

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 07-20999-CR-LENARD
Magistrate Judge Edwin G. Torres**

UNITED STATES OF AMERICA

v.

**CARLOS KAUFFMANN,
Defendant.**

_____ /

PLEA AGREEMENT

The United States of America and CARLOS KAUFFMANN (hereinafter referred to as "Defendant") enter into the following agreement:

1. Defendant hereby agrees to plead guilty to Count 1 of the Indictment which charges Defendant with conspiracy to act as an agent of a foreign government without prior notification to the Attorney General, in violation of Title 18, United States Code, Section 371.

2. Defendant is aware that his sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). Defendant acknowledges and understands 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. Defendant also acknowledges and understands that the court may compute an advisory sentence under the Sentencing Guidelines. Defendant is also aware that, under certain circumstances, the court may depart from any advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. Defendant is further aware and understands

that the court is required to consider the Sentencing Guidelines and any advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence in that range; the court is permitted to tailor the ultimate sentence in light of statutory concerns, including those in Title 18, United States Code, Section 3553, and such sentence may be either more severe or less severe than any advisory sentence computed under the Sentencing Guidelines. Knowing these facts, 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 he may not withdraw his plea solely as a result of the sentence imposed.

3. Defendant understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to five years on Count 1.

4. The Court may also impose a term of supervised release on Count 1 of not more than three years to be served upon completion of any sentence of imprisonment, pursuant to Title 18, United States Code, Section 3583(b)(2).

5. On Count 1, the Court may also impose a fine of not more than \$250,000 pursuant to Title 18, United States Code, Section 3571(b)(3).

6. In addition to any sentence imposed under paragraphs 2 through 5 of this agreement, a special assessment in the amount of \$100 shall be imposed on Defendant, pursuant to Title 18, United States Code, Section 3013(a)(2)(A). Defendant shall deposit the amount of \$100 with the Clerk of the Court within thirty days of the entry of this plea. Said sum shall be used to satisfy the special assessment imposed by the Court.

7. The United States' view, contrary to Defendant's view, is that, because the underlying substantive offense is not covered by an expressly promulgated or analogous offense guideline, the

provisions of 18 U.S.C. § 3553 shall control, in accordance with § 2X5.1 of the Sentencing Guidelines.

8. In the event the Court disagrees with the Government's view and calculates for the Defendant an advisory guidelines range using the Sentencing Guidelines, the United States agrees to recommend as follows:

- (a) that the court reduce by two levels the sentencing guideline applicable to Defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon Defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing 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 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 and the court to allocate their resources efficiently.
- (b) that Defendant was a minimal participant in this offense; and
- (c) that the defendant be sentenced at the low end of the applicable guidelines range, as that range is determined by the court.

The United States, however, will not be required to make these sentencing recommendations and/or motion(s) if Defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to sentencing; 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 a false statement or misrepresentation to any governmental entity or official.

9. Defendant agrees to cooperate fully with the Office of the United States Attorney for the Southern District of Florida (hereinafter referred to as "Office") by:

(a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding; and

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office.

10. This Office reserves the right to evaluate the nature and extent of Defendant's cooperation and to make Defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If the Court holds, in accordance with the Government's view expressed in paragraph 7 that the underlying substantive offense is not covered by an expressly promulgated or analogous offense guideline, and if in the sole and unreviewable judgment of this Office, Defendant's cooperation is of such quality and significance to the investigation or prosecution of criminal matters, this Office may request at sentencing that the Court consider Defendant's cooperation as a mitigating factor in its Section 3553 assessment. On the other hand, if the Court holds, that the underlying substantive offense is covered by an expressly promulgated or analogous offense guideline, and if in the sole and unreviewable judgment of this Office, Defendant's cooperation is of such quality and significance to the investigation or prosecution of criminal matters as to warrant the court's downward departure from any advisory sentence calculated under the Sentencing

Guidelines, this Office may at or before sentencing make a motion consistent with the intent of Section 5K1.1 of the Sentencing Guidelines prior to sentencing, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that Defendant has provided substantial assistance and recommending that Defendant's sentence be reduced from any advisory sentence suggested by the Sentencing Guidelines. Defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file any such request and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of Defendant's cooperation shall be binding insofar as the appropriateness of this Office's filing of any such motion is concerned.

11. Defendant understands and acknowledges that the court is under no obligation to grant the request referred to in paragraph 10 of this agreement should the government exercise its discretion to make such a request. Defendant also understands and acknowledges that the court is under no obligation to reduce Defendant's sentence because of Defendant's cooperation.

12. This Office 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 Defendant and Defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the appropriate sentence to be imposed.

13. The United States promises that any testimony, evidence, or information provided by Defendant under this agreement shall not be used against him or his assets, except as further provided in this paragraph. The Government remains free to use, against Defendant, in any manner,

any testimony, evidence, or information developed independently from any testimony, evidence, or information provided by Defendant under this agreement. The Government also remains free to use, against Defendant, in any manner, any testimony, evidence, or information provided by Defendant:

- (a) pertaining to any crimes of violence;
- (b) in any cross-examination or as impeachment evidence in the event that Defendant testifies at any other individual's trial or proceeding;
- (c) known to the Government prior to entering into this agreement, with the limitations as set forth in paragraph 16.
- (d) in a prosecution for perjury or giving a false statement;
- (e) in the event there is a breach of the agreement by Defendant;
- (f) in determining the Government's sentencing recommendation; and/or
- (g) in determining whether, or to what extent, a sentence reduction is warranted based upon Defendant's cooperation.

14. Defendant is aware that Title 18, United States Code, Section 3742 affords 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, Defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742, to appeal any sentence imposed 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 and/or variance from any advisory guideline range that the court establishes at sentencing. 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). If the United States appeals Defendant's sentence pursuant to Section 3742(b),

Defendant shall be released from the above waiver of appellate rights. By signing this agreement, Defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. Defendant further agrees, together with the United States, to request that the district court enter a specific finding that Defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

15. Defendant is aware that the sentence has not yet been determined by the court. Defendant is also aware that any estimate of the probable sentencing range or sentence that Defendant may receive, whether that estimate comes from 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. 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. Defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that Defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by Defendant, the government, or a recommendation jointly made by both Defendant and the government.

16. This agreement resolves all charges against Defendant arising out of this Indictment and any potential federal criminal charges against Defendant arising out of grand jury proceedings or other criminal investigations currently pending in the Southern District of Florida, excluding any potential charges for crimes of violence or for tax-related violations of Title 26 of the United States Code. This paragraph is limited to the United State's Attorney's Office for the Southern District of Florida and, as such, does not and cannot bind other federal, state, or local prosecuting authorities.

17. The United States agrees to seek dismissal of Count 2 of the Indictment, as to this Defendant, after sentencing.

18. Due to physical safety concerns, the Department of Justice will recommend to United States Immigration & Customs Enforcement that Defendant and his wife, Maria Gabriela Jimenez, not be removed to Venezuela, nor will the Department of Justice object to their relocation to any country that will accept them. Defendant will, however, be required to serve any period of incarceration in a United States facility. Any relocation while on supervised release after service of any sentence of confinement must be consistent with Defendant's obligations to the United States Probation Office and the Court.

19. This is the entire agreement and understanding between the United States and Defendant. There are no other agreements, promises, representations, or understandings.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: _____

By: _____
THOMAS J. MULVIHILL
SENIOR LITIGATION COUNSEL
UNITED STATES ATTORNEY'S OFFICE

Date: _____

By: _____
CLIFFORD I. RONES
SENIOR TRIAL ATTORNEY
U. S. DEPARTMENT OF JUSTICE

Date: _____

By: _____
JOHN C. SHIPLEY
ASSISTANT UNITED STATES ATTORNEY
UNITED STATES ATTORNEY'S OFFICE

Date: _____

By: _____
CARLOS KAUFFMANN
DEFENDANT

Date: _____

By: _____
JACOB M. DENARO
ATTORNEY FOR DEFENDANT

Date: _____

By: _____
NEIL M. SCHUSTER
ATTORNEY FOR DEFENDANT