



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 25, 2017

By E-mail

Deborah A. Colson, Esq.
80 Broad Street, Suite 1900
New York, New York 10004

Re: United States v. Alla Tsirlin, S2 16 Cr. 763 (LGS)

Dear Ms. Colson:

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 ALLA TSIRLIN (“the defendant”) to Counts One and Two of the above-referenced Indictment. Count One charges the defendant with conspiracy to commit health care fraud, mail fraud, and wire fraud, in violation of Title 18, United States Code, Section 1349, and carries a maximum term of imprisonment of 20 years; a maximum term of three years’ 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 \$100 mandatory special assessment. Count Two charges the defendant with committing health care fraud, in violation of Title 18, United States Code, Sections 1347 and 2, and carries a maximum term of imprisonment of 10 years; a maximum term of three years’ 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. In addition to the foregoing, the Court must order restitution as specified below.

The total maximum term of imprisonment on Counts One and Two is 30 years.

In consideration of the defendant’s plea to the above offenses, 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 her participation in a conspiracy to commit health care fraud, mail fraud, and wire fraud through the defendant’s participation in a conspiracy and fraud scheme to commit health care fraud, wire fraud, and wire fraud through the operation of approximately six medical clinics in Brooklyn, New York, including engaging in false and fraudulent Medicare and Medicaid billing and the payment of illegal kickbacks, from in or about November 2011 through 2012, as charged in Counts One and 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 Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges she 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 allegations with respect to Counts One and Two of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7): a sum of money equal to \$1,383,237 in United States currency, representing proceeds traceable to the commission of said offenses (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 her 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 \$1,383,237 in accordance with Title 18, United States Code, Sections 3663, 3663A, and 3664, and that the obligation to make such restitution shall be made a condition of probation, *see* 18 USC §3563(b)(2), or of supervised release, *see* 18 USC §3583(d), as the case may be.

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

The applicable Guidelines manual is the manual effective November 1, 2016.

1. Pursuant to U.S.S.G. § 3D1.2, Counts One and Two are grouped together into a single Group. Guideline 2B1.1 applies to the Group.
2. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is seven.
3. Pursuant to U.S.S.G. § 2B1.1(b)(1)(I), a 16-level increase is warranted because the loss resulting from the offense exceeded \$1,500,000, but was not more than \$3,500,000.
4. Pursuant to U.S.S.G. § 2B1.1(b)(7), a two-level increase is warranted because the loss to the Government health care program exceeded \$1,000,000, but was not more than \$7,000,000.
5. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through her allocution 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 her 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.

In accordance with the above, the applicable Guidelines offense level is 22.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history.

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 stipulated Guidelines range is 41 to 51 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 22, the applicable fine range is \$15,000 to \$150,000.

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 her 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 her 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 her 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; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 41 to 51 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 any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$150,000, and the Government agrees not to appeal any fine that is greater than or equal to \$15,000. The defendant also agrees not to appeal any restitution amount or forfeiture amount that is less than or equal to \$1,383,237, and the Government agrees not to appeal any restitution amount or forfeiture amount that is greater than or equal to \$1,383,237. 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 she has accepted this Agreement and decided to plead guilty because she is in fact guilty. By entering this plea of guilty, the defendant waives any

and all right to withdraw her plea or to attack her 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.

The defendant recognizes that, if she is not a citizen of the United States, her guilty plea and conviction make it very likely that her deportation from the United States is presumptively mandatory and that, at a minimum, she is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that she has discussed the possible immigration consequences (including deportation) of her guilty plea and conviction with defense counsel. The defendant affirms that she wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw her guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge her 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 deportation) resulting from her 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

Very truly yours,

JOON H. KIM
Acting United States Attorney

By: David Raymond Lewis
DAVID RAYMOND LEWIS
Assistant United States Attorney
(212) 637-2397

APPROVED: Michael Ferrara
MICHAEL FERRARA
Chief, Complex Frauds and Cybercrime Unit

AGREED AND CONSENTED TO:

Alla Tsirlin
ALLA TSIRLIN

11/9/17
DATE

APPROVED:

Deborah A. Colson
DEBORAH A. COLSON
Attorney for Alla Tsirlin

11/9/17
DATE