



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

August 21, 2018

BY EMAIL

Guy Petrillo, Esq.
Petrillo Klein & Boxer LLP
655 Third Avenue, 22nd Floor
New York, NY 10017

Re: United States v. Michael Cohen, 18 Cr. ____ (WHP)

Dear Mr. Petrillo:

This prosecution and the protection against prosecution, with respect to tax offenses, set forth below have been approved by the Tax Division, Department of Justice.

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 Michael Cohen (the "defendant") to Counts One through Eight of the above-referenced Information (the "Information").

Counts One through Five of the Information charge the defendant with evasion of personal income tax, for the calendar years 2012, 2013, 2014, 2015, and 2016, respectively, in violation of 26 U.S.C. § 7201. Counts One through Five each carry a maximum term of imprisonment of 5 years; a maximum term of supervised release of 3 years; a maximum fine of \$100,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

Count Six of the Information charges the defendant with making false statements to a financial institution in connection with a credit decision, from at least in or about February 2015, up to and including in or about April 2016, in violation of 18 U.S.C. § 1014. Count Six carries a maximum term of imprisonment of 30 years; a maximum term of supervised release of 5 years; a maximum fine of \$1,000,000; and a \$100 mandatory special assessment.

Count Seven of the Information charges the defendant with willfully causing an unlawful corporate contribution, from at least in or about June 2016, up to and including in or about October 2016, in violation of 52 U.S.C. §§ 30118(a) & 30109(d)(1)(A), and 18 U.S.C. § 2(b). Count Seven carries a maximum term of imprisonment of 5 years; a maximum term of supervised release of 3 years; a maximum fine of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

Count Eight of the Information charges the defendant with making an excessive campaign contribution, on or about October 27, 2016, in violation of 52 U.S.C. §§ 30116(a)(1)(A), 30116(a)(7) & 30109(d)(1)(A), and 18 U.S.C. § 2(b). Count Eight carries a maximum term of imprisonment of 5 years; a maximum term of supervised release of 3 years; a maximum fine of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment.

The total maximum term of imprisonment on Counts One through Eight is 65 years.

It is further understood that at least two weeks prior to the date of sentencing, the defendant shall file with the IRS, and provide copies to the Office, accurate amended personal tax returns for the calendar years 2012 through 2016.

In consideration of his plea to the above offenses, the defendant will not be further prosecuted criminally by this Office and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes relating to: (1) evasion of payment of income taxes, for the calendar years 2012 through 2016, as charged in Counts One through Five of the Information; (2) making false statements to a financial institution in connection with a credit decision, from at least in or about February 2015, up to and including in or about April 2016, as charged in Count Six of the Information; (3) causing an unlawful corporate contribution, from at least in or about June 2016 through in or about August 2016, as charged in Count Seven of the Information; (4) making an excessive campaign contribution, on or about October 27, 2016, as charged in Count Eight of the Information, and (5) making false statements to a financial institution in connection with a credit decision by Sterling National Bank, from at least in or about October 2016, up to and including in or about April 2018, 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. This Agreement does not provide any protection against prosecution except as set forth above. 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 Six of the Information and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting or derived from, proceeds obtained directly or indirectly, as a result of the commission of offense alleged in Count Six. 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 further agrees to make restitution in an amount ordered by the Court in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code, 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 particular, pursuant to 18 U.S.C. §§ 3663(a)(3) and 3663A(a)(3), the defendant agrees to pay restitution to the IRS for the amount of additional taxes, penalties and interest due as a result of his filing of tax returns for tax years 2012 through 2016, and as determined by the Internal Revenue Service (“IRS”), which based on current information is \$1,495,305 in past taxes due and owing for calendar years 2012 through 2016. The defendant also agrees not to contest the applicability of civil fraud penalties and interest with respect to the aforementioned taxes due and owing as restitution. The restitution amount shall be paid according to a plan established by the Court. If the Court orders the defendant to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release or probation, the IRS will use the restitution order as the basis for a civil assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant’s timely payment of restitution according to that schedule will preclude: (1) the IRS and the defendant from reaching an agreed upon schedule for payments of past due taxes, civil penalties and interest, or (2) the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

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 November 1, 2016 Guidelines apply to these offenses.
2. Because the offenses charged in Counts One through Eight are determined largely on the basis of the total amount of harm or loss, they group pursuant to U.S.S.G. § 3D1.2(d) (the “Group”).
3. Because different Guidelines apply to the offenses charged in Counts One through Eight,¹ pursuant to U.S.S.G. § 3D1.3(b), the Guideline that results in the highest offense level for the Group applies.² Here, application of U.S.S.G. § 2B1.1 results in the highest offense level and therefore applies to the Group.
4. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7 because at least one offense comprising the Group has a statutory maximum term of imprisonment of 20 years or more.

¹ The applicable Guideline to the offenses charged in Counts One through Five is U.S.S.G. § 2T1.1. The applicable Guideline to the offense charged in Count Six is U.S.S.G. § 2B1.1. The applicable Guideline to the offenses charged in Counts Seven and Eight is U.S.S.G. § 2C1.8.

² There is no stipulation regarding whether the tax counts group with the bank fraud and campaign finance counts under U.S.S.G. § 3D1.2. Under the Government’s grouping analysis, set forth above, all counts group under Section 3D1.2, resulting in an offense level of 24. The defendant believes that the tax counts do not group with the false statements and campaign finance counts. Under the defendant’s grouping analysis, the Guidelines offense level would be 23. The parties agree not to appeal or challenge collaterally the Court’s determination on the grouping analysis.

5. An additional 16 levels are added pursuant to U.S.S.G. § 2B1.1(b)(1)(I), because the offenses that comprise the Group involved more than \$1,500,000, but less than \$3,500,000.

6. An additional two levels are added pursuant to U.S.S.G. § 2B1.1(b)(10) because the Group involved the use of sophisticated means, including the defendant's creation of shell companies and fake invoices.

7. An additional two levels are added pursuant to U.S.S.G. § 3B1.3 because the defendant used a special skill—to wit, his education, training and licensing as an attorney in New York State—in a manner that significantly facilitated the commission and concealment of the offense comprising the Group.

8. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his 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 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.

In accordance with the above, the applicable Guidelines offense level is 24 under the Government's calculations and 23 under the defendant's calculations.

B. Criminal History Category

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

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 either 51 to 63 months' imprisonment under the Government's calculations, or 46 to 57 months' imprisonment under the defendant's calculations. Accordingly, the stipulated Guidelines range is 46 to 63 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 an offense level of 23 or 24, the applicable fine range is \$20,000 to \$1,000,000.

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 of 46 to 63 months' imprisonment (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; 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 46 to 63 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 \$1,000,000, and the Government agrees not to appeal any fine that is greater than or equal to \$20,000. The defendant also agrees not to appeal any order of restitution that is less than or equal to \$1,495,305, and the Government agrees not to appeal any order of restitution greater than or equal to the same. Finally, the defendant agrees not to appeal any special assessment that is less than or equal to \$800. 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, 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, 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 deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he 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 his 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 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 deportation) 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 and, to the extent set forth above, the Tax Division, Department of Justice.

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,

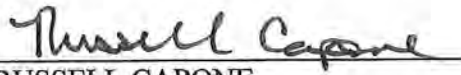
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Attorney for the United States
Acting Under Authority Conferred
By 28 U.S.C. § 515

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APPROVED:



RUSSELL CAPONE
Chief, Public Corruption Unit
EDWARD B. DISKANT
Deputy Chief, Public Corruption Unit

AGREED AND CONSENTED TO:




Michael Cohen



DATE

APPROVED:



Guy Petrillo, Esq.
Attorney for Michael Cohen



DATE