

Judge Leighton

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BRIANA WATERS,)
)
 Defendant.)

No. CR05-5828RBL
PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Andrew C. Friedman and Thomas M. Woods, Assistant United States Attorneys for said District, Defendant, Briana Waters, and her attorney, Neil M. Fox, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters her plea of guilty to the following charges contained in the Fifth Superseding Indictment.

a. Conspiracy, as charged in Count 1, in violation of Title 18, United States Code, Section 371;

b. Possessing an Unregistered Firearm, as charged in Count 4, in violation of Title 26, United States Code, Section 5861(d);

1 c. Arson, as charged in Count 5, in violation of Title 18, United States Code, Section
2 844(i); and

3 d. Using a Destructive Device During a Crime of Violence, as charged in Count 6, in
4 violation of Title 18, United States Code, Section 924(c).

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

9 **2. Elements of the Offenses.** The elements of the offense of Conspiracy, as charged in
10 Count 1, are as follows:

11 First, at some time between 1996 and October 2001, there was an agreement between two
12 or more persons to commit the crime of arson or the crime of using a destructive device during a crime
13 of violence, as charged in the Fifth Superseding Indictment;

14 Second, Defendant joined the conspiracy knowing of at least one of its objects and
15 intending to help accomplish it; and

16 Third, at some time between May 11, 2001, and October 2001 one of the members of the
17 conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

18 The elements of the offense of Possessing an Unregistered Firearm, as charged in Count 2, are as
19 follows:

20 First, on or about May 20, 2001, Defendant knowingly possessed, or aided and abetted
21 another person's possession of, a destructive device; and

22 Second, the destructive device was not registered to Defendant or the other person in the
23 National Firearms Registration and Transfer Record.

24 The elements of the offense of Arson, as charged in Count 5, are as follows:

25 First, Defendant damaged or destroyed, or aided and abetted in damaging or destroying, a
26 building;

27 Second, Defendant or the person whom Defendant aided and abetted, used fire to do so;

28 Third, Defendant acted maliciously; and

1 Fourth, the building was used in interstate commerce or in activity affecting interstate
2 commerce.

3 The elements of the offense of Using a Destructive Device During a Crime of Violence, as
4 charged in Count 6, are as follows:

5 First, Defendant committed, or aided and abetted, the crime of damaging or destroying by
6 fire a building used in interstate commerce as charged in Count 5;

7 Second, Defendant knowingly used, or aided and abetted the use of, a destructive device;
8 and

9 Third, Defendant or the person whom defendant aided and abetted used the destructive
10 device during and in relation to the crime of damaging or destroying a building by fire.

11 **3. The Penalties.** Defendant understands that the statutory penalties for the offense of
12 Conspiracy as charged in Count 1 are as follows: imprisonment for up to five (5) years, a fine of up to
13 two hundred fifty thousand and no/100 dollars (\$250,000.00), a period of supervision following release
14 from prison of up to three years, and a special assessment of one hundred and no/100 dollars (\$100.00).
15 If Defendant receives a sentence of probation, the probationary period could be up to five (5) years.

16 Defendant understands that the statutory penalties for the offense of Possessing an Unregistered
17 Firearm as charged in Count 4 are as follows: imprisonment for up to ten (10) years, a fine of up to ten
18 thousand and no/100 dollars (\$10,000.00), a period of supervision following release from prison of up to
19 three years, and a special assessment of one hundred and no/100 dollars (\$100.00). If Defendant
20 receives a sentence of probation, the probationary period could be up to five (5) years.

21 Defendant understands that the statutory penalties for the offense of Arson as charged in Count 5
22 are as follows: imprisonment for a mandatory-minimum term of five (5) years up to a maximum of
23 twenty (20) years, a fine of up to two hundred fifty thousand and no/100 dollars (\$250,000.00), a period
24 of supervision following release from prison of up to three years, and a special assessment of one
25 hundred and no/100 dollars (\$100.00).

26 Defendant understands that the statutory penalties for the offense of Using a Destructive Device
27 During a Crime of Violence as charged in Count 6 are as follows: imprisonment for a mandatory-
28 minimum term of thirty (30) years up to a maximum of life imprisonment, consecutive to any other

1 sentence, a fine of up to two hundred fifty thousand and no/100 dollars (\$250,000.00), a period of
2 supervision following release from prison of up to five years, and a special assessment of one hundred
3 and no/100 dollars (\$100.00).

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

10 Defendant understands that, in addition to any term of imprisonment and/or fine that is imposed,
11 the Court may order her to pay restitution to any victim of her offenses, as required by law. Defendant
12 agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or
13 restitution, is due and payable immediately and further agrees to submit a completed Financial Statement
14 of Debtor form as requested by the United States Attorney's Office. Defendant further agrees that the
15 special assessment shall be paid at or before the time of sentencing.

16 4. **Rights Waived by Pleading Guilty.** Defendant understands that, by pleading guilty, she
17 knowingly and voluntarily waives the following rights:

- 18 a. The right to plead not guilty and to persist in a plea of not guilty;
- 19 b. The right to a speedy and public trial before a jury of her peers;
- 20 c. The right to the effective assistance of counsel at trial, including, if Defendant
21 could not afford an attorney, the right to have the Court appoint one for her;
- 22 d. The right to be presumed innocent until guilt has been established beyond a
23 reasonable doubt at trial;
- 24 e. The right to confront and cross-examine witnesses against Defendant at trial;
- 25 f. The right to compel or subpoena witnesses to appear on her behalf at trial;
- 26 g. The right to testify or to remain silent at trial, at which trial such silence could not
27 be used against Defendant; and
- 28 h. The right to appeal a finding of guilt or any pretrial rulings.

1 5. **United States Sentencing Guidelines.** Defendant understands and acknowledges that, at
2 sentencing, the Court must consider the sentencing range calculated under the United States Sentencing
3 Guidelines, together with the other factors set forth in Title 18, United States Code, Section 3553(a),
4 including: (1) the nature and circumstances of the offenses; (2) the history and characteristics of the
5 defendant; (3) the need for the sentence to reflect the seriousness of the offenses, to promote respect for
6 the law, and to provide just punishment for the offenses; (4) the need for the sentence to afford adequate
7 deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of
8 the defendant; (6) the need to provide the defendant with educational and vocational training, medical
9 care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available;
10 (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity
11 among defendants involved in similar conduct who have similar records. Accordingly, Defendant
12 understands and acknowledges that:

13 a. The Court will determine her applicable Sentencing Guidelines range at the time
14 of sentencing;

15 b. After consideration of the Sentencing Guidelines and the factors in
16 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term
17 authorized by law;

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

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

24 6. **Restitution.** Defendant shall make restitution to the State of Washington in the amount
25 of four million one hundred thirty thousand and no/100 dollars (\$4,130,000.00) and restitution to the
26 University of Washington in the amount of one million nine hundred sixty-two thousand, six hundred
27 forty-nine and 95/100 dollars (\$1,962,649.95), for a total amount of six million ninety-two thousand, six
28 hundred forty-nine and 95/100 dollars (\$6,092,649.95). Defendant shall receive credit against this

1 amount for amounts already paid in restitution. Said restitution shall be due and payable immediately
2 and shall be paid in accordance with a schedule of payments as proposed by the United States Probation
3 Office and ordered by the Court.

4 7. **Statement of Facts.** The parties agree on the following facts. Defendant admits he is
5 guilty of the charged offense

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7 During 2000 and 2001, Defendant, Briana Waters was acquainted
8 with William Rodgers, who previously had committed arsons on behalf of
9 the Earth Liberation Front and/or the Animal Liberation Front. In
10 approximately April 2001, Rodgers told Defendant that he was planning to
11 commit an "action" at the University of Washington, and asked Defendant
12 to participate in the action. This action was to be targeted on the office of
13 Toby Bradshaw, a professor at the University of Washington, whom
14 Waters understood to be involved in genetic engineering of poplar trees.

15 Defendant agreed to participate in the action as a lookout.
16 Defendant subsequently participated in meetings with Rodgers, Jennifer
17 Kolar, Lacey Phillabaum, and Justin Solondz, during which they made
18 plans to set fire to Bradshaw's office. Defendant agreed that she would try
19 and obtain a car to be used for transportation to and from the arson.
20 Defendant subsequently persuaded a relative, who was not aware of the
21 purpose, to rent a car. During the day or days prior to the arson, Defendant
22 observed Solondz making incendiary devices, which were to be used in the
23 arson in a "clean room" in the garage of a house in which Defendant was
24 living.

25 On the evening of May 20, 2001, Defendant, Rodgers, Solondz,
26 and Phillabaum drove to Seattle in the rental car that Defendant had
27 procured. Among other things, they took with them the incendiary devices
28 that Solondz had made. This foursome then met with Kolar in Seattle and
eventually traveled to the Center for Urban Horticulture. Solondz
remained with the car, to serve as the getaway driver and a lookout.
Waters hid in some bushes and also served as a lookout. The others
used the incendiary devices Solondz had made to set fire to Professor Bradshaw's
office within the Center for Urban Horticulture. Defendant and the other
conspirators then left the area. The incendiary devices subsequently ignited. The
resulting fire destroyed the Center for Urban Horticulture.

Professor Bradshaw's research was funded in substantial part by a
consortium of lumber companies that hoped the research would have
practical application in improving the profitability of poplar farming. The
lumber companies that funded Professor Bradshaw's research harvest and
sell lumber throughout the United States and abroad. As a result, the
Center for Urban Horticulture is a building used in interstate commerce
and in activity affecting interstate commerce. The incendiary devices that
Solondz made fall within the definition of destructive devices. Neither
Solondz, nor anyone else, registered the devices in the National Firearms
Registration and Transfer Record.

1 In September 2001, Defendant participated in another arson at the
2 Bureau of Land Management, Litchfield Wild Burro and Horse Corrals in
3 Susanville, California. Although Defendant initially believed that this
4 action would merely involve releasing horses, Defendant learned prior to
5 the action that it also would involve arson of hay barns at the site. Other
6 participants in the arson included Joseph Dibee, Jennifer Kolar, Stanislas
7 Meyerhoff, Rebecca Rubin, Darren Thurston, and Kevin Tubbs.

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9 In early 2008, Defendant stood trial in this case on charges that
10 then were set forth in a Fourth Superseding Indictment. Defendant
11 testified, in her own defense, that she was innocent of the charges against
12 her and that she had no involvement in the arson of the University of
13 Washington Center for Urban Horticulture. Defendant's testimony was
14 false.

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17 **8. Cooperation.**

18 a. Defendant shall cooperate completely and truthfully with law enforcement
19 authorities in the investigation and prosecution of other individuals involved in criminal activity. Such
20 cooperation shall include, but not be limited to, complete and truthful statements to law enforcement
21 officers, as well as complete and truthful testimony if called as a witness before a grand jury, or at any
22 state or federal trial, retrial, or other judicial proceedings. Defendant acknowledges that this obligation
23 to cooperate shall continue after Defendant has entered guilty pleas and sentence has been imposed, no
24 matter what sentence Defendant receives; Defendant's failure to do so may constitute a breach of this
25 Plea Agreement.

26 b. Defendant understands the United States will tolerate no deception from
27 Defendant. If, in the estimation of the United States Attorney, information or testimony provided from
28 the date of the Plea Agreement, proves to be untruthful or incomplete in any way, regardless of whether
the untruthfulness was intended to help or hurt the United States' case, the United States Attorney for the
Western District of Washington may consider that Defendant has breached this Plea Agreement.

c. The United States Attorney's Office for the Western District of Washington, in
turn, agrees not to prosecute Defendant for any other offenses, other than crimes of violence, that
Defendant may have committed in the Western District of Washington prior to the date of this
Agreement about which: (1) the United States presently possesses information; or (2) Defendant
provides information pursuant to this Agreement to cooperate with the authorities.

1 d. The parties agree that information provided by Defendant in connection with this
2 Plea Agreement shall not be used to determine Defendant's sentence, except to the extent described in
3 USSG § 1B1.8.

4 e. In exchange for Defendant's cooperation, as described above, and conditioned
5 upon Defendant's fulfillment of all conditions of this Plea Agreement, the United States Attorney agrees
6 to consider filing a motion pursuant to 18 U.S.C. § 3553(e) and/or U.S.S.G. §5K1.1, recommending that
7 the Court sentence Defendant to a sentence that reflects Defendant's cooperation as more specifically
8 delineated in paragraph 9. Defendant understands that, in the event the United States Attorney files such
9 a sentencing recommendation, that recommendation will be based on consideration of factors and
10 provisions set forth in the United States Sentencing Guidelines and 18 U.S.C. § 3553(a).

11 f. Defendant agrees that Defendant's sentencing date may be delayed based on the
12 United States' need for Defendant's continued cooperation and agrees not to object to any continuances
13 of Defendant's sentencing date sought by the United States.

14 9. **Sentencing Recommendation.** Provided that Defendant cooperates with the government
15 and that the government files a motion pursuant to 18 U.S.C. § 3553(e) and/or U.S.S.G. § 5K1.1, the
16 parties agree that they each will recommend that the Court impose a sentence of 48 months'
17 imprisonment. In the event that Defendant cooperates with the government and that the government
18 files a motion pursuant to 18 U.S.C. §3553(e) and/or U.S.S.G. §5K1.1 and that Defendant's cooperation
19 results in the discovery of significant additional evidence relating to the arson of the University of
20 Washington Center for Urban Horticulture, beyond that provided by Defendant's own testimony, and
21 which is admissible at any criminal trial stemming from that crime, the government may elect to
22 recommend a sentence that is less than 48 months, but in no event less than time served (that is,
23 approximately 37 months' imprisonment). In the event the Government recommends a sentence less
24 than 48 months imprisonment, Defendant may also recommend that same sentence. Such additional
25 evidence may be physical evidence, documentary evidence, or evidence from additional witnesses,
26 provided that such evidence results directly from Defendant's cooperation. Defendant understands,
27 however, that the government shall have sole discretion to determine whether it believes that
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1 Defendant's cooperation has resulted in the discovery of significant additional evidence. Defendant also
2 acknowledges that no one has promised or guaranteed what sentence the Court will impose.

3 **10. Other Recommendations.** The United States Attorney's Office for the Western District
4 of Washington agrees that it will recommend to the Court and/or the Bureau of Prisons that Defendant
5 be incarcerated at a facility as close to her family in California as possible, and more specifically, that
6 she be incarcerated at the Federal Correctional Institution at Dublin, California.. The United States
7 Attorney's Office for the Western District of Washington also agrees that it will recommend to the
8 Bureau of Prisons that Defendant be permitted to serve the final six months of her sentence in a
9 residential reentry center, pursuant to the provisions of the Bureau of Prisons' program allowing inmates
10 to serve up to the final six months of a sentence in a residential reentry center. Defendant understands
11 that these are recommendations, and that no one has promised or guaranteed that the Bureau of Prisons
12 will follow the recommendations.

13 The United States Attorney's Office for the Western District of Washington also agrees that it
14 will recommend to the Court and/or the Bureau of Prisons that in the event defendant is a litigant in any
15 civil family action for which a hearing is set during her term of imprisonment arrangements be made for
16 her to attend such hearing in person, or if that is not possible, telephonically.

17 **11. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the United
18 States Attorney's Office for the Western District of Washington agrees to move to dismiss Count 7 of
19 the Fifth Superseding Indictment at the time of sentencing and not to prosecute Defendant for any
20 additional offenses known to it as of the time of this Agreement that are based upon evidence in its
21 possession at this time, and that arise out of the conduct giving rise to this investigation. In addition, the
22 United States Attorney's Office for the Eastern District of California has agreed that it will not prosecute
23 Defendant in connection with the October 15, 2001, arson of the Bureau of Land Management,
24 Litchfield Wild Horse and Burro Corrals in Susanville, California. In this regard, Defendant recognizes
25 the United States has agreed not to prosecute all of the criminal charges the evidence establishes were
26 committed by Defendant solely because of the promises made by Defendant in this Agreement.
27 Defendant agrees, however, that for purposes of preparing the Presentence Report, the United States
28 Attorney's Office will provide the United States Probation Office with evidence of all conduct

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

5 **12. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if Defendant breaches
6 this Plea Agreement, the United States may withdraw from this Plea Agreement and Defendant may be
7 prosecuted for all offenses for which the United States has evidence. Defendant agrees not to oppose
8 any steps taken by the United States to nullify this Plea Agreement, including the filing of a motion to
9 withdraw from the Plea Agreement. Defendant also agrees that, if Defendant is in breach of this Plea
10 Agreement, Defendant has waived any objection to the re-institution of any charges in the Fifth
11 Superseding Indictment that were previously dismissed or any additional charges that had not been
12 prosecuted.

13 Defendant further understands that if, after the date of this Agreement, Defendant should engage
14 in illegal conduct, or conduct that is in violation of her conditions of release or confinement (examples
15 of which include, but are not limited to: obstruction of justice, failure to appear for a court proceeding,
16 criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial
17 Services Officer, Probation Officer, or Court), the United States is free under this Plea Agreement to file
18 additional charges against Defendant or to seek a sentence that takes such conduct into consideration by
19 requesting the Court to apply additional adjustments or enhancements in its Sentencing Guidelines
20 calculations in order to increase the applicable advisory Guidelines range, and/or by seeking an upward
21 departure or variance from the calculated advisory Guidelines range. Under these circumstances, the
22 United States is free to seek such adjustments, enhancements, departures, and/or variances even if
23 otherwise precluded by the terms of the Plea Agreement.

24 **13. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the Court
25 imposes a custodial sentence that is within or below the Sentencing Guidelines range (or the statutory
26 mandatory minimum, if greater than the Guidelines range) that is determined by the Court at the time of
27 sentencing, Defendant waives to the full extent of the law:
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- 1 a. any right conferred by Title 18, United States Code, Section 3742 to appeal the sentence,
2 including any restitution order imposed; and
3 b. any right to bring a collateral attack against the conviction and sentence, including any
4 restitution order imposed, except as it may relate to the effectiveness of legal
5 representation.

6 This waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C.
7 2241, to address the conditions of her confinement or the decisions of the Bureau of Prisons regarding
8 the execution of her sentence.

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

13 **14. Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea
14 Agreement freely and voluntarily and that no threats or promises, other than the promises contained in
15 this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

16 **15. Statute of Limitations.** In the event this Agreement is not accepted by the Court for any
17 reason, or Defendant breaches any of the terms of this Plea Agreement, the statute of limitations shall be
18 deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the
19 date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on
20 which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's
21 Office.

22 **16. Completeness of Agreement.** The United States and Defendant acknowledge that these
23 terms constitute the entire Plea Agreement between the parties. This Agreement binds only the
24 United States Attorney's Office for the Western District of Washington. It does not bind any other
25 United States Attorney's Office or any other office or agency of the United States, or any state or local
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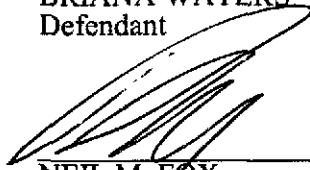
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prosecutor, except to the extent that Paragraph 10 provides to the contrary with respect to the United States Attorney's Office for the Eastern District of California.

Dated this 14th day of June, 2011.



BRIANA WATERS
Defendant



NEIL M. FOX
Attorney for Defendant



ANDREW C. FRIEDMAN
Assistant United States Attorney



THOMAS M. WOODS
Assistant United States Attorney

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INSTRUCTIONS FOR PAYING SPECIAL ASSESSMENTS PRIOR TO SENTENCING

1. Special Assessments paid prior to sentencing must be paid to the Clerk, United States District Court.
2. Special Assessments must be paid by a first party, certified, or cashiers check, or a money order. No second party checks will be accepted. No post-dated checks will be accepted.
3. All checks must be made out in U.S. dollars to "Clerk, U.S. District Court.
4. All checks or money orders must be accompanied by the attached form entitled, "Plea Agreement Special Assessment Payments." The entire form must be filled out or the Clerk, United States District Court, will not accept the payment.

PLEA AGREEMENT SPECIAL ASSESSMENT PAYMENT

DATE: _____

FROM: _____

TO: CLERK, U.S. DISTRICT COURT
ATTN: INTAKE TEAM

CASE NAME: UNITED STATES v. BRIANA WATERS _____

CASE DOCKET NUMBER: CR05-5828RBL _____

DEFENDANT'S NAME: BRIANA WATERS _____

SINGLE OR MULTIPLE DEFENDANTS: SINGLE _____

TOTAL SPECIAL ASSESSMENT PER DEFENDANT AS SET FORTH IN THE PLEA AGREEMENT: \$400.00 _____