

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
FEB - 2 2017
CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

United States of America,

No. 16-cr-20641

Plaintiff,

Hon. Gershwin A. Drain

v.

Offenses:

D-1 Futoshi Higashida,

18 U.S.C. §§ 371 and 1519

Conspiracy to Obstruct an Investigation
of a Matter within U.S. Jurisdiction

Defendant.

18 U.S.C. § 1512(b)(2)(B)

Attempted Obstruction of Justice

Maximum Penalty:

5 years (Count 1)

20 years (Count 2)

Maximum Fine:

Not to exceed \$250,000

Mandatory Supervised Release:

Up to 3 years

Rule 11 Plea Agreement

The United States of America and Futoshi Higashida ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charges and the United States would have to prove every essential element of the charged offenses beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty; and
 - (h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in subparagraphs 1(b)–(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or § 2255, that challenges the sentence imposed by the

Court if that sentence is consistent with or below the sentence jointly recommended by the parties in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)–(c). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Consistent with Fed. R. Crim. P. 11(b)(1)(O), the defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future. Under federal law, a broad range of crimes are removable offenses, including the offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including his attorney or the district court, can predict with certainty the effect of his conviction on his immigration status. The defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United

States. The defendant will plead guilty to the Indictment that has been filed in the United States District Court for the Eastern District of Michigan. The Indictment charges the defendant with (1) knowingly conspiring to commit an offense against the United States, namely, obstruction of an investigation of a matter within the jurisdiction of a department and agency of the United States, in violation of Title 18, United States Code, Section 1519, all in violation of Title 18, United States Code, Section 371, and (2) knowingly attempting to corruptly persuade another individual, with the intent to cause and induce that individual to alter objects with the intent to impair those objects' integrity and availability for use in an official proceeding, in violation of Title 18, United States Code, Section 1512(b)(2)(B).

3. The defendant will plead guilty to the criminal charges described in Paragraph 2 pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 of this Plea Agreement. The United States agrees that, pursuant to 18 U.S.C. § 3142, it will stipulate to the release of the defendant based on the release conditions imposed at his arraignment pending the sentencing in this case.

FACTUAL BASIS FOR OFFENSES CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts. The following facts are a sufficient and accurate basis for the defendant's guilty pleas.

(a) The defendant was a citizen of Japan and resided in Japan and the United States. From at least as early as June 2008 until in or about July 2011, the defendant was employed by Company A as a manager in the Business Administration and Marketing Department. During this period, the defendant reported to Mikio Katsumaru. From in or about August 2011 until in or about September 2011, the defendant was employed by Company B as Vice President. From in or about October 2011 until at least September 2012, the defendant was employed by COMPANY B as President. While working at COMPANY B, the defendant's office was located in Novi, Michigan.

(b) COMPANY A was a corporation based in Japan. COMPANY B was a joint venture owned by COMPANY A and another company. COMPANY A and COMPANY B manufactured and sold automotive parts to automobile manufacturers in the United States and elsewhere.

(c) Under the Sherman Antitrust Act, Title 15, United States Code, Section 1, it was and is a crime for employees of competitor companies to

conspire with each other to suppress and eliminate competition in unreasonable restraint of interstate and foreign trade and commerce. Under the Sherman Antitrust Act, a criminal violation (“antitrust crime”) by a corporation was and is punishable by a fine of up to \$100 million, and an antitrust crime by an individual was punishable by imprisonment of up to ten years and a fine of up to \$1 million.

(d) The Federal Bureau of Investigation (“FBI”) was and is an agency and department of the United States with jurisdiction to investigate violations of federal criminal laws, including antitrust crimes. The United States Department of Justice was and is an agency and department of the United States with jurisdiction to investigate and prosecute violations of federal criminal laws, including antitrust crimes.

(e) On October 8, 2015, three employees of COMPANY A were charged in the Eastern District of Kentucky with an antitrust crime, for knowingly participating in a conspiracy to suppress and eliminate competition for automotive parts sold to certain automobile manufacturers in the United States and elsewhere from at least as early as September 2003 and continuing until at least October 2011.

(f) On September 1, 2016, COMPANY A was charged in the Eastern District of Kentucky with an antitrust crime for knowingly

participating in a conspiracy to suppress and eliminate competition for automotive parts sold to certain automobile manufacturers in the United States and elsewhere from at least as early as January 2000 until at least September 2012.

Count 1

(g) From at least as early as June 2008 until at least September 2012, the defendant, Katsumaru, and other co-conspirators knowingly conspired to destroy, conceal, and cover up records and documents with the intent to impede, obstruct, and influence a contemplated investigation of a matter within the jurisdiction of the FBI and the United States Department of Justice, namely, an investigation of an antitrust crime committed by COMPANY A, COMPANY B, and their employees in violation of Title 18, United States Code, Section 1519. For the purpose of forming and carrying out the conspiracy, the defendant, Katsumaru, and co-conspirators instructed employees of COMPANY A and COMPANY B to delete e-mails and electronic records referring to communications with competitor companies.

(h) In furtherance of the conspiracy and to effect the object of the conspiracy, the defendant, Katsumaru, and co-conspirators committed and caused to be committed overt acts in the Eastern District of Michigan and elsewhere.

Count 2

(i) On or about September 25, 2012, in the Eastern District of Michigan, the defendant knowingly attempted to corruptly persuade INDIVIDUAL D with the intent to cause and induce INDIVIDUAL D to alter objects, namely his cellular phone and computer, by instructing INDIVIDUAL D to delete phone numbers and call records from his cellular telephone and data from his computer that would reflect communications with competitors.

(j) The defendant sent these instructions to INDIVIDUAL D with the intent to impair those objects' integrity and availability for use in a prosecution of COMPANY B and its employees for an antitrust crime before a court of the United States.

ELEMENTS OF THE OFFENSES

5. (a) The elements of Count One are as follows:

(1) Two or more persons conspired, or agreed to commit the crime of obstructing a contemplated investigation of a matter within the jurisdiction of a department and agency of the United States, in violation of Title 18, United States Code, Section 1519;

(2) The defendant knowingly and voluntarily joined the conspiracy; and,

(3) A member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

(b) The elements of Count Two are as follows:

(1) The defendant attempted to corruptly persuade another person;

(2) The defendant acted knowingly; and,

(3) The defendant acted with the intent to cause or induce that person to alter an object with the intent to impair the object's integrity or availability for use in an official proceeding.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalties which may be imposed against him are as follows.

(a) For Count One:

(1) a term of imprisonment of five (5) years (18 U.S.C. § 371);

(2) a fine not to exceed \$250,000; and,

(3) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two

(2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. §§ 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

(b) For Count Two:

(1) a term of imprisonment of twenty (20) years (18 U.S.C. § 1512);

(2) a fine not to exceed \$250,000; and,

(3) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(4); 18 U.S.C. §§ 3583(b)(2) and (e)(3); and U.S.S.G. § 5D1.2(a)(2)).

7. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. §§ 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for each charged crime.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing, unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the November 1, 2016 Guidelines Manual. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Court will make Guidelines determinations by applying a standard of preponderance of the evidence. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). There are no Sentencing Guideline disputes. Except as provided below, the defendant's Guideline range is 15 to 21 months, as set forth on the attached worksheets. If the Court finds:

(a) That defendant's criminal history category is higher than reflected on the attached worksheets, or

(b) that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime, and if any such finding results in a Guideline range higher than 15 to 21 months, the higher Guideline range becomes the agreed range. However, if the Court finds that the defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the Sentencing Guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does not authorize a corresponding increase in the agreed range. Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections (a) and (b), above.

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C) and subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13

of this Plea Agreement, the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence within the applicable Guidelines range requiring the defendant to pay to the United States a criminal fine of \$7,500 payable in full before the fifteenth (15th) day after the date of judgment; a period of imprisonment of 14 months; no period of supervised release; and no order of restitution (“the recommended sentence”). The defendant agrees that he will not request that he be allowed to serve any part of his sentence in home detention, intermittent confinement, or community confinement.

10. The United States will not object to the defendant’s request that the Court make a recommendation to the Bureau of Prisons (“BOP”) that the BOP designate that the defendant be assigned to a Federal Minimum Security Camp (and specifically to the Federal Prison Camp at Taft, California) to serve his sentence. The United States also will not object to the defendant’s request that he be released following the Court’s imposition of the sentence to allow him to self-surrender to the assigned prison facility.

11. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek

at the sentencing hearing any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The defendant understands that the Court will order him to pay a \$200 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

12. The United States and the defendant agree that the applicable Guidelines imprisonment range exceeds the term of imprisonment contained in the jointly recommended sentence set out in Paragraph 9 of this Plea Agreement. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a downward departure from the Guidelines imprisonment range in this case and will request that the Court impose the term of imprisonment contained in the recommended sentence set out in Paragraph 9 of this Plea Agreement because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the automotive body sealing products industry.

13. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 15 of this Plea Agreement, and prior to sentencing in this case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and

his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

14. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for subparagraph 14(b) of this Plea Agreement, will be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the type or location of the prison facility to which the defendant is assigned to serve his sentence.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In

addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 17 of this Plea Agreement, will be tolled for the period between the date of signature of this Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of signature of this Plea Agreement, whichever period is greater.

DEFENDANT'S COOPERATION

15. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of automotive body sealing products, any federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from such investigation to which the United States is a party (collectively "Federal Proceeding"). Federal Proceeding includes—but is not limited to—an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful, and continuing cooperation of the defendant will include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all documents, including claimed personal documents, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine, and with translations into English, in the possession, custody, or control of the defendant, that are requested by attorneys and agents of the United States in connection with any Federal Proceeding;

(b) making himself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information not requested in (a)–(c) of this paragraph and not

protected under the attorney-client privilege or work-product doctrine that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401–02), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

16. The United States agrees that if pursuant to this Plea Agreement and Significant Public Benefit Parole, the defendant travels to the United States for interviews, grand jury appearances, or court appearances , or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject the defendant to arrest, detention, or service of process, or to prevent the defendant from departing the United States. This paragraph does not apply to the defendant's commission of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses that is not covered by the Relevant Offense.

GOVERNMENT'S AGREEMENT

17. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 15 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of signature of this Plea Agreement that (a) was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of automotive body sealing products, or (b) is specified in Paragraph 4(g) – (j) of this Plea Agreement (collectively, "Relevant Offense"). The nonprosecution terms of this paragraph do not apply to (a) any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401–02), or conspiracy to commit such offenses except for the conduct specified in Paragraph 4(g) – (j) of this Plea Agreement; (b) civil matters of any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d) any crime of violence.

REPRESENTATION BY COUNSEL

18. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

19. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in

Paragraph 15 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gives notice of its intent to void its obligations under this Plea Agreement.

21. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In addition, the defendant

unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.


ENTIRETY OF AGREEMENT

22. This Plea Agreement and the attached sentencing worksheet constitute the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement and the attached sentencing worksheet cannot be modified except in writing, signed by the United States and the defendant.

23. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

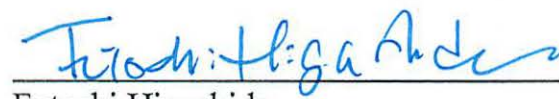
Respectfully Submitted,

1/5/2017
Date


Andre M. Geverola
Assistant Chief
L. Heidi Manschreck
Matthew McCrobie
Jesse L. Reising
Chester C. Choi
Trial Attorneys
Antitrust Division
U.S. Department of Justice
Chicago Office
209 S. LaSalle Street, Suite 600
Chicago, Illinois 60604
312-984-7200

By signing below, defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer, and has had all of his questions answered by his lawyer.


Niall E. Lynch
Attorney for Defendant


Futoshi Higashida
Defendant

2/2/2017
Date

2/2/2017
Date

Defendant:	Futoshi Higashida	Count:	One
Docket No.:	16-cr-20641	Statutes:	18 U.S.C. §§ 371 and 1519

WORKSHEET A – Count 1 (Offense Levels)

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all “closely related” to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
§ 2X1.1(a); § 2J1.2(a)	Base offense level for a conspiracy is the base offense for the substantive offense.	14
§ 2J1.2(b)(3)	Adjustment for an offense that involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; the selection of any essential or especially probative records, document, or tangible object, to destroy or alter; or was otherwise extensive in scope, planning, or preparation.	+2
§ 2X1.1(b)(2)	Adjustment because the conspiracy was not fully completed by the co-conspirators.	-3

2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
§ 3B1.1(a)	Adjustment because defendant was organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.	+4


3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

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Respectfully Submitted,

1/5/2017
Date


Andre M. Geverola
Assistant Chief
L. Heidi Manschreck
Matthew McCrobie
Jesse L. Reising
Chester C. Choi
Trial Attorneys
Antitrust Division
U.S. Department of Justice
Chicago Office
209 S. LaSalle Street, Suite 600
Chicago, Illinois 60604
312-984-7200

By signing below, defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer, and has had all of his questions answered by his lawyer.

Niall E. Lynch
Attorney for Defendant

Futoshi Higashida
Defendant

Date

Date

Defendant:	Futoshi Higashida	Count:	One
Docket No.:	16-cr-20641	Statutes:	18 U.S.C. §§ 371 and 1519

* * * * *

If this is the only Worksheet A, check this box and skip Worksheet B.

If the defendant has no criminal history, check this box and skip Worksheet C.

✓

Defendant:	Futoshi Higashida	Count:	Two
Docket No.:	16-cr-20641	Statute:	18 U.S.C. §1512

WORKSHEET A – Count 2 (Offense Levels)

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all “closely related” to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
§ 2J1.2(a)	Base offense level for obstruction of justice.	14

2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
N/A	N/A	

3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

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Defendant:	Futoshi Higashida	Counts:	One and Two
Docket No.:	16-cr-20641	Statutes:	18 U.S.C. §§ 371 and 1519; 18 U.S.C. §1512

WORKSHEET B (Multiple Counts)

Instructions (U.S.S.G. ch. 3, pt. D):

- Group the counts of conviction into distinct Groups of Closely Related Counts. “All counts involving substantially the same harm shall be grouped together into a single Group.” (See U.S.S.G. § 3D1.2.)
- Determine the offense level applicable to each Group. (See U.S.S.G. § 3D1.3.)
- Determine the combined offense level by assigning “units” to each Group as follows (see U.S.S.G. § 3D1.4):
 - assign 1 unit to the Group with the highest offense level,
 - assign 1 unit to each additional Group that is equally serious as, or 1 to 4 levels less serious than, the Group with the highest offense level,
 - assign ½ unit to each Group that is 5 to 8 levels less serious than the Group with the highest offense level,
 - assign no units to each Group that is 9 or more levels less serious than the Group with the highest offense level.

1. **GROUP ONE: COUNT(S)** _____
 ADJUSTED OFFENSE LEVEL 17

2. **GROUP TWO: COUNT(S)** _____
 ADJUSTED OFFENSE LEVEL _____

3. **GROUP THREE: COUNT(S)** _____
 ADJUSTED OFFENSE LEVEL _____

4. **GROUP FOUR: COUNT(S)** _____
 ADJUSTED OFFENSE LEVEL _____

1	unit
	unit
	unit
	unit
1	unit

5. **TOTAL UNITS**

Defendant:	Futoshi Higashida	Counts:	One and Two
Docket No.:	16-cr-20641	Statutes:	18 U.S.C. §§ 371 and 1519; 18 U.S.C. §1512

6. INCREASE IN OFFENSE LEVEL

1 unit —→ no increase 2 1/2 – 3 units —→ add 3 levels
 1 1/2 units —→ add 1 level 3 1/2 – 5 units —→ add 4 levels
 2 units —→ add 2 levels > 5 levels —→ add 5 levels

0

7. ADJUSTED OFFENSE LEVEL OF GROUP WITH THE HIGHEST OFFENSE LEVEL

17

8. COMBINED ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 6 and 7.

17

Defendant:	Futoshi Higashida	Counts:	One and Two
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WORKSHEET C (Criminal History)

Date of defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses):

1. PRIOR SENTENCES

Prior Sentence of Imprisonment Exceeding 13 Months **(U.S.S.G. §§ 4A1.1(a)):**

3 POINTS

Enter 3 points for each prior adult sentence of imprisonment exceeding one year and one month that either (1) was imposed within 15 years of the defendant's commencement of the instant offenses (taking into account relevant conduct and stipulated offenses) or (2) resulted in the defendant's confinement during any part of that 15-year period. (See U.S.S.G. §§ 4A1.1(a), 4A1.2(d)(1), (e)(1).)

Prior Sentence of Imprisonment of at Least 60 Days **(U.S.S.G. §§ 4A1.1(b)):**

2 POINTS

Enter 2 points for each prior sentence of imprisonment of at least 60 days not counted under U.S.S.G. § 4A1.1(a) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(b), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and resulted in the defendant's confinement during any part of the 5-year period preceding the defendant's commencement of the instant offense (see U.S.S.G. §§ 4A1.1(b), 4A1.2(d)(2)(A)).

Other Prior Sentences **(U.S.S.G. §§ 4A1.1(c)):**

1 POINT

Enter 1 point for each prior sentence not counted under U.S.S.G. § 4A1.1(a) or (b) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and was imposed within 5 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(d)(2)(B)). NOTE: No more than 4 points may be added under this item.

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<u>Date of Imposition</u>	<u>Status*</u>	<u>Offense</u>	<u>Sentence</u>	<u>Release Date**</u>	<u>Points</u>

* If the defendant committed the offense before turning 18, indicate whether he or she was sentenced as a juvenile (J) or as an adult (A).

** A release date is required in only two situations: (1) when a sentence covered under U.S.S.G. § 4A1.1(a) was imposed more than 15 years before the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) but resulted in his or her confinement during any part of that 15-year period; or (2) when a sentence counted under U.S.S.G. § 4A1.1(b) was imposed for an offense committed before the defendant turned 18 but resulted in his or her confinement during any part of the 5-year period preceding his or her commencement of the instant offense (taking into account relevant conduct and stipulated offenses).

Defendant:	Futoshi Higashida	Counts:	One and Two
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**2. COMMISSION OF INSTANT OFFENSE WHILE UNDER PRIOR SENTENCE
(U.S.S.G. § 4A1.1(d))**

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) while under any criminal justice sentence having a custodial or supervisory component, including probation, parole, supervised release, imprisonment, work release, and escape status. (See U.S.S.G. §§ 4A1.1(d), 4A1.2(m), (n).) List the type of control and identify the sentence from which it resulted.



3. PRIOR SENTENCE RESULTING FROM CRIME OF VIOLENCE (U.S.S.G. § 4A1.1(e))

Enter 1 point for each prior sentence resulting from a conviction for a crime of violence that did not receive any points under U.S.S.G. § 4A1.1(a), (b), or (c) because such sentence was considered related to another sentence resulting from a conviction for a crime of violence. But enter no points where the sentences are considered related because the offenses occurred on the same occasion. (See U.S.S.G. §§ 4A1.1(e), 4A1.2(p).) Identify the crimes of violence and briefly explain why the cases are considered related. NOTE: No more than 3 points may be added under this item.



4. TOTAL CRIMINAL HISTORY POINTS

Enter the sum of the criminal history points entered in Items 1-4.



5. CRIMINAL HISTORY CATEGORY

Total Criminal History Points

0-1
2-3
4-6
7-9
10-12
≥ 13

Criminal History Category

I
II
III
IV
V
VI



Defendant:	Futoshi Higashida	Counts:	One and Two
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WORKSHEET D (Guideline Range)**1. (COMBINED) ADJUSTED OFFENSE LEVEL**

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in item 8 of Worksheet B.

17

**2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY
(U.S.S.G. § 3E1.1)**

-3

3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

14

4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

I

**5. CAREER OFFENDER/CRIMINAL LIVELIHOOD/ARMED CAREER
CRIMINAL/DANGEROUS SEX OFFENDER (U.S.S.G. CH. 4, PT. B)**

- a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), the armed career criminal provision (U.S.S.G. § 4B1.4), or the dangerous sex offender provision (U.S.S.G. § 4B1.5) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

- b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1), the armed career criminal provision (U.S.S.G. § 4B1.4), or the dangerous sex offender provision (U.S.S.G. § 4B1.5) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

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6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. CH. 5, PT. A)

Enter the guideline range in the Sentencing Table (*see* U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

15-21

months

7. STATUTORY RESTRICTIONS ON OR SUPERSESSION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (*See* U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.



months

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WORKSHEET E (Authorized Guideline Sentences)

1. PROBATION

a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)

☒

1. Probation is not authorized by the guidelines (minimum of guideline range ≥ 10 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

☐

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).

☐

3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range > 0 months but ≤ 9 months).

b. Length of Term of Probation (U.S.S.G. § 5B1.2)

☐

1. At least 1 year but not more than 5 years (total offense level ≥ 6)

☐

2. No more than 3 years (total offense level < 6).

c. Conditions of Probation (U.S.S.G. § 5B1.3)

2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(C)(2), (D)(2))

☒

- a. A split sentence is not authorized (minimum of guideline range = 0 months or ≥ 15 months).

☐

- b. A split sentence is authorized (minimum of guideline range > 0 months but ≤ 12 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 10 or 12 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, 6, 8, or 9 months). The authorized length of the term of supervised release is set forth below in Item 4.b.

3. IMPRISONMENT (U.S.S.G. CH. 5, PT. C)

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

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4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)

a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)



1. At least 2 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment ≥ 25 years.



2. At least 1 year but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment ≥ 5 years but < 25 years.



3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment > 6 months but < 5 years.



4. The statute of conviction requires a minimum term of supervised release of _____ years.

c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

5. RESTITUTION (U.S.S.G. § 5E1.1)



1. The court *must* order full restitution to the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3556, 3663A, 3664.) The court will determine who the victims are and their restitution amounts.



2. The court *must* order full restitution to the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3556, 3663A, 3664) The parties agree that full restitution is \$ _____.

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☐ 3. The parties agree that the court *may* order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$_____.
(See 18 U.S.C. §§ 3663(a)(3), 3664.)

☐ 4. The parties agree that the court *may also* order restitution to persons other than the victim(s) of the offense(s) of conviction in any amount up to and including \$_____.
(See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3), 3664.)

☒ 5. Restitution is not applicable. (See U.S.S.G. § 5E1.1(b)(2)).

6. FINE (U.S.S.G. § 5E1.2)

a. Fines for Individual Defendants

The court must impose a fine unless “the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine.” (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))

Minimum Fine
\$7,500 _____

Maximum Fine
\$75,000 _____

7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are:

- \$100.00 for every count charging a felony (\$400 for a corporation),
- \$25.00 for every count charging a Class A misdemeanor (\$125 for a corporation),
- \$10.00 for every count charging a Class B misdemeanor (\$50 for a corporation),
and
- \$5.00 for every count charging a Class C misdemeanor or an infraction (\$25 for a corporation).

The defendant must pay a special assessment or special assessments in the total amount of \$200 _____.

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8. FORFEITURE (U.S.S.G. § 5E1.4)



Assets of the defendant will be forfeited.



Assets of the defendant will not be forfeited.

9. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES

List any additional applicable guideline, policy statement, or statute.

N/A

10. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range.

The defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense. The defendant's substantial assistance warrants a departure consisting of a one-point downward adjustment in the offense level. This adjustment results in a **Total Offense Level of 13** and a **Guidelines imprisonment range of 12 to 18 months.**