

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff,

v.

[2] RAFAEL PINA-NIEVES,
Defendant.

CRIM. NO. 12-215 (DRD)

RECEIVED AND FILED
2015 MAY 13 PM 3:25
CLERK'S OFFICE
U.S. DISTRICT COURT
CRIMINAL DIVISION

PLEA AGREEMENT

(Pursuant to Federal Rules of Criminal Procedure 11(c)(1)(A) and (B))

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through its attorneys, Rosa Emilia Rodríguez-Vélez, United States Attorney for the District of Puerto Rico, Jose A. Ruiz-Santiago, Chief of Criminal Division, G. A. Massucco-LaTaif, Assistant United States Attorney, and the defendant, **Rafael Pina-Nieves**, and the defendant's counsel, Francisco Rebollo-Casaldue, Esq., pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure, and state to this Honorable Court, that they have reached an agreement, the terms and conditions of which are as follows:

1. **COUNT TO WHICH DEFENDANT PLEADS GUILTY**

The defendant will plead guilty to Count Two of the Indictment, which charges, in substance, as follows:

Bank Fraud
18 U.S.C. §1344

Beginning on or about December 1, 2007 and continuing through about January 30, 2008, in the District of Puerto Rico and elsewhere within the jurisdiction of this Court, [2] RAFAEL PINA-NIEVES, and other defendants charged herein, did knowingly execute a scheme and artifice to defraud and to obtain moneys and funds owned by and under the custody of Doral Bank, a federally insured financial institution, as that term is defined by Title 18, United States Code, Section 20, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

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2. MAXIMUM PENALTIES

The maximum statutory penalty for ~~Thirty-Four~~ ^{Two} is a term of imprisonment of thirty ~~(30)~~ years, a term of supervised release of not more than five (5) years (Class A Felony), and a fine not to exceed \$1,000,000.

3. SPECIAL MONETARY ASSESSMENT

At the time of the signing of this plea agreement the defendant will pay a special assessment of one hundred dollars (\$100.00) per count, as required by Title 18, United States Code, Section 3013(a).

4. ADVISORY NATURE OF THE SENTENCING GUIDELINES AND ITS APPLICABILITY

The defendant is aware that pursuant to the decisions issued on January 12, 2005, by the Supreme Court of the United States in the cases of United States v. Booker and United States v. Fanfan, 543 U.S. 220 (2005), the United States Sentencing Guidelines ("Sentencing Guidelines") are no longer mandatory and must be considered effectively advisory.

5. FINES AND/OR RESTITUTION

The parties recommend to the Court that no fine be imposed as it is contemplated that the forfeiture will be imposed in lieu of any fine. Nevertheless, the parties recognize that the determination of fines and restitution is left to the discretion of the Court.

6. SENTENCING GUIDELINES CALCULATIONS

Although the Sentencing Guidelines are now advisory in nature, the sentencing court, in imposing sentence, is required to consider the guideline "sentencing range established for the applicable category of the offense committed by the defendant". United States v. Booker, 543 U.S. 220 (2005). The United States and Defendant agree to recommend the following guideline calculation:

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COUNT 18 18 U.S.C. 1349 USSG §2B1.1	
Base Offense Level, §2B1.1(a)(1)	7
Amount of Loss (More than \$30,000) §2B1.1(b)(1)(G)	+6
Acceptance of Responsibility, §3E1.1(b)	-2
Stipulated Total Offense Level	11
Imprisonment Range, Assuming Criminal History Category I	8-14 Months (Zone B)

7. CRIMINAL HISTORY CATEGORY

The parties do not stipulate the defendant's Criminal History Category. Therefore, the parties recognize that the recommended applicable imprisonment range may be materially higher than that expressed above.

8. SENTENCE RECOMMENDATION

At sentencing the parties will jointly recommend a sentence 8 months, to include 4 months of imprisonment and 4 months of home detention. The United States does not oppose that the defendant be allowed to self-surrender to his designated BOP institution after sentencing. The defendant agrees that any sentence imposed within the stipulated total offense level is reasonable pursuant to Title 18, United States Code §3553(a). At sentencing, the United States will dismiss any remaining counts.

9. ADJUSTMENTS OR DEPARTURES

Except for provided above, the United States and the defendant agree that no further adjustments or departures shall be requested by the parties and that this agreement considers all relevant factors set forth in Title 18, United States Code, Section 3553.

10. RULE 11(c)(1)(B) WARNINGS

The defendant is aware that the defendant's sentence is within the sound discretion of the sentencing judge, but the same may be imposed following the United States Sentencing Guidelines, Policy Statements, Application, and Background Notes as advisory to the imposition of sentence. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty. If the Court should impose a sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw a guilty plea, and

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will remain bound to fulfill all of the obligations under this plea agreement. Moreover, the United States reserves the right to carry out its responsibilities under the sentencing guidelines. Specifically, the United States reserves the right: (a) to bring its version of the facts of this case including its file and any investigative files to the attention of the probation office in connection with that office's preparation of a pre-sentence report; (b) to dispute sentencing factors or facts material to sentencing; (c) to seek resolution of such factors or facts in conference with opposing counsel and the probation office. The defendant acknowledges that he is aware that parole has been abolished.

11. JURISDICTIONAL LIMITS OF PLEA AGREEMENT

It is specifically understood by the defendant, that except for the District of Puerto Rico, this plea agreement does not extend to or bind other federal districts, federal civil and/or State or Commonwealth of Puerto Rico law enforcement authorities.

12. NO FURTHER ADJUSTMENTS OR DEPARTURES

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The United States and defendant agree that no further adjustments or departures to defendant's total adjusted base offense level and no variance sentence under 18 U.S.C. § 3553 shall be sought by defendant. The parties agree that any request by defendant for an adjustment or departure will be considered a material breach of this Plea and Forfeiture Agreement, and the United States will be free to ask for any sentence, either guideline or statutory.

13. SATISFACTION WITH ATTORNEY

The defendant represents to the Court that defendant is satisfied with defendant's attorneys, Francisco Rebollo-Casaldue, Esq., and hereby indicates that counsel has rendered effective legal assistance.

14. RIGHTS SURRENDERED BY DEFENDANT THROUGH GUILTY PLEA

Defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. Defendant understands that the rights of criminal defendants include the following:

a. If the defendant had persisted in a plea of not guilty to the charges, defendant would have had the right to a speedy jury trial with the assistance of counsel. The trial may

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be conducted by a judge sitting without a jury if the defendant, the United States and the judge agree.

b. If a jury trial is conducted, the jury would be composed of twelve lay persons selected at random. The defendant and the defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree, unanimously, before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent and it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence on defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on the privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from defendant's refusal to testify. If the defendant desired to do so, the defendant could testify on defendant's own behalf.

15. STIPULATED VERSION OF FACTS

The accompanying Stipulated Version of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Stipulated Version of Facts and agrees that the facts therein are accurate in every respect and that, had the matter proceeded to trial, the United States would have proven those facts beyond a reasonable doubt. Further, the defendant agrees that said statement of facts will be used by the sentencing judge in

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determining the application of any sentencing guidelines in the instant case.

16. WAIVER OF APPEAL

The defendant hereby agrees that if this Honorable Court accepts this plea agreement and sentences him/her according to its terms, conditions, and recommendations, the defendant waives and surrenders his right to appeal the judgment, sentence and order of forfeiture in this case.

17. ENTIRETY OF PLEA AGREEMENTS AND AMENDMENTS

The United States and the defendant acknowledge that the above-stated terms and conditions constitute the entire plea agreement between the parties and deny the existence of any other terms and conditions not stated herein. No additional promises, terms or conditions will be entered unless in writing and signed by all parties.

18. VOLUNTARINESS OF PLEA

It is understood that defendant is entering into this plea agreement without compulsion, threats, or any other promises from the United States Attorney or any of his agents. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is, in fact, guilty.

19. DISMISSAL OF REMAINING COUNTS:

At sentencing, the United States shall request the dismissal of the remaining counts of the Indictment

20. PLEA AGREEMENT PROTOCOL

To ensure that the Court's resources are employed in an efficient and productive manner, the parties agree on the following protocol regarding plea agreement preparation, handling and submission, in compliance with Local Rule 111 of the Local Rules of the United States District Court for the District of Puerto Rico.

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The United States shall be responsible for drafting the proposed plea agreement and supplement and for providing these documents in pdf-format to defense counsel. In that respect, the United States shall furnish to defense counsel a pdf-format version of these documents bearing the signatures of the prosecutor(s) handling the case and the approval signatures of his or her supervisors, at least five (5) days prior to the deadline set forth herein.

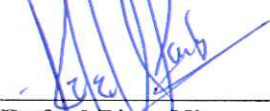
RESPECTFULLY SUBMITTED
ROSA EMILIA RODRÍGUEZ-VELEZ



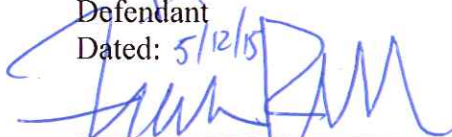
Jose A. Ruiz-Santiago
First Assistant United States Attorney
Dated: 5/12/15



G. A. Massucco-LaTaif
Assistant United States Attorney
Dated: 11 May 2015



Rafael Pina-Nieves
Defendant
Dated: 5/12/15



Francisco Rebollo-Casaldue, Esq.
Attorney for Defendant
Dated: 5-12-15



Edwin Prado, Esq.
Attorney for Defendant
Dated:

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UNDERSTANDING OF RIGHTS

I have consulted with my counsel and fully understand all my rights with respect to the Indictment pending against me. Further, I have consulted with my attorney and fully understand my rights with respect to the provision of the Sentencing Guidelines, Policy Statements, Application, and Background Notes which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I fully understand this agreement and I voluntarily agree to it.

Date: 5-12-15

RAFAEL PINA-NIEVES
Defendant

I am the attorney for **RAFAEL PINA-NIEVES**. I have fully explained to the defendant the defendant's rights with respect to the pending Indictment. Further, I have reviewed the provisions of the Sentencing Guidelines, Policy Statements, Application, and Background Notes, and I have fully explained to the defendant the provisions of those guidelines which may apply in this case. I have also explained to the defendant the advisory nature of the Sentencing Guidelines. I have carefully reviewed every part this Plea Agreement with the defendant. To my knowledge, the defendant is entering into this agreement is voluntarily, intelligently and with full knowledge of all the consequences of her plea of guilty.

Date: 5-12-15

Francisco Rebollo-Casaldue, Esq.

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STIPULATED VERSION OF FACTS

In conjunction with the submission of the accompanying plea agreement in this case, the United States of America submits the following statement setting forth the stipulated facts leading to the defendant's acceptance of criminal responsibility for defendant's violation of 18 U.S.C. §§1349, 1344.

For the purposes of this Plea Agreement and the Stipulated Version of Facts, the United States specifically adopts Paragraphs 1-13 of the General Allegations contained in the Superseding Indictment; Paragraphs 1-4 of the manner and Means of the Superseding Indictment; Paragraphs 1-4, 7-11, 16-19, and 29 in the SuperSeding Indictment as specific acts committed by defendant Rafael Pina-Nieves within this Conspiracy.

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L/P
Defendant admits that he wilfully and voluntarily committed bank fraud. His role in the fraud was to provide money (approximately \$490,007.03) to co-defendant Orlando Sierra-Mercado in order to provide a down payment for the property being sold by defendant Morales-Guanill. The money for the down payment came from the \$1,350,000.000 that Pina-Nieves was receiving from defendant Morales-Guanill (money that Morales-Guanill had received from using bank lines of credit and loans) in order to realize the fraudulent sale of the home to Sierra. At all times, defendant Pina-Nieves knew that Sierra-Mercado did not have sufficient money or credit history in order to legitimately purchase the house being sold by Morales-Guanill.

For the purposes of calculating an amount of loss for his Plea, defendant Rafael Pina-Nieves agrees to be held responsible for an amount of fraud exceeding \$30,000. Had this matter gone to trial, the United States would have proven amounts that greatly exceed this number, but the parties stipulate that for sentencing purposes, and as part of this Plea,

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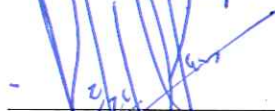
\$30,000.00 is the amount for which he accepts responsibility.

Should the case have proceeded to trial, the government would have proved the foregoing beyond a reasonable doubt through physical evidence, documents, financial records, and testimony from witnesses, including members of law enforcement.

Full discovery has been provided.



G. A. Massucco-LaTaif
Assistant United States Attorney
Dated: 11 MAY 2015



RAFAEL PINA-NIEVES
Defendant
Dated: 5-12-15



Francisco Rebollo-Casaldue, Esq.
Attorney for Defendant
Dated: 5-12-15



Edwin Prado, Esq.
Attorney for Defendant
Dated: