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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12  
13

14 UNITED STATES OF AMERICA, ) NO. 19-0381-04 CRB  
15 Plaintiff, ) PLEA AGREEMENT  
16 v. )  
17 ALLAN JOSUE FUNEZ OSORTO, )  
18 Defendant. )  
19

20 I, Allan Josue Funez Osorto, and the United States Attorney’s Office for the Northern District of  
21 California (hereafter “the government”) enter into this written Plea Agreement (the “Agreement”)  
22 pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant’s Promises

24 1. I agree to plead guilty to Count One of the Superseding Information charging me with  
25 Conspiracy to Distribute Controlled Substances, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(C). I  
26 agree that the elements of the offense are as follows: (1) beginning on a date unknown, but no later than  
27 January 2019, there was an agreement between me and others to distribute controlled substances; and (2)  
28

1 I joined in the agreement knowing of its purpose and intending to help accomplish that purpose.

2 I agree that the maximum penalties are as follows:

- 3 a. Maximum prison term 20 years
- 4 b. Maximum fine \$ 1,000,000
- 5 c. Maximum supervised release term life
- 6 d. Minimum supervised release term 3 years
- 7 e. Mandatory special assessment \$100 per felony count
- 8 f. Potential Deportation
- 9 g. Forfeiture
- 10
- 11 h. Mandatory and discretionary denial of federal benefits upon conviction of drug offenses,  
21 U.S.C. § 862 and § 862a.
- 12

13 I acknowledge that it is virtually certain that pleading guilty will have consequences with respect  
 14 to my immigration status if I am not a natural born citizen of the United States. Under federal law, a  
 15 broad range of crimes are removable offenses, including the offense to which I am pleading guilty.  
 16 Removal and other immigration consequences are the subject of a separate proceeding, however, and I  
 17 understand that no one, including my attorney or the district court, can predict to a certainty the effect of  
 18 this conviction on my immigration status. I nevertheless affirm that I want to plead guilty regardless of  
 19 any immigration consequences that may result from my guilty plea, even if the consequence is my  
 20 automatic removal from the United States. I also acknowledge that there are no identical or  
 21 substantially similar charges to non-removable offenses to which the government would agree.

22 2. I agree that I am guilty of the offense to which I am pleading guilty, and I agree that the  
 23 following facts are true:

24 I am a citizen of Honduras. At some point, but no later than January 2019, I entered the United  
 25 States and began living in Oakland, California, which is in the Northern District of California.

26 From at least January 2019 to the time of my arrest in August 2019, I agreed with an individual  
 27 who I will call “Co-Conspirator 1” and others to distribute controlled substances, including heroin,  
 28 methamphetamine, and cocaine base, in the Tenderloin neighborhood of San Francisco. I entered into

1 this agreement knowing of its purpose – namely, distributing drugs – and with the intent to accomplish  
2 that purpose.

3 Co-Conspirator 1 typically helped find housing for individuals, like myself, who distributed  
4 drugs for him/her. Co-Conspirator 1 found residences in Oakland, California where I, and others  
5 working for Co-Conspirator 1, lived. By living in the residence, I understood that I needed to purchase  
6 drugs from Co-Conspirator 1, which I would then resell in the Tenderloin.

7 In June 2019, I lived at one such residence located on 103rd Avenue in Oakland. I was arrested  
8 that month after law enforcement executed a search warrant on the house. During the search, law  
9 enforcement found and seized drugs that were related to the drug trafficking conspiracy. They also  
10 seized \$4,465 that I agree were proceeds of prior drug sales completed by members of the conspiracy.

11 After my arrest, with the help of Co-Conspirator 1, I moved to an apartment on High Street in  
12 Oakland. At that time, I continued buying drugs from Co-Conspirator 1 and selling them in the  
13 Tenderloin. On August 6, 2019, law enforcement executed a search warrant at the High Street  
14 apartment. During the search, law enforcement found and seized drugs that were related to the drug  
15 trafficking conspiracy. They also seized \$6,895 that I agree were proceeds of prior drug sales completed  
16 by members of the conspiracy.

17 I stipulate and agree that it was within the scope of the agreement with my co-conspirators and  
18 reasonably foreseeable to me that the conspiracy would distribute at least 700 kilograms of converted  
19 drug weight as defined in the U.S. Sentencing Guidelines, but less than 1,000 kilograms of converted  
20 drug weight.

21 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the  
22 rights to a jury trial with the assistance of an attorney; to confront and cross-examine government  
23 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth  
24 Amendment claims; to any further discovery from the government; and to pursue any affirmative  
25 defenses and present evidence.

26 4. I agree to give up my right to appeal my conviction, including constitutional challenges  
27 to the statutes of conviction. I agree to give up my right to appeal the judgment and all orders of the  
28

1 Court. I also agree to give up my right to appeal any aspect of my sentence, including any orders  
2 relating to forfeiture and/or restitution, reserving only my right to claim that my sentence violated this  
3 plea agreement, applicable law, or the Constitution. I reserve my right to claim that my counsel was  
4 ineffective. I understand that this waiver includes, but is not limited to, any and all constitutional or  
5 legal challenges to my conviction and guilty plea, including arguments that the statutes to which I am  
6 pleading guilty are unconstitutional, and any and all claims that the statement of facts provided herein is  
7 insufficient to support my plea of guilty.

8 5. I agree not to file any collateral attack on my conviction or sentence, including a petition  
9 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was  
10 ineffective. I agree not to move the Court to modify my sentence under 3582(c)(1)(A) until I have fully  
11 exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring such a motion on  
12 my behalf, unless the BOP has not finally resolved my appeal within 180 days of my request despite my  
13 seeking review within ten days of each decision.

14 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered. In  
15 the event I violate any of the terms of the Agreement, I agree that the facts set forth in Paragraph 2 of  
16 this Agreement and, if applicable, the fact that I made a sworn admission to them in a previous court  
17 proceeding, shall be admissible against me in any subsequent proceeding, including at trial. In any  
18 subsequent proceeding conducted after I violate any of the terms of the Agreement, I expressly waive  
19 any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in  
20 Paragraph 2 of the Agreement and, if applicable, the fact that I made a sworn admission to them at a  
21 previous court proceeding.

22 7. I understand that the Court must consult the United States Sentencing Guidelines and  
23 take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I  
24 also understand that the Court is not bound by the Guidelines calculations below; the Court may  
25 conclude that a higher Guidelines range applies to me, and, if it does, I will not be entitled, nor will I  
26 ask, to withdraw my guilty plea. I further agree that regardless of the sentence that the Court imposes on  
27 me, I will not be entitled, nor will I ask, to withdraw my guilty plea. I agree that the Sentencing  
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Guidelines offense level should be calculated as set forth below, and that I will not request a downward departure under the Sentencing Guidelines from that offense level although I reserve the right to seek a downward variance based on the factors set forth in 18 U.S.C. § 3553(a). I understand that the government is free to oppose any such request. I further understand that, following enactment of the FIRST STEP Act (Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act) of 2018 on December 21, 2018, and the amendment to 18 U.S.C. § 3553(f)(1), the U.S. Sentencing Commission may issue an amendment to the Sentencing Guidelines governing the applicability of statutory mandatory minimums in certain cases (U.S.S.G. § 5C1.2(a)(1)) that would lower the adjusted offense level by two levels if I also otherwise meet the requirements of U.S.S.G. § 5C1.2(a)(2) through (5). *See* U.S.S.G. § 2D1.1(b)(18). The parties thus agree that a two-level variance is appropriate if: (1) I do not have any of the following: (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the Sentencing Guidelines; (B) a prior 3-point offense, as determined under the Sentencing Guidelines; and (C) a prior 2-point violent offense, as determined under the Sentencing Guidelines; and (2) I meet the other requirements of 18 U.S.C. 3553(f)(2) through (5) and the requirements of U.S.S.G. § 5C1.2(a)(2) through (5). I acknowledge that, by this agreement, I am receiving the benefit of any such modification of the Sentencing Guidelines. Consequently, consistent with my agreement in paragraph 5 of this agreement not to seek relief under 18 U.S.C. § 3582, I will not seek any further reduction of my sentence based on any such modification of the Sentencing Guidelines. I acknowledge that the Guidelines computation set forth below does not incorporate this two-level variance. The parties have reached no agreement regarding my Criminal History Category.

- a. Base Offense Level, U.S.S.G. §§ 2D1.1(a)(5), (c)(6): 28  
(At least 700 KG but less than 1,000 KG of Converted Drug Weight)
- b. Acceptance of Responsibility: - 3  
If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a three-level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing.
- c. Adjusted Offense Level: 25

1 8. I agree that regardless of any other provision of this Agreement, the government may and  
2 will provide the Court and the Probation Office with all information relevant to the charged offense and  
3 the sentencing decision, including Victim Impact Statements. I agree that, based on the nature of the  
4 offense, the Court should impose the following special condition of supervised release which is  
5 reasonably related to deterrence and rehabilitation:

6 //

7 Special Condition (Searches)

8 The defendant shall submit his person, residence, office, vehicle, electronic devices and  
9 their data (including cell phones, computers, and electronic storage media), and any  
10 property under defendant’s control to a search. Such a search shall be conducted by a  
11 United States Probation Officer or any federal, state, or local law enforcement officer at  
12 any time, with or without suspicion. Failure to submit to such a search may be grounds  
13 for revocation; the defendant shall warn any residents that the premises may be subject to  
14 searches.

15 9. I agree that I will make a good-faith effort to pay any fine, forfeiture, or restitution I am  
16 ordered to pay. I agree to pay the special assessment at the time of sentencing.

17 10. I agree not to commit or attempt to commit any crimes before sentence is imposed or  
18 before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not  
19 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the  
20 government; and not to fail to comply with any of the other promises I have made in this Agreement. I  
21 agree that if I fail to comply with any promises I have made in this Agreement, then the government will  
22 be released from all of its promises in this Agreement, including those set forth in The Government’s  
23 Promises Section below, but I will not be released from my guilty plea.

24 I agree that upon entry of my guilty plea, I am subject to the mandatory remand provision of 18  
25 U.S.C. § 3143(a)(2), and that I agree to remain in the custody of the U.S. Marshal pending sentencing.  
26 under 18 U.S.C. § 3145(c).

27 11. I agree to forfeit my interest in the following property (hereinafter “subject property”):

- 28 a. \$4,465 in cash seized on June 21, 2019 from a residence on 103rd Avenue in Oakland,  
California.

I admit that the subject property was proceeds from the drug trafficking conspiracy, and thus is  
forfeitable to the United States pursuant to the provisions of 21 U.S.C. § 853 and the procedures outlined

1 in Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853. I relinquish any and all  
2 right, title, and interest I may have in the subject property and agree that such right, title, and interest can  
3 be forfeited to the United States without further notice to me. I also agree I will not contest any  
4 administrative or judicial forfeiture proceeding (whether criminal, civil, state or federal) that may be  
5 brought against said property. I further agree to waive all constitutional and statutory challenges in any  
6 manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in  
7 accordance with this Agreement on any grounds, including that the forfeiture constitutes an excessive  
8 fine or punishment or that the forfeiture proceeding was brought in violation of the statute of limitations.

9 12. Understanding that the government has in its possession digital devices and/or digital  
10 media belonging to and seized from me, I waive any right to the return of digital data contained on those  
11 digital devices and/or digital media and agree that if any of these digital devices and/or digital media are  
12 returned to me, the government may delete all digital data from those digital devices and/or digital  
13 media before they are returned to me.

14 13. I agree that this Agreement contains all of the promises and agreements between the  
15 government and me, and I will not claim otherwise in the future. No modification of this Agreement  
16 shall be effective unless it is in writing and signed by all parties.

17 14. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of  
18 California only, and does not bind any other federal, state, or local agency.

19 The Government's Promises

20 15. The government agrees to move to dismiss any open charges pending against the  
21 defendant in the captioned Indictment at the time of sentencing.

22 16. The government agrees not to file any additional charges against the defendant that could  
23 be filed as a result of the investigation that led to the captioned Indictment and Superseding Information.

24 17. The government agrees to recommend a sentence within the range associated with the  
25 Guidelines calculation set out in paragraph 7 above, along with a two-level reduction, if determined to  
26 be applicable by the Court, following passage of the FIRST STEP Act, unless the defendant violates the  
27 terms of the Agreement above or fails to accept responsibility.

1 The Defendant's Affirmations

2 18. I confirm that I have had adequate time to discuss this case, the evidence, and the  
3 Agreement with my attorney and that my attorney has provided me with all the legal advice that I  
4 requested.

5 19. I confirm that while I considered signing this Agreement, and at the time I signed it, I  
6 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand  
7 the Agreement.

8 20. I confirm that my decision to enter a guilty plea is made knowing the charges that have  
9 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to  
10 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or  
11 threatened me to enter into this Agreement.


12 21. I confirm that I read this entire Plea Agreement with the assistance of a Spanish language  
13 interpreter and in the presence of my attorney.

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_  
ALLAN JOSUE FUNEZ OSORTO  
Defendant

17  
18 DAVID L. ANDERSON  
United States Attorney

19  
20 Dated: May 4, 2020

  
\_\_\_\_\_  
SAILAJA M. PAIDIPATY  
Assistant United States Attorney

22 22. I have fully explained to my client all the rights that a criminal defendant has and all the  
23 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all  
24 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my  
25 client's decision to plead guilty is knowing and voluntary.

26  
27 Dated: \_\_\_\_\_

\_\_\_\_\_  
ADAM GASNER  
Attorney for Defendant



1 The Defendant's Affirmations

2 18. I confirm that I have had adequate time to discuss this case, the evidence, and the  
3 Agreement with my attorney and that my attorney has provided me with all the legal advice that I  
4 requested.

5 19. I confirm that while I considered signing this Agreement, and at the time I signed it, I  
6 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand  
7 the Agreement.

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9 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to  
10 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or  
11 threatened me to enter into this Agreement.

12 21. I confirm that I read this entire Plea Agreement with the assistance of a Spanish language  
13 interpreter and in the presence of my attorney.

14  
15 Dated: 5-4-20

  
for Allan Josue Funez Osorto  
ALLAN JOSUE FUNEZ OSORTO  
Defendant


17  
18 DAVID L. ANDERSON  
United States Attorney

19  
20 Dated: \_\_\_\_\_

\_\_\_\_\_  
SAILAJA M. PAIDIPATY  
Assistant United States Attorney

21  
22 22. I have fully explained to my client all the rights that a criminal defendant has and all the  
23 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all  
24 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my  
25 client's decision to plead guilty is knowing and voluntary.

26  
27 Dated: 5-4-20

  
ADAM GASNER  
Attorney for Defendant

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INTERPRETER CERTIFICATION

I, \_\_\_\_\_, hereby certify that I am a certified Spanish language interpreter and that I accurately translated this Agreement to the defendant.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Interpreter's Signature

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INTERPRETER CERTIFICATION

I, Nina Safdie, hereby certify that I am a certified Spanish language interpreter and that I accurately translated this Agreement to the defendant.


Dated: 5/4/2020

DocuSigned by:  
Nina Safdie  
10558CA9BAE645B...  
Interpreter's Signature

**TRANSLATOR'S STATEMENT**

I, Nina Safdie, do hereby affirm that I am an English-Spanish, Spanish-English interpreter/translator duly certified by the Administrative Office of the U.S. Courts and by the State of California. I certify that the attached document is a true and correct translation of the document provided to me, to the best of my knowledge and ability and without bias or favor to any of the parties to any of the proceedings in which this translation is used.

1/27/20  
Date

  
Nina Safdie

Nina Safdie  
State & Federal Court Certified Spanish Interpreter/Translator  
615 C Street, San Rafael, CA 94901  
(415-990-2194)  
State Certification No.: 292302  
Federal Certification No.: 93-523