UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Criminal Case No. 20-cr-165 (JEB)**
	:	
	:	
KEVIN CLINESMITH,	:	
	:	
Defendant.	:	

STATEMENT OF OFFENSE IN SUPPORT OF GUILTY PLEA

I. Summary of the Plea Agreement

Defendant Kevin Clinesmith agrees to admit guilt and enter a plea of guilty to a one-count Information charging him with False Statements, in violation of Title 18 U.S.C. § 1001(a)(3).

II. Elements of the Offenses

The essential elements of the offense of False Statements, in violation of Title 18 U.S.C. § 1001(a)(3), each of which the government must prove beyond a reasonable doubt, are:

1. On or about June 19, 2017, the defendant made or used a false writing or document;
2. The writing or document contained a statement or entry that was false, fictitious or fraudulent;
3. The statement or entry was material;
4. The defendant acted knowingly and willfully; and
5. The writing or document pertained to a matter within the jurisdiction of the executive branch or judicial branch of the Government of the United States.

III. Penalties for the Offense

The penalties for False Statements, in violation of Title 18 U.S.C. § 1001(a)(3), are as follows:

(A) a term of imprisonment not greater than five years;

(B) a fine not to exceed $250,000;

(C) a term of supervised release of not more than three years, after any period of incarceration;

(D) a special assessment of $100.

IV. Statement of the Facts

Pursuant to Federal Rule of Criminal Procedure 11, the United States and the defendant, Kevin Clinesmith, stipulate and agree that had this case gone to trial, the government's evidence would prove the following beyond a reasonable doubt:

A. Defendant's Background

1. The defendant is a lawyer and was admitted to practice law in November 2007.

2. From July 12, 2015 to September 21, 2019, the defendant was employed full-time with the Federal Bureau of Investigation ("FBI") as an Assistant General Counsel in the National Security and Cyber Law Branch of the FBI's Office of General Counsel. The defendant's office was located in the J. Edgar Hoover Building ("Hoover Building") in the District of Columbia.

3. As part of the defendant's duties and responsibilities, the defendant assisted FBI Special Agents and Supervisory Special Agents in connection with applications prepared by the FBI and the National Security Division of the United States Department of Justice ("NSD") to conduct surveillance under the Foreign Intelligence Surveillance Act ("FISA").

B. Crossfire Hurricane and the FISA Applications on Individual #1

4. On July 31, 2016, the FBI opened a Foreign Agents Registration Act ("FARA")

investigation known as Crossfire Hurricane into whether individual(s) associated with the Donald J. Trump for President Campaign were witting of and/or coordinating activities with the Russian government. By August 16, 2016, the FBI had opened individual cases under the Crossfire Hurricane umbrella on four United States persons including a United States person referred to herein as "Individual #1."

5. The defendant was assigned to provide legal support to FBI personnel working on Crossfire Hurricane. He was one of the individuals at the FBI who communicated with another specific United States government agency (the "Other Government Agency" or "OGA") to raise questions or concerns for the Crossfire Hurricane team.

6. In addition, as part of his responsibilities, the defendant provided support to FBI Special Agents and Supervisory Special Agents working with the NSD to prepare FISA applications to obtain authority from the United States Foreign Intelligence Surveillance Court ("FISC") to conduct surveillance on Individual #1. There were a total of four court-approved FISA applications targeting Individual #1: the first application was approved on October 21, 2016 ("FISA #1"), and three renewal applications were approved on January 12, 2017 ("FISA #2"), April 7, 2017 ("FISA #3"), and June 29, 2017 ("FISA #4"). FISA #4 expired September 22, 2017. Each of the FISA applications alleged there was probable cause that Individual #1 was a knowing agent of a foreign power, specifically Russia.

C. Individual #1's Prior Relationship With Another Government Agency

7. On August 17, 2016, prior to the approval of FISA #1, the OGA provided certain members of the Crossfire Hurricane team a memorandum ("August 17 Memorandum") indicating that Individual #1 had been approved as an "operational contact" for the OGA from 2008 to 2013 and detailing information that Individual #1 had provided to the OGA concerning Individual #1's

prior contacts with certain Russian intelligence officers. As noted below, the defendant told the Department of Justice Office of the Inspector General ("DOJ OIG") that he did not recall reviewing the August 17 Memorandum and he did not have access to it at the Office of General Counsel office space. However, the document, which was located at another location at the Hoover Building, was available to the Special Agents and Supervisory Special Agents on the Crossfire Hurricane team, and the defendant, upon request.

8. The first three FISA applications did not include Individual #1's history or status with the OGA.

9. Prior to the submission of FISA #4, Individual #1 had publicly stated that he/she had assisted the United States government in the past. During the preparation of FISA #4, an FBI Supervisory Special Agent ("SSA"), who was the affiant on FISA #4, asked the defendant to inquire with the OGA as to whether Individual #1 had ever been a "source" for the OGA.

10. The defendant knew that if Individual #1 had been a source with the OGA, that information would need to be disclosed in the FISA renewal request. In a voluntary interview with the DOJ OIG, the defendant stated there was "a big, big concern from both [the NSD's Office of Intelligence][1] and from the FBI that we had been targeting a source, because that should never happen without us knowing about it." The defendant indicated he knew that if it were true, they would "need to provide [the information] to the court" because such information would "drastically change[] the way that we would handle ... [the] FISA application."

11. On June 15, 2017, the defendant sent an email to a liaison from the OGA ("OGA Liaison"), stating: "We need some clarification on [Individual #1]. There is an indication that he

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[1] The Office of Intelligence is responsible for preparing and filing all applications for Court orders pursuant to FISA, and working with the FBI to do so.

may be a "[digraph]"[2] source. This is a fact we would need to disclose in our next FISA renewal… To that end, can we get two items from you? 1) Source Check/Is [Individual #1] a source in any capacity? 2) If he is, what is a [digraph] source (or whatever type of source he is)?"

12. Later that same day, the OGA Liaison responded by email in which the liaison provided the defendant with a list (but not copies) of OGA documents. That list included a reference to the August 17 Memorandum the OGA had previously provided to certain members of the Crossfire Hurricane team. The liaison also wrote that the OGA uses

> the [digraph] to show that the encrypted individual...is a [U.S. person]. We encrypt the [U.S. persons] when they provide reporting to us. My recollection is that [Individual #1] was or is ... [digraph] but the [documents] will explain the details. If you need a formal definition for the FISA, please let me know and we'll work up some language and get it cleared for use.

13. The defendant subsequently responded that same day to the OGA Liaison via email with "Thanks so much for that information. We're digging into the [documents] now, but I think the definition of the [digraph] answers our questions."

14. In one of the defendant's voluntary interviews with DOJ OIG, he stated he "didn't know the details of . . . the content of the [documents identified in the liaison's email]" and "didn't have access to [those documents] in the [Office of General Counsel] space." He further stated that he did not recall ever reviewing the documents referenced in the liaison's email. However, the documents, which were located at another location at the Hoover Building, were available to the Special Agents and Supervisory Special Agents on the Crossfire Hurricane team, and the defendant, upon request.

15. On June 19, 2017, SSA followed up with an instant message to the defendant and asked, "Do you have any update on the [OGA source] request?" During a series of instant messages

[2] The OGA uses a specific two-letter designation, or digraph, to describe a U.S. person who has been approved by the OGA for "operational contact."

between the defendant and the SSA, the defendant indicated that Individual #1 was a "subsource" and "was never a source." The defendant further stated "[the OGA] confirmed explicitly he was never a source." The SSA subsequently asked "Do we have that in writing." The defendant responded he did and that he would forward the email that the OGA provided to the defendant.

D. Defendant's False Statement

16. On June 19, 2017, immediately following the instant messages between the defendant and the SSA, the defendant, from his office in the Hoover Building, forwarded the OGA Liaison's June 15, 2017 email to the SSA with alterations that the defendant had made so that the OGA Liaison's email read as follows:

> My recollection is that [Individual #1] was or is "[digraph]" **and not a "source"** but the [documents] will explain the details. If you need a formal definition for the FISA, please let me know and we'll work up some language and get it cleared for use

(emphasis added). The defendant had altered the original June 15, 2017 email from the OGA Liaison by adding the words "and not a source" to the email, thus making it appear that the OGA Liaison had written in the email that Individual #1 was "not a source" for the OGA. Relying on the altered email, the SSA signed and submitted the application to the Court on June 29, 2017. The application for FISA #4 did not include Individual #1's history or status with the OGA.

17. In truth, and in fact, and as the defendant well knew, the original June 15, 2017 email from the OGA Liaison did not contain the words "not a source," and therefore, when the defendant altered and forwarded the email on June 19, 2017, the defendant made and used a writing or document, specifically an email, that contained a statement or entry he knew was materially false; in doing so the defendant acted knowingly and willfully; and the email pertained to a matter within both the jurisdiction of the executive branch and judicial branch of the Government of the United States.

18. This proffer of evidence is not intended to constitute a complete statement of all facts known by the parties, but is a minimum statement of facts intended to provide the necessary factual predicate for the guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for the defendant's plea of guilty to the charged crime. This Statement of the Offense fairly and accurately summarizes and describes the defendant's actions and involvement in the offense to which he is pleading guilty.

Respectfully Submitted,

John H. Durham
Special Attorney to the Attorney General

Neeraj N. Patel
Special Assistant United States Attorney
for the District of Columbia

Anthony Scarpelli
Assistant United States Attorney
for the District of Columbia

DEFENDANT'S ACKNOWLEDGMENT

I have read the Statement of Offense setting forth the facts related to my guilty plea to False Statements, in violation of Title 18 U.S.C. § 1001(a)(3). I have discussed this proffer fully with my attorneys, Justin Shur, Esquire, Megan Cunniff Church, Esquire, and Emily Damrau, Esquire. I fully understand this proffer and I acknowledge its truthfulness, agree to it and accept it without reservation. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this proffer fully.

Date: 8-14-2020

Kevin Clinesmith
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read each of the pages constituting the government's proffer of evidence related to my client's guilty plea to False Statements, in violation of Title 18 U.S.C. § 1001(a)(3). I have reviewed the entire proffer with my client and have discussed it with him fully. I concur in my client's agreement with and acceptance of this proffer.

Date: 8-14-2020

Justin Shur, Esquire
Attorney for Defendant

Date: 8-14-2020

Emily Damrau, Esquire
Attorney for Defendant

Date: 8-14-2020

Megan Cunniff Church, Esquire
Attorney for Defendant

U.S. Department of Justice

John H. Durham
Special Attorney to the Attorney General
Department of Justice

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

August 14, 2020

Justin Shur, Esquire
Megan Cunniff Church, Esquire
Emily Damrau, Esquire
MoloLamken, LLC.
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Re: <u>United States v. Kevin Clinesmith</u>
Criminal Case No. 20-cr-165 (JEB)

Dear Mr. Shur, Ms. Church, and Ms. Damrau:

This letter sets forth the full and complete plea offer to your client, Kevin Clinesmith (hereinafter referred to as "your client" or "defendant"), from the United States Department of Justice (hereinafter also referred to as "the Government" or "this Office"). This plea offer expires on August 14, 2020. If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

1. Charges and Statutory Penalties

Your client agrees to plead guilty to a Criminal Information, a copy of which is attached, charging your client with False Statements, in violation of 18 U.S.C. § 1001(a)(3).

Your client understands that a violation of 18 U.S.C. § 1001(a)(3) carries a maximum sentence of five years of imprisonment; a fine of $250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than three years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your client agrees to pay a special assessment of $100 per felony conviction to the Clerk of the United States District Court for the District of Columbia. Your client also understands that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing

Commission, *Guidelines Manual* (2018) (hereinafter "Sentencing Guidelines," "Guidelines," or "U.S.S.G."), the Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

2. **Factual Stipulations**

Your client agrees that the attached "Statement of Offense" fairly and accurately describes your client's actions and involvement in the offenses to which your client is pleading guilty. Please have your client sign and return the Statement of Offense as a written proffer of evidence, along with this Agreement.

3. **Additional Charges**

In consideration of your client's guilty plea to the above offenses, your client will not be further prosecuted criminally by this Office for the specific conduct set forth in the attached Statement of Offense.

4. **Sentencing Guidelines Analysis**

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the Sentencing Guidelines. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree to the following:

A. Estimated Offense Level Under the Guidelines

The parties agree that the following Sentencing Guidelines sections apply:

U.S.S.G. §2B1.1(a)(2)	Base Offense Level	6

The parties disagree on the whether the following enhancement applies:

U.S.S.G. §3B1.3	Abuse of Position of Trust	+2
	Total	8

The Government reserves the rights to argue for the application of the 2-level enhancement at sentencing and the defendant reserves his right to object to the application of the enhancement.

B. Acceptance of Responsibility

The Government agrees that a 2-level reduction will be appropriate, pursuant to U.S.S.G. § 3E1.1, provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client's allocution, adherence to every provision of this Agreement, and conduct between entry of the plea and imposition of sentence.

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any agreement set forth above, should your client move to withdraw your client's guilty plea after it is entered, or should it be determined by the Government that your client has either (a) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice, or (b) engaged in additional criminal conduct after signing this Agreement.

In accordance with the above, the Government believes the Estimated Offense Level will be at least 6, and the defendant believes the Estimated Offense Level will be at least 4.

B. Estimated Criminal History Category

Based upon the information now available to this Office, your client has no criminal convictions.

Accordingly, your client is estimated to have 0 criminal history points and your client's Criminal History Category is estimated to be I (the "Estimated Criminal History Category"). Your client acknowledges that after the pre-sentence investigation by the United States Probation Office, a different conclusion regarding your client's criminal convictions and/or criminal history points may be reached and your client's criminal history points may increase or decrease.

C. Estimated Guidelines Range

Based upon the above, your client's estimated Sentencing Guidelines range is zero months to six months (the "Estimated Guidelines Range"). In addition, the parties agree that, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 6, the estimated applicable fine range is $1,000 to $9,500, and at Guidelines level 4, the estimated applicable fine range is $500 to $9,500 Your client reserves the right to ask the Court not to impose any applicable fine.

The parties agree that, solely for the purposes of calculating the applicable range under the Sentencing Guidelines, neither a downward nor upward departure from the Estimated Guidelines Range set forth above is warranted. Except as provided for in the "Reservation of Allocution" section below, the parties also agree that neither party will seek any offense-level calculation different from the Estimated Offense Level calculated above in subsection A.

Your client understands and acknowledges that the Estimated Guidelines Range calculated above is not binding on the Probation Office or the Court. Should the Court or Probation Office determine that a Guidelines range different from the Estimated Guidelines Range is applicable, that will not be a basis for withdrawal or rescission of this Agreement by either party.

Your client understands and acknowledges that the terms of this section apply only to conduct that occurred before the execution of this Agreement and that is known to the Government at the time of the signing of this Agreement. If the Government learns that your client committed any conduct, unknown to the Government at the time of the signing of this Agreement, that would form the basis for an increase in your client's offense level or justify an upward departure or should your client commit any such conduct after the execution of this Agreement (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or the Court), the Government is free under this Agreement to seek an increase in the offense level based on that pre- or post-agreement conduct.

5. **Agreement as to Sentencing Allocution**

The parties reserves their rights to seek a sentence above or below the Estimated Guidelines Range based upon factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a), and both parties reserve their rights to object to a sentence above or below the Estimated Guidelines Range.

6. **Reservation of Allocution**

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not described in the charges to which your client is pleading guilty, to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. The parties also reserve the right to address the correctness of any Sentencing Guidelines calculations determined by the presentence report writer or the court, even if those calculations differ from the Estimated Guidelines Range calculated herein. In the event that the Court or the presentence report writer considers any Sentencing Guidelines adjustments, departures, or calculations different from those agreed to and/or estimated in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court or the presentence report writer and to allocute for a sentence within the Guidelines range, as ultimately determined by the Court, even if the Guidelines range ultimately determined by the Court is different from the Estimated Guidelines Range calculated herein.

In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocution in any post-sentence litigation. The parties retain the full right of allocution in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and does not intend to file any post-sentence downward departure motion in this case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

7. **Court Not Bound by this Agreement or the Sentencing Guidelines**

Your client understands that the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the

Government at the time of sentencing. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that your client's entry of a guilty plea to the charged offenses authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation. The Government and your client will be bound by this Agreement, regardless of the sentence imposed by the Court. Any effort by your client to withdraw the guilty plea because of the length of the sentence shall constitute a breach of this Agreement.

8. **Conditions of Release**

Your client acknowledges that, although the Government will not seek a change in your client's release conditions pending sentencing, the final decision regarding your client's bond status or detention will be made by the Court at the time of your client's plea of guilty. The Government may move to change your client's conditions of release, including requesting that your client be detained pending sentencing, if your client engages in further criminal conduct prior to sentencing or if the Government obtains information that it did not possess at the time of your client's plea of guilty and that is relevant to whether your client is likely to flee or pose a danger to any person or the community. Your client also agrees that any violation of your client's release conditions or any misconduct by your client may result in the Government filing an ex parte motion with the Court requesting that a bench warrant be issued for your client's arrest and that your client be detained without bond while pending sentencing in your client's case.

9. **Waivers**

A. Venue

Your client waives any challenge to venue in the District of Columbia.

B. Statute of Limitations

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached Statement of Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of Offense that is not time-barred on the date that this Agreement is signed.

C. Trial Rights

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statute or rule. Your client agrees to forego the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to be indicted by a Grand Jury, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against self-incrimination.

Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights that arise under these rules in the event your client withdraws your client's guilty plea or withdraws from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

D. Appeal Rights

Your client agrees to waive, insofar as such waiver is permitted by law, the right to appeal the conviction in this case on any basis, including but not limited to claim(s) that (1) the statute(s) to which your client is pleading guilty is unconstitutional, and (2) the admitted conduct does not fall within the scope of the statute(s). Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client also agrees to waive the right to appeal the sentence in this case, including but not limited to any term of imprisonment, fine, forfeiture, award of restitution, term or condition of supervised release, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum or Guidelines range determined by the Court. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement. Notwithstanding the above agreement to waive the right to appeal the conviction and sentence, your client retains the right to appeal on the basis of ineffective assistance of counsel, but not to raise on appeal other issues regarding the conviction or sentence.

E. Collateral Attack

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective assistance of counsel. Your client reserves the right to file a motion brought under 18 U.S.C. § 3582(c)(2), but agrees to waive the right to appeal the denial of such a motion.

10. **Use of Self-Incriminating Information**

As an express condition of this agreement, the defendant agrees to be personally debriefed by the Federal Bureau of Investigation ("FBI") regarding the FBI's review of Foreign Intelligence Surveillance Act ("FISA") matters and any information he possesses, direct or indirect, that should be brought to the attention of the Foreign Intelligence Surveillance Court ("FISC"). The Government agrees pursuant to U.S.S.G. § 1B1.8(a), that information provided by your client pursuant to this Agreement or during the course of the aforementioned debriefing, and about which the Government had no prior knowledge or insufficient proof in the absence of the debriefing, will not be used at the time of sentencing for the purpose of determining the applicable guideline range. However, all information provided by the defendant may be used for the purposes and in accordance with the terms identified in U.S.S.G. § 1B1.8(b).

11. **Restitution**

Your client understands that the Court has an obligation to determine whether, and in what amount, mandatory restitution applies in this case under 18 U.S.C. § 3663A.

12. **Breach of Agreement**

Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, or engages in any criminal activity prior to sentencing, your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of, this Agreement, whether or not the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.

13. **Complete Agreement**

No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and an attorney for the Office.

Your client further understands that this Agreement is binding only upon the Office. This Agreement does not bind the any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of Offense, and returning both to me no later than August 14, 2020.

Sincerely yours,

John H. Durham
Special Attorney to the Attorney General

Neeraj N. Patel
Special Assistant United States Attorney
for the District of Columbia

Anthony Scarpelli
Assistant United States Attorney
for the District of Columbia

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorneys, Justin Shur, Esquire, Megan Cunniff Church, Esquire, and Emily Damrau, Esquire. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offenses identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorney in connection with this Agreement and matters related to it.

Date: 8-14-2020

Kevin Clinesmith
Defendant

ATTORNEYS ACKNOWLEDGMENT

We have read every page of this Agreement, reviewed this Agreement with my client, Kevin Clinesmith, and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. We concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 8-14-2020

Justin Shur, Esquire
Attorney for Defendant

Date: 8-14-2020

Emily Damrau, Esquire
Attorney for Defendant

Date: 8-14-2020

Megan Cunniff Church, Esquire
Attorney for Defendant