



**U.S. Department of Justice**

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June 17, 2016

Teresa Whalen, Esq.  
Law Office of Teresa Whalen  
801 Wayne Avenue, Suite 400  
Silver Spring, Maryland 20910

Re: United States v. Damien Travis Boddy,  
Criminal No. GJH-14-0528

Dear Ms. Whalen:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by **June 24, 2016**, it will be deemed withdrawn. **The plea agreement is entered in to and will be submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).** The terms of the agreement are as follows:

Offenses of Conviction

1. The Defendant agrees to plead guilty to Counts One and Two of the Superseding Information to be filed against him, which will charge him in Count One with Possession of a Firearm Not Registered in the National Firearms Registration, in violation of 26 U.S.C. § 5861, and in Count Two with Transportation of Explosive Materials with the Intent to Injure, Kill, or Intimidate, in violation of 18 U.S.C. § 844(d). The Defendant admits that he is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offenses

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

Count One (Possession of a Firearm Not Registered in the National Firearms Registration): (1) the Defendant knowingly possessed a National Firearms Act ("NFA") firearm; (2) the firearm was a destructive device; (3) the Defendant knew of the characteristics of the firearm, that is,

that it was a destructive device; (4) the firearm was or could readily have been put in operating condition; and (5) the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

Count Two (Transportation of Explosive Materials with the Intent to Injure, Kill, or Intimidate): (1) The Defendant transported or received, or attempted to transport or receive any explosive; (2) with the knowledge or intent that it would be used to kill, injure, or intimidate any individual or unlawfully used to damage or destroy any building, vehicle, or other real or personal property; (3) in or affecting interstate or foreign commerce.

#### Penalties

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

Count One (Possession of a Firearm not Registered in the National Firearms Registration): imprisonment for ten years, followed by a term of supervised release of not more than three years, and a fine not to exceed \$250,000; and,

Count Two (Transportation of Explosive Materials with the Intent to Injure, Kill, or Intimidate): imprisonment for ten years, followed by a term of supervised release of not more than three years, and a fine not to exceed \$250,000.

In addition, the Defendant must pay \$200 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.<sup>1</sup> If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

#### Waiver of Rights

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

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<sup>1</sup> Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

a. If the Defendant had persisted in his plea of not guilty, he 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 his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

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

e. If the Defendant were found guilty after a trial, he 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 against him. 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 he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him 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. The Defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his 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 his/her attorney or the Court, can predict with certainty the effect of a



conviction on immigration status. Defendant nevertheless affirms that he 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 understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto which would be proved beyond a reasonable doubt. This office calculates the applicable sentencing guidelines as follows:

*Count One*

*(Possession of a Firearm Not Registered in the National Firearms Registration)*

a. The base offense level for *Count One* is **18**, pursuant to United States Sentencing Guidelines (“U.S.S.G.”) § 2K2.1(a)(3).

b. A 2-level increase applies, pursuant to U.S.S.G. § 2K2.1(b)(3)(B), because the offense involved a destructive device.

*Count Two*

*(Transportation of Explosive Materials with the Intent to Injure, Kill, or Intimidate)*

c. The base offense level for *Count Two* is **33**, pursuant to U.S.S.G. §§ 2K1.3(c)(1)(B) and 2A2.1(a)(1), because the object of the offense would have constituted first degree murder.

d. *Counts One* and *Two* group under U.S.S.G. §§ 3D1.2(b) and 3D1.3. Therefore, the combined offense level is **33**.

e. This Office does not oppose a 2-level reduction in the Defendant’s adjusted offense level, based upon the Defendant’s apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional 1-level decrease in recognition of the Defendant’s timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this

agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. If the Defendant receives a 3-level downward adjustment for acceptance of responsibility, the final offense level for Count One will be **30**.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a Career Offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute. If the Defendant wishes to argue for any factor that could take the sentence outside of the advisory guidelines range, he will notify the Court, the United States Probation Officer and government counsel at least 14 days in advance of sentencing of the facts or issues he intends to raise.

#### Rule 11(c)(1)(C) Plea

9. The parties stipulate and agree, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that a total sentence of **not less than 120 months (ten years) and not more than 240 months (twenty years) imprisonment** in the custody of the Bureau of Prisons is the appropriate disposition of this case. The parties further agree that a total sentence of **not less than 120 months (ten years) and not more than 240 months (twenty years) imprisonment** is the appropriate and reasonable sentence under the factors enumerated in 18 U.S.C. § 3553(a), regardless of the applicable U.S.S.G. calculations.

10. This agreement does not affect the Court's discretion to impose any lawful term of supervised release or fine or to set any lawful conditions of probation or supervised release. In the event that the Court rejects this plea agreement, *either* party may elect to declare the agreement null and void. Should the Defendant so elect, he will be afforded the opportunity to withdraw his plea pursuant to the provisions of Federal Rule of Criminal Procedure 11(c)(5).

#### Obligations of the United States Attorney's Office

11. At the time of sentencing, this Office and the Defendant will recommend a total sentence within the agreed-upon range of **not less than 120 months (ten years) and not more than 240 months (twenty years) imprisonment**. In addition, this Office also will move to dismiss the indictment now pending against the Defendant.

12. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts that this Office has agreed to dismiss at sentencing.

### Restitution

13. The Defendant agrees to the entry of a Restitution Order for the full amount of the victim's losses. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss caused by the offense conduct set forth in the factual stipulation. The Defendant further agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

### Collection of Financial Obligations

14. The Defendant expressly authorizes the U.S. Attorney's Office for the District of Maryland to obtain a credit report in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, 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 other third party. The Defendant will promptly submit a completed financial statement to the United States Attorney's Office, in a form this Office prescribes and as it directs. The Defendant promises that the financial statement and disclosures will be complete, accurate and truthful, and understands that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. § 1001 by an additional five years' incarceration and fine.

### Waiver of Appeal

15. In exchange for the concessions made by this Office and the Defendant in this plea 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 otherwise, to appeal the Defendant's conviction.

b. If the Court accepts the plea agreement and imposes a sentence within the agreed-upon range, the Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal the sentence imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the Defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release).

c. Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing



from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. 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.

Obstruction or Other Violations of Law

16. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.


Entire Agreement

17. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that 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 and none will be entered into unless in writing and signed by all parties.

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.

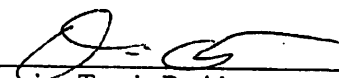
Very truly yours,

Rod J. Rosenstein  
United States Attorney

By:   
Erin B. Pulice  
Michael T. Packard  
Assistant United States Attorneys

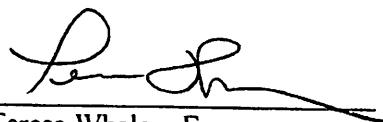
I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of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

06/21/16  
Date

  
\_\_\_\_\_  
Damien Travis Boddy

I am Damien Travis Boddy's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

6/21/16  
Date

  
\_\_\_\_\_  
Teresa Whalen, Esq.



**ATTACHMENT A - STATEMENT OF FACTS**  
**STIPULATED FACTS - UNITED STATES v. DAMIEN TRAVIS BODDY**

*The United States and the Defendant, Damien Travis Boddy, agree that if this case proceeded to trial, the United States would prove the following facts beyond a reasonable doubt. They agree that these are not all of the facts that would be proved if this case proceeded to trial.*

On or about October 19, 2014, the Defendant, **DAMIEN TRAVIS BODDY** (“**BODDY**”) manufactured, transported, and received an explosive with the intent to kill, injury, or intimidate an individual and unlawfully use to damage or destroy a building, vehicle, and other real or personal property, specifically a residence located in Upper Marlboro, Maryland by fire and the owner of the residence (hereinafter “Victim A”), an individual he previously had met through a mutual acquaintance. On or about this same day, **BODDY** knowingly possessed a firearm and destructive device as defined by 18 U.S.C. § 921(4) and 26 U.S.C. § 5845(f) which was not registered to him in the National Firearms Registration and Transfer Record.

Prior to the incident described in the preceding paragraph, on September 22, 2011, **BODDY** set fire to a vehicle parked at Victim A’s residence. In addition, in August 2012, **BODDY** contacted Victim A’s employer and threatened to kill Victim A.

On October 19, 2014, at approximately 1:25 a.m., **BODDY** drove a Toyota Camry to an Exxon gas station in Upper Marlboro, Maryland. **BODDY** then filled several empty “Icehouse” beer bottles with gasoline and placed the gas-filled bottles in the Toyota Camry.

Shortly thereafter, **BODDY** drove to Victim A’s residence, located in Upper Marlboro, Maryland (hereinafter “Victim A’s residence”). Using protective gloves and a lighter, **BODDY** set fire to at least two of the gas-filled beer bottles and, with the intent to injure, damage or destroy any individual or property, threw the lit bottles at Victim A’s residence. The lit bottles qualify as explosives as defined by 18 U.S.C. § 844(j). The bottles struck a window on the first floor and ignited a small fire on the exterior of the residence. The bottles, however, failed to penetrate the interior of the residence, and the fire thus was confined to the exterior of the window and shrubbery.

At approximately 1:55 a.m., members of the Prince George’s County (Maryland) Fire Department (“PGFD”) arrived at Victim A’s residence and extinguished the fire. PGFD Investigators subsequently recovered the remnants of one of the gas-filled beer bottles near the residence, gas residue on the window, and an intact gas-filled beer bottle on the sidewalk adjacent to Victim A’s residence.

Shortly thereafter, members of the Prince George’s County Police Department (“PGPD”) encountered **BODDY** in the Toyota Camry on Fenway Lane in Upper Marlboro, Maryland, a short distance from Victim A’s residence. Inside the Toyota Camry, PGPD officers discovered an “Icehouse” brown beer bottle filled with gasoline in the cup holder, a lighter, protective gloves, and paperwork from

(cont’d)

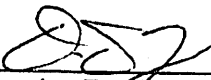
the Marlboro Village Exxon gas station located on John Rogers Boulevard in Upper Marlboro, Maryland. Both the Toyota Camry and **BODDY** himself reeked of gasoline.

The gas-filled beer bottles knowingly possessed by **BODDY** were "firearms" and "destructive devices" pursuant to 18 U.S.C. § 921(a)(4) and 26 U.S.C. § 5845(f) and were never registered to him in the National Firearms Registration and Transfer Record. Some of the materials used to create these destructive devices were manufactured outside the State of Maryland.

\* \* \*


I have read this statement of facts, and have carefully reviewed it with my attorney. I acknowledge that it is true and correct.

06/21/16  
Date

  
Damien Travis Boddy

I am the attorney for Damien Travis Boddy. I have carefully reviewed the statement of facts with him.

6/21/16  
Date

  
Teresa Whalen, Esq.