

LAST CHANCE AGREEMENT

It is hereby agreed by U.S. Customs and Border Protection, through its undersigned representative ("Agency"), Border Patrol Agent (BPA) [REDACTED] ("Employee"), and the National Border Patrol Council Local 2913 ("Union") (collectively, the "Parties"), that this Last Chance Agreement ("Agreement") constitutes the full and final resolution of all issues related to the Agency's undated proposal letter ("Proposal Letter") issued to the Employee on October 7, 2019, which proposed a removal of the Employee for the charges of 1. Unprofessional Conduct; 2. Failure to Report; and 3. Unauthorized Disclosure. The deciding official, Chief Patrol Agent [REDACTED] has sustained Charge 1. Unprofessional Conduct and Charge 3. Unauthorized Disclosure and the deciding official has sustained the removal; however, he is offering an Agreement holding the removal in abeyance and the Employee will serve a seven (7) calendar-day suspension.

The terms and conditions of this Agreement are as follows:

1. In exchange for the promises made by the Employee in paragraph 2 of this Agreement, the Agency agrees to the following:
 - a. To hold in abeyance, the removal for two (2) years from the date of the last signature on this Agreement;
 - b. That if the Employee violates the Agreement, the Agency will effectuate the removal pursuant to the Decision Letter;
 - c. That if the Employee successfully completes the Agreement Period, as defined in paragraph 2(a) below, that the Agency will not impose any further disciplinary action against the Employee for the conduct cited in the Proposal Letter.
2. In exchange for the promises made by the Agency in paragraph 1 of this Agreement, the Employee agrees to the following:
 - a. To not commit any form of similar misconduct, either on or off-duty, beginning on the effective date of this Agreement until two (2) years from the effective date of this Agreement ("Agreement Period").
 - b. That if, in its sole discretion, the Agency determines that the Employee has engaged in any form of similar misconduct during the Agreement Period defined in paragraph 2(a), the Employee will be in violation of the Agreement.
 - c. That any violation of the Agreement by the Employee will result in the implementation of the removal referenced in paragraphs 1(a) and (b).
 - d. To serve a seven (7) calendar-day suspension without pay. The dates for the suspension will be provided under separate cover.
 - e. The Employee and Union voluntarily agree to waive any and all appeals rights regarding the seven (7) calendar-day suspension decision, the determination of

future misconduct pursuant to paragraph 2(b), and the removal pursuant to paragraph 1(b) and 2(c) in any forum, including but not limited to: any and all grievance or appeal rights associated with any collective bargaining agreement or the Agency Administrative Grievance Procedures, all rights to appeal to the Merit Systems Protection Board, to file a complaint with the Equal Employment Opportunity Commission concerning any act that predates the effective date of this Agreement, or to file any other action in any administrative or judicial forum.

- f. That if the Agency determines that the misconduct occurred within the Agreement Period, even if the misconduct is substantiated outside of the Agreement Period, the removal will be effected within a reasonable period of time.
- g. That if the Employee is removed pursuant to paragraph 1(b) and 2(c), the Employee waives any and all procedural rights to which he would otherwise be entitled under the provisions of 5 U.S.C. § 7513 and 5 C.F.R. Part 752, Subpart C, including, but not limited to, the right to a proposal letter, the right to reply, and the right to an advance notice of the action.

3. The Parties further agree to the following:

- a. That each party will be responsible for its own costs and attorney fees associated with this matter.
- b. That the facts of this Agreement and its terms and conditions shall remain confidential and that the parties will not to disclose any of these terms and conditions to any person, firm, or other entity, except as follows: (1) to any governmental entity, including courts of competent jurisdiction and administrative bodies, when such disclosure is required or authorized by federal, state, or local law; (2) to any Agency officials who are responsibility for carrying out the terms of the Agreement or who have need to know to perform their duties; (3) in any future proceedings involving the parties to this Agreement in which the terms and conditions of the Agreement may be relevant; (4) to Employee's family, attorney(s), or tax advisor; (5) to Congress; (6) to the Office of Special Counsel; and (7) to an Inspector General. This provision does not restrict the disclosure of information about the facts and allegations relevant to the Employee. Notwithstanding the prohibitions of this paragraph, the Parties may publicly state that they have reached an amicable resolution.
- c. Nothing in this Agreement prevents any individual, including the Employee, from disclosing information to, or otherwise cooperating with, an Office of the Inspector General, an Office of General Counsel, a member of committee of Congress, or the Office of Special Counsel. In addition, nothing in this Agreement prevents any individual, including the Employee, from disclosing information that such individual reasonably believes evidences any violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an

abuse of authority, a substantial and specific danger to public health or safety, or censorship related to scientific integrity.

- d. That this Agreement is for their mutual benefit, will not establish any precedent, and will not be used as a basis for the Employee, Union, or any other person or group to seek or justify similar terms in any other matter involving the Agency.
- e. That this document comprises the complete understanding of the Parties and that any modifications to this Agreement must be mutually agreed upon, in writing, and signed by each of the Parties. The Parties further agree that this Agreement cannot be changed or terminated except by written agreement, signed by all Parties.
- f. That facsimile or pdf copies of this Agreement may be executed for the convenience of the Parties, and each signature page shall be deemed to be a part of the original instrument.
- g. That the Parties have read this Agreement, have been afforded the opportunity to seek the advice of counsel or the representative(s) of their choosing, and that they sign this Agreement voluntarily, without coercion, and with full knowledge and understanding of its terms and conditions.
- h. That should any provision of this Agreement be determined by any court or legal tribunal to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected thereby, and the illegal or invalid part, term or provision shall be deemed not to be part of the Agreement; however, all other provisions shall remain binding on the Parties.
- i. That the effective date of this Agreement is the date the last party has affixed his signature on this Agreement.

[REDACTED]

Employee

2/6/2020
Date

[REDACTED]

NBFC, Local 2913

02/05/2020
Date

[REDACTED]

Deciding Official for the Agency

02/03/2020
Date