

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>JUN 24 2009</p> </div>	
<p>CLERK U S DISTRICT COURT DISTRICT OF ARIZONA</p>	
BY _____	DEPUTY _____

1 DIANE J. HUMETEWA  
 United States Attorney  
 District of Arizona  
 2 ERIC MARKOVICH  
 Assistant U.S. Attorney  
 3 Evo A. DeConcini Federal Courthouse  
 405 West Congress Street, Suite 4800  
 4 Tucson, Arizona 85701-5040  
 Telephone: (520) 620-7300  
 5 Eric.Markovich@usdoj.gov  
 Attorneys for Plaintiff  
 6

7 UNITED STATES DISTRICT COURT  
 8 DISTRICT OF ARIZONA

9 United States of America, )  
 10 Plaintiff, )  
 11 v. )  
 12 **BRETT NOLAN SMITH,** )  
 13 Defendant. )  
 14

**PLEA AGREEMENT**  
 Case No. *09-0736-TUC-DCB (JCG)*

15 The United States of America and defendant agree to the following disposition of  
 16 this matter:

- 17 1. The defendant agrees to plead guilty to Count One of the Indictment, which  
 18 charges the defendant with a felony violation of Title 18, United States Code, Section 1708,  
 19 Possession of Stolen Mail Matter.
- 20 2. The essential elements of the charge to which the defendant is pleading guilty  
 21 are:  
 22 (a) knowingly or intentionally buying, receiving or unlawfully possessing;  
 23 (b) mail matter which had been stolen, taken, embezzled and abstracted  
 24 from a letter box which was an authorized depository for mail matter.

25 TERMS

26 3. The defendant understands that this guilty plea is conditioned upon the  
 following terms, stipulations, and requirements:

Maximum Penalties

1 a. A violation of Title 18, United States Code, Section 1708 is punishable  
2 by a fine of \$250,000.00, a term of 5 years imprisonment, or both, and a period of not more  
3 than three (3) years supervised release.  
4

5 b. Pursuant to Title 18, United States Code, Section 3561, et seq., at the  
6 sole discretion of the Court, and even if probation is available, the defendant instead may  
7 be sentenced to a term of imprisonment.

8 c. Pursuant to 18 United States Code, Section 3013, the defendant shall  
9 pay a special assessment of \$100.00. The special assessment is due and payable at the time  
10 the defendant enters the plea of guilty, but in no event shall be paid later than the time of  
11 sentencing unless the defendant is indigent. If the defendant is indigent, the special  
12 assessment will be collected according to the provisions of Chapters 227 and 229 of Title  
13 18, United States Code.

Agreements Regarding Sentence

14  
15 4. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), in exchange for defendant's guilty  
16 plea to Count <sup>one</sup> ~~two~~ of the Indictment charging Possession of Stolen Mail Matter, the parties  
17 agree to the following sentencing caps on any term of imprisonment:

18 6 months if the defendant is a Criminal History Category I, II, III or IV.

19 8 months if the defendant is a Criminal History Category V.

20 10 months if the defendant is a Criminal History Category VI.

21 Defendant also agrees to make full restitution to all victims identified by the  
22 Probation Office.

23 5. If the Court, after reviewing this plea agreement, concludes any provision is  
24 inappropriate, it may reject the plea agreement, giving the defendant, in accordance with  
25 Fed. R. Crim. P. 11, an opportunity to withdraw the guilty plea.  
26

1           6.     The defendant and the government agree that this agreement does not in any  
2 manner restrict the actions of the government in any other district or bind any other United  
3 States Attorney's Office.

4                           Wavier of Defenses and Appeal Rights

5           7.     The defendant waives any and all motions, defenses, probable cause  
6 determinations, and objections which defendant could assert to the Indictment or to the  
7 Court's entry of judgment against defendant and imposition of sentence upon defendant  
8 consistent with the agreement. Defendant further waives: (1) any right to appeal the  
9 Court's entry of judgment; (2) any right to appeal the imposition of sentence under Title 18,  
10 United States Code, Section 3742 (sentence appeals); and (3) any right to collaterally attack  
11 defendant's conviction and sentence under Title 28, United States Code, Section 2255.

12                           Reinstitution of Prosecution

13           8.     If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by  
14 any court in a later proceeding, the government will be free to prosecute the defendant for  
15 all charges as to which it has knowledge, and any charges that have been dismissed because  
16 of this plea agreement will be automatically reinstated. In such event, defendant waives any  
17 objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment  
18 to the Constitution as to the delay occasioned by the later proceedings.

19                           Disclosure of Information to U.S. Probation Office

20           9.     The defendant understands and agrees to cooperate fully with the United  
21 States Probation Office in providing:

22           a.     All criminal history information, i.e., all criminal convictions as  
23 defined under the Sentencing Guidelines;

24           b.     All financial information, i.e., present financial assets or liabilities that  
25 relate to the ability of the defendant to pay a fine or restitution;

26           c.     All history of drug abuse which would warrant a treatment condition  
as part of sentencing; and

1           d. All history of mental illness or conditions which would warrant a  
2 treatment condition as a part of sentencing.

3                           Effect on Forfeiture Proceedings

4           10. Nothing in this agreement shall be construed to protect the defendant from  
5 civil forfeiture proceedings or prohibit the United States from proceeding with and/or  
6 initiating an action for civil forfeiture. Further, this agreement does not preclude the United  
7 States from instituting any civil proceedings as may be appropriate now or in the future.

8                           WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

9                                   Waiver of Rights

10           11. I have read each of the provisions of the entire plea agreement with the  
11 assistance of counsel and understand its provisions. I have discussed the case and my  
12 constitutional and other rights with my attorney. I understand that by entering my plea of  
13 guilty I will be giving up my right to plead not guilty; to trial by jury; to confront, cross-  
14 examine, and compel the attendance of witnesses; to present evidence in my defense; to  
15 remain silent and refuse to be a witness against myself by asserting my privilege against  
16 self-incrimination; all with the assistance of counsel, to be presumed innocent until proven  
17 guilty beyond a reasonable doubt, and to appeal.

18           12. I agree to enter my guilty plea as indicated above on the terms and conditions  
19 set forth in this agreement.

20           13. I have been advised by my attorney of the nature of the charge to which I am  
21 entering my guilty plea. I have been advised by my attorney of the nature and range of the  
22 possible sentence, and that I will not be able to withdraw my guilty plea if I am dissatisfied  
23 with the sentence the court imposes.

24           14. My guilty plea is not the result of force, threats, assurance or promises other  
25 than the promises contained in this agreement. I agree to the provisions of this agreement  
26 as a voluntary act on my part, rather than at the direction of or because of the  
recommendation of any other person, and I agree to be bound according to its provisions.

1 I agree that any Sentencing Guideline range referred to herein or discussed with my attorney  
2 is not binding on the Court and is merely an estimate.

3 15. I agree that this written plea agreement contains all the terms and conditions  
4 of my plea and that promises made by anyone (including my attorney) that are not contained  
5 within this written plea agreement are without force and effect and are null and void.

6 16. I am satisfied that my defense attorney has represented me in a competent  
7 manner.

8 17. I am not now on or under the influence of any drug, medication, liquor, or  
9 other intoxicant or depressant, which would impair my ability to fully understand the terms  
10 and conditions of this plea agreement.

11 Factual Basis

12 I further agree that the following facts accurately describe my conduct in connection  
13 with the offenses to which I am pleading guilty and that if this matter were to proceed to  
14 trial the government could prove these facts beyond a reasonable doubt:

15 On or about May 21, 2007, at or near Tucson, Arizona, in the District of Arizona,  
16 the defendant, Brett Nolan Smith, unlawfully had in his possession check  
17 number 1374, dated May 21, 2007, drawn on the Pima Federal Credit Union account  
18 of Nathan Daily in the amount of \$300.00, made payable to Brett Nolan Smith. The  
19 defendant knew that this item was stolen and had no right to possess it. The  
20 government could prove that this check had been stolen from the U.S. mail.

18 10-24-09  
19 Date

  
20 **BRETT NOLAN SMITH**  
21 Defendant

21 DEFENSE ATTORNEY'S APPROVAL

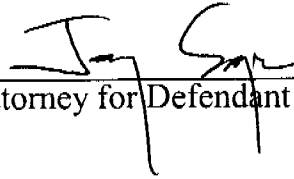
22 I have discussed this case and the plea agreement with my client in detail and have  
23 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the  
24 constitutional and other rights of an accused, the factual basis for and the nature of the  
25 offense to which the guilty plea will be entered, possible defenses, and the consequences  
26 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,  
promises, or representations have been given to me or to the defendant by the government

1 or by any of its representatives which are not contained in this written agreement. I concur  
2 in the entry of the plea as indicated above and on the terms and conditions set forth in this  
3 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure  
4 that the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P.

5  
6 Date

6/24/09

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
Attorney for Defendant



GOVERNMENT'S APPROVAL

9 I have reviewed this matter and the plea agreement. I agree on behalf of the United  
10 States that the terms and conditions set forth are appropriate and are in the best interests of  
11 justice.

12 DIANE J. HUMETEWA  
13 United States Attorney  
14 District of Arizona

15  
16 Date

6/24/09

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
Eric Markovich  
Assistant U.S. Attorney

