

The Honorable Jamal N. Whitehead

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DESMOND D. BOSTICK,

Defendant.

NO. CR23-155 JNW

PLEA AGREEMENT

The United States, through United States Attorney Tessa M. Gorman and Assistant United States Attorneys Sean H. Waite and Kristine L. Foerster of the Western District of Washington, and Desmond Bostick and his attorney Dennis Carroll, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure Rule 11.

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in a Superseding Information.

2. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to *Assault with Intent to Commit a Felony*, as charged in Count 1 of the Superseding Information,

1 in violation of Title 18, United States Code, Section 113(a)(2) and Title 49, United States
2 Code, Section 46506(1).

3 By entering a plea of guilty, Defendant hereby waives all objections to the form of
4 the charging document. Defendant further understands that before entering any guilty
5 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
6 may be used by the United States in a prosecution for perjury or false statement.

7 3. **Elements of the Offense.** The elements of *Assault with Intent to Commit*
8 *a Felony*, as charged in Count 1, are as follows:

9 *First*, the defendant assaulted Victim-1;

10 *Second*, the assault was done with the specific intent to commit a felony;

11 *Third*, the offense was committed while aboard an aircraft in flight within
12 the special aircraft jurisdiction of the United States.

13 4. **The Penalties.** Defendant understands that the statutory penalties
14 applicable to *Assault with Intent to Commit a Felony*, as charged in Count 1, are: A
15 maximum term of imprisonment of up to 10 years, a fine of up to \$ 250,000, a period of
16 supervision following release from prison of up to 3 years, and a mandatory special
17 assessment of \$100 dollars. If a probationary sentence is imposed, the probation period
18 can be for up to 5 years.

19 Defendant understands that supervised release is a period of time following
20 imprisonment during which Defendant will be subject to certain restrictive conditions and
21 requirements. Defendant further understands that, if supervised release is imposed and
22 Defendant violates one or more of the conditions or requirements, Defendant could be
23 returned to prison for all or part of the term of supervised release that was originally
24 imposed. This could result in Defendant serving a total term of imprisonment greater
25 than the statutory maximum stated above.

1 Defendant understands that as a part of any sentence, in addition to any term of
2 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
3 restitution to any victim of the offense, as required by law.

4 Defendant further understands that the consequences of pleading guilty may
5 include the forfeiture of certain property, either as a part of the sentence imposed by the
6 Court, or as a result of civil judicial or administrative process.

7 Defendant agrees that any monetary penalty the Court imposes, including the
8 special assessment, fine, costs, or restitution, is due and payable immediately and further
9 agrees to submit a completed Financial Disclosure Statement as requested by the United
10 States Attorney's Office.

11 Defendant understands that, if pleading guilty to a felony drug offense, Defendant
12 will become ineligible for certain food stamp and Social Security benefits as directed by
13 Title 21, United States Code, Section 862a.

14 **5. Immigration Consequences.** Defendant recognizes that pleading guilty
15 may have consequences with respect to Defendant's immigration status if Defendant is
16 not a citizen of the United States. Under federal law, a broad range of crimes are grounds
17 for removal, and some offenses make removal from the United States presumptively
18 mandatory. Removal and other immigration consequences are the subject of a separate
19 proceeding, and Defendant understands that no one, including Defendant's attorney and
20 the Court, can predict with certainty the effect of a guilty plea on immigration status.
21 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
22 immigration consequences that Defendant's guilty plea(s) may entail, even if the
23 consequence is Defendant's mandatory removal from the United States.

24 **6. Rights Waived by Pleading Guilty.** Defendant understands that by
25 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

26 a. The right to plead not guilty and to persist in a plea of not guilty;

1 b. The right to a speedy and public trial before a jury of Defendant's
2 peers;

3 c. The right to the effective assistance of counsel at trial, including, if
4 Defendant could not afford an attorney, the right to have the Court appoint one for
5 Defendant;

6 d. The right to be presumed innocent until guilt has been established
7 beyond a reasonable doubt at trial;

8 e. The right to confront and cross-examine witnesses against Defendant
9 at trial;

10 f. The right to compel or subpoena witnesses to appear on Defendant's
11 behalf at trial;

12 g. The right to testify or to remain silent at trial, at which trial such
13 silence could not be used against Defendant; and

14 h. The right to appeal a finding of guilt or any pretrial rulings.

15 7. **United States Sentencing Guidelines.** Defendant understands and
16 acknowledges that the Court must consider the sentencing range calculated under the
17 United States Sentencing Guidelines and possible departures under the Sentencing
18 Guidelines together with the other factors set forth in Title 18, United States Code,
19 Section 3553(a), including: (1) the nature and circumstances of the offense(s); (2) the
20 history and characteristics of Defendant; (3) the need for the sentence to reflect the
21 seriousness of the offense(s), to promote respect for the law, and to provide just
22 punishment for the offense(s); (4) the need for the sentence to afford adequate deterrence
23 to criminal conduct; (5) the need for the sentence to protect the public from further
24 crimes of Defendant; (6) the need to provide Defendant with educational and vocational
25 training, medical care, or other correctional treatment in the most effective manner; (7)
26 the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the
27 need to avoid unwarranted sentence disparity among defendants involved in similar

1 conduct who have similar records. Accordingly, Defendant understands and
2 acknowledges that:

3 a. The Court will determine Defendant's Sentencing Guidelines range
4 at the time of sentencing;

5 b. After consideration of the Sentencing Guidelines and the factors in
6 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
7 maximum term authorized by law;

8 c. The Court is not bound by any recommendation regarding the
9 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
10 range offered by the parties or the United States Probation Department, or by any
11 stipulations or agreements between the parties in this Plea Agreement; and

12 d. Defendant may not withdraw a guilty plea solely because of the
13 sentence imposed by the Court.

14 8. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
15 guaranteed what sentence the Court will impose.

16 9. **Statement of Facts.** The parties agree on the following facts. Defendant
17 admits Defendant is guilty of the charged offense:

18 a. On June 20, 2023, Bostick was a passenger on a flight from San
19 Diego, CA to Seattle, WA.

20 b. Bostick was seated in an aisle seat at the rear of the airplane, and an
21 adult female passenger, Victim-1, was seated next to him in the middle seat of a 3-seat
22 row.

23 c. During the flight Bostick touched Victim-1's knee with his fingers,
24 making circular motions.

25 d. Bostick moved his fingers to the outside of Victim-1's thigh and,
26 while continuously making contact, moved his fingers up her thigh between her knee and
27 her hip.

1 e. Towards the end of the flight, Victim-1 stood up from her seat to
2 allow the window passenger to pass through. When she did so, Bostick knowingly and
3 intentionally squeezed Victim-1's butt cheek with his hand.

4 f. When the other passenger came back to the row, Victim-1 again
5 stood from her seat to allow him to pass through. When she sat back down, Bostick again
6 knowingly and intentionally touched Victim-1's butt cheek with his hand.

7 g. Bostick did not know Victim-1 and did not have her permission to
8 touch her in anyway.

9 h. Bostick assaulted Victim-1 with the intent to engage in sexual
10 contact with Victim 1 without her permission. Specifically, Bostick assaulted Victim-1
11 with the intent to touch Victim-1's buttocks without her permission. He did so in order to
12 arouse his sexual desires.

13 i. This all occurred aboard an aircraft in flight within the special
14 aircraft jurisdiction of the United States.

15 The parties agree that the Court may consider additional facts contained in the
16 Presentence Report (subject to standard objections by the parties) and/or that may be
17 presented by the United States or Defendant at the time of sentencing, and that the factual
18 statement contained herein is not intended to limit the facts that the parties may present to
19 the Court at the time of sentencing.

20 10. **Sentencing Factors.** The parties agree that the following Sentencing
21 Guidelines provisions apply to this case:

22 a. The base offense level is 14 pursuant to U.S.S.G. § 2A2.2(a)

23 The parties agree they are free to present arguments regarding the applicability of
24 all other provisions of the United States Sentencing Guidelines. Defendant understands,
25 however, that at the time of sentencing, the Court is free to reject these stipulated
26 adjustments, and is further free to apply additional downward or upward adjustments in
27 determining Defendant's Sentencing Guidelines range.

1 It is the parties' expectation that this offense will not qualify, under current federal
2 law, as a federal sex offense pursuant to 34 USC § 20911(5). However, Defendant
3 understands that other jurisdictions, including the State of Washington and other states,
4 have their own statutes and codes that may differ from federal law, and that other
5 jurisdictions may consider this conviction as a sex offense. Furthermore, Defendant
6 understands that the parties' expectation on this issue is not binding on any court or
7 agency, including any federal court or agency, and a subsequent finding contrary to the
8 parties' expectation is not grounds for withdrawal of this plea agreement.

9 **11. Acceptance of Responsibility.** At sentencing, *if* the Court concludes
10 Defendant qualifies for a downward adjustment for acceptance of responsibility pursuant
11 to USSG § 3E1.1(a) and Defendant's offense level is 16 or greater, the United States will
12 make the motion necessary to permit the Court to decrease the total offense level by three
13 (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the
14 United States by timely notifying the United States of Defendant's intention to plead
15 guilty, thereby permitting the United States to avoid preparing for trial and permitting the
16 Court to allocate its resources efficiently.

17 **12. Agreed Recommendation Regarding Imprisonment.** Pursuant to
18 Federal Rule of Criminal Procedure 11(c)(1)(B), the parties jointly agree to recommend
19 that the appropriate term of imprisonment to be imposed by the Court at the time of
20 sentencing is a term of 9 months. Defendant understands that this recommendation is not
21 binding on the Court and the Court may reject the recommendation of the parties and
22 may impose any term of imprisonment up to the statutory maximum penalty authorized
23 by law. Defendant further understands that Defendant cannot withdraw a guilty plea
24 simply because of the sentence imposed by the Court. Except as otherwise provided in
25 this Plea Agreement, the parties are free to present arguments regarding any other aspect
26 of sentencing.

1 13. **Restitution.** Defendant agrees that the Court can order Defendant to pay
2 restitution to the victims of Defendant's crimes and, in exchange for the agreements by
3 the United States contained in this Plea Agreement, Defendant agrees that restitution in
4 this case should not be limited to the offense of conviction. Defendant is aware that the
5 United States will present evidence supporting an order of restitution for all losses caused
6 by all of Defendant's criminal conduct known to the United States at the time of
7 Defendant's guilty plea to include those losses resulting from crimes not charged or
8 admitted by Defendant in the Statement of Facts. In exchange for the promises by the
9 United States contained in this Plea Agreement, Defendant agrees that Defendant will be
10 responsible for any order by the District Court requiring the payment of restitution for
11 such losses.

12 a. The full amount of restitution shall be due and payable immediately
13 on entry of judgment and shall be paid as quickly as possible. If the Court finds that the
14 defendant is unable to make immediate restitution in full and sets a payment schedule as
15 contemplated in 18 U.S.C. § 3664(f), Defendant agrees that the Court's schedule
16 represents a minimum payment obligation and does not preclude the U.S. Attorney's
17 Office from pursuing any other means by which to satisfy the defendant's full and
18 immediately-enforceable financial obligation, including, but not limited to, by pursuing
19 assets that come to light only after the district court finds that the defendant is unable to
20 make immediate restitution.

21 b. Defendant agrees to disclose all assets in which Defendant has any
22 interest or over which Defendant exercises control, directly or indirectly, including those
23 held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the
24 United States' investigation identifying all property in which Defendant has an interest
25 and with the United States' lawful efforts to enforce prompt payment of the financial
26 obligations to be imposed in connection with this prosecution. Defendant's cooperation
27 obligations are: (1) before sentencing, and no more than 30 days after executing this Plea

1 Agreement, truthfully and completely executing a Financial Disclosure Statement
2 provided by the United States Attorney's Office and signed under penalty of perjury
3 regarding Defendant's and Defendant's spouse's financial circumstances and producing
4 supporting documentation, including tax returns, as requested; (2) providing updates
5 with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within
6 seven days of the event giving rise to the changed circumstances; (3) authorizing the
7 United States Attorney's Office to obtain Defendant's credit report before sentencing; (4)
8 providing waivers, consents or releases requested by the U.S. Attorney's Office to access
9 records to verify the financial information; (5) authorizing the U.S. Attorney's Office to
10 inspect and copy all financial documents and information held by the U.S. Probation
11 Office; (6) submitting to an interview regarding Defendant's Financial Statement and
12 supporting documents before sentencing (if requested by the United States Attorney's
13 Office), and fully and truthfully answering questions during such interview; and (7)
14 notifying the United States Attorney's Office before transferring any interest in property
15 owned directly or indirectly by Defendant, including any interest held or owned in any
16 other name, including all forms of business entities and trusts.

17 c. The parties acknowledge that voluntary payment of restitution prior
18 to the adjudication of guilt is a factor the Court considers in determining whether
19 Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a). In
20 addition, in any event, the government will consider Defendant's cooperation regarding
21 restitution in making its sentencing recommendation.

22 14. **Forfeiture of Assets.** Defendant understands the forfeiture of assets is part
23 of the sentence that must be imposed in this case. Defendant agrees to forfeit to the
24 United States immediately all of his right, title, and interest in any and all property, real
25 or personal, that was used, or intended to be used, in any manner or part, to commit, or to
26 facilitate the commission of Assault with Intent to Commit a Felony, the offense set forth
27 in Count 1 of the Superseding Information, and any property constituting, or derived

1 from, any proceeds Defendant obtained, directly or indirectly, as the result of this
2 offense. This property is subject to forfeiture pursuant to Title 18, United States Code,
3 Section 2253(a)(2) and (3).

4 Defendant agrees to fully assist the United States in the forfeiture of the above-
5 described property and to take whatever steps are necessary to pass clear title to the
6 United States, including but not limited to: surrendering title and executing any
7 documents necessary to effect forfeiture; assisting in bringing any property located
8 outside the United States within the jurisdiction of the United States; and taking whatever
9 steps are necessary to ensure that property subject to forfeiture is not sold, disbursed,
10 wasted, hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to
11 file a claim to any such property in any federal forfeiture proceeding, administrative or
12 judicial, which may be or has been initiated. Defendant also agrees he will not assist any
13 party who may file a claim to this property in any federal forfeiture proceeding.

14 The United States reserves its right to proceed against any remaining property not
15 identified in this Plea Agreement, including any property in which Defendant has any
16 interest or control, if said assets constitute or are derived from proceeds of, or were used
17 or intended to be used to facilitate, the offense set forth in Count 1 of the Superseding
18 Information.

19 **15. Abandonment of Contraband.** Defendant also agrees that, if any federal
20 law enforcement agency seized any illegal contraband that was in Defendant's direct or
21 indirect control, Defendant consents to the federal administrative disposition, official use,
22 and/or destruction of that contraband.

23 **16. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
24 the United States Attorney's Office for the Western District of Washington agrees not to
25 prosecute Defendant for any additional offenses known to it as of the time of this Plea
26 Agreement based upon evidence in its possession at this time, and that arise out of the
27 conduct giving rise to this investigation and moves to dismiss the remaining counts in the

1 Indictment at the time of sentencing. In this regard, Defendant recognizes the United
2 States has agreed not to prosecute all of the criminal charges the evidence establishes
3 were committed by Defendant solely because of the promises made by Defendant in this
4 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
5 Presentence Report, the United States Attorney's Office will provide the United States
6 Probation Office with evidence of all conduct committed by Defendant.

7 Defendant agrees that any charges to be dismissed before or at the time of
8 sentencing were substantially justified in light of the evidence available to the United
9 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
10 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
11 (1997).

12 **17. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
13 Defendant breaches this Plea Agreement: (a) the United States may withdraw from this
14 Plea Agreement and Defendant may be prosecuted for all offenses for which the United
15 States has evidence; (b) Defendant will not oppose any steps taken by the United States
16 to nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
17 Agreement; and (c) Defendant waives any objection to the re-institution of any charges
18 that previously were dismissed or any additional charges that had not been prosecuted.

19 Defendant further understands that if, after the date of this Plea Agreement,
20 Defendant should engage in illegal conduct, or conduct that violates any conditions of
21 release or the conditions of confinement (examples of which include, but are not limited
22 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while
23 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
24 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement
25 to file additional charges against Defendant or to seek a sentence that takes such conduct
26 into consideration by requesting the Court to apply additional adjustments or
27 enhancements in its Sentencing Guidelines calculations in order to increase the applicable

1 advisory Guidelines range, and/or by seeking an upward departure or variance from the
2 calculated advisory Guidelines range. Under these circumstances, the United States is
3 free to seek such adjustments, enhancements, departures, and/or variances even if
4 otherwise precluded by the terms of the Plea Agreement.

5 **18. Waiver of Appellate Rights and Rights to Collateral Attacks.**

6 Defendant acknowledges that, by entering the guilty plea required by this Plea
7 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
8 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
9 judgment of conviction. Defendant further agrees that, provided the Court imposes a
10 custodial sentence that is within or below the Sentencing Guidelines range (or the
11 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
12 Court at the time of sentencing, Defendant waives to the full extent of the law:

13 a. Any right conferred by Title 18, United States Code, Section 3742,
14 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
15 restitution order, probation or supervised release conditions, or forfeiture order (if
16 applicable); and

17 b. Any right to bring a collateral attack against the conviction and
18 sentence, including any restitution order imposed, except as it may relate to the
19 effectiveness of legal representation.

20 This waiver does not preclude Defendant from bringing an appropriate motion
21 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
22 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

23 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
24 attacking (except as to effectiveness of legal representation) the conviction or sentence in
25 any way, the United States may prosecute Defendant for any counts, including those with
26 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
27 Agreement.

1 19. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into
2 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
3 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
4 Agreement or set forth on the record at the change of plea hearing in this matter.

5 20. **Statute of Limitations.** In the event this Plea Agreement is not accepted
6 by the Court for any reason, or Defendant breaches any of the terms of this Plea
7 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
8 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
9 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
10 of the Plea Agreement by Defendant is discovered by the United States Attorney’s
11 Office.


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21. **Completeness of Plea Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties, except as may be set forth on the record at the change of plea hearing in this matter. This Plea Agreement binds only the United States Attorney’s Office for the Western District of Washington. It does not bind any other United States Attorney’s Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 11th day of April, 2024.



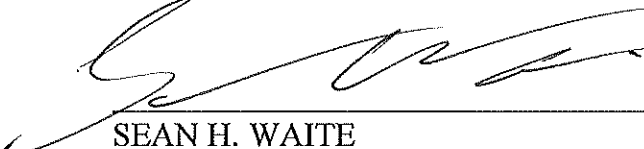
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