

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 31 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELLIS FULTON KINGSEP, AKA Ellis
King,

Defendant - Appellant.

No. 25-3528

D.C. No.

4:24-cr-00006-TMB-SAO-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Timothy M. Burgess, Circuit Judge, Presiding

Submitted August 12, 2026**
Anchorage, Alaska

Before: CALLAHAN, BEA, and BUMATAY, Circuit Judges.

Ellis Fulton Kingsep pleaded guilty to mail fraud, in violation of 18 U.S.C.
§ 1341. In the plea agreement, the parties “agree[d] to recommend a sentence
within the anticipated Guideline range of 15-21 months of imprisonment.” After

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

signing the plea agreement, Kingsep sent threatening letters to witnesses and failed to disclose financial information about his offshore accounts. As a result of this misconduct, the government recommended a sentence of 36 months of imprisonment. The district court sentenced Kingsep to 30 months of imprisonment followed by 3 years of supervised release. Kingsep appeals his sentence, arguing that the government breached the plea agreement. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

“A plea agreement is a contract; the government is held to the literal terms of the agreement.” *United States v. Mondragon*, 228 F.3d 978, 980 (9th Cir. 2000) (citation omitted). “Generally, we review a defendant’s claim that the government has breached its plea agreement de novo.” *United States v. Farias-Contreras*, 104 F.4th 22, 27 (9th Cir. 2024) (citing *Mondragon*, 228 F.3d at 980).

Kingsep asserts that the government agreed to recommend a sentence within 15 to 21 months of imprisonment and therefore breached the plea agreement by recommending a sentence of 36 months. However, as the government explains, the plea agreement merely provided an anticipated, but not binding, sentencing range.¹

¹ The government also contends that Kingsep waived his right to appeal based on an appellate waiver in the plea agreement. Regardless of the waiver provision, we must decide whether the government breached the agreement because if it did, Kingsep is released from the appellate waiver. *See United States v. Hernandez-Castro*, 814 F.3d 1044, 1045 (9th Cir. 2016) (“A defendant is released from his or

The plea agreement itself specifies that the sentencing range provided is merely “anticipated”: “The parties agree to recommend a sentence within the anticipated Guideline range of 15-21 months of imprisonment.” And the first section of the agreement, which summarizes its terms, states: “The parties agree to recommend a sentence of imprisonment within the guideline range as calculated and adopted by the court. The parties anticipate that this range will be 15-21 months of imprisonment, as further discussed *infra*, understand and agree that the calculation will be made by the court.”

Kingsep does not propose a reasonable alternative reading. Under Kingsep’s interpretation of the agreement, the government may only recommend a sentence between 15 and 21 months of imprisonment. But that is incongruent with the agreement’s acceptance of responsibility provision. Under the acceptance of responsibility provision, the government maintains discretion to “withdraw” its recommendation and motion for a downward adjustment for acceptance of responsibility. If the government fully exercised that discretion, Kingsep’s total offense level could increase to 17, resulting in a sentencing range of 24 to 30 months. *See* U.S. Sent’g Guidelines Manual §§ 3E1.1, 5A (U.S. Sent’g Comm’n 2025). Put simply, the agreement did not constrain the government to a sentence

her appeal waiver if the government breaches the plea agreement.” (citing *United States v. Gonzalez*, 16 F.3d 985, 989–90 (9th Cir. 1993))).

recommendation of 15 to 21 months.

For these reasons, the government proposes the only reasonable interpretation of the plea agreement and, under that interpretation, the government did not breach the agreement by recommending a sentence above the anticipated sentencing range.

AFFIRMED.