

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 18-cr-00429-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

2. KEVIN KUCIAPINSKI,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Jeremy Sibert, Assistant United States Attorney for the District of Colorado, and the defendant, Kevin Kuciapinski, personally and by counsel, Clifford Barnard and Kelly Meilstrup, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees to

- (1) plead guilty to the Count of the Information charging a violation of Title 18 U.S.C. § 208, Acts Affecting a Personal Financial Interest.
- (2) waive certain appellate and collateral attack rights, as explained in detail below; and
- (3) A lifetime of not participating in Federal Government contracting and/or subcontracting that directly or indirectly receives the benefits of federal assistance programs.

B. Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A). The government agrees not to bring other charges against the defendant based on information currently known to the United States Attorney's Office, District of Colorado concerning a discreet specific criminal episode and move to dismiss the indictment and superseding indictment with prejudice against this defendant only. Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement and potentially file a superseding indictment.

Provided the defendant does not engage in prohibited conduct or otherwise implicate USSG §§ 3C1.1 and 3E1.1, cmt. n.4 between the guilty plea and sentencing in this case, the government agrees that the defendant should receive a two-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a) and agrees to file a motion requesting that the defendant receive a one level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b) if it applies. The government will recommend a probationary sentence.

C. Defendant's Waiver of Appeal:

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

- (1) the sentence exceeds the maximum sentence provided in the statute of conviction, 18 U.S.C. § 208;
- (2) the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of 4; or
- (3) the government appeals the sentence imposed.

If the first criteria applies, the defendant may appeal only the issue of how his sentence exceeds the statutory maximum sentence. But if one of the latter two criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including the restitution order) in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255). This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

- (1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;
- (2) the defendant was deprived of the effective assistance of counsel; or
- (3) the defendant was prejudiced by prosecutorial misconduct.

The defendant also waives the right to appeal any sentence imposed below or within the guideline range upon a revocation of supervised release in this case number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court.

The defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests in any part upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). This waiver does not apply to an appeal of a denied § 3582(c)(1)(A)(i) motion where the district court, in denying the motion on § 3553(a) grounds, failed to consider the facts allegedly establishing extraordinary and compelling circumstances as part of its § 3553(a) analysis.

II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of Title 18 U.S.C. § 208 are as follows:

First: The defendant was an officer or employee of the executive branch of the United States, an independent agency, a federal reserve bank, or the District of Columbia;

Second: The defendant participated personally and substantially in his official, governmental capacity through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

Third: The defendant did so in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter; and

Fourth: The defendant knew that he or his spouse had a financial interest in the particular matter.

United States v. Hedges, 912 F.2d 1397, 1400-1401 (11th Cir. 1990).

III. STATUTORY PENALTIES

The maximum sentence for a violation for the sole Count in the Information is not more than 1 year imprisonment, not more than \$100,000 fine, or both imprisonment and a fine, not more than a year of supervised release, \$25 mandatory victim's fund special assessment fee.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

The factual basis for this plea is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from presenting non-contradictory additional facts which are relevant to the Court's guideline computation, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties agree the government would be able to prove the following facts at trial.

Beginning on or about January 1, 2014 and continuing to on or about December 31, 2014, defendant Kevin Kuciapinski, serving as an active-duty Major, an officer of the executive branch of the United States Government, in the United States Air Force,

unlawfully participated personally in the rendering of technical advice on various occasions to his wife, M. K. and co-defendant Randolph Stimac. The defendant's rendering of this advice resulted in federal funding that would eventually benefit M. K.'s company, which was listed as a key subcontractor under a Health and Human Services (HHS) contract numbered HHSN316201200115W-HHSP233201400203W. In part because of defendant Kevin Kuciapinski's advice, two federal agencies provided a total of \$953,386 in funds. The value of the HHS contract was approximately \$1,450,191.89, and M.K.'s company as a subcontractor was going to be paid approximately \$479,898.00. M.K. was the owner and president of her company and had a financial interest in obtaining federal funds for the HHS contract. After the federal government discovered fraudulent conduct by co-defendant Randolph Stimac and M.K., the HHS contract was canceled and the funds were returned to the U.S. Treasury and, thus, the United States lost no money, except for administrative costs, as a result of the HHS contract being canceled. The United States Army lost the use of \$453,386.00 for that fiscal year as a result of the HHS contract being canceled.

VI. ADVISORY GUIDELINE CALCULATION

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline

computations, the recitation below identifies the matters which are in dispute.

The Guideline calculation below is the good-faith estimate of the parties, but it is only an estimate. The parties understand that the government has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process, affect the estimate below.

- a) Under Section 2C1.3, the base offense level is 6.
- b) No Specific Offense Characteristics apply under Section 2C1.3(b).
- c) The adjusted offense level is 6.
- d) Applying two levels off for acceptance, the resulting total offense level is 4.
- e) The parties understand that the defendant's criminal history computation is tentative and based on the defendant's prior convictions. The parties believe the defendant is in criminal history category I.
- f) The career offender/criminal livelihood/armed career criminal adjustments do not apply.
- g) The advisory guideline range resulting from these calculations is 0-6 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 0 months (bottom of Category I) to 12 months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the count of conviction.
- h) Pursuant to guideline § 5E1.2, assuming the estimated offense level above is correct, the fine range for this offense would be \$500 to \$9,500 plus applicable interest and penalties.
- i) Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is not more than one year.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose a reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT

The agreement disclosed to the Court is the entire agreement. There are no other promises, agreements or "side agreements," terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any other terms, promises, conditions or assurances.

Date: 12/20/2022



KEVIN KUCIAPINSKI
Defendant

Date: 12/20/2022



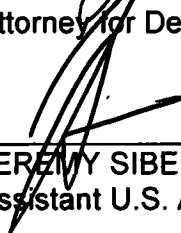
CLIFFORD BARNARD
Attorney for Defendant K. Kuciapinski

Date: 12/20/2022



KELLY MELSTRUP
Attorney for Defendant K. Kuciapinski

Date: 12/20/22



JEREMY SIBERT
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