

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case Number: 16-20010-CR-MORENO

UNITED STATES OF AMERICA

v.

**FERNANDO MENDEZ-VILLAMIL,
a/k/a "Fernando Mendez,"**

Defendant.

PLEA AGREEMENT

The Office of the United States Attorney for the Southern District of Florida (hereinafter this "Office") and FERNANDO MENDEZ-VILLAMIL (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to count one (1) which charges the defendant with conspiracy to commit health care fraud and wire fraud in violation of Title 18, United States Code, Section 1349, count five (5) which charges the defendant with conspiracy to defraud the United States and make false statements with respect to immigration matters, 18 United States Code, Section 371, and count six (6) which charges the defendant with conspiracy to defraud the government with respect to claims, 18 United States Code, Section 286. The United States agrees to move to dismiss the remaining counts of the indictment at the time of sentencing.

2. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the

Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. As to count one (1) of the Indictment, the defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to twenty (20) years, to be followed by a term of supervised release. In addition to a term of imprisonment, the Court may impose a fine of up to \$250,000. As to count five (5) of the Indictment, the defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to five (5) years, to be followed by a term of supervised release. In addition to a term of imprisonment, the Court may impose a fine of up to \$250,000. As to count 6 of the Indictment, the defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to ten (10) years, to be followed by a term of supervised release. In addition to a term of imprisonment, the Court may impose a fine of up to \$250,000.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The defendant understands and acknowledges that as a result of this plea, the defendant will be excluded from Medicare, Medicaid, and all Federal health care programs. Defendant agrees to complete and execute all necessary documents provided by any department or agency of the federal government, including but not limited to the United States Department of Health and Human Services, to effectuate this exclusion within 60 days of receiving the documents. This exclusion will not affect the defendant's right to apply for and receive benefits as a beneficiary under any Federal health care program, including Medicare and Medicaid.

6. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. This Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

a. Base Offense Level: That the appropriate base offense level is seven (7) under Section 2B1.1(a)(1) of the Sentencing Guidelines.

b. Amount of Loss: That the defendant's offense level, shall be increased by twenty two (22) levels pursuant to Section 2B1.1(b)(1) of the Sentencing Guidelines because the actual loss or intended loss resulting from the defendant's conduct in the respective indictment is more than \$25,000,000 and less than \$65,000,000.

c. That pursuant to § 2B1.1(b)(7)(B)(iii) of the Sentencing Guidelines four (4) levels should be added because the loss was more than \$20,000,000.

d. Role in the offense: That pursuant to §3B1.1(a) of the Sentencing Guidelines four (4) levels should be added because the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.

e. Abuse of Trust and Use of a Special Skill: That the defendant should not receive a two-level (2) increase for abuse of a position of trust or use of a special skill pursuant to Section 3B1.3 of the Sentencing Guidelines.

f. Sophisticated Means: That Section 2B1.1(b)(1) of the Sentencing Guidelines does not apply in that the offense did not involve sophisticated means; and

g. Acceptance of Responsibility: That under Section 3E1.1 of the Sentencing Guidelines, the Sentencing Guideline level applicable to the defendant's offense should be reduced by three (3) levels based on the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the United States will not be required to make this sentencing recommendation if the defendant: (a) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (b) is found to have misrepresented facts to the government prior to entering this plea agreement; or (c) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making a false

statement or misrepresentation to any governmental entity or official, including the United States Probation Office.

8. **Restitution:** The defendant understands and acknowledges that the Court must order restitution for the full amount of victim(s)' losses pursuant to 18 U.S.C. §3663A. Defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing unless the Court orders otherwise. The Office and the defendant stipulate and agree that the defendant shall pay restitution to: 1) Social Security Administration in the amount of \$20,302,923, Centers for Medicare and Medicaid Services is \$12,868,071, Florida Medicaid, Agency for Health Care Administration is \$16,711,447, and to United States Citizenship and Immigration Services \$814,640. This payment shall be made jointly and severally with co-defendants in the instant case.

9. The defendant agrees to make full and accurate disclosure of his financial affairs to this Office and the probation office. Specifically, defendant agrees that, within thirty calendar days of the signing of this Plea Agreement, defendant shall submit a completed **Financial Disclosure Statement** (form provided by this Office), and shall fully disclose and identify all assets in which he has any interest and/or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. The defendant agrees to provide, in a timely manner, all financial information requested by this Office and the probation office, and upon request, to meet in person to identify assets/monies which can be used to satisfy the restitution, forfeiture, and/or fine ordered or imposed. In addition, defendant expressly authorizes this Office to obtain a credit report on him.

10. **Forfeiture:** The defendant agrees to forfeit to the United States, voluntarily and immediately, all rights, title and interest to: (a) any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense charged in count 1 of the Indictment, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Section 982(a)(7); and (b) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense charged in count 5 of the Indictment, and any property, real or personal, (i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense; or (ii) that was used to facilitate, or was intended to be used to facilitate, the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(6)(A). The defendant specifically agrees to the entry of a forfeiture money judgment against him in the amount of \$30,394,158 in United States currency, which sum represents proceeds derived from the offenses alleged in counts 1 and 5 of the Indictment. In partial satisfaction of the forfeiture money judgment, the defendant agrees, in any capacity, and as a beneficiary, officer, director of Dr. Fernando-Mendez Villamil, M.D., P.A., and FMV Holding Company, to forfeit to the United States the following property:

- a) the real property located at 1898 SW 22 Street, Miami, Florida, more particularly described as Lots 23 and 24, in Block 28, of New Shenandoah, according to the plat thereof, as recorded in Plat Book 10, at Page 55, of the public records of Miami-Dade County, Florida, Folio No. 01-4115-012-0270;
- b) the real property located at 6211 SW 79 Street, South Miami, Florida, more particularly described as Lot 8, Block 7, of Oak Heights, according to the plat thereof, as recorded in Plat Book 46, at Page 64, of the public records of Miami-Dade County, Florida, Folio No. 09-4036-011-0700; and
- c) any and all art, artifacts, antiques, collectibles, and other similar valuables, including all items listed in inventory of art collection filed in this case, [DE 80-1.]

11. The defendant also agrees to assist this Office in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, of property that may be subject to forfeiture. This assistance will include the identification of forfeitable property, consent to the entry of an order enjoining the transfer or encumbrance of forfeitable property, and the delivery to this Office of all necessary and appropriate documentation with respect to said property, including consents to forfeiture, quit claim deeds, and any and all other documents necessary to deliver good and marketable title to said property, and transfer the property to the jurisdiction of the United States.

12. The defendant knowingly and voluntarily further agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited property. In addition, the Defendant agrees to waive any applicable time limits for administrative or judicial forfeiture proceedings brought against any forfeited property. The defendant also agrees to waive any appeal for the forfeiture.

13. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the Court. The defendant understands further that any recommendation that the government makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges that he may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation

made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

14. **Immigration warning:** The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a natural-born citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which defendant is pleading guilty. In addition, under certain circumstances, de-naturalization may also be a consequence of pleading guilty to a crime. Removal, de-naturalization, and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including the defendant's attorney or the Court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. The defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea may entail, even if the consequence is the defendant's denaturalization and automatic removal from the United States.

15. **Appellate waiver:** The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by this Office in this plea agreement, the defendant thereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal

as set forth in Title 18, United States Code, Section 3742(b). However, if the government appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with this Office, to request that the district Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

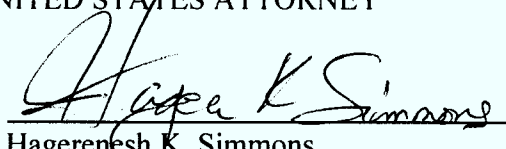
16. The defendant agrees that he has consulted with his attorney and fully understands all rights with respect to the indictment. Further, the defendant agrees that he has been advised concerning and fully understands all rights with respect to the provisions of the Sentencing Guidelines which may apply in this case. The defendant, by his signature affixed below, attests that he has read this agreement and voluntarily agrees to be bound by every term and condition set forth herein.

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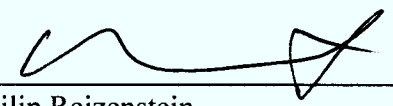
17. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

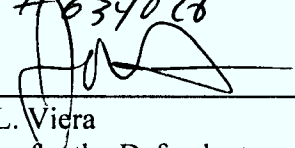
Date: 5/10/16

By: 
Hagerenesh K. Simmons
Special Assistant U.S. Attorney

Date: 5/10/16

By: 
Philip Reizenstein
Attorney for the Defendant
Bar # 634026

Date: 5/10/16

By: 
Jorge L. Viera
Attorney for the Defendant
Bar # 417939

Date: 5/10/16

By: 
FERNANDO MENDEZ-VILLAMIL
Defendant