

10/21/09



U.S. Department of Justice

FILED

United States Attorney

NOV 9 - 2009

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

District of Columbia

*Judiciary Center
555 Fourth St. N.W.
Washington, D.C. 20001*

September 25, 2009

VIA EMAIL

Kenneth M. Robinson, Esq.
717 D Street, NW
Suite 400
Washington, DC 20004

Re: United States v. Ernest Bernard Moore
Criminal Number 09- 250 (RMU)

Dear Mr. Robinson:

This letter sets forth the full and complete plea offer to your client, Ernest Bernard Moore, from the Criminal Division of the Office of the United States Attorney for the District of Columbia (hereinafter also referred to as "the Government" or "this Office"). This plea offer will expire on October 2, 2009. If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement. The terms of the offer are as follows:

I. Charges and Statutory Penalties

Your client agrees to waive indictment and plead guilty to Counts 1-3 of a three-count criminal Information, a copy of which is attached, charging Student Aid Fraud, in violation of 20 U.S.C. § 1097 (Count One), Disability Fraud, in violation of 42 U.S.C. § 408 (Count Two), and Bank Fraud, in violation of 18 U.S.C. § 1344 (Count Three).

Your client understands that: (i) pursuant to 20 U.S.C. § 1097 and 18 U.S.C. § 3571(b), the charge carries a maximum sentence of five years of imprisonment, a fine of \$250,000, or a fine of twice the pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d), a \$100 special assessment, a three-year term of supervised release, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made; (ii) pursuant to 42 U.S.C. § 408 and 18

U.S.C. § 3571(b), the charge carries a maximum sentence of five years of imprisonment, a fine of \$250,000, or a fine of twice the pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d), a \$100 special assessment, a three-year term of supervised release, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made; and (iii) pursuant to 18 U.S.C. § 1344, the charge carries a maximum sentence of thirty years of imprisonment, a fine of \$1,000,000, a \$100 special assessment, a five-year term of supervised release, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made.

In consideration of your client’s plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the “Statement of the Offense.”

II. Factual Stipulations

Your client agrees that the “Statement of the Offense” fairly and accurately describes your client’s actions and involvement in the offenses to which your client is pleading guilty. It is anticipated that prior to or during the plea hearing, your client will adopt and sign the “Statement of the Offense” as a written proffer of evidence.

III. Sentencing Guidelines Stipulations

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Commission, Guidelines Manual (hereinafter “Sentencing Guidelines” or “U.S.S.G.”). The parties agree that the 2008 edition of the Guidelines Manual applies. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties stipulate to the following:

A. Offense Level under the Guidelines

The parties agree to the following calculation under the Sentencing Guidelines:

2B1.1(a)(1)	Base Offense Level	7
2B1.1(b)(1)(G)	Loss greater than \$400,000	14
TOTAL		21

Acceptance of Responsibility; 2-point reduction: The Government agrees that a 2-level reduction would be appropriate, pursuant to U.S.S.G § 3E1.1(a), provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client’s allocution, *adherence to every provision of this Agreement*, and subsequent conduct prior to the imposition of sentence.

The Government will not move for an additional 1-level reduction, pursuant to § 3E1.1(b), U.S.S.G..

In accordance with the above, the applicable **Guidelines Offense Level is 19.**

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the parties agree that, pursuant to §§4A1.1(a) and 4A1.2(e)(1) of the Sentencing Guidelines, your client has 3 criminal history points.

In accordance with the above, your client's **Criminal History Category is II.**

C. Applicable Guideline Range

Based upon the calculations set forth above, your client's stipulated **Sentencing Guidelines range is 33-41 months (the "Stipulated Guidelines Range") in Zone D of the Sentencing Guidelines. In addition, the parties agree should the Court impose a fine, at Guidelines level 19, the applicable fine range is \$6,000 to \$60,000.**

The parties agree that under the Sentencing Guidelines neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Court consider such a departure or adjustment.

IV. Agreement as to Sentencing Allocation

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range and suggest that the Court consider a sentence outside of the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. §3E1.1, and/or imposition of an adjustment for obstruction of justice, *see* U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should your client move to withdraw your client's guilty plea once it is entered, or should it be determined that your client has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) engaged in additional criminal conduct after signing this Agreement.

The government reserves its full right of allocation for purposes of sentencing and post-sentencing in this matter, including the right to set forth all of its evidence with respect to your client's criminal activities at sentencing. The government reserves the right to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in

the presentence report, and to contest any matters not provided for in this plea agreement.

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²In exchange for your client's guilty plea, the government agrees 1) to recommend to the Court a ~~3~~-level adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1, and 2) not to oppose your client's release pending sentencing, provided that your client (a) cooperates with the presentence report writer (including answering all material questions truthfully and providing all financial information requested); (b) cooperates fully and truthfully with the Court in any proceeding arising from this matter; (c) complies with the other provisions of this agreement; and (d) abides by the conditions set for his release by the Court.

If in this plea agreement the government has agreed to recommend or refrain from recommending to the sentencing judge a particular resolution of any sentencing issue, the government reserves the right to full allocution in any post-sentence litigation in order to defend the sentencing judge's ultimate decision on such issues.

V. Court Not Bound by the Plea Agreement

It is understood that pursuant to Federal Rules of Criminal Procedure 11(c)(1)(B) and 11(c)(3)(B) the Court is not bound by the above stipulations, either as to questions of fact or as to the parties' determination of the applicable Guidelines range, or other sentencing issues. In the event that the Court considers any Guidelines adjustments, departures, or calculations different from any stipulations contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in Title 18, United States Code, Section 3553(a), the parties reserve the right to answer any related inquiries from the Court.

VI. Court Not Bound by the Non-Mandatory Sentencing Guidelines

It is understood that the sentence to be imposed upon your client is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. Your client acknowledges that your client's entry of a guilty plea to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence outside the Guidelines range.

VII. Restitution

In addition to the other penalties provided by law, the Court must also order that your client make restitution under 18 U.S.C. § 3663A. Restitution is payable immediately unless ordered otherwise by the Court.

In addition to any restitution that must be ordered by the Court, your client agrees to make restitution to all victims of your client's criminal conduct and not merely for those victims included in the counts to which your client agrees to plead guilty. The government contends that pursuant to 18 U.S.C. §§3663(a)(3) and 3663A(a)(3), the order of restitution imposed by the Court shall be in the amounts and to the victims indicated in Exhibit 1 to this letter. Your client contends that the restitution amounts are less, but acknowledges that some amount of restitution is owed to each of the victims listed in Exhibit 1 to this letter. The parties will rely on the Court, with the assistance of the United States Probation Office, to resolve this issue.

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VIII. Loan History

Your client agrees that, upon request by the Government, he will truthfully and accurately complete any paperwork necessary to correct the credit history of Kamau Mposi, an individual whose identity he appropriated for the purposes of applying for and receiving federal student aide. Your client also agrees to provide any documentation that may be necessary to establish to the relevant credit and reporting entities that he was in fact the individual who incurred the obligations that he obtained under Mr. Mposi's name.

IX. Release/Detention

Your client acknowledges that while the Government will not seek detention of your client pending sentencing, the final decision regarding your client's bond status or detention will be made by the Court at the time of your client's plea of guilty. The Government will not oppose your client's voluntary surrender to commence serving any sentence which is imposed. The Government may move to change your client's conditions of release if your client engages in further criminal conduct prior to sentencing or if the Government obtains information that it did not possess at the time of your client's plea of guilty and that is relevant to whether your client is likely to flee or to pose a danger to any person or the community.

X. Breach of Agreement

Your client understands and agrees that if, after entering this Plea Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Plea Agreement, or engages in any criminal activity prior to sentencing, your client will have breached this Plea Agreement. In the event of such a breach: (a) the Government will be free from its obligations under the Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client shall be fully subject to criminal prosecution for any other crimes,

including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of this Agreement, including your client's statements made during proceedings before the Court pursuant to Fed. R. Crim. P. 11.

Your client acknowledges discussing with you Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410, rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights which arise under these rules.

Your client understands and agrees that the Government shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. Your client further understands and agrees that the Government need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. However, in the event of such a breach, your client will not be allowed to withdraw this guilty plea.

XI. Waiver of Statute of Limitations

It is further agreed that should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

XII. Waiver of Right to DNA Testing

By entering this plea of guilty, your client waives any and all right your client may have, pursuant to 18 U.S.C. § 3600, to require DNA testing of any physical evidence in the possession of the Government. Your client fully understands that, as a result of this waiver, any physical evidence

in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

XIII. Complete Agreement


No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and an Assistant United States Attorney for the District of Columbia.

Your client further understands that this Agreement is binding only upon the Criminal Division of the United States Attorney's Office for the District of Columbia. This Agreement does not bind the Civil Division of this Office or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing the Agreement in the space indicated below and returning the original to me once it has been signed by your client and by you or other defense counsel.

Sincerely yours,


CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY


By: 
ELLEN CHUBIN EPSTEIN
Assistant United States Attorney

DEFENDANT'S ACCEPTANCE

I have read this Plea Agreement and have discussed it with my attorney, Kenneth Robinson, Esquire. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense(s) identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Plea Agreement. I am satisfied with the legal services provided by my attorney in connection with this Plea Agreement and matters related to it.

Date: 9-30-09




Ernest Bernard Moore
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read each of the pages constituting this Plea Agreement, reviewed them with my client, and discussed the provisions of the Agreement with my client, fully. These pages accurately and completely sets forth the entire Plea Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 9-30-09



Kenneth Robinson, Esquire
Attorney for the Defendant

EXHIBIT 1 Restitution			
	Individual/Institution	Address	Restitution
1	TERI (AES/PHEAA Loans 001-002)	First Marble Head, Fraud Prevention Department, Attention Sarah Kostas, One Cabot Road, Medford, MA 02155 (781) 658-5330	\$28,483.39
2	National Collegiate Trust (AES/PHEAA Loans 003-004)	First Marble Head, Fraud Prevention Department, Attention Sarah Kostas, One Cabot Road, Medford, MA 02155 (781) 658-5330	\$93,655.19
3	Citibank Citi Assist Student Loans	Citibank, PO Box 6095, Sioux Falls, SD 57117-6095	\$32,040.65
4	Sallie Mae	Sallie Mae, P.O.Box 3779, Wilkes-Barre, PA 18773-3779	\$67,003.62
5	EduCap Inc.	Attn: Sharon, Educap Inc. Loan Servicing Department, 21680, Ridgetop Circle, Sterling, VA 20166; (703) 674-4746	\$28,878.84
6	American Express	America Express, 6712 Washington Ave, Ste 210, Egg Harbor, Township, NJ 08234	\$67,762.00
7	Capitol One	Capitol One Bank Attn: Specialty Investigations, PO Box 85582, Richmond, VA 23360	\$1,439.63
8	Citibank Credit Cards	Citi Investigative Services 14700 Citicorp Dr. Bldg 2 /Flr 1, Hagerstown, MD 21742 Citi Case# 20090064504	\$177,282.32
9	Discover Financial Services	Restitution Department, DFS Services LLC, 5420 West 1730 South, Salt Lake City UT 84101 re: 6011 XXXX-XXXX-7680	\$6,489.38
10	Arrow Financial Services (GEMB Peach Direct Account ending in 6293)	5996 Touhy Ave, Niles, IL 60714	\$3,402.00
11	GECIS Americas Recovery (GEMB Brooks Brothers MasterCard ending in 0474)	Attn: Cars Team PO Box 981426, El Paso, TX 79998-1426	\$3,365.69
12	GEMB Collection Department (Dillard's American Express)	GEMB/Collection Department, PO Box 36955, Canton, OH 44735	\$4,677.63
13	GEMB (remainder active MOORE GEMB accounts and one CANNADY account)	GE Money Bank, 950 Forrer Blvd, West Building, Kettering, OH 45420	\$12,223.05
14	HSBC	HSBC Retail Services, 90 Christiana Road, Churchmans Corporate Center, New Castle, DE 19720; Attn: Jennifer Beamer	\$12,152.71
15	JP Morgan Chase	Fraud Investigations, Diane Henn, P.O. Box 1523, Lindenloust, NY 11757-0942; (516)-574-6232	\$56,115.78
16	Macy's	9111 Duke Blvd, Mason, OH 45040	\$19,978.75
17	NCO Financial Systems (Bank of America Accounts ending in 1145,4202, and 9600)	NCO Financial Systems, Attn: Payment Processing, 1804 Washington, Blvd, Dept 600, Baltimore, MD 21230	\$89,492.17
18	Nordstrom, FSB Card Services	Attn: Brian Larsen, Nordstrom FSB, PO Box 6589, Centennial, CO 80155	\$7,938.10
19	Stanford Federal Credit Union	Attn: Mr. Richard Nice, Collection Manager, Corporate Headquarters, 1860 Embarcadero Road, 2nd Floor, Palo Alto, CA 94303 (650) 842-6146	\$13,400.00
20	Social Security Administration	Social Security Administration Debt Management Section ATTN: Court Refund PO Box 2861 Philadelphia, PA 19122	\$8,296.00
21	Warren Baker	10044 Naughton Court, Bristow, VA 20136	\$4,961.00
22	U S. Department of Education Accounts Receivables Group (Loans under XXX-XX-7900)	830 First Street, N.E. Room 22B3 Washington, D.C. 20202-4461. Contact person: Ralph Page. (202) 377-3756.	\$9,119.00
Total Restitution			\$739,037.90