

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-____-CR- 20894-SEITZ

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN PABLO VASQUEZ,

Defendant.

PLEA AGREEMENT

The United States Department of Justice, Criminal Division, Fraud Section (the "Department") and JUAN PABLO VASQUEZ (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to an information charging the defendant with one count of conspiracy to violate the laws of the United States, in violation of Title 18, United States Code, Section 371, that is, to make corrupt payments to foreign officials in violation of Title 15, United States Code, Section 78dd-2, the Foreign Corrupt Practices Act ("FCPA").

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 one (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 as to Count 1 a statutory maximum term of imprisonment of up to five (5) years' imprisonment, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the Court may also impose a fine equal to the greatest of: (i) \$250,000; (ii) twice the gross amount of any pecuniary gain that any person derived from the offense; or (iii) twice the gross amount of any pecuniary loss sustained by any victim of the offense. The Court may also order restitution.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph three (3) of this agreement, a mandatory special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that the special assessment imposed shall be paid at the time of sentencing.

5. The Department reserves 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 Department further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The Department and the defendant agree that, although not binding on the probation office or the Court, in the event that the Department does not make at or before sentencing a motion pursuant to Section 5K1.1 of the Sentencing Guidelines or after sentencing a motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure, 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 Department 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.

7. Provided the defendant enters the guilty plea contemplated by this plea agreement in a timely fashion, the Department agrees that, although not binding on the probation office or the Court, it will recommend 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. Similarly, if at the time of sentencing the defendant's offense level is determined to

be sixteen (16) or greater, the Department 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 Department to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The Department, however, will not be required to make this sentencing recommendation if the defendant: (a) fails or refuses to make full, accurate, and complete disclosure to the Department and the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (b) is found to have misrepresented facts to the government prior to entering this plea agreement; or (c) 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 Department and the defendant agree further 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: Pursuant to Section 1B1.11(a) of the Sentencing Guidelines, the applicable Guidelines Manual is the 2009 edition.
- b. Applicable Guideline Offense and Base Offense Level: Pursuant to Section 2C1.1 of the Sentencing Guidelines, the base offense level is twelve (12). U.S.S.G. § 2C1.1(a)(2).
- c. Specific Offense Characteristics: The parties agree and stipulate that the following offense characteristics apply under Section 2C1.1(b):

- (i) The offense involved more than one bribe. Accordingly, the offense level is increased by two (2) levels. U.S.S.G. § 2C1.1(b)(1).
 - (ii) The offense involved more than \$400,000 but less than \$1,000,000 in bribe payments. Accordingly, the offense level is increased by fourteen (14) levels. U.S.S.G. §§ 2C1.1(b)(2); 2B1.1(b)(1)(H).
 - (iii) The offense involved a public official in a high-level decision-making or sensitive position. Accordingly, the offense level is increased by four (4) levels. U.S.S.G. § 2C1.1(b)(3).
- d. Overall guideline range: The parties agree and stipulate that the adjusted offense level, assuming a 3-level reduction for acceptance of responsibility as contemplated in paragraph seven (7) above, is a level 29, and the applicable sentencing guideline range (assuming a Criminal History Category of I) is 87-108 months' imprisonment. Section 5G1.1(a) of the U.S.S.G. states that where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence. Because the statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371, is five years' imprisonment and is less than the bottom of the applicable guideline range, the defendant and the Department agree that the Sentencing Guidelines sentence is five years' imprisonment. U.S.S.G. § 5G1.1(a).

9. This agreement is limited to the United States Department of Justice, Criminal Division, Fraud Section, and as such, does not and cannot bind other federal, state, regulatory, or local prosecuting authorities.

10. The defendant is aware that the sentence has not yet been determined by the Court. The defendant is also 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 Department, or the probation office, is a prediction, not a promise, and is not binding on the Department, the probation office, or the Court. The defendant understands further that any recommendation that the Department 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 two (2) above, that he may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the Department, or a recommendation made jointly by both the defendant and the Department.

11. 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 Department 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, or to collaterally attack the conviction, any sentence imposed, or the manner in which sentence was imposed, including any restitution order, pursuant to Title 28, United States Code, Sections 2241, 2254, 2255, or any other applicable provision, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the Sentencing Guidelines range that the Court establishes at sentencing. The

defendant further understands that nothing in this plea agreement shall affect the Department's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). If the Department appeals the defendant's sentence pursuant to Section 3742(b), however, the defendant shall be released from the above waiver of appellate rights. By signing this plea agreement, the defendant acknowledges that he has discussed the appeal and collateral attack waiver set forth in this plea agreement with the defendant's attorney. The defendant further agrees, together with the Department, to request that the Court enter a specific finding that the defendant's waiver of the right to appeal the sentence to be imposed in this case was knowing and voluntary.

12. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charge identified in paragraph one (1) above, or otherwise fails to fully comply with any of the terms of this plea agreement, the Department 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 agreement between the parties, 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 him as part of his cooperation with the Department, or otherwise, including the Statement of Offense to be filed with this plea agreement, whether such statements were 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.

13. The Department represents that the undersigned prosecutor is unaware of any information establishing the factual innocence of the defendant in the offense referred to in paragraph one (1) of this agreement. The Department 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, the Department would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, the Department would be required to provide information in its possession that supports such a defense. Further, if this case proceeded to trial, the Department 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 Department'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 Department agrees that it will not seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement, except that the Department shall have the right in its discretion to seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement where any such additional upward specific offense characteristics,

enhancements, or upward departures to or from the defendant's offense level would be based on conduct occurring after the defendant enters into this agreement. The defendant agrees that he will not seek additional downward specific offense characteristics, reductions, or downward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement. However, in the event the probation office recommends any specific offense characteristics, enhancements, reductions, or departures to or from the defendant's offense level other than those, if any, specifically referred to in this agreement, either party shall have the right but not the obligation to oppose any such recommendation.

15. The defendant agrees that he shall cooperate fully with the Department by:
 - a. providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by the Department, whether in interviews, before a grand jury, at any trial, or other Court proceeding;
 - b. appearing at such grand jury proceedings, hearings, trials, other judicial proceedings, and at meetings, as may be required by the Department;
 - c. at the direction of the Department, cooperating with other authorities, including foreign authorities, with regard to investigation and prosecution of matters related to the criminal information and any other matters;
 - d. if requested by the Department, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct, under the supervision of, and in compliance with, law enforcement officers and agents; and

- e. in providing information and testimony, neither seeking to protect any person or entity through false information or omission, nor falsely implicating any person or entity.

16. The defendant also understands and agrees that he will not commit any further crimes. The defendant further understands that he may be prosecuted for, without limitation, any materially false statement made at any time during his cooperation with the Department, including under the federal perjury, obstruction of justice, and false statements statutes.

17. In addition, should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and reasonably disclose all information and provide full and complete cooperation, which determinations are within the sole discretion of the Department, this plea agreement is voidable at the option of the Department, and the following conditions shall then also apply:

- a. The defendant may be prosecuted for perjury or false statements, if any, committed while testifying pursuant to this plea agreement or for obstruction of justice should he commit these offenses during the time in which he is cooperating with law enforcement pursuant to this plea agreement; and
- b. The Department may use against the defendant his own admissions and statements, including the Statement of Offense to be filed with this plea agreement, and the information, books, papers, documents, and objects that he himself has furnished in the course of his cooperation with the United States.

18. The Department reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the Court at the time


of sentencing. If, in the sole and unreviewable judgment of the Department, 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 required by the Sentencing Guidelines, the Department may at or before sentencing make a motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, and/or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance in the investigation or prosecution of other criminal matters, the extent of any assistance provided, and a recommendation for sentence reduction. The defendant acknowledges and agrees, however, that nothing in this agreement may be construed to require the Department to file such a motion and that the Department's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

19. The defendant understands and acknowledges that the Court is under no obligation to grant any motion by the Department pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines, and /or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in this plea agreement, should the Department exercise its discretion to file such a motion.

20. This is the entire agreement and understanding between the Department and the defendant. There are no other agreements, promises, representations, or understandings.

DENIS J. McINERNEY
Chief, Fraud Section
Criminal Division

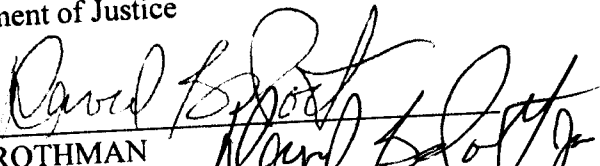
Date: 12/15/10

By: 
JEFFREY H. KNOX
Senior Litigation Counsel

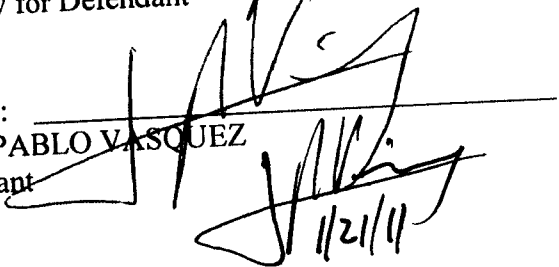
AMANDA AIKMAN
Trial Attorney

Fraud Section, Criminal Division
U.S. Department of Justice

Date: Dec 7, 2010

By: 
DAVID B. ROTHMAN
Attorney for Defendant

Date: 12/3/10

By: 
JUAN PABLO VASQUEZ
Defendant