



**U.S. Department of Justice**

**Carmen M. Ortiz**  
*United States Attorney*  
*District of Massachusetts*

Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

August 10, 2012

Oscar Cruz, Esq.  
Office of the Federal Defender  
51 Sleeper Street, 5th Floor  
Boston, MA 02210

**FILED**  
**In Open Court**  
**USDC, Mass.**  
Date 9/11/12  
By JARRET LOVETT  
**Deputy Clerk**

Re: U.S. v. Inocente Orlando Montano  
Criminal No. 12-10044-DPW

Dear Attorney Cruz:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Inocente Orlando Montano ("Defendant"), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall waive indictment and plead guilty to the Superseding Information attached to this Agreement charging him with three counts of immigration fraud, in violation of 18 U.S.C. §1546(a), and three counts of perjury, in violation of 18 U.S.C. §1621(2). Defendant expressly and unequivocally admits that he committed the crimes charged in the Superseding Information, did so knowingly and willfully, and is in fact guilty of those offenses. The U.S. Attorney agrees to dismiss the Indictment now pending in this action upon entry of judgment on the charges set forth in the Superseding Information.

2. Penalties

Defendant faces the following maximum penalties: (a) for each count charging a violation of 18 U.S.C. §1546(a), incarceration for a period of ten years; supervised release for a period of three years; a fine of \$250,000; and a mandatory special assessment of \$100; and (b) for each count charging a violation of 18 U.S.C. §1621(2), incarceration for a period of five years; supervised release for a period of three years; a fine of \$250,000; and a mandatory special assessment of \$100.

Defendant also 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 the offenses to which Defendant is pleading guilty. As more fully set forth in section 6 below, Defendant agrees and stipulates to accept a final judicial order of deportation or removal knowing that it will result in his amenability to immediate deportation or removal from the United States upon conviction and completion of any period of incarceration

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the District Court ("Court"), subject to the statutory maximum penalties set forth above, and the provisions of the Sentencing Reform Act, and the United States Sentencing Guidelines promulgated thereunder. The Sentencing Guidelines are advisory, not mandatory and, as a result, the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine. In imposing the sentence, the Court must consult and take into account the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. §3553(a).

The U.S. Attorney will take the position, with respect to the application of the United States Sentencing Guidelines, that:

- (i) Defendant's Base Offense Level for each violation of 18 U.S.C. §1621(2) ("the perjury counts") is 14, pursuant to USSG §2J1.3(a).
- (ii) Defendant's Base Offense Level for each violation of 18 U.S.C. §1546(a) ("the immigration fraud counts") is 8, pursuant to USSG §2L2.2(a).
- (iii) None of the six counts of the Superseding Information is grouped together under USSG §3D1.2. Thus, under the guideline provisions governing the determination of the offense level on multiple counts, set forth at USSG §§3D1.1-4, each count constitutes a separate group.
- (iv) Under USSG §3D1.3(b), the guideline that produces the highest offense level applies; thus the Base Offense Level for violation of 18 U.S.C. §1621(2) controls and the offense level applicable to each group of closely related counts is 14.
- (v) Under USSG §3D1.4, the combined offense level is 18 because (a) the offense level applicable to the group with the highest offense level is 14; (b) the offense level is increased by 3 levels, pursuant to USSG §3D1.4 (a), because each of the three perjury counts is equally serious; and (c) the offense level is further increased by 1 level, pursuant to USSG §3D1.4(b), because each of the three immigration fraud counts is 5-8 levels less serious than the perjury counts.

Based on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case, and information known to the U.S. Attorney at this time, the U.S. Attorney agrees to recommend that the Court reduce by three levels Defendant's Adjusted Offense Level under USSG §3E1.1.

The U.S. Attorney specifically reserves the right not to recommend a reduction under USSG §3E1.1 if, at any time between Defendant's execution of this Agreement and sentencing Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit his conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about his financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw his guilty plea.

Defendant expressly understands that he may not withdraw his plea of guilty if, for any of the reasons listed above, the U.S. Attorney does not recommend that he receive a reduction in Offense Level for acceptance of responsibility.

Defendant expressly understands that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the U.S. Attorney may seek an upward adjustment pursuant to USSG §3C1.1 if Defendant obstructs justice after the date of this Agreement.

#### 4. Sentence Recommendation

There is no agreement regarding disposition in this case.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Agreement Regarding Stipulated Judicial Order of Deportation or Removal

Defendant agrees he is not a citizen or national of the United States, and that he is a native of El Salvador and a citizen of El Salvador.

Defendant agrees that when he is convicted in the instant criminal proceeding, he will be convicted in this Court for the offenses of Fraud and Misuse of Visas, Permits and Other Documents, in violation of 18 U.S.C. § 1546(a), and Perjury, in violation of 18 U.S.C. § 1621(2).

Defendant understands and knowingly waives his right to a hearing before an Immigration Judge, or before any other authority under the Immigration and Nationality Act, on the question of his deportability or removability from the United States. Defendant further concedes the he is removable under 8 U.S.C. §1227(a)(1)(B) of the Immigration and Nationality Act. In this regard Defendant understands and knowingly waives his rights to examine the evidence against him, to present evidence on his own behalf, to cross-examine any witnesses presented by the government, in any administrative removal proceeding and to appeal from a determination of deportability or removability.

Defendant understands and knowingly waives his right to apply for any relief from deportability or removability from the United States that would otherwise be available to him. Defendant understands that if he is an alien lawfully admitted for permanent residence, acceptance of a final order of deportation or removal from the United States terminates that status.

Defendant understands that execution of an order of removal against him may have the legal consequence under the immigration laws of permanently barring him from reentering the United States.

Defendant agrees and stipulates to accept a final judicial order of deportation or removal knowing that it will result in his amenability to immediate deportation or removal from the United States upon conviction and completion of any period of incarceration. Defendant agrees that the order of deportation or removal be issued for his deportation to El Salvador, or to any other country as prescribed by the immigration laws and regulations of the United States of America. Further, Defendant understands that the issuance of a final judicial order of deportation or removal has no bearing on, and is independent of, any request that may be presented for his extradition, and that this Agreement contains no promises or representations regarding such. Although the defendant agrees to deportation to El Salvador, he reserves the right to contest any and all extradition requests made by any other country in the Courts of the United States.

Defendant knowingly waives any and all rights to appeal, or to move to reopen or reconsider, or to seek to vacate, or to otherwise seek any judicial or administrative review of, the order of deportation or removal or the right of the United States Department of Homeland Security ("DHS") to enforce such order. Defendant waives any right to and agrees he will not seek any judicial or administrative stay of execution of the order of removal or deportation. Defendant waives any right to seek release from the custody of DHS when DHS assumes such custody after conviction and his release from any period of incarceration and preparatory to arrangements for his deportation or removal from the United States. Defendant agrees he will in all ways cooperate with DHS officials in the surrendering of or applying for any travel documents, or in other formalities relating to his deportation or removal from the United States and preparations therefor.

7. Court Not Bound by Agreement

The sentencing recommendations made by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the U.S. Probation Office or the Court. Within the maximum sentence which Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the Court. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw his plea of guilty regardless of what sentence is imposed. Nor may Defendant withdraw his plea because the U.S. Probation Office or the Court declines to follow the Sentencing Guidelines calculations or recommendations of the parties. In the event that the Court declines to follow the Sentencing Guidelines calculations or recommendations of the U.S. Attorney, the U.S. Attorney reserves the right to defend the Court's calculations and sentence in any subsequent appeal or collateral challenge.

8. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in Paragraph 1 of this Agreement.

9. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on motion of Defendant, this Agreement shall be null and void at the option of the U.S. Attorney.

10. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of his pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at her sole option, be released from her commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to her

under the law, irrespective of whether she elects to be released from her commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach any provision of this Agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by Defendant, and any information, materials, documents or objects which may be provided by Defendant to the government subsequent to this Agreement without any limitation. In this regard, Defendant hereby waives any defense to any charges which Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

11. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

12. Complete Agreement

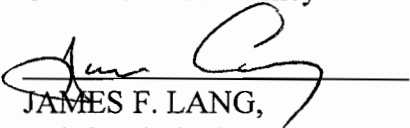
This letter contains the complete and only agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney John A. Capin.

Very truly yours,

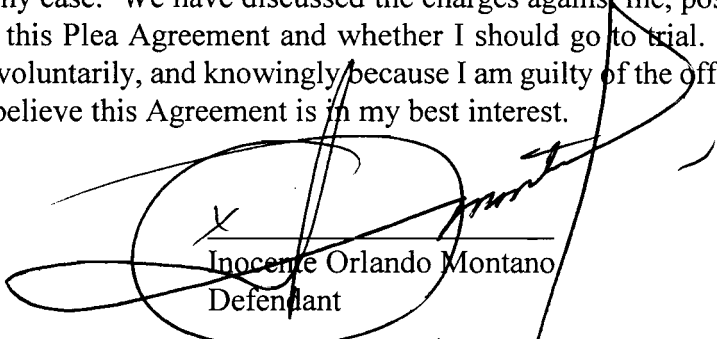
CARMEN M. ORTIZ  
United States Attorney

By:

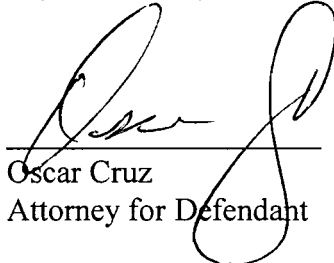
  
\_\_\_\_\_  
JAMES F. LANG,  
Chief, Criminal Division  
CYNTHIA A. YOUNG  
Deputy Chief, Criminal Division

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter or I have had this letter read to me in my native language in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.

  
\_\_\_\_\_  
Innocente Orlando Montano  
Defendant  
Date: 9/11/12

I certify that Innocente Orlando Montano has read this Agreement or has had this Agreement read to him in his native language and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly.

  
\_\_\_\_\_  
Oscar Cruz  
Attorney for Defendant  
Date: 9/11/12

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	CRIMINAL NUMBER 12-10044-DPW
	)	
v.	)	Violations:
	)	18 U.S.C. § 1546(a)
	)	Immigration Fraud
INOCENTE ORLANDO MONTANO	)	18 U.S.C. § 1621(2)
	)	Perjury

**SUPERSEDING INFORMATION**

The United States Attorney charges that:

I. BACKGROUND

At all times relevant to this Superseding Information:

1. The defendant, Inocente Orlando Montano (“Montano”), was a citizen of El Salvador.
2. Montano received military training and served as an officer in the military of El Salvador. He was a military officer during a civil war in El Salvador that spanned the period from 1979 through 1991.
3. Throughout the civil war, Montano held positions of authority within El Salvador’s Armed Forces. While a colonel in El Salvador’s Armed Forces, Montano served, from on or about June 1, 1989, until on or about March 2, 1992, in the military government as the Vice-Minister for Public Security.
4. Several reports published by governmental and non-governmental organizations in the early 1990s documented human rights violations committed by the Salvadoran military during that country’s civil war. Such violations include torture, arbitrary detention, extrajudicial killings, and disappearances.



5. For example, in 1990, the Arms Control and Foreign Policy Caucus, a group made up of members of the United States Congress, published a report entitled “Barriers to Reform: A Profile of El Salvador’s Military Leaders.” That report alleges that human rights abuses were committed by troops directly under Montano’s command.

6. As another example, in 1993, the United Nations Commission on the Truth for El Salvador published a report entitled “From Madness to Hope: The 12 Year War in El Salvador” (“U.N. Truth Commission Report”). The U.N. Truth Commission Report found that there was substantial evidence that Montano colluded with other Salvadoran military officers to issue an order to murder a particular Jesuit priest at San Salvador’s Central American University and to leave no witnesses. As described in the U.N. Truth Commission Report, the consequence of that order was the murder, on November 15, 1989, of six Jesuit priests, an employee of the priests, and the employee’s daughter. The U.N. Truth Commission Report further found that there was evidence that Montano and others took steps to conceal the truth regarding said murders.

7. In 1994, Montano retired from service as an officer of El Salvador’s Armed Forces and at some point thereafter left El Salvador and came to the United States.

8. In or about 2002, Montano was present in the United States and, on several occasions thereafter, applied for and received Temporary Protected Status (“TPS”), a benefit the United States government extends to certain foreign nationals, permitting them to remain in the United States if unable to safely return to their home country because of ongoing armed conflict, the temporary effects of an environmental disaster, or other extraordinary and temporary conditions. To be eligible for TPS, a foreign national must submit to the Department of Homeland Security (and previously to the Immigration and Naturalization Service) a Form I-821,

Application for Temporary Protected Status. The Form I-821 calls for information necessary to determine whether the applicant is eligible for TPS. Information necessary to determine eligibility for TPS included the date on which Montano entered the United States. To be eligible for TPS, Montano must have entered on or before February 13, 2001. To be eligible for TPS, Montano also must have continuously resided in the United States since March 9, 2001. In fact, Montano entered the United States on or about July 2, 2001.

COUNT ONE  
18 U.S.C. § 1546(a)  
Immigration Fraud

The United States Attorney re-alleges and incorporates by reference paragraphs 1-8 of this Superseding Information and charges that, on or about August 24, 2007, in the District of Massachusetts, the defendant,

INOCENTE ORLANDO MONTANO,

did knowingly make under oath, and did knowingly subscribe as true under penalty of perjury under 28 U.S.C. § 1746, a false statement with respect to a material fact in an application and document required by the immigration laws and regulations prescribed thereunder, and did knowingly present such application and document, which contained a false statement and which failed to contain any reasonable basis in law or fact. Specifically the defendant did knowingly prepare, sign, and present a Form I-821, Application for Temporary Protected Status, knowing it contained a false statement, to wit, that the defendant entered the United States on September 30, 2000, which statement the defendant then and there knew was false, in that he had, in fact, entered the United States on or about July 2, 2001.

All in violation of Title 18, United States Code, Section 1546(a).

COUNT TWO  
18 U.S.C. § 1621(2)  
Perjury

The United States Attorney re-alleges and incorporates by reference paragraphs 1-8 of this Superseding Information and further charges that, on or about August 24, 2007, in the District of Massachusetts, the defendant,

INOCENTE ORLANDO MONTANO,

in a declaration, certificate, verification, and statement under the penalty of perjury as permitted under 28 U.S.C. § 1746, did willfully subscribe as true material matters which he did not then and there believe to be true, that is to say:

At the time and on the date stated above, on a Form I-821, Application for Temporary Protected Status, the defendant responded to a question asking for the date when he entered the United States by indicating that he entered on September 30, 2000, which statement the defendant then and there knew was false, in that he had, in fact, entered the United States on or about July 2, 2001.

The Defendant signed said Form I-821 and certified under penalty of perjury under the laws of the United States of America that the answers he provided on said Form I-821 were true and correct.

All in violation of Title 18, United States Code, Section 1621(2).

COUNT THREE  
18 U.S.C. § 1546(a)  
Immigration Fraud

The United States Attorney re-alleges and incorporates by reference paragraphs 1-8 of this Superseding Information and charges that, on or about November 10, 2008, in the District of Massachusetts and elsewhere, the defendant,

INOCENTE ORLANDO MONTANO,

did knowingly make under oath, and did knowingly subscribe as true under penalty of perjury under 28 U.S.C. § 1746, a false statement with respect to a material fact in an application and document required by the immigration laws and regulations prescribed thereunder, and did knowingly present such application and document, which contained a false statement and which failed to contain any reasonable basis in law or fact. Specifically the defendant did knowingly prepare, sign, and present a Form I-821, Application for Temporary Protected Status, knowing it contained a false statement, to wit, that the defendant entered the United States on September 30, 2000, which statement the defendant then and there knew was false, in that he had, in fact, entered the United States on or about July 2, 2001.

All in violation of Title 18, United States Code, Section 1546(a).

COUNT FOUR  
18 U.S.C. § 1621(2)  
Perjury

The United States Attorney re-alleges and incorporates by reference paragraphs 1-8 of this Superseding Information and further charges that, on or about November 10, 2008, in the District of Massachusetts, the defendant,

INOCENTE ORLANDO MONTANO,

in a declaration, certificate, verification, and statement under the penalty of perjury as permitted under 28 U.S.C. § 1746, did willfully subscribe as true material matters which he did not then and there believe to be true, that is to say:

At the time and on the date stated above, on a Form I-821, Application for Temporary Protected Status, the defendant responded to a question asking for the date when he entered the United States by indicating that he entered on September 30, 2000, which statement the defendant then and there knew was false, in that he had, in fact, entered the United States on or about July 2, 2001.

The Defendant signed said Form I-821 and certified under penalty of perjury under the laws of the United States of America that the answers he provided on said Form I-821 were true and correct.

All in violation of Title 18, United States Code, Section 1621(2).

COUNT FIVE  
18 U.S.C. § 1546(a)  
Immigration Fraud

The United States Attorney re-alleges and incorporates by reference paragraphs 1-8 of this Superseding Information and charges that, on or about August 27, 2010, in the District of Massachusetts and elsewhere, the defendant,

INOCENTE ORLANDO MONTANO,

did knowingly make under oath, and did knowingly subscribe as true under penalty of perjury under 28 U.S.C. § 1746, a false statement with respect to a material fact in an application and document required by the immigration laws and regulations prescribed thereunder, and did knowingly present such application and document, which contained a false statement and which failed to contain any reasonable basis in law or fact. Specifically the defendant did knowingly prepare, sign, and present a Form I-821, Application for Temporary Protected Status, knowing it contained a false statement, to wit, that the defendant entered the United States on September 30, 2000, which statement the defendant then and there knew was false, in that he had, in fact, entered the United States on or about July 2, 2001.

All in violation of Title 18, United States Code, Section 1546(a).

COUNT SIX  
18 U.S.C. § 1621(2)  
Perjury

The United States Attorney re-alleges and incorporates by reference paragraphs 1-8 of this Superseding Information and further charges that, on or about August 27, 2010, in the District of Massachusetts, the defendant,

INOCENTE ORLANDO MONTANO,

in a declaration, certificate, verification, and statement under the penalty of perjury as permitted under 28 U.S.C. § 1746, did willfully subscribe as true material matters which he did not then and there believe to be true, that is to say:

At the time and on the date stated above, on a Form I-821, Application for Temporary Protected Status, the defendant responded to a question asking for the date when he entered the United States by indicating that he entered on September 30, 2000, which statement the defendant then and there knew was false, in that he had, in fact, entered the United States on or about July 2, 2001.

The Defendant signed said Form I-821 and certified under penalty of perjury under the laws of the United States of America that the answers he provided on said Form I-821 were true and correct.

All in violation of Title 18, United States Code, Section 1621(2).

Respectfully submitted,

CARMEN M. ORTIZ  
United States Attorney

By: \_\_\_\_\_

JOHN A. CAPIN  
Assistant U.S. Attorney  
(617) 748-3264