

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,                   :           10-CR-459 (SJ)  
  :           :  
  :           May 26, 2011  
  :           :  
  :           Brooklyn, New York  
ALEKSANDR AFANASYEV,                        :           :  
  :           :  
  :           Defendant.       :  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:                   LORETTA LYNCH, ESQ.  
  UNITED STATES ATTORNEY  
  BY: DANIEL BROWNELL, ESQ.  
  ASSISTANT U.S. ATTORNEY  
  271 Cadman Plaza East  
  Brooklyn, New York 11201

For the Defendant:                   JAMES DiPIETRO, ESQ.

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1           THE CLERK: Criminal cause for pleading.  
2 United States v. Aleksandr Afanasyev, Case Number  
3 10-CR-459.

4           Please state your appearances for the  
5 record.

6           MR. BROWNELL: Daniel Brownell for the  
7 government. Good afternoon, your Honor.

8           MR. DiPIETRO: It's James DiPietro for Mr.  
9 Afanasyev. Once again, good afternoon, your Honor.

10          THE INTERPRETER: Nelly Alishaev, Russian  
11 Interpreter.

12          THE CLERK: Let's start by swearing you in.

13                 (Interpreter is sworn.)

14                 (Defendant is sworn.)

15          THE COURT: What is Mr. Afanasyev going to  
16 do today?

17          MR. DiPIETRO: Judge, with the Court's  
18 permission, my client is prepared to enter a plea of  
19 guilty to count one of the indictment and to count two  
20 of the information in satisfaction of the additional  
21 charges that have been filed against him.

22          THE COURT: And is he waiving indictment  
23 with respect to the information?

24          MR. DiPIETRO: He is.

25          THE COURT: And he'll need to be arraigned

1 on that as well?

2 MR. DiPIETRO: He would have to be, yes,  
3 your Honor.

4 THE COURT: Okay. Why don't we just start  
5 with the consent.

6 Good afternoon, sir.

7 THE DEFENDANT: Good afternoon, your Honor.

8 THE COURT: Do you speak any English?

9 THE DEFENDANT: I do, but not fluently.

10 THE COURT: Okay.

11 MR. DiPIETRO: I think he meant to say,  
12 Judge, he does speak English, but there's times when an  
13 interpreter can certainly help the cause.

14 THE COURT: So would your client prefer to  
15 answer in Russian or in English?

16 THE DEFENDANT: English.

17 THE COURT: Okay. All right.

18 I have here a consent form in which you have  
19 agreed to have me hear your guilty plea and make a  
20 recommendation to Judge Johnson whether to accept it.

21 I believe you signed it; is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did you discuss it with your  
24 lawyer before you signed it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand what you're  
2 doing?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you don't  
5 have to consent to have me hear the plea and that none  
6 of your rights will be affected if you prefer to have  
7 Judge Johnson hear it?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you making this decision  
10 voluntarily?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you have any questions?

13 THE DEFENDANT: No.

14 THE COURT: Mr. DiPietro, are you satisfied  
15 that Mr. Afanasyev's consent to have me hear the plea  
16 is knowing and voluntary?

17 MR. DiPIETRO: I am, your Honor.

18 THE COURT: I have her an information and  
19 also a waiver of indictment.

20 Mr. DiPietro, did you go over the  
21 information and the waiver of indictment with your  
22 client?

23 MR. DiPIETRO: I did, your Honor.

24 THE COURT: And are you satisfied that his  
25 waiver is knowing and voluntary?

1 MR. DiPIETRO: I am.

2 THE COURT: Sir, do you understand what it  
3 means to waive indictment on the charge in the  
4 information?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you discuss it with your  
7 lawyer?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you sign this waiver of  
10 indictment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you have any questions about  
13 what you're doing?

14 THE DEFENDANT: No.

15 THE COURT: Are you agreeing to waive  
16 indictment voluntarily?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Would you like me to explain  
19 further what it means to waive indictment?

20 THE DEFENDANT: No.

21 THE COURT: Now, the information charges you  
22 with tax evasion and it has several counts.

23 Have you read the information?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Discuss it with your lawyer?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand it?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Would you like me to read it  
5 publicly, Mr. DiPietro?

6 MR. DiPIETRO: We would waive the reading,  
7 your Honor.

8 THE COURT: All right. And I'll defer  
9 asking how he pleads on this.

10 I'm going to ask you a lot of questions. If  
11 there is anything that you don't understand, let me  
12 know. If you would like to discuss anything privately  
13 with your lawyer, feel free to do that at any time, and  
14 you can ask me any question you'd like at any time.

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If there's any word that you  
18 don't understand or you even have the slightest  
19 question about, just ask me and I will interpret it or  
20 -- I won't interpret it. I will explain it or just ask  
21 the interpreter and she will interpret it.

22 THE DEFENDANT: Thank you.

23 THE COURT: Now, you are under oath. You  
24 have to answer each question honestly and completely.

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: If you make any false  
2 statements, you could be prosecuted for perjury.

3 Do you understand?

4 THE DEFENDANT: I understand, your Honor.

5 THE COURT: What is your full name?

6 THE DEFENDANT: Aleksandr Afanasyev.

7 THE COURT: How old are you?

8 THE DEFENDANT: Forty-five.

9 THE COURT: What is the last level of school  
10 that you finished?

11 THE DEFENDANT: It was high school. I  
12 finished it in 1982 in the Ukraine (ui).

13 THE COURT: What is your native language?

14 THE DEFENDANT: Russian, but I speak  
15 Ukrainian also.

16 THE COURT: Okay.

17 THE COURT: Were you able to communicate  
18 with your lawyer?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you need an interpreter or  
21 did you speak English with him?

22 THE DEFENDANT: Sometimes I used a  
23 translator. If I don't understand anything, so I --

24 MR. DiPIETRO: I have a paralegal that works  
25 with my office, your Honor, that speaks Russian

1 fluently. So on occasion, if there was some  
2 communication gap, he came in and translated.

3 THE COURT: All right. So there was always  
4 someone available to translate for you when you needed  
5 it; is that correct, Mr. DiPietro?

6 MR. DiPIETRO: Exactly.

7 THE COURT: All right.

8 Sir, do you think you understood everything  
9 your lawyer said to you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you think he understood  
12 everything you said to him?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. DiPietro, do you agree?

15 MR. DiPIETRO: I agree.

16 THE COURT: Okay.

17 Are you now or have you recently been under  
18 the care of a doctor or a psychiatrist?

19 THE DEFENDANT: No.

20 THE COURT: In the past 24 hours, have you  
21 taken any medicine or pills?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: In the past 24 hours, have you  
24 drunk any alcoholic beverages?

25 THE DEFENDANT: No.

1 THE COURT: Or taken any narcotic drugs?

2 THE DEFENDANT: No.

3 THE COURT: Have you ever been hospitalized  
4 or treated for drug addiction, alcoholism, or a mental  
5 or emotional problem?

6 THE DEFENDANT: Yes, I did. It was a long  
7 time ago, like ten years ago, eleven years ago.

8 THE COURT: Can you briefly explain.

9 THE DEFENDANT: Okay.

10 THE COURT: You don't have to say much.  
11 Just say what --

12 THE DEFENDANT: I was addicted to heroin,  
13 your Honor.

14 THE COURT: All right. When is the last  
15 time you used heroin?

16 THE DEFENDANT: October, 1999.

17 THE COURT: All right. Is your mind clear  
18 now?

19 THE DEFENDANT: I'm sorry?

20 THE COURT: Is your mind clear?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand why you are  
23 here and what is happening here today?

24 THE DEFENDANT: Totally, your Honor.

25 THE COURT: All right.

1           Mr. DiPietro, have you discussed this matter  
2 fully with your client?

3           MR. DiPIETRO: On several occasions.

4           THE COURT: Does he understand the rights  
5 that he would be waiving by pleading guilty?

6           MR. DiPIETRO: He does.

7           THE COURT: Is he capable of understanding  
8 the nature of these proceedings?

9           MR. DiPIETRO: A hundred percent.

10          THE COURT: Do you have any doubt as to his  
11 competency to plead at this time?

12          MR. DiPIETRO: None whatsoever.

13          THE COURT: Have you advised him of the  
14 possible sentence, fine, and other penalties that he  
15 faces if he does plead guilty?

16          MR. DiPIETRO: I have.

17          THE COURT: Have you explained to him how  
18 sentencing works and specifically discussed with him  
19 the sentencing guidelines?

20          MR. DiPIETRO: Several times.

21          THE COURT: Have you advised him that  
22 there's no guarantee what his guideline range will be  
23 or what his sentence will be?

24          MR. DiPIETRO: Yes, your Honor.

25          THE COURT: Do you think he understood all

1 of your discussions?

2 MR. DiPIETRO: No question in my mind.

3 THE COURT: Did you hear what your lawyer  
4 said?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you agree with everything  
7 that he said?

8 THE DEFENDANT: Absolutely, your Honor.

9 THE COURT: Have you discussed your case  
10 with him as fully as you need to?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Is there anything that you would  
13 like to ask him before we go any further?

14 THE DEFENDANT: No.

15 THE COURT: Are you satisfied to have him  
16 represent you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, we've already gone through  
19 the information a little bit. Let's just make sure  
20 that you understand all of the charges against you.  
21 There's an indictment and there's also this information  
22 involving tax evasion.

23 Do you understand all of the charges against  
24 you in the indictment?

25 THE DEFENDANT: Yes, your Honor.

1           THE COURT: Have you discussed them  
2 thoroughly with your lawyer?

3           THE DEFENDANT: Yes, your Honor.

4           THE COURT: Let me just ask the government  
5 briefly to explain the charges against this defendant,  
6 both in the indictment and the information.

7           MR. BROWNELL: Judge, with regard to the  
8 indictment and the conspiracy to commit healthcare  
9 fraud, this particular defendant was involved in the  
10 operation of three retail durable medical equipment  
11 companies that were defrauding no-fault insurance  
12 companies.

13           The main ways that they defrauded the  
14 insurance companies was that they worked with bogus  
15 wholesale durable medical equipment companies. And  
16 among other things, these wholesale companies would  
17 provide the defendant and his co-conspirators with  
18 bogus wholesale invoices for equipment.

19           Those invoices were bogus in that they  
20 grossly inflated the actual costs of the equipment that  
21 was being provided. The defendant and his co-  
22 conspirators in turn used these bogus wholesale  
23 invoices to bill the insurance companies; therefore,  
24 receiving reimbursement for claims that were grossly  
25 inflated.

1           With regard to the tax evasion count, among  
2 other things, the defendant and his co-conspirators  
3 grossly under reported their income by using these same  
4 wholesale invoices as business deductions. Since they  
5 were grossly inflated, they obviously were much greater  
6 business deductions than they were actually entitled to  
7 take.

8           THE COURT: Any questions about what was  
9 just said?

10          THE DEFENDANT: No, your Honor.

11          THE COURT: Do you need any further  
12 explanation of the charges in the indictment or the  
13 information?

14          THE DEFENDANT: No, sir.

15          THE COURT: I'm briefly going to explain to  
16 you the rights that you will give up if you plead  
17 guilty. I'm sure your lawyer has done this already.

18                Do you understand that it is your right to  
19 plead not guilty if you wish?

20          THE DEFENDANT: Yes, your Honor.

21          THE COURT: And if you continue to plead not  
22 guilty, you have a right under constitution and laws of  
23 this country to a speedy and public trial by jury with  
24 the help of your lawyer on the charges contained in  
25 both the information and the indictment?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you cannot afford to retain  
3 an attorney, the court will appoint counsel for you at  
4 any stage of the proceedings where you cannot afford to  
5 retain an attorney. Your lawyer would advise and  
6 represent you at all stages, including through trial  
7 and on appeal, if you were convicted.

8 Do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: At your trial, you would be  
11 presumed innocent. The government would have to prove  
12 your guilt by competent evidence admissible at trial  
13 and convince a jury beyond a reasonable doubt of every  
14 charge that it wishes for you to be convicted on.

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Even if you did everything the  
18 government has accused you of, it is still possible  
19 that you could be found not guilty; in fact, it would  
20 be the jury's duty to find you not guilty if the  
21 government could not persuade the jury beyond a  
22 reasonable doubt of your guilt.

23 Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Any questions about anything so

1 far?

2 THE DEFENDANT: No.

3 THE COURT: If you go to trial, the  
4 government would have to bring its witnesses to court.  
5 They would have to testify in your presence. Your  
6 lawyer would have a right to cross-examine the, to  
7 object to the government's evidence, and to present  
8 evidence in your defense.

9 Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You also would have the right to  
12 compel witnesses whom you wish to call to appear at  
13 trial.

14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: At your trial, you would have a  
17 choice: You could testify in your defense, if you wish;  
18 you also have a fifth amendment privilege, which gives  
19 you the right to remain silent and not to incriminate  
20 yourself.

21 Do you understand?

22 THE DEFENDANT: I understand, your Honor.

23 THE COURT: So that means that no one could  
24 force you to testify at the trial. And if you did not  
25 testify, Judge Johnson would instruct the jurors that

1 they could not hold that against you and assume that  
2 you're guilty just because you did not testify in your  
3 own defense.

4 Do you understand?

5 THE DEFENDANT: Understand.

6 THE COURT: If you decide to plead guilty  
7 here today and if the Court accepts your guilty plea,  
8 you'll give up your right to a trial, the right to  
9 confront witnesses, and the other rights I just  
10 explained.

11 Do you understand that?

12 THE DEFENDANT: I understand, your Honor.

13 THE COURT: You will not be able to take  
14 back your guilty plea.

15 THE DEFENDANT: I understand.

16 THE COURT: There will be no trial at all.  
17 The Court will just enter a judgment that your guilty  
18 based on what you say here today, and you will not have  
19 the right to appeal your judgment of conviction.

20 Do you understand?

21 THE DEFENDANT: Understand, your Honor.

22 THE COURT: And if you do plead guilty, I'm  
23 going to have to ask you some questions. I have to be  
24 sure you really are guilty. You will have to answer me  
25 and admit your guilt. When you do that, you will give

1 up your right to remain silent and not to incriminate  
2 yourself.

3 Do you understand?

4 THE DEFENDANT: I understand.

5 THE COURT: Any questions about anything so  
6 far?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: So are you willing to give up  
9 your right to a trial, the right to remain silent, and  
10 the other rights I just explained to you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: I'm sure you understand this,  
13 but one of the charges against you is a conspiracy  
14 charge.

15 Do you understand what a conspiracy is?

16 THE DEFENDANT: It's agreement two or more  
17 people for --

18 THE COURT: You'd be a good judge or lawyer.

19

20 THE DEFENDANT: Thank you, your Honor.

21 THE COURT: All right. So I have here a  
22 copy of Court Exhibit 1. It's a plea agreement. It's  
23 dated today, May 26. There is a signature above your  
24 name on the signature page.

25 Is that your signature on this plea

1 agreement?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Before you signed it, did you  
4 read it carefully and discuss it with your lawyer?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did he answer all of your  
7 questions?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Is there anything you did not  
10 understand in the plea agreement?

11 THE DEFENDANT: I understood everything.

12 THE COURT: Okay. Is this the only agreement  
13 between the defense and the government at this time?

14 MR. DiPIETRO: It is the only agreement,  
15 Judge, but I've spoken to the prosecutor. I just want  
16 to be abundantly clear.

17 There's obviously a forfeiture provision in  
18 the agreement. By the defendant consenting to a  
19 forfeiture judgment against him in the amount indicated  
20 in the agreement, which is \$2,400,970, the defendant  
21 would have fulfilled that aspect of the agreement. No  
22 one is expecting him to come with a check, so-to-speak,  
23 at the time of sentence. I mean, he will consent to a  
24 judgment with others, and I guess they will be jointly  
25 and severely liable for that amount.

1           MR. BROWNELL: That is correct, your Honor.  
2 And there are at least three other people that are  
3 jointly and severely liable for that amount.

4           MR. DiPIETRO: Thank you.

5           THE COURT: All right. So let's go through  
6 this plea agreement.

7           In paragraph one you've agreed to plead  
8 guilty to count one of the indictment and also to plead  
9 guilty to count two of the information.

10          THE DEFENDANT: Yes, your Honor.

11          THE COURT: If you do that -- let's start  
12 with the indictment.

13          If you plead guilty to count one in the  
14 indictment, you're facing from zero to ten years in  
15 prison. If you are sentenced to prison, there would be  
16 a maximum period of supervised release of three years  
17 after you're released from prison.

18          Do you understand?

19          THE DEFENDANT: I understand, your Honor.

20          THE COURT: And if you violate any condition  
21 of your release, you could be sentenced to up to two  
22 more years in prison without credit for the time you've  
23 been in prison or on supervised release.

24          Do you understand?

25          THE DEFENDANT: I understand.

1 THE COURT: Do you have any questions about  
2 supervised release or do you understand what that is?

3 THE DEFENDANT: No, I understood everything.  
4 Thank you.

5 THE COURT: Okay. There's a possible fine.  
6 The maximum --

7 (Off the record.)

8 THE COURT: I think everything was picked up  
9 until the fine, but just for the record. You said you  
10 understood that the maximum period of imprisonment was  
11 ten years, the minimum zero; that the maximum  
12 supervised release term was three years after your  
13 release from prison if you're sentenced to prison;  
14 there's a two year possible penalty for a violation of  
15 supervised release.

16 And we're now going to the fine, which is a  
17 maximum of \$250,000 or twice the monetary gain,  
18 whichever is greater.

19 Do you understand that?

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: There's also a restitution  
22 amount which is mandatory, and the amount would be  
23 determined by the Court.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: I note that that has not been  
2 determined yet. So there's no guarantee what that  
3 amount will be.

4           Do you understand?

5           THE DEFENDANT: I understand.

6           THE COURT: There's also a special  
7 assessment of \$100. And there's this criminal  
8 forfeiture provision, which your lawyer just explained  
9 or, at least, discussed.

10          Have you discussed the forfeiture provision  
11 with him?

12          THE DEFENDANT: Yes, your Honor.

13          THE COURT: Is there anything more that  
14 needs to be explained at this time about it?

15          THE DEFENDANT: No.

16          THE COURT: So do you understand everything  
17 so far?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Now, on the other charge, the  
20 tax evasion charge, you face from zero to five years in  
21 prison, a maximum supervised release term of three  
22 years. Again, a potential sentence of up to two years  
23 for any violation of a term of supervised release, a  
24 possible maximum fine of \$250,000 or twice the monetary  
25 gain. Restitution to be determined by the Court, and

1 \$100 special assessment.

2 Do you understand?

3 THE DEFENDANT: I understand, your Honor.

4 THE COURT: With respect to the sentencing,  
5 has there been any discussion as to whether the  
6 sentences would be concurrent or consecutive?

7 MR. BROWNELL: There hasn't been. I mean,  
8 quite frankly, I'm presuming they're going to be  
9 concurrent, but there has been no discussion.

10 MR. DiPIETRO: Judge, as you can see on page  
11 4, these two offenses group; meaning, that they're  
12 related. So I mean it's my opinion they will run  
13 currently.

14 THE COURT: All right. But it is possible  
15 that they could be consecutive; is that right?

16 MR. DiPIETRO: I would assume anything is  
17 possible.

18 THE COURT: Have you discussed that with  
19 your client?

20 MR. DiPIETRO: I have.

21 THE COURT: Do you understand what we're  
22 talking about?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: So do you understand that the  
25 sentences could be consecutive? I'm not saying they

1 will be, but they could be consecutive or they could be  
2 concurrent.

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And you understand what that  
5 means?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Any questions about anything so  
8 far?

9 THE DEFENDANT: No.

10 THE COURT: Paragraph two discusses the  
11 sentencing guidelines. The guidelines are just rules  
12 that help the Court or guides that help the Court  
13 decide how to sentence you. Judge Johnson will  
14 calculate the guideline range, and then determine how  
15 best to sentence you, either within the guidelines,  
16 above the guidelines or below the guidelines. And  
17 they're just advisory. He need only consult them and  
18 then he has to make up his own mind as to what is a  
19 just sentence.

20 Do you understand how the guidelines work?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So would the government briefly  
23 explain its estimate of the guideline range.

24 MR. BROWNELL: Judge, the bottom line  
25 estimate that the government has with regard to the

1 guidelines is Level 22, which includes three points off  
2 for acceptance of responsibility, and then the  
3 possibility of an extra global point off if enough of  
4 the defendants in the indictment plead guilty.

5 THE COURT: And in paragraph two you have  
6 stipulated to this guideline calculation; is that  
7 correct? On the bottom of page four.

8 MR. DiPIETRO: That's accurate, Judge.  
9 Defendant does stipulate to that guideline calculation,  
10 but at the same time I don't believe there's any  
11 dispute. We have the right to ask for a departure or a  
12 non-guideline sentence based on the fact it's a  
13 3553(a).

14 MR. BROWNELL: That's correct, your Honor.

15 THE COURT: Do you understand everything  
16 that's just been said?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that this  
19 guidelines calculation is just an estimate? You may  
20 have agreed to it, but again, it's up to Judge Johnson  
21 to decide what the guideline range will be.

22 THE DEFENDANT: I understand, your Honor.

23 THE COURT: In paragraph four, you have  
24 agreed not to appeal or otherwise challenge your  
25 conviction or sentence, if you receive a term of

1 imprisonment of 63 months or less.

2 Do you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do we need to discuss the  
5 forfeiture provisions?

6 MR. DiPIETRO: Judge, I think they pretty  
7 much --

8 MR. BROWNELL: I think we've covered it.

9 MR. DiPIETRO: Yes, I think we've covered  
10 it.

11 THE COURT: Okay.

12 MR. DiPIETRO: And I can place on the record  
13 at this time -- I don't know if your Honor is going to  
14 inquire. My client is a United States citizen, so  
15 there is no deportation.

16 THE COURT: Right. I was going to get to  
17 that, too.

18 So you understand if you were not a citizen,  
19 you could potentially face deportation?

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: And the one final thing about  
22 sentencing is that the guidelines must be considered by  
23 the Court, but also the Court has to consider other  
24 things; such as, the circumstances of the offense, your  
25 background, your respect for the law, what's fair

1 punishment, what would be deterrence of others from  
2 committing similar crimes, how to protect the public  
3 from further crimes, and/or need for effective  
4 correctional treatment. These are all statutory  
5 criteria.

6 Do you understand?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Is there anything else in the  
9 plea agreement or anything else having to do with this  
10 case that should be put on the record before we go any  
11 further?

12 MR. BROWNELL: Judge, I can't think of  
13 anything.

14 MR. DiPIETRO: I join in the prosecutor. I  
15 don't think there's anything else we have to put on the  
16 record.

17 THE COURT: Any questions you have for me or  
18 for your lawyer?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Do you understand that if you  
21 are sentenced to prison there is no early release on  
22 parole.

23 THE DEFENDANT: I understand, your Honor.

24 THE COURT: So are you ready to plead?

25 THE DEFENDANT: Yes, your Honor.

1                   MR. DiPIETRO: My client is ready to plead  
2 to count one of the indictment and count two of the  
3 information.

4                   THE COURT: Is there any reason why he  
5 should not do so?

6                   MR. DiPIETRO: None that I'm aware of, your  
7 Honor.

8                   THE COURT: So how do you plead as to count  
9 one of the indictment and count two of the in fact?

10                  THE DEFENDANT: I'm guilty, your Honor.

11                  THE COURT: Are you pleading guilty  
12 voluntarily?

13                  THE DEFENDANT: Yes, your Honor.

14                  THE COURT: Has anyone forced you or  
15 threatened you to make you to agree to plead guilty?

16                  THE DEFENDANT: No, your Honor.

17                  THE COURT: Has anyone promised you  
18 anything that is not in the plea agreement?

19                  THE DEFENDANT: No, your Honor.

20                  THE COURT: Has anyone promised you what  
21 your sentence will be?

22                  THE DEFENDANT: No, your Honor.

23                  THE COURT: All right. So these are  
24 related. I just need you to explain to me why you are  
25 guilty of each charge. You can either do it together

1 or separately.

2 MR. DiPIETRO: Judge, with your Honor's  
3 permission we prepared a statement, which I have given  
4 to the prosecutor. I'd like to hand it up to the  
5 Court.

6 THE COURT: Thank you.

7 THE DEFENDANT: Can I start?

8 THE COURT: Please do.

9 THE DEFENDANT: From in or about 2007 to  
10 June, 2010, in the Eastern District of New York and  
11 elsewhere, I agreed with other individuals to commit  
12 healthcare fraud. We agreed to do this by submitting  
13 false claims for durable medical equipment to insurance  
14 companies. We billed insurance for medical equipment  
15 that was much more expensive than the medical equipment  
16 actually provided to the patient. Myself and others  
17 agreed to do this with the intent to obtain money from  
18 various insurance companies which was not rightfully  
19 ours.

20 In addition, for the calendar years 2008 and  
21 2009 myself and others wilfully attempted to evade  
22 income tax due and owing the United States. Myself and  
23 others did this by filing false US Income Tax Returns  
24 that under-reported the actual income from our medical  
25 equipment companies for the calendar years 2008 and

1 2009. I know by under reporting the annual income I  
2 received, I owe the United States more money in taxes  
3 than I actually paid.

4 THE COURT: Mr. Brownell?

5 MR. BROWNELL: It's acceptable, your Honor.

6 THE COURT: Anything to add, Mr. DiPietro?

7 MR. DiPIETRO: No, your Honor.

8 THE COURT: Before I go any further, Mr.  
9 Afanasyev, was there anything in this proceeding here  
10 today that you did not understand, any word, any  
11 concept, anything?

12 THE DEFENDANT: No.

13 THE COURT: You understood everything?

14 THE DEFENDANT: I understood everything.

15 THE COURT: All right. So I find that you  
16 are acting voluntarily, you fully understand your  
17 rights, the charges against you, the rights you're  
18 giving up by pleading guilty, the consequences of a  
19 guilty plea including all the possible penalties, the  
20 fact that there's no guarantee what your guideline  
21 range will be or what your sentence will be. And I do  
22 find that there is a factual basis for your plea to  
23 each of the counts.

24 I, therefore, recommend that the Court  
25 accept your plea of guilty to count one in the

1 indictment and count two of the information.

2 THE CLERK: Sentencing is set for September  
3 29, 2011 at 9:30 a.m. before Judge Johnson.

4 THE COURT: You know the next step is that  
5 you will be interviewed by the probation department.  
6 They will be preparing a presentence investigation  
7 report, which could be a very important document in  
8 determining what your sentence will be. You have a  
9 right to have your lawyer present during the interview.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Thank you.

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



ELIZABETH BARRON

September 12,

1 2011