

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

CASE NO 14-CR-20286-ALTONAGA(s)(s)

UNITED STATES OF AMERICA

vs.

ALEX ENRIQUE SOMARRIBA,

Defendant.

PLEA AGREEMENT

The United States of America and **ALEX ENRIQUE SOMARRIBA**, hereinafter referred to as the defendant, enter into the following agreement:

1. The defendant agrees to plead guilty to the Second Superseding Indictment (hereinafter "Indictment"), which charges the following crime:

- a. Count 1 charges the defendant with Conspiracy to Conduct the Affairs of an Enterprise through a Pattern of Racketeering Activity, in violation of Title 18, United States Code, Section 1962(d).

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(s) identified in paragraph 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 maximum penalties apply for the following count to which he is pleading guilty:

- a. The maximum penalties for Count 1 are a term of life in prison, a maximum fine of \$250,000, and up to five years' supervised release.

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

5. The Office of the United States Department of Justice, Criminal Division, Organized Crime and Gang Section (hereinafter "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 the defendant and the 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 quality and quantity of punishment.

6. *Acceptance of Responsibility.* The United States agrees that it will recommend at sentencing that the court reduce by three levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the United States will not be required to make these sentencing recommendations, if the defendant: (1) fails or refuses to make 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 entering this plea agreement; 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 false statements or misrepresentations to any governmental entity or official.

7. *Agreed Sentence.* The parties agree, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, that the defendant should be sentenced to a **term of imprisonment of 240 months for Count 1**, except as provided below in the section entitled "*Exception to Binding Agreement.*" It is understood by the parties that the final determination to accept a plea pursuant to Rule 11(c)(1)(C) ultimately remains in the Court's discretion and, except as provided below in the section entitled "*Exception to Binding Agreement,*" **if the Court does not accept the terms of these agreed sentences, then the plea is null and void.**

8. Subject to the Court's approval of this plea agreement:

a. Defendant will be sentenced to a **term of imprisonment of 240 months for the offense in Count 1** – Conspiracy to Conduct the Affairs of an Enterprise through a Pattern of Racketeering Activity, in violation of Title 18, United States Code, Section 1962(d); and

b. Defendant will pay a **special assessment of \$100.00**, pursuant to Title 18, United States Code, Section 3013.

9. *Imposition of Sentence:* The parties agree that the Court will consult with and take into account the United States Sentencing Guidelines and accompanying policy statements (“USSG”) for the calculation of the defendant's sentence pursuant to Title 18, United States Code, Section 3553, as construed by *United States v. Booker*, 543 U.S. 220 (2005). However, the defendant understands that the USSG are advisory and that the Court may take other factors into account in sentencing which would result in a greater or lesser sentence than the sentencing range as calculated under the USSG.

10. *Cooperation.* The defendant agrees that the defendant shall cooperate fully with this 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.

11. This Office 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 this Office 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, this Office may at or before sentencing make a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, or a Rule 35 motion subsequent to sentencing, reflecting that

the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file such a motion and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

12. The defendant understands and acknowledges that the court is under no obligation to grant a government motion pursuant to 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 11 of this agreement, should the government exercise its discretion to file such a motion.

13. *Basis for Rule 11(c)(1)(C) Plea Agreement:* The parties understand that the Court may accept a plea agreement for a specific sentence pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure only if the agreed sentence is within the applicable guideline range; or the agreed sentence departs from the applicable guideline for justifiable reasons. USSG § 6B1.2(c).

14. To the extent the parties' agreed sentence departs from the Court's calculated guidelines range, the agreed sentence departs for justifiable reasons. The defendant has agreed to plead guilty in a timely manner, and his plea at this juncture will reduce the amount of time and resources to prepare the case for trial and to try the case. Additionally, it is anticipated that the defendant's plea in this case will induce other defendants in this 15-defendant case to consider resolving their cases in lieu of trial. Finally, a sentence of 240 months achieves justice in holding the defendant responsible for his actions and in deterring others from contemplating similar criminal conduct.

15. *Rejection of the Plea Agreement:* If this plea agreement or any material provision thereof, including the sentence agreed upon in the previous section, is rejected by the court, except as provided below in the section entitled “*Exception to Binding Agreement,*” the parties shall be released from their obligations under this plea agreement and it shall be null and void. It is further agreed that, in this event, defendant may withdraw his plea of guilty if such a plea has been entered, except as provided below in the section entitled “*Exception to Binding Agreement.*” It is further agreed, if this plea agreement is rejected, that the admissibility against defendant of any statements made by defendant or his representative(s) during the course of and in furtherance of the plea discussions will be determined under Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence. Defendant acknowledges that all leads derived from such statements may be used against defendant in any subsequent proceeding.

16. *Exception to Binding Agreement:* All promises here made by each party are made dependent on full performance of the promises made by the other party. Any promise regarding the government’s sentencing recommendation applies only to the sentencing upon the Second Superseding Indictment and does not apply, for example, to any future proceedings relating to an alleged violation of probation, a violation of parole, or a violation of supervised release. If the defendant commits any crimes, violates any of the conditions of his release, or violates any term of this agreement between signing this agreement and the date of sentencing; or if the defendant provides information to the probation officer, the United States, or the Court which is intentionally misleading or intentionally untruthful, the United States will be free to recommend at sentencing on the charges to which the defendant has pleaded guilty, a sentence higher than that contemplated by this agreement. If the government pursues this course, the defendant will not be free to

withdraw his guilty plea entered pursuant to this plea agreement. Furthermore, in such an instance, the government will be free to charge, reinstate, or otherwise pursue any and all charges and forfeiture actions which could have been brought but for this plea agreement.

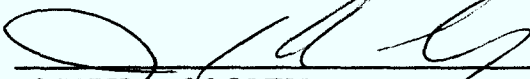
17. *Appellate Waiver.* The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives 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, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the court establishes at sentencing. The 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). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. The defendant understands that, although defendant will be sentenced in conformity with the Sentencing Guidelines, by this agreement defendant waives the right to appeal the sentence on the basis that the sentence is the result of an incorrect application of the Sentence Guidelines. By signing this agreement, counsel for the defendant acknowledges that counsel has discussed the appeal waiver set forth in this agreement with the defendant. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of the defendant's right to appeal the sentence to be imposed in this case was knowing and voluntary.

18. This is the entire Agreement and understanding between the United States and the

defendant. There are no other agreements, promises, representations, or understandings.


LESLIE R. CALDWELL
ASSISTANT ATTORNEY GENERAL

Date: 3/9/2015

By: 


JOSEPH A. COOLEY
TRIAL ATTORNEY, DOJ-CRM-OCGS

Date: 3/9/2015

By: 

REBECCA A. STATON
TRIAL ATTORNEY, DOJ-CRM-OCGS

Date: 3-7-2015

By: 

RICHARD K. HOULIHAN
ATTORNEY FOR DEFENDANT

Date: 3-7-2015

By: 

ALEX ENRIQUE SOMARRIBA
DEFENDANT