

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) CR. NO. 2:19-CR-127-MHT  
 )  
 ULYSSES OLIVER, JR. )

**PLEA AGREEMENT**

**I. BACKGROUND INFORMATION**

**A. Attorneys**

Defense Attorney: Richard Keith  
Assistant United States Attorney: Denise O. Simpson  
Special Litigation Counsel/DOJ: Jared Fishman  
Trial Attorney/DOJ: David Reese

**B. Counts and Statutes Charged**

Count 1: 18 U.S.C. § 242  
Count 2: 18 U.S.C. § 242

**C. Counts Pleading Pursuant to Plea Agreement**

Count 1: 18 U.S.C. § 242  
Count 2: 18 U.S.C. § 242

**D. Statutory Penalties**

Counts 1 & 2: 18 U.S.C. § 242

A term of imprisonment of not more than ten years and a fine of not more than \$250,000, or both;  
A term of up to three years of supervised release;  
A mandatory special assessment fee of \$100;  
An order of restitution

**E. Elements of the Offenses**

Counts 1 & 2: 18 U.S.C. § 242:

- First: The defendant acted under color of law;
- Second: The defendant deprived the victim of a right secured and protected by the Constitution and laws of the United States; namely, the right to be free from cruel and unusual punishment;
- Third: The defendant acted willfully;
- Fourth: The offense resulted in bodily injury to the victim and involved the use of a dangerous weapon.

**II. INTRODUCTION**

Denise O. Simpson, Assistant United States Attorney; Jared Fishman and David Reese, Special Litigation Counsel and Trial Attorney of the Civil Rights Division of the Department of Justice, respectively; and Richard Keith, attorney for the defendant, Ulysses Oliver, Jr., pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, with the authorization of the defendant, submit this plea agreement. The terms are as follows.

**III. THE GOVERNMENT'S PROVISIONS**

1. Upon entering a plea of guilty by the offenses charged in Counts 1 and 2 of the Information, the attorneys for the United States will agree, pursuant to Rule 11(c)(1)(A), that the government will not bring any additional charges against the defendant in connection with the assault of two Elmore Correctional Facility inmates on February 16, 2019.

2. Pursuant to Rule 11(c)(1)(B), the government will recommend, and the government and the defendant agree and stipulate, that the applicable base offense levels, specific offense characteristics, and adjustments are as follows: (1) the base offense level for the offenses charged in Counts 1 and 2 of the Information is 14, see U.S.S.G. §§ 2H1.1(a)(1), 2A2.2(a); (2) the offenses were committed under color of law, see U.S.S.G. § 2H1.1(b)(1)(B); (3) a dangerous weapon was

used in the commission of the offenses, see U.S.S.G. § 2A2.2(b)(2)(B); (4) both victims sustained bodily injury, see U.S.S.G. § 2A2.2(b)(3)(A); (5) the victims were physically restrained in the course of the offenses, see U.S.S.G. § 3A1.3; (6) the defendant willfully attempted to obstruct or impede the administration of justice with respect to the investigation and prosecution of the offenses charged in Counts 1 and 2, see U.S.S.G. § 3C1.1; and (7) the combined offense level for the offenses charged in Counts 1 and 2 is 33, see U.S.S.G. § 3D1.4. Additionally, the government reserves the right to provide information to the United States Probation Office (Probation) regarding the defendant's criminal history. This agreement does not obligate the government to make any recommendation regarding the defendant's criminal history score or resulting criminal history category.

3. Pursuant to Rule 11(c)(1)(B), the government will recommend, and the government and the defendant agree and stipulate, that the defendant's advisory Guidelines range is 135-168 months, assuming the defendant falls within criminal history category I, and absent any reduction for acceptance of responsibility as set forth in paragraph 5.

4. Pursuant to Rule 11(c)(1)(B), the government agrees to recommend a sentence no greater than the bottom of the advisory Guidelines range, that is, the lowest number of the advisory Guidelines range.

5. The government acknowledges that the defendant assisted authorities in the investigation and prosecution of the defendant's own misconduct by timely notifying the government of the defendant's intention to enter a guilty plea, thereby permitting the government to avoid preparing for trial and allowing the government and the Court to allocate resources efficiently. Provided the defendant otherwise qualifies, and that the defendant does not, before the

date of the sentencing hearing, either personally or through the actions of the defense attorney on behalf of the defendant, take any action inconsistent the acceptance of responsibility, the government will move at or before the sentencing hearing for a further reduction of one level. See U.S.S.G. § 3E1.1(b). Determination of whether the defendant met the defendant's obligations to qualify for a reduction pursuant to § 3E1.1(b) is at the sole discretion of the government. Further, the government reserves the right to oppose the defendant's receiving a two-level reduction pursuant to § 3E1.1(a) should the government receive information indicating that, between the date of the plea hearing and the date of the sentencing hearing, the defendant, either personally or through the actions of the defense attorney on behalf of the defendant, has acted inconsistent with the acceptance of responsibility.

#### **IV. THE DEFENDANT'S PROVISIONS**

6. The defendant agrees to plead guilty to Counts 1 and 2 and to make factual admissions of guilt in open court. The defendant further agrees to waive any right the defendant may have to subsequently withdraw the guilty plea pursuant to Rule 11(d). The defendant also promises to refrain from taking any action inconsistent with the defendant's acceptance of responsibility for the offense to which the defendant is pleading guilty.

7. The defendant reserves the right to request a downward variance, that is, a sentence below the bottom, that is the lowest number, of the advisory Guidelines range.

8. The defendant acknowledges that the defendant will not be allowed to withdraw the guilty plea in the event that the Court does not accept any or all of the recommendations made pursuant to Rule 11(c)(1)(B). The defendant also understands that the defendant will be allowed to withdraw the guilty plea in the event that the Court does not accept any or all of the provisions

set forth pursuant to Rule 11(c)(1)(A).

9. The defendant agrees not to commit any other federal, state, or local offense while awaiting sentencing, regardless of whether that offense is charged or chargeable. The defendant agrees to provide truthful information to Probation and to the Court in all presentence and sentencing proceedings.

10. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of the Court. The defendant acknowledges that the full fine and restitution amounts shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of Probation at any time, the defendant agrees that the United States Bureau of Prisons and Probation will have the authority to establish payment schedules to ensure payment of the fine and restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off from federal payments, execution on non-exempt property, and any other means the government deems appropriate. The defendant also agrees that the defendant may be contacted by government officials regarding the collection of any financial obligation imposed by the Court without notifying the defendant's attorney and outside the presence of the defendant's attorney.

11. To facilitate the collection of financial obligations imposed in this case, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or third party. Further, the defendant will, if requested by the government, promptly submit a completed financial statement to the Office of the United States Attorney for the Middle District of Alabama in a form the government provides and as the government directs. The defendant

promises that such financial statement and disclosures will be complete, accurate, and truthful. The defendant expressly authorizes the government to obtain a report on the defendant's credit in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

12. The defendant certifies that the defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by this agreement or that may be imposed upon the defendant by the Court. In addition, the defendant promises that the defendant will make no such transfers in the future.

13. The defendant agrees to pay the \$200 assessment fee on the date of sentencing.

14. The defendant agrees to waive and hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, but not limited to, any records that may be sought under the Freedom of Information Act, see 5 U.S.C. § 552, or the Privacy Act of 1974, see 5 U.S.C. § 552a.

#### **V. FACTUAL BASIS**

15. The defendant admits the allegations charged in Counts 1 and 2 of the Information and understands that the nature of the charges to which the plea is offered involves proof as to Counts 1 and 2. Specifically, the defendant admits the following to be true and correct:

a. On the morning of February 16, 2019, while working as a Sergeant for the Alabama Department of Corrections ("ALDOC") at Elmore Correctional Facility ("ECF") in Elmore, Alabama, the defendant was present when ALDOC Correctional Officer 1 brought victims C.R. and C.H. to the ECF shift office. CO 1 told the defendant and others that C.R. and C.H. jumped the fence at the visitation area of ECF and retrieved a packet of material CO 1 believed to



be contraband. The defendant left the shift office and went to the front gate area of ECF to view surveillance video of the incident.

b. After the defendant went to the front gate area to view the surveillance video, ALDOC Correctional Lieutenant 1 handcuffed C.R. and C.H. behind their backs. After C.R. and C.H. were handcuffed, they were placed in the ECF observation room. The ECF observation room contains four beds and sits directly across from the ECF shift office, separated by a hallway approximately five feet across. The shift office door and the observation room door open into the hallway. Additionally, the ECF shift office has a window through which persons inside the shift office can see into the hallway.

c. After viewing the surveillance video, which depicted C.R. and C.H. jumping the fence at the ECF visitation area and retrieving a packet of material, the defendant became enraged and returned to the shift office. At the shift office, the defendant retrieved the key to the ECF observation room from ALDOC Correctional Sergeant 1. The defendant entered the observation room and found C.R. and C.H., who were sitting quietly on a bed in the observation room, and who still were handcuffed with their hands behind their backs. Neither were engaged in any kind of disruptive conduct. The defendant pulled C.R. from the bed and brought C.R. out of the observation room and into the hallway. There was no legitimate law enforcement reason to remove the inmates from the observation room at that time.

d. In the hallway, the defendant shoved C.R. against the shift office wall, then knocked C.R. to the floor. The defendant struck C.R. multiple times in the body with his fists and feet. The defendant then produced a collapsible baton from his belt and struck C.R. approximately nineteen times on his legs, head, arms, back, and body. Throughout the assault, C.R. was not

resisting nor engaged in any sort of disruptive conduct, and posed no threat. During the assault, C.R. defecated on himself.

e. After assaulting C.R., and as C.R. lay in the hallway, the defendant again went into the observation room and pulled victim C.H. into the hallway. The defendant shoved C.H. against the shift office wall and struck C.H. with his baton three times, landing blows on C.H.'s legs, back, and head. When C.H. slid to the floor, the defendant continued hitting C.H. with his baton, administering approximately seven strikes to C.H.'s arms, legs, and abdomen. The defendant also kicked C.H. as he lay on the floor. Throughout the assault, C.H. was not resisting nor engaged in any sort of disruptive conduct, and posed no threat.

f. After assaulting C.H., the defendant slapped C.R. on the back of the head and ordered the victims to stand up. When the victims stood up, the defendant shoved C.R. by the back of the neck. C.R. and C.H. walked back into the observation room. In the observation room, Lieutenant 1 removed the victims' handcuffs while the defendant stood next to the victims with his baton extended. After Lieutenant 1 removed their handcuffs, C.R. and C.H. sat on a bed in the observation room. The victims did not resist or engage in any sort of disruptive conduct, and posed no threat. As Lieutenant 1 stood by, the defendant then shoved the tip of his baton into the face of victim C.H., under C.H.'s left eye, which produced a laceration on C.H.'s face.

g. As a result of defendant's conduct, victims C.R. and C.H. suffered physical pain, bruises, and lacerations.

h. CO 1 was present in the hallway, in the shift office, and in the observation room during the defendant's assault of C.R. and C.H. CO 1 did not tell the defendant to stop the assault of either C.R. or C.H. Despite having the duty and opportunity to do so, CO 1 did not



verbally or physically intervene with the defendant to prevent the defendant from continuing to assault C.R. and C.H.

i. CO 2 was present in the hallway and in the shift office during the defendant's assault of C.R. and C.H. CO 2 did not tell the defendant to stop the assault of either C.R. or C.H. Despite having the duty and opportunity to do so, CO 2 did not verbally or physically intervene with the defendant to prevent the defendant from continuing to assault C.R.

j. Lieutenant 1 was present in the hallway, in the shift office, and in the observation room during the defendant's assault of C.R. and C.H. Lieutenant 1 did not tell the defendant to stop the assault of either C.R. or C.H. Despite having the duty and opportunity to do so, Lieutenant 1 did not verbally or physically intervene with the defendant to prevent the defendant from continuing to assault C.R. and C.H.

k. Sergeant 1 was present in the shift office during the defendant's assault of C.R. and C.H. Despite having the duty and opportunity to do so, Sergeant 1 did not verbally or physically intervene with the defendant to prevent the defendant from continuing to assault C.R. and C.H.

l. The defendant's assault of C.R. and C.H. was in contravention of ALDOC policies and procedures governing the use of force, was not consistent with the defendant's training regarding use of force, was not justified, and was not applied as a good-faith effort to further a legitimate law enforcement and institutional purpose. At the time of his assault of C.R. and C.H., the defendant knew that his use of force was not permitted by ALDOC policies and procedures governing the use of force, was not justified, and was not applied as a good-faith effort to further a legitimate law enforcement and institutional purpose. The defendant assaulted C.R. and C.H.

as punishment because he believed that C.R. and C.H. had successfully brought contraband into ECF.

m. In the course of his prior employment with ALDOC, the defendant has intervened verbally or physically to prevent ALDOC correctional officers from using force against inmates. The circumstances in the present case were not meaningfully different from these past instances in which the defendant intervened verbally or physically to prevent ALDOC officers from using force against inmates.

n. In the course of his prior employment with ALDOC, other ALDOC correctional officers have intervened verbally or physically with the defendant to prevent him from using force against inmates. The circumstances in the present case were not meaningfully different from these past instances in which other ALDOC correctional officers intervened verbally or physically to prevent the defendant from using force against inmates.

o. Following the assault, the defendant wrote a false written report concerning the assault. In his written statement, the defendant wrote that he “singly took inmates [C.R.] and [C.H.] from the [observation room] and began to strike them in their leg area with my collapsible baton,” when, in truth and in fact, the defendant struck C.R. with his baton on C.R.’s legs, arms, head, back, and body; and struck C.H. with his baton on C.H.’s legs, back, head, arms, and trunk. Additionally, the defendant’s written report omits that the defendant struck C.R. with his fists and feet, and struck C.H. with his feet. Additionally, the defendant wrote in his written statement that he struck the victims “until I was told to stop by [Correctional Lieutenant I],” when, in truth and in fact, Lieutenant I had not ordered the defendant to stop. The defendant included this false statement in his report at the request of Lieutenant I in order to falsely insulate Lieutenant I from

future liability.

The defendant admits these allegations are true. Both the United States and the defendant agree that this factual basis does not contain all of the relevant information known to the defendant. The parties also agree that this is a sufficient factual basis for the crimes to which the defendant is pleading guilty, but is not an exhaustive statement by the defendant.

#### **VI. THE DEFENDANT'S WAIVER OF APPEAL AND COLLATERAL ATTACK**

16. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the conviction or sentence. The defendant further expressly waives the right to attack the conviction or sentence in any post-conviction proceeding, including proceedings pursuant to 28 U.S.C. § 2255. Exempt from this waiver is the right to appeal or collaterally attack the conviction or sentence on the grounds of ineffective assistance of counsel or prosecutorial misconduct.

17. In return for the above waiver by the defendant, the government does not waive its right to appeal any matter related to this case, as set forth at 18 U.S.C. § 3742(b). However, if the government decides to exercise its right to appeal, the defendant is released from the appeal waiver and may pursue any appeal pursuant to 18 U.S.C. § 3742(a).

#### **VII. BREACH OF THE PLEA AGREEMENT**

18. The parties agree that the issue of whether either party has breached this agreement at any time is one that will be resolved by the Court by a preponderance of the evidence, except as set forth in paragraph 20. The parties agree that, should either party obtain information causing the party to develop a good faith belief that the other party has breached this agreement, then the

party will promptly file a written motion—or make an oral motion if doing so would be more expedient—asking that the Court declare the other party to be in breach of the plea agreement.

19. The parties agree that, a breach of the plea agreement by the defendant would include, but not be limited to: (1) failing to fulfill each of the defendant's obligations under this plea agreement; (2) committing new criminal conduct; or (3) seeking to withdraw the guilty plea or otherwise engaging in conduct inconsistent with an acceptance of responsibility. Should the Court find the defendant to have breached this agreement: (1) the government will be free from its obligations under this agreement; (2) the defendant will not be permitted to withdraw the guilty plea; (3) the defendant's obligations and waivers under this agreement will remain in full force and effect; (4) the defendant will be subject to prosecution for other crimes; and (5) the government will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, all statements by the defendant and any information or materials provided by the defendant, including statements made during the plea hearing and all statements made by the defendant pursuant to proffer letters.

20. The parties agree that, in the event that the defendant breaches this agreement by committing new criminal conduct, the government will be required to only establish probable cause to believe that the defendant committed a new criminal offense for the Court to find the defendant in breach of the plea agreement.

21. The parties agree that, should the Court find the government in breach of this plea agreement, the defendant may cancel this agreement and thus be released from the appellate and collateral attack waivers. The parties further agree that a breach of the plea agreement by the government will not automatically entitle the defendant to withdraw the guilty plea and, if the

defendant should seek to withdraw the guilty plea on the basis of such a breach, then the defendant will be required to file a motion pursuant to Rule 11(d).

#### **VIII. THE DEFENDANT'S ACKNOWLEDGEMENTS**

22. The defendant understands that the Court is neither a party to nor bound by this agreement. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the Court will determine the advisory Guidelines range and the sentence. The defendant acknowledges that the defendant and the defendant's attorney have discussed the advisory Guidelines and the statutory sentencing factors set forth at 18 U.S.C. § 3553(a) and the defendant understands how those provisions may apply in this case. The defendant further understands that the defendant will have no right to withdraw a guilty plea on the basis that the Court calculates an advisory Guidelines range that differs from the range projected by the defense attorney or the government.

23. The defendant acknowledges that the defendant authorized and consented to the negotiations between the government and the attorney for the defendant that led to this agreement.

24. The defendant understands that: (1) in pleading guilty, the defendant may be required to make statements under oath; and (2) the government has a right to use against the defendant, in a prosecution for perjury or for making a false statement, any statement that the defendant makes. However, as the defendant understands, the government may not use as evidence against the defendant in any future proceeding involving the charges alleged in the Information or related offenses, the defendant's guilty plea if the Court permits the defendant to withdraw that guilty plea.

25. The defendant understands that if the defendant pleads guilty pursuant to this



agreement and the Court accepts that guilty plea, the defendant will waive certain rights, namely: (1) the right to plead not guilty or to persist in a plea of not guilty; (2) the right to a jury trial; (3) the right to be represented by counsel—and if necessary to have the Court appoint counsel—at trial and at every other stage of the proceeding; and (4) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

26. The defendant understands: (1) the nature of each charge to which the defendant is pleading guilty; (2) the maximum and minimum penalties associated with each charge to which the defendant is pleading guilty, including imprisonment, fine, and a term of supervised release; (3) any applicable mandatory minimum penalty associated with a charge to which the defendant is pleading guilty; (4) any applicable forfeiture provision applicable to a charge to which the defendant is pleading guilty; (5) the Court's authority to order restitution; and (6) the Court's obligation to impose a special assessment.

27. The defendant confirms that the entirety of any agreement between the defendant and the government is as set forth in this agreement and any addendum to this agreement and that the government has not made any promises to the defendant other than those contained in this agreement and any addendum to this agreement. This agreement consists of 16 pages and 32 paragraphs and an addendum.

28. The defendant confirms that counsel has competently and effectively represented the defendant throughout the proceedings leading to the entry of a guilty plea. The defendant is satisfied with such representation.

29. The defendant enters this plea agreement and pleads guilty freely and voluntarily.



That is, the defendant acts without being influenced by any threats, force, intimidation, or coercion of any kind.

30. The defendant understands that this agreement binds only the Office of the United States Attorney for the Middle District of Alabama and the Civil Rights Division of the Department of Justice, and that the agreement does not bind any other component of the United States Department of Justice, nor does it bind any state or local prosecuting authority.

#### **IX. THE ATTORNEYS' ACKNOWLEDGEMENTS**

31. The attorneys for the government and for the defendant acknowledge that this plea agreement contains the entirety of any agreement between the parties and that the parties reached this plea agreement in accordance with the procedure set forth at Rule 11.

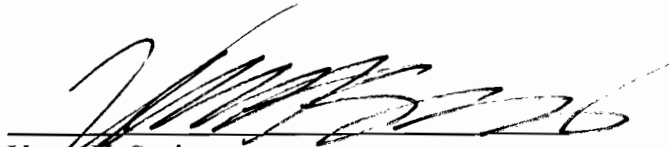
32. The attorney for the defendant confirms that the attorney for the defendant advised the defendant of: (1) the nature of the charges to which the defendant is pleading guilty; (2) the penalties associated with those charges; (3) the rights that the defendant is waiving by pleading guilty; and (4) the possibility that statements made by the defendant under oath during a plea hearing may be used against the defendant in a subsequent prosecution for perjury or for making a false statement.

This 2<sup>nd</sup> day of April, 2019.

Respectfully submitted,

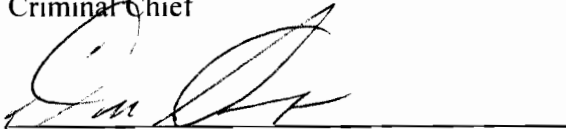
LOUIS V. FRANKLIN, SR.  
UNITED STATES ATTORNEY

ERIC S. DREIBAND  
ASSISTANT ATTORNEY GENERAL  
United States Department of Justice  
Civil Rights Division



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Verne H. Speirs  
Criminal Chief

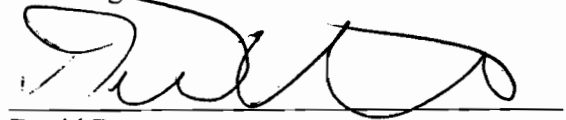


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Denise O. Simpson  
Assistant United States Attorney

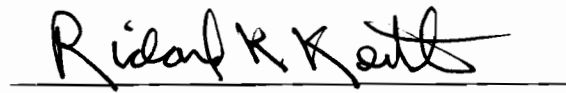
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Jared Fishman  
Special Litigation Counsel  
Civil Rights Division



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David Reese  
Trial Attorney  
Civil Rights Division

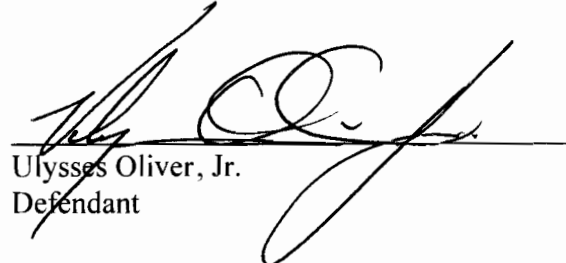


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Richard Keith  
Attorney for the Defendant

I have read the foregoing Plea Agreement and understand it, and it correctly states the representations that have been made to me and accurately sets forth the conditions of the plea agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPHS ARE TRUE AND CORRECT.



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Ulysses Oliver, Jr.  
Defendant