

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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CLERK-ALBUQUERQUE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT A. WARREN,)
)
 Defendant.)

CRIMINAL NO. 09-CR-2059 BB

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, **ROBERT A. WARREN**, and the defendant's counsel, Peter Schoenburg and Marc Lowry:

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 this case with his attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE 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 the 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 an Indictment charging Count 2 as a violation of 18 U.S.C. §§ 2252(a)(2), 2252(b)(1), and 2256, that being receipt of a visual depiction of minors engaged in sexually explicit conduct. The Defendant further agrees to admit to the criminal forfeiture in the Indictment. The United States will move to dismiss Counts 1, 3, 4, 5, 6 and 7 at the time of sentencing.

SENTENCING

4. The defendant understands that the maximum penalty the Court can impose is:
 - a. Imprisonment not less than five (5) years up to twenty (20) years;
 - b. a fine not to exceed \$250,000;
 - c. a lifetime term of supervised release. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked--even on the last day of the term--and the 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 pursuant to law.
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.

Nonetheless, it is expressly understood and agreed by and between the Defendant and the United States that:

a. The parties stipulate and agree that a sentence of imprisonment shall be imposed in this case, and that the length of that imprisonment be at least five (5) years and no more than nine (9) years..

b. That the parties stipulate and agree that the Defendant shall go into custody at the time of entry of this plea agreement and shall remain in custody pending sentencing and the conditional appeal.

c. If the Court does not accept the agreement that the sentence in this case shall include imprisonment within the five (5) year to nine (9) year range as set out in this agreement, or the defendant enter into custody at the time of entry of a plea pursuant and remain in custody thereafter as set forth in this agreement, either the Defendant or the United States may revoke and withdraw from this plea agreement.

6. The parties agree that, as a part of the Defendant's sentence, the Court may enter an order of restitution as authorized by law.

7. 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.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I, **ROBERT A. WARREN**, am

acknowledging that I am pleading guilty because I am, in fact, guilty of the offense 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 my guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of the facts are true and correct:

A. On June 18, 2008, Federal Bureau of Investigation (FBI) Agents executed a search warrant at my residence of 3116 Vista Sandia, Santa Fe, New Mexico, 87506, to search for computers and computer-related media which contained evidence and was an instrumentality of a violation of 18 U.S.C. § 2252. FBI Agents seized multiple computers, external hard drives, compact disks, floppy disks, and a folder containing printed visual depictions of minors engaged in sexually explicit conduct (hereafter "child pornography") from my residence.

B. I now know the search warrant was based upon the fact that my personal identifying information and email addresses of "rawarren@rt66.com" and "derick38@comcast.net" were identified in seven (7) national Immigration and Customs Enforcement (ICE) Investigations from 2001 to 2006 in which purchasers of memberships to child pornography websites were identified. I also now know the search warrant was based upon a user with an IP Address of 67.164.150.173 attempted to access an advertised child pornography website, that was actually an undercover FBI website, at least nine (9) different times from October 28, 2007 to October 31, 2007. The IP Address of 67.164.150.173 belonged to Comcast and Comcast identified the user of this particular IP Address as myself living at 3116 Vista Sandia, Santa Fe, New Mexico.

C. I know that a forensic examiner conducted an examination of my computers, hard drives, floppy disks and compact disks. I know now that on my Dell XPS Tower, Serial Number 38H3T71, with an internal Western Digital Hard Drive, model SD3200AAKS, Serial Number WCARW3332506 (that was seized from my office on June 18, 2008), the examiner reviewed the registration information. The examiner found my email address of derick38@comcast.net. The examiner also found that the computer was titled "Bob's Computer" and the registered owner was listed as "Bob." The examiner found thousands of images and videos of child pornography. Many of the images and videos were saved in user created files titled "research 1," "research 2," "research 3", etc. The examiner found a peer-to-peer (P2P) file sharing program, which is used via the Internet, that contained child pornography images. The examiner also found child pornography images associated with Internet newsgroups. The examiner reviewed the Mozilla download browser file which also contained evidence of child pornography and search queries like "lolitas," "babysex," "preteen" and "little-slave" which is consistent with child pornography. The examiner found that the account holder of Mozilla was listed as "Robert Warren." The examiner also found some emails to my email account of "derick38@comcast.net" which confirmed my subscriptions to child pornography websites. Finally, the examiner found websites in my favorites such as "purechildfuck," "real child porn" and "child pedoporn" which are consistent with child pornography.

D. I know now the examiner also reviewed my following items: a Western Digital 750 GB Hard Drive, Model WD7500H1-U-00, Serial Number WCASN0062031 (which was seized from my office); a Western Digital External 320 GB USB Hard Drive, Model WD3200H1U-00, Serial Number WCARW1072969 (which was seized from my office); a

Gateway Desktop Computer, Model 2000, Serial Number 0009043536, with an internal IBM Hard Drive, Model DCAS-34330, Serial Number DN12E2R (which was seized from my garage); a Seagate 160 GB Sata Hard Drive, Model ST3160812AS, Serial Number 5LS3KV8B (which was seized from my office); and compact disks and floppies (which was seized from my office). The examiner found child pornography images and videos on each of these items.

E. I now know the agents sent the found child pornography images and videos from my computers to the National Center for Missing and Exploited Children (NCMEC) in an attempt to identify real, known children. According to NCMEC, there were 2621 known images and 26 known videos from 141 different series on my computers.

F. One such video which I received from the Internet, using my "derick38@comcast.net" email account, is titled "bondage.avi." This image was created on July 8, 2007 and saved in a folder titled "research 4" on my Dell XPS Tower, Serial Number 38H3T71, which contained an internal Western Digital 320 GB Seta Hard Drive. This is a known video from the "Vahl" series. This 3 minute and 15 second movie depicts a young prepubescent female tied in ropes, hanging from the ceiling, while an adult male fondles her vagina and breasts. The adult male then ties this female child to a board and forces his penis in her mouth, while the child is blindfolded.

G. I know now that Comcast has servers located in Pennsylvania and Colorado, therefore using my email account of derick38@comcast.net to receive this video, the video crossed state lines so as to satisfy the interstate nexus.

9. By signing this agreement, the Defendant admits all the foregoing facts and

admits that there is a factual basis for each element of the crime to which the Defendant will plead guilty. Specifically, the defendant agrees that on or about July 8, 2007, I, **ROBERT A. WARREN**, while in Santa Fe, New Mexico, knowingly received the visual depiction of "Bondage.avi" 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 this image on my Dell XPS Tower, Serial Number 38H3T71, with an internal Western Digital Hard Drive, model SD3200AAKS, Serial Number WCARW3332506. I knew it was illegal for me to possess this video.

10. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which Defendant will plead 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

11. For the sole purpose of preparing the Presentence Report in this case, the United States and the Defendant observe that the following United States Sentencing Guidelines (U.S.S.G) may be relevant in this case. The parties make these observations solely to expedite the preparation of the Presentence Report. The United States and the Defendant agree that the following observations are not binding on the parties or the Court. The Defendant reserves the right to argue that any specific guideline addressed below does not apply when calculating a guideline sentence in this case, should be departed from, or that the guidelines as a whole should be ignored. In other words, the observations concerning the guidelines made here should not

determine, as a matter of law, what sentence the Court shall impose within the five (5) year to nine (9) year duration that is addressed by this plea agreement.

a. The parties observe that U.S.S.G §2G2.2(a)(1) may be relevant in this case. The parties further agree the cross reference in U.S.S.G § 2G2.2 (c) is not applicable.

b. The parties observe that U.S.S.G. § 2G2.2(b)(4) may be relevant as the image of "bondage.avi" involved a child tied to a board.

c. The parties observe that U.S.S.G § 2G2.2(b)(2) may be relevant as the material involved a prepubescent minor.

d. The parties observe that U.S.S.G §2G2.2(b)(6) may be relevant as the offense involved the use of computer or interactive computer services for the possession, transmission, receipt of distribution of the material.

e. The parties ~~agree~~ observe that U.S.S.G §2G2.2(b)(7)(D) may be ~~applicable~~ as the offense involved at least 600 images or more. According to the commentary, "each video, video-clip, or similar visual depiction shall be considered to have 75 images." NCMEC identified 2621 known child pornography images and 26 known child pornography videos of identifiable minors

f. The parties agree as of the date of this agreement, the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for his or her criminal conduct, the Defendant is entitled to a reduction of three (3) levels from the base level as calculate under the sentencing guidelines. This reduction is contingent upon the Defendant personally providing to the United States

(PLA) (ML) relevant

Probation Officer who prepares the presentence report in this case an appropriate oral or written statement to which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in court as required, and/or failing to abide by conditions of release.

g. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant. Consequently, in return for the benefit conferred on the Defendant by entering into this agreement, the Defendant agrees to go into custody at the time of entry of a plea in this matter and shall remain in custody pending sentencing and conditional appeal. The Defendant is permitted to seek a downward departure or variance to the mandatory minimum term of imprisonment of five (5) years for the charge to which the Defendant pleads guilty. Finally, the Defendant agrees that a sentence within the range of five (5) to nine (9) years is a reasonable sentence, and thus waives his appeal rights related to a sentence which includes imprisonment within the range of five (5) to nine (9) years. If the Defendant, in violation of this paragraph, should nevertheless seek to remain out of custody pending sentencing or his conditional appeal, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on any and all charges which includes receipt and possession of visual depictions of minors engaged in sexually explicit conduct.

h. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the United States violates the plea agreement, or where the District Court's decision on the suppression motion (Docs. 100 & 101) is overturned, the Defendant

agrees that, upon the 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 the Defendant admits in conjunction with the plea agreement.

12. The United States and the Defendant understand that the above stipulations are not binding on the Court, except as to the length of imprisonment between five (5) years to nine (9) years and his custody status at the time of entry of plea and during his conditional appeal, and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Furthermore, the United States and the Defendant understand that, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court, with the exception that the imprisonment in this case will be between five (5) years and nine (9) years, and the Defendant will enter into custody at the time of plea and remain in custody during his conditional appeal; these provisions are binding in the sense that if the Court does not accept the plea agreement with these provisions, the United State or the Defendant may withdraw from the plea agreement.

DEFENDANT'S OBLIGATIONS

13. 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.

14. 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 Defendant's capacity to satisfy any fines and/or restitution.

15. The Defendant agrees to enter into custody at the time of entry of this plea and remain in custody pending sentencing and the conditional appeal. If the Defendant should violate this obligation, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on any and all charges in this case.

FORFEITURE

16. The Defendant voluntarily and immediately agrees to forfeit any interest and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offenses in this case.

17. 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:

- (A) Dell XPS Tower, Serial Number 38H3T71, with an internal Western Digital Hard Drive, model SD3200AAKS, Serial Number WCARW3332506, Evidence #QAQ_1 ;
- (B) Western Digital External 750 GB USB Hard Drive, Model WD7500H1-U-00, Serial Number WCASN0062031, Evidence #QAQ_2;
- (C) Western Digital External 320 GB USB Hard Drive, Model WD3200H1U-00, Serial Number WCARW1072969, Evidence #QAQ_3;
- (D) Gateway Desktop Computer, Model 2000, Serial Number 0009043536, with an internal IBM Hard Drive, Model DCAS-34330, Serial Number DN12E2R, Evidence #QAQ_7;
- (E) Compact disks and floppies, Evidence #QAQ_8 through QAQ_28; and
- (F) Seagate 160 GB Sata Hard Drive, Model ST3160812AS, Serial Number 5LS3KV8B, Evidence #QAQ_31.

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

19. 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

20. The Defendant understands that by pleading guilty, the Defendant will be required to register as a sex offender upon the Defendant's release from prison as a condition of supervised release pursuant to 18 U.S.C. § 3583(d). The Defendant also understands that independent of supervised release, the Defendant will be subject to federal and state sex offender registration requirements, and that those requirements may apply throughout the Defendant's life. The Defendant understands that the Defendant shall keep the Defendant's registration current, shall notify the state sex offender registration agency or agencies of any changes to the Defendant's name, place of residence, employment or student status, or other relevant information within three business days after such change. The Defendant shall comply with requirements to periodically verify in person the Defendant's sex offender registration information. The Defendant understands that the Defendant will be subject to possible federal and state penalties for failure to comply with any such sex offender registration requirements. If the Defendant resides in New Mexico following release from prison, the Defendant will be

subject to the registration requirements of New Mexico. The Defendant further understands, that under 18 U.S.C. § 4042(c), notice will be provided to certain law enforcement agencies upon the Defendant's release from confinement following conviction.

21. As a condition of supervised release, the Defendant shall initially register with the state sex offender registration in New Mexico, and shall also register with the state sex offender registration agency in any state where the Defendant resides, is employed, works, or is a student, as directed by the Probation office. The Defendant shall comply with all requirements of federal and state sex offender registration laws, including the requirements to update the Defendant's registration information. The Defendant shall provide proof of registration to the Probation office within 72 hours of release from imprisonment.

WAIVER OF APPEAL RIGHTS

22. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction or any sentence within five (5) years to (9) nine years of imprisonment. The United States also waives its right to appeal any sentence within five (5) years to nine (9) years of imprisonment. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel. The only exception to the Defendant's waiver of the right to appeal is that the Defendant does not forego his right to appeal the motion to suppress decision in this case reflected in the District Court's Orders (Docs. 100 & 101) and pursuant to Fed.R.Crim.P. 11(a)(2), or any fine or restitution not authorized by law.

UNITED STATES' AGREEMENT

23. Provided that the defendant fulfills his obligations as set out above, the United

States agrees that:

a. The United States will not recommend a sentence of imprisonment greater than nine (9) years in this particular case. Should the United States violate this condition, the Defendant shall have the right to treat this plea agreement as null and void and to proceed to trial on any and all charges in this case.

b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present Indictment.

c. The United States will move to dismiss Counts 1, 3, 4, 5, 6 and 7 of the Indictment at the time of sentencing.

d. 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.

VOLUNTARY PLEA

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

VIOLATION OF PLEA AGREEMENT

25. The defendant understands and agrees that if the 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 crime(s) or offense(s) contained in or related to the charges filed in this case, as

well as perjury, false statement, obstruction of justice and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

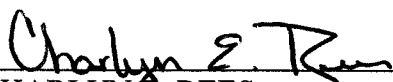
26. At the time of execution of this plea agreement, the Defendant will tender a money order or certified check payable to the order of the United States District Court, District of New Mexico, 333 Lomas Blvd., NW, Suite 270, Albuquerque, New Mexico 87102, in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT


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

AGREED TO AND SIGNED this 30 day of August, 2010.

KENNETH J. GONZALES
United States Attorney



CHARLYN E. REES
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PETER SCHOENBURG
MARC LOWRY
Attorneys 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.



ROBERT A. WARREN
Defendant