

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

12 MAY 11 PM 1:52
CLERK-LAS CRUCES

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CRIMINAL NO. 12-96 RB
)	
DOUGLAS J. KUESTER,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c), Fed. R. Crim. P., the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the United States Department of Justice, Tax Division, the defendant, Douglas J. Kuester, and the defendant's counsel, Aric Elsenheimer:

REPRESENTATION BY COUNSEL

1. The defendant understands the defendant's right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The defendant further understands the following rights:
- a. to be charged and prosecuted by indictment;
 - b. to plead not guilty;
 - c. to have a trial by jury;
 - d. to confront and cross-examine witnesses and to call witnesses to testify for the defense; and
 - e. against compelled self-incrimination.

WAIVER OF RIGHTS AND PLEA OF GUILTY

imp'd Agf
the following
counts

3. The defendant hereby agrees to waive these rights and to plead guilty to ~~Counts 11~~ *counts* and ~~37 of the Indictment~~, charging the defendant with False, Fictitious or Fraudulent Claims in violation of 18 U.S.C. § 287 in Count 11 and Aggravated Identity Theft in violation of 18 U.S.C. § 1028A in Count 37.

SENTENCING

4. The defendant understands that the minimum and maximum penalty the Court can impose is:

- a. For the defendant's violation of the false claims statute in Count 11:
 - i) a term of imprisonment of not more than five (5) years;
 - ii) a fine not to exceed the greater of \$250,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;
 - iii) a mandatory term of supervised release of not more than three (3) years that must follow any term of imprisonment (If the defendant serves a term of imprisonment, is then released, and violates the conditions of supervised release, the defendant's supervised release could be revoked -- even on the last day of the term -- and the defendant could be returned to another period of incarceration and a new term of supervised release.);
 - iv) a mandatory special assessment of \$100; and
 - v) restitution, including mandatory restitution, as may be ordered by the Court.

- b. For the defendant's violation of the aggravated identity theft statute in Count 37:
 - i) a mandatory term of imprisonment of two (2) years consecutive to any sentence imposed on Count 11;
 - ii) a fine not to exceed the greater of \$250,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;
 - iii) a mandatory term of supervised release of not more than one (1) year that must follow any term of imprisonment (If the defendant serves

a term of imprisonment, is then released, and violates the conditions of supervised release, the defendant's supervised release could be revoked -- even on the last day of the term -- and the defendant could be returned to another period of incarceration and a new term of supervised release.);

- iv) a mandatory special assessment of \$100; and
- v) restitution, including mandatory restitution, as may be ordered by the Court.

5. The parties are aware that the Court may accept or reject this plea agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Fed. R. Crim. P. 11(c)(5), if the Court rejects this plea agreement, the defendant shall have the right to withdraw his plea of guilty.

6. The United States hereby expressly reserves the right to make known to the United States Probation Office and to the Court, for inclusion in the presentence report prepared pursuant to Rule 32, Fed. R. Crim. P., any information that the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

7. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the defendant agrees that, upon the defendant's signing of this plea agreement, the facts that the defendant has admitted under this plea agreement as set forth below, as well as any facts to which the defendant admits in open court at the defendant's plea hearing, shall be admissible against the defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the defendant expressly waives the defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the defendant admits in conjunction with this plea agreement.

RESTITUTION

8. The parties agree that, as part of the defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. The defendant agrees and acknowledges that, as part of the defendant's sentence, the Court is not limited to ordering restitution only for the amounts involved in the particular offenses to which the defendant is entering a plea of guilty, but may and should order restitution resulting from all of the defendant's criminal conduct related to this case. The parties further agree that the amount of restitution will be determined by the Court after the submission of evidence and argument by the parties.

9. The defendant agrees that this agreement or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties, owed to the Internal Revenue Service ("IRS") for the time periods covered by this agreement or any other time period.

10. The defendant agrees that, unless the Director of the Administrative Office of the United States Courts directs him otherwise, all payments made pursuant to the Court's restitution order are to be sent only to the Clerk of the Court for the District of New Mexico. With each payment to the Clerk of the Court made pursuant to the Court's restitution order, the defendant will provide the following information:

- a. The defendant's name and Social Security number;
- b. The District Court docket number assigned to this case;
- c. Tax year(s) or period(s) for which restitution has been ordered; and
- d. A statement that the payment is being submitted pursuant to the District Court's restitution order.

11. The defendant agrees to include a request that the Clerk of the Court send the information, along with the defendant's payments, to the IRS at the following address:

IRS-RACS
Attention: Mail Stop 6261, Restitution
333 W. Pershing Avenue
Kansas City, MO 64108

The defendant also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at that address.

DEFENDANT'S ADMISSION OF FACTS

12. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offenses to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

- a. I am a tax preparer in Silver City, New Mexico, and have been preparing tax returns for several years. Beginning in early 2007 and continuing until early 2010, I prepared and electronically filed a number of false federal income tax returns with the IRS. I prepared and filed those returns in Silver City. I would often use the identifying information of individuals -- their names, dates of births, and Social Security numbers -- on those tax returns, without the permission or knowledge of those individuals. Some of the identifying information I had received because I had

previously prepared tax returns for those individuals when they were clients of mine as a tax preparer.

- b. To disguise the source of the false tax returns, I used an anonymizer, which masks the true Internet Protocol address ("IP address") assigned to a computer on the Internet by routing the computer's access through another, random IP address.
- c. I made up most of the information on the false returns I filed, making the returns appear to be legitimate tax returns. These returns claimed tax refunds from the United States Treasury and indicated that the refunds should be deposited into various bank accounts that I had access to or onto prepaid debit cards that I possessed. I kept a percentage of the money I received from the refunds I was able to fraudulently obtain and used it for personal purposes.
- d. Among the false returns I prepared and filed was a federal income tax return in the name of "L.C." I prepared a false return using her name, date of birth, and Social Security number, and on January 30, 2008, I electronically filed that return with the IRS from Silver City, within the District of New Mexico. That return included false information that I made up, including false income information, false federal income tax withholding information, and false Schedule A deductions, and based on that false information it fraudulently claimed a tax refund from the United States in the amount of \$7,659. I knew that neither I nor L.C. was entitled to that refund amount. I am aware that the tax return traveled through interstate wires to an IRS service center outside the state of New Mexico in order to be processed by the IRS. L.C. was not aware of the tax return I had filed in her name and had not given me permission to use her identifying information to file a return in her name. I was aware that L.C.

was a real person. The IRS paid a refund based upon this tax return and I kept the money.

13. By signing this agreement, the defendant admits that there is a factual basis for each element of the crimes to which the defendant will plead guilty. The defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

14. The United States and the defendant stipulate as follows:

a. The defendant and the United States agree, pursuant to Fed. R. Crim. P. 11(c)(1)(C) and U.S.S.G. § 6B1.2(c), that the appropriate sentence in this case is 48 months imprisonment. The remaining components of the defendant's sentence, including but not limited to any fine or restitution and the length and conditions of supervised release, shall be imposed by the Court after the presentation of evidence and/or argument by the parties.

b. The parties stipulate that, pursuant to U.S.S.G. ss 3E1.1, the defendant has clearly demonstrated a personal acceptance of responsibility for his offenses.

DEFENDANT'S OBLIGATIONS

15. The defendant understands the defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information, including, but not limited to defendant's true identity, citizenship status, and any prior criminal convictions. The defendant hereby represents that the defendant has complied with and will continue to comply with this obligation. The defendant understands that any misrepresentation with respect to the above obligations may be considered a breach of this plea agreement.

WAIVER OF APPEAL RIGHTS

16. The defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal this conviction and any sentence, including any fine, at or under the maximum statutory penalty authorized by law. In addition, the defendant agrees to waive any collateral attack to this conviction pursuant to 28 U.S.C. § 2255, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

GOVERNMENT'S AGREEMENT

17. Provided that the defendant fulfills the defendant's obligations as set out above, the United States agrees that it will move to dismiss the outstanding counts of the Indictment against the defendant at the time of imposition of sentence, and that it will not bring additional criminal charges against the defendant arising out of the facts forming the basis of the present Indictment, to include other potentially false and fraudulent tax returns filed by the Defendant as part of the scheme described in the Indictment or referenced in any discovery or pleadings in this case.

18. This agreement is limited to the United States Attorney's Office for the District of New Mexico and to the United States Department of Justice, Tax Division, and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

19. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the Court will impose.

VIOLATION OF PLEA AGREEMENT

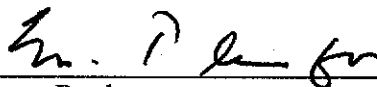
20. The defendant understands and agrees that if the defendant or the defendant's attorney violates any provision of this plea agreement, the United States may declare this plea agreement null and void, and the defendant will thereafter be subject to prosecution for any criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, and obstruction of justice, and any other crime committed by the defendant during prosecution of this case.

ENTIRETY OF AGREEMENT

22. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the defendant and an attorney for the United States.

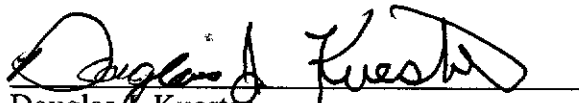
AGREED TO AND SIGNED this 11th day of May, 2012.

KENNETH J. GONZALES
United States Attorney

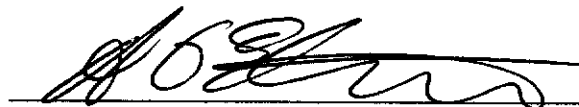


Jason Poole
Trial Attorney
U.S. Department of Justice, Tax Division
Southern Criminal Enforcement Section
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This agreement has been read to me in the language I understand best, and I have carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


Douglas J. Kuester
Defendant

I am the attorney for Douglas J. Kuester. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.


Aric Elsenheimer
Attorney for Defendant