



U.S. Department of Justice

ORIGINAL

United States Attorney  
District of New Jersey

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Newark, NJ 07102

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SBK/EL/PL AGR  
2009R00080

November 20, 2009

BY ELECTRONIC MAIL

Christopher O'Malley, Esq.  
Assistant Federal Public Defender  
840 Cooper St., Suite 350  
Camden, New Jersey 08102

Re: United States v. Albert Gonzalez, 09-626 (JBS)  
Plea Agreement

Dear Mr. O'Malley:

This letter sets forth the plea agreement between your client, Albert Gonzalez, and the United States Attorney for the District of New Jersey and the Criminal Division of the United States Department of Justice ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Albert Gonzalez to Counts 1 and 2 of the Indictment, Criminal Number 09-626, that charges him with conspiracy to gain unauthorized access to computers, contrary to 18 U.S.C. § 1030(a)(2), (a)(4), & (a)(5)(A)(i), in violation of 18 U.S.C. § 371 (Count 1), and conspiracy to commit wire fraud in a manner affecting financial institutions (Count 2), contrary to 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1349, both offenses having been committed while Albert Gonzalez was on pre-trial release from the United States District Court for the District of New Jersey, in violation of 18 U.S.C. § 3147. If Albert Gonzalez enters a guilty plea, is sentenced on these charges and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against him for his involvement with others, between in or about October 2006 and in or about May 2008, in a conspiracy to gain unauthorized access to computer servers at Heartland Payment Systems, Inc.; 7-11, Inc.; Hannaford Brothers, Inc., and the two companies identified in the Indictment as Company A and Company B, and to steal from those companies, for distribution and sale, credit and debit card numbers issued by

financial institutions and the personal identifying information corresponding to those credit and debit card numbers. But if a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, Mr. Gonzalez agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by him may be commenced against him, notwithstanding the expiration of the limitations period after he signs the agreement.

### Sentencing

The violation of 18 U.S.C. § 371 - conspiracy to gain unauthorized access to computers - to which Albert Gonzalez agrees to plead guilty carries a statutory maximum prison sentence of 5 years and a statutory maximum fine equal to the greatest of: (1) \$250,000 (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. The violation of 18 U.S.C. § 1349 - wire fraud conspiracy affecting financial institutions - to which Albert Gonzalez agrees to plead guilty carries a statutory maximum prison sentence of 30 years and a statutory maximum fine equal to the greatest of: (1) \$1,000,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. The sentence on each count may run consecutively. Fines imposed by the sentencing judge may be subject to the payment of interest.

18 U.S.C. § 3147 carries a sentencing enhancement of a maximum of 10 years' imprisonment imposed consecutively to any other sentence of imprisonment imposed in this matter where the offense was committed while Albert Gonzalez was released on bond pursuant to chapter 207 of Title 18 of the United States Code. See 18 U.S.C. § 3147(1).

The sentence to be imposed upon Albert Gonzalez is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Albert Gonzalez ultimately will receive.

Further, in addition to imposing any other penalty on Albert Gonzalez, the sentencing judge: (1) will order him to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order him to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order him, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) may require him to serve terms of supervised release of not more than three years for the conviction on Count 1, and not more than five years for the conviction on Count 2, which if imposed would run concurrently and would begin at the expiration of any term of imprisonment imposed. Should Mr. Gonzalez be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, he may be sentenced to not more than two years' imprisonment on Count 1 and not more than three years' imprisonment on Count 2 in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to additional terms of supervised release.

In addition, Mr. Gonzalez agrees to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying that offense, which is to be paid to those entities that suffered losses in connection with the computer intrusions and fraudulent credit and debit card activities in which Mr. Gonzalez conspired to participate.

#### Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Mr. Gonzalez by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Mr. Gonzalez's activities and relevant conduct with respect to this case.

#### Stipulations

This Office and Mr. Gonzalez agree to stipulate at the time of the plea to the statements set forth in Schedule A hereto. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the

parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Mr. Gonzalez from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

#### Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Mr. Gonzalez waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

#### Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, including the District of Massachusetts, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Mr. Gonzalez. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service ("IRS")), or any third party from initiating or prosecuting any civil proceeding against Mr. Gonzalez.

#### No Other Promises

This agreement constitutes the plea agreement between Mr. Gonzalez and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions

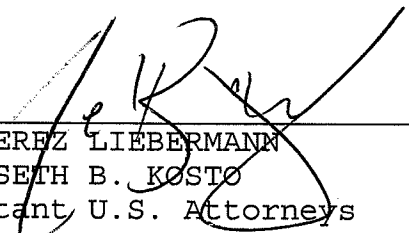
have been made or will be made unless set forth in writing and signed by the parties.

Transfer for Plea and Sentencing

This Office will agree to the transfer of this matter, pursuant to Fed. R. Crim. P. 20, to the United States District Court for the District of Massachusetts for plea and sentencing proceedings in the event that defendant so requests and the United States Attorney for the District of Massachusetts agrees to such a transfer.

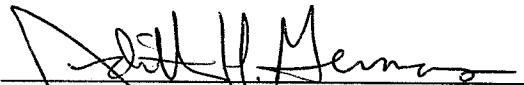
Very truly yours,

PAUL J. FISHMAN  
United States Attorney

  
By: EREZ LIEBERMANN  
SETH B. KOSTO  
Assistant U.S. Attorneys

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KIMBERLY KIEFER PERETTI  
Senior Counsel  
Computer Crime and  
Intellectual Property Section  
Criminal Division  
Department of Justice

APPROVED:

  
\_\_\_\_\_  
JUDITH H. GERMANO  
Chief, Commercial Crimes Unit  
Criminal Division

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Very truly yours,

PAUL J. FISHMAN  
United States Attorney

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By: EREZ LIEBERMANN  
SETH B. KOSTO  
Assistant U.S. Attorneys



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KIMBERLY KIEFER PERETTI  
Senior Counsel  
Computer Crime and  
Intellectual Property Section  
Criminal Division  
Department of Justice

APPROVED:

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JUDITH H. GERMANO  
Chief, Commercial Crimes Unit  
Criminal Division

I have received this letter from my attorney, Christopher O'Malley, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:

  
\_\_\_\_\_  
Albert Gonzalez

Date: 11/30/09

  
\_\_\_\_\_  
Christopher O'Malley, Esq.

Date: 11.30.09

Plea Agreement With Albert Gonzalez

Schedule A

1. This Office and Albert Gonzalez agree to stipulate to the following facts:
- a. Between at least as early as October 2006 and May 2008, defendant Gonzalez and the individual identified in the Indictment as "P.T." (hereinafter "P.T.") identified potential corporate victims by reviewing lists of Fortune 500 companies.
  - b. During that time, defendant Gonzalez and P.T. traveled (or had others travel on their behalf) to retail stores to explore the types of point of sale systems used in those stores and to understand their potential vulnerabilities.
  - c. Defendant Gonzalez leased or otherwise controlled the Ukranian Server, the Latvian Server, and the ESTHost Server defined in the Indictment.
  - d. Defendant Gonzalez gave P.T. access to certain Hacking Platforms and instructed P.T. to encrypt the Hacking Platforms and disable logging functions on them in order to prevent the hacking activities that would take place on those servers from being discovered.
  - e. Defendant Gonzalez gave access to the Hacking Platforms that he controlled to Hacker 1 and Hacker 2 identified in the Indictment, among others, knowing that Hacker 1 and Hacker 2 would use those servers to store malware and launch attacks against corporate victims.
  - f. Defendant Gonzalez controlled the "S" directory of the Ukranian Server.
  - g. Malware used against Heartland, Company A, and Company B matched malware found in the "S" directory of the Ukranian Server.
  - h. Defendant Gonzalez instructed P.T. to modify malware used in the attacks on Heartland and Company A to connect to IP addresses that Gonzalez provided him.
  - i. Defendant Gonzalez and P.T. tested malware by running multiple anti-virus programs in an attempt to ascertain if the programs detected the malware.



- j. Defendant Gonzalez knew that Hacker 1 and Hacker 2 gained unauthorized access to Hannaford Brothers through a related company's servers.
- k. Defendant Gonzalez engaged in instant messaging with Hacker 1 and Hacker 2 before, during, and after hacks into corporate victims, including a discussion in which one of the coconspirators stated "planning my second phase against Hannaford", and another in which one of the coconspirators stated that "[C]ore still hasn't downloaded that [Company B] sh-t."
- l. On or about November 6, 2007, defendant Gonzalez transferred a computer file to the Ukranian Server named "sqlz.txt" that contained information taken without authorization from Company A's computer network.
- m. Defendant Gonzalez was aware that Hacker 1 and Hacker 2 were attempting to access Heartland Payment Systems between in or about December 2007 and in or about January 2008.
- n. Between in or about August 2007 and in or about November 2007, HACKER 1 and HACKER 2, with Gonzalez's knowledge, gained unauthorized access to 7-Eleven, Inc.'s servers through 7-Eleven's public-facing Internet site, and then leveraged that access into servers supporting ATM terminals located in 7-Eleven stores. This access caused 7-Eleven, Inc., on or about November 9, 2007, to disable its public-facing Internet site to disrupt the unauthorized access.
- o. In or about January 2008, defendant Gonzalez sent P.T. the SQL Injection String that P.T. used to gain unauthorized access to Company B's servers.
- p. On or about April 22, 2008, defendant Gonzalez modified a file on the Ukranian Server that contained computer log data stolen from Company B's computer network.
- q. It was foreseeable to defendant Gonzalez that Hacker 1 and Hacker 2 would use malware to gather and steal credit and debit card numbers and associated Card Data from the Corporate Victims identified in the Indictment, including tens of millions of credit and debit card numbers.
- r. It was foreseeable to defendant Gonzalez that the theft of credit and debit card numbers and associated Card

Data in the possession of the Corporate Victims identified in the Indictment would affect more than 250 financial institutions.

- s. It was foreseeable to defendant Gonzalez that the losses resulting from unauthorized access into the servers of the Corporate Victims' identified in the Indictment would exceed \$20 million.
- t. Defendant Gonzalez conspired to gain unauthorized access to the Corporate Victims identified in the Indictment while on pretrial release from the District of New Jersey.

### Sentencing

2. This Office will not seek a term of imprisonment higher than 300 months (25 years) on Count 2. Defendant reserves the right to seek a lower sentence, subject to the limitation in paragraph 3 below.

3. Albert Gonzalez will not seek a term of imprisonment lower than 204 months (17 years). This Office reserves the right to seek a higher sentence, subject to the limitation in paragraph 2 above.

4. The parties agree that the sentences imposed on Counts 1 and 2 should run concurrently, and that this Office will not seek sentences that run consecutively on Counts 1 and 2. This Office further agrees that it will not seek a consecutive sentence for Albert Gonzalez's violation of 18 U.S.C. § 3147 that results in a cumulative sentence of more than 25 years' imprisonment.

5. The parties agree that the sentence imposed in this matter should run concurrently with such sentences as may be imposed in United States v. Albert Gonzalez, Criminal Dkt. No. 09CR1026-PBS, pending in the United States District Court for the District of Massachusetts, and United States v. Albert Gonzalez, Criminal Dkt. No. 08CR10223-PBS, pending in the United States District Court for the District of Massachusetts, and this Office will not seek sentences that run consecutively to sentences imposed in those cases.

### Waiver of Appeal and Collateral Attack

6. Albert Gonzalez knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence

imposed by the sentencing court if that sentence of imprisonment does not exceed 300 months (25 years). This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence of imprisonment is at least 204 months (17 years). The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

7. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.