



**U.S. Department of Justice**

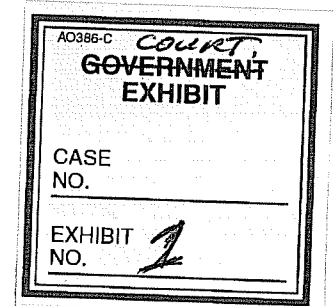
*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building*

*One Saint Andrew's Plaza  
New York, New York 10007*

August 26, 2013

Henry P. Bell, Esq.  
John Priovolos, Esq.  
6301 Sunset Drive, Suite 203  
South Miami, Florida 33143



**Re: Tomas Alberto Clarke Bethancourt**

Dear Messrs. Bell and Priovolos:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York and the Fraud Section of the U.S. Department of Justice (collectively, "the Offices") will accept a guilty plea from Tomas Alberto Clarke Bethancourt ("Clarke" or "the defendant") to a six-count criminal information (the "Information") charging him with violations of Title 15, United States Code, Section 78dd-2 and Title 18, United States Code, Sections 371, 1952(a)(3)(A), 1956(a)(2)(A), and 2, in connection with schemes to pay bribes to foreign officials of state-owned banks in Venezuela, along with a scheme to obstruct an examination conducted by the U.S. Securities and Exchange Commission (the "SEC") in order to prevent the SEC from detecting bribes to foreign officials.

Count One of the Information charges the defendant with conspiring to violate the Foreign Corrupt Practices Act, to violate the Travel Act, and to commit money laundering, all in violation of Title 18, United States Code, Section 371. Count One carries a maximum sentence of five years' imprisonment; a maximum fine pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

Count Two of the Information charges the defendant with violating the Foreign Corrupt Practices Act, in violation of Title 15, United States Code, Section 78dd-2, and Title 18 United States Code, Section 2. Count Two carries a maximum sentence of five years'

imprisonment; a maximum fine pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

Count Three of the Information charges the defendant with violating the Travel Act, in violation of Title 18 United States Code, Sections 1952 and 2. Count Three carries a maximum sentence of five years' imprisonment; a maximum fine pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

Count Four of the Information charges the defendant with committing money laundering, in violation of Title 18 United States Code, Section 1956(a)(2)(A) and 2. Count Four carries a maximum sentence of twenty years' imprisonment; a maximum fine pursuant to Title 18, United States Code, Section 3571 of the greater of \$500,000, or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

Count Five of the Information charges the defendant with conspiring to obstruct justice, in violation of Title 18 United States Code, Section 371. Count Five carries a maximum sentence of five years' imprisonment; a maximum fine pursuant to Title 18, United States Code Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

Count Six of the Information charges the defendant with conspiring to violate the Foreign Corrupt Practices Act, in violation of Title 18, United States Code, Section 371. Count Six carries a maximum sentence of five years' imprisonment; a maximum fine pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

The total maximum sentence of incarceration on Counts One through Six is forty-five years.

In addition to the foregoing, the Court must order restitution to any victims of the defendant's offenses in accordance with Sections 3663, 3663A, and 3664 of Title 18, United States Code. Restitution shall be paid according to a plan established by the Court.

The defendant furthermore admits the forfeiture allegations with respect to Counts One through Four and Count Six of the Information and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses charged in Counts One through Three and Count Six of the Information, and all property traceable to such property, and pursuant to Title 18, United States Code, Section 982(a)(1), all property, real and personal, involved in the offenses charged in Counts One and Four of the Information, and all property traceable to such property. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

The defendant hereby consents to prosecution on the charges contained in the Information in the Southern District of New York and waives any right to challenge such prosecution on the basis of venue.

It is further understood that prior to the date of sentencing, Clarke shall file accurate amended tax returns for the tax years 2008 to the present, accurate Reports of Foreign Bank and Financial Accounts (FBARs) for the tax years 2008 to the present, and will pay, or will enter into an agreement to pay, past taxes due and owing by him to the Internal Revenue Service, including applicable penalties, if any, on such terms and conditions as will be agreed upon between him and the Internal Revenue Service.

It is understood that Clarke (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which the Offices inquire of him, which information can be used for any purpose; (b) shall cooperate fully with the Offices, the Federal Bureau of Investigation, and any other law enforcement agency designated by the Offices; (c) shall attend all meetings at which the Offices request his presence; (d) shall provide to the Offices, upon request, any document, record, or other tangible evidence relating to matters about which the Offices or any designated law enforcement agency inquire of him; (e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which the Offices may request his testimony; (f) shall bring to the attention of the Offices all crimes that he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness; and, (g) shall commit no further crimes whatsoever.

Moreover, any assistance Clarke may provide to federal criminal investigators shall be pursuant to the specific instructions and control of the Offices and designated investigators.

It is understood that the Offices cannot, and do not, agree not to prosecute Clarke for criminal tax violations. However, if Clarke fully complies with the understandings specified in this Agreement, no testimony or other information given by him (or any other information directly or indirectly derived therefrom) will be used against him in any criminal tax prosecution. Moreover, if Clarke fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by the Offices for any crimes, except for criminal tax violations, related to his participation in: (i) schemes from at least in or around 2008 through in or around 2012 to pay bribes to foreign officials responsible for investments made by state-owned banks in Venezuela in order to get and retain business from those banks, as charged in Counts One, Two, Three, Four, and Six of the Information; (ii) a scheme during early 2011 to obstruct an examination conducted by the SEC to prevent the SEC from detecting bribes made to foreign officials, as charged in Count Five of the Information; and (iii) and a scheme in June 2012 to commit bank fraud by secretly paying approximately \$400,000 to a homeowner in conjunction with a bank-mandated short-sale of a home, to the extent that he has disclosed such participation to the Offices as of the date of this Agreement. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

It is understood that all of the conduct set forth in subsection (iii) of the preceding paragraph constitutes either relevant conduct, pursuant to United States Sentencing Guidelines (“U.S.S.G.”) Section 1B1.3, or other conduct of the defendant, pursuant to U.S.S.G. Section 1B1.4, that the Court may consider at the time of sentencing.

It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Offices. The Offices will, however, bring the cooperation of Clarke to the attention of other prosecuting offices, if requested by him.

It is understood that the sentence to be imposed upon Clarke is within the sole discretion of the Court. The Offices cannot, and do not, make any promise or representation as to what sentence Clarke will receive, and will not recommend any specific sentence to the Court. However, the Offices will inform the Probation Department and the Court of (a) this Agreement; (b) the nature and extent of Clarke’s activities with respect to this case and all other activities of Clarke that the Offices deem relevant to sentencing; and (c) the nature and extent of Clarke’s cooperation with the Offices. In so doing, the Offices may use any information they deem relevant, including information provided by Clarke both prior to and subsequent to the signing of this Agreement. In addition, if the Offices determine that Clarke has provided substantial assistance in an investigation or prosecution, and if he has fully complied with the understandings specified in this Agreement, the Offices will file a motion, pursuant to Section

5K1.1 of the Sentencing Guidelines, requesting the Court to sentence Clarke in light of the factors set forth in Section 5K1.1(a)(1)-(5). It is understood that, even if such a motion is filed, the sentence to be imposed on Clarke remains within the sole discretion of the Court. Moreover, nothing in this Agreement limits the right of the Offices to present any facts and make any arguments relevant to sentencing to the Probation Department and the Court, or to take any position on post-sentencing motions. Clarke hereby consents to such adjournments of his sentence as may be requested by the Offices.

It is understood that, should the Offices determine either that Clarke has not provided substantial assistance in an investigation or prosecution, or that Clarke has violated any provision of this Agreement, such a determination will release the Offices from any obligation to file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, but will not entitle Clarke to withdraw his guilty plea once it has been entered.

It is understood that, should the Offices determine, subsequent to the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines and/or Title 18, United States Code, Section 3553(e), that Clarke has violated any provision of this Agreement, the Offices shall have the right to withdraw such motion.

It is understood that, should Clarke commit any further crimes or should it be determined that he has given false, incomplete, or misleading testimony or information, or should he otherwise violate any provision of this Agreement, Clarke shall thereafter be subject to prosecution for any federal criminal violation of which the Offices have knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Clarke, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is understood that in the event that it is determined that Clarke has committed any further crimes, given false, incomplete, or misleading testimony or information, or otherwise violated any provision of this Agreement, (a) all statements made by Clarke to the Offices or other designated law enforcement agents, and any testimony given by Clarke before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against Clarke; and (b) Clarke shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is, in fact, guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

Henry P. Bell, Esq.  
John Priovolos, Esq.

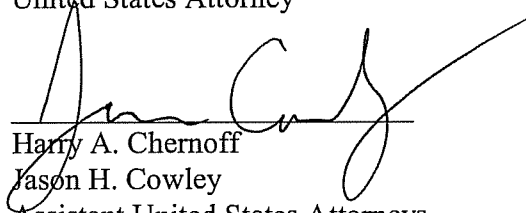
August 26, 2013

This Agreement supersedes any prior understandings, promises, or conditions between the Offices and Clarke. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

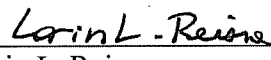
Very truly yours,

PREET BHARARA  
United States Attorney

By:

  
\_\_\_\_\_  
Harry A. Chernoff  
Jason H. Cowley  
Assistant United States Attorneys  
James M. Koukios  
Maria Gonzalez Calvet  
Trial Attorneys  
U.S. Department of Justice

APPROVED:

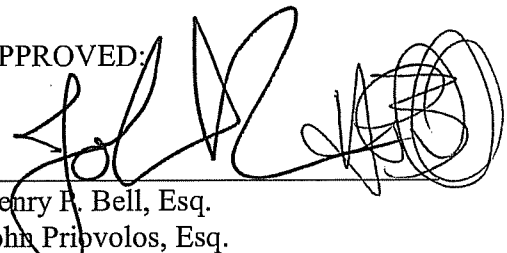
  
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Lorin L. Reisner  
Chief, Criminal Division

AGREED AND CONSENTED TO:

  
\_\_\_\_\_  
Tomas Alberto Clarke Bethancourt

8/29/13  
\_\_\_\_\_  
Date

APPROVED:

  
\_\_\_\_\_  
Henry P. Bell, Esq.  
John Priovolos, Esq.  
Attorneys for Tomas Alberto Clarke Bethancourt

8/29/13  
\_\_\_\_\_  
Date