

SK:FJN/GK/TBM  
F. #2014R01920 /OCDETF #NY-NYE-764

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

DAIRO ANTONIO USUGA DAVID,  
also known as "Otoniel, "Mao,"  
"Gallo" and "Mauricio-Gallo,"

14-CR-625 (S-4) (DLI)  
23-CR-021 (DLI)  
23-CR-027 (DLI)

Defendant.

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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York, the United States Attorney's Office for the Southern District of Florida, and the United States Attorney's Office for the Southern District of New York (collectively, the "Offices") and DAIRO ANTONIO USUGA DAVID (the "defendant") agree to the following:

The Eastern District of New York Indictment:

1. The defendant will plead guilty to Count One of the fourth superseding indictment in United States v. Dairo Antonio Usuga David, et al., 14-CR-625 (S-4) (DLI) (E.D.N.Y.) (the "EDNY Indictment"), charging a violation of 21 U.S.C. § 848. The count carries the following statutory penalties:

- a. Maximum term of imprisonment: life<sup>1</sup>  
(21 U.S.C. § 848(a)).

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<sup>1</sup> When the United States requested extradition of the defendant from Colombia, it agreed that it would not seek a sentence of life imprisonment. Therefore, although the defendant understands that the crimes to which he is pleading guilty each carry a maximum sentence of life imprisonment, the government will not seek a sentence of life imprisonment in this case.



- b. Minimum term of imprisonment: 20 years  
(21 U.S.C. § 848(a)).
- c. Maximum supervised release term: 5 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 5 years without credit for pre-release imprisonment or time previously served on post-release supervision  
(18 U.S.C. § 3583 (b) and (e)).
- d. Maximum fine: \$2,000,000  
(21 U.S.C. § 848(a)).
- e. Restitution: N/A.
- f. \$100 special assessment  
(18 U.S.C. § 3013).
- g. Other penalties: criminal forfeiture, as set forth below in paragraphs 8 through 15; removal, as set forth below in paragraph 16  
(21 U.S.C. §§ 853(a) and 853(p)).

The Southern District of Florida Indictment:

2. In connection with the indictment in United States v. Dairo Antonio Usuga David, 15-CR-20403-WPD(s) (S.D.F.L.) (the "SDFL Indictment"), the defendant will consent to transfer the case from the Southern District of Florida to the Eastern District of New York for plea and sentencing, pursuant to Rule 20 of the Federal Rules of Criminal Procedure, and plead guilty to Count Two of the superseding indictment, which has been assigned EDNY docket number 23-CR-021 (DLI), charging a violation of 46 U.S.C. §§ 70506(b), 70506(a) and 21 U.S.C. § 960(b)(1)(B). The count carries the following statutory penalties:

- a. Maximum term of imprisonment: life  
(21 U.S.C. § 960(b)(1)(B)).
- b. Minimum term of imprisonment: 10 years  
(21 U.S.C. § 960(b)(1)(B)).

- c. Minimum supervised release term: 5 years, maximum supervised release term: life, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 5 years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. § 3583 (e); 21 U.S.C. § 960(b)(1)(B)).
- d. Maximum fine: \$10,000,000 (21 U.S.C. § 960(b)(1)(B)).
- e. Restitution: N/A.
- f. \$100 special assessment (18 U.S.C. § 3013).
- g. Other penalties: criminal forfeiture, as set forth below in paragraphs 8 through 15; removal, as set forth below in paragraph 16 (21 U.S.C. §§ 853(p) and 881(a), 28 U.S.C. § 2461(c) and 46 U.S.C. § 70507(a)).

The Southern District of New York Indictment:

3. In connection with the indictment in United States v. Dairo Antonio Usuga David, et. al., 04-CR-962 (S-3) (LAP) (S.D.N.Y.) (the “SDNY Indictment”), the defendant will consent to transfer the case from the Southern District of New York to the Eastern District of New York for plea and sentencing, pursuant to Rule 20 of the Federal Rules of Criminal Procedure, and plead guilty to Count Two of the third superseding indictment, which has been assigned EDNY docket number 23-CR-027 (DLI), charging a violation of 21 U.S.C. § 963. The count carries the following statutory penalties:

- a. Maximum term of imprisonment: life (21 U.S.C. § 960(b)(1)(B)).
- b. Minimum term of imprisonment: 10 years (21 U.S.C. § 960(b)(1)(B)).



- c. Minimum supervised release term: 5 years, maximum supervised release term: life, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 5 years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. § 3583 (e); 21 U.S.C. § 960(b)(1)(B)).
- d. Maximum fine: \$10,000,000 (21 U.S.C. § 960(b)(1)(B)).
- e. Restitution: N/A.
- f. \$100 special assessment (18 U.S.C. § 3013).
- g. Other penalties: criminal forfeiture, as set forth below in paragraphs 8 through 15; removal, as set forth below in paragraph 16 (21 U.S.C. §§ 853(a), 853(p) and 970).

The sentences imposed by the Court on Count One of the EDNY Indictment, Count Two of the SDNY Indictment, and Count Two of the SDNY Indictment may run consecutively to each other and to any other sentence the defendant is currently serving.

4. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the “Guidelines” and “U.S.S.G.”) is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case. The Offices will advise the Court and the Probation Department of information relevant to sentencing, including criminal activity engaged in by the defendant, and such information may be used by the Court in determining the defendant’s sentence. See 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”).

The Offices estimate the likely adjusted offense level under the Guidelines to be 54, which is predicated on the following Guidelines calculation:

EDNY Indictment: Continuing Criminal Enterprise

Base Offense Level (More Than 450 Kilograms of Cocaine (§§ 2D1.5(a)(1), 2D1.1(a)(5), 2D1.1(c)(1)))	42
Plus: Possession of Dangerous Weapon (§ 2D1.1(b)(1))	+2
Plus: Use of Violence (§ 2D1.1(b)(2))	+2
Plus: Use of Semi-Submersible Vessel (§ 2D1.1(b)(3)(B))	+2
Plus: Bribery of Law Enforcement Officials (§ 2D1.1(b)(11))	+2
Plus: Maintained Premises for Purpose of Manufacture or Distribution (§ 2D1.1(b)(12))	+2
Total:	<u>52</u>

SDFL Indictment: Maritime Narcotics Conspiracy

Base Offense Level (More Than 450 Kilograms of Cocaine (§§ 2D1.1(c)(1)))	38
Plus: Possession of Dangerous Weapon (§ 2D1.1(b)(1))	+2
Plus: Use of Violence (§ 2D1.1(b)(2))	+2
Plus: Use of Semi-Submersible Vessel (§ 2D1.1(b)(3)(B))	+2
Plus: Bribery of Law Enforcement Officials (§ 2D1.1(b)(11))	+2
Plus: Maintained Premises for Purpose of Manufacture or Distribution (§ 2D1.1(b)(12))	+2
Plus: Role Adjustment (§ 3B1.1(a))	+4
Plus: Aggravating Role (§ 2D1.1(b)(16))	+2
Total:	<u>54</u>

SDNY Indictment: Narcotics Importation Conspiracy

Base Offense Level (More Than 450 Kilograms of Cocaine (§§ 2D1.1(c)(1)))	38
Plus: Possession of Dangerous Weapon (§ 2D1.1(b)(1))	+2

Plus:	Use of Violence (§ 2D1.1(b)(2))	+2
Plus:	Use of Semi-Submersible Vessel (§ 2D1.1(b)(3)(B))	+2
Plus:	Bribery of Law Enforcement Officials (§ 2D1.1(b)(11))	+2
Plus:	Maintained Premises for Purpose of Manufacture or Distribution (§ 2D1.1(b)(12))	+2
Plus:	Role Adjustment (§ 3B1.1(a))	+4
Plus:	Aggravating Role (§ 2D1.1(b)(16))	+2
Total:		<u>54</u>

<u>Grouping Analysis (§§ 3D1.2, 3D1.4)</u>	<u>Units</u>	<u>Level</u>
Highest Offense Level (SDFL/SDNY Indictment)		54
Combined Adjusted Offense Level		<u>54</u>

If the defendant clearly demonstrates acceptance of responsibility, through allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a), resulting in an adjusted offense level of 52, which is to be treated as an offense level of 43, see U.S.S.G. ch. 5, pt. A, cmt. n.2, and a range of imprisonment of life, assuming that the defendant falls within Criminal History Category I. Furthermore, if the defendant has accepted responsibility as described above, to the satisfaction of the Offices, and if the defendant pleads guilty on or before January 25, 2023, an additional one-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(b), resulting in an adjusted offense level of 51, which is to be treated as an offense level of 43, see U.S.S.G. ch. 5, pt. A, cmt. n.2. This level carries a range of imprisonment of life, assuming that the defendant falls within Criminal History Category I. The defendant stipulates to the above Guidelines calculation. The defendant further stipulates that the total amount of cocaine involved in the offense and for which he is responsible



pursuant to U.S.S.G. § 1B1.3 is at least 96,856 kilograms, and the defendant waives his right to a jury trial or Fatico hearing on such issue.

5. The Guidelines estimate set forth in paragraph 4 is not binding on the Offices, the Probation Department or the Court. If the Guidelines offense level advocated by the Offices, or determined by the Probation Department or the Court, is, for any reason, including an error in the estimate, different from the estimate, the defendant will not be entitled to withdraw the plea and the government will not be deemed to have breached this agreement.

6. The defendant agrees not to file an appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, the conviction or sentence in the event that the Court imposes a term of imprisonment of any term of years and the sentences imposed on Count One of the EDNY Indictment, Count Two of the SDFL Indictment, and Count Two of the SDNY Indictment run concurrently to each other. This waiver is binding without regard to the sentencing analysis used by the Court. The defendant waives all defenses based on venue. The defendant further waives all defenses based on the statute of limitations, venue, and double jeopardy with respect to any prosecution that is not time-barred on the date that this agreement is signed in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates this agreement, or (c) the defendant's plea is later withdrawn. The defendant further waives the right to raise on appeal or on collateral review any argument that (1) the statutes to which the defendant is pleading guilty are unconstitutional and (2) the admitted conduct does not fall within the scope of the statutes. Nothing in the foregoing waiver of appellate and collateral review rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum. The defendant waives any right to additional disclosure from the government in connection with the guilty plea. The defendant

agrees that with respect to all charges referred to in paragraphs 1 and 7(a) he is not a "prevailing party" within the meaning of the "Hyde Amendment," 18 U.S.C. § 3006A note, and will not file any claim under that law. The defendant agrees to pay the special assessment by check payable to the Clerk of the Court at or before sentencing. The defendant understands that he may be subject to removal as set forth in paragraph 16 below. Nevertheless, the defendant affirms that he wants to plead guilty and to waive his right to appeal as set forth at the beginning of this paragraph, even if the consequence is the defendant's automatic removal from the United States.

7. The Offices agree that:

- a. no further criminal charges will be brought against the defendant for: (i) engaging in a continuing criminal enterprise involving the international manufacturing, distribution, importation and possession (with intent to distribute) of cocaine, the murder of persons who posed a threat or perceived threat to the enterprise, and conspiracies and attempts to do the same, all from June 2003 through October 2021; (ii) conspiring to possess with intent to distribute cocaine aboard a vessel subject to the jurisdiction of the United States, from April 2009 through October 2021; (iii) the international manufacturing, distribution, importation and possession (with intent to distribute) of cocaine, and conspiracies and attempts to do the same, all from 1997 through October 2021; it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.*, and at the time of sentence, the Offices will move to dismiss the remaining counts of the EDNY Indictment, the SDFL Indictment, and the SDNY Indictment, and any underlying indictments with prejudice;

and, based upon information now known to the Offices, they will:

- b. not seek a Guidelines sentence of life imprisonment in this case if the Guidelines range determined by the Court is life, it being understood that the Offices retain the discretion to seek a sentence of any term of years;
- c. take the position that, in light of overlap in, and the relationship between, the conduct underlying the charges in the EDNY Indictment, the SDFL Indictment, and the SDNY Indictment to



which the defendant is pleading guilty, the sentences imposed by the Court on Count One of the EDNY Indictment, Count Two of the SDFL Indictment, and Count Two of the SDNY Indictment should run concurrently, it being understood that the Offices have authority only to recommend and that decision rests solely within the discretion of the Court at sentencing.

If information relevant to sentencing, as determined by the Offices, becomes known to the Offices after the date of this agreement, the Offices will not be bound by paragraph 7(c). Should it be judged by the Offices that the defendant has violated any provision of this agreement, the defendant will not be released from his plea of guilty but the Offices will be released from their obligations under this agreement, including but not limited to: (a) moving for the additional one-level downward adjustment for timely acceptance of responsibility described in paragraph 4 above; and (b) the provisions of paragraph 7(c).

8. The defendant acknowledges that he obtained and/or acquired property that is subject to forfeiture as a result of his violations of 21 U.S.C. §§ 848 and 963, and 46 U.S.C. § 70506(b). The defendant consents to the entry of a forfeiture money judgment in the amount of two hundred and sixteen million dollars and zero cents (\$216,000,000.00) (the "Forfeiture Money Judgment"). The defendant agrees that the amount of the Forfeiture Money Judgment and any payments towards the Forfeiture Money Judgment represent: (a) property constituting, or derived from, any proceeds obtained directly or indirectly as the result of the defendant's violation of 21 U.S.C. §§ 848 and 963; (b) property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offenses; (c) any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise; (d) any property that is used or intended for use to commit, or facilitate the commission of a conspiracy to violate 46 U.S.C. § 70503; and/or (e) substitute assets, and thus are forfeitable to the United States pursuant to 21 U.S.C. §§ 853(a), 853(p),

881(a), and 970, 28 U.S.C. § 2461(c), and 46 U.S.C. § 70507(a), in any administrative and/or judicial (civil or criminal) proceeding(s) at the Office's exclusive discretion. The defendant consents to the entry of an Order of Forfeiture, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, imposing the Forfeiture Money Judgment.

9. The Forfeiture Money Judgment shall become due in full 30 days before sentencing (the "Due Date"). All payments made by the defendant toward the Forfeiture Money Judgment shall be by money order, certified or official bank check, payable to the "United States Marshals Service." The defendant shall cause said payments to be sent by overnight mail delivery to Assistant United States Attorney Claire S. Kedeshian, United States Attorney's Office, Eastern District of New York, 271A Cadman Plaza East, Brooklyn, New York 11201, with the criminal docket numbers noted on the face of the instrument. The defendant also waives all statutory deadlines, including but not limited to deadlines set forth in 18 U.S.C. § 983.

10. If defendant fails to pay any portion of the Forfeiture Money Judgment on or before the Due Date, the defendant consents to the forfeiture of any other property of his up to the amount of the unpaid Forfeiture Money Judgment, pursuant to 21 U.S.C. § 853(p), and further agrees that the conditions of 21 U.S.C. § 853(p)(1)(A)-(E) have been met.

11. The defendant agrees to fully assist the government in effectuating the payment of the Forfeiture Money Judgment, by among other things, executing any documents necessary to effectuate any transfer of title to the United States. The defendant agrees not to file a claim or petition seeking remission or contesting the forfeiture of any property against which the government seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) forfeiture proceeding. The defendant further agrees not to assist any person or entity in the filing of any claim or petition seeking remission or contesting the forfeiture of any

property against which the government seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) forfeiture proceeding.

12. The failure of the defendant to forfeit any monies and/or properties as required under this agreement, including the failure of the defendant to execute any document to accomplish the same on timely notice to do so, may constitute a material breach of this agreement. Upon such a breach, the defendant will not be entitled to withdraw the plea, but the Offices may bring additional criminal charges against the defendant.

13. The defendant represents that he will disclose all of his assets to the United States on the financial statement entitled "United States Department of Justice Financial Statement" (hereinafter, the "Financial Statement") on or before the date of sentencing and will provide a copy to Assistant United States Attorney Francisco J. Navarro. The defendant agrees that a failure to disclose all assets on the Financial Statement and to inform the government in writing of any material changes up until the time of sentencing constitutes a material breach of this agreement. Upon such a breach, the defendant will not be entitled to withdraw the plea, but the Offices may bring additional criminal charges against the defendant. Should undisclosed assets which the defendant owns or in which the defendant has an interest be discovered, the defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets and agrees that said assets shall be forfeited to the United States pursuant to 21 U.S.C. §§ 853(a), 853(p), 881(a), and 970, 28 U.S.C. § 2461(c), and 46 U.S.C. § 70507(a) as: (a) property constituting, or derived from, any proceeds obtained directly or indirectly as the result of the defendant's violation of 21 U.S.C. §§ 848 and 963; (b) property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offenses; (c) any of his interest in, claims against, and property or contractual rights affording a source of



control over, the continuing criminal enterprise; (d) any property that is used or intended for use to commit, or facilitate the commission of a conspiracy to violate 46 U.S.C. § 70503; and/or (e) substitute assets.

14. The defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of any monies and/or properties forfeited hereunder, including notice set forth in an indictment, information, or administrative notice. In addition, the defendant knowingly and voluntarily waives his right, if any, to a jury trial on the forfeiture of any monies and/or properties, and waives all constitutional, legal and equitable defenses to the forfeiture of said monies and/or properties, including, but not limited to, any defenses based on principles of double jeopardy, the Ex Post Facto clause of the Constitution, or any applicable statute of limitations, venue, or any defense under the Eighth Amendment, including a claim of excessive fines.

15. The defendant agrees that the entry and payment of the Forfeiture Money Judgment is not to be considered payment of a fine, penalty, restitution, or any income taxes that may be due, and shall survive bankruptcy.

16. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which the defendant is pleading guilty. Indeed, because the defendant is pleading guilty to engaging in a continuing criminal enterprise, in violation of 21 U.S.C. § 848, conspiracy to possess with intent to distribute a controlled substance aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. § 70506(b), and narcotics importation conspiracy, in violation of 21 U.S.C. § 963, removal is presumptively mandatory. Removal and

other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration status. The defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States.

17. This agreement does not bind any federal, state, or local prosecuting authority other than the Offices, and does not prohibit the Offices from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant.

18. Apart from any written proffer agreements, if applicable, no promises, agreements or conditions have been entered into by the parties other than those set forth in this agreement and none will be entered into unless memorialized in writing and signed by all parties. Apart from any written proffer agreements, if applicable, this agreement supersedes all prior


promises, agreements, or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Brooklyn, New York  
January 25, 2023

  
FJN 1/25/2023

BREON PEACE  
United States Attorney  
Eastern District of New York

By:

  
Francisco J. Navarro  
Gillian A. Kassner  
Tara B. McGrath  
Assistant United States Attorneys

Approved by:

  
Saritha Komatireddy  
Supervising Assistant United States Attorney

SK/FJN  
1/25/2023

MARKENZY LAPOINTE  
United States Attorney  
Southern District of Florida

By:

  
Robert Emery  
Supervising Assistant United States Attorney

RJM/FJN  
1/25/2023

DAMIAN WILLIAMS  
United States Attorney  
Southern District of New York

By:

  
George Turner/Amanda Houle  
Supervising Assistant United States Attorney

GT/FJN  
1/25/2023



I have read and/or had translated and read to me the entire agreement and discussed it with my attorney. I understand all of its terms and am entering into it knowingly and voluntarily.

Dairo usuga David  
DAIRO ANTONIO USUGA DAVID  
Defendant

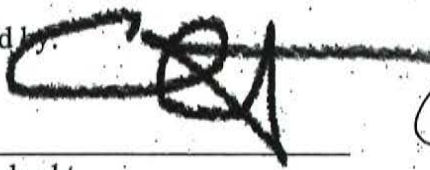
01/05 2023 Dairo usuga David

1/25/23

Translated by:

Ruutung 01/05/2023

Approved by:



Alexei Schacht  
Counsel to Defendant

1/25/23

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Paul Nalven  
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1/5/23 (PN)



Marcia Gotler  
Federally Certified  
Spanish Translator

1/25/23