

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 vs.) No. 09 CR 736
) Judge Samuel Der-Yeghiayan
)
 DAVOUD BANIAMERI,)
 also known as “Davoud Baniamery,”)
 “David Baniameri,” and)
 “David Baniamery”)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant DAVOUD BANIAMERI, and his attorney, THOMAS BRANDSTRADER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The superseding indictment in this case charges defendant with: (a) conspiring to export goods and technology to Iran, in violation of 50 U.S.C. §§ 1705(a) and (c), and 31 C.F.R. § 560.204 (Count One); (b) exporting goods and technology from the United States to Iran, in violation of 50 U.S.C. §§ 1705(a) and (c), and 31 C.F.R. §§ 560.203 and 560.204 (Count Two); (c) attempting to export goods and technology from the United States to Iran, in violation of 50 U.S.C. §§ 1705(a) and (c), and 31 C.F.R. § 560.204 (Count Three); (d) conspiring to export defense articles on the United States Munitions List from the United States without a license, in violation of 22 U.S.C. § 2778 and 22 C.F.R. §§ 121.1, 123.1 &

127.1(a)(3), all in violation of 18 U.S.C. § 371 (Count Four); (e) attempting to export defense articles on the United States Munitions List from the United States without a license, in violation of 22 U.S.C. § 2778 and 22 C.F.R. § 127.1(a)(1) (Count Five); (f) conspiring to commit money laundering by transferring funds from outside of the United States to the United States for the purpose of exporting goods and technology from the United States to Iran, in violation of 18 U.S.C. §§ 1956(a)(2)(A) and (h) (Count Six); and (g) conspiring to commit money laundering by transferring funds from outside of the United States to the United States for the purpose of (i) exporting goods and technology from the United States to Iran and (ii) exporting defense articles on the United States Munitions List from the United States without a license, in violation of 18 U.S.C. §§ 1956(a)(2)(A) and (h) (Count Seven).

3. Defendant has read the charges against him contained in the superseding indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the superseding indictment: Count One, which charges defendant with conspiring to export goods and technology to Iran, in violation of 50 U.S.C. §§ 1705(a) and (c), and 31 C.F.R. § 560.204; and Count Five, which charges defendant with attempting to export defense articles on the United States Munitions List from the United States without a license, in violation of 22 U.S.C. § 2778 and 22 C.F.R. § 127.1(a)(1).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Five of the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. With respect to Count One of the superseding indictment: beginning no later than September 2008 and continuing until in or about September 2009, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant and co-defendant Syed Majid Mousavi knowingly and willfully agreed and conspired with each other, and with others known and unknown, to export and cause the exportation of goods from the United States of America to Iran, in violation of the embargo imposed upon that country by the United States, without having first obtained the required licenses and authorizations from the Office of Foreign Asset Control, United States Department of Treasury, in violation of Title 50, United States Code, Section 1705(a) and (c), and Title 31, Code of Federal Regulations, Parts 560.203 and 560.204.

b. With respect to Count Five of the superseding indictment: beginning in or about August 2009 and continuing until in or about September 2009, in the Northern District of Illinois, and elsewhere, defendant, co-defendant Andro Telemi, and co-defendant Syed Majid Mousavi knowingly and willfully attempted to export from the United States defense articles designated on the United States Munitions List, namely, ten connector adapters, without first having obtained the required license or other approval for such export;

in violation of Title 22, United States Code, Section 2778, and Title 22, Code of Federal Regulations, Section 127.1(a)(1).

c. More specifically, defendant BANIAMERI is an Iranian national with legal permanent residence in the United States, maintaining a residence and a business in California. Among other things, defendant BANIAMERI was in the business of exporting goods and technology from the United States. Co-defendant Telemi is a naturalized United States citizen from Iran residing in California. Co-defendant Mousavi is an Iranian citizen living in Iran. Co-defendant Mousavi is in the business of, among other things, importing goods and technology to Iran.

The Radio Test Kits

Sometime before October 10, 2008, co-defendant Mousavi contacted defendant BANIAMERI and requested that defendant BANIAMERI purchase and export radio test sets from the United States to Iran through Dubai, United Arab Emirates. Defendant BANIAMERI agreed, and, over the next two months, defendant BANIAMERI negotiated the purchase of three Marconi radio test kits from Company A, which was located in the Northern District of Illinois.

After negotiating the purchase of the radio test kits, defendant BANIAMERI forwarded the Company A invoice to co-defendant Mousavi to confirm the purchase and to request money to pay for those items. Co-defendant Mousavi then arranged for money to be transferred to Company A from financial institutions located in Iran through financial

institutions located in other countries. Co-defendant Mousavi then contacted defendant BANIAMERI to confirm that the payment had been sent to Company A.

After payment was received by Company A, defendant BANIAMERI arranged for the radio test kits to be shipped to him in California. Defendant BANIAMERI then repackaged the radio test kits and shipped them to his brother, Individual A, in Dubai, United Arab Emirates. Individual A then arranged, at defendant BANIAMERI's and co-defendant Mousavi's direction, to ship the radio test kits to co-defendant Mousavi in Iran.

At the time defendant BANIAMERI purchased and exported the radio test kits to Iran through Dubai, defendant BANIAMERI knew that he needed to obtain a license from the United States government to export the radio test kits to Iran. At no time did defendant BANIAMERI or anyone else obtain, or even attempt to obtain, such a license.

The TOW Missile Connector Adaptors

Sometime before August 10, 2009, co-defendant Mousavi contacted defendant BANIAMERI and requested that he purchase and export to Iran ten connector adaptors for the TOW and TOW2 missile systems. Defendant BANIAMERI agreed, and over the next couple of months, defendant BANIAMERI, co-defendant Telemi, and co-defendant Mousavi attempted to purchase ten connector adaptors from Company B, which was located in the Northern District of Illinois. Unbeknownst to defendant BANIAMERI, co-defendant Telemi, and co-defendant Mousavi, Company B was in fact a company controlled by law enforcement.

Between on or about August 10, 2009, and on or about August 17, 2009, defendant BANIAMERI engaged in negotiations, telephonically and via email, with Company B to purchase ten connector adaptors for approximately \$9,950. During this time, defendant BANIAMERI communicated with co-defendant Mousavi to ensure that he was purchasing the correct adaptors. Among other things, defendant BANIAMERI sent co-defendant Mousavi, via email, photographs of the connector adaptors. In addition, defendant BANIAMERI informed co-defendant Mousavi that they needed a license to export these items from the United States, stating in an email dated August 12, 2009: “Also only I can purchase these items, exporting those need permit, any way I am going to do something. Also these stupid people directly by email from Iran tried to purchase goods ... As I understand these connector adapters would use in the system and they are military parts in the U.S. Tell them if they wanted an aircraft it was easier!!!”

Defendant BANIAMERI enlisted the help of co-defendant Telemi in exporting these items to Dubai and then to Iran. To that end, on or about August 17, 2009, defendant BANIAMERI and co-defendant Telemi had Company B send a pro forma invoice to defendant Telemi’s email account. Then, on or about August 18, 2009, defendant BANIAMERI emailed co-defendant Mousavi co-defendant Telemi’s bank account information so that co-defendant Mousavi could arrange for the money for the connector adaptors to be wired into co-defendant Telemi’s account. After co-defendant Telemi’s bank refused to accept those funds, defendant BANIAMERI opened a bank account at Citibank for the purpose of obtaining the funds from co-defendant Mousavi.

Between on or about August 19, 2009, and on or about September 9, 2009, defendant BANIAMERI and co-defendant Telemi continued to negotiate the purchase of ten connector adaptors from Company B. During that time, defendant BANIAMERI and co-defendant Telemi communicated with representatives of Company B telephonically, via email, and in person on September 1, 2009, during which meeting, among other things, defendant BANIAMERI and co-defendant Telemi negotiated a \$9450 price for the ten connector adaptors.

On or about September 8, 2009, defendant BANIAMERI wired approximately \$2000 from his bank account to Company B's bank account located in the Northern District of Illinois as partial payment for the connector adaptors. Defendant BANIAMERI then arranged for co-defendant Telemi to pay the remaining balance on or about September 9, 2009, when co-defendant Telemi was scheduled to meet with representatives of Company B to take possession of the connector adaptors.

On or about September 9, 2009, at defendant BANIAMERI's direction, co-defendant Telemi met with representatives of Company B in California. During that meeting, co-defendant Telemi paid the remaining balance and took possession of the connector adaptors, intending to export them the following day to Dubai, for subsequent transshipment to Iran.

To further facilitate the export of the ten connector adaptors from the United States to Dubai and then to Iran, defendant BANINAMERI arranged to fly from the United States to Dubai on or about September 9, 2009, and then from Dubai to Iran a few days later.

At the time defendant BANIAMERI attempted to purchase and export the connector adaptors to Iran through Dubai, defendant BANIAMERI knew that he needed to obtain a license from the United States government to export the connector adaptors. At no time did defendant BANIAMERI or anyone else obtain, or even attempt to obtain, such a license.

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count One carries a maximum sentence of 10 years' imprisonment. Count One also carries a maximum fine of \$250,000. Defendant further understands that with respect to Count One the judge also may impose a term of supervised release of not more than three years.

b. Count Five carries a maximum sentence of 20 years' imprisonment. Count Five also carries a maximum fine of \$250,000. Defendant further understands that with respect to Count Five, the judge also may impose a term of supervised release of not more than three years.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty.

d. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 30 years' imprisonment. In addition, defendant is subject to a

total maximum fine of \$500,000, a period of supervised release, and special assessments totaling \$200.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2010 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the charge in Count One of the superseding indictment is 26, pursuant to Guideline §2M5.3(a).

ii. The base offense level for the charge in Count Five of the superseding indictment is 26, pursuant to Guideline §2M5.2(a)(1).

iii. Pursuant to Guideline § 3D1.2, Counts One and Five group because they involve substantially the same harm; therefore, the combined base offense level is 26.

iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

v. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 23, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 46 to 57 months' imprisonment, in addition to any supervised release the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant

shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. Each party is free to recommend whatever sentence it deems appropriate.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

13. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the superseding indictment, as well as the initial indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

14. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 09 CR 736.

15. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

16. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where

actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the superseding indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

17. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

18. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of

his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

19. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

20. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

21. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including one or more offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States.

Conclusion

22. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

23. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute

defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

25. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

26. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

DAVOUD BANIAMERI
Defendant

PATRICK C. POPE
Assistant U.S. Attorney

THOMAS BRANDSTRADER
Attorney for Defendant