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 10 Attorneys for Plaintiff  
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JASON FONG,

17 Defendant.

No. SA CR 20-00146(B)-DOC

PLEA AGREEMENT FOR DEFENDANT  
JASON FONG

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

25 DEFENDANT'S OBLIGATIONS

26 2. Defendant agrees to:

27  
 28

1 a. Give up the right to indictment by a grand jury and,  
2 at the earliest opportunity requested by the USAO and provided by the  
3 Court, appear and plead guilty to a single-count Second Superseding  
4 Information in the form attached to this agreement as Exhibit A or a  
5 substantially similar form, which charges defendant with making false  
6 statements involving international terrorism, in violation of Title  
7 18, United States Code, Section 1001(a)(2).

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

9 c. Abide by all agreements regarding sentencing contained  
10 in this agreement.

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

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

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

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

23 THE USAO'S OBLIGATIONS

24 3. The USAO agrees to:

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

26 b. Abide by all agreements regarding sentencing contained  
27 in this agreement.

1 c. At the time of sentencing, move to dismiss the  
2 Information (Dkt. 1) and First Superseding Indictment (Dkt. 110) as  
3 against defendant. Defendant agrees, however, that at the time of  
4 sentencing the Court may consider any dismissed charges in  
5 determining the applicable Sentencing Guidelines range, the propriety  
6 and extent of any departure from that range, and the sentence to be  
7 imposed.

8 d. At the time of sentencing, provided that defendant  
9 demonstrates an acceptance of responsibility for the offense up to  
10 and including the time of sentencing, recommend a two-level reduction  
11 in the applicable Sentencing Guidelines offense level, pursuant to  
12 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an  
13 additional one-level reduction if available under that section.

14 NATURE OF THE OFFENSE

15 4. Defendant understands that for defendant to be guilty of  
16 the crime charged in the Second Superseding Information, that is,  
17 making false statements involving international terrorism, in  
18 violation of Title 18, United States Code, Section 1001(a)(2), the  
19 following must be true: (1) defendant made a false statement; (2) the  
20 statement was made in a matter within the jurisdiction of the Federal  
21 Bureau of Investigation ("FBI"); (3) defendant acted willfully; that  
22 is, the defendant acted deliberately and with knowledge both that the  
23 statement was untrue and that his conduct was unlawful; and (4) the  
24 statement was material to the activities or decisions of the FBI;  
25 that is, it had a natural tendency to influence, or was capable of  
26 influencing, the agency's decisions or activities.



1 federal crime for a convicted felon to possess a firearm or  
2 ammunition. Defendant understands that the conviction in this case  
3 may also subject defendant to various other collateral consequences,  
4 including but not limited to revocation of probation, parole, or  
5 supervised release in another case and suspension or revocation of a  
6 professional license. Defendant understands that unanticipated  
7 collateral consequences will not serve as grounds to withdraw  
8 defendant's guilty plea.

9 9. Defendant and his counsel have discussed the fact that, and  
10 defendant understands that, if defendant is not a United States  
11 citizen, the conviction in this case makes it practically inevitable  
12 and a virtual certainty that defendant will be removed or deported  
13 from the United States. Defendant may also be denied United States  
14 citizenship and admission to the United States in the future.  
15 Defendant understands that while there may be arguments that  
16 defendant can raise in immigration proceedings to avoid or delay  
17 removal, removal is presumptively mandatory and a virtual certainty  
18 in this case. Defendant further understands that removal and  
19 immigration consequences are the subject of a separate proceeding and  
20 that no one, including his attorney or the Court, can predict to an  
21 absolute certainty the effect of his conviction on his immigration  
22 status. Defendant nevertheless affirms that he wants to plead guilty  
23 regardless of any immigration consequences that his plea may entail,  
24 even if the consequence is automatic removal from the United States

25 FACTUAL BASIS

26 10. Defendant admits that defendant is, in fact, guilty of the  
27 offense to which defendant is agreeing to plead guilty. Defendant  
28

1 and the USAO agree to the statement of facts provided below and agree  
2 that this statement of facts is sufficient to support a plea of  
3 guilty to the charge described in this agreement and to establish the  
4 Sentencing Guidelines factors set forth in paragraph 12 below but is  
5 not meant to be a complete recitation of all facts relevant to the  
6 underlying criminal conduct or all facts known to either party that  
7 relate to that conduct.

8 The Federal Investigation

9 At all relevant times, the FBI was conducting a federal criminal  
10 investigation involving international terrorism into the  
11 dissemination of certain materials and information by defendant  
12 through various online chat communications, a matter within the  
13 jurisdiction of the executive branch of the government of the United  
14 States, namely, the FBI (the "Federal Investigation").

15 Specifically, the FBI received information that in February  
16 2020, defendant had created a chat group called "Mujahideen in  
17 America" on an online communication application with end-to-end  
18 encryption (hereinafter, the "Chat Group"). Among the individuals  
19 the defendant invited into the Chat Group were "Person 1," an Online  
20 Covert Employee (the "OCE"), and others.

21 Defendant also had private chat conversations with Person 1, the  
22 OCE, and others from the Chat Group throughout February to May 2020.  
23 In certain of these chats, Person 1 expressed interest in joining  
24 Hay'at Tahrir Al-Sham ("HTS"), a designated foreign terrorist  
25 organization. The OCE expressed interest in participating in jihad  
26 generally.

1 On April 24 and 25, 2020, defendant met with the OCE in person  
2 in California. During their meeting, they discussed potentially  
3 traveling to Syria or elsewhere to join Malhama Tactical, a Syrian  
4 organization training fighters.

5 False Statements in May 20, 2020 FBI Interview

6 On or about May 20, 2020, the FBI interviewed defendant  
7 regarding the Federal Investigation. During the recorded interview,  
8 after being advised of his Miranda rights and being advised that it  
9 was a crime to lie to the federal government, defendant knowingly and  
10 willfully made the following materially false statements, among  
11 others, to the FBI:

12 Defendant falsely stated that he had not had contact with anyone  
13 who expressed interest in joining a foreign terrorist organization.  
14 In fact, defendant knew that Person 1 had told defendant that he  
15 wanted to join HTS, which was a foreign terrorist organization.  
16 Defendant also falsely stated that that he had never met in person  
17 with any of the individuals that he communicated with in the Chat  
18 Group. In fact, defendant knew that he had met in person with the  
19 OCE on April 24 and 25, 2020.

20 SENTENCING FACTORS

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

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

8 Base Offense Level: 14 U.S.S.G. § 2J1.2

9 Offense Relating to  
10 International Terrorism +12 U.S.S.G. § 2J1.2(b)(1)(C)

11 Defendant and the USAO reserve the right to argue that additional  
12 specific offense characteristics, adjustments, and departures under  
13 the Sentencing Guidelines are appropriate.

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

16 14. Defendant and the USAO reserve the right to argue for a  
17 sentence outside the sentencing range established by the Sentencing  
18 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),  
19 (a)(2), (a)(3), (a)(6), and (a)(7).

20 WAIVER OF CONSTITUTIONAL RIGHTS

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

- 23 a. The right to persist in a plea of not guilty.  
24 b. The right to a speedy and public trial by jury.  
25 c. The right to be represented by counsel -- and if  
26 necessary have the Court appoint counsel -- at trial. Defendant  
27 understands, however, that, defendant retains the right to be  
28



1 represented by counsel -- and if necessary have the Court appoint  
2 counsel -- at every other stage of the proceeding.

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

6 e. The right to confront and cross-examine witnesses  
7 against defendant.

8 f. The right to testify and to present evidence in  
9 opposition to the charges, including the right to compel the  
10 attendance of witnesses to testify.

11 g. The right not to be compelled to testify, and, if  
12 defendant chose not to testify or present evidence, to have that  
13 choice not be used against defendant.

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

17 WAIVER OF APPEAL OF CONVICTION

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



1 conviction. Defendant understands that this waiver includes, but is  
2 not limited to, arguments that the statute to which defendant is  
3 pleading guilty is unconstitutional, and any and all claims that the  
4 statement of facts provided herein is insufficient to support  
5 defendant's plea of guilty.

6 RESULT OF WITHDRAWAL OF GUILTY PLEA

7 20. Defendant agrees that if, after entering a guilty plea  
8 pursuant to this agreement, defendant seeks to withdraw and succeeds  
9 in withdrawing defendant's guilty plea on any basis other than a  
10 claim and finding that entry into this plea agreement was  
11 involuntary, then (a) the USAO will be relieved of all of its  
12 obligations under this agreement; and (b) should the USAO choose to  
13 pursue any charge that was either dismissed or not filed as a result  
14 of this agreement, then (i) any applicable statute of limitations  
15 will be tolled between the date of defendant's signing of this  
16 agreement and the filing commencing any such action; and  
17 (ii) defendant waives and gives up all defenses based on the statute  
18 of limitations, any claim of pre-indictment delay, or any speedy  
19 trial claim with respect to any such action, except to the extent  
20 that such defenses existed as of the date of defendant's signing this  
21 agreement.

22 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

23 21. Defendant agrees that if the count of conviction is  
24 vacated, reversed, or set aside, both the USAO and defendant will be  
25 released from all their obligations under this agreement.  
26  
27  
28



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

6           c. Defendant agrees that: (i) any statements made by  
7 defendant, under oath, at the guilty plea hearing (if such a hearing  
8 occurred prior to the breach); (ii) the agreed to factual basis  
9 statement in this agreement; and (iii) any evidence derived from such  
10 statements, shall be admissible against defendant in any such action  
11 against defendant, and defendant waives and gives up any claim under  
12 the United States Constitution, any statute, Rule 410 of the Federal  
13 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
14 Procedure, or any other federal rule, that the statements or any  
15 evidence derived from the statements should be suppressed or are  
16 inadmissible.

17           COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

18                           OFFICE NOT PARTIES

19           25. Defendant understands that the Court and the United States  
20 Probation and Pretrial Services Office are not parties to this  
21 agreement and need not accept any of the USAO's sentencing  
22 recommendations or the parties' agreements to facts or sentencing  
23 factors.

24           26. Defendant understands that both defendant and the USAO are  
25 free to: (a) supplement the facts by supplying relevant information  
26 to the United States Probation and Pretrial Services Office and the  
27 Court, (b) correct any and all factual misstatements relating to the  
28

1 Court's Sentencing Guidelines calculations and determination of  
2 sentence, and (c) argue on appeal and collateral review that the  
3 Court's Sentencing Guidelines calculations and the sentence it  
4 chooses to impose are not error, although each party agrees to  
5 maintain its view that the calculations in paragraph 12 are  
6 consistent with the facts of this case. While this paragraph permits  
7 both the USAO and defendant to submit full and complete factual  
8 information to the United States Probation and Pretrial Services  
9 Office and the Court, even if that factual information may be viewed  
10 as inconsistent with the facts agreed to in this agreement, this  
11 paragraph does not affect defendant's and the USAO's obligations not  
12 to contest the facts agreed to in this agreement.

13 27. Defendant understands that even if the Court ignores any  
14 sentencing recommendation, finds facts or reaches conclusions  
15 different from those agreed to, and/or imposes any sentence up to the  
16 maximum established by statute, defendant cannot, for that reason,  
17 withdraw defendant's guilty plea, and defendant will remain bound to  
18 fulfill all defendant's obligations under this agreement. Defendant  
19 understands that no one -- not the prosecutor, defendant's attorney,  
20 or the Court -- can make a binding prediction or promise regarding  
21 the sentence defendant will receive, except that it will be within  
22 the statutory maximum.

23 NO ADDITIONAL AGREEMENTS

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

3 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

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

7 AGREED AND ACCEPTED

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

11 E. MARTIN ESTRADA  
12 United States Attorney

13 

14 CHRISTINE RO  
15 SOLOMON KIM  
16 Assistant United States Attorneys

3/21/2023

Date

17 

18 ID CscMWZhD1S3X2maGKMgcLoh

19 JASON FONG  
20 Defendant

3/21/2023

Date

21 

22 ID suPIHNd8u3YyEb5qb5gHdw29

23 KARREN KENNEY  
24 CHARLES SWIFT  
25 Attorneys for Defendant JASON FONG

3/21/2023

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

  
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3/21/2023

JASON FONG  
Defendant

Date



CERTIFICATION OF DEFENDANT’S ATTORNEY

I am JASON FONG’s attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his 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. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client’s decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client’s entry of a guilty plea pursuant to this agreement.

*Karren Kenney*

ID YySNuKL1fEsf5gKWtnUVbpF

3/21/2023

KARREN KENNEY  
CHARLES SWIFT  
Attorneys for Defendant JASON FONG

Date