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08-CR-00251-PLAGR

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JUL 28 2008
CLERK AT SEATTLE
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOMOAKI IISHIBA,

Defendant.

NO. CR08-251MJP

PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Todd Greenberg, Assistant United States Attorney, and Defendant, TOMOAKI IISHIBA, and his attorney, Robert M. Leen, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

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 the 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 enter a plea of guilty to the offense of Conspiracy to Smuggle Goods from the United States, in violation of Title 18, United States Code, Section 371, as charged by Information. By entering the plea of guilty, Defendant hereby waives all objections to the form of the charging document.

1 Defendant further understands that before entering the plea of guilty, Defendant will be
2 placed under oath. Any statement given by Defendant under oath may be used by the
3 government in a prosecution for perjury or false statement.

4 3. Elements of the Offense. The elements of the offense of Conspiracy to
5 Smuggle Goods from the United States, in violation of Title 18, United States Code,
6 Section 371, are as follows:

7 i. The Defendant agreed with at least one other person to fraudulently
8 and willfully export from the United States merchandise, articles, and objects, contrary to
9 laws and regulations of the United States;

10 ii. The Defendant became a member of the conspiracy knowing of at
11 least one of its objects and intending to help accomplish it; and

12 iii. One of the members of the conspiracy performed at least one overt
13 act for the purpose of carrying out the conspiracy.

14 4. The Penalties.

15 a. Defendant understands that the statutory penalties for the offense of
16 Conspiracy to Smuggle Goods from the United States, in violation of Title 18, United
17 States Code, Section 371, are as follows: Imprisonment for up to five (5) years, a fine of
18 up to \$250,000, a period of supervision following release from prison of up to three (3)
19 years, and a \$100 penalty assessment. Defendant agrees that the penalty assessment shall
20 be paid at or before the time of sentencing.

21 b. Defendant understands that in addition to any term of imprisonment
22 and/or fine that is imposed, the Court may order Defendant to pay restitution to any victim
23 of the offense, as required by law. Defendant further understands that a consequence of
24 pleading guilty may include the forfeiture of certain property, either as a part of the
25 sentence imposed by the Court, or as a result of civil judicial or administrative process.

26 c. Defendant agrees that any monetary penalty the Court imposes, including
27 the special assessment, fine, costs or restitution, is due and payable immediately, and
28 further agrees to submit a completed Financial Statement of Debtor form as requested by

1 the United States Attorney's Office.

2 d. Defendant understands that supervised release is a period of time
3 following imprisonment during which he will be subject to certain restrictions and
4 requirements. Defendant further understands that if supervised release is imposed and he
5 violates one or more of its conditions, he could be returned to prison for all or part of the
6 term of supervised release that was originally imposed. This could result in Defendant
7 serving a total term of imprisonment greater than the statutory maximum stated above.

8 5. Rights Waived by Pleading Guilty. Defendant understands that, by pleading
9 guilty, he knowingly and voluntarily waives the following rights:

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

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

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

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

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

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

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

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

25 6. United States Sentencing Guidelines. Defendant understands and
26 acknowledges that, at sentencing, the Court must consider the sentencing range calculated
27 under the United States Sentencing Guidelines, together with the other factors set forth in
28 Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances

1 of the offense; (2) the history and characteristics of the defendant; (3) the need for the
2 sentence to reflect the seriousness of the offense, to promote respect for the law, and to
3 provide just punishment for the offense; (4) the need for the sentence to afford adequate
4 deterrence to criminal conduct; (5) the need for the sentence to protect the public from
5 further crimes of the defendant; (6) the need to provide the defendant with educational
6 and vocational training, medical care, or other correctional treatment in the most effective
7 manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims;
8 and (9) the need to avoid unwarranted sentence disparity among defendants involved in
9 similar conduct who have similar records. Accordingly, Defendant understands and
10 acknowledges that:

11 a. The Court will determine Defendant's applicable Sentencing
12 Guidelines range at the time of sentencing;

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

16 c. The Court is not bound by any recommendation regarding the
17 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
18 range offered by the parties, or by the United States Probation Department; and

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

21 7. Ultimate Sentence. Defendant acknowledges that no one has promised or
22 guaranteed what sentence the Court will impose.

23 8. Statement of Facts. The parties agree on the following facts in support of
24 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged
25 offense.

26 a. On numerous occasions between 2006 and February 2008, Tomoaki
27 Iishiba exported firearms parts and accessories from the United States to Japan. The
28 exported firearms parts included, among other items, EoTech 553 holographic night

1 vision compatible firearm sights; EoTech 550 firearm sights; upper receivers modified for
2 Airsoft; and various scopes. For example, in October and December 2006, Iishiba
3 purchased a total of sixty (60) EoTech 553 sights from a business known as Optics Planet,
4 and thereafter mailed the sights to coconspirators in Japan. The recipients of the items in
5 Japan were individuals and business entities that Iishiba met through his contacts as a
6 military officer of the United States Army.

7 b. Iishiba was aware that an export license was required to legally
8 export the items to Japan. At no time did Iishiba apply for, or obtain, an export license.
9 Iishiba sent the firearms parts and accessories to Japan by mail, and misidentified the
10 contents of the packages on export declaration forms.

11 9. Sentencing Factors. The parties agree and stipulate that the following
12 Sentencing Guidelines provisions apply to this case:

13 a. A base offense level of 14, pursuant to USSG § 2M5.2(a)(2).

14 c. A two-level upward adjustment because the Defendant abused a position
15 of public trust in a manner that significantly facilitated the commission and concealment
16 of the offense, pursuant to USSG § 3B1.3.

17 c. The United States acknowledges that Defendant has assisted the United
18 States by timely notifying the authorities of his intention to plead guilty, thereby
19 permitting the United States to avoid preparing for trial and permitting the Court to
20 allocate its resources efficiently. If at the time of sentencing, the United States remains
21 satisfied that Defendant has accepted responsibility, then it will recommend a sentence
22 that takes this acceptance of responsibility into consideration. Defendant understands and
23 agrees that the United States will base its recommendation on factors set forth in the
24 United States Sentencing Guidelines, including Section 3E1.1.

25 10. Joint Sentencing Recommendation. The government acknowledges the
26 defendant did not intend to threaten a security or foreign policy interest of the United
27 States, and that defendant's conduct did not constitute such a threat, and for this reason
28 the parties agree to jointly recommend a sentence of three years' probation, no fine, and a

1 \$100 special assessment. Defendant acknowledges that this joint recommendation is not
2 binding on the Court, and that Defendant may not withdraw the guilty plea solely because
3 the Court does not follow the recommendation.

4 11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement, the
5 United States Attorney's Office for the Western District of Washington agrees not to
6 prosecute Defendant for any additional offenses known to it as of the time of this
7 Agreement that are based upon evidence in its possession at this time, or that arise out of
8 the conduct giving rise to this investigation. In this regard, Defendant recognizes that the
9 United States has agreed not to prosecute all of the criminal charges that the evidence
10 establishes were committed by Defendant solely because of the promises made by
11 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for
12 purposes of preparing the Presentence Report, the United States Attorney's Office will
13 provide the United States Probation Office with evidence of all relevant conduct
14 committed by Defendant.

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

20 12. Post-Plea Conduct. Defendant understands that the terms of this Plea
21 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
22 If, after the date of this Agreement, Defendant should engage in illegal conduct, or
23 conduct that is in violation of his/her conditions of release (examples of which include,
24 but are not limited to: obstruction of justice, failure to appear for a court proceeding,
25 criminal conduct while pending sentencing, and false statements to law enforcement
26 agents, the Pretrial Services Officer, Probation Officer or Court), the United States is free
27 under this Agreement to seek a sentence that takes such conduct into consideration. Such
28 a sentence could include a sentencing enhancement under the United States Sentencing

1 Guidelines or an upward departure from the applicable sentencing guidelines range.


2 13. Statute of Limitations. In the event that this Agreement is not accepted by
3 the Court for any reason, or Defendant has breached any of the terms of this Plea
4 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
5 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
6 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
7 Agreement by Defendant is discovered by the United States Attorney's Office.

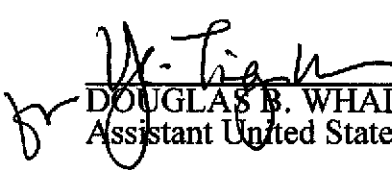
8 14. Voluntariness of Plea. Defendant acknowledges that he has entered into
9 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
10 promises contained in this Plea Agreement, were made to induce Defendant to enter this
11 plea of guilty.

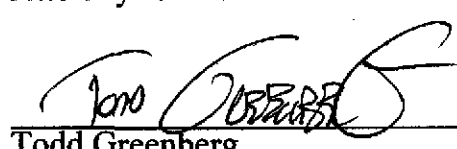
12 15. Completeness of Agreement. The United States and Defendant
13 acknowledge that these terms constitute the entire Plea Agreement between the parties.
14 This Agreement only binds the United States Attorney's Office for the Western District of
15 Washington. It does not bind any other United States Attorney's Office or any other
16 office or agency of the United States, or any state or local prosecutor.

17 Dated this 28th day of JULY, 2008.

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19 
20 TOMOAKI IISHIBA
21 Defendant

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19 
20 Robert M. Leen
21 Attorney for Defendant

22 
23 DOUGLAS B. WHALLEY
24 Assistant United States Attorney

22 
23 Todd Greenberg
24 Assistant United States Attorney