



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*

October 1, 2007

Gerald L. Shargel, Esq.
Law Offices of Gerald L. Shargel
570 Lexington Avenue, 45th Floor
New York, New York 10022

Re: *United States v. Oscar S. Wyatt, Jr.*
S5 05 Cr. 59 (DC)

Dear Mr. Shargel:

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 Oscar S. Wyatt, Jr. (the "defendant") to Count One of the above-referenced Indictment (the "Indictment"). Count One charges the defendant with conspiring to commit wire fraud, in violation of Title 18, United States Code, Section 1349. Count One carries a maximum sentence of twenty years' imprisonment; 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 mandatory \$100 special assessment. In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code.

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 his conduct in connection with the United Nations Oil-for-Food Program from in or about mid-2000 through and including in or about March 2003, including (1) a conspiracy to commit wire fraud and/or engage in prohibited financial transactions with a country sponsoring international terrorism, namely, the former Government of Iraq, as charged in Count One of the Indictment; (2) wire fraud, as charged in Count Two of the Indictment; (3) engaging in prohibited financial transactions with a country sponsoring international terrorism, namely, the former Government of Iraq, as charged in Count Three of the Indictment; and (4) participation in violations of the Iraqi Sanctions Act from in or about 1994 through and including in or about March 2003, namely, making and/or causing to be made unauthorized payments to the former Government of Iraq, traveling without authorization to Iraq, and supplying satellite communications equipment and services to the former Government of Iraq, as charged in Counts

Four and Five of the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Counts 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 admits the forfeiture allegation with respect to Count One of the Indictment and agrees in full satisfaction of that forfeiture allegation to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, a sum of money equal to \$11,023,245.91, in United States currency, representing property that constituted or was derived from proceeds traceable to the commission of the offense charged in Count One (the "Property"). The defendant further agrees to forfeit the full value of the Property (\$11,023,245.91) to the Government prior to his sentencing. The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Property and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Property to the United States, including, but not limited to, the execution of all necessary documentation. This Office shall request that the Department of Justice apply its restoration policy and apply the forfeited Property in satisfaction of any restitution order in this case.

In consideration of the foregoing and pursuant to Sentencing Guidelines Section 6B1.4, the parties hereby stipulate the following:

- A. Offense Level
 1. The Sentencing Guidelines applicable to this case are those in effect as of November 1, 2000.
 2. The Sentencing Guideline applicable to this case is U.S.S.G. § 2F1.1, which prescribes a base offense level of six.
 3. Because a substantial part of the defendant's fraudulent scheme was committed outside the United States and the offense otherwise involved sophisticated means, two levels are added pursuant to §2F1.1(b)(6).
 4. Pursuant to U.S.S.G. § 2F1.1(b)(2), the defendant's offense level is increased by two levels because the offense of conviction involved more than minimal planning.
 5. Pursuant to U.S.S.G. § 2F1.1(b)(1)(H), the defendant's offense level is increased by seven levels because the loss resulting from his criminal conduct was more than \$120,000 and less than \$200,000.
 6. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the

imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). No further adjustment for acceptance of responsibility is warranted because the defendant entered his plea of guilty at a time that did not permit the Government to avoid preparing for trial and did not permit the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 15.

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. Thus, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Sentencing Guidelines range is 18 to 24 months (the "Stipulated Sentencing Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to §5E1.2. At Guidelines level 15, the applicable fine range is \$4,000 to \$40,000.

The parties agree that no downward or upward departure or adjustment from the Stipulated Sentencing Guidelines Range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court *sua sponte* consider such a departure or adjustment.

The parties further agree that a sentence within the Stipulated Sentencing Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). In addition, neither party will seek a sentence outside of the Stipulated Sentencing Guidelines Range, suggest that the Probation Department consider a sentence outside of the Stipulated Sentencing Guidelines Range, or suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Sentencing Guidelines Range.

Nothing in this Agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Sentencing Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced; or (iii) to seek an appropriately adjusted sentencing range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Furthermore, 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, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should the defendant move to withdraw his guilty plea once it is entered,

or 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 Department 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 Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated above, or contemplates any sentence outside of the Stipulated Sentencing 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 understood that the Sentencing 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. 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 outside the Stipulated Sentencing Guidelines Range set forth above.

It is agreed (i) that the defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below the Stipulated Sentencing Guidelines Range set forth above (18 to 24 months) and (ii) that the Government will not appeal any sentence within or above the Stipulated Sentencing Guidelines Range (18 to 24 months). The defendant also agrees not to appeal any restitution order that is entered by the Court. It is further agreed that any sentence within the Stipulated Sentencing Guidelines Range is reasonable. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated 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 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.

By entering this plea of guilty, the defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. § 3600, to require DNA testing of any physical evidence in the possession of the Government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

It is further agreed that should the conviction following 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, and the defendant agrees to waive any and all defenses to a retrial on the charges in the Indictment on double jeopardy or other grounds attributable to the defendant's mid-trial decision to enter this plea of guilty.

It is further understood that the defendant will not travel outside the United States prior to his sentencing, and will not seek permission from the Court for any such travel. This Office reserves the right to move without notice to the defendant for a revocation or modification of the defendant's bail conditions should it determine that the defendant has violated any provision of this Agreement or condition of his release, or should it determine that such a revocation or modification is otherwise appropriate.

It is further understood that the defendant will surrender to the custody of the Bureau of Prisons on or before January 2, 2008, and will not seek any adjournment or extension of that surrender date.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

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 defendant. No additional understandings, promises, or conditions have been


Gerald L. Shargel, Esq.
October 1, 2007

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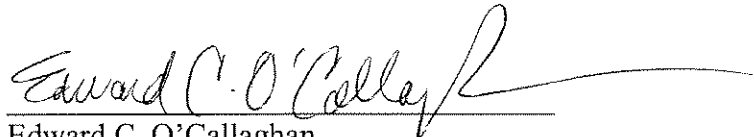
entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

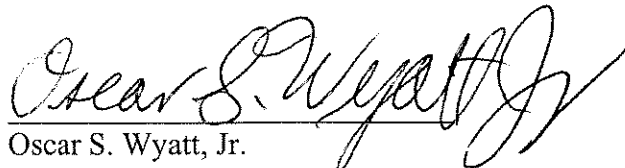
MICHAEL J. GARCIA
United States Attorney

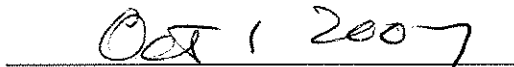
By: 
Stephen A. Miller/Michael E. Farbiarz
Assistant United States Attorneys
(212) 637-2210/1587

APPROVED:



Edward C. O'Callaghan
Chief, Terrorism & National Security Unit


AGREED AND CONSENTED TO:


Oscar S. Wyatt, Jr.


Date

APPROVED:


Gerald L. Shargel, Esq.
Attorney for Oscar S. Wyatt, Jr.


Date