

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

PLEA AGREEMENT

v.

DYJUAN TATRO,
a/k/a Dy,

Criminal Action No.:
09-CR-578 (GLS)

Defendant.

RICHARD S. HARTUNIAN, United States Attorney for the Northern District of New York (by Assistant United States Attorney Carlos A. Moreno, appearing) and DYJUAN TATRO, a/k/a Dy (by Lawrence Elmen, Esq., appearing) hereby enter into the following Plea Agreement regarding the disposition of certain criminal charges against the Defendant:

1. **Defendant's Promises.** In return for the consideration described below, DYJUAN TATRO agrees as follows:

a. The Defendant will withdraw his previous plea of "Not Guilty" and enter a plea of "Guilty" to Count 1 of Indictment 09-CR-578 (GLS), charging him with a RICO conspiracy in violation of 18 U.S.C. § 1962(d).

b. The Defendant will also admit the allegation contained in the section of the Indictment titled "**Concerning Count One**", which, among other things,

alleges that said RICO conspiracy included an agreement to possess with intent to distribute, and to distribute, 50 or more grams of cocaine base (crack).

2. **Potential Penalties.** DYJUAN TATRO understands that his guilty plea to Count 1 of Indictment 09-CR-578 (GLS) will subject him to the following potential penalties:

- a. **Maximum term of imprisonment:** Life. (18 U.S.C. § 1963(a), 21 U.S.C. §841(a)(1) and 21 U.S.C. §841(b)(1)(A))
- b. **Mandatory minimum term of imprisonment:** None. (18 U.S.C. § 1963(a))
- c. **Supervised Release:** In addition to imposing any other penalty,

the sentencing Court may require the Defendant to serve a term of supervised release of up to 5 years, to begin at the expiration of any term of imprisonment imposed upon him. (18 U.S.C. § 3583) Should the Defendant be placed on a term of supervised release and subsequently violate any of the terms and conditions of that release before the expiration of such term, he may be sentenced to up to 5 years imprisonment in addition to any prison term previously imposed upon him and in addition to the statutory maximum term of imprisonment set forth above. Under some circumstances, the Court may also extend the term of supervised release, and it may modify, reduce, or enlarge the conditions of such release.

d. **Maximum fine:** The greater of \$250,000, or not more than twice the gross profits, or other proceeds, derived from the offense. (18 U.S.C. §1963(a) and 18 U.S.C. § 3571(b)(3))

e. **Special Assessment:** The Defendant will be required to pay an assessment of \$100 which is due and payable at the time of sentencing. (18 U.S.C. § 3013) The Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100 payable to the U.S. District Court at the time of his sentencing.

f. **Interest and penalties:** Interest and penalties may accrue, as a matter of law, on any unpaid financial obligation imposed as part of the Defendant's sentence, from as early as the date of sentencing.

g. **Collateral Consequences:** Conviction of a felony under this Agreement may result in the loss of certain civil rights, including, but not limited to, the right to vote or the right to possess firearms.

h. **Forfeiture:** The sentence imposed by the Court will include an order of forfeiture. (18 U.S.C. §1963(a)).

3. **Sentencing Factors.** DYJUAN TATRO understands that the sentence to be imposed upon him is within the discretion of the sentencing Court, subject to the statutory maximum penalties and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines promulgated thereunder, as modified by *United States v. Booker*, 543 U.S. 220 (2005). While the Court is not ultimately bound to

impose a sentence within the applicable Sentencing Guidelines range, it must take into account the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a). The United States Attorney's Office will ask the Court to apply the Guidelines in effect on the date of sentencing, pursuant to 18 U.S.C. § 3553(a)(4)(A)(ii) and U.S.S.G. § 1B1.11, even if the application of the Guidelines in effect at the time the Defendant committed the offense would generate a lower sentencing range.

4. **Elements of the Offense.** DYJUAN TATRO understands the following legal elements of the offense stated in Count 1 of Indictment 09-CR-578 (GLS) and admits that those elements accurately describe his criminal conduct:

A. (RICO Conspiracy):

- i.* A conspiracy or agreement, as detailed in Count 1 of Indictment 09-CR-578 (GLS), existed between two or more persons to participate in the affairs of an enterprise through a pattern of racketeering activity;
- ii.* The defendant knowingly and willfully joined or became a member of the conspiracy or agreement with knowledge of its purpose;
- iii.* The defendant either agreed to personally commit two racketeering acts in furtherance of the conspiracy, or agreed to participate in the conduct of the enterprise with the knowledge and intent that other members of the conspiracy would commit at least two racketeering acts as detailed in the Indictment in furtherance of the enterprise;
- iv.* The enterprise is or would be engaged in, or its activities would affect, interstate or foreign commerce.

5. **Factual Basis for the Plea.** **DYJUAN TATRO** admits the following facts, which establish his guilt with respect to the offense stated in Count 1 of Indictment 09-CR-578 (GLS):

a. **DYJUAN TATRO** did knowingly and intentionally, in some way or manner, come to a mutual understanding with others to try to accomplish a common and unlawful plan, namely: to be a member of the Original Gangsta Killers, Orange Gambino Killers, "OGK" or Downtown gang, (the enterprise) and to participate in the affairs of the "enterprise." The Defendant also combined, conspired, confederated, and agreed with other persons to possess with intent to distribute and distribute cocaine base (crack cocaine), cocaine, and marijuana.

b. Beginning in about 2000, the exact date being unknown, and continuing thereafter up to the date of the indictment, **TATRO** was a member of a criminal organization in Albany, New York, originally known as the Black Gangstas (BGs) and later known as the Original Gansta Killers, Orange Gambino Killers, OGK, or Downtown gang. **TATRO** and other OGK gang members and associates operated within and near a specifically defined geographic area known as the Downtown section of the City of Albany, New York. Members of the OGK gang, including **TATRO**, routinely engaged in criminal activities which included crack cocaine, cocaine, and marijuana trafficking, possession of firearms, and acts of assault, robbery and attempted murder against rival gang members within the Northern District of New York. While associated with this gang, **TATRO** was a narcotics distributor who distributed cocaine base (crack) to others. Members of the OGK gang, including **TATRO**, routinely

engaged in criminal activities in the Northern District of New York, including (1) trafficking of cocaine base (crack), cocaine, and marijuana. **TATRO** and other gang members routinely engaged in the possession of firearms, and acts of assault, robbery, and attempted murder against rival gang members.

c. The OGK gang, including its leadership, members, and associates, constitute a group of individuals associated in fact. This group was an ongoing organization whose members functioned as a continuing unit for the common purposes of achieving its objectives.

d. OGK gang members, including **TATRO**, routinely utilized telephones to conduct narcotics-related business, and other gang members also used telephones and wrote letters to one another to communicate about other gang related matters. Some of these gang related matters included the following: the status and activities of other OGK gang members; the status and activities of rival gang members and the status of law enforcement activities within their geographic area of operation.

e. OGK gang members communicated about gang related business by written correspondence that, among other subjects, at times encouraged continued gang membership, continued participation in narcotics' dealing, and acts of violence against rival gang members.

f. In furtherance of his gang related and narcotics distribution activities, **TATRO** traveled out of state, purchased firearms, and transported the firearms back to the Albany area to be shared by OGK gang members. In addition, while in prison, **TATRO** utilized telephone facilities to request the assistance from other

gang members. Also, **TATRO** regularly sold, and possessed with intent to sell, cocaine base (crack cocaine) at various times during the course of the conspiracy. For example:

i. On or about February 6, 2004, in the vicinity of View Street, Albany, New York, **TATRO** possessed more than 500 milligrams of cocaine base (crack cocaine);

ii. On or about June 13, 2004, in the vicinity of Teunis Street, Albany, New York, **TATRO** possessed for sale 11 individually wrapped pieces of cocaine base (crack cocaine).

g. In order to effect the objects of the conspiracy, **TATRO** also engaged in acts of violence. For example:

i. On or about October 5, 2002, in the vicinity of Delaware Avenue, Albany, New York, **TATRO**, together with another co-conspirator assaulted another person;

ii. On or about October 16, 2003, in the vicinity of Clinton Avenue, Albany, New York, **TATRO**, together with other co-conspirators cut another person with a razor;

iii. On or about February 17, 2006, in the vicinity of Washington Avenue, **TATRO**, discharged a firearm at two rival gang members and wounded them.

h. **TATRO** admits that his involvement in the narcotics conspiracy, including his conduct and the reasonably foreseeable conduct of his co-conspirators in furtherance of their jointly undertaken conspiracy, involved the possession with intent to

distribute and distribution of more than 50 grams of cocaine base (crack cocaine). The Defendant's involvement in a conspiracy involving this quantity of crack and cocaine results in him facing a maximum sentence of Life.

i. The parties incorporate by reference, as further factual admissions by the Defendant, the stipulations as to sentencing factors and issues set forth in paragraph 9 below.

j. The Defendant understands that the sentencing Court may make factual finding with respect to any and all sentencing factors and issues, including those referenced in the United States Sentencing Guidelines, whether or not such factors or issues have been admitted by the Defendant or stipulated by the parties. In making those findings by a preponderance of the evidence, the Court may consider any reliable evidence, including hearsay. The Defendant agrees that his sentence may be determined based upon such judicial fact-finding.

6. **Use of Defendant's Admissions.** The Defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth above, in paragraph 5 , shall be admissible and useable against the Defendant by the United States in any subsequent criminal or civil proceeding, even if he fails to enter a guilty plea pursuant to this Agreement, or if such a guilty plea is later vacated or withdrawn. The Defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent these rules are inconsistent with this paragraph or with this Agreement generally.

7. **Collection of Financial Obligations.** In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees fully to disclose all assets in which he has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party.

a. The Defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The Defendant promises that his financial statement and disclosures will be complete, accurate and truthful.

b. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on him in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court.

8. **Government's Promises and Reservation of Rights.** In exchange for the plea of guilty to Count 1 of Indictment 09-CR-578 (GLS) by **DYJUAN TATRO** and his continuing compliance with all of the terms of this Plea Agreement, the United States Attorney's Office for the Northern District of New York agrees as follows:

a. At the time of sentencing, it will move to dismiss the remaining charge against the Defendant in Indictment 09-CR-578 (GLS) for so long as the guilty plea and sentence on Count 1 of Indictment 09-CR578 (GLS) remain in effect.

b. It will bring no further federal criminal charges against the Defendant relating to the conduct in the Northern District of New York, committed

before the date of this Agreement, which is described in Count 1 of Indictment 09-CR-578 (GLS) and the Defendant's admissions in paragraph 5 above for so long as the guilty plea and sentence on Count 1 of Indictment 09-CR-578 (GLS) remain in effect.

c. If the guilty plea to Count 1 of Indictment 09-CR-578 (GLS) is later withdrawn or vacated, the charges dismissed or not prosecuted pursuant to this Agreement may be filed and prosecuted, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the reinstatement of any such charges. The Defendant waives any defense or objection to the reinstatement and prosecution of any such charges that are not time-barred by the applicable statute of limitations as of the date of this Agreement.

d. This agreement does not prevent the government from either recommending a specific sentence within the applicable Guidelines range as determined by the Court or, if the government deems appropriate, recommending that the Court impose a sentence above that range.

e. The U.S. Attorney's Office reserves the right to advise the sentencing Court and the Probation Office of any information, in aggravation or mitigation of sentencing, whether or not encompassed within Count 1 of Indictment 09-CR-578 (GLS), subject only to the limitations imposed by U.S.S.G. § 1B1.8.

9. **Stipulations.** The U.S. Attorney's Office and **DYJUAN TATRO** agree to stipulate at sentencing to the statements set forth in the subparagraphs below, subject to the caveats set forth in the subparagraphs following.

a. **TATRO** is accountable for more than 50 grams of cocaine base (crack), based upon the relevant conduct of this Defendant. This amount is readily provable by the United States, without consideration of information protected by U.S.S.G. § 1B1.8.

b. The Parties agree that **TATRO'S** offense level will be increased by 2 levels pursuant to U.S.S.G. §2D1.1(b)(1).

c. The U.S. Attorney's Office will recommend a 2-level downward adjustment to the applicable Sentencing Guidelines range if, (A) through the time of sentencing, the Defendant clearly demonstrates "acceptance of responsibility" to the satisfaction of the Government for the offenses of conviction, as defined in U.S.S.G. § 3E1.1(a); and (B) the Government does not learn of new evidence of conduct committed by the Defendant, either before or after his guilty plea, that constitutes "obstruction of justice," as defined in U.S.S.G. § 3C1.1. If the Defendant clearly demonstrates "acceptance of responsibility" to the satisfaction of the Government and promptly enters a plea of guilty, thereby permitting the U.S. Attorney's Office to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently, the U.S. Attorney's Office will move for an additional downward adjustment of 1 level, if the Defendant otherwise qualifies under U.S.S.G. § 3E1.1(b).

d. Until the Probation Office has fully investigated the Defendant's criminal history, it is not possible to predict with certainty the Defendant's Criminal History Category and, in some cases, his total offense level. The Defendant understands that, under certain circumstances, his criminal history may affect his base

offense level under the Sentencing Guidelines. The parties agree that, if the presentence investigation reveals that the Defendant's criminal history may support a base offense level different than that stipulated in this Agreement, the parties will be released from their stipulation as to the base offense level and may advocate with respect to how the Defendant's criminal history affects his base offense level.

e. It is understood that these stipulations cannot and do not bind the sentencing Court, which may make independent factual findings by a preponderance of the evidence and may reject any or all stipulations between the parties. The rejection of any or all stipulations by the Court will not be the basis for the withdrawal of a plea of guilty by the Defendant, and will not release either the U.S. Attorney's Office or the Defendant from any other portion of this Agreement, including any other stipulations agreed to herein.

f. No stipulation in this Agreement shall affect the parties' respective obligations to ensure that, to the extent possible, the Court has all information pertinent to its determination of an appropriate sentence. The parties may provide any such factual information to the Probation Office and/or to the Court, without limitation, before or after the completion of the Presentence Investigation Report, and agree that the submission of such information shall not be deemed "advocacy" in violation of any stipulation in this Agreement.

g. To the extent the stipulations above do not reflect agreement on any factor or issue potentially affecting the applicable advisory Sentencing Guidelines range, the Defendant and the U.S. Attorney's Office each expressly reserves the right to advocate if, and how, any such factor or issue would apply under the Sentencing

Guidelines.

10. **Preliminary Sentencing Guidelines Estimates.** The Defendant understands that any estimate of the Defendant's total offense level, criminal history score, and/or Sentencing Guidelines range provided before sentencing is preliminary and is not binding on the parties to this Agreement, the Probation Office, or the Court.

11. **Remedies for Breach.** Should the U.S. Attorney's Office determine that the Defendant, after the date of this Plea Agreement, (i) has committed any further crime or violated any condition of release or supervision imposed by the Court (whether or not charged); (ii) has given false, incomplete, or misleading testimony or information; or (iii) has otherwise breached any condition of this Agreement, the U.S. Attorney's Office will have the right, in its sole discretion, to void this Agreement, in whole or in part. In the event of any such breach, the Defendant will not be permitted to withdraw his guilty plea under this Agreement, but will thereafter be subject to prosecution for any federal criminal violation of which the U.S. Attorney's Office has knowledge, including but not limited to charges that this Office has agreed to dismiss or has agreed not to prosecute pursuant to this Agreement.

a. The Defendant waives any defense or objection to the commencement of any such prosecution that is not time-barred by the applicable statute of limitations as of the date of this Agreement, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement

of any such prosecution.

b. Moreover, in connection with any such prosecution, any information, statement, or testimony provided by the Defendant, and all leads derived therefrom, may be used against him, without limitation. The Defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent these rules are inconsistent with this paragraph or with this Agreement generally.

12. **Limitations on Agreement.** This Agreement is limited to the U.S. Attorney's Office for the Northern District of New York and cannot bind other federal, state or local prosecuting authorities. Furthermore, this Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the Defendant, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability or proceedings relating to the forfeiture of assets.

13. **Agreement Not Binding on the Court.** The Court is neither a party to, nor bound by this Agreement. The Court may accept or reject this Plea Agreement or defer a decision until it has considered the Presentence Investigation Report prepared by the U.S. Probation Office.

a. If the Court rejects the provisions of this Agreement permitting the Defendant to plead guilty to 18 U.S.C. § 1962(d) in satisfaction of other charges, which provisions were negotiated pursuant to Fed. R. Crim. P. 11(c)(1)(A), the Court will

afford the Defendant an opportunity to withdraw his plea of guilty prior to sentencing, pursuant to Fed. R. Crim. P. 11(c)(5) & (d).

b. The Court is not bound by any recommendation, stipulation, or request made by the parties, pursuant to Fed. R. Crim. P. 11(c)(1)(B), as to the appropriate sentence, and the Defendant may not withdraw his plea of guilty if the Court declines to follow any such recommendation, stipulation, or request. The U.S. Attorney's Office reserves the right to support and defend, in connection with any post-sentencing proceedings, any decision the Court may make with regard to the Defendant's sentence, whether or not such decision is consistent with this Office's recommendations, stipulations, or requests.

14. **Waiver of Defendant's Rights.** DYJUAN TATRO acknowledges that he has read each of the provisions of the entire Plea Agreement with the assistance of counsel and understands its provisions. The Defendant further acknowledges that his plea is voluntary and did not result from any force, threat, or promises, other than the promises in this Plea Agreement.

a. The Defendant understands his right to assistance of counsel at every stage of the proceeding and has discussed his constitutional and other rights with defense counsel. The Defendant understands that by entering a plea of guilty, he will be giving up his rights (i) to be presumed innocent until proven guilty beyond a reasonable doubt; (ii) to plead not guilty; (iii) to trial by jury; (iv) to confront, cross-examine, and compel the attendance of witnesses at trial; (v) to present evidence in his defense; and (vi) to remain silent and refuse to be a witness against himself by

asserting the privilege against self-incrimination.

b. The Defendant has been advised by defense counsel of the nature of the charge to which he is entering a guilty plea and the nature and range of the possible sentence. The Defendant understands the sentencing Court's obligation to consider the United States Sentencing Guidelines, as explained further in paragraph 3 above, and the Court's discretion to depart from those Guidelines under some circumstances or otherwise to impose a reasonable sentence outside of the applicable Sentencing Guidelines range.

15. **Waiver of Appeal and Collateral Attack.** **DYJUAN TATRO**

acknowledges that, after consultation with defense counsel, he fully understands the extent of his rights to appeal, and/or to collaterally attack the conviction and sentence in this case. The Defendant waives any and all rights, including those conferred by 18 U.S.C. § 3742 and/or 28 U.S.C. § 2255, to appeal or collaterally attack his conviction and any sentence of imprisonment of 175 months or less, including any related issues with respect to the establishment of the advisory Sentencing Guidelines range or the reasonableness of the sentence imposed. The Defendant acknowledges that the number of months specified above is not a promise of any particular sentence and is not binding on the Court. The Defendant agrees that, should the sentence imposed exceed 175 months, this would not permit him to withdraw his guilty plea or to appeal or collaterally attack his conviction, but would merely allow the Defendant to appeal or collaterally attack the sentence imposed by the Court, to the extent permitted by 18 U.S.C. § 3742 and/or 28 U.S.C. § 2255.

16. **Memorialization of Agreement.** No promises, agreements or conditions other than those set forth in this Agreement will be effective unless memorialized in writing and signed by all parties or confirmed on the record before the Court. This Agreement, to become effective, must be signed by all of the parties listed below.

RICHARD S. HARTUNIAN
United States Attorney
Northern District of New York

Dated: December 17, 2010

By:



Carlos A. Moreno
Assistant United States Attorney
Bar Roll No. 105079

Dated: December 17, 2010



DYJUAN TATRO
Defendant

Dated: December 17, 2010



Lawrence Elmen, Esq.
Attorney for **DYJUAN TATRO**
Bar Roll No. 512330