



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

February 11, 2013

BY ELECTRONIC MAIL

James Di Pietro, Esq.
186 Joralemon Street
Brooklyn, NY 11201

Re: **United States v. Andrey Anikeyev**
S7 12 Cr. 171 (JPO)

Dear Mr. Di Pietro:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Andrey Anikeyev ("the defendant") to Count One of the above-referenced Superseding Information (the "Information"). Count One charges the defendant with conspiracy to commit mail fraud and health care fraud, in violation of Title 18, United States Code, Section 371, and carries a maximum term of imprisonment of five years, a maximum term of supervised release of three years, 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 persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for (i) his participation in a conspiracy to commit mail fraud and health care fraud from in or about 2008 up through in or about February 2012, as charged in Count One of the Information, and (ii) his participation in a conspiracy to commit money laundering from in or about 2008 up through in or about February 2012, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegations with respect to Count One of the Information and agrees to forfeit to the United States, pursuant to Title 18, United States Code,

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Sections 982(a)(7) and 981(a)(1)(C) and Title 21, United States Code, Section 2461(c) a sum of money equal to \$4,102,273.67 in United States currency, representing the amount of gross proceeds obtained from Count One (the "Money Judgment"). The defendant agrees to forfeit all right, title, and interest in the funds seized from the six accounts listed in the forfeiture allegations with respect to Count One of the Information (the "Seized Funds"). The Seized Funds shall be credited to the Money Judgment upon their final forfeiture. 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. It is the intent of this Office to request that Department of Justice invoke its restoration policy and transfer any funds forfeited in this case to the clerk of the court to be distributed to victims pursuant to the terms of a restitution order entered by this Court. The defendant consents to the entry of the Consent Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court.

The defendant further agrees to make restitution in an amount of \$4,102,273.67, in accordance with 18 U.S.C. §§3663, 3663A, and 3664. The restitution amount shall be paid according to a plan established by the Court. The parties agree, however, that the existence of a payment plan set by the Court will not bar Governmental collection efforts against any of the defendant's available assets.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

The Sentencing Guidelines in effect as of November 1, 2012, apply to this case.

1. The Sentencing Guideline applicable to the offense charged in Count One is U.S.S.G. § 2B1.1. Pursuant to U.S.S.G. § 2B1.1(a)(2), the base offense level is 6.

2. Pursuant to U.S.S.G. § 2B1.1(b)(1)(J), because the intended loss from the offense is more than \$2,500,000 but less than \$7,000,000, the offense level is increased by 18 levels.

3. Pursuant to U.S.S.G. § 2B1.1(b)(2)(A), because the offense involved 10 or more victims, the offense level is increased by 2 levels.

4. Pursuant to U.S.S.G. § 2B1.1(b)(10)(C), because the offense involved sophisticated means, the offense level is increased by 2 levels.

5. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the

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imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 25.

B. Criminal History Category

Based upon the Information now available to this Office (including representations by the defense), the defendant has no criminal history points, calculated as follows:

1. On or about September 19, 1997, the defendant was convicted in Kings County Criminal Court of Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree, a Class U Misdemeanor, and was sentenced to a fine of \$250 or 15 days' imprisonment. Pursuant to U.S.S.G. § 4A1.2(c)(1), this conviction results in no criminal history points.
2. On or about November 7, 1997, the defendant was convicted in Kings County Criminal Court of Driving While Intoxicated, a Class U Misdemeanor, and was sentenced to three years' probation. Pursuant to U.S.S.G. § 4A1.1 n.3, because this sentence was imposed more than 10 years prior to the instant offense, this conviction results in no criminal history points.

Accordingly, the defendant has no criminal history points and is in Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Guidelines range is 57 to 71 months. However, the maximum sentence applicable to Count One of the Indictment is 60 months' imprisonment. Accordingly, the applicable stipulated Guidelines range is 57 to 60 months (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 25, the applicable fine range is \$10,000 to \$100,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest

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that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence different from the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence different from the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence different from the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence different from the Stipulated Guidelines Range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive.

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Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be different from the Stipulated Guidelines Range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 57 to 60 months' imprisonment and (ii) that the Government will not appeal any sentence at the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any restitution or forfeiture amount that is less than or equal to \$4,102,273.67, and the Government agrees not to appeal any restitution or forfeiture amount that is greater than or equal to \$4,102,273.67.

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.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement 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 further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.


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Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. 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:


Daniel S. Goldman
Nicholas L. McQuaid
Carolina A. Fornos
Assistant United States Attorneys
(212) 637-2289/1049/2740

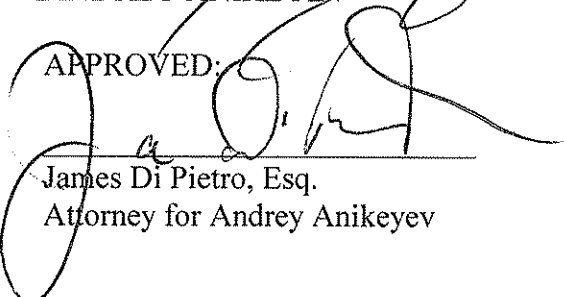
APPROVED:


Karl Metzner
Chief, Organized Crime

AGREED AND CONSENTED TO:


ANDREY ANIKEYEV

APPROVED:


James Di Pietro, Esq.
Attorney for Andrey Anikeyev

DATE

2/15/13

DATE

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