

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

[1] AMERICO OMS-RIVERA,  
Defendant.

CRIMINAL NO. 16-483(FAB)

**PLEA AND FORFEITURE AGREEMENT**

**TO THE HONORABLE COURT:**

The United States of America, Defendant, Américo Oms-Rivera, and Defendant's Counsels, Sonia I. Torres-Pabón and Juan Carlos Fontánez-Nieves, Esq., pursuant to Federal Rule of Criminal Procedure 11, state that they have reached a Plea and Forfeiture Agreement, the terms and conditions of which are as follows:

**1. Charges to which Defendant will Plead Guilty**

Defendant agrees to plead guilty to Count One of the Superseding Indictment:

**Count One:**

From on or about March 19, 2009, to on or about October 22, 2015, in the District of Puerto Rico, the defendant, [1] AMERICO OMS-RIVERA, and other co-conspirators known and unknown to the Grand Jury, knowingly and willfully conspired and agreed together and with each other, to devise a scheme and artifice to defraud the Social Security Administration (SSA), and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises. For purposes of executing the scheme and artifice to defraud more fully described below, the defendant and co-conspirators caused to be transmitted by means of wire communications in interstate commerce certain signals and

sounds contrary to 18 U.S.C. § 1343.

**Object of the Conspiracy**

It was the object of the conspiracy that the defendant and co-conspirators would defraud the United States by submitting false and/or fraudulent information to the Social Security Administration, an agency of the United States. The application would claim that an individual was suffering from disabling psychiatric conditions, which prevented him/her from working. This claim would later be supported by the submission of false documents including, but not limited to, a fraudulent psychiatric medical report prepared by [1] AMERICO OMS-RIVERA. The false and fraudulent documents would be submitted for the purposes of tricking or deceiving the SSA into approving the payment of disability insurance benefits. The submission of the false and fraudulent documents to the SSA would cause to be transmitted by means of wire communications in interstate commerce certain signals and sounds inasmuch said documents are ultimately routed electronically to SSA Headquarters located in Baltimore, Maryland. The defendant, [1] AMERICO OMS-RIVERA, would derive financial gain and profit from the conspiracy to defraud.

**Manner and Means of the Scheme and Artifice to Defraud and Deprive**

It was a part of the manner and means of the unlawful conspiracy that the defendant [1] AMERICO OMS-RIVERA and MGM would backdate medical records to patients applying for disability insurance benefits in order to create the appearance of a longer history of medical treatment.

It was further a part of the manner and means of the unlawful conspiracy that [1] AMERICO OMS-RIVERA and MGM would refer patients to FCA in order for FCA to assist them in applying for Social Security Disability Insurance Benefits.

It was further a part of the manner and means of the unlawful conspiracy that FCA, would coach the patients on how to fill out the SSA forms and what to say to get their disability benefits approved. The submission of the SSA forms to the SSA would cause to be transmitted by means of wire communications in interstate commerce certain signals and sounds as described above.

It was further a part of the manner and means of the unlawful conspiracy that [1] AMERICO OMS-RIVERA, assisted by MGM, would submit fraudulent psychiatric medical reports to the SSA on behalf of his patients. The submission of the fraudulent psychiatric medical reports to the SSA would cause to be transmitted by means of wire communications certain signals and sounds as described above.

It was further a part of the manner and means of the unlawful conspiracy that the defendant [1] AMERICO OMS-RIVERA, and MGM, would charge a fee for the submission of fraudulent psychiatric medical reports to the SSA, for backdating medical files and creating fictitious medical appointments that never took place.

If was further a part of the manner and means of the unlawful conspiracy that defendant [1] AMERICO OMS-RIVERA, aided and abetted by MGM, did template reporting in the submission of psychiatric medical reports to the SSA. The submission of these fraudulent psychiatric medical reports to the SSA would cause to be transmitted by means of wire communications certain signals and sounds as discussed above. Template wording is verbiage, phrases or similar concepts used repeatedly or which appear in same or similar patterns, to describe distinct individuals or patients. All in violation of 18 U.S.C. § 1349.

## 2. Maximum Penalties

The maximum statutory penalty for the offense charged in Count One of the

Superseding Indictment, is a term of imprisonment of not more than twenty (20) years, pursuant to 18 U.S.C. §§ 1343 and 1349, a fine not to exceed \$250,000.00, and a term of supervised release of not more than three (3) years.

### **3. Sentencing Guidelines Applicability**

Defendant understands that the sentence will be imposed by the Court in accordance with 18 U.S.C. §§ 3551-86, and the United States Sentencing Guidelines (hereinafter "Guidelines"), which are advisory pursuant to the United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005). Further, Defendant acknowledges that parole has been abolished, and that the imposition of Defendant's sentence may not be suspended.

### **4. Special Monetary Assessment**

Defendant agrees to pay a special monetary assessment ("SMA") of one hundred dollars (\$100.00) per count of conviction. The SMA will be deposited in the Crime Victim Fund, pursuant to 18 U.S.C. § 3013 (a)(2)(A).

### **5. Fines and Restitution**

The Court may, pursuant to Section 5E1.2 of the Guidelines order Defendant to pay a fine. Defendant agrees to execute and make available, prior to sentencing, a standardized financial statement (OBD Form 500). The United States will advocate on behalf of any identified victim, and comply with its obligations under the Mandatory Victim Restitution Act of 1996. The parties agree that the defendant will make restitution to the United States Social Security Administration in the amount of \$321,000.00. This restitution will be paid within a term of four (4) years by way of a payment plan to be determined by the Financial Litigation and Asset Recovery Unit of the U.S. Attorney's Office. The defendant acknowledges that the restitution sought in this case does not impact the Social Security

Administration's administrative policies and/or proceedings. As to the accrual of interests pursuant to 18 U.S.C. § 3612(f), the government will leave the matter to the discretion of the Court at sentencing.

**6. Sentence to be Determined by the Court**

Defendant understands that the sentence to be imposed will be determined solely by the United States District Judge. The United States cannot make and has not made any promise or representation as to what sentence Defendant will receive. Any discussions that the parties might have had about possible sentences are not binding in any way on the Court, and do not constitute representations about what the parties will seek, or what the actual sentence will be.

**7. Recommended Sentencing Guidelines Calculations**

After due consideration of the relevant factors enumerated in 18 U.S.C. § 3553(a), the United States and Defendant submit that the advisory Guidelines calculations listed below apply to Defendant. However, Defendant acknowledges that the Court is not required to accept those recommended Guidelines calculations.

SENTENCING GUIDELINES CALCULATIONS					
COUNT ONE					
18 U.S.C. § 1349					
Base Offense Level pursuant to U.S.S.G. § 2B1.1(a)(1)					7
Specific Offense Characteristic pursuant to U.S.S.G. § 2B1.1(b)(1)(I) since the amount of loss greater than \$1,500,000.00					+16
Acceptance of Responsibility pursuant to U.S.S.G. §3E1.1					-3
<b>TOTAL ADJUSTED OFFENSE LEVEL</b>					<b>20</b>
CH Cat. I	CH Cat. II	CH Cat. III	CH Cat. IV	CH Cat. V	CH Cat. VI
33-41	37-46	41-51	51-63	63-78	70-87

**8. Sentence Recommendation**

After due consideration of the relevant factors enumerated in 18 U.S.C. § 3553(a), the parties agree to the following:

- i. The parties stipulate that a downward departure applies in this case pursuant to § 5H1.4 of the U.S. Sentencing Guidelines.
- ii. As to sentencing recommendations, the defendant will argue for a sentence of probation and if at sentencing the Court finds that a downward departure applies pursuant to § 5H1.4 due to defendant's health condition, the government will not oppose a sentence of probation. Otherwise, the government reserves the right to request a term of imprisonment not greater than 27 months.
- iii. The defendant agrees to self-surrender his DEA license and be excluded from participation in SSA cases, as well as Medicare, Medicaid and all other Federal health care programs pursuant to 42 U.S.C. § 1320(b)(1)(B).
- iv. The parties agree that any recommendation or action by either party contrary to the terms and conditions set forth above will constitute a material breach of the Plea and Forfeiture Agreement.

**9. No Stipulation as to Criminal History Category**

The parties do not stipulate as to any Criminal History Category for Defendant.

Handwritten signatures in blue ink on the left margin, including a large signature at the top, a smaller one below it, and another one further down.

**10. Waiver of Appeal**

Defendant knowingly and voluntarily agrees that, if the imprisonment sentence imposed by the Court is 27 months or less, Defendant waives the right to appeal any aspect of this case's judgment and sentence, including, but not limited to the term of imprisonment or probation, restitution, fines, forfeiture, and the term and conditions of supervised release.

**11. No Further Adjustments or Departures**

The United States and Defendant agree that no further adjustments or departures to Defendant's total adjusted base offense level and no variant sentence under 18 U.S.C. § 3553—other than any explicitly provided for in this Plea Agreement—shall be sought by Defendant. The parties agree that any request by Defendant for an adjustment or departure that is not explicitly provided for in this Plea Agreement will be considered a material breach of this Plea Agreement, and the United States will be free to ask for any sentence, either guideline or statutory.

**12. Satisfaction with Counsel**

Defendant is satisfied with counsels, Sonia I. Torres-Pabón and Juan Carlos Fontánez-Nieves, Esq., and asserts that counsels have rendered effective legal assistance.

**13. Rights Surrendered by Defendant Through Guilty Plea**

Defendant understands that by entering into this Plea Agreement, Defendant surrenders and waives certain rights as detailed in this agreement. Defendant understands that the rights of criminal defendants include the following:

- a. If 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 be conducted by a judge sitting without a jury if 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. Defendant and 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 Defendant is presumed innocent, that it could not convict Defendant unless, after hearing all the evidence, it was persuaded of 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 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 Defendant. Defendant would be able to confront those witnesses and Defendant's attorney would be able to cross-examine them. In turn, Defendant could present witnesses and other evidence on Defendant's own behalf. If the witnesses for Defendant would not appear voluntarily, Defendant could require their attendance through the subpoena power of the Court.
- e. At a trial, 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 Defendant desired to do so, Defendant could testify on Defendant's own behalf.



#### 14. Stipulation of Facts

The accompanying Stipulation of Facts signed by Defendant is hereby incorporated into this Plea Agreement. Defendant adopts the Stipulation of Facts and agrees that the facts therein are accurate in every respect. Defendant agrees and accepts that had the matter proceeded to trial, the United States would have proven those facts beyond a reasonable doubt.

**15. Limitations of Plea Agreement**

This Plea Agreement binds only the United States Attorney's Office for the District of Puerto Rico and Defendant. It does not bind any other federal district, state, or local authorities.

**16. Entirety of Plea Agreement**

This written agreement constitutes the complete Plea Agreement between the United States, Defendant, and Defendant's counsel. The United States has made no promises or representations except as set forth in writing in this Plea Agreement and denies the existence of any other terms and conditions not stated herein.

**17. Amendments to Plea Agreement**

No other promises, terms or conditions will be entered into between the parties unless they are in writing and signed by all parties.

**18. Voluntariness of Plea Agreement**

Defendant acknowledges that no threats have been made against Defendant and that Defendant is pleading guilty freely and voluntarily because Defendant is guilty.

**19. Breach and Waiver**

Defendant agrees that defendant will have breached this Plea Agreement if, after entering into this Plea Agreement, Defendant: (a) fails to perform or to fulfill completely each and every one of Defendant's obligations under this Plea Agreement; (b) engages in any criminal activity prior to sentencing; or (c) attempts to withdraw Defendant's guilty plea. In the event of such a breach, the United States will be free from its obligation under this Plea Agreement and Defendant will not have the right to withdraw the guilty plea. Moreover, Defendant agrees that if Defendant is in breach of the Plea Agreement,

Defendant is deemed to have waived any objection to the reinstatement of any charges under the Superseding Indictment, Information, or complaint which may have previously been dismissed or which may have not been previously prosecuted.

**20. Potential Impact on Immigration Status**

Pursuant to Federal Rule of Criminal Procedure 11(b)(1)(O), Defendant hereby agrees and recognizes that if convicted, a Defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

**21. Felony Conviction**

Defendant hereby agrees and recognizes that the plea of guilty in this case will be recognized as a felony conviction, which will result in the loss of certain rights, including but not limited to the right to vote in a federal election, to serve as a juror, to hold public office, and to lawfully possess a firearm.

**22. Forfeiture Provision**

Defendant agrees to forfeit, pursuant to 18 U.S.C. § 982(a)(7), waive and forgo any interests or claims over the following property: Parcel or lot no. 13 of Project Harbourlights Estates at Palmas del Mar, Humacao, PR with a measure of 1,992.11 square meter. In the north border, at 37.00 meters, it has an area reserved for development; in the south border, in an arch of 38.44 meters, it has the street Galeta Drive; in the east border, at a distance of 65.91 meters, it has lot no. 12; and in the west boarder, at 68.22 meters, it has lot no. 14 (hereinafter "property" or "asset").

Defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant

agrees to consent to the entry of orders of forfeiture for such property before or at the sentencing hearing and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

Defendant acknowledges that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise Defendant of this, pursuant to Rule 11(b)(1)(J), at the time Defendant's guilty plea is accepted.

Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant further agrees to provide any documentation that is necessary for the transfer of the property to the United States, including but not limited to written authorization from Inmobiliaria Oms Perez LLC and/or the administrator of the Oms Perez - I Trust Fund. Defendant acknowledges that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, giving rise to forfeiture and/or substitute assets for property otherwise subject to forfeiture.

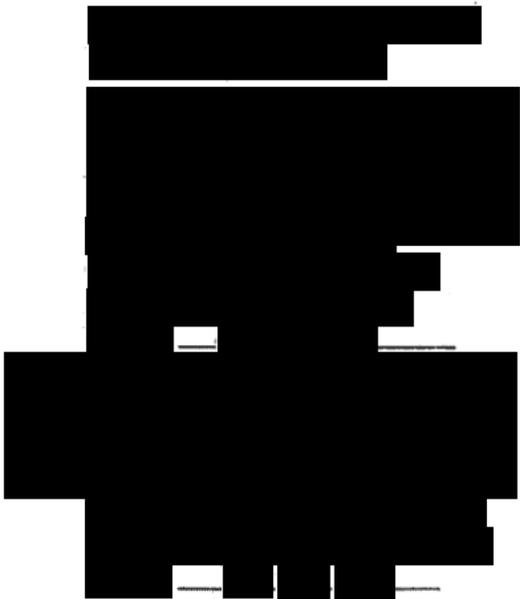
Defendant, by agreeing to the forfeiture stated above, acknowledges that such forfeiture is not grossly disproportionate to the gravity of the offense conduct to which Defendant is pleading guilty. Defendant agrees that the forfeiture provisions of this Plea Agreement are intended to and will survive Defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability

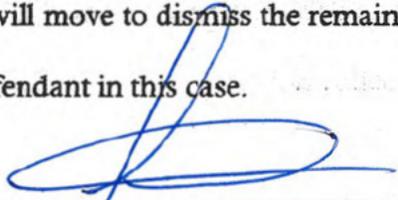
of any particular property pursuant to this agreement shall be determined as if Defendant had survived, and that determination shall be binding upon Defendant's heirs, successors and assignees until the agreed forfeiture, including any agreed money judgment, is collected in full.

The government has had the opportunity to conduct the necessary due diligence on the title and property subject to forfeiture and accepts such property with all conditions, liens, and annotations as it draws from the Property Registry of Puerto Rico.

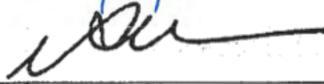
**23. Dismissal of Remaining Counts**

At sentencing should there be any pending counts and should the Defendant comply with the terms of this Plea Agreement, the United States will move to dismiss the remaining counts of the Superseding Indictment pending against Defendant in this case.



  
\_\_\_\_\_  
Sonia I. Torres-Pabón, Esq.  
Counsel for Defendant  
Dated: Oct 19, 2020

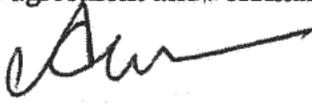
  
\_\_\_\_\_  
Juan Carlos Fontáñez-Nieves, Esq.  
Counsel for Defendant  
Dated: 10/19/2020

  
\_\_\_\_\_  
Américo Oms-Rivera  
Defendant  
Dated: 10/17/20

**UNDERSTANDING OF RIGHTS**

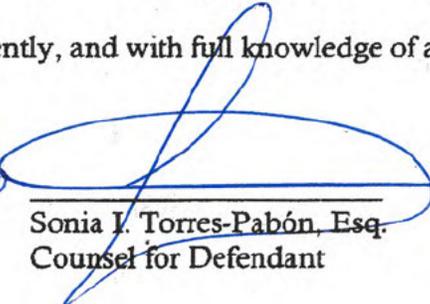
I have consulted with counsel and fully understand all of my rights as to the charges pending against me. Further, I have consulted with my attorney and fully understand my rights as to the provisions of the Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. My counsel has translated the Plea Agreement to me in the Spanish language and I have no doubts as to the contents of the agreement. I fully understand this agreement and voluntarily agree to it.

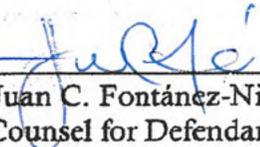
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\_\_\_\_\_  
Américo Oms-Rivera  
Defendant

I am the attorney for Defendant. I have fully explained Defendant's rights to Defendant with respect to the pending charges. Further, I have reviewed the applicable provisions of the Guidelines and I have fully explained to Defendant the provisions of those Guidelines that may apply in this case. I have carefully reviewed every part of this Plea Agreement with Defendant. I have translated the Plea Agreement and explained it in the Spanish language to the Defendant who has expressed having no doubts as to the contents of the agreement. To my knowledge, Defendant is entering into this Plea Agreement voluntarily, intelligently, and with full knowledge of all consequences of Defendant's plea of guilty.

Date: Oct 19/2020

  
\_\_\_\_\_  
Sonia I. Torres-Pabón, Esq.  
Counsel for Defendant

  
\_\_\_\_\_  
Juan C. Fontáñez-Nieves  
Counsel for Defendant

### STIPULATION OF FACTS

In conjunction with the submission of the accompanying Plea and Forfeiture Agreement in this case, the Defendant Américo Oms-Rivera admits that he is guilty as charged in the Superseding Indictment and admits the following:

The defendant, Américo Oms-Rivera ("OMS-RIVERA"), admits that starting on a date unknown but no later than on or about March 19, 2009, to on or about October 22, 2015, in the District of Puerto Rico, the defendant and other co-conspirators known and unknown to the Grand Jury, knowingly and willfully conspired and agreed together and with each other, to devise a scheme and artifice to defraud the Social Security Administration, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises.

For purposes of executing the scheme and artifice to defraud more fully described below, OMS-RIVERA and the co-conspirators caused to be transmitted by means of wire communications in interstate commerce certain signals and sounds contrary to 18 U.S.C. § 1343.

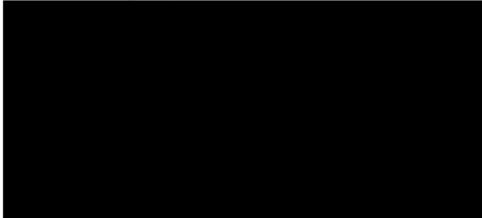
It was a part of the manner and means of the unlawful conspiracy that OMS-RIVERA, aided and abetted by other co-conspirators, would backdate medical records of patients applying for disability insurance benefits by creating fictitious medical appointments that never took place. This was done to create the appearance of a longer history of medical treatment and for the purpose of tricking or deceiving the SSA into approving disability insurance benefits.

It was further a part of the manner and means of the unlawful conspiracy that OMS-RIVERA and MGM would charge a fee for the preparation of a fraudulent psychiatric medical report to be submitted to the SSA.

It was further a part of the manner and means of the unlawful conspiracy that OMS-RIVERA would refer patients to non-attorney representatives FCA and SPR in order for them to assist the patients in applying for social security disability benefits.

It was further a part of the manner and means of the unlawful conspiracy that SPR would prepare psychiatric medical reports, using as a go-by a template report and adding fictitious medical appointments. OMS-RIVERA would sign this fraudulent psychiatric medical report. In other instances, OMS-RIVERA would prepare and sign the fraudulent psychiatric reports. These fraudulent psychiatric medical reports were submitted to the SSA, which cause to be transmitted by means of wire communications certain signals and sounds in interstate commerce since the documents were ultimately routed to SSA Headquarters in Baltimore, Maryland.

At trial, the United States would have proven beyond a reasonable doubt that OMS-RIVERA is guilty as charged in Count One of the Superseding Indictment by presenting physical and documentary evidence, as well as the testimony of law enforcement agents, SSA employees and others. Full discovery has been provided to the defendant.



*[Handwritten signature]*

Sonia I. Torres-Fabón, Esq.  
Counsel for Defendant

Dated: Oct 20, 2020

*[Handwritten signature]*

Juan C. Fontáñez-Nieves, Esq.  
Counsel for defendant

Dated: \_\_\_\_\_

Américo Oms-Rivera  
Defendant

Dated: 10-17-20