

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

CASE NO. 08-CR-20543-CMA

UNITED STATES OF AMERICA

v.

BERNARD JEAN TERNUS,

Defendant.

FACTUAL PROFFER

Had this matter proceeded to trial, the United States and Defendant Bernard Jean Ternus (the "Defendant") agree that the following facts would have been proved beyond a reasonable doubt, are true and correct, and are sufficient to support a plea of guilty:

The Defendant fraudulently concealed his French criminal history in order to obtain a United States visa, which he then used to enter into and remain in the United States.

On or about September 1, 2006, the Defendant, a citizen of France, applied for a United States visa by submitting a United States Department of State Nonimmigrant Visa Application form, Form DS-156.

The following statement appears at the beginning of Item 38 in the Defendant's DS-156 application: "A visa may not be issued to persons who are within specific categories defined by law as inadmissible to the United States (except when a waiver is obtained in advance). Is any of the following applicable to you?" The first question after that statement is the following: "Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action? Have you ever unlawfully distributed or sold a controlled

substance (drug), or been a prostitute or procurer for prostitutes?" The Defendant answered "no" to that question.

At the end of his DS-156 application in Item 41, the Defendant signed a certification statement that reads as follows: "I certify that I have read and understood all of the questions set forth in this application and the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the United States...."

At the time that the Defendant answered "no" to the question in Item 38 about criminal history and submitted his DS-156 application, the Defendant in fact had a criminal history in France dating to 1966. At the time the Defendant answered "no" to the question about criminal history and submitted his DS-156 application, the Defendant knew that he had been arrested and convicted in France. The Defendant had been arrested in France on at least seven separate occasions, as follows: in 1966 for the crime of breaking and entering; in 1968 for the crimes of driving without insurance and resisting arrest; in 1972 for the crime of theft; in 1973 for the crime of robbery; in 1993 for the crime of being in possession of stolen goods; in 2002 for the crime of assault with a deadly weapon; and in 2002 for the crime of destruction of a vehicle. The Defendant had been convicted in France in 2006 for the crime of assault with a deadly weapon.

On October 31, 2006, an E-2 visa, visa number xxxxxxxxx9001, valid for 60 months, was issued to the Defendant. An E-2 visa is a document required for entry into and as evidence of authorized stay or employment in the United States.

On July 5, 2007, the Defendant arrived at Miami International Airport aboard American Airlines flight number 63 from Paris, France. The Defendant presented his U.S. visa to the

United States Customs and Border Protection for examination and entry into the United States, and he was admitted into the United States.


The Defendant knew that the E-2 visa he obtained and used had been procured by means of a false claim and statement, that is, his false claim to have no French criminal history. On October 25, 2007, the Defendant stated to F.B.I. special agents working in an undercover capacity that he had lied on his immigration papers, and that he will be in trouble if he is found out. On January 5, 2008, the Defendant stated to an F.B.I. special agent working in an undercover capacity that he had lied on his visa application about having a prior police record in France.

The Defendant engaged in his above-described conduct in Miami-Dade County in the Southern District of Florida, and elsewhere.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

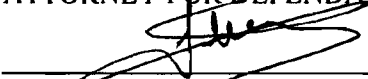
Date: 07/10/08

By: 
CHRISTOPHER J. HUNTER
ASSISTANT UNITED STATES ATTORNEY

Date: 07/10/08

By: 
RICHARD BIRKENWALD
ATTORNEY FOR DEFENDANT

Date: 07/10/08

By: 
BERNARD JEAN TERNUS
DEFENDANT

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