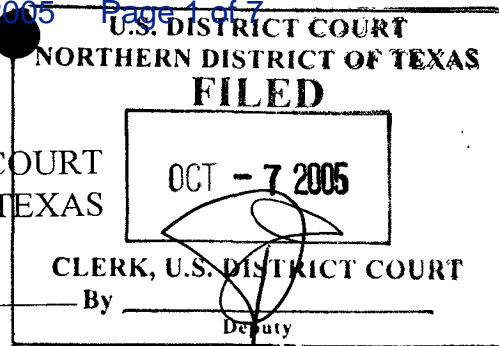


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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



UNITED STATES OF AMERICA

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§
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§
§

v.

ORIGINAL

No. 3:05-CR-124-M

HONG THANH DUONG (06)

PLEA AGREEMENT

Hong Thanh Duong, Paul Brauchle, the defendant's attorney, and the United States of America (the government), agree as follows:

1. **Rights of the defendant:** Duong understands that he has the rights
 - a. to plead not guilty;
 - b. to have a trial by jury;
 - c. to have his guilt proven beyond a reasonable doubt;
 - d. to confront and cross-examine witnesses and to call witnesses in his defense; and
 - e. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** Duong waives these rights and pleads guilty to the offense alleged in Count 1 of the indictment, charging a violation of 18 U.S.C. § 371 [18 U.S.C. §§ 1341, 1343, and 1957(a)], that is, conspiracy to commit mail fraud, wire fraud, and illegal monetary transactions. Duong understands the nature and elements of the crime to which he is pleading guilty, and agrees that the factual resume he has signed is true and will be submitted as evidence.

3. **Sentence:** The maximum penalties the Court can impose include:
 - a. imprisonment for a period not to exceed five (5) years;
 - b. a fine not to exceed \$250,000.00, or twice any pecuniary gain to the defendant or loss to the victim(s);
 - c. a mandatory term of supervised release of not less than 2 years nor more than 3 years, may follow any term of imprisonment. If Duong violates the conditions of supervised release, he could be imprisoned for the entire term of supervised release;
 - d. a mandatory special assessment of \$100.00;
 - e. restitution to victims or to the community, which may be mandatory under the law, and which Duong agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone; and
 - f. costs of incarceration and supervision.

4. **Court's sentencing discretion and role of the Guidelines:** Duong understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, but are advisory only. Duong has reviewed the guidelines with his attorney, but understands no one can predict with certainty the outcome of the Court's consideration of the guidelines in this case. Duong will not be allowed to withdraw his plea if his sentence is higher than expected. Duong fully understands that the actual sentence imposed (so long as it is within the statutory maximum) is solely in the discretion of the Court.

5. **Mandatory special assessment:** Duong agrees to pay to the U.S. District Clerk the amount of \$100.00, in satisfaction of the mandatory special assessment in this case.

6. **Defendant's cooperation:** Duong shall cooperate with the government by giving truthful and complete information and/or testimony concerning his participation in the offense of conviction and knowledge of criminal activities. Upon demand, Duong shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding his capacity to satisfy any fines or restitution. The government will advise the Court of the extent of Duong's cooperation.

7. **Government's agreement:** The government will not bring any additional charges against Duong based upon the conduct underlying and related to Duong's plea of guilty. The government will dismiss, after sentencing, any remaining charges in the pending indictment. Pursuant to Rule 11(c)(1)(B), the government recommends that Duong be sentenced at the lowest end of the guideline range applied by the court and that he receive a downward adjustment for mitigating role under USSG § 3B1.2. This recommendation is not binding on the district court. The government will evaluate the extent and value of Duong's assistance to authorities and will file a motion for downward departure under the terms of §5K1.1 of the Federal Sentencing Guidelines if, and only if, the government deems such motion to be appropriate. The determination that a §5K1.1 motion is to be filed is in the sole discretion of the government after it has evaluated the entire scope and level of the defendant's cooperation. Duong understands the government is under no obligation to file such motion unless, in the government's opinion, the defendant has rendered substantial assistance. Duong further understands that this agreement is not contingent upon the outcome or success of any investigation conducted by the government or any testimony that he may provide; rather that the filing

of this motion is contingent on the defendant's complete, truthful, forthright, and honest assistance, information, and testimony. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against Duong or any property.

8. **Violation of agreement:** Duong understands that if he violates any provision of this agreement, or if his guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute Duong for all offenses of which it has knowledge. In such event, Duong waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, Duong also waives objection to the use against him of any information or statements he has provided to the government, and any resulting leads.

9. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

10. **Waiver of right to appeal or otherwise challenge sentence:** Duong waives his rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from his conviction and sentence. He further waives his right to contest his conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. Duong, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at

sentencing, (b) to challenge the voluntariness of his plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.

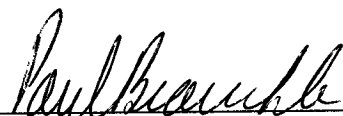
11. **Representation of counsel:** Duong has thoroughly reviewed all legal and factual aspects of this case with his lawyer and is fully satisfied with that lawyer's legal representation. Duong has received from his lawyer explanations satisfactory to him concerning each paragraph of this plea agreement, each of his rights affected by this agreement, and the alternatives available to him other than entering into this agreement. Because he concedes that he is guilty, and after conferring with his lawyer, Duong has concluded that it is in his best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

12. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

AGREED TO AND SIGNED this ____ day of August, 2005.

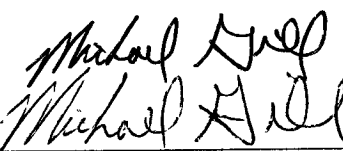


HONG THANH DUONG
Defendant

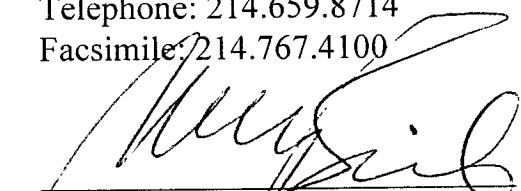


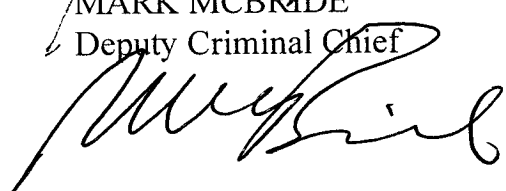
PAUL BRAUCHLE
Counsel for Defendant

RICHARD B. ROPER
UNITED STATES ATTORNEY

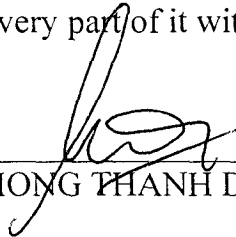


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Deputy Criminal Chief


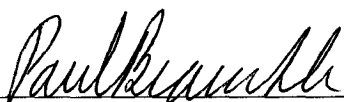
I have read (or had read to me) this Plea Agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.



HONG THANH DUONG

Date

I am the defendant's counsel. I have carefully reviewed every part of this Plea Agreement with the defendant. To my knowledge and belief, my client's decision to enter into this Plea Agreement is an informed and voluntary one.



PAUL BRAUCHLE
Attorney for Defendant

10-3-05

Date

PLEA TRANSLATED INTO VIETNAMESE
BY COURT INTERPRETER.

Nova C. Phung

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT - 7 2005
CLERK, U.S. DISTRICT COURT
By _____
Deputy

UNITED STATES OF AMERICA §
v. **ORIGINAL** § No. 3:05-CR-124-M
HONG THANH DUONG (06) §

FACTUAL RESUME

Hong Thanh Duong, Paul Brauchle, the defendant's attorney, and the United States of America (the government), represent the following elements and facts to this Honorable Court as follows:

ELEMENTS OF THE OFFENSE

Count 1

Conspiracy to Commit Mail Fraud, Wire Fraud, and Illegal Monetary Transactions
(Violation of 18 U.S.C. § 371 [18 U.S.C. §§ 1341, 1343, and 1957(a)])

First: That the defendant and at least one other person made an agreement to commit the crime of mail fraud, wire fraud, or engaging in illegal monetary transactions as charged in the indictment;

Second: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

FACTS

Beginning in or about July 2002, and continuing through on or about August 2, 2002, in the Dallas Division of the Northern District of Texas, and elsewhere, defendant **Hong Thanh Duong** joined together and conspired with **Xuyen Thi-Kim Nguyen**, also known as “Kim Xuyen Nguyen” and others, to commit the crimes of: mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and engaging in illegal monetary transactions, in violation of 18 U.S.C. § 1957(a). **Duong** was aware of the unlawful purposes of this conspiracy and joined in it willfully, with the intent to further the conspiracy’s unlawful purposes.

In furtherance of the conspiracy and in order to effect the objects thereof, **Duong** and his co-conspirators committed and caused to be committed the following overt acts, among others, in the Dallas Division of the Northern District of Texas, and elsewhere:

Based on information he has received from the Federal Bureau of Investigation, **Duong** knows that **Sean Nguyen, Dai Nguyen**, and others set up a scheme in relation to the sale and purchase of the residence located at 421 Ivan Drive, Lewisville, Texas. Although the original sales price was \$195,000, **Duong** understands that an appraiser prepared a fraudulent Uniform Residential Appraisal Report for 421 Ivan Drive, estimating the market value of that residence to be \$400,000.

At the time of this scheme, **Duong** was residing in Seattle, Washington. One of his friends, **Cuc Kim Tran**, introduced **Duong** to **Xuyen Nguyen**. Because **Duong** had a

good credit rating, **Xuyen Nguyen** recruited **Duong** to serve as the “straw borrower” to purchase a residence in Texas, meaning **Duong** would represent himself as the purchaser of a specific residence, although he would not live in the house or maintain responsibility for payment of any mortgage on the property. **Duong** agreed to serve as a straw borrower and traveled to Dallas, Texas to meet with **Xuyen Nguyen**.

On or about August 1, 2002, **Duong** attended a meeting at American Title Company in Garland, Texas and executed a HUD-1 Settlement Statement in connection with his straw purchase of the residence located at 421 Ivan Drive, Lewisville, Texas 75067. **Duong** understands that this statement misrepresented the true value of the residence located at 421 Ivan Drive and falsely listed **Duong** as the purchaser / borrower for that house. **Duong** was not the true purchaser of the residence located at 421 Ivan Drive and did not intend to live at that address or maintain responsibility for payment of the mortgage on that property.

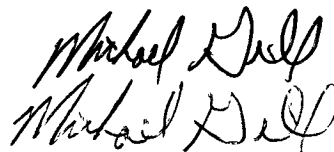
The HUD-1 Settlement Statement, along with other fraudulent loan documents claiming that **Duong** was the purchaser / borrower for the residence, were submitted to Countrywide Home Loans, d.b.a. America’s Wholesale Lender, in order to secure financing to close straw borrower **Duong**’s purchase of 421 Ivan Drive from H.N. for the inflated amount of \$398,000. As a result of this false submission, **Duong** agrees and stipulates that he, along with the other co-conspirators, caused Countrywide Home Loans, d.b.a. America’s Wholesale Lender to fund and transmit by wire communication

\$372,683.24 from the Bank of New York, New York City, New York to American Title Company's account maintained at Compass Bank in Houston, Texas in order to close straw borrower **Duong's** purchase of 421 Ivan Drive from H.N. Because the residence at 421 Ivan Drive was overvalued in the documentation submitted to Countrywide Home Loans, **Duong** agrees that a large part of the loan proceeds wired from New York to Texas were fraudulently obtained.

On or about August 1, 2002, **Xuyen Nguyen** provided **Duong** with the Community Union Cashier's Check in the amount of \$15,000 as payment for **Duong's** assistance in the 421 Ivan Drive transaction. **Duong** later deposited the \$15,000 cashier's check into his personal account, maintained at US Bank, account number *****5605.


AGREED TO AND SIGNED this ____ day of August, 2005.

RICHARD B. ROPER
UNITED STATES ATTORNEY



MICHAEL R. GILL
Assistant United States Attorney
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Dallas, Texas 75242
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Facsimile: 214.767.4100



HONG THANH DUONG
Defendant

PAUL BRAUCHLE
Counsel for Defendant

*Document translated into Vietnamese
by Court Interpreter.
Nora C. Phung*