



U.S. Department of Justice

*United States Attorney
District of Maryland*

*Leo J. Wise
Assistant United States Attorney
Leo.Wise@usdoj.gov*

*Suite 400
36 S. Charles Street
Baltimore, MD 21201-3119*

*DIRECT: 410-209-4909
MAIN: 410-209-4800
FAX: 410-962-3091*

March 16, 2020

Stephen B. Mercer, Esq.
RaquinMercer LLC
5906 Hubbard Drive
Rockville, MD 20852
Email: steve@raquinmercerc.com

Re: United States v. Victor Rivera

Dear Counsel:

This letter, together with the Sealed Supplement, confirms the plea agreement (this "Agreement") that has been offered to your client, Victor Rivera (hereinafter "RIVERA"), by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have the Defendant execute it in the spaces provided below. If this offer has not been accepted March 23, 2020, it will be deemed withdrawn. The terms of the Agreement are as follows:

Offense of Conviction

1. The Defendant agrees to waive indictment and plead guilty to a one-count information charging the Defendant with making false statements to federal agents, in violation of 18 U.S.C. § 1001. The Defendant admits that the Defendant is, in fact, guilty of the offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

First, that on or about the date specified in the information, the defendant falsified or concealed or covered up a material fact;

Second, that the fact falsified or concealed or covered up was material;

Third, that defendant did so by trick, scheme or device;

Fourth, that defendant acted knowingly and willfully; and

Fifth, that the falsification, concealment or cover-up was with respect to a matter within the jurisdiction of the government of the United States.

Penalties

3. The maximum penalties provided by statute for the offenses to which the Defendant is pleading guilty are as follows:

CT	STATUTE	MAX IMPRISONMENT	MAX SUPERVISED RELEASE	MAX FINE	SPECIAL ASSESSMENT
1	18 U.S.C. § 1001	5 years	3 years	\$250,000	\$100

a. Prison: If the Court orders a term of imprisonment, the Bureau of Prisons has sole discretion to designate the institution at which it will be served.

b. Supervised Release: If the Court orders a term of supervised release, and the Defendant violates the conditions of supervised release, the Court may order the Defendant returned to custody to serve a term of imprisonment up to the entire original term of supervised release if permitted by statute, followed by an additional term of supervised release.

c. Payment: If a fine is imposed, it shall be payable immediately, unless the Court orders otherwise under 18 U.S.C. § 3572(d). The Defendant may be required to pay interest if the fine is not paid when due.

f. Collection of Debts: If the Court imposes a fine, this Office’s Financial Litigation Unit will be responsible for collecting the debt. If the Court establishes a schedule of payments, the Defendant agrees that: (1) the full amount of the fine is nonetheless due and owing immediately; (2) the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment; and (3) the United States may fully employ all powers to collect on the total amount of the debt as provided by law. Until the debt is paid, the Defendant agrees to disclose all assets in which the Defendant has any interest or over which the Defendant exercises direct or indirect control. Until the money judgment is satisfied, the Defendant authorizes this Office to obtain a credit report in order to evaluate the Defendant’s ability to pay, and to request and review the Defendant’s federal and state income tax returns. The Defendant agrees to complete and sign a copy of IRS Form 8821 (relating to the voluntary disclosure of federal tax return information) and a financial statement in a form provided by this Office.

Waiver of Rights

4. The Defendant understands that by entering into this Agreement, the Defendant surrenders certain rights as outlined below:

a. If the Defendant had pled not guilty and persisted in that plea, the Defendant would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in defense, however, the Defendant would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in the Defendant's own defense if the Defendant so chose, and the Defendant would have the right to refuse to testify. If the Defendant chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from the Defendant's decision not to testify.

e. If the Defendant were found guilty after a trial, the Defendant would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that the Defendant may have to answer the Court's questions both about the rights being given up and about the facts of the case. Any statements that the Defendant makes during such a hearing would not be admissible against the Defendant during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, the Defendant will be giving up the right to file and have the Court rule on pretrial motions, and there will be no further trial or

proceeding of any kind in the above-referenced criminal case, and the Court will find the Defendant guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status, including possible denaturalization. The Defendant recognizes that if the Defendant is not a citizen of the United States, or is a naturalized citizen, pleading guilty may have consequences with respect to the Defendant’s immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. 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 Court, can predict with certainty the effect of a conviction on immigration status. The Defendant is not relying on any promise or belief about the immigration consequences of pleading guilty. The Defendant nevertheless affirms that the Defendant wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the “advisory guidelines range”) pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. § 3551-3742 (excepting 18 U.S.C. § 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant stipulate and agree to the Statement of Facts set forth in Attachment A, which is incorporated by reference herein. This Office and the Defendant further agree that the applicable guideline calculation is as follows:

a. Base Offense Level (U.S.S.G. § 2B1.1(a)(2))	6	
b. Abuse of Position of Trust (U.S.S.G. § 3B1.3)	<u>+2</u>	
TOTAL	8	

This Office does not oppose a two-level reduction in the Defendant’s adjusted offense level pursuant to U.S.S.G. § 3E1.1(a), based upon the Defendant’s apparent prompt recognition and affirmative acceptance of personal responsibility for the Defendant’s criminal conduct. This Office may oppose any adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and may decline to make a motion pursuant to U.S.S.G. § 3E1.1(b), if the Defendant: (i) fails to admit each and every item in the factual stipulation; (ii) denies involvement in the offense; (iii) gives conflicting statements about the Defendant’s involvement in the offense; (iv) is untruthful with the Court, this Office, or the United States Probation Office; (v) obstructs or attempts to obstruct justice prior to sentencing; (vi) engages in any criminal conduct between the date of this

Agreement and the date of sentencing; (vii) attempts to withdraw the plea of guilty; or (viii) violates this Agreement in any way.

7. There is no agreement as to the Defendant's criminal history and the Defendant understands that the Defendant's criminal history could alter the Defendant's offense level. Specifically, the Defendant understands that the Defendant's criminal history could alter the final offense level if the Defendant is determined to be a career offender or if the instant offense was a part of a pattern of criminal conduct from which the Defendant derived a substantial portion of the Defendant's income.

8. Other than as set forth above, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines are in dispute or will be raised in calculating the advisory guidelines range.

Obligations of the Parties

9. At the time of sentencing, this Office and the Defendant reserve the right to advocate for a reasonable sentence, period of supervised release, and/or fine considering any appropriate factors under 18 U.S.C. § 3553(a). This Office and the Defendant reserve the right to bring to the Court's attention all information with respect to the Defendant's background, character, and conduct that this Office or the Defendant deem relevant to sentencing, including the conduct that is the subject of any counts of the Indictment. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

Waiver of Appeal

10. In exchange for the concessions made by this Office and the Defendant in this Agreement, this Office and the Defendant waive their rights to appeal as follows:

a. The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or any other statute or constitutional provision, to appeal the Defendant's conviction on any ground whatsoever. This includes a waiver of all right to appeal the Defendant's conviction on the ground that the statutes to which the Defendant is pleading guilty is unconstitutional, or on the ground that the admitted conduct does not fall within the scope of the statutes to the extent that such challenges can be legally waived.

b. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed (including any term of imprisonment, fine, term of supervised release, or order of restitution) for any reason (including the establishment of the advisory sentencing guidelines range, the determination of the Defendant's criminal history, the weighing of the sentencing factors, and any constitutional challenges to the calculation and imposition of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release), except the Defendant reserves the right to appeal any sentence that exceeds the statutory maximum; and

c. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Defendant's Conduct Prior to Sentencing and Breach

13. a. Between now and the date of the sentencing, the Defendant will not engage in conduct that constitutes obstruction of justice under U.S.S.G. § 3C1.1; will not violate any federal, state, or local law; will acknowledge guilt to the probation officer and the Court; will be truthful in any statement to the Court, this Office, law enforcement agents, and probation officers; will cooperate in the preparation of the presentence report; and will not move to withdraw from the plea of guilty or from this Agreement.

b. If the Defendant engages in conduct prior to sentencing that violates the above paragraph of this Agreement, and the Court finds a violation by a preponderance of the evidence, then: (i) this Office will be free from its obligations under this Agreement; (ii) this Office may make sentencing arguments and recommendations different from those set out in this Agreement, even if the Agreement was reached pursuant to Rule 11(c)(1)(C); and (iii) in any criminal or civil proceeding, this Office will be free to use against the Defendant all statements made by the Defendant and any of the information or materials provided by the Defendant, including statements, information, and materials provided pursuant to this Agreement, and statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure. A determination that this Office is released from its obligations under this Agreement will not permit the Defendant to withdraw the guilty plea. The Defendant acknowledges that the Defendant may not withdraw the Defendant's guilty plea if the Court finds that the Defendant breached the Agreement.

Court Not a Party

11. The Court is not a party to this Agreement. The sentence to be imposed is within the sole discretion of the Court. The Court is not bound by the Sentencing Guidelines stipulation in this Agreement. The Court will determine the facts relevant to sentencing. The Court is not required to accept any recommendation or stipulation of the parties.


Entire Agreement

12. This letter, together with the Sealed Supplement, constitutes the complete plea agreement in this case. This letter, together with the Sealed Supplement, supersedes any prior understandings, promises, or conditions between this Office and the Defendant. There are no other agreements, promises, undertakings, or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement. No changes to this Agreement will be effective unless in writing, signed by all parties and approved by the Court.

If the Defendant fully accepts each and every term and condition of this Agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Robert K. Hur
United States Attorney

By: 
Leo J. Wise
Derek E. Hines
Assistant United States Attorneys

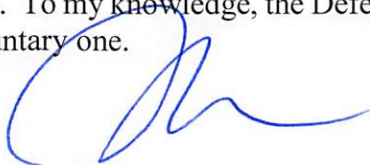
I have read this Agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

3/21/20
Date


Victor RIVERA

I am the Defendant's attorney. I have carefully reviewed every part of this Agreement, including the Sealed Supplement with the Defendant. The Defendant advises me that the Defendant understands and accepts its terms. To my knowledge, the Defendant's decision to enter into this Agreement is an informed and voluntary one.

3/21/20
Date


Stephen Mercer, Esq.

ATTACHMENT A

STIPULATION OF FACTS

The undersigned parties stipulate and agree that if this case had proceeded to trial, this Office would have proven the following facts beyond a reasonable doubt. The undersigned parties also stipulate and agree that the following facts do not encompass all of the evidence that would have been presented had this matter proceeded to trial.

1. The Baltimore Police Department (“BPD”) is an agency of the State of Maryland whose law enforcement jurisdiction includes Maryland’s largest city, Baltimore.

2. Sworn members of the BPD must abide by the Law Enforcement Officer’s Code of Ethics, which provides, in pertinent part:

As a Law Enforcement Officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation; the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department ... I recognize the badge of my office as a symbol of public faith and I accept it as a public trust to be held so long as I am true to the ethics of police service.

3. VICTOR RIVERA joined the BPD on July 11, 1994.

4. As of January 8, 2007, RIVERA was serving on an Organized Crime Division (OCD) squad under Sergeant W.K.

5. In February 2009, RIVERA was serving on a squad with Keith Gladstone, Ivo Louvado, W.J., C.J., and P.G., that was supervised by W.K.

6. Prior to February 19, 2009, W.J. and C.J. told RIVERA that they had received information from a confidential informant about a large-scale narcotics trafficker operating out of a residence on the 1400 block of Ellamont Street, in Baltimore, Maryland.

7. On February 19, 2009, RIVERA, and other members of the squad were conducting surveillance in the 1400 block of Ellamont Street targeting an individual whose initials are T.M. RIVERA and W.K. followed a car from that residence to a nearby school where RIVERA saw the driver throw something in a trash container. Once the driver left, RIVERA and W.K. recovered the trash and found it to be empty kilogram drug wrappers. During this time other officers claimed to have followed a second individual who left the residence and who, the

officers claimed, threw trash from the window of his vehicle. Those other officers claimed to have recovered the trash, which, they represented, contained cocaine residue.

8. RIVERA returned to the area around the residence and continued surveillance.

9. Ultimately, RIVERA participated in the execution of a search and seizure warrant at the residence. No drugs were found in the residence. RIVERA learned that drugs were recovered from a pick-up truck that was parked down the block.

10. RIVERA further learned that forty-one (41) kilograms of cocaine was turned into the BPD's Evidence Control Unit on February 20, 2009, from the seizure from the pick-up truck.

11. Later that day, a criminal complaint was filed in the United States District Court for the District of Maryland charging T.M. with possessing with intent to distribute five or more kilograms of cocaine.

12. Subsequent to the seizure, RIVERA, Gladstone and Louvado discovered 3 additional kilograms of cocaine in the surveillance van that had been used to transport the 41 kilograms that were turned in to BPD. These kilograms of cocaine had come from the seizure from T.M.'s pickup truck on February 19 and 20, 2009, but had not be turned into the BPD on February 20, 2009.

13. Rather than turn this cocaine into BPD, RIVERA, Gladstone and Louvado agreed to sell the cocaine and split the proceeds from its sale.

14. RIVERA sold the cocaine to a confidential informant of his who trafficked in cocaine. The source proceeded to sell the cocaine in Baltimore City. RIVERA received the proceeds of the sale from his source and then shared them with Gladstone and Louvado. Ultimately, RIVERA received \$20,000 in drug proceeds from the sale of the cocaine seized from T.M.'s pickup truck that had not been turned in to BPD.

15. As a law enforcement officer, RIVERA knew it was a crime to provide false information, or to conceal or cover up material facts, during voluntary interviews with federal law enforcement.

16. On March 1, 2017, seven members of the BPD's Gun Trace Task Force were arrested on federal racketeering charges, including W.J. Following the filing of charges, the FBI continued to investigate misconduct by members of the BPD.

17. On November 1, 2019, RIVERA agreed to participate in a voluntary interview with FBI task force officers ("TFOs"). RIVERA was told it was a crime to lie to the FBI TFOs interviewing him and he acknowledged he understood.

18. The FBI TFOs questioned RIVERA about the seizure of cocaine on February 19 and 20, 2009. In that interview, RIVERA made a number of false statements and material omissions including, but not limited to, the following:

FBI TFO: Right. Okay. So then what happened? One..., once you guys found the drugs, what was like the next move?

RIVERA: Um..., all I remember is goin' back to Headquarters to layin' it out for the news.

* * *

FBI TFO: Did you ever hear of anybody taking any drugs or any money or anything like that from the incident?

RIVERA: No sir. No.

FBI TFO: Nothin' like that?

RIVERA: Well this is...

FBI TFO: And I'm not talkin' about seizure, I'm talkin' about like, you know, stealing or..., or whatever.

RIVERA: Yeah, right. No. I... There's been... This is...probably what..., where my name comes in. Is that was it is?

FBI TFO: Whatta you mean?

RIVERA: Am I being accused of..., of s..., taking something?

FBI TFO: (Sighs). Well we're not accusing you of it right now. We're talk... We're..., we're tryin' to get to the bottom of...,

RIVERA: Right.

FBI TFO: ...you know...

RIVERA: Yeah, yeah. Hmph hmph.

FBI TFO: Yeah.

RIVERA: No.

* * *

FBI TFO: ... You said here before..., 'cause I asked you before you... about a backpack. You don't remember anything about a backpack?

RIVERA: (Whispers). No.

* * *

FBI TFO: All right, so would it be.... So I'm gonna ask you this question even though I think you've already answered it. Um, you didn't take any drugs. Did you give any drugs to [RIVERA's confidential source]”

RIVERA: No.

FBI TFO: ...to sell?

RIVERA: No.

FBI TFO: No?

RIVERA: And that's what's being said.

FBI TFO: Did you give any drugs to anybody else to sell other than “[RIVERA's confidential source]”

RIVERA: No.

FBI TFO: All right.

RIVERA: Hmph hmph (no).

FBI TFO: Did... I mean this is... 'Cause, you know, I., I'm gonna ask you anyway, but... So if you never gave drugs to “[RIVERA's confidential source]”

RIVERA: Right.

FBI TFO: ...did “[RIVERA's confidential source]” ever give you money for drugs that he sold for you?

RIVERA: No. Hmph hmph (no).

FBI TFO: No? Okay.

RIVERA: (In a lower voice). Hmph hmph (no).

FBI TFO: Did you ever... (Slight Laugh). Did you ever give any money to anyone else...

RIVERA: No.

FBI TFO: ...from drug..., from sale of...

RIVERA: Hmph hmph.

FBI TFO: ...those drugs?

RIVERA: No.

FBI TFO: Never gave any money to anybody else from your squad?

RIVERA: Ah, that... No.

* * *

FBI TFO: ...or I'll tell you what... Nah, that's like what your..., the allegation (Unintelligible) against you..., I'm not saying what it is but I tell you what the information we have is that um..., is that...

FBI TFO: ...we have reason to believe that drugs were taken from that incident, okay? Um, there was..., you know, "X" amount of kilos that were recovered and submitted to Evidence, um, which are probably..., which reflected in that photograph...

RIVERA: Right.

FBI TFO: ...and then that there was some evidence that there was some drugs that was taken, um, that was not submitted and that was subsequently pushed out and resold. That's the information that we have so mean I guess..., you know..., point blank, I mean do you know anything about that?

RIVERA: No.

FBI TFO: You don't know anything about that?

RIVERA: (In a lower voice). Hmph hmph (no).

* * *

FBI TFO: So we..., you know..., we..., we talk... I'm not gonna lie to you. We talk..., we've talked to... You know, you're not the only person we've talked to. We have talked to a bunch of people, um, to include [T.M.], you know? T.M., you know...,

RIVERA: Hmph hmph.

FBI TFO: ...is telling us that he had more drugs than what was seized.

RIVERA: Hmph hmph.

FBI TFO: Um...,

RIVERA: (Clears throat).

FBI TFO: ...so that's kind of why we're here today. Um., and you don't know., you don't know anything., have any knowledge of any extra drugs being taken?

RIVERA: No.

FBI TFO: Don't have any knowledge of any black backpack?

RIVERA: No.

FBI TFO: Um, never gave any drugs to "[RIVERA's confidential source]"

RIVERA: No.

FBI TFO: "[RIVERA's confidential source]" never gave you...

RIVERA: Uh-uh.

FBI TFO: ...any money?

RIVERA: No. (Whispers). Nah.

FBI TFO: (Sniffs). You never split any money with ah., Gladstone...

RIVERA: No.

FBI TFO: ...or Louvado? No? No money?

(Small Pause).

RIVERA: Why would., why would I do that?

FBI TFO: Well I'm just sayin'. Ah, you know, I just wanna be thorough with the questions that I ask. I wanna give you every opportunity to.,

RIVERA: (Breathing Noise and/or a sigh).

FBI TFO: ...you know, if you..., maybe, maybe you'll remember something, I don't know.



RIVERA: No.

19. At all times relevant to the facts summarized above, RIVERA knew his conduct was unlawful.

SO STIPULATED:



Leo J. Wise
Derek E. Hines
Assistant United States Attorneys

Victor Rivera
Defendant

Stephen Mercer, Esq.
Counsel for Defendant