

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-CR-20573 (UNGARO)

UNITED STATES OF AMERICA

vs.

OLGA HERNANDEZ,

Defendant.

PLEA AGREEMENT

The United States of America and OLGA HERNANDEZ (hereinafter referred to as the "defendant") enter into the following Plea Agreement:

1. The defendant agrees to plead guilty to Count 1 of the Indictment, which charges the defendant with conspiracy to commit wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1349.

2. The defendant admits the facts in the statement of offense filed with this Plea Agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of offense, which is hereby incorporated into this Plea Agreement constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's Probation Office, which investigation will commence after the guilty plea has been entered. The United States and the defendant agree to recommend that the Sentencing Guidelines should apply pursuant to United States v. Booker, that the Guidelines provide a fair and just resolution based on the facts of this case, and that no upward or downward departures to the advisory guideline calculation are appropriate other than the reductions for acceptance of responsibility. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 30 years, followed by a term of supervised

release of up to 5 years. In addition to a term of imprisonment and supervised release, the Court also may impose a fine of up to \$1,000,000, and must also order restitution.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this Agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The Office of the United States Attorney for the Southern District of Florida and the Criminal Division of the United States Department of Justice (hereinafter "the Government") reserve the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this Agreement, the Government further reserve the right to make any recommendation as to the quality and quantity of punishment.

7. The Government agrees to recommend at sentencing that the Court reduce by 3 levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the Government will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make full, accurate and complete disclosure to the Probation Office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the Government prior to entering this Plea Agreement; or, (3) commits any misconduct after entering into this plea Agreement,

including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The Government and the defendant agree that, although not binding on the Probation Office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

(a). That the base offense level is 7 under U.S.S.G. § 2B1.1(a);

(b). Loss: The loss associated with the properties involved in this fraud scheme is not fully discernible at this time since some of the properties are still in default and have not been foreclosed. The parties agree that the loss for the purposes of this plea shall be \$24,512,755.34, which is a fair assessment of both present and future losses caused by the defendant's conduct as of the date of the Plea Agreement. The Government and defendant agree that the new guidelines proposed by the United States Sentencing Commission and effective November 1, 2015, should apply. Therefore, the relevant amount of actual, probable or intended loss, under Section 2B1.1(b)(1)(K) of the new guidelines proposed by the United States Sentencing Commission Section as of April 30, 2015, resulting from the offense committed in this case is more than \$9,500,000 but less than \$25,000,000, resulting in a 20-level enhancement; and,

(c). Total Offense Level: That the applicable offense level under all of the circumstances of the offense committed by the defendant, and assuming a 3-level departure for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines, is Level 24.

9. The defendant agrees to pay restitution as determined by the Court. The

Government is not limited by the loss figure above when arguing for restitution. The government may request up to a 90 day extension for the final determination of loss for restitution purposes under Title 18, United States Code, Section 3664(d)(5).

10. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the Government, or the Probation Office, is a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The defendant understands further that any recommendation that the Government makes to the Court as to sentencing, whether pursuant to this Agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw her plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the Government, or a recommendation made jointly by both the defendant and the Government.

11. In the event the defendant withdraws from this Agreement prior to or after pleading guilty to the charges identified in paragraph 1 above or otherwise fails to fully comply with any of the terms of this Plea Agreement, the Government will be released from its obligations under this Agreement, and the defendant agrees and understands that: (a) she thereby waives any protection afforded by the proffer letter agreement between the parties, signed by the defendant on August 20, 2012, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by her as part of plea discussions, any debriefings or interviews, or in this Agreement,

whether made prior to or after the execution of this Agreement, will be admissible against her without any limitation in any civil or criminal proceeding brought by the Government; and, (b) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this Agreement, of any documents provided by the defendant or her representatives to any state or federal agency and/or the Government.

12. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the Government in this Plea Agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this Agreement shall affect the Government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the Government appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this Agreement, the defendant acknowledges that she has discussed the appeal waiver set forth in this Agreement with her attorney. The defendant further agrees, together with the Government, to request that the Court enter a specific finding that the defendant's waiver of her right to appeal the sentence to be imposed in this case was knowing and voluntary.

13. This is the entire Agreement and understanding between the Government and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

ANDREW WEISMANN
Chief, Fraud Section
U.S. Department of Justice

Date: 7-12-15

By:


DAVID A. BYBEE
Senior Litigation Counsel

WILLIAM E. JOHNSTON
MICHAEL T. O'NEILL
Trial Attorneys


Date: 7-12-15

By:


DANIEL LURVEY
Attorney for Defendant Hernandez

Date: 7-12-15

By:


OLGA HERNANDEZ
Defendant