



U.S. Department of Justice

Criminal Division

Fraud Section

*Bond Building
1400 New York Ave., N.W.
Washington, D.C. 20005
(202) 305-4002*

October 5, 2011

Via Hand Delivery

Mary Petras
Federal Public Defender's Office
625 Indiana Avenue, NW
Suite 550
Washington, DC 20004

Robert Adler
Federal Public Defender's Office
450 South Australian Avenue
West Palm Beach, FL 33401-5008

Re: Martin Carter

Dear Counsel:

This letter sets forth the full and complete plea offer to your client, Mr. Martin B. Carter (hereinafter, the "defendant"). This offer is binding only upon the Fraud Section, Criminal Division of the United States Department of Justice (hereinafter, the "Government"). This plea offer will expire on October 1, 2011. Upon receipt, the executed letter will itself become the plea agreement. The terms of the offer are as follows: _____

Charges and Potential Penalties

1. The defendant agrees to waive Indictment and to plead guilty to a one-count information charging a violation of 18 U.S.C. § 371 (Conspiracy to Commit Mail Fraud, Wire Fraud, and Obstruction of Justice). It is understood that the guilty plea, to be made before the Court by the defendant, will be based on a factual admission of guilt to the offense charged. The defendant agrees that the attached "Statement of the Offense" fairly and accurately describes the defendant's actions and involvement in the conspiracy, and that those actions and that involvement establish his guilt of the offense charged beyond a

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

11-218 (RMC)

reasonable doubt. During the plea hearing, the defendant will adopt the Statement of the Offense as a written proffer of evidence

2. The defendant understands that the maximum sentence that can be imposed under 18 U.S.C. § 371 is five years of imprisonment, a fine of not more than \$250,000 or twice the pecuniary gain or loss derived from the offense, and up to three years of supervised release. The defendant also understands that he is required to pay a special assessment of \$100 at the time of sentencing. Additionally, the defendant understands that the Court must order the defendant to pay restitution pursuant to 18 U.S.C. § 3663A, unless the number of identifiable victims is so large as to make restitution impracticable or the burden on the sentencing process to determine restitution outweighs the need to provide restitution, pursuant to U.S.C. § 3663A(c)(3). Notwithstanding the maximum sentence, the defendant understands that the sentence to be imposed in this case will be determined by the Court, guided by the factors enumerated in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Guidelines Commission (hereinafter "Sentencing Guidelines" or "U.S.S.G."). The defendant understands that this sentence, including the applicable sentencing guideline range, will be determined solely by the Court, and the Government cannot and does not make any promises, representations or predictions regarding what sentence the Court will impose. The defendant further understands that if the Court imposes a sentence greater than that provided in the Sentencing Guidelines range as determined by the Court, or which is in any other way unsatisfactory to him, he cannot withdraw his guilty plea. This does not, however, limit the defendant's right to appeal an unlawful sentence.

Defendant's Obligations

3. The defendant agrees to cooperate fully with the Government by providing truthful, candid, and complete information to all matters within his knowledge concerning his wrongful conduct as well as any wrongful conduct involving others. The defendant understands that such cooperation will include:
 - a. providing complete, truthful, and candid disclosure of information and all records, writings, tangible objects, or other requested materials of any kind or description that he has which relate directly or indirectly to the subject of this investigation;
 - b. answering completely, truthfully, and candidly all questions put to him by attorneys and law enforcement officials during the course of this investigation;
 - c. making himself available for interviews by attorneys and law enforcement officers of the Government upon request and reasonable notice;
 - d. not attempting to protect any person or entity through false information or omission, nor falsely implicating any person or entity;

- e. not disclosing the fact of or details regarding his cooperation with law enforcement to any person or entity;
 - f. complying with any and all reasonable requests from federal government authorities with respect to the specific assistance that he shall provide;
 - g. answering, at trial, before the grand jury, or at any hearing arising out of this investigation, all questions put to him by the Court or by the attorney for any party completely, truthfully, and candidly;
 - h. submitting to any polygraph examinations that the Government might request; and
 - i. providing a full and complete accounting of all assets, real or tangible, held by him or in any other name for his benefit, and, to that end, submitting a standard form 500 (Financial Statement of Debtor).
4. The Government reserves the right to evaluate the nature and extent of the defendant's cooperation and shall make such cooperation, or lack thereof, known to the Court at the time of sentencing. If, in the sole and unreviewable judgment of the Government, the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the sentence calculated pursuant to the Sentencing Guidelines, the government may at or before sentencing make a motion pursuant to Section 5K1.1 of the Sentencing Guidelines reflecting that the defendant has provided substantial assistance and recommending a downward departure. The defendant acknowledges and agrees, however, that nothing in this agreement may be construed to require the Government to file such a motion and that, for purposes of a Section 5K1.1 and/or Rule 35 assessment, the Government's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.
5. The defendant understands and acknowledges that, should the Government exercise its discretion to file a motion pursuant to Section 5K1.1 of the sentencing guidelines, the Court is under no obligation to grant such a motion.
6. The defendant understands that this agreement is not conditioned upon charges being brought against any other individual, upon any outcome in any pending investigation, upon any outcome of any future prosecution which may occur because of the defendant's cooperation, or upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This agreement is predicated upon the defendant providing full, truthful, and complete cooperation.

Sentencing Guidelines

7. Although not binding on the Court, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree that the 2010 Sentencing Guidelines apply as follows:

Base Offense level (§ 2B1.1(a)(1))	6
Amount of loss or gain if loss cannot be reasonably determined was more than \$1,000,000 and less than \$2,500,000 (§ 2B1.1(b)(1))	16
Subtotal	22
Acceptance of Responsibility, subject to conditions set forth below (§ 3E1.1)	-3
Adjusted Offense Level (Assuming Criminal History Category I)	19 (30-37 months)

8. The defendant agrees not to seek any decrease in his adjusted offense level as set forth above. The defendant further agrees not to seek a downward departure for any reason from the otherwise applicable guideline range established under the Sentencing Guidelines and that a sentence within the applicable guideline range is reasonable. However, the defendant may seek a variance from the applicable guideline range based on the factors set forth in 18 U.S.C. § 3553(a). The government also agrees not to seek an upward departure for any reason from the otherwise applicable guideline range established under the Sentencing Guidelines. In the event that this plea offer is either not accepted by the defendant or is accepted and subsequently withdrawn, the parties will not be bound by the proposed interpretations of the applicable Sentencing Guideline provisions contained herein.

Financial Arrangements

9. The defendant agrees that prior to or at the time of the sentencing, he will deliver to the Clerk's Office, United States District Court, a certified check in the amount of \$100, to

cover the special assessment, as required in Title 18, United States Code, Section 3013. The defendant also agrees to provide a full and complete accounting of all assets, real or tangible, held by him or in any other name for his benefit, and, to that end, to submit a standard form 500 (Financial Statement of Debtor).

Reservation of Allocution

10. The parties reserve their full right of allocution for purposes of sentencing and post-sentencing in this matter. Additionally, the government specifically reserves its right to set forth at sentencing and any proceeding(s) before the Bureau of Prisons all of its evidence with respect to the defendant's criminal activities.
11. The Government reserves the right to inform the Probation Department and the Court of any relevant facts, to dispute any factual inaccuracies in the pre-sentence report and to contest any matters not provided for in the plea agreement.
12. If in this plea agreement, the Government has agreed to recommend or refrain from recommending to the sentencing judge a particular resolution of any sentencing issue, the government reserves the right to full allocution in any post-sentence litigation in order to defend the sentencing judge's ultimate decision on such issues.

Waiver of Certain Rights

13. The defendant understands that by pleading guilty, he relinquishes certain constitutional rights, including the right to a jury trial, as well as the right to appeal and the right to collaterally attack his conviction. Additionally, the defendant acknowledges and agrees that the Court has jurisdiction and authority over this case and that it has the right to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty. The defendant also waives any challenges to his plea based on statute of limitations or venue.

Government Concessions

14. In exchange for the defendant's guilty plea, the Government agrees to recommend a two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based on the defendant's timely acceptance of personal responsibility. The Government also agrees to file a motion for an additional 1-level decrease under Section 3E1.1(b) of the Sentencing Guidelines provided that the defendant

does not violate this agreement, admits and continues to admit his guilt, and provides assistance in the investigation and prosecution of this offense. The Government also agrees not to oppose the defendant's request for release pending sentencing provided that defendant complies with all terms of the plea agreement. The Government, however, will not be required to make these recommendations if any of the following occurs: (1) the defendant fails or refuses to make a full, accurate, and complete disclosure to the Government or the Probation Office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) the defendant is found to have misrepresented facts to the Government prior to entering into this plea agreement; (3) the defendant 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 a false statement or misrepresentation to any governmental entity or official; or (4) the defendant fails to comply with any term of this plea agreement.

15. Subject to other paragraphs in this agreement, the Government will not bring any additional criminal charges against the defendant for the criminal activity described in the attached Statement of Offense, provided that the defendant has disclosed all material information to the Government prior to the execution of this agreement. This agreement not to prosecute the defendant does not extend to federal or local crimes of violence as those terms are defined in 18 U.S.C. §16 and D.C. Code § 23-1331(4). It is understood by the parties that the United States has no evidence, as of the date of this agreement, of any crimes of violence involving the defendant.
16. The Government further agrees to dismiss the Complaint in *United States v. Carter*, 11-369-M-01, dated June 7, 2011 at the time the defendant is sentenced under this agreement.

Breach of or failure to tender agreement

17. If the defendant fails to make a complete, truthful, and candid disclosure of information to federal law enforcement officers, government attorneys, and grand juries conducting this investigation, or to the Court, and/or if he commits any further crimes, or attempts to withdraw the plea, the Government will have the right to characterize such conduct as a breach of this plea agreement. If during this investigation or prosecution the defendant should commit perjury, knowingly give any false statement, commit any act of contempt, or obstruct justice, the United States may prosecute him for these offenses to the fullest extent provided by law. In the event of a breach, (a) the Government will be free from its obligations under the agreement and may take whatever position it believes appropriate as to the sentence and the conditions of the defendant's release—examples of which include but are not limited to obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law

enforcement agents, the probation officer or Court—the Government is free under this agreement to seek an increase in the offense level based on that post-agreement conduct; (b) the defendant will not have the right to withdraw the guilty plea; (c) the defendant shall be fully subject to criminal prosecution for any other crimes which he has committed or might commit, if any, including perjury and obstruction of justice; and (d) the Government will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding any of the information or materials provided by him pursuant to this cooperation agreement. The defendant waives any right to claim that evidence presented in any such prosecution is tainted by virtue of the statements he has made.

18. In the event of a dispute as to whether the defendant has knowingly given materially false, incomplete or misleading information in fulfilling the terms of his cooperation agreement or whether the defendant has knowingly committed any other material breach of this agreement, and if the United States wants to exercise its rights under this agreement, and if the defendant so requests, the matter shall be submitted to the Court and shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documents shall be admissible and at which time the United States shall have the burden to establish the same by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States to file or not to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision to file or not to file such a motion rests in the sole discretion of the United States.
19. Any such prosecutions of the defendant not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the running of the applicable statute of limitations before the commencement of such prosecutions. The defendant knowingly and voluntarily agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this section.

Fraud Section, Criminal Division of the United States Department of Justice Bound

20. The defendant understands that this agreement is binding only upon the Fraud Section, Criminal Division of the United States Department of Justice. This agreement does not bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the defendant.

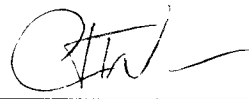
Complete Agreement

21. No other agreements, promises, understandings or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by the defendant, the defendant's counsel and the Government.

Very truly yours,

DENIS J. McINERNEY
Chief


By:



Andrew H. Warren
Albert Stieglitz
Trial Attorneys

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this plea agreement. I am satisfied with the legal services provided by my attorney in connection with this plea agreement and matters related to it.


Date: 10/5/11



Martin B. Carter
Defendant

I have read each of the pages constituting this plea agreement, reviewed them with my client, and discussed the provisions of the agreement with my client fully. These pages accurately and completely set forth the entire plea agreement. I concur in my client's desire to plead guilty as set forth in this agreement.

Date: 10/5/11



Mary Petras
Assistant Federal Public Defender
Attorney for the Defendant