



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Llofó Building
One Saint Andrew's Plaza
New York, New York 10007

July 17, 2022

By Email

David Stern, Esq.
Rothman, Schneider, Soloway & Stern, LLP
100 Lafayette Street, Suite 501
New York, New York 10013
212-571-5500
Fax 212-571-5507

Re: *United States v. Terrence Williams*, S3 21 Cr. 603 (VEC)

Dear Mr. Stern:

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 Terrence Williams ("the defendant") to Counts One and Two of the above-referenced Indictment.

Count One of the Indictment charges the defendant with participating in a conspiracy to commit two objects, namely health care fraud and wire fraud, in violation of Title 18, United States Code, Section 1349. Count One carries a maximum sentence of 20 years' imprisonment; a maximum term of three years' supervised release; a maximum fine pursuant to Title 18, United States Code § 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

Count Two of the Indictment charges the defendant with aggravated identity theft, in violation of Title 18, United States Code, Sections 1028A and 2. Count Two carries a mandatory minimum sentence of two years' imprisonment, which must be imposed consecutively to any sentence imposed for Count One; a maximum term of one year supervised release; 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 a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

The total maximum sentence of incarceration for Counts One and Two is 22 years' imprisonment, with a mandatory minimum term of two years' imprisonment.

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, if any, as to which this Office cannot, and does not, make any agreement) for (i) participating in a conspiracy from at

least in or about 2017 through at least in or about 2021 to defraud the National Basketball Association Players' Health and Welfare Benefit Plan, as charged in Count One of the Indictment, and (ii) committing aggravated identity theft by using the personal identifying information of another person from at least in or about June 2018 through at least in or about May 2019, as charged in Count Two of the Indictment, 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 allegation with respect to Count One of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(7), and Title 28, United States Code, Section 2461(c), a sum of money equal to \$653,672.55 in United States currency, representing proceeds traceable to the commission of said offense (the "Money Judgment"). 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. 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 the amount of \$2,500,000 to the National Basketball Association Players' Health and Welfare Benefit Plan, in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664.

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

1. The applicable Guidelines manual is the 2021 edition.

Count One

2. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is seven because the statutory maximum term of imprisonment for Count One is 20 years or more.

2. Pursuant to U.S.S.G. § 2B1.1(b)(1)(J), the offense level is increased by 18 levels because the actual or intended loss amount exceeded \$3,500,000 but was not greater than \$9,500,000.

3. Pursuant to U.S.S.G. § 2B1.1(b)(10)(C), the offense level is increased by two levels because the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means.

4. Pursuant to U.S.S.G. § 3B1.1(a), the offense level is increased by four levels because the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.

6. Pursuant to U.S.S.G. § 3C1.1, the offense level is increased by two levels because the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution or sentencing of the instant offense of conviction, and the obstructive conduct related to the defendant's offense of conviction and any relevant conduct.

7. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocation and subsequent conduct prior to the 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, the Government will move at sentencing for an additional one-level reduction, 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.

Count Two

7. Pursuant to U.S.S.G. § 2B1.6(a), the Guidelines sentence for Count Two is the term of imprisonment required by the statute, which is two years, which must run consecutively to any other sentence imposed. Chapters Three and Four of the United States Sentencing Guidelines do not apply to Count Two.

In accordance with the above, the applicable Guidelines offense level is 30.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has one criminal history point.

1. On or about April 12, 2021, in King County District Court in Washington state, the defendant was convicted of reckless driving, a misdemeanor, and was sentenced to 364 days in prison; 360 days of which were suspended. Pursuant to U.S.S.G. § 4A1.1(c), one criminal history point is added.

In accordance with the above, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Guidelines range is 97 to 121 months' imprisonment for Count One. Count Two carries a mandatory minimum sentence of 24 months' imprisonment, which must run consecutively to the sentence imposed for Count One. Accordingly, the defendant's stipulated Guidelines range is 121 to 145 months' imprisonment (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 30, the applicable fine range is \$30,000 to \$300,000.

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 in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of 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 where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and 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 outside of 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. 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 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, of any sentence within or below the Stipulated Guidelines Range of 121 to 145 months' imprisonment and (ii) that the Government will not appeal any sentence within or above 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 or bring a collateral challenge of any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal or bring a collateral challenge of any fine that is less than or equal to \$300,000, and the Government agrees not to appeal or bring a collateral challenge of any fine that is greater than or equal to \$30,000. The defendant also agrees not to appeal or bring a collateral challenge of any forfeiture amount that is less than or equal to \$653,672.55, and the Government agrees not to appeal or bring a collateral challenge of any forfeiture amount that is greater than or equal to \$653,672.55. The defendant also agrees not to appeal or bring a collateral challenge of any restitution amount that is less than or equal to \$2,500,000, and the Government agrees not to appeal or bring a collateral challenge of any restitution amount that is greater than or equal to \$2,500,000. The defendant also agrees not to appeal or bring a collateral challenge of any special assessment that is less than or equal to \$200. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

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 or sentence, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, or 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.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his removal from the United States is presumptively mandatory and that, at a minimum, he is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, he recognizes that

pleading guilty may have consequences with respect to the defendant's immigration status. Under federal law, an individual may be subject to denaturalization and removal if his naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that he has discussed the possible immigration consequences (including removal or denaturalization) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including his attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from his guilty plea and conviction.

It is further agreed that should the conviction(s) following the defendant's plea(s) 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.

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,

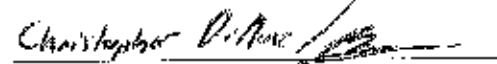
DAMIAN WILLIAMS
United States Attorney

By:



Ryan B. Finkel
Assistant United States Attorney
(212) 637-6612

APPROVED:



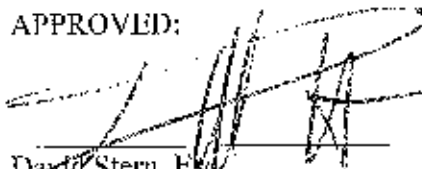
Christopher J. DiMase
Chief, Complex Frauds and Cybercrime Unit

AGREED AND CONSENTED TO:


Terrence Williams

8/25/22
DATE

APPROVED:


David Stern, Esq.
Attorney for Terrence Williams

8/25/22
DATE