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10 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
 14)
 Plaintiff,) GOVERNMENT'S REQUEST FOR JUDICIAL
 15) NOTICE OF RECENT FCPA SENTENCING
 v.) AND RECENT EMPHYSEMA-RELATED
 16) FILING IN SEPARATE CRIMINAL
 GERALD GREEN and) MATTER; EXHIBITS
 17 PATRICIA GREEN,)
) Sent. Date: August 12, 2010
 18 Defendants.) Sent. Time: 9:30 a.m.
)
 19)
)
 20)
 _____)

21
 22 Plaintiff United States of America, through its counsel of
 23 record, the United States Attorney's Office for the Central
 24 District of California, and the Fraud Section, United States
 25 Department of Justice, Criminal Division, hereby requests that
 26 the Court take judicial notice of the following two items of
 27 sentencing evidence, namely: (1) that on July 30, 2010, defendant
 28 Juan Diaz ("Diaz") was sentenced to 57 months in prison after

1 pleading guilty and accepting responsibility for his role in a
2 conspiracy to pay approximately \$1,028,851 in bribes to former
3 officials of the Republic of Haiti to secure favorable
4 telecommunications rates in violation of the Foreign Corrupt
5 Practices Act ("FCPA") (United States v. Diaz, Cr No. 09-20346-JEM
6 SDFL)¹; and (2) a recent emphysema-related filing in a criminal
7 case in the Southern District of New York, specifically, a July
8 28, 2010 letter from Barbara J. Cadogan, Health Systems
9 Administrator, Federal Bureau of Prisons, Northeast Regional
10 Office, filed in advance of sentencing of Saverio Todaro, a 67
11 year-old defendant with severe chronic obstructive pulmonary
12 disease, emphysema, and dyspnea on exertion (the "Todaro BOP
13 Letter") (United States v. Saverio Todaro, Cr No. 10-268-KMW
14 SDNY). The Todaro BOP Letter affirms the Bureau of Prisons'
15 ability to care for patients with severe emphysema and sets forth
16 the number of patients currently under Bureau of Prisons ("BOP")
17 care with chronic obstructive pulmonary disease.

18 A. Recent FCPA Sentencing (United States v. Diaz, Cr No. 09-
19 20346-JEM SDFL).

20 This request for judicial notice as it pertains to defendant
21 Diaz is made in effort to ensure that the Court is kept current
22 with respect to the FCPA sentencing landscape as it relates to
23 the criminal prosecution of individuals so as to avoid
24 unwarranted disparities in sentencings. A copy of the Plea
25

26 ¹ Diaz also pled guilty to one count of money laundering in
27 connection with the bribery scheme.

1 Agreement and Statement of Facts in the Diaz case is attached
2 hereto as Exhibit 17.

3 As set forth in Exhibit 17, defendant Diaz admitted that
4 from approximately November 2001 through October 2003, Diaz and
5 others conspired to pay money secretly to Haitian government
6 officials in exchange for awarding preferred telecommunications
7 rates to three Miami area telecommunications businesses. In
8 addition to assisting in the making of the bribe payments, Diaz
9 agreed to launder money for the foreign officials. Diaz received
10 a 5%-10% commission on all monies laundered, earning a total of
11 approximately \$73,824.00 (Diaz has been ordered to pay this full
12 amount as restitution). Diaz, a United States Citizen, was the
13 intermediary between the three Miami, Florida area businesses and
14 the foreign officials in Haiti. In total, Diaz and others caused
15 corrupt payments of approximately \$1,023,851 to be paid to two
16 former officials at Haiti's national telecommunications agency.²

17 The government would like the Court to note that defendant
18 Diaz was not found to be a leader or organizer in this bribery
19 scheme, indeed, at sentencing, Diaz was described by the AUSA as
20 being a "second tier level" player as far as culpability was
21 concerned, and described by the Judge as the "get-away driver."
22 Diaz Sentencing Transcript at 11, 17, attached hereto as Exhibit
23 18.

24
25 ² In addition to defendant Diaz's comprehensive factual
26 admission of his role in the offense, as set forth in Exhibit 17,
27 defendant Diaz waived indictment, proceeded by information, and
promptly pled guilty. Defendant Diaz is currently cooperating
with the government.

1 B. Recent Emphysema-Related Filing(United States v. Saverio
2 Todaro, Cr No. 10-268-KMW SDNY).

3 Defendant Todaro has been diagnosed with severe chronic
4 obstructive pulmonary disease ("COPD"), emphysema and dyspnea on
5 exertion. In addition, Todaro reportedly takes at least 4
6 medications and uses oxygen and an inhaler to address his medical
7 condition. Exhibit 19 at 1.

8 In the Todaro BOP Letter, Ms. Cadogan outlines the care and
9 treatment facilities within the BOP and affirms that BOP will be
10 able to provide appropriate care for Mr. Todaro given his
11 condition. Ms. Cadogan further states the BOP currently has
12 "1,212 inmates with COPD and 53 inmates who use portable oxygen."
13 Exhibit 19 at 3.

14 DATED: August 4, 2010

Respectfully submitted,
ANDRÉ BIROTTE JR.
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division

18 _____/s/
19 BRUCE H. SEARBY
20 Assistant United States Attorney
21 JONATHAN E. LOPEZ
22 Senior Trial Attorney
23 United States Department
24 of Justice, Fraud Section

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-20346-CR-JEM

UNITED STATES OF AMERICA

vs.

JUAN DIAZ,

Defendant.

_____ /

PLEA AGREEMENT

The United States of America and JUAN DIAZ, (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant waives indictment and agrees to plead guilty to a one-count information charging the defendant with conspiracy to violate the laws of the United States in violation of Title 18, United States Code, Section 371, in particular violations of the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78dd-2, and Money Laundering, Title 18, United States Code, Section 1956(a)(1)(B)(i).

2. 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 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.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to five years, followed by a term of supervised release of up to three years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of not more than \$250,000, or twice the value of the property involved in the transaction, whichever is greater. The defendant is also subject to a forfeiture judgment, as more fully described in Paragraphs 15 through 19 below.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. It is the prosecuting AUSA's duty to ensure that the special assessment has been paid at the time of sentencing. If a defendant is financially unable to pay the special assessment, the defendant should be required to present evidence to the United States and the court as to the reasons for his failure to pay.

6. The Office of the United States Attorney for the Southern District of Florida and the United States Department of Justice, Criminal Division, Fraud Section and Asset Forfeiture and Money Laundering Section (hereinafter "the Offices") 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, these Offices further reserve the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his

intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. However, the United States will not be required to make this motion and this recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the United States and the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) is found to have misrepresented facts to the government prior to entering into 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 United States 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. Applicable Guidelines Manual: That the 2003 United States Sentencing Commission Guidelines Manual governs the defendant's sentencing in this case.

b. Amount of Loss: That the amount of funds within the scope of criminal activity the defendant agreed to jointly undertake, for purpose of Sections 2S1.1 and 2B1.1 of the Sentencing Guidelines, is \$1,028,951.95.

c. Guideline Calculation: That the defendant's U.S.S.G. calculation is as follows:

Base offense level under §2S1.1(a)(1)28

Total Offense Level 28

9. The United States and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court impose a sentence within the advisory sentencing guideline range produced by application of the Sentencing Guidelines. Although not binding on the probation office or the Court, the United States and the defendant further agree that, except as otherwise expressly contemplated in this Plea Agreement, they will jointly recommend that the Court neither depart upward nor depart downward under the Sentencing Guidelines when determining the advisory sentencing guideline range in this case.

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 set forth in paragraph 2 above, that the defendant may not withdraw his 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 one (1) above or otherwise fails to fully comply with any of the terms of this plea agreement, this Office will be released from its obligations under this agreement, and the defendant agrees and understands that: (a) he thereby waives any protection afforded by the proffer letter agreements between the parties dated January 19, 2006 and July 30, 2008, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statement made by him 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 him without any limitation in any civil or criminal proceeding brought by the government; (b) the defendant's waiver of any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information, referred to herein, shall remain in full force and effect; and (c) 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 his representatives to any state or federal agency and/or this Office.

12. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information against the defendant with respect to any criminal offense in connection with the defendant's criminal conduct under this Information.

13. This Office represents that the undersigned prosecutors are unaware of any information establishing the factual innocence of the defendant in the offense referred to in

paragraph one (1) of this agreement. This Office understands it has a continuing duty to provide such information establishing factual innocence of the defendant. The defendant understands that if this case proceeded to trial, this Office would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, this Office would be required to provide information in its possession that supports such a defense. Further, if this case proceeded to trial, this Office would be required to provide other information and materials in accordance with Fed. R. Crim. P. 16 and the Southern District of Florida's Standing Discovery Order. In return for the Government's promises set forth in this agreement, the defendant waives the right to receive in discovery any such information and materials other than information and materials establishing the factual innocence of the defendant, and agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of such information and materials other than information and materials establishing the factual innocence of the defendant.

14. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement. This waiver includes the right to contest any matter that would have been subject to pre-trial determination, such as, venue, double jeopardy, statute of limitations, discovery, or suppression. The defendant is further 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 United States in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order,

by the United States 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 United States 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 he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

FORFEITURE

15. The defendant also agrees to forfeit to the United States in the form of a money judgment against him, voluntarily and immediately, all of his right, title and interest to all assets, and/or their substitutes, which are subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21 United States Code, Section 853, and Title 28, United States Code, Section 2461 as follows: the sum of \$1,028,951.95 United States currency. The defendant agrees to pay \$73,824.20 toward this money judgment at the time sentence is imposed by way of a certified check made payable to the Department of the Treasury, and delivered to the United States Attorney's Office, Southern District of Florida.

specifically violation of the Foreign Corrupt Practices Act, Title 15, United States Code Section 78dd-2, a specified unlawful activity as defined in Title 18, United States Code, Section 1956(c)(7), to which the defendant has pled guilty, or is a substitute asset in lieu of property subject to forfeiture, and that the above-listed property is, therefore, subject to forfeiture pursuant to 21 U.S.C. § 853(p) as incorporated by Title 28, United States Code, Section 2461(c).

17. Defendant warrants that he is the sole owner of the \$73,824.20 United States currency that he will pay to the United States toward satisfaction of the money judgment, and agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of property covered by this agreement. Defendant further agrees to waive all interest in the funds listed above for forfeiture in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted. Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment or that it violates the Ex Post Facto Clause of the Constitution. Defendant agrees to take all steps as requested by the United

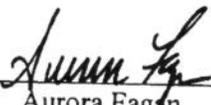
States to pass clear title to the forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding.

18. The defendant further agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or any further notification of any judicial or administrative forfeiture proceedings brought against the said assets. The defendant agrees to specifically waive any appeal for the forfeiture.

19. The defendant knowingly and voluntarily agrees to waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited assets.

20. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings unless contained in a letter from the United States Attorney's Office executed by all parties and counsel prior to the change of plea hearing.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: 
Aurora Fagan
Assistant United States Attorney

Date 4/21/09

STEVEN A. TYRRELL, CHIEF
FRAUD SECTION, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

By: 
Nicola J. Mrazek

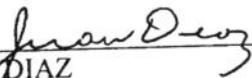
Date 4/21/09

Trial Attorney

RICHARD WEBER, CHIEF
ASSET FORFEITURE AND MONEY LAUNDERING SECTION, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE


By: Kevin Gerrity
Trial Attorney

Date 4/21/09


JUAN DIAZ
DEFENDANT

Date 4/21/09


ALLEN S. KATZ
ATTORNEY FOR DEFENDANT JUAN DIAZ

Date 4/21/09

FACTUAL AGREEMENT

If this matter had gone to trial, the United States would prove beyond a reasonable doubt that beginning in or around November 2001, and continuing through in or around October 2003, the defendant Juan Diaz ("Diaz"), conspired, in violation of 18 United States Code, Section 371, with Foreign Officials A and B; Co-conspirators A, B, and C; Companies 1, 2 and 3; and numerous other individuals, to: (1) violate the Foreign Corrupt Practices Act, 15 United States Code, Section 78dd-2(a); and (2) commit money laundering in violation of 18 United States Code, Section 1956(a)(1)(B)(i).

Telecommunications D'Haiti ("Haiti Teleco") is the Republic of Haiti's state-owned national telecommunications company. Haiti Teleco was the only provider of land line telephone service to and from Haiti. Various international telecommunications companies contracted with Haiti Teleco to allow those companies' customers to make calls to Haiti. Telecommunications companies paid Haiti Teleco a set rate for each minute of telephone calls to Haiti. From in or around May 2001 to April 2003, Official A was the Director of International Relations of Haiti Teleco. In this position, it was Official A's responsibility to negotiate contracts with international telecommunications companies on behalf of Haiti Teleco. From in or around March 2001 to June 2003, Official B was the General Director of Haiti Teleco. In this position, Official B oversaw all of Haiti Teleco and signed the contracts between Haiti Teleco and international telecommunications companies.

Company 1 was a privately owned telecommunications company that was incorporated in Florida and was headquartered in Miami, Florida. Company 1 executed a series of contracts with Haiti Teleco that allowed Company 1's customers to call Haiti. Co-conspirator A was the President and Director of Company 1. In this position, Co-conspirator A negotiated and signed contracts with Haiti Teleco on behalf of Company 1. Co-conspirator B was the Executive Vice President of Company 1. In this position, Co-conspirator B was in charge of overseeing Company 1's finances.

Company 2 was a U.S. telecommunications company that was incorporated in Florida and had its principal place of business in Miami, Florida. Company 2 was the parent company of Company 3, which was also incorporated in Florida and had its principal place of business in Miami, Florida. Company 3 operated out of the same offices and shared some of the same personnel as Company 2. Company 2 and Company 3 executed a series of contracts with Haiti Teleco that allowed their customers to call Haiti.

Co-conspirator C was the Vice President of both Company 2 and Company 3. In this position, Co-conspirator C, among others, negotiated and signed contracts with Haiti Teleco on behalf of Company 2 and Company 3. Co-conspirator C had signatory authority over Company 2's and Company 3's bank accounts.

In or about November 2001, the conspiracy between the Defendant and his co-conspirators began. The Defendant was approached by his friend, Official A. Official A needed a shell company to launder the bribe money from Companies 1, 2 and 3 to himself and Official B. Official A offered

a five to ten percent commission to the Defendant if he could provide these services. The Defendant then opened a small business checking account at Kislak National Bank in the name of JD Locator Services ("JD Locator"). The Defendant would use this account to receive funds and deposit checks intended for Officials A and B from Co-conspirators A and B at Company 1, and Co-conspirator C at Company 2. The Defendant would keep a commission and launder the rest of the money for Officials A and B. During this time, JD Locator did not have any business purpose other than to launder the bribe payments. JD Locator did not ever provide or intend to provide any legal goods or services to Companies 1, 2, 3 or any other company or person.

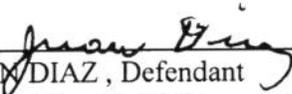
The purpose of the conspiracy was for the Defendant and his co-conspirators to unjustly enrich themselves by providing bribe payments to Officials A and B in exchange for business advantages to Companies 1, 2, and 3 including, but not limited to, issuing preferred telecommunications rates, reducing the number of minutes for which payment was owed (effectively reducing the per minute rate), and giving a variety of credits toward owed sums. It was further a purpose of the conspiracy for the Defendant and his co-conspirators to conduct financial transactions with the proceeds of the bribe payments knowing that said transactions would conceal the nature of the bribe proceeds to Officials A and B. Such financial transactions involved wiring money, withdrawing cash, and issuing checks to Officials A and B, and to their family and friends. These transactions were all made through the Defendant's shell company, JD Locator.

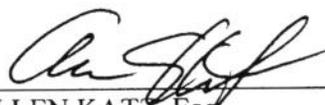
Company 1, to disguise the true nature of the payments, would issue checks for fictional "consulting services" to JD Locator. To conceal the true nature of the bribe payments, Company 1 would falsely record in its books and records the payments to JD Locator as "commissions." Similarly, Company 2 would falsely list moneys sent to JD Locator as vendor payments in its books and records.

Over the course of the conspiracy, JD Locator received bribe payments of \$1,028,851.95 for services which were never rendered or intended to be rendered. These bribe proceeds, which were all profit, were disguised by being sent to Officials A and B through the Defendant's company, JD Locator, or by being given to Official A by Defendant. In order to further conceal the bribe payments to the Haitian government officials, Defendant mislabeled checks by writing in non-existent invoice numbers in the memo section. The true nature of the bribe proceeds from Companies 1 and 2's bank accounts were therefore disguised and concealed by using JD Locator. Of the total amount of bribe proceeds, Defendant kept \$73,824.00 as commissions and laundered the rest of the bribe payments, \$955,027.95, to Officials A and B.

All of the financial transactions in the conspiracy affected interstate and foreign commerce. All of the financial institutions whose accounts were used for the financial transactions were federally insured and regulated.

All of the aforementioned events took place in the Southern District of Florida, and do not include each and every act or action taken in furtherance of the crimes articulated above. The facts articulated in this document serve as a basis for the entry of my plea of guilty to the charged crimes.

By: 
JUAN DIAZ, Defendant
Signed May 15, 2009

By: 
ALLEN KATZ, Esq.
Attorney for Defendant Juan Diaz

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 09-20346-CR-JEM

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Miami, Florida
July 30, 2010

JUAN DIAZ,
Defendant.

TRANSCRIPT OF
SENTENCING HEARING
BEFORE THE HONORABLE JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

United States Attorney's Office
BY: AURORA FAGAN, A.U.S.A.
99 N.E. 4th Street
Miami, Florida 33132

FOR THE DEFENDANT:

BY: ALLEN S. KATZ, P.A.
BY: ALLEN STEWART KATZ, ESQ.
777 Brickell Avenue - Suite 1114
Miami, Florida 33131

REPORTED BY:

DAWN M. WHITMARSH, RPR
Official Court Reporter
400 N. Miami Avenue, 10S03
Miami, Florida 33128
Telephone: 305-523-5598

1 THE COURT: Maybe I should have on him, but I didn't.

2 MR. KATZ: As far as my client goes, and I'd also point
3 out, Judge, that the factors leading to the participation of the
4 various defendants, as the PSI relates, my client had just lost
5 his wife and was paying off medical bills. He, in fact,
6 received the smallest gain, which I'm not making light of, but
7 his \$73,000 gain, when compared to Mr. Antoine, who it was just
8 greed, quite frankly, of over a million dollars. I think when
9 you consider the circumstances giving rise to the offense and
10 the relative culpability --

11 THE COURT: Let me ask Ms. Fagan, relative to
12 Mr. Antoine, what is this gentleman's culpability relative to
13 Mr. Antoine?

14 MS. FAGAN: I believe it's less, Your Honor. If we had
15 to group all of the participants in this conspiracy, I would
16 probably group Joel Esquenazi, Robert Antoine, Carlos Rodriguez
17 and John Rene Duperval at the top.

18 And then the second tier level I would say would be
19 Mr. Diaz, Mr. Fourcand, Marguerite Grandison, and then probably
20 at the lower end would be Antonio Perez who is also scheduled to
21 be sentenced I think in the next few weeks.

22 So if I had to put, you know, things in hierarchy,
23 that's probably how I would put them.

24 THE COURT: And do you have off the top of your head
25 what the sentences were for the ones that have already been

1 sentenced?

2 MS. FAGAN: Yes, sir. Mr. Fourcand was sentenced to
3 six months. He was convicted of the 1957, I believe, money
4 laundering.

5 Mr. Antoine was sentenced to 48 months.

6 THE COURT: Why was he so light? I don't remember
7 right now.

8 MS. FAGAN: He was actually convicted of the money
9 laundering conspiracy with the wire fraud objective. Part of
10 the problem is that under statute, we can't charge foreign
11 officials with FCPA violations. So...

12 THE COURT: I gotcha. All right.

13 Well then, do you agree that this gentleman's sentence
14 should be less than Mr. Antoine's?

15 MS. FAGAN: Well, I do believe in level of culpability,
16 that he does fall below Mr. Antoine. I just think though that
17 Mr. Antoine really is sort of at the higher realm. It's just
18 because of the way of the statutes are and, you know, what we
19 can -- what we are legally allowed to charge.

20 THE COURT: So you think that Antoine's was
21 artificially kept low by the fact that he is a foreigner and was
22 not able to be charged under the Foreign Corrupt Trade and
23 Practices or whatever that is.

24 MS. FAGAN: I do believe that is a factor, Your Honor.

25 THE COURT: All right. I think it's a factor too.

1 All right. Go ahead. I'm sorry to have interrupted
2 you, Mr. Katz.

3 MR. KATZ: That's quite all right, Judge. I'm almost
4 done.

5 And quite frankly, it would only bring -- a level 23
6 would only bring Mr. -- the bottom of Mr. Diaz's guidelines two
7 months below Mr. Antoine. And unfortunately, unless the Court
8 wants to make a determination that it's either intermediate or
9 minimal, which based on what the Court has already said --

10 THE COURT: I'm not going to do that. That will be
11 denied.

12 But go ahead with the rest of it.

13 MR. KATZ: I believe, again, you know, one of the
14 considerations should be relative culpability as well as the
15 light of the circumstances giving rise to the crime.

16 THE COURT: But, you see, relative culpability would
17 result in my giving a variance for that reason. But I don't
18 think it results in changing the guidelines. See, that's my
19 problem is I don't see that that is -- I mean, I think you're
20 talking about two different things. Apples and oranges.

21 I do not think that it's prudent for me to start
22 changing guidelines based on relative culpability or anything
23 like that unless I deem that it's appropriate to reduce it
24 because of, you know, minor role or something like that which I
25 do not think is so in this case.

1 MR. KATZ: The only thing I can say, Judge, is that the
2 case law and again, the *De Varon* case, talks about that being
3 one amongst the factors that the Court can consider in assessing
4 the client's role, because the role is assessed relative --

5 THE COURT: I agree. I don't have a problem with that.
6 I agree with that concept. But I think that his role is
7 properly assessed in what he is charged with. So I will deny
8 that motion also.

9 Now, let's argue to me what you think the sentence
10 should be and why I should make a -- why I should grant a
11 variance and have a lower sentence than the 60 months which is
12 with the guideline sentence.

13 MR. KATZ: Well --

14 THE COURT: I think you've said most of it, but give me
15 your best shot.

16 MR. KATZ: Judge, I'm assuming the government is not
17 going to object that I'm arguing outside of the plea agreement
18 by offering an answer to Your Honor's question.

19 THE COURT: Well, if I ask you a question, I expect you
20 to answer it.

21 MR. KATZ: I certainly shall, Judge.

22 Again, based on the relative culpability, my client is
23 an unsophisticated person who is in a unique situation in his
24 lifetime. He had lost his wife --

25 THE COURT: Lift the microphone head up, because you're

1 tall and then you're standing up, and I know that some lawyers
2 can't talk when they're sitting down, but go ahead.

3 MR. KATZ: At this point, Judge, I think the Court
4 deserves the respect of me standing up and so does my client.

5 THE COURT: That's all right. Don't worry about it.

6 MR. KATZ: Given Mr. Diaz's circumstances in both
7 personally and professionally, the impetus for him getting
8 engaged in this conduct, the uniqueness of his engagement in
9 criminal conduct, the fact that he, again, is the sole caregiver
10 to his 12-year-old son, he has explained to his son exactly what
11 has occurred, and if Your Honor will hear from him, you'll hear
12 that his son does understand, he's certainly remorseful. He's
13 exhibited that in the past.

14 And essentially, Judge, he's -- in addition to being
15 guilty of a crime which we pled guilty to, he was also a victim
16 of some sophisticated individuals, some of whom run foreign
17 governments and telecommunications companies. He's clearly the
18 least sophisticated out of the group of individuals that have
19 been before Your Honor with the exception of possibly
20 Mr. Fourcand.

21 And in light of the fact that other defendants are
22 getting the benefit of foreign status and other status, I think
23 that for parity in sentencing purposes, I would ask the Court to
24 grant the variance and allow him to appear in the hierarchy
25 where he deserves, as the government as acknowledged he

1 deserves.

2 THE COURT: All right. Ms. Fagan?

3 MS. FAGAN: Yes, sir. We do -- we will ask the Court
4 to impose a sentence of the 57 months. We do believe that the
5 guidelines had taken into account his criminal liability.

6 I can say that I have personally sat in on information
7 sessions with Mr. Diaz. He has been consistently forthright,
8 very respectful of the parties involved. And he has been, we
9 believe, willing to answer all of our questions as Your Honor
10 knows.

11 I always get asked by defense counsel when defendants
12 are cooperating to sort of, as part of the cooperation or sort
13 of the plea deal, to give minor role. I just don't think it's
14 warranted in this sense. I look at cooperation in one category.

15 THE COURT: It has nothing to do with role.

16 MS. FAGAN: Right. I look at role assessment in
17 another. And so I do believe that the appropriate mechanism for
18 taking into account his cooperative posture would be the Rule 35
19 which, if things still go -- you know, he's still being
20 forthright, we do anticipate filing, as Your Honor is aware.

21 But for purposes of the sentence today, we would ask
22 the Court to impose 57 months.

23 MR. KATZ: May I just add one more thing, Judge?

24 THE COURT: Sure.

25 MR. KATZ: I apologize.

1 The other defendants, I would also point out, in their
2 seeking monetary gain, they were directly affecting either
3 Haitian Teleco or ultimately the Haitian citizens who were
4 buying these programs. If you look at who my client victimized,
5 quote, unquote, essentially he was taking money in a small
6 amount, relatively speaking, from the other gentlemen who were
7 defrauding that money. He wasn't directly defrauding.

8 And again, I understand the conduct we've pled guilty
9 to, but if you look at, again, his motivation, which I've
10 already expressed, and who his conduct affected, his conduct
11 only affected the other defendants, other than to the extent he
12 enabled this situation to go on. But there were clearly other
13 people who were doing that as well.

14 But essentially he took 7.5 percent, on average, of the
15 money from Antoine and the other people accepting bribes.

16 THE COURT: I understand your point. I'm not sure how
17 significant it is, but I understand the point. He did, however,
18 facilitate the bigger scheme, which was to cheat the people of
19 Haiti who get cheated by everybody under the sun.

20 MR. KATZ: I don't disagree with that, Judge.

21 But as compared to, for instance, Mr. Esquenazi, who is
22 the director of a large corporation, you know --

23 THE COURT: Yeah, but he's like the get-away driver. I
24 mean, he's still participates. He was helping them get away
25 with the money.



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

VIA E-MAIL

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July 28, 2010

Anne Ryan
Assistant U.S. Attorney
United States Attorney's Office
One St. Andrew's Plaza
New York, New York 10007

Re: United States v. Saverio Todaro
Criminal No. 10-CR-268

Dear Ms. Ryan:

Thank you for your recent inquiry concerning the Federal Bureau of Prisons (BOP) ability to provide adequate health care for federal prisoners with significant, acute or chronic medical conditions. Specifically, you have asked whether, based on the available information, the BOP can provide the necessary and appropriate care for Mr. Todaro should he be incarcerated in a federal correctional facility.

I am only aware of Mr. Todaro's medical condition as described by the documents you provided this office, namely, medical records from Jamaica Hospital Medical Center and Craig Thurm, M.D. The records describe Mr. Todaro as being diagnosed with severe chronic obstructive pulmonary disease, emphysema, dyspnea on exertion. Mr. Todaro reportedly takes at least 4 medications and uses oxygen and an inhaler to address his medical conditions.

The Bureau has implemented a medical care level classification system. The care level classification system is intended to enhance the Bureau's ability to manage inmate health care effectively by matching inmates with those institutions that can best meet their medical needs, while at the same time achieving optimal use of the Bureau's health care resources.

Anne Ryan
Assistant United States Attorney
July 28, 2010
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If committed to the custody of the BOP, Mr. Todaro may be reviewed for designation by the Bureau of Prisons Office of Medical Designations. At that time, a determination would be made as to the appropriate facility, either a medical referral center or a general population institution, in which to designate Mr. Todaro. Medical referral centers are prisons which provide in-patient care to seriously ill inmates. The BOP has six of these centers throughout the United States. Besides providing chronic care for seriously ill inmates, these medical centers also provide hospice care for terminally ill inmates. For your reference, I have attached an outline describing the Bureau's care level criteria. It is my opinion Mr. Todaro will likely be considered a Care Level 3 inmate.

Every Bureau facility, regardless of care level, has a Health Services Department, typically staffed with a physician(s) and several mid-level providers, such as physician assistants and nurse practitioners, along with technical and administrative staff. Most Health Services Departments conduct "sick-call" four or more days per week for the entire inmate population. Each Bureau institution also contracts with medical centers in the local vicinity to provide specialized medical treatment. These medical centers offer Bureau inmates access to specialists and diagnostic tools (including MRIs and CT Scans). When medical emergencies and the need for surgical procedures arise, these outside medical centers offer the Bureau a wide range of trained medical and surgical specialists. Each institution has procedures in place that instruct health services and/or correctional staff on how to contact local emergency medical services for transportation to local medical centers.

All inmates entering our facilities are thoroughly screened by medical staff for physical and mental health conditions, and are monitored thereafter through follow-up appointments and chronic care clinics, as necessary. A medical plan of action for an inmate would include a thorough and timely history and physical exam, per existing policies and procedures, to ascertain the mental health and medical status upon a designation and arrival to a Bureau facility. Subsequently, pending the results of this evaluation, by both mental health and medical staff; the treating Clinical Director and Chief Psychologist may formulate a plan that addresses his medical, mental health and activities of daily living issues. This plan may include assessment of the daily functioning, ie., handicap living quarters, need for a bottom bunk, ambulatory aides or bracing, pharmacy line oversight, specialty consultations, etc.

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Assistant United States Attorney
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Every general population institution runs a number of chronic care clinics whose purpose it is to provide routinely scheduled quality care to medically ill inmates, as well as to stay cognizant of any changes in medical conditions that may arise. If Mr. Todaro is designated to a general population institution, it is likely he would be assigned to the Pulmonary clinic. Inmates enrolled in chronic care clinics are seen at a minimum on a quarterly basis, and more often if medically necessary. The Bureau currently has 7,955 inmates participating in the Pulmonary Clinic, 1,212 inmates with COPD and 53 inmates who use portable oxygen.

As noted above, Mr. Todaro takes 4 specific medications and uses an inhaler. A review of the Bureau's National Formulary indicates that the Bureau has one of these medications specifically on its formulary. The other medications have substantially similar equivalents on the formulary. All of these medications, an inhaler and an oxygen pump can be provided to Mr. Todaro upon his arrival at a Bureau institution.

Based on the information provided to me and my knowledge of Bureau's medical resources, the Bureau will be able to provide appropriate care for Mr. Todaro. For your convenience, I have attached a general outline to explain how the Bureau designates prisoners with medical illnesses and to describe the medical services available within the Bureau. If I can offer any further information in this matter, please do not hesitate to contact me.

Sincerely,


Barbara J. Cadogan
Health Systems Administrator

Encl.

OUTLINE OF BUREAU OF PRISONS CARE LEVELS AND EXAMPLES

There are four CARE Levels in the Bureau of Prisons (BOP) medical CARE Level classification system. After initial designation and provisional care level assignment by the Designation and Sentence Computation Center (DSCC), non-provisional CARE Levels are determined by BOP clinicians. These assignments depend on treatment modalities and inmate functionality in addition to diagnostic categories such as cancer, diabetes, HIV, hepatitis.

Q. Who are CARE Level 1 inmates and who designates them?

- Inmates are generally healthy, but may have limited medical needs that can be easily managed by clinician evaluations every six months; and
- Inmates are less than 70 years of age.
- CARE Level 1 designations are made by the DSCC.
- **Examples:** mild asthma, diet-controlled diabetes, stable HIV patients not requiring medications.

Q. Who are CARE Level 2 inmates and who designates them?

- Inmates are stable outpatients who require clinician evaluation every 1 - 6 months.
- Can be managed in chronic care clinics, including for mental health issues.
- Enhanced medical resources may be required from time to time, but are not regularly necessary.
- CARE Level 2 designations are made by the DSCC.
- **Examples:** medication-controlled diabetes, epilepsy, or emphysema.

Q. Who are CARE Level 3 inmates and who designates them?

- Inmates are fragile outpatients who require frequent clinical contacts to prevent hospitalization for catastrophic events.
- May require some assistance with activities of daily living, but do not need daily nursing care.
- Inmate companions may be used to provide assistance.
- Stabilization of medical or mental health conditions may require periodic hospitalization.
- **Examples:** cancer in remission less than a year, advanced HIV disease, severe mental illness in remission on medication, severe congestive heart failure, end-stage liver disease.
- **Designation of CARE Level 3 inmates is made by the BOP's Office of Medical Designation and Transportation in Washington, D.C.**

Q. Who are CARE Level 4 inmates and who designates them?

- Inmates require services available only at an MRC (which provide significantly enhanced medical services and limited in-patient care).
- May need daily nursing care.
- Functioning may be severely impaired and requires 24-hour skilled nursing care or nursing assistance.
- **Examples:** cancer on active treatment, dialysis, quadriplegia, stroke or head injury patients, major surgical patients, acute psychiatric illness requiring inpatient treatment, high-risk pregnancy.
- **Designation of CARE Level 4 inmates is made by the BOP's Office of Medical Designation and Transportation in Washington, D.C.**

Q. When is the CARE Level classification process going to be implemented?

A. It is currently in use.

Q. What can I, as a federal judge, do in the sentencing process to assist in the designations process?

- Until an inmate comes into the BOP and is evaluated by a health care provider, the Presentence Report (PSR) is the BOP's principal resource for initially assessing medical conditions.
- The Court can assist the BOP in this process by requesting that the PSR contain complete and current information regarding the medical and mental health status of the inmate (for example, new or additional information that may be available from the local jail or the defendant's personal physician). In order to facilitate appropriate Care Level designation, the Court should recommend that all current medical information be forwarded to the BOP at the time of sentencing.

Q. Whom should the judges contact concerning designations for defendants from their courts?

- The first point of contact within the BOP for defendants who do not have significant medical or mental health conditions should be the DSCC.