelines factors:

Base Offense Level:	18	[U.S.S.G. § 2D1.1(c)(11)]
Acceptance of Responsibility:	-3	[U.S.S.G. § 3E1.1(a), (b)]
Total Offense Level	15	

The USAO will agree to a two-level downward adjustment for acceptance of responsibility (and, if applicable, move for an additional one-level downward adjustment under U.S.S.G. § 3E1.1(b)) only if the conditions set forth in paragraph 3(d) are met and if defendant has not committed, and refrains from committing, acts constituting obstruction of justice within the meaning of U.S.S.G. § 3C1.1, as discussed below. Subject to paragraph 25 below, defendant and the USAO agree not to seek, argue, or suggest in any way, either orally or in writing, that any other specific offense characteristics, adjustments, or departures relating to the offense level be imposed.

1 Defendant agrees, however, that if, after signing this agreement but
2 prior to sentencing, defendant were to commit an act, or the USAO
3 were to discover a previously undiscovered act committed by defendant
4 prior to signing this agreement, which act, in the judgment of the
5 USAO, constituted obstruction of justice within the meaning of
6 U.S.S.G. § 3C1.1, the USAO would be free to seek the enhancement set
7 forth in that section and to argue that defendant is not entitled to
8 a downward adjustment for acceptance of responsibility under U.S.S.G.
9 § 3E1.1.

10 13. Defendant understands that there is no agreement as to
11 defendant's criminal history or criminal history category.

12 14. Defendant and the USAO agree that, taking into account the
13 factors listed in 18 U.S.C. § 3553(a)(1)-(7), the relevant Sentencing
14 Guidelines effective on November 1, 2018 represent a reasonable basis
15 for the Court to determine defendant's sentence in this case, and
16 that defendant should be sentenced in accordance with the Sentencing
17 Guidelines. Therefore, subject to paragraph 25 below, defendant and
18 the USAO agree not to argue, either orally or in writing, that the
19 Court (a) not follow the Sentencing Guidelines in imposing sentence;
20 (b) impose a sentence not in accordance with the Sentencing
21 Guidelines; or (c) impose a term of imprisonment outside the
22 sentencing range for the Total Offense Level stipulated to in
23 paragraph 12 above.

24 WAIVER OF CONSTITUTIONAL RIGHTS

25 15. Defendant understands that by pleading guilty, defendant
26 gives up the following rights:

- 27 a. The right to persist in a plea of not guilty.
28 b. The right to a speedy and public trial by jury.

1 c. The right to be represented by counsel -- and if
2 necessary have the Court appoint counsel -- at trial. Defendant
3 understands, however, that, defendant retains the right to be
4 represented by counsel -- and if necessary have the Court appoint
5 counsel -- at every other stage of the proceeding.

6 d. The right to be presumed innocent and to have the
7 burden of proof placed on the government to prove defendant guilty
8 beyond a reasonable doubt.

9 e. The right to confront and cross-examine witnesses
10 against defendant.

11 f. The right to testify and to present evidence in
12 opposition to the charges, including the right to compel the
13 attendance of witnesses to testify.

14 g. The right not to be compelled to testify, and, if
15 defendant chose not to testify or present evidence, to have that
16 choice not be used against defendant.

17 h. Any and all rights to pursue any affirmative defenses,
18 Fourth Amendment or Fifth Amendment claims, and other pretrial
19 motions that have been filed or could be filed.

20 WAIVER OF APPEAL OF CONVICTION

21 16. Defendant understands that, with the exception of an appeal
22 based on a claim that defendant's guilty plea was involuntary, by
23 pleading guilty defendant is waiving and giving up any right to
24 appeal defendant's conviction on the offense to which defendant is
25 pleading guilty. Defendant understands that this waiver includes,
26 but is not limited to, arguments that the statute to which defendant
27 is pleading guilty is unconstitutional, and any and all claims that
28

1 the statement of facts provided herein is insufficient to support
2 defendant's plea of guilty.

3 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

4 17. Defendant agrees that, provided the Court imposes a total
5 term of imprisonment on ~~an~~ ^{the} counts of conviction of no greater than
6 the high end of the range corresponding to an offense level of 15 and
7 the criminal history category calculated by the Court, defendant
8 gives up the right to appeal all of the following: (a) the procedures
9 and calculations used to determine and impose any portion of the
10 sentence; (b) the term of imprisonment imposed by the Court; (c) the
11 fine imposed by the Court, provided it is within the statutory
12 maximum; (d) to the extent permitted by law, the constitutionality or
13 legality of defendant's sentence, provided it is within the statutory
14 maximum; (e) the term of probation or supervised release imposed by
15 the Court, provided it is within the statutory maximum; and (f) any
16 of the following conditions of probation or supervised release
17 imposed by the Court: the conditions set forth in ^{amended} General Order 20-04
18 of this Court; the drug testing conditions mandated by 18 U.S.C.
19 §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions
20 authorized by 18 U.S.C. § 3563(b)(7).

21 18. The USAO agrees that, provided all portions of the sentence
22 are at or below the statutory maximum specified above, the USAO gives
23 up its right to appeal any portion of the sentence.

24 RESULT OF WITHDRAWAL OF GUILTY PLEA

25 19. Defendant agrees that if, after entering a guilty plea
26 pursuant to this agreement, defendant seeks to withdraw and succeeds
27 in withdrawing defendant's guilty plea on any basis other than a
28 claim and finding that entry into this plea agreement was

1 involuntary, then (a) the USAO will be relieved of all of its
2 obligations under this agreement; and (b) should the USAO choose to
3 pursue any charge that was either dismissed or not filed as a result
4 of this agreement, then (i) any applicable statute of limitations
5 will be tolled between the date of defendant's signing of this
6 agreement and the filing commencing any such action; and
7 (ii) defendant waives and gives up all defenses based on the statute
8 of limitations, any claim of pre-indictment delay, or any speedy
9 trial claim with respect to any such action, except to the extent
10 that such defenses existed as of the date of defendant's signing this
11 agreement.

12 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

13 20. Defendant agrees that if the count of conviction is
14 vacated, reversed, or set aside, both the USAO and defendant will be
15 released from all their obligations under this agreement.

16 EFFECTIVE DATE OF AGREEMENT

17 21. This agreement is effective upon signature and execution of
18 all required certifications by defendant, defendant's counsel, and an
19 Assistant United States Attorney.

20 BREACH OF AGREEMENT

21 22. Defendant agrees that if defendant, at any time after the
22 signature of this agreement and execution of all required
23 certifications by defendant, defendant's counsel, and an Assistant
24 United States Attorney, knowingly violates or fails to perform any of
25 defendant's obligations under this agreement ("a breach"), the USAO
26 may declare this agreement breached. All of defendant's obligations
27 are material, a single breach of this agreement is sufficient for the
28 USAO to declare a breach, and defendant shall not be deemed to have

1 cured a breach without the express agreement of the USAO in writing.
2 If the USAO declares this agreement breached, and the Court finds
3 such a breach to have occurred, then: (a) if defendant has previously
4 entered a guilty plea pursuant to this agreement, defendant will not
5 be able to withdraw the guilty plea, and (b) the USAO will be
6 relieved of all its obligations under this agreement.

7 23. Following the Court's finding of a knowing breach of this
8 agreement by defendant, should the USAO choose to pursue any charge
9 that was either dismissed or not filed as a result of this agreement,
10 then:

11 a. Defendant agrees that any applicable statute of
12 limitations is tolled between the date of defendant's signing of this
13 agreement and the filing commencing any such action.

14 b. Defendant waives and gives up all defenses based on
15 the statute of limitations, any claim of pre-indictment delay, or any
16 speedy trial claim with respect to any such action, except to the
17 extent that such defenses existed as of the date of defendant's
18 signing this agreement.

19 c. Defendant agrees that: (i) any statements made by
20 defendant, under oath, at the guilty plea hearing (if such a hearing
21 occurred prior to the breach); (ii) the agreed to factual basis
22 statement in this agreement; and (iii) any evidence derived from such
23 statements, shall be admissible against defendant in any such action
24 against defendant, and defendant waives and gives up any claim under
25 the United States Constitution, any statute, Rule 410 of the Federal
26 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
27 Procedure, or any other federal rule, that the statements or any
28

1 evidence derived from the statements should be suppressed or are
2 inadmissible.

3 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

4 OFFICE NOT PARTIES

5 24. Defendant understands that the Court and the United States
6 Probation and Pretrial Services Office are not parties to this
7 agreement and need not accept any of the USAO's sentencing
8 recommendations or the parties' agreements to facts or sentencing
9 factors.

10 25. Defendant understands that both defendant and the USAO are
11 free to: (a) supplement the facts by supplying relevant information
12 to the United States Probation and Pretrial Services Office and the
13 Court, (b) correct any and all factual misstatements relating to the
14 Court's Sentencing Guidelines calculations and determination of
15 sentence, and (c) argue on appeal and collateral review that the
16 Court's Sentencing Guidelines calculations and the sentence it
17 chooses to impose are not error, although each party agrees to
18 maintain its view that the calculations in paragraph 12 are
19 consistent with the facts of this case. While this paragraph permits
20 both the USAO and defendant to submit full and complete factual
21 information to the United States Probation and Pretrial Services
22 Office and the Court, even if that factual information may be viewed
23 as inconsistent with the facts agreed to in this agreement, this
24 paragraph does not affect defendant's and the USAO's obligations not
25 to contest the facts agreed to in this agreement.

26 26. Defendant understands that even if the Court ignores any
27 sentencing recommendation, finds facts or reaches conclusions
28 different from those agreed to, and/or imposes any sentence up to the

1 maximum established by statute, defendant cannot, for that reason,
2 withdraw defendant's guilty plea, and defendant will remain bound to
3 fulfill all defendant's obligations under this agreement. Defendant
4 understands that no one -- not the prosecutor, defendant's attorney,
5 or the Court -- can make a binding prediction or promise regarding
6 the sentence defendant will receive, except that it will be between
7 the statutory mandatory minimum and the statutory maximum.

8 NO ADDITIONAL AGREEMENTS

9 27. Defendant understands that, except as set forth herein,
10 there are no promises, understandings, or agreements between the USAO
11 and defendant or defendant's attorney, and that no additional
12 promise, understanding, or agreement may be entered into unless in a
13 writing signed by all parties or on the record in court.

14 //

15 //

16 //

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

28. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

TRACY L. WILKISON
Acting United States Attorney


FARAZ R. MOHAMMADI
Assistant United States Attorney

04/22/2021

Date


TIMMY DO PHAM
Defendant

4/20/21

Date



KATE CORRIGAN
Attorney for Defendant TIMMY DO
PHAM

4/20/21
Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those

1 contained in this agreement. No one has threatened or forced me in
 2 any way to enter into this agreement. I am satisfied with the
 3 representation of my attorney in this matter, and I am pleading
 4 guilty because I am guilty of the charge and wish to take advantage
 5 of the promises set forth in this agreement, and not for any other
 6 reason.

7
 8 
 TIMMY DO PHAM
 Defendant

4/20/21
 Date

10 CERTIFICATION OF DEFENDANT'S ATTORNEY

11 I am TIMMY DO PHAM's attorney. I have carefully and thoroughly
 12 discussed every part of this agreement with my client. Further, I
 13 have fully advised my client of his rights, of possible pretrial
 14 motions that might be filed, of possible defenses that might be
 15 asserted either prior to or at trial, of the sentencing factors set
 16 forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
 17 provisions, and of the consequences of entering into this agreement.
 18 To my knowledge: no promises, inducements, or representations of any
 19 kind have been made to my client other than those contained in this
 20 agreement; no one has threatened or forced my client in any way to
 21 enter into this agreement; my client's decision to enter into this
 22 agreement is an informed and voluntary one; and the factual basis set
 23 forth in this agreement is sufficient to support my client's entry of
 24 a guilty plea pursuant to this agreement.

25
 26 
 KATE CORRIGAN
 Attorney for Defendant TIMMY DO
 27 PHAM

4/20/21
 Date