

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

**LAYMAR GIOSSE
PENA TORREALBA**

DEFENDANT

§
§
§
§
§
§
§
§

CRIMINAL NO. H-19-~~XXX~~

UNDER SEAL

136

PLEA AGREEMENT

The United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas and John P. Pearson and Robert S. Johnson, Assistant United States Attorneys, and Robert Zink, Acting Chief of the Fraud Section of the Criminal Division of the United States Department of Justice ("Fraud Section") and Sarah E. Edwards and Sonali D. Patel, Trial Attorneys, and the defendant, Laymar Giosse Pena Torrealba ("Defendant"), and Defendant's counsel, pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

Defendant's Agreement

1. Defendant agrees to plead guilty to Count One of the Information. Count One charges Defendant with conspiracy to launder money, in violation of Title 18, United States Code, Section 371. Defendant, by entering this plea, agrees that she

is waiving any right to have the facts that the law makes essential to the punishment either charged in the Information, or proved to a jury beyond a reasonable doubt.

Punishment Range

2. The **statutory** maximum penalty for a violation of Title 18, United States Code, Section 371, is imprisonment of not more than five years and a fine of not more than \$250,000 or twice the gross gain or loss. Additionally, Defendant may receive a term of supervised release after imprisonment of up to three years. *See* Title 18, United States Code, Sections 3571(b)(3), 3571(d), and 3583(b)(2). Defendant acknowledges and understands that if she should violate the conditions of any period of supervised release which may be imposed as part of her sentence, then Defendant may be imprisoned for up to two years, without credit for time already served on the term of supervised release prior to such violation. *See* Title 18, United States Code, Section 3583(e)(3). Defendant understands that she cannot have the imposition or execution of the sentence suspended, nor is she eligible for parole.

Mandatory Special Assessment

3. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00)

per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Immigration Consequences

4. Defendant recognizes that pleading guilty may have consequences with respect to her immigration status if she is not a citizen of the United States. Defendant understands that if she is not a citizen of the United States, by pleading guilty she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

Cooperation

5. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentencing Guidelines. Defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas and the Fraud Section. Should Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1

of the United States Sentencing Guidelines. Defendant further agrees to persist in the plea through sentencing, fully cooperate with the United States, and not to oppose the forfeiture of assets contemplated in paragraphs 22-27 of this agreement. Defendant consents to adjournments of her sentencing as requested by the Government.

6. Defendant understands and agrees that “fully cooperate,” as that term is used herein, includes providing all information relating to any criminal activity known to Defendant, including but not limited to violations of the Foreign Corrupt Practices Act, money laundering, and wire fraud. Defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this plea agreement binds only the United States Attorney for the Southern District of Texas, the Fraud Section, and Defendant; it does not bind any other United States Attorney or any other component of the Department of Justice;
- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive her Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (d) Defendant agrees to provide truthful, complete and accurate information and testimony and understands any false statements made

by the Defendant to the Grand Jury or at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes;

(e) Defendant agrees to provide to the United States all documents in her possession or under her control relating to all areas of inquiry and investigation; and

(f) Should the recommended departure, if any, not meet Defendant's expectations, the Defendant understands that she remains bound by the terms of this agreement and cannot, for that reason alone, withdraw her plea.

Waiver of Appeal and Collateral Review

7. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, Section 2255. Defendant's knowing and voluntary waiver of the right to appeal or collaterally attack the conviction and sentence includes waiving the right

to raise on appeal or on collateral review any argument that (1) the statute(s) to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statute(s). In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks her conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

8. Defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

9. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that she may have received from her counsel, the United States or the Probation Office, is a prediction and not a promise, did not induce her guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are "effectively advisory" to the Court. *See United States v. Booker*,

543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

10. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

Agreement Binding - Southern District of Texas and Fraud Section Only

11. The United States Attorney's Office for the Southern District of Texas and the Fraud Section agree that they will not further criminally prosecute Defendant for offenses arising from conduct charged in the Information. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas, the Fraud Section, and Defendant. It does not bind any other United States Attorney's Office or any other component of the Department of Justice. The United States Attorney's Office for the Southern District of Texas and the Fraud Section will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

United States' Non-Waiver of Appeal

12. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, Section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

13. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offenses to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties'

positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

Rights at Trial

14. Defendant understands that by entering into this agreement, she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

(a) Defendant has a right to have the United States Attorney present the charges in the Information to a Grand Jury consisting of not less than sixteen (16) nor more than twenty-three (23) impartial citizens, who would hear the facts of the case as presented by the United States Attorney and witnesses, and then return an indictment against the defendant only if twelve (12) or more members of the Grand Jury found that there was probable cause to believe the defendant committed the crime charged in the Criminal Information.

(b) If Defendant persisted in a plea of not guilty to the charges, Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.

(c) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and her attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on her own behalf. If the witnesses for Defendant would not appear

voluntarily, she could require their attendance through the subpoena power of the court; and

(d) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, she could testify on her own behalf.

Factual Basis for Guilty Plea

15. Defendant is pleading guilty because she is in fact guilty of the charges contained in Count One of the Information. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others, would be offered to establish Defendant's guilt:

Petroleos de Venezuela S.A. (together with its subsidiaries and affiliates, "PDVSA") was the Venezuelan state-owned and state-controlled oil company. PDVSA was responsible for the exploration, production, refining, transportation, and trade in energy resources in Venezuela and provided funding for other operations of the Venezuelan government. PDVSA and its wholly-owned subsidiaries, including Citgo Petroleum Corporation ("Citgo"), were "instrumentalities" of the Venezuelan government as that term is used in the Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Section 78dd-2(h)(2)(A).

Defendant, a Venezuelan citizen and a resident of Texas, was employed by Citgo since in or around July 2015. During this time, Defendant was a buyer and, beginning in or around December 2016, a supervisor in Citgo's Special Projects Group. The Special Projects Group within Citgo was responsible for procuring equipment and supplies needed by PDVSA in Venezuela, and was separate from the rest of Citgo's procurement department. PDVSA paid Citgo for the equipment procured by the Special Projects Group with crude oil. The Special Projects Group did not purchase equipment and supplies directly from vendors; instead, the Special Projects Group would determine which vendor would win a contract, and a separate third-party logistics company would then issue the purchase order to the vendor. In exchange, the third-party logistics company would receive a percentage of the contract value. Citgo maintained relationships with four logistics companies that provided this service.

During her time in the Special Projects Group, Defendant accepted bribes from Jose Manuel Gonzalez Testino ("Gonzales") and employees who worked on his behalf. Gonzalez has been charged separately. In exchange for bribes, Defendant took steps in her official capacity as a Citgo official to share inside information with Gonzalez. For example, Defendant assisted Gonzalez by providing him with inside information regarding information that should be included

with bid materials to be submitted to PDVSA, contracts being worked on by other buyers in the Special Projects Group, and upcoming contracts for parts and equipment needed by PDVSA.

In addition to providing Gonzalez with inside information, Defendant accepted bribes in exchange for assisting Gonzalez's logistics company, identified as "Company B" in the Information, in obtaining and retaining business with Citgo. Defendant was also able to decide, at least for part of her time in the Special Projects Group, which logistics company would be selected to handle each of the purchase orders for which she was responsible. Gonzalez owned "Company B" in the Information, which was one of the four logistics companies that contracted with vendors on Citgo's behalf. Defendant received payments that were tied to specific contracts that Company B was awarded.

Defendant, Gonzalez, and the other individuals involved in the various bribery schemes agreed to attempt to conceal, and did in fact conceal, the nature, source, and ownership of the bribe proceeds. Specifically, Defendant laundered bribe proceeds by (1) directing payments to be made into overseas accounts that (2) were not in Defendant's name, but in the name of the individual identified as "Pena Associate A" in the Information.

On or about February 11, 2017, a \$10,500 payment was made by check to Pena Associate A from the business account of a Gonzalez controlled company. On or about November 10, 2017, the individual identified as “Employee B” in the Information sent Gonzalez a spreadsheet tracking payments made from a U.S. business bank account of this same Gonzalez controlled company, on which the payment to Pena Associate A was noted.

On or about April 7, 2017, a relative of the Defendant sent “Employee A” in the Information an email stating, in part and as translated into English, “Hello here are the coordinates for . . . [Defendant] for you.” The email contained, among other things, account information for a Mexican bank account belonging to Pena Associate A, who received payments on behalf of Defendant. Employee A then forwarded the email to Gonzalez, noting that \$10,362 would be wired to Pena Associate A’s account. In order to facilitate additional bribe payments to Defendant, in or about May 2017 Gonzalez flew Pena Associate A to Switzerland to open “Bank Account A” in the Information.

On or about July 20, 2017, Gonzalez sent an email to an individual identified as “Businessman A” in the Information asking that \$100,000 be wired to Bank Account A from the company identified as Company A in the Information. On or about August 2, 2017, Company A wired \$57,472.11 to Bank Account A, and on or

about August 7, 2017, Company A wired \$42,517.89 to Bank Account A, for a total of \$99,990. Bank Account A received a four additional wire transfers, representing bribe payments to the Defendant, between on or about January 16, 2018 and on or about August 31, 2018. These transfers totaled \$231,818.47.

In addition to paying Defendant via wire transfers, Gonzalez also provided Defendant with other things of value. For example, Gonzalez and Employee B arranged for Defendant and her family to travel to Clearwater, Florida, New York, New York, and other places, and paid for flights and hotels for these trips.

In total, Defendant received, and laundered, at least \$342,308.47 in bribe proceeds.

Breach of Plea Agreement

16. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to

this plea agreement, and all leads derived therefrom, will be used against Defendant in any such prosecution.

Restitution, Forfeiture, and Fines – Generally

17. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that she will make a full and complete disclosure of all assets over which she exercises direct or indirect control, or in which she has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which she has an interest, unless Defendant obtains the prior written permission of the United States.

18. Defendant agrees to make a complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 30 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

19. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution

and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of her assets to deliver all funds and records of such assets to the United States.

20. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

Forfeiture

21. Defendant stipulates and agrees that the factual basis for her guilty plea supports the forfeiture of the laundered funds that she, personally or through members of her family at her direction, controlled or obtained. Because not all of the relevant records are currently available, it is not practical at this time to determine the proper amount of a money judgment; however, both parties agree that Defendant will forfeit at least \$332,308.47. Prior to sentencing, Defendant and the United States will attempt to agree upon the money judgment amount and on any specific assets to be forfeited. If they cannot agree, then the Court will be asked to determine the money judgment forfeiture based on a reasonable approximation of the amount of laundered funds that Defendant controlled or obtained as a result of the conspiracy.

22. Defendant stipulates and admits that one or more of the conditions set forth in Title 21, United States Code, Section 853(p), exists. Defendant agrees to forfeit any of her property until the money judgment is fully satisfied.

23. Defendant agrees to waive any and all interest in any asset which is the subject of a related administrative or judicial forfeiture proceeding, whether criminal or civil, federal or state.

24. Defendant consents to any order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

25. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

Fines

26. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to

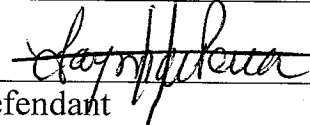
the provisions of paragraph 7 above, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

Complete Agreement

27. This written plea agreement, consisting of 21 pages, including the attached addendum of Defendant and her attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against her and that she is pleading guilty freely and voluntarily because she is guilty.

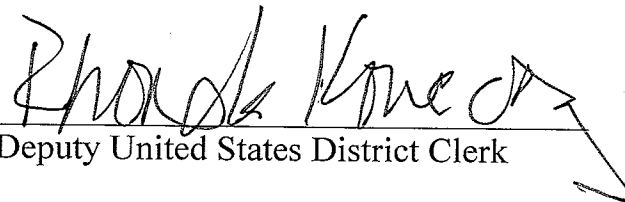
28. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on Mar 21, 2019.


Defendant

Subscribed and sworn to before me on Mar 21, 2019.

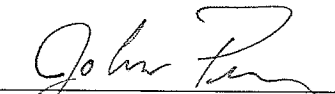
DAVID J. BRADLEY, Clerk
UNITED STATES DISTRICT CLERK

By: 
Deputy United States District Clerk

APPROVED:

Ryan K. Patrick
United States Attorney


By:




John P. Pearson
Robert S. Johnson
Assistant United States Attorneys
Southern District of Texas
Telephone: (713) 567-9342

Robert Zink
Acting Chief, Fraud Section

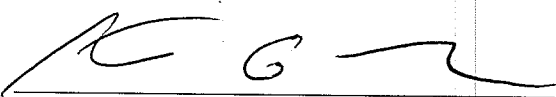
By:



Sarah E. Edwards
Sonali D. Patel
Trial Attorneys
Telephone: (202) 305-6761



Laymar Glosse Pena Torrealba
Defendant



Stanley G. Schneider
Attorney for Defendant

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

**LAYMAR GIOSSE
PENA TORREALBA**

DEFENDANT

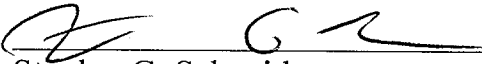
§
§
§
§
§
§
§

CRIMINAL NO. H-19-XXX

UNDER SEAL

PLEA AGREEMENT -- ADDENDUM

I have fully explained to Defendant her rights with respect to the pending Information. These rights and the Information and Plea Agreement have been explained to Defendant in English and Spanish. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant's decision to enter into this agreement is an informed and voluntary one.

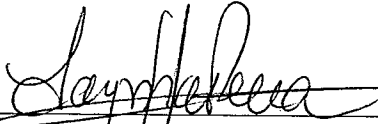


Stanley G. Schneider
Attorney for Defendant

3 - 21 - 19

Date

I have consulted with my attorney and fully understand all my rights with respect to the Information pending against me. My attorney has fully explained, and I understand, all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.



Laymar Giosse Pena Torrealba
Defendant

3-21-19

Date