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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Case No. 04-110-JO
v.)	
)	PLEA AGREEMENT
ALI KHALID STEITIYE,)	
)	
Defendant.)	
_____)	

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its attorneys, Karin J. Immergut, United States Attorney, and Charles F. Gorder, Jr., Pamala R. Holsinger, and David L. Atkinson, Assistant United States Attorneys, and the defendant, ALI KHALID STEITIYE, by and through his attorney, Noel Grefenson, and hereby enter into the following plea agreement:

1. Defendant ALI KHALID STEITIYE will enter a plea of guilty to Count 2 of the indictment charging Possession of a Machinegun in violation of 18 U.S.C. §§ 922(o)(1) and

924(a)(2). The maximum penalty for Count 2 is ten years in prison, a fine of \$250,000, a mandatory penalty assessment of \$100.00, and a 3-year term of supervised release.

2. In payment of the \$100.00 mandatory penalty assessment, the defendant ALI KHALID STEITIYE will present the Court with a cashier's check in the amount of \$100.00 (One-Hundred Dollars) made payable to the "Clerk, United States District Court," at or before the time of sentencing.

3. The parties stipulate that the elements of the offense charged in Count 2 are that (1) the defendant possessed a machine gun, that is, a weapon which automatically shot more than one round of ammunition, without manual reloading, by a single function of the trigger as defined in 26 U.S.C. § 5845(b); and, (2) the defendant knew of the character of the machine gun. ALI KHALID STEITIYE further certifies that he is aware of the holding in *United States v. Stewart*, 348 F.3d 1132 (9th Cir.2003) (18 U.S.C. § 922(o) "as applied" to a homemade machine gun which had neither been transferred nor transported in commerce exceeds Congress' commerce clause powers). The parties stipulate that *Stewart* is inapplicable to this case because ALI KHALID STEITIYE obtained and transported the machine gun in interstate commerce. Further, ALI KHALID STEITIYE acknowledges that he was not licensed or otherwise authorized to possess the machinegun.

4. The parties agree that the following factual basis for the plea of guilty to Count 2 of the indictment is accurate and supports each and every element of the offense to which the defendant is pleading guilty. The parties further agree that the following factual basis supports the

upward departure more fully developed below in paragraph 7. These are not necessarily all of the facts known to the Government or to the defendant ALI KHALID STEITIYE:

A. At a point between January 1, 2001 and September 29, 2001, ALI KHALID STEITIYE acquired a machinegun in the state of Washington. At the time he acquired the weapon, he believed it to be a machinegun. ALI KHALID STEITIYE was not licensed or otherwise authorized to possess a machinegun or any other class of firearm. He thereafter transported the machinegun to the state of Oregon, where he test-fired it and confirmed that it automatically shot more than one round of ammunition, without manual reloading, by a single function of the trigger.

B. On or about September 29, 2001 defendant ALI KHALID STEITIYE transported the machinegun to a gravel pit in Washougal, Washington to conduct shooting practice with Habes Al Saoub (aka Abu-Tarek), Jeffrey Leon Battle, Ahmed Bilal, Patrice Lumumba Ford and another individual. While at the gravel pit, defendant ALI KHALID STEITIYE made the machine gun available for firing by Habes Al Saoub (aka Abu Tarek) and other members of the group, knowing that they intended to travel to Afghanistan to join the Taliban in violent jihad in the wake of the events at the World Trade Center and Pentagon on September 11, 2001. No other member of the group brought a machinegun or other fully-automatic weapon for use at the gravel pit. ALI KHALID STEITIYE, Habes Al Saoub (aka Abu Tarek) and other members of the group fired the machinegun, as well as other weapons which various participants had brought with them. The group was interrupted by a law enforcement officer, at which point they ceased their firearms practice at the gravel pit and returned to Oregon. ALI KHALID STEITIYE retained possession of the machinegun.

C. At a point in time between September 29, 2001 and October 24, 2001 (*ie.* the date of his arrest in connection with an earlier prosecution), ALI KHALID STEITIYE relinquished possession of the machinegun and acquired a different, semi-automatic weapon. The machinegun which is the subject of this prosecution was not one of the weapons with which he was charged, nor was it attributed to him at sentencing, in the case of *US v Steitiye*, Dist. of Oregon Crim. No. 01-396-BR.

D. At a point in time following September 29, 2001, *in fact* Habes Al Saoub aka Abu-Tarek, Jeffrey Leon Battle, Ahmed Bilal, Patrice Lumumba Ford and other individuals left the United States and traveled to Asia in an effort to assist the Taliban in Afghanistan in violent jihad against forces of the United States. ALI KHALID STEITIYE did not travel with the group.

5. Rights Waived by Pleading Guilty. Defendant represents to the Court that he is satisfied with the representation provided by his attorney. Defendant understands that, by pleading guilty, he knowingly and voluntarily waives the following rights:

- a. The right to plead not guilty, and to persist in a plea of not guilty;
- b. The right to a speedy and public trial before a jury of Defendant's peers;
- c. The right to the effective assistance of counsel at trial, including, if

Defendant could not afford an attorney, the right to have the Court appoint one for Defendant;

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

- e. The right to confront and cross-examine witnesses against Defendant;
- f. The right to compel or subpoena witnesses to appear on Defendant's behalf;
- g. The right to testify or to remain silent at trial, which such silence could not

be used against Defendant; and

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

The defendant further waives presentation of the sentencing enhancement matters set forth in this plea agreement (and no others) to a grand jury, their inclusion in an indictment, and their presentation to a sentencing jury for determination of whether the government can establish them by proof beyond a reasonable doubt. Rather, the defendant stipulates and agrees to the sentencing enhancement matters set forth in this plea agreement and agrees that a judge alone may make the requisite findings.

6. Dismissal of Remaining Counts and Future Prosecutions.

- a. In return for defendant ALI KHALID STEITIYE entering the plea of guilty pursuant to this Agreement, upon the District Court's acceptance of defendant ALI KHALID STEITIYE's plea of guilty and upon defendant ALI KHALID STEITIYE's compliance with the

other terms and conditions of this Agreement, the UNITED STATES OF AMERICA will move to dismiss the remaining count against defendant ALI KHALID STEITIYE in the indictment at the time of sentencing. Defendant agrees and acknowledges that the charge to be dismissed is based on fact and does not provide Defendant with a basis for any future claims as a “prevailing party” under the “Hyde Amendment,” Pub.L. No. 105-119 (1997).

b. In exchange for the defendant's plea of guilty and cooperation as set forth in this Plea Agreement, the defendant will not be prosecuted by the United States for any other criminal offenses committed anywhere in any way involving or related to the possession of firearms, levying war against the United States or providing material support or resources to a foreign terrorist organization, and/or engaging in transactions with a specially designated terrorist and/or terrorist organization, committed up to the date of his arrest and about which the defendant has provided complete and truthful information. Such a promise of non-prosecution does not foreclose any prosecution for an act of murder, attempted murder, or act of actual physical violence against the person of another. Further, absent a breach of this Agreement by defendant as set forth in paragraph 12, no testimony, statements or tangible objects provided by the defendant in compliance with this agreement (or any information directly or indirectly derived therefrom) will be used against the defendant in any criminal case, except a prosecution for perjury, making false statements, or obstruction of justice.

7. Guideline Calculations and Recommendations. The plea of guilty is entered pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The parties stipulate to the following calculation of the applicable sentencing guideline range for these offenses, using the November

2001 edition of the Sentencing Guidelines: The defendant has a Criminal History Category of III. The applicable guideline for Count 2 is U.S.S.G. § 2K2.1(a)(4)(B) which establishes a base Offense Level of 20. The parties stipulate, and will jointly move at the time of sentencing, that pursuant to U.S.S.G. § 5K2.0, and pursuant to U.S.S.G. § 2K2.1(c)(1)(A) (which cross-references to U.S.S.G. § 2X1.1 because the defendant made the machinegun available for use by others whom the defendant knew intended to support the Taliban, a specially designated terrorist, under circumstances analogous to the “time of war” departure suggested by Application note 1, U.S.S.G. § 2M5.2), there exists an aggravating circumstance of a kind and to a degree not adequately taken into consideration by the Sentencing Commission. This circumstance should fairly result in an upward departure of 8 offense levels because the defendant made firearms available to others who were training in preparation for potential combat against U.S. troops during a time of war, or in preparation therefor. This produces an Offense Level of 28 for Count 2. The government will recommend a three (3) - level reduction for acceptance of responsibility. The government reserves the right to change this recommendation if defendant, between plea and sentencing, acts inconsistently with acceptance of responsibility as explained in USSG § 3E1.1. With a three-level reduction for acceptance of responsibility, the final Offense Level is 25 and the applicable sentencing range is 70-87 months. The parties agree that neither will seek to have the sentences imposed in *US v Steitiye*, District of Oregon Crim. Nos. 01-396-BR or 02-06-BR considered as “relevant conduct” to either enhance or mitigate the sentence in this case under U.S.S.G. § 1B1.3 or any other guideline provision. In fact, the parties have, between themselves, considered and accounted for those sentences in arriving at the agreement evidenced herein. The government

agrees not to seek any other upward departures or adjustments, except as specified in this agreement. Defendant agrees not to seek any downward departures or adjustments, except as specified in this agreement. The Court is not bound by the recommendations of the parties or of the Presentence Report (PSR) writer. Because this agreement is made under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, defendant may not withdraw his guilty plea or rescind this plea agreement if the Court does not follow the agreements or recommendations herein. The parties agree that, in the event that the United States Sentencing Guidelines are declared unconstitutional by the Supreme Court or Ninth Circuit Court of Appeals either *en toto* or as applied to this case, the appropriate discretionary sentence in this case is between 60 and 84 months. If the parties are erroneous in their prediction that ALI KHALID STEITIYE will be sentenced as a criminal history category III offender, the parties will adjust their recommendations to accomplish the objective of this agreement, that is, a sentence between 60 and 84 months.

8. Cooperation and Continued Acceptance of Responsibility.

a. Defendant shall continue to accept responsibility for his criminal conduct.

b. Defendant shall cooperate completely and truthfully with the Government in the investigation and prosecution of other individuals involved in criminal and terrorist activity, including being debriefed and providing truthful testimony at any proceeding resulting from or related to his cooperation, including grand juries, hearings, trials, and military commissions. Defendant shall provide complete and truthful information at all times during his cooperation, including during debriefings and testimony. Defendant also agrees to disclose the existence of and to make reasonable efforts to produce to the Government any and all documents, records, and

other items of evidentiary value that are in his actual or constructive possession. This Plea Agreement is not conditioned upon the result of any investigation or the outcome of any trial as to which Defendant may cooperate, or on whether the information provided by Defendant helps or hurts the Government's position. Defendant agrees to cooperate with any efforts and requests by the Government to verify that the information provided is complete and truthful, including taking a polygraph examination if it is deemed necessary by the United States, with an examiner selected by the Government.

c. Defendant's complete and truthful cooperation shall be provided to all federal, state, and local law enforcement, intelligence, military, and other authorities designated by the Government, at any location within the United States and at the Guantanamo Naval Station, Guantanamo Bay, Cuba. Defendant will be required to provide information to foreign government authorities only if the foreign government first agrees that it will not prosecute Defendant for any conduct related to the subject matter on which he provides information. The Government will designate a specific Assistant United States Attorney for the District of Oregon and/or a specific Trial Attorney for the Criminal Division, United States Department of Justice, through which requests for Defendant's cooperation will be coordinated and communicated to Defendant and his counsel. Defendant agrees that he will not engage in any investigation or cooperation that is not specifically authorized by the Government. The defendant's counsel is expressly permitted to be present at any time that the defendant is interviewed or testifies.

d. To protect the integrity of investigations, prosecutions, and intelligence activities, defendant ALI KHALID STEITIYE agrees that he will not communicate, directly or

indirectly through intermediaries (including family members), any information he has about his own or other persons' involvement in criminal and terrorist activity to anyone other than: (1) in testimony during proceedings resulting from or related to his cooperation; (2) in debriefings by authorities designated by the Government; (3) to his counsel and their authorized agents; (4) if his counsel so authorizes, to counsel for persons about whom he has provided information; or (5) as otherwise authorized in advance by the Government.

e. Defendant agrees not to object to any requests by the Government for continuances of his sentencing date up to one year after entry of his guilty plea.

f. The Government agrees that any information provided by Defendant in connection with this Plea Agreement shall not be used to determine his sentence, except to the extent permitted by Section 1B1.8 of the Sentencing Guidelines.

9. Substantial Assistance Departure. If defendant remains in compliance with this agreement, the Government will recommend a particular sentence which will be not less than 60 months nor more than 84 months. The particular sentence to be recommended will be in the sole discretion of the Government and the Government may recommend a downward departure if necessary to achieve such a sentence pursuant to U.S.S.G. § 5K1.1 and/or Rule 35 of the Federal Rules of Criminal Procedure for substantial assistance to authorities. The defendant agrees not to request a sentence less than 60 months unless authorized in advance by the government.

10. Additional Sentencing Recommendations. The Government will recommend that Defendant receive credit for all time he has served in custody from June, 2004** through the date of sentencing. Defendant understands, however, that the final calculation of his statutory time-

served credit will be made by the Bureau of Prisons and cannot be controlled by this Plea Agreement.

11. Waiver of Appeal/Post-Conviction Relief. Defendant waives the right to appeal from his conviction and sentence unless the sentence imposed exceeds the statutory maximum. Should defendant seek an appeal, despite this waiver of that right, the government may take any position on appeal. Defendant also waives the right to file a motion pursuant to 28 U.S.C. § 2255 to set aside the conviction and sentence, except on grounds of ineffective assistance of counsel

12. Revocation of Plea Agreement.

a. If Defendant commits a material violation of any of his obligations under this Plea Agreement, including but not limited to his obligations to cooperate, then the Government may elect to move the District Court to find a material breach of this Plea Agreement. The Government and Defendant agree that the preponderance of the evidence standard of proof applies to all violations of this Plea Agreement.

b. If the District Court makes a finding of material breach, Defendant agrees that the Government will be released from its commitments under this Plea Agreement. Defendant further agrees that the Government may then prosecute Defendant for any and all federal crimes that he has committed, including the charges dismissed pursuant to this Plea Agreement, and upon conviction may recommend to the Court any sentence for such crimes up to and including the maximum sentence. Defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial defense to such a prosecution, except to the extent that such a defense exists as of the date he signs this Plea Agreement. In addition, Defendant agrees that, in

any such prosecution, all admissions and other information that he has provided at any time, including all statements he has made and all evidence he has produced during proffers, interviews, testimony, and otherwise, may be used directly and indirectly against him, regardless of any constitutional provision, statute, rule, guideline provision, prior agreement, or other term of this Plea Agreement to the contrary. Finally, Defendant understands that his violation of the terms of this Plea Agreement would not entitle him to withdraw his guilty plea to the charge in the indictment.


13. The defendant ALI KHALID STEITIYE and his attorney further stipulate that the defendant is entering his guilty plea freely and voluntarily and with full knowledge of the consequences and without reliance on any discussions with representatives of the UNITED STATES OF AMERICA except as to those concessions contained in this Plea Agreement and without any threats, force, intimidation or coercion of any kind.

14. This is the entire plea agreement among the parties.

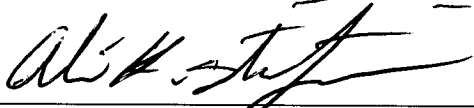
Dated: November 7, 2004.

For Plaintiff United States of America:

KARIN J. IMMERGUT
United States Attorney
District of Oregon

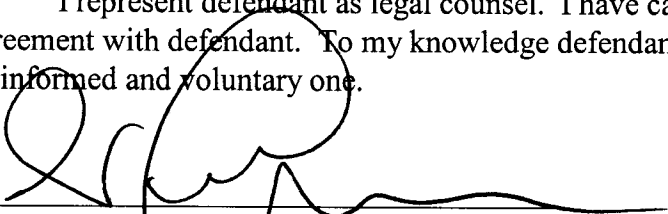
By 
CHARLES F. GORDER, JR.
PAMALA R. HOLSINGER
DAVID L. ATKINSON
Assistant United States Attorneys

I have read this agreement carefully and reviewed every part of it with my attorney. I understand the agreement and voluntarily agree to it. I am satisfied with the legal assistance provided to me by my attorney.



Defendant ALI KHALID STEITIYE

I represent defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge defendant's decision to enter into this agreement is an informed and voluntary one.



NOEL GREFENSON
Attorney for ALI KHALID STEITIYE