IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 22-cr-00262-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RICHARD R. NIETO,

Defendant.

PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING

The United States of America, by and through Craig G. Fansler and Martha A. Paluch, Assistant United States Attorneys for the United States Attorney's Office for the District of Colorado (the "government"), and the defendant, Richard Rejan Nieto ("Nieto" or the "defendant"), personally and by counsel, John Richilano, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees:

(1) to plead guilty to counts 1 and 4 of the Indictment, which charge violations of 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1957 (Money Laundering);

(2) to waive certain appellate and collateral attack rights, as explained in detail below;

Court Exhibit

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(3) to be liable for restitution to the Small Business Administration in the total amount of $946,037.39, plus prejudgment interest accruing through the date of sentencing; and

(4) not to contest forfeiture, as more fully described below.

B. The Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A). The government agrees not to bring other charges against the defendant based on information currently known to the United States Attorney's Office, District of Colorado concerning fraud against the government programs described below and to move to dismiss counts 2-3 and 5-8 of the Indictment with prejudice. Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement and potentially file a superseding indictment.

Provided the defendant does not engage in prohibited conduct or otherwise implicate USSG §§ 3C1.1 and 3E1.1, cmt. n.4 between the guilty plea and sentencing in this case, the government agrees that the defendant should receive a two-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a) and agrees to file a motion requesting that the defendant receive a one-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b). The government agrees to recommend a term of imprisonment not greater than the low-end of the applicable guideline range calculated by the court at sentencing.

C. Defendant's Waiver of Appeal:

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

(1) the sentence exceeds the maximum sentence provided in the statutes of conviction, 18 U.S.C. §§ 1343 and 1957;

(2) the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of **19**; or

(3) the government appeals the sentence imposed.

If the first criteria applies, the defendant may appeal only the issue of how his sentence exceeds the statutory maximum sentence. But if one of the latter two criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including the restitution order) in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255). This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

(1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;

(2) the defendant was deprived of the effective assistance of counsel; or

(3) the defendant was prejudiced by prosecutorial misconduct.

The defendant also waives the right to appeal any sentence imposed below or within the guideline range upon a revocation of supervised release in this case number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court.

The defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests in any part upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). This waiver does not apply to an appeal of a denied § 3582(c)(1)(A)(i) motion where the district court, in denying the motion on § 3553(a) grounds, failed to consider the facts allegedly establishing extraordinary and compelling circumstances as part of its § 3553(a) analysis.

D. Forfeiture of Assets:

The defendant admits the forfeiture allegations. The defendant further agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(1), and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant, the defendant's nominees, or elsewhere. The assets to be forfeited include but are not limited to (1) $23,034 seized from his E*Trade account, Civil Case No. 22-mc-00080-NYW; (2) items of value including cryptocurrency seized from his Coinbase account, Civil Case No. 22-mc-00082-NYW; (3) items of value including cryptocurrency seized from his Binance US account, Civil Case No. 22-mc-00169-KHR; and (4) a money judgment in the amount of $913,551.88 which will be credited with the net proceeds derived from judicially forfeited assets. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action.

The defendant understands that pursuant to 18 U.S.C. § 983, the seizing agency is required to send notice in non-judicial civil forfeiture matters. Having been advised of said rights regarding notice, the defendant hereby knowingly and voluntarily waives his rights to notice being sent within the time frames in 18 U.S.C. § 983 and to having the property returned to him/her if notice is not sent within the prescribed time frames. The defendant further agrees to the forfeiture of any substitute assets up to the value of any property described above pursuant to 21 U.S.C. § 853(p) and Federal Rules of Criminal Procedure 32.2(e).

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

The United States Attorney's Office for the District of Colorado will recommend to the Attorney General that any net proceeds derived from the sale of the judicially forfeited assets be remitted or restored to eligible victims of the offense, for which the defendant has pleaded guilty, pursuant to 18 U.S.C. § 981(e), 28 C.F.R. pt. 9, and any other applicable laws, if the legal requirements for recommendation are met. The defendant understands that the United States Attorney's Office only has authority to recommend such relief and that the final decision of whether to grant relief rests solely with the Department of Justice, which will make its decision in accordance with applicable law.

II. ELEMENTS OF THE OFFENSE

A. Count 1 (Wire Fraud)

The parties agree that the elements of wire fraud, in violation of 18 U.S.C. § 1343, are as follows:

A. The defendant devised a scheme to defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises,

B. The defendant acted with specific intent to defraud;

C. The defendant used, or caused another person to use, interstate or foreign wire communications facilities for the purpose of carrying out the scheme; and

D. The scheme employed false or fraudulent pretenses, representations, or promises that were material.

Tenth Circuit Pattern Jury Instructions (Criminal Cases), 2021 Edition, § 2.57.

B. Count 4 (Money Laundering)

The parties agree that the elements of money laundering, in violation of 18 U.S.C. § 1957, are as follows:

A. The defendant knowingly engaged or attempted to engage in a monetary transaction;

B. The defendant knew that the transaction involved criminally derived property;

C. The property had a value greater than $10,000;

D. The property was, in fact, derived from a specified unlawful activity; and

E. The monetary transaction occurred in the United States.

Model Crim. Jury Instr. 9th Cir. 18.7 Money Laundering (18 U.S.C. § 1957) (2022).

III. STATUTORY MAXIMUM SENTENCE

The maximum sentence for a violation of count 1 (wire fraud, 18 U.S.C. § 1343) of the Indictment is: not more than 20 years of imprisonment, a fine of not more than the greater of $250,000 or twice the gain or loss from the offense, or both; not more than 3 years of supervised release; a $100 mandatory victim's fund assessment fee; plus restitution in an amount to be determined at sentencing.

The maximum sentence for a violation of count 4 (money laundering, 18 U.S.C. § 1957) of the Indictment is: not more than 10 years of imprisonment, a fine of not more than the greater of $250,000 or twice the gain or loss from the offense, or both; not more than 3 years of supervised release; a $100 mandatory victim's fund assessment fee; plus restitution in an amount to be determined at sentencing.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

The factual basis for this plea is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from presenting non-contradictory additional facts which are relevant to the Court's guideline computation, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties stipulate that the following facts are true and correct.

A. Background about the Paycheck Protection Program

In or around March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized emergency financial assistance to millions of Americans suffering economic harm caused by the COVID-19 pandemic. One form of CARES Act assistance was the Paycheck Protection Program (PPP). The PPP provided forgivable loans to small businesses for payroll and certain other eligible business expenses. The loan application required the business to provide information about average monthly payroll expenses and number of employees, which was used to calculate the amount of loan the business could request. Businesses applying for a loan were required to provide documentation verifying their payroll expenses. Loan proceeds were required to be used for certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities.

Loan applications were processed by participating lenders, with the loans fully guaranteed by the Small Business Administration (SBA). The SBA paid participating lenders a processing fee for each funded PPP loan.

B. Nieto Businesses

Nieto owned two businesses that received PPP loans: Denver Pro Painting and Contracting Inc. (Denver Pro) and DenPro, Inc. (DenPro). Denver Pro was incorporated in Colorado in March 2014. DenPro was incorporated in Colorado in December 2018. At the time he submitted PPP applications, Nieto was 100% owner of each business.

C. The Scheme to Defraud

From at least April 2020 to at least April 2021, Nieto knowingly and with an intent to defraud devised and participated in a scheme to defraud and to obtain money from the United States and private lenders by means of materially false and fraudulent pretenses, representations, and promises. As a result of the scheme, Nieto obtained $913,551.88 in PPP loans and obtained loan forgiveness of one of the loans totaling $176,956.09.

1. *PPP Loan Scheme*

NIETO submitted three fraudulent PPP applications to Lender 1. Lender 1 funded two applications, totaling $913,551.88. It did not approve a third application wherein Nieto requested a $202,780.52 loan.

As to the first funded PPP application, on or about May 19, 2020, NIETO applied to Lender 1 on behalf of Denver Pro for a $175,384.83 loan. On the application, Nieto falsely stated that Denver Pro had 15 employees and an average monthly payroll of $70,153. In support of the application, Nieto submitted fabricated Forms 941—quarterly federal tax returns—that inflated wages and did not match the tax returns filed with the IRS. Nieto knowingly misrepresented to Lender 1 that the Form 941s were from his accountant, despite knowing they were not. Lender 1 approved the loan and disbursed $175,384.83 to Nieto. Had Nieto provided truthful information about wages and true copies of Forms 941, the maximum PPP loan Denver Pro could have sought would have been far less than the $175,384.83 loan that Nieto received. As a direct result of the funded PPP loan application, the SBA paid Lender 1 a lender processing fee of $8,769.24.

As to the second funded PPP application, on or about August 6, 2020, NIETO applied to Lender 1 in the name of DenPro for a PPP loan of $738,167.05. As part of the application, Nieto falsely stated that DenPro had 62 employees and $295,266.82 in average monthly payroll for 2019. In truth, DenPro had no payroll or employees in 2019. Nieto submitted fabricated Forms 941 for 2019 to make it appear that DenPro was a legitimate business that had filed tax returns, despite knowing that it was not a legitimate business. Based on Nieto's false representations, Lender 1 approved the loan and disbursed $738,167.05 to Nieto. As a direct result of the funded PPP loan application, the SBA paid Lender 1 a lender processing fee of $22,145.01.

In both funded applications, Nieto falsely certified that he had provided true and accurate information and supporting documents, despite knowing about the false representations and fabricated documentation submitted in and with his applications.

On or about March 25, 2021, Nieto applied a third time to Lender 1 on behalf of Denver Pro for a $202,780.52 PPP loan. Nieto falsely stated that Denver Pro had 14 employees and $81,112.17 in average monthly payroll. He also falsely certified that all funds from Denver Pro's first PPP loan had been used for eligible expenses, a certification he knew to be false. Lender 1 did not approve this March 2021 application.

2. *PPP Forgiveness Scheme*

After receiving PPP loans, Nieto submitted two fraudulent loan forgiveness applications to Lender 1. On or about April 5, 2021, Nieto requested loan forgiveness of the entire amount of the $175,384.83 loan given to Denver Pro. Nieto falsely stated in the loan forgiveness application that Denver Pro had incurred $200,000.32 in payroll costs after receiving the PPP loan and had eleven employees at the time of the forgiveness application. In truth, Denver Pro did not have employees other than Nieto in 2021, according to testimony Nieto provided under oath in an August 2021 civil proceeding. As part of the forgiveness application, Nieto submitted to Lender 1 thirteen fake payroll checks, each dated for a pay period of May 18-27, 2020. The checks were falsified to appear to have been drawn from a Denver Pro checking account and to show actual tax withholdings. During this period, however, Denver Pro did not pay any of these individuals from this checking account, and the checks were fabricated. Based on Nieto's false representations, Lender 1 recommended to the SBA forgiveness of the entire $175,384.83 PPP loan to Denver Pro. On or about April 13, 2021, the SBA transmitted a $176,956.09 loan forgiveness payment to Lender 1—which included forgiveness of the full $175,384.83 in principal and $1,571.26 in interest—before Nieto had to submit a single payment on the PPP loan.

On or about August 18, 2021, Nieto requested loan forgiveness of the entire $738,167.05 loan disbursed to DenPro. He falsely stated in the application that DenPro had incurred $742,000 in payroll costs after receiving the PPP loan and had 35 employees at the time of the forgiveness application. As part of the application, Nieto submitted approximately 74 fake payroll checks to Lender 1, dated between September 2, 2020, and October 28, 2020. The checks were falsified to appear to have been drawn from a DenPro checking account and to show actual tax withholdings. During this period, however, DenPro did not pay any of these individuals from this checking account. Lender 1 did not approve DenPro's loan forgiveness application.

3. *Total Loss and Restitution*

Nieto agrees that the loss for which he will be held responsible for purposes of the calculation of the sentencing guidelines is the intended loss from the PPP loan and loan forgiveness schemes of $1,117,903.56. Nieto further agrees that his restitution obligation is $946,037.39—which includes the amount of the PPP loans, interest accrued through the date of forgiveness (for the Denver Pro loan), and lender processing fees of $30,914.25—plus any prejudgment interest on the DenPro PPP loan, to be determined at the time of sentencing.

4. *Use of Loan Proceeds*

Nieto transferred PPP loan proceeds through multiple intermediate accounts before using proceeds to make personal expenditures and investments. Among other transactions, he used loan proceeds to pay a home mortgage, contribute to his E*Trade investment account, purchase cryptocurrency, invest in a friend's start-up company, and purchase gold and silver coins. For example, after receiving the DenPro PPP loan, he transferred all PPP loan proceeds ($738,167.05) to an account at JP Morgan Chase on August 14, 2020, before engaging in the following representative sequences of transactions:

- Purchase of two $50,000 cashier checks, which were then deposited to a new Key Bank account ending in 4788. These funds were later deposited to a Wells Fargo account, before Nieto transferred on May 4 and 5, 2021 $20,000 derived from the DenPro PPP loan proceeds to his cryptocurrency trading account with BAM Trading Services d/b/a Binance.US.

- Transfer of $150,000 to Wells Fargo account before Nieto purchased two Wells Fargo cashier's checks totaling $150,000. The cashier's checks were endorsed to Company 1, for the purpose of investing in a friend's start-up business.

- Transfer of $102,000 to DenPro Wells Fargo account, part of which was then transferred through personal accounts and Denver Pro accounts at Wells Fargo before Nieto transferred at least $87,000 of PPP loan proceeds to his Coinbase trading account to purchase bitcoin.

D. Count 1

As charged in the Indictment, Nieto agrees that on or about May 19, 2020, to further the scheme set forth above, he knowingly prepared and submitted a fraudulent

PPP loan application on behalf of Denver Pro to Lender 1 to obtain a loan in the amount of $175,384.83.

On June 11, 2020, the SBA Finance Center in Denver, Colorado created and certified the payment file for PPP lender processing fees paid out in connection with the Denver Pro PPP loan and transmitted it via interstate wire from Colorado to a U.S. Treasury processing site located outside of Colorado.

E. Count 4

As charged in the Indictment, Nieto agrees that on or about August 19, 2020, he knowingly deposited in Colorado a $50,000 cashier's check numbered 9562417246 to a Key Bank account ending in 4788. At the time Nieto deposited the cashier's check, he knew that the funds being deposited were, in fact, derived from his submission of a fraudulent PPP loan application to Lender 1 on behalf of DenPro.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

The guideline calculation below is the good-faith estimate of the parties, but it is only an estimate. The parties understand that the government also has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process, affect the estimate below.

A. Count 1 (Wire Fraud)

A. The base guideline is § 2B1.1, with a base offense level of 7. § 2B1.1(a)(1).

B. A 14-level applies because the loss was more than $550,000 but less than $1,500,000. §2B1.1(b)(1)(H).

C. The adjusted offense level for Count 1 is 21.

B. Count 4 (Money Laundering)

A. The base guideline is § 2S1.1(a), with a base offense level of 21. § 2S1.1(a).

B. A 1-level increase applies because the defendant is being convicted under 18 U.S.C. § 1957. § 2S1.1(b)(2)(A).

C. The adjusted offense level for Count 4 is 22.

C. Combined Sentence

A. The total adjusted offense level is 22. § 3D1.2(b).

B. The defendant should receive a 3-level downward adjustment for timely acceptance of responsibility. § 3E1.1(a)–(b).

C. The resulting total offense level is 19.

D. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be II. However, defendant reserves the right to argue that his criminal history category substantially over-represents the seriousness or his criminal history or the likelihood that he will commit other crimes. *See* § 4A1.3(b)(1).

E. The career offender/criminal livelihood/armed career criminal adjustments would not apply.

F. The advisory guideline range resulting from these calculations is 33-41 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 30 months (bottom of Category I) to 78 months (top of Category VI). The guideline range would not exceed, in any case, the statutory maximum applicable to the count of conviction.

G. Because there is an undischarged term of state imprisonment, the defendant pursuant to § 5G1.3(d) may file a motion requesting that the federal sentence run partially concurrent to an undischarged term of state imprisonment and/or be adjusted for time already served on such imprisonment. The parties will set forth their positions on the relationship between the sentences before sentencing.

H. Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be $10,000 to $100,000, plus applicable interest and penalties.

I. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least 1 year, but not more than 3 years.

J. Pursuant to guideline §5E1.1(a)(1), the Court shall enter a restitution order for the full amount of the victims' losses, which the parties agree will be an amount of $946,037.39, plus interest accruing through the date of sentencing.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT

The agreement disclosed to the Court is the entire agreement. There are no other promises, agreements or "side agreements," terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any other terms, promises, conditions or assurances.

11/20/23
Date

RICHARD REJAN NIETO
Defendant

11/20/23
Date

John M. Richilano
Attorney for Defendant Richard Rejan Nieto

11/20/2023
Date

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