

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NORMAN CLEVE ELQUEST, )  
 )  
 Defendant. )

MATTHEW J. DYKMAN  
CLERK

CRIMINAL NOS. 09-3604 JH

**PLEA AGREEMENT**

Pursuant to Federal Rule of Criminal Procedure 11, the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **NORMAN CLEVE ELQUEST**, and Defendant's counsel, John Van Butcher:

**REPRESENTATION BY COUNSEL**

1. The Defendant understands his right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of these cases with his attorney and is fully satisfied with that attorney's legal representation.

**RIGHTS OF DEFENDANT**

2. The Defendant further understands his rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
  - b. to have a trial by jury; and
  - c. at a trial:
    - 1) to confront and cross-examine adverse witnesses,

- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

**WAIVER OF RIGHTS AND PLEA OF GUILTY**

3. The Defendant hereby agrees to waive these rights and to plead guilty to Count 1 of the Indictment charging a violation of 18 U.S.C. §§ 2252<sup>a</sup>(~~2~~)(2), 2252(b)(1), and 2256, that being Distribution and Attempted Distribution of A Visual Depiction of a Minor Engaged in Sexually Explicit Conduct. The Defendant further agrees to admit to the criminal forfeiture charged in the Indictment. Counts 2 through 6 of the Indictment shall be dismissed at the time of sentencing.

**SENTENCING**

4. The Defendant understands that the penalty the Court can impose for Count 1 is:
  - a. imprisonment for not less than 15 years and not more than 40 years;
  - b. a fine not to exceed \$250,000;
  - c. a lifetime term of supervised release. (If Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, Defendant's supervised release could be revoked -- even on the last day of the term -- and Defendant could then be returned to another period of incarceration and a new term of supervised release.);
  - d. a mandatory special penalty assessment of \$100.00; and
  - e. restitution as may be ordered by the Court.

5. The parties recognize that the United States Sentencing Guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes, although the Defendant faces a statutory minimum of 15 years for Count 1 of the Indictment.

6. The United States hereby expressly reserves the right to make known to the Court and the United States Pretrial Services and Probation Office, for inclusion in the presentence report prepared pursuant to Federal Rule of Criminal Procedure 32, any information that the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G § 1B1.3.

7. The Defendant fully understands that the agreement included in this document determines the sentence in these cases, and whether the Court accepts the plea described herein and enters that agreed upon sentence is solely in the discretion of the Court. Both parties understand that should the Court choose not to accept this plea agreement, as fully laid out in this document, the United States may withdraw from this plea agreement and proceed to trial on the Indictment in these cases previously filed with the Court as solely within the discretion of the United States. It is expressly understand and agreed by and between the Defendant and the United States that:

a. The United States has made an agreement with the Defendant pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., that a specific sentence is agreed to in this plea agreement. This specific sentence shall be for a total of 15 years imprisonment on Count 1 which the Defendant pleads guilty under this agreement. Both parties agree that the Special Penalty Assessment is \$100 per convicted Count, that restitution may be ordered by the Court, and that the terms of supervised release will be determined by the Court.

b. The United States and the Defendant agree that the nature and circumstances of this crime warrant this plea agreement pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., and as provided in the United States Sentencing Guideline § 6B1.1(c).

c. Both the United States and the Defendant recognize that this agreement identifies a definite term of imprisonment for Count 1 as appropriate in this cases. Both parties agree a Presentence Report shall be prepared to determine Defendant's applicable criminal history category. Both parties agree that neither a request for an upward departure nor a request for a downward departure or variance is permitted by either of the parties. Should either party seek a departure from the agreed upon sentence, the other party may withdraw from the plea agreement and proceed with the case without regard to this agreement, as it shall be null and void.

d. The United States and the Defendant understand that the above agreements and stipulations shall not be binding on the Court until such time as the Court may choose to accept this agreement.

#### **DEFENDANT'S ADMISSION OF FACTS**

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish his guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admits the following facts related to the charges against me, and declares under penalty of perjury that all of the facts are true and correct:

a. On August 4, 2009, Investigators with the New Mexico Attorney General's Office (NMAGO) served a search warrant at my residence of 9312 Alta Monte Avenue NE, Albuquerque, New Mexico 87114<sup>WCE, Ser 6</sup> to seize computers and computer-related media which contained evidence of visual depictions of minors engaged in sexually explicit conduct (hereafter "child pornography). Investigators seized my computers, floppies and compact disks pursuant to this search warrant.

b. I now know that this search warrant was based on an undercover operation on July 14, 2009 and July 29, 2009 by the NMAGO aimed at those who possess, receive, and distribute child pornography. On both July 14, 2009 and July 29, 2009, Special Agent Kinch connected with a computer with an Internet Protocol Address (hereafter "IP Address) of 68.35.42.76 who was offering child pornography images available through a peer-to-peer (P2P) file-sharing program. SA Kinch took a screen capture of the files available for distribution from this computer on these respective dates.

c. I now know that SA Kinch determined that the IP Address of 68.35.42.76 was issued to a Comcast and Comcast identified the subscriber as myself, residing at 9312 Alta Monte Avenue NE, Albuquerque, New Mexico.

d. One of my child pornography files available for distribution via the P2P file-sharing program on July 14, 2009 and July 29, 2009 was titled "12 Yo Boys Playing Sex - Goyorgie01 Kdv Rbv Pjk Rf# s00 Hmv Brn Gerbys Preteen Boys Boy Sex Starskysh Yamad Fuck Pthc Crimea Kingpass p101.mpg." This 9 minute and 35 second in length video depicts four prepubescent males masturbating. The video also depicts anal intercourse between multiple males. The video further depicts a prepubescent male with his wrists and ankles bound while

being anally penetrated. This image was available for distribution using Comcast as my Internet Service Provider. I now know this file is an identified video from the Dalmation series.

e. I now know that Comcast does not have servers located in New Mexico and any distribution and attempted distribution of child pornography would transmit across state lines, so as to satisfy the interstate nexus requirement.

f. I now know an extensive computer forensics was later conducted of my Maxwell DVD+R labeled as "backup poss corruption," my Fuji Film 1.44 MB Floppy Disk labeled as "I," my Fuji 1.44 MB Disk labeled as "I," and my black and Silver No Name Computer Tower, with serial number S06-040709-03, which contained a Western Digital 320 GB Hard Disk Drive, serial number WMAV23402895 and a Western Digital 250 GB Hard Disk Drive, serial number WCAL73218859 . The forensic examiner found the file-sharing programs of Limewire and Ares, as well 1,465 child pornography images and 186 child pornography videos. .

g. I now know the found child pornography images on my computers and computer related media were sent to the National Center for Missing and Exploited Children (NCMEC) in an attempt to identify real, known children depicted in such images. According to NCMEC, there were 97 known images from 13 different series and 33 known videos from 12 series..

h. On both July 14, 2009 and July 29, 2009, I had prior convictions for Attempt to Commit Criminal Sexual Penetration in the ~~first~~ <sup>third</sup> degree, a felony in violation of N.M. Stat. Ann. § 30-9-11(A)(1), in the Second Judicial District Court, County of Bernalillo, Cause No. CR-91-01272, and Criminal Sexual Contact of a Minor in the third degree, a felony in

violation of N.M. Stat. Ann. § 30-9-12(C)(1), in the Second Judicial District Court, County of Bernalillo, Cause No. CR-91-01272.

I. In sum, from July 14, 2009 to July 29, 2008, having previously been convicted of the felonies of Attempt to Commit Criminal Sexual Penetration in the ~~first~~ <sup>third</sup> degree and Criminal Sexual Contact of a Minor in the third degree, I knowingly distributed and attempted to distribute a visual depiction that had been mailed, shipped, or transported in interstate or foreign commerce by means of computer, the production of which involved the use of minors engaged in sexually explicit conduct and is of such conduct. I stored the images of minor children engaged in sexually explicit conduct on my computer and offered the images through a P2P file-sharing program through Comcast. I knew it was illegal for me to possess these images.

9. By signing this agreement, the Defendant admits all the foregoing facts and admits that there is a factual basis for each element of each crimes to which the Defendant pleads guilty. The Defendant also recognizes and accepts responsibility for his criminal conduct. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

#### STIPULATIONS

10. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing,

shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rules of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts Defendant admits in conjunction with the plea agreement.

### **DEFENDANT'S OBLIGATIONS**

11. The Defendant understands his obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant hereby represents that he has complied with and will continue to comply with this obligation.

12. If requested to do so by the United States Attorney's Office, the Defendant will submit a personal financial statement under oath and/or submit to interviews by the United States Attorney's Office regarding the Defendant's capacity to satisfy any fines and/or restitution.

13. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offenses in these cases. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or party of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which The Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

14. The Defendant voluntarily and immediately agrees to forfeit to the United States all of the Defendant's right, title, and interest in the following assets and properties in Criminal Cause No. 09-2630:



- a. One (1) Maxwell DVD+R labeled as "backup poss corruption";
- b. One (1) Fuji Film 1.44 MB Floppy Disk labeled as "I";
- c. One (1) Fuji 1.44 MB Disk labeled as "I"; and
- d. One (1) black and Silver No Name Computer Tower, with serial number S06-040709-03, which contained the following:
  - A. Western Digital 320 GB Hard Disk Drive, serial number WMAV23402895; and
  - B. Western Digital 250 GB Hard Disk Drive, serial number WCAL73218859.

15. The Defendant agrees to waive the right of notice of any forfeiture proceeding involving the above-described property.

16. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States, any State or its subdivisions.

**SEX OFFENDER REGISTRATION AND NOTIFICATION**

17. The Defendant agrees that the Defendant has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, the Defendant must register and keep the registration current in each of the following jurisdictions: where the

Defendant resides; where the Defendant is an employee; and where the Defendant is a student. The Defendant agrees that the Defendant understands that the requirements for registration include providing the Defendant's name, the Defendant's residence, address, and the names and addresses of any places where the Defendant is or will be an employee or student, among other information. The Defendant agrees that the Defendant understands that the requirement to keep registration current includes informing at least one jurisdiction in which the Defendant resides, is an employee, or is a student not later than three business days after any change of the Defendant's name, residence, employment, or student status. The Defendant agrees that the Defendant has been advised, and understands, that failure to comply with these obligations subjects the Defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

#### VALIDITY OF CONVICTIONS

18. The Defendant further agrees that the Defendant is the same person who was previously convicted of the following offenses, each of which was at the time of conviction punishable by imprisonment exceeding one year:

- WCO*  
*third* *CR*
- a. Attempt to Commit Criminal Sexual Penetration in the ~~first~~ degree, a felony in violation of N.M. Stat. Ann. § 30-9-11(A)(1), in the Second Judicial District Court, County of Bernalillo, Cause No. CR-91-01272, and
  - b. Criminal Sexual Contact of a Minor in the third degree, a felony in violation of N.M. Stat. Ann. § 30-9-12(C)(1), in the Second Judicial District Court, County of Bernalillo, Cause No. CR-91-01272.

19. The Defendant further agrees that the convictions listed above are valid and free from fundamental error, and that the Defendant's constitutional rights, including the right to counsel, were not violated when the convictions were obtained.

#### **WAIVER OF APPEAL RIGHTS**

20. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a the Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's convictions and any sentence imposed in conformity with this plea agreement. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

#### **UNITED STATES' AGREEMENT**

21. Provided that the Defendant fulfills his obligations as set out above, the United States agrees that:

- a. The United States will not bring additional charges against the Defendant arising out of the facts forming the basis of the present Indictments.
- b. The United States will move to dismiss Counts 2 through 6 of the Indictment following sentencing.
- c. This plea agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

#### **DEFENDANT'S RIGHT TO WITHDRAW GUILTY PLEA**

22. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), if the Court rejects this plea agreement, the Defendant shall have the right to withdraw the Defendant's plea of guilty.

### **VOLUNTARY PLEA**

23. The Defendant agrees and represents that his plea of guilty is freely and voluntarily made and not the result of force, threats or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

### **VIOLATION OF PLEA AGREEMENT**

24. The Defendant understands and agrees that if Defendant violates any provision of this plea agreement, the United States may declare this plea agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation including, but not limited to, any crimes or offenses contained in or related to the charges filed in these cases, as well as perjury, false statement, obstruction of justice and any other crime committed by the Defendant during this prosecution.

### **SPECIAL ASSESSMENT**

25. At the time of execution of this plea agreement, the Defendant will tender a money order or certified check payable to the order of the United States District Court, District of New Mexico, 333 Lomas Blvd., NW, Suite 270, Albuquerque, New Mexico, 87102, in the amount of \$300.00 in payment of the special penalty assessment described above.

**ENTIRETY OF AGREEMENT**

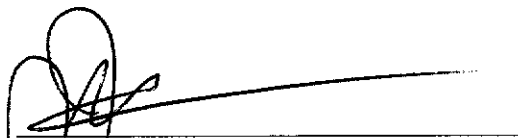
26. This document is a complete statement of the agreement in these cases and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 25 day of March, 2010.

GREGORY J. FOURATT  
United States Attorney



CHARLYN E. REES  
Assistant United States Attorney  
P.O. Box 607  
Albuquerque, New Mexico 87102  
(505) 346-7274

  
JOHN VAN BUTCHER  
Attorney for Defendant

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand the plea agreement and voluntarily sign it.

  
NORMAN CLEVE ELQUEST  
Defendant